

TABLED

Cherokee Council House

Cherokee, (NC)

FEB 06 2020

ORDINANCE NO. 130 (2020)

WHEREAS, Tribal Council passed Ordinance No. 2 (2019) containing laws essential for the accreditation of the Tribe's Public Health Department; and

WHEREAS, as part of the public health law initiative there are other chapters of the Tribal Code that require updating in order to ensure accuracy in cross-referencing, language use and to reflect changes that would support efficiencies in the current government structure; and

WHEREAS, these proposed changes are the result of the collaborative efforts of the tribal programs that would benefit from the changes proposed.

NOW THEREFORE BE IT ORDAINED in Tribal Council assembled, at which a quorum is present, that Cherokee Code Chapters 113A, 113B, 113C, 113D, 113E, 113F and 113G shall be amended as set forth in Exhibit A.

BE IT FURTHER ORDAINED that this ordinance shall be effective upon ratification by the Principal Chief and that all prior ordinances and resolutions that are inconsistent with this ordinance are rescinded.

Submitted by: Office of the Attorney General for the Division of Public Health and Human Services

EXHIBIT A

Chapter 113A — AIR AND NOISE POLLUTION CONTROL AND ENVIRONMENT

ARTICLE I. - IN GENERAL

Secs. 113A-1—113A-20. - Reserved.

ARTICLE II. - OVERFLIGHTS

1 Sec. 113A-21. - Purpose.

2 This Overflights ordinance was created to protect the lands, sacred sites and the peaceful
3 enjoyment of Tribal habitations of the Eastern Band of Cherokee Indians from the invasion of
4 noise and air pollution and the invasion of individual and collective privacy on the part of
5 commercial air tour sightseeing agencies and other flight operations.

6 Sec. 113A-22. - Authority.

7 (a)A. Like land, water, and minerals, the airspace of the Eastern Band of Cherokee Indians
8 over and near the Reservation is an important resource for Indian people, and the Indians
9 must use their rights to ensure proper utilization of such a resource. The Eastern Band of
10 Cherokee Indians Tribal Government has the inherent sovereign power to pass laws to
11 implement and enforce those special rights on behalf of members of the Tribe. The Tribe
12 believes it is important to establish an Overflight ordinance in order to use the aforesaid laws
13 and powers to protect the health, safety and welfare of the Tribe.

14 (b)B. Section 23 of the Charter and Governing Document of the Eastern Band of Cherokee
15 Indians gives the Tribe the authority to adopt laws and regulations for the government of the
16 Tribe.

17 Sec. 113A-23. - Definitions and applicability.

18 (a)A. *Definitions.*

19 (1) A "commercial air tour" means any sightseeing flight operated under visual flight
20 conditions for compensation or hire, taking into account such factors as the areas where
21 the flights are conducted, the frequency of flights, the routes of flights, and the
22 operator's advertising, solicitation, or holding out to the public as willing to provide a
23 sightseeing flight.

24 (2) For purposes of this rule, "the Reservation" means any part of the Eastern Band of
25 Cherokee Indian Reservation. This includes fee land parcels within the external
26 boundaries of the Reservation.

27 (3) A "military flight" refers to any flight on the part of any division of the United States
28 Armed Services. This definition does not include any flight conducted on the part of
29 any military official who is not acting in the course of his/her duties as a member of the
30 Armed Services.

31 (4) A "medical flight" is any flight used to transport injured or ill individuals or to
32 transport vital organs for the purpose of transplantation.

(5) A "noncommercial flight" refers to any flight that is not operated under visual flight conditions for compensation or hire. This includes, but is not limited to, flights for the purposes of personal recreational use, agricultural use, forestry and military and medical uses.

(b)B. *Applicability.*

(1) This rule applies to all commercial air tours within the exterior boundary of the Reservation who fly below 5,000 feet above ground level (AGL) over the Reservation.

(2) This article does not apply to medical, forestry or military flights.

Sec. 113A-24. - Air tour licensing requirements.

(a)A. This section corresponds with 42 C.F.R. part 135 of the Federal Aviation Regulations (FAR) as follows:

(1) All commercial air tour operators operating, over the Eastern Band of Cherokee Reservation must comply with 42 C.F.R. part 135 of the Federal Aviation Regulations within six months of the ratification of this article.

(2) Notwithstanding paragraph (1) above, an operator may conduct commercial air tours pursuant to 42 C.F.R. part 91 of the FAR if:

(i) The operator secures a letter of agreement signed by the Tribal Business Committee and the Tribal Council describing the conditions under which such flights will be conducted; and

(ii) The flights are:

(a) Not violative of the Tribe's health or welfare;

(b) Nonintrusive;

(c) Not unreasonably impacting Reservation resources and resident and/or visitor experiences; and

(d) Adhere to the requirements of the Air Tour Management Plan (ATMP); and

(iii) No more than five air tour flights cumulative are provided in any 30-day period.

(b)B. No commercial air tour may operate over the Reservation under paragraph 4(A)(2) until an ATMP for the Reservation has been adopted.

(c)C. Each operator that conducts a commercial air tour over the Reservation shall comply with the operating specifications that are based on the ATMP for the Reservation.

(d)D. No existing commercial air tour operator shall continue to conduct commercial air tours over the Reservation until they comply with all of the terms of this article, or until they reach an agreement with the Tribal Council and the Tribal Business Committee as contemplated by section 113A-28 of this article.

Sec. 113A-25. - The Office of the Tribal Aviation Commissioner (reserved).

Sec. 113A-26. - Air Tour Management Plan (ATMP).

1 (a)A. Visitor activities on the Reservation must occur in such a manner and by such means so as
2 to prevent impairment of Reservation resources and values. Consistent with this requirement
3 and the purposes and values of the Eastern Band of Cherokee Indians, opportunities for all
4 residents and visitors, including air tour passengers and ground based visitors, and the
5 special interests of Native Americans, must be managed in an equitable manner.

6 (b)B. Following these determinations, the Tribal Council and the Tribal Business Committee
7 will undertake a formal scoping process that enables the agencies and the public to develop a
8 proposed ATMP that responds appropriately to the needs determined by the Tribal Business
9 Committee and the Tribal Council's requirements for the safe and efficient use of the Eastern
10 Band of Cherokee Nation's airspace. This would be done by means of a public scoping
11 session in which the public can comment on the proposed ATMP.

12 (c)C. An operator who operates or proposes to establish a commercial air tour over the Eastern
13 Band of Cherokee Reservation shall apply to the Tribal Business Committee for the
14 appropriate operation specifications. The Tribal Business Committee shall promptly notify
15 the Tribal Council that a formal proposal has been submitted to conduct an air tour over the
16 Reservation.

17 (d)D. The Tribal Business Committee will undertake to establish an ATMP in cooperation with
18 the Tribal Council. The Tribal Council shall have the responsibility for assisting and
19 cooperating in the ATMP's development and in determining the nature and extent of impacts
20 on natural and cultural resources, health and welfare of the Tribe, and resident and/or visitor
21 experience opportunities. The Tribal Business Committee shall be responsible for initiating
22 the ATMP and for ensuring the safe and efficient use of the Eastern Band of Cherokee
23 Nation's airspace and to protect the public health and welfare from aircraft noise and
24 pollution. All of this will be done in recognition of the fact that Native peoples have rights to
25 the protection of their lands and sacred sites, and to the peaceful use and enjoyment of Tribal
26 habitations, without invasion of their individual and collective privacy.

27 (1) If the Reservation has any bona fide commercial air tours on the date of publication of
28 this overflights article, the Tribal Business Committee, the Tribal Council, affected air
29 tour operators, and other interested parties will begin the ATMP development process
30 upon the adoption of the final ordinance.

31 (2) If the Reservation has no commercial air tour companies on the date of adoption of
32 this rule, the ATMP development process will begin when an operator first applies to
33 the Tribal Business Committee for approval under section 113A-24 that would permit
34 such operations on the Reservation.

35 (3) The Tribal Business Committee and the Tribal Council will then undertake a formal
36 scoping process that enables the agencies and the public to decide whether commercial
37 air tour flightseeing is appropriate over a particular area of the Reservation and under
38 what conditions flightseeing may or may not take place.

39 (4) The Tribal Business Committee and the Tribal Council shall identify other interested
40 parties in the vicinity of the Reservation and shall offer them a role in formulating the
41 ATMP and, to the extent the Tribal Council desires, ensure their effective participation
42 in its development. This may be through the Tribal Business Committee and the Tribal

Council cooperating in the development of an Environmental Assessment (EA) or an Environmental Impact Study (EIS) or by means of some other appropriate agreement.

(5) The Tribal Council and the Tribal Business Committee shall not unilaterally decide to ban all commercial air tours over the Reservation before an application is filed and may not authorize air tours except pursuant to this article.

(6) If either the Tribal Council or Tribal Business Committee lacks the funds to conduct the EA/EIS punctually, the operator may pay for it, thereby expediting the process, but only after prior approval to proceed by the Tribal Business Committee and the Tribal Council.

(e)E. In making their decisions, the Tribal Council and the Tribal Business Committee shall take the following general principles into account:

(1) The general health and welfare of the Tribe.

(2) Existing management plans for the Reservation.

(3) In certain areas of the Reservation where "natural quiet" is an appropriate concern, every ground Reservation resident and/or visitor should have the reasonable opportunity to enjoy unimpaired quiet.

(4) Diversity of resident and/or visitor experience, taking into account the purpose, value, history, and nature of the Reservation.

(5) In certain areas of the Reservation, commercial air tours can provide an appropriate means to experience the Reservation environment from a perspective which can enhance both Reservation residents' and visitors' enjoyment and understanding of natural and cultural resources, and natural processes.

(6) Access to the Reservation, and providing the ability of diverse populations to experience the Reservation.

(7) Ability of ground residents and/or visitors or air tour visitors to obtain a similar experience, including natural quiet, near but not in or over specific areas of the Reservation.

(8) Timing, e.g., restrictions for particular events or occasions, or for seasonal wildlife considerations.

(9) Impacts on cultural events or values, wildlife, wilderness, solitude, and ability to view elements of the Reservation.

(10) Protection of the sanctity of sites sacred to the Eastern Band of Cherokee Indians, and the peaceful enjoyment of Tribal habitations and traditional activities.

(11) Altitude of flights.

(12) Time of occurrence of flights.

(13) Potential contamination that may result from fuel tanks stored on the Reservation for plane refueling.

(14) Other pollution including, but not limited to, air and water pollution.

(15) The frequency of flights and the number of flights per operator.

1 This list is not to be construed as exhaustive.

2 (f)F. The Air Tour Management Plan may prohibit, authorize, or authorize, with conditions,
3 commercial air tour flights over the Reservation itself, and to the extent to which other
4 interested, non-Tribal parties were cooperating agencies in the development of the ATMP
5 flights over non-Tribal lands near the Reservation. The limitations or conditions may
6 address:

7 (1) Potential effects of the ATMP on the general health and welfare of the Tribe.

8 (2) Air tour routes.

9 (3) Maximum or minimum altitudes.

10 (4) Time of day restrictions.

11 (5) Restrictions for particular events.

12 (6) Maximum number of flights per unit of time.

13 (7) Intrusions of privacy on Tribal lands.

14 (8) Mitigation of noise, visual, pollution, or other impacts.

15 (9) Prohibition of flights.

16 (10) Potential contamination that may result from leaking fuel tanks stored on the
17 Reservation for plane refueling.

18 (11) Other pollution including, but not limited to, air and water pollution.

19 This list is not to be construed as exhaustive.

20 (g)G. If restrictions are placed on the maximum number of air tour flights per unit of time,
21 allocation of opportunities to conduct air tours initially would be determined in the public
22 process of the ATMP development. Once the ATMP is adopted and in place, free market
23 mechanisms, buying and selling, would be allowed to allocate these opportunities among
24 interested entities. Such opportunities are not property rights.

25 (h)H. If:

26 (1) The ATMP procedure results in specification of a maximum number of commercial
27 air tour flights on the Reservation;

28 (2) The entire number of available flights is allocated to existing operators; and

29 (3) A new entrant wants to commence commercial air tour operations on the Reservation;

30 Then that new entrant must:

31 (i) Obtain FAR 42 C.F.R. part 135 certification from the Tribal Business Committee,
32 including approval of operation specifications that permit the new entrant to
33 operate such commercial air tours from the Reservation; and

34 (ii) Purchase from an existing commercial air tour operator on the Reservation all or a
35 portion of the existing operator's authorized commercial air tours on the
36 Reservation.

1 (i)I. The ATMP should prescribe incentives for the adoption of "quiet aircraft technology" by
2 air tour operators operating on the Reservation. Such incentives might include, for example,
3 preferential routes or times of operations. An ATMP may not favor one operator or kind of
4 aircraft over another on any basis other than demonstrable noise impacts on the ground
5 residence on the Reservation.

6 (j)J. Both the Tribal Council and Tribal Business Committee may sign and adopt the
7 environmental determination, which may include a Finding of No Significant Impact
8 (FONSI), Environmental Assessment (EA), or Environmental Impact Statement (EIS), and
9 the Record of Decision for the ATMP, should a study be completed.

10 (k)K. Any person may petition the Tribal Business Committee to initiate an amendment of a
11 completed ATMP. The Tribal Business Committee and the Tribal Council shall consider
12 proposed amendments to a completed ATMP on a resources-available basis, but must make
13 a good faith effort to consider such proposed amendments at least once every 24 calendar
14 months. At any time, either entity may, but neither entity must, propose and sponsor
15 amendments of a completed ATMP.

16 Sec. 113A-27. - Enforcement.

17 (a)A. The Tribe will enforce the terms of the ATMP by imposing administrative or civil
18 sanctions against operators who violate the term of their 42 C.F.R. part 135 operating
19 certificate operation specifications. Sanctions may include the entire range of Tribal
20 enforcement measures, including revocation of the offending operator's permit to conduct
21 tours on the Reservation, a fine, revocation of trader's licenses, or injunctive relief.

22 (b)B. Any person who violates any of the provisions of this article is subject to the imposition
23 of civil penalties for such unlawful activities. The Business Committee, through the Tribe's
24 Attorney General, is authorized to file a civil action against such person on behalf of the
25 Tribe in Tribal Court for civil penalties, including reasonable attorney's fees and costs. Any
26 civil action concerning such violations shall be heard in Tribal Court, and the alleged
27 violator shall be served and have the opportunity to be heard. Any person who is found by
28 the Tribal Court to have committed the violations, shall be subject to a civil penalty of not
29 less than \$100.00, but not more than \$1,500.00, for each day each violation occurs,
30 including reasonable attorney's fees and costs.

31 (c)C. The Business Committee, through the Tribe's Attorney General, is authorized to bring a
32 civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law,
33 against any person who has committed any violation under the provisions, for all civil
34 damages caused, including damages to the land or natural resources of the Tribe or its
35 members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for
36 cleaning up any hazardous waste, or abating the effects thereof, together with the costs of
37 the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of
38 any civil action for damages before such action is filed.

39 (d)D. All civil damages shall be paid to the Tribe. This includes any property which is
40 forfeited to the Tribe for payment of civil damages.

41 (e)E. Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the
42 attorney is an employee of the Tribe, or shall otherwise be paid according to the provisions

1 of any retainer agreement. All costs of suit awarded in any civil action shall be paid to the
2 Tribe.

3 (f)F. Any person who is not a member of the Tribe who is found by the Tribal Court to have
4 committed any violations may be excluded from the Reservation, and may have his or her
5 rights to engage in commercial dealing, or consensual activities, on the Reservation
6 suspended or terminated.

7 (g)G. Any civil penalties or damages imposed under this section are in addition to, and do not
8 supercede or limit, any other remedies which may be available to the Tribe, including the
9 filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil
10 damages, or any other relief in any court of competent jurisdiction.

11 (h)H. The Eastern Band of Cherokee Court of Indian Offenses shall have jurisdiction to hear
12 all matters arising from this article.

13 (i)I. Any Tribal member or other person living on or around the Reservation may refer a
14 complaint of ATMP violations to the Tribal Business Committee for appropriate
15 enforcement actions.

Sec. 113A-28. - Interim authority.

(a)A. If there are no bona fide commercial air tour operations on the Reservation as of August
1, 1998, no commercial air tour operations may commence until an ATMP is adopted for the
Reservation.

(b)B. If a bona fide commercial air tour operation exists over the Reservation as of August 1,
1998, that operator may continue to operate that existing service, provided the Tribal
Council, the Business Committee, and the operator have negotiated an interim operating
agreement that embodies the existing service, which includes the following:

- (1) The agreement must protect the general health and welfare of the Tribe; and
- (2) The operator applies for appropriate operation specifications pursuant to this article;
and
- (3) The agreement must ensure the protection of Reservation resources and values; and
- (4) The agreement must enhance safe operation of the air tour; and
- (5) The agreement must foster the adoption of quiet technology; and
- (6) The agreement must allow for modifications of the operations based on experience,
provided that modification improves protection of Reservation resources and values;
and
- (7) An operator providing service pursuant to 42 C.F.R. part 91 applies for 42 C.F.R. part
135 authority; and
- (8) The agreement must set out to avoid potential contamination that could result from
leaking fuel tanks stored on the Reservation for plane refueling purposes; and
- (9) The agreement must set out to prevent air, water and other potential pollution.

This list is not to be construed as exhaustive.

(c)E. The draft of the Interim Operating Agreement shall be published for public comment.

(d)D. Interim Operating Authority shall extend until adoption of the ATMP at the Reservation, but may be suspended or revoked before then by the Tribal Business Committee if the operator operates in material violation of the procedures and specifications of the Interim Operating Agreement.

(e)E. The parties may agree on any changes to the Interim Operating Authority that otherwise meet the standards of this article.

(f)F. Interim Operating Authorities may not be bought and sold.

Sec. 113A-29. - Fees.

To the extent that fees are charged for ground visitors, the ATMP may impose, and commercial air operators will pay, a reasonable fee.

Sec. 113A-30. - Compliance monitoring.

The ATMP shall consider whether a system is necessary to monitor compliance or to distinguish between tour and nontour aircraft.

Sec. 113A-31. - Rules and regulations.

The Division of Agriculture and Natural Resources~~Business Committee~~ shall promulgate rules and regulations for the enforcement of this article.

~~Sec. 113A-32. — Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this article are specifically repealed.~~

~~Sec. 113A-33. — Severability.~~

~~If any section of this article is deemed unconstitutional, the remaining provisions shall have full force and effect.~~

~~Sec. 113A-34. — Effective date.~~

~~This article shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113B - PROHIBITION OF OPEN DUMPING

Sec. 113B-1. - Purpose.

The purpose of this chapter is to improve environmental health, public sanitation, and general aesthetics by prohibiting the open dumping of solid waste on the lands of the Eastern Band of Cherokee Indians.

Sec. 113B-2. - Definitions.

- (1) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

- (2) *Garbage* shall mean all putrescible wastes, including animal, aquacultural, offal and carcasses, and recognizable industrial byproducts or substances that create a public nuisance or potential health hazard as determined by the Deputy Operating Officer or his or her authorized representative, but excluding sewage and human wastes.
- (3) *Open dump* shall mean a solid waste disposal site that does not have a permit.
- (4) *Person* shall mean an individual, corporation, company, association, partnership, unit of Tribal government, state agency, federal agency, or other legal entity.
- (5) *Putrescible* shall mean a solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisances from odors and gases, such as commercial kitchen wastes, offal, and carcasses.
- (6) *Refuse* shall mean all nonputrescible waste.
- (7) *Sludge* shall mean any solid, semisolid, or liquid waste generated from a municipal, commercial, institutional, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effect.
- (8) *Solid waste* shall mean any hazardous or nonhazardous garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment, and disposal systems, and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. This term does not include:
- (a) Fowl and animal fecal waste; or
 - (b) Solid or dissolved material in:
 - (1) Domestic sewage and sludge generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems which are designed to discharge effluent to the surface waters;
 - (2) Irrigation return flows; and
 - (3) Wastewater discharges and the sludge incidental thereto and generated by the treatment thereof which are point sources subject to permitting under section 402 of the Federal Water Pollution Control Act; except that sludge meeting the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act shall also be a solid waste for the purposes of this chapter.
- ~~(9) Vector shall mean a carrier, usually an arthropod, that is capable of transmitting a pathogen from one organism to another.~~
- ~~(10) Erosion control measure, structure, or device shall mean a physical device constructed, and management practices utilized, to control sedimentation and soil erosion such as silt fences, sediment basins, check dams, channels, swales, energy dissipation pads, seeding, mulching and other similar items.~~

(944) *Tribe* shall mean the Eastern Band of Cherokee Indians.

(1042) *Reservation* shall mean all trust land held by the United States for the benefit of the Eastern Band of Cherokee Indians the land within the limits of the Cherokee Indian Reservation, or the Qualla Boundary, established on September 6, 1839, by Executive Order, presently containing 56,573 acres more or less, and under the jurisdiction of the United States government, and including rights of way running through the Reservation.

(1143) *Disposal* shall mean the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any water, including groundwater.

(1244) *Disposal site* shall mean any site designated and approved by the Deputy Officer of Utilities for the collection and disposal of solid waste.

(1345) *Secretary of the Division of Operations*~~Deputy Operating Officer~~ or his or her authorized representative. The Secretary of the Division of Operations~~Deputy Operating Officer~~ is the direct supervisor of the Director of Infrastructure and Public Facilities responsible for the programs, departments, or agencies with functions and responsibilities for solid waste, water and sewer line construction, wastewater treatment and discharge, and water treatment for consumption. Central Engineering and Public Safety Divisions. "His or her authorized representative," refers to a Tribal employee who is designated by the Secretary or law ~~reports to the Deputy Operating Officer and is authorized~~ to carry out the intent of this chapter. ~~on behalf of the Deputy Operating Officer.~~

(1446) *Executive Office* shall mean the office of the Principal Chief of the Eastern Band of Cherokee.

Sec. 113B-3. - Applicability.

This chapter applies to all lands of the Cherokee Indian Reservation located in Swain, Jackson, Haywood, Graham, and Cherokee Counties.

Sec. 113B-4. - Open dump closure.

A person operating or having operated an open dump for disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including any corporation, shall immediately close the site. ~~in accordance with the following requirements:~~

(1) ~~At the discretion of the Deputy Operating Officer or his or her authorized representative, all solid waste will be either removed and placed in an approved solid waste disposal site or facility, or will be compacted and covered in place with one foot or more of suitable compacted earth. A condition of closing the site by compacting and covering the waste in place shall be recordation of the waste disposal location by the possessory holder with the Bureau of Indian Affairs, Branch of Real Property Management.~~

(2) ~~In addition, at the request of the Deputy Operating Officer or his or her authorized representative in coordination with other Tribal programs as necessary, effective vector control and erosion control measures shall be implemented. The Deputy Operating Officer or his or her~~

~~authorized representative may also request means by which to prevent unauthorized entry to the site including gates, chains, berms, fences, signage or other methods deemed necessary.~~

(3) — All steps needed for proper closure will be funded by the person operating the dump or the possessory holder who holds land on which such an open dump is or has been operating. Should the Tribe incur costs for the closure of an open dump, the cost will be a debt to the Tribe and collected as such.

Sec. 113B-5. - Enforcement.

- (1) The ~~Department of the Environmental and~~ Natural Resources ~~Office, agents, officials, or other qualified persons authorized by the Executive Office~~ will periodically inspect tribal lands sites for the presence of open dumping to ensure compliance with this chapter, or rules or orders adopted or issued pursuant to this chapter.
- (2) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Eastern Band of Cherokee while that person is inspecting or attempting to inspect suspected open dumping activities when that person is authorized to do so under tribal law or rules adopted by the Division of Agriculture and Natural Resources under the authority of chapter 150.
- (3) If it is determined that a person engaging in a waste disposal activity on Tribal lands or deeded lands within lands under Tribal jurisdiction fail to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, ~~a notice of violation will be served upon that person. The notice shall specify a date by which the person must comply with the provisions of this chapter, or rules or orders adopted pursuant to this chapter and inform the person of the actions that need to be taken to comply with Chapter 113B. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.~~ For the purpose of this section, 30 days will be given to any person or entity in violation of Chapter 113B to comply. ~~The Environmental & Natural Resources Office reserves the right to shorten the time limits for compliance, depending on the severity of the activity.~~

(a) — Inspection schedule:

- (1) — ~~Written warning to those individuals/entities engaged in illegal dumping activities. A schedule will be provided to the individual/entity to come into compliance. The Environmental and Natural Resources Office reserves the right to issue a fine or initiate proceedings to recover costs associated with clean-up of open dumps if necessary.~~
- (2) — ~~Re-inspection of site. Final notice to comply if progress unsatisfactory.~~
- (3) — ~~Stop work order/Notice of failure to comply delivered and fines issued.~~
- (4) — ~~A stop work order or notice of failure to comply can be initiated at any time at the discretion of the Manager of the Environmental & Natural Resources Office in accordance with the severity of the site. The Environmental & Natural Resources Office reserves the right to issue a fine automatically or initiate proceedings to recover costs associated with clean-up of open dumps if individual/entity fails to comply with written requests of the Tribe.~~

- (4) The ~~Department of Environmental and~~ Natural Resources ~~Office~~ shall have the power to conduct such investigations as it may deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon property, public or private, for the purpose of investigating and inspecting the sites of any suspected open dumping activities.
- (5) The ~~Department of Environmental and~~ Natural Resources ~~Office~~ shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions related to suspected open dumping activities.

Sec. 113B-6. - Penalties.

Environmental Compliance Fine Schedule

| Residential | Commercial |
|------------------------------|--------------------------------------|
| 1st offense - Warning notice | |
| 2nd offense - \$50.00/day | \$200.00/day |
| 3rd offense - \$100.00/day | \$400.00/day |
| 4th offense - \$200.00/day | \$600.00/day* final notice to comply |

*Not to exceed \$5,000.00

This does not include clean-up, transportation and remediation costs incurred by the Tribe in cases where the Eastern Band of Cherokee takes action in the clean-up of illegal dumping activities.

- (1) *Criminal prosecution.* In addition to the closure requirements listed in section 113B-4 above, a person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Court shall be subject to imprisonment of 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.
- (2) *Civil proceedings.* A person operating or having operated an open dump for the disposal of solid waste or a possessory holder who holds land on which such an open dump is or has been operating, including a corporation, shall be subject to the imposition ~~by the Tribal Department of Sanitation~~ of a civil penalty not to exceed \$5,000.00 for each violation. A civil penalty shall be assessed only after the Tribe has given the alleged violator notice of ~~the violation contemplated board action~~ and an

~~administrative hearing, if requested, consistent with chapter 150. If the offender fails to pay the civil penalty so assessed within 15 days after written notice of final assessment thereof, then said penalty may be recovered by the Tribe in a civil action in the nature of debt.~~

- (3) *Injunction and abatement.* The violation of this chapter is hereby declared to be a public health nuisance, and this chapter may be enforced by rules adopted by the Division of Public Health and Human Services or by the Division of Agriculture and Natural Resources, in accordance with chapter 150. This may include injunctive relief granted by the Cherokee Court, injunction and or an Order of Abatement. ~~Injunctions and Orders of Abatement may be issued administratively by the Environmental Review Board after notice and hearing; and, after exhaustion of the administrative process, actions for such remedies may be commenced in the Cherokee Court against all persons subject to its jurisdiction while those not subject to the jurisdiction of the Cherokee Court may be subjected to the jurisdiction of the North Carolina Courts or the United States Courts, as appropriate. This subsection does not preclude the Environmental Review Board from issuing a temporary emergency injunction without notice and a hearing if an emergency exists by which damage to persons or property appears to be imminent; a temporary emergency injunction may not exceed more than 14 calendar days without notice and hearing.~~
- (4) *Exclusion.* Any person who is not a member of the Tribe who ~~is found by the Cherokee Court to have committed any violations~~ this Chapter may be excluded from the Reservation, ~~or~~ and may have his or her rights to engaged in commercial dealings or consensual activities on the Reservation suspended or terminated.
- (5) *Costs.* In addition to the above proceedings, the Tribe, through the Tribal Attorney General, is authorized to initiate ~~administrative or court proceedings separately or in connection with either a criminal, civil, injunctive, abatement or exclusion proceeding brought under this Code. Such proceedings may seek~~ to recover ~~for~~ any damages caused to the lands or other resources of the Eastern Band of Cherokee Indians as a result of any violation of this section. ~~This includes payment of costs of all associated remedial action taken, for any expenses incurred in investigating and evaluating such damages, for any administrative costs incurred as a result of this matter and for the reasonable value of the attorney time and expenses associated with such proceedings. The Environmental Review Board may require the payment of costs pursuant to this subsection as part of its authority to provide an administrative remedy, which may be appealed to the Cherokee Court.~~
- (6) *Scope of penalties or damages.* Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, ~~including any relief before the Environmental Review Board or in any court of competent jurisdiction.~~

Sec. 113B-7. - Rules and regulations.

The Division of Agriculture and Natural Resources ~~Environmental Department~~ shall promulgate rules and regulations for the enforcement of this chapter.

~~Sec. 113B-8. - Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this chapter are specifically repealed.~~

Sec. 113B-9. - Severability.

If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.

~~Sec. 113B-10. - Effective date.~~

~~This chapter shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113C - CONTROL OF OPEN BURNING

Sec. 113C-1. - Purpose.

The practice of the open burning of combustible materials results in pollution of the air which can detrimentally affect the health and well-being of the human community and the natural resources on which they depend. The purpose of this section is to control the air pollution resultant from the open burning of combustible materials on the Cherokee Indian Reservation.

Sec. 113C-2. - Definitions.

(a) For the purpose of this chapter, the following definitions apply:

- (1) *Air curtain burner* shall mean a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) *Dangerous materials* shall mean explosives or containers used in the holding or transporting of explosives.
- (3) *Hazardous waste* shall mean a hazardous waste as defined in 40 C.F.R. § 261.3.
- (4) *Land clearing* shall mean the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way; agricultural, residential, commercial, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property cleanup activities.
- (5) *Log* shall mean any limb or trunk whose diameter exceeds six inches.
- (6) *Nuisance* shall mean causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (7) *Occupied structure* shall mean a building in which people may live or work or one intended for housing farm or other domestic animals.
- (8) *Open burning* shall mean the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (9) *Person* shall mean:
 - (a) The person in operational control over the open burning; or

- (b) The possessory landholder or person in control of the land when he has directly or indirectly allowed the open burning or has benefitted from it.
- (10) *Public pickup* shall mean the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a Tribal or other governmental agency, private company contracted by a governmental agency or municipal service.
- (11) *Public road* shall mean any road that is part of the state highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (12) *RACM* shall mean regulated asbestos containing material as defined in 40 C.F.R. § 61.142.
- (13) *Refuse* shall mean any garbage, rubbish, or trade waste.
- (14) *Director* shall mean the Director of the Tribal Environmental Office.
- (15) *Salvageable items* shall mean any product or material that was first discarded or damaged and then all, or part, was saved for future use, and includes insulated wire, electric motors, and electric transformers.
- (16) *Synthetic material* shall mean manmade material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (17) *Fire chief* shall mean the person authorized by the Tribal government to administer and enforce Tribal fire policies.
- (18) *Tribe* shall mean the Eastern Band of Cherokee Indians.
- (19) *Tribal Environmental Office* shall mean the staff authorized by the Tribal government to implement and enforce Tribal environmental policies.
- (20) *BIA* shall mean the Bureau of Indian Affairs.
- Sec. 113C-3. - Applicability.

This Chapter applies to all ~~activities operations~~ involving open burning. ~~This Chapter does not authorize any open burning which is not allowed by the Bureau of Indian Affairs Branch of Forestry.~~

Sec. 113C-4. - Prohibited open burning; control of existing fires.

- (a) All open burning is prohibited except open burning allowed under Cherokee Code Sec. 113C-5, Sec. 113C-6, or Sec. 113C-7.
- (b) Burn bans that prohibit open burning during periods of hazardous forest fire conditions may be declared pursuant to recommendation from the Cherokee Fire Department Chief. Upon such recommendation, during periods of hazardous forest fire conditions, the Principal Chief is authorized to prohibit all open burning regardless of whether a permit is required under Sec. 113C-6 or no permit required under Sec. 113C-5 or as allowed under Sec. 113C-7. The Principal Chief shall issue a press release containing relevant details of the prohibition to news media serving the area affected. Upon a determination that hazardous forest fire conditions exist the Principal Chief is authorized to cancel any burn permit issued under this Chapter and suspend the issuance of any new permits.

- (c) If a fire is set without a permit as required by Sec. 113C-6, or is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by public safety officials, environmental compliance or enforcement. In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed, the Tribe may enter the property and take responsible steps to extinguish or control the fire.

Sec. 113C-5. - Permissible open burning without a permit.

- (a) The following types of open burning are permissible without a permit:

- (1) Open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:

- (a) The material burned originates on the premises of private residences and is burned on those premises;
- (b) There are no public pickup services available;
- (c) The material does not include municipal solid waste such as nonvegetative materials, such as household garbage or other manmade materials (i.e., shingles, tires, plastic), are not burned;
- (d) The burning is started no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
- (e) The burning does not create a nuisance; and
- (f) Material is not burned when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;

- (2) Campfires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials, refuse or salvageable materials for fuel;

- (3) Fires purposely set to forest lands for forest management practices by a government program authorized by law to manage tribal forest lands; acceptable to the Bureau of Indian Affairs Branch of Forestry;

- (4) Fires purposely set to agricultural lands for disease, pest control, and other agricultural practices by a government program authorized by law to manage agricultural lands acceptable to the agriculture extension service;

- (5) Fires purposely set for wildlife management practices by a government program authorized by law to manage wildlife; acceptable to the Tribal Fish and Game Department;

- ~~(6) Fires for the disposal of dangerous materials when it is the safest and most practical method of disposal, provided preapproval is obtained from the Tribal Environmental Director in writing;~~

~~(7) Fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood if the Tribal Environmental Director grants permission for the burning. The person desiring to do the burning shall document to the Tribal Environmental Director that there is no other practical method of disposal of the waste. Factors that the Tribal Environmental Director shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The Tribal Environmental Director shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this subparagraph shall comply with the conditions of subparagraphs (1)(a) and (1)(b) of this rule;~~

~~(8) Fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;~~

(9) Fires purposely set for the instruction and training of firefighting personnel, including fires at permanent firefighting training facilities, or when conducted with the express permission of the Department of Natural Resources and under the supervision of or with the cooperation of one or more of the following agencies:

(a) The Tribe's or the Bureau of Indian Affairs Branch of Forestry;

(b) The North Carolina Insurance Department;

(c) North Carolina technical institutes; or

(d) North Carolina community colleges, including:

(I) The North Carolina Fire College; ~~or~~

(II) The North Carolina Rescue College; ~~or~~

(e) The Cherokee Fire Department.

Sec. 113C-6. - Permissible open burning with a permit.

(a) Open burning for land clearing or right-of-way maintenance is permitted if the following conditions are met, and a written permit from the from the Tribal Department of Natural Resources Environmental Office is issued pursuant to rules adopted by the Division of Agriculture and Natural Resources under Chapter 150. The following guidelines shall be adhered to in permitting the open burning of land clearing or construction debris.

(1a) Prevailing winds at the time of burning are away from any area, including public road within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;

(2b) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The Department of Natural Resources Tribal Environmental Director may grant exceptions to the setback requirements if:

- (A) A signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained before the open burning begins from all residents or owners of dwellings, commercial or institutional establishments, or other occupied structures within 1,000 feet of the open burning site; or
- (B) An air curtain burner as described in Rule 113C-7 of this chapter, is utilized at the open burning site;
- (C) Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth are not burned. However, kerosene, distillate oil, or diesel fuel may be used to start the fire;
- (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the Department of Natural Resources Tribal Environmental Director. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this part; and
- (E) No fires are started or vegetation is added to existing fires when the Tribe's Division of Agriculture and Natural Resources Bureau of Indian Affairs Branch of Forestry has banned burning for that area.

Sec. 113C-7. - Air curtain burners.

- (a) Debris from land clearing or right-of-way maintenance may be carried off-site for open burning to facilities permitted in accordance with this rule for the operation of an air curtain burner. However, no material may be taken off-site for open burning in areas where a permitted air curtain burner is not available.
- (b) Air permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months. Operating air permits shall be required for air curtain burners located at permanent sites or where materials are transported in from another site.
- (c) Air curtain burners described in paragraph (b) of this rule shall comply with the following conditions and stipulations:
 - (1a) Prevailing winds at the time of burning shall be away from any area, including a public road within 250 feet of the burning, as measured from the edge of the pavement or other roadway surface, which may be significantly affected by smoke, ash, or other air pollutants from the burning;
 - (2b) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;

- (3e) No fires shall be started or material added to existing fires when the Bureau of Indian Affairs Branch of Forestry has banned burning for that area;
- (4d) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5e) Operators of the air curtain burner shall be certified to read visible emissions and the facility shall be tested for visible emissions within 90 days after initial operation;
- (6f) Air curtain burners shall meet manufacturers specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturers specifications shall be kept on-site and be available for inspection by the Department of Natural Resources ~~Tribal Environmental staff~~;
- (7g) Except during startup, visible emissions shall not exceed five percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five percent but no more than 35 percent shall be allowed for any one-hour period. During startup, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 30 minutes, and there shall be no more than one startup per day;
- (8h) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall water the ash prior to its removal to prevent the ash from becoming airborne;
- (9i) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (10j) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (11k) The location of the burning at temporary sites shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
- (12l) Compliance with this rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other public health laws, rules in this chapter or any other air quality rules.
- (d5) Recordkeeping requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site.

Sec. 113C-8. - Penalties.

- (a1) Individuals or corporations violating the provisions of the above sections of this chapter shall be guilty of a misdemeanor. All such persons who are subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to imprisonment for 60 days or a fine of \$500.00, or both for each violation. Persons who are not subject to the criminal jurisdiction of the Cherokee Indian Court shall be subject to punishment in the North Carolina or United States courts, as appropriate.

(b2) Any person over whom the Tribal Court can exercise criminal jurisdiction, and who violates any of the provisions shall, upon conviction in Tribal Court, be guilty of a criminal offense, and shall be subject to a fine of not less than \$100.00, nor more than \$5,000.00, for each day each violation occurs, and in the discretion of the Tribal Court, may also be subject to imprisonment of not less than one day, nor more than 90 days, for each day each violation occurs. As an alternative sentence, any person found guilty of violating any of the provisions may be placed on probation, and required by the Tribal Court to provide not less than 40 hours, but not more than 200 hours, of community service assisting the solid waste agency, or performing other kinds of community service.

(c3) Any person who violates any of the provisions is subject to the imposition of civil penalties for such unlawful activities. ~~The Director of the Solid Waste Agency, through T~~ the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for injunctive relief or for damages caused by such violation. ~~for civil penalties, including reasonable attorney's fees and costs. Any civil action concerning such violations shall be heard in Tribal Court, and the alleged violator shall be served and have the opportunity to be heard.~~ Any person who is found by the Tribal Court to have committed the alleged violations shall be subject to a civil penalty of not less than \$100.00, but not more than \$1,500.00, for each day each violation occurs, including reasonable attorney's fees and costs.

(d4) ~~The Director of the Solid Waste Agency, through the Tribe's Attorney General, is authorized to bring a civil action on behalf of the Tribe or its members, in Tribal Court, or any other court of law, against any person who has committed any violation under the provisions, for all civil damages caused, including damages to the land or natural resources of the Tribe or its members, and for the reasonable costs actually incurred, or to be incurred, by the Tribe for cleaning up any solid or hazardous waste, or abating the effects thereof, together with the costs of the suit, including reasonable attorney's fees. The Tribal Council must approve the filing of any civil action for damages before such action is filed.~~

(e5) ~~Any Tribal law enforcement officer is authorized to seize the property of any person who commits and is charged with the criminal violation of any of the provisions, if such property, while used in the commission of such offenses, is located on the Reservation. If such person is convicted of any offense under the provisions, such seized property shall be forfeited to the Tribe. Such property shall be seized as security for the payment of any civil penalties or damages which may be assessed or imposed, and such property is subject to forfeiture to the Tribe for payment of any civil penalties or damages actually assessed or imposed.~~

(f6) ~~All civil penalties assessed by the Tribal Court shall be paid to the Environmental Protection Board, and shall be retained in a trust fund designated for paying costs of remedial responses to environmental emergencies occurring on the Reservation, and shall only be expended on such purposes. This includes any property which is forfeited to the Tribe for payment of civil penalties.~~

(7) ~~All civil damages shall be paid to the Tribe. This includes any property which is forfeited to the Tribe for payment of civil damages.~~

(8) ~~Reasonable attorney's fees awarded in any civil action shall be paid to the Tribe if the attorney is an employee of the Tribe, or shall otherwise be paid according the provisions of~~

~~any retainer agreement. All costs of suit awarded in any civil action shall be paid to the Tribe.~~

(g⁹) Any person who is not a member of the Tribe who is found by the Tribal Court to have committed any violations may be excluded from the Reservation, and may have his or her rights to engage in commercial dealings, or consensual activities, on the Reservation suspended or terminated.

~~(10) Any civil penalties or damages imposed under this section are in addition to, and do not supercede or limit, any other remedies which may be available to the Tribe, including the filing of an action for injunctive relief in Tribal Court, or the filing of a civil action for civil damages, or any other relief in any court of competent jurisdiction.~~

~~Sec. 113C-9. Rules and regulations.~~

~~The Lands Committee shall promulgate rules and regulations for the enforcement of this chapter.~~

~~Sec. 113C-10. Prior inconsistent laws repealed.~~

~~Any existing laws which are inconsistent with this chapter are specifically repealed.~~

~~Sec. 113C-11. Severability.~~

~~If any section of this chapter is deemed unconstitutional, the remaining provisions shall have full force and effect.~~

~~Sec. 113C-12. Effective date.~~

~~This chapter shall be effective 30 days after execution by the Principal Chief.~~

Chapter 113D - SOIL EROSION AND SEDIMENTATION CONTROL

ARTICLE I. - GENERAL PROVISIONS

Sec. 113D-1. - Title.

This chapter may be cited as the Eastern Band of Cherokee Soil Erosion and Sedimentation Control Law.

Sec. 113D-2. - Severability.

If any section of this chapter is held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Sec. 113D-3. ~~Effective date.~~ (Rescinded and Reserved).

~~This chapter shall take effect and be enforced on June 1, 2001.~~

Sec. 113D-4. - Purposes.

(a) This chapter is adopted for the purposes of:

- (1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (2) Establishing procedures through which these purposes can be fulfilled.

Sec. 113D-5. - Definitions.

(a) As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) *Accelerated erosion*: Any increase over the rate of natural erosion as a result of land-disturbing activity.

(2) *Access and haul roads*: All roads either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery and constructed and used in conjunction with land-disturbing activities which require a permit under this chapter.

(3) *Adequate erosion control measure, structure, or device*: One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

(4) *Affiliate*: A person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

(5) *Approved sediment control plan*: A written course of action including maps, drawings, calculations or assumptions, found by the administrator or other duly appointed agent to satisfy all requirements of this chapter which details the timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off-site sediment damage associated with a land-disturbing activity.

(6) *Applicant*: Any person, whether the person is financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the environmental planning office or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the environmental review board a motion to appeal a decision by the environmental planning office or his agent as contained in this chapter.

(7) *Being conducted*: A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

(8) *Borrow*: Fill material which is required for on-site construction and is obtained from other locations.

(9) *Buffer zone*: The strip of land adjacent to a lake or natural watercourse.

(10) *Completion of construction or development*: No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

(11) *Continuing violation*: Those violations of this chapter or an approved sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

(12) *Director*: The director of environmental planning for the Eastern Band of Cherokee Indians.

(13) *Discharge point*: The point at which runoff leaves a tract of land.

(14) *District*: The county soil and water conservation district, created pursuant to Chapter 139, North Carolina General Statutes, which encompasses the Tribal land in question.

(15) *Disturbed areas*: Those areas where the ground cover on or above the soil surface is removed, including trees, grasses or pavements or other surfaces either natural or manmade.

(16) *Energy dissipater*: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

(17) *Erosion*: The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

(18) *Final objective*: The type of structure or use resulting from the land-disturbing activity.

(19) *Ground cover*: Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

(20) *Lake or natural watercourse*: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

(21) *Land-disturbing activity*: Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

(22) *Local government*: The Eastern Band of Cherokee Indians.

(23) *Natural erosion*: The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

(23) *Off-site sediment damage*: The removal or transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or any land, public or private not owned by the person responsible for the land-disturbing activity.

~~Parent: An affiliate that directly, or indirectly through one or more intermediaries, controls another person.~~

(24) *Person*: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

(25) *Person conducting land-disturbing activity*: Any person who may be held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

(26) *Person responsible for the violation*: As used in this chapter:

(A4) The developer or other person who has or holds himself out as having financial or operational control over the land-disturbing activity; or

(B2) The landowner or person in possession or control of the land when he has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon him.

(27) *Phase of grading*: One of two types of grading, rough or fine.

(28) *Plan*: An erosion and sedimentation control plan.

(29) *Sediment*: Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

(30) *Sedimentation*: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

(31) *Siltation*: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

(32) *Stabilize*: To establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent groundcover.

(33) *Storm drainage facilities*: The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

(34) *Stormwater runoff*: The direct runoff of water resulting from precipitation in any form.

(35) *Subsidiary*: An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

(36) *Ten-year storm*: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

(37) *Tract*: All contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

(38) *Twenty five (25)-year storm*: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

(39) Uncovered: The removal of ground cover from, on, or above the soil surface.

(40) Undertaken: The initiation of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

(41) Velocity: The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

(42) Waste: Surplus materials resulting from on-site construction and disposed of at other locations.

(43) Waste areas: Areas used for the stockpiling or burial of surplus materials resulting from on-site construction and disposed of at other locations.

(44) Working days: Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Sec. 113D-6. - Exclusions.

(a) This chapter shall not apply to the following land-disturbing activities:

(1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals, including, but not limited to:

(A)a. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;

(B)b. Dairy animals and dairy products;

(C)c. Poultry and poultry products;

(D)d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;

(E)e. Bees and apiary products;

(F)f. Fur-producing animals;

(G)g. Ornamental horticulture, including the raising of shrubs, Christmas trees, and other nursery operations; and

(H)h. Trout production and other aquaculture activities;

(2) Activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with best management practices the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract;

(3) Activities for which a permit is required under federal mining laws; or

(4) For the duration of an emergency, activities essential to protect human life.

Secs. 113D-7—113D-19. - Reserved.

ARTICLE II. - EROSION AND SEDIMENTATION CONTROL PLANS AND NOTIFICATION PROCEDURES

Sec. 113D-20. - Plan required.

- (a) No person shall initiate any land-disturbing activity uncovering one acre or more (43,560 square feet) without having an erosion and sedimentation control plan approved by the Tribe.
- (b) An erosion and sedimentation control plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity is to be undertaken on a tract comprising of one acre or more, if one acre or more is to be uncovered. The plan shall be filed with the environmental planning office at least 30 calendar days prior to the commencement of the proposed activity.
- (c) Persons conducting land-disturbing activity on a tract which covers one acre or more shall file three copies of the erosion control plan with the environmental planning office at least 30 calendar days prior to beginning such activity and shall keep another copy of the plan on file at the job site. After approving the plan, if the environmental planning office, either upon review of such plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the environmental planning office will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the environmental planning office.
- (d) The environmental planning office will review each complete plan submitted to them and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The environmental planning office shall have five business days to check the plans for completeness. Failure to approve, approve with modifications, or disapprove a complete erosion and sedimentation control plan within 30 calendar days of receipt shall be deemed approved. Disapproval of a plan must specifically state in writing the reasons for disapproval. The environmental planning office must approve, approve with modifications, or disapprove a revised plan within 15 calendar days of receipt, or it is deemed to be approved. If, following commencement of a land-disturbing activity pursuant to an approved plan, the environmental planning office determines that the plan is inadequate to meet the requirements of this chapter, the county may require any revision of the plan that is necessary to comply with this chapter. Failure to approve, approve with modifications, or disapprove a revised erosion control plan within 15 calendar days of receipt shall be deemed approval of the plan. The environmental planning office shall establish an expiration date of three years for erosion control plans approved under this chapter.
- (e) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the environmental planning office. A professional is not required to design plans.

Sec. 113D-21. - Financial responsibility statement.

Erosion control plans may be disapproved unless accompanied by an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

Sec. 133D-22. - Coordination with the National Environmental Policy Act (NEPA).

Any plan submitted for a land-disturbing activity for which an environmental document is required by the National Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Tribe shall promptly notify the person submitting the plan that the 30-calendar-day time limit for review of the plan pursuant to subsection 113D-20(d) of this chapter shall not begin until a complete environmental document is available for review.

Sec. 113D-23. - Plan disapproval.

- (a) The environmental planning office may disapprove an erosion control plan upon a finding that an applicant, or a parent company, subsidiary, or other affiliate of the applicant:
- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the environmental planning office pursuant to the Act and has not complied with the notice within the time specified in the notice;
 - (2) Has failed to pay a civil penalty assessed pursuant to the Act or a local chapter adopted pursuant to the Act by the time the payment is due.
 - (3) Has been convicted of a misdemeanor pursuant any criminal provision of a local chapter adopted pursuant to the Act or;
 - (4) Has failed to substantially comply with the provisions of this chapter, or rules or regulations adopted pursuant to this chapter. For purposes of this section an applicant's record may be considered for only the two years prior to the application date.

Sec. 113D-24. - Plan amendment.

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the environmental planning office, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

Sec. 113D-25. - Failure to file a plan.

Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

Sec. 113D-26. - Compliance with water quality laws.

The approval of an erosion control plan is conditioned on the applicant's compliance with federal and Tribal water quality laws, regulations, and rules.

Sec. 113D-27. - Plans involving ditches to lower the water table.

A copy of the erosion control plan for any land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the environmental planning office and the United States Army Corps of Engineers.

Sec. 113D-28. - Plan approval or disapproval.

- (a) If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.
- (b) An erosion and sedimentation control plan may be disapproved if the plan fails to address the following control objectives, or other requirements of this chapter:
 - (1) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
 - (2) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
 - (3) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
 - (4) *Control surface water.* Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
 - (5) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.
 - (6) *Manage storm water runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, plans are to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Sec. 113D-29. - Notification procedures for land disturbing activity not meeting the erosion control plan requirements.

- (a) In cases where less than one acre will be disturbed, applicants for building permits on any construction will be asked to complete a form that explains how erosion control will be managed during construction. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form. No fee is required for completing the form.

- (b) Should the applicant fail to fill out the notification form in advance of clearing land, give false or misleading information on the form or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in section 113D-73.

ARTICLE III. - PERMITS

Sec. 113D-30. - Permit required.

- (a) No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefore from the environmental planning office, except that no permit shall be required for any land-disturbing activity:
 - (1) For the purpose of fighting fires;
 - (2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or
 - (3) That does not exceed 43,560 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.
- (b) Tribal council hereby establishes a \$50.00 per acre fee for sediment and erosion control permits for commercial sites. If a person initiates land-disturbing activity for which a permit is required without obtaining such a permit, the environmental planning office is authorized to double the regular permit fee.
- (c) Requests for a permit to conduct land-disturbing activities shall contain a sediment control plan.

Sec. 113D-31. - Permit applications.

- (a) Clear lines of communication between the environmental planning office, the person financially responsible, and the person conducting the land-disturbing activities are essential not only for the success of the program outlined in this chapter, but to avoid costly delays and resubmittal of applications by the developer as well. It is recommended that prior to submitting a formal application for a permit, persons conducting land-disturbing activities notify the environmental planning office and briefly describe the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities and request application forms. A pre-application conference is strongly suggested to identify specific areas of concern to both the applicant and the environmental planning office. A permit will not be issued based upon a notification of intent.
- (b) Forms, application requirements, and plan assistance are available upon request from the environmental planning office. All requests for information, submission of plans and applications, and requests for assistance will be handled through the office of the environmental planning office.
- (c) The environmental planning office shall review the application and accompanying plan for completeness and compliance with this chapter. If the submitted plan is approved by the environmental planning office, a permit to conduct land-disturbing activities shall be issued in the name of the applicant. Permits are valid for three years after they are issued;

construction shall begin within the three-year time period or the permit shall expire and a new permit shall be required.

- (d) Permits shall be prominently displayed on the site until the project is certified complete by the environmental planning office. In addition, a copy of the approved sediment control plan shall be kept on hand at the job site at all times for inspection.

Sec. 113D-32. - Surety.

- (a) Application for a permit to disturb five or more acres shall require the posting of a security bond, with the environmental planning office, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the Tribal attorney general, in an amount of not less than \$500.00 nor more than \$5,000.00 per acre of disturbed area as set forth in the approved sediment control plan to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. Such surety shall be valid until the land-disturbing activity is completed in accordance with the approved sediment control plan and released by the environmental planning office as discussed in the following subsections.
 - (1) Land-disturbing activities not in compliance with this chapter or an approved sediment control plan for 90 working days after notice of violation is received through registered or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable surety.
 - (2) Forfeiture of applicable surety shall in no way relieve responsible parties of penalties, fines or other requirements of this chapter.
 - (3) Forfeited surety shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person responsible for the land-disturbing activity.
 - (4) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the environmental planning office who shall perform an inspection of the improvements. If the conditions of this chapter are met, within 30 calendar days of the date of notification of completion the Tribe shall authorize in writing the release of applicable surety.

Secs. 113D-33—113D-39. - Reserved.

ARTICLE IV. - EROSION CONTROL REQUIREMENTS

Sec. 113D-40. - Responsibilities of persons conducting land-disturbing activities.

- (a) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.
- (b) It is the responsibility of the person conducting the land-disturbing activity to apply to the environmental planning office or his agent for any permit required and receive said permit

contingent upon an approved erosion and sediment control plan, before beginning any land-disturbing activity which uncovers one acre or more.

- (c) If any land-disturbing activity requires a permit as defined in this chapter, a building permit shall not be issued, until a plan has been approved by the environmental planning office or the proper notification form filled out. The building permit may be applied for at the same time as the permit or notification form required by this chapter.

Sec. 113D-41. - Protection of property.

Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

Sec. 113D-42. - More restrictive rules shall apply.

Whenever conflicts exist between federal or Tribal laws, ordinance, or rules, the more restrictive provision shall apply.

Sec. 113D-43. - Access and haul roads.

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

Sec. 113D-44. - Operations in lakes or natural watercourses.

Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. The applicant shall consult with the US Army Corps of Engineers and the Tribe to determine if a permit is required before undertaking any land-disturbing activity in or near a watercourse, wetlands or swamp.

Sec. 113D-45. - Borrow and fill areas.

When the person conducting the land-disturbing activity is also the person conducting the borrow fill activity, areas from which borrow is obtained or fill is deposited shall be considered as part of the land-disturbing activity. When the person conducting the land-disturbing activity is not the person obtaining the borrow or depositing the fill, these areas shall be considered a separate land-disturbing activity.

Sec. 113D-46. - Additional measures.

Whenever the Tribe determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

Sec. 113D-47. - Restoration of areas affected by failure to comply.

The Tribe may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity as required to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land-disturbing activity. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

Secs. 113D-48, 113D-49. - Reserved.

ARTICLE V. - STANDARDS FOR LAND-DISTURBING ACTIVITY

Sec. 113D-50. - Mandatory standards.

(a) No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

(1) *Buffer zone.*

(A)a. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25 percent of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Tribe approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(B)b. Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(C)e. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(D)d. Where a temporary and minimal disturbance is permitted as an exception by (1)a. of this section, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the director of environmental planning.

(E)e. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations.

- (2) *Graded slopes and fills.* The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.
- (3) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 45 calendar days following completion of construction or development whichever period is shorter.
- (4) *Plan approval.* No person shall initiate any land-disturbing activity on a tract if more than one acre is to be uncovered unless an erosion and sedimentation control plan for such activity is filed 30 or more calendar days prior to initiating the activity and approved _____ by _____ the _____ Tribe.

Sec. 113D-51. - Design and performance standards.

Erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures.

Sec. 113D-52. - Storm water outlet protection.

- (a) Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse at the discharge point does not exceed the greater of:
 - (1) The velocity established by the table in subsection (d) of this section; or
 - (2) The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

If the foregoing requirements cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the pre-development velocity by ten percent.

- (b) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The environmental planning office recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will

be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
 - (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.
- (c) *Exceptions.* This rule shall not apply where it can be demonstrated that storm water discharge velocities will not create an erosion problem in the receiving watercourse.
- (d) The following is a table for maximum permissible velocity for storm water discharges:

Maximum Permissible
Velocities

| Material | F.P.S. | M.P.S. |
|--|--------|--------|
| Fine sand (noncolloidal) | 2.5 | .8 |
| Sandy loam (noncolloidal) | 2.5 | .8 |
| Silt loam (noncolloidal) | 3.0 | .9 |
| Ordinary firm loam | 3.5 | 1.1 |
| Fine gravel | 5.0 | 1.5 |
| Stiff clay (very colloidal) | 5.0 | 1.5 |
| Graded, loam to cobbles (noncolloidal) | 5.0 | 1.5 |
| Graded, silt to cobbles (colloidal) | 5.5 | 1.7 |
| Alluvial silts (noncolloidal) | 3.5 | 1.1 |
| Alluvial silts (colloidal) | 5.0 | 1.5 |

| | | |
|------------------------------|-----|-----|
| Coarse gravel (noncolloidal) | 6.0 | 1.8 |
| Cobbles and shingles | 5.5 | 1.7 |
| Shales and hard pans | 6.0 | 1.8 |

Source. Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

Sec. 113D-53. - Responsibility for maintenance.

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Secs. 113D-54—113D-59. - Reserved.

ARTICLE VI. - APPEALS

Sec. 113D-60. - Environmental review board established.

- (a) The environmental review board is hereby established to hear these appeals pursuant to this chapter and other environmental laws of the Eastern Band of Cherokee Indians as designated by the Tribal council.
- (b) The environmental review board shall be composed of two Tribal council members appointed by Tribal council chairman and one local qualified person appointed by the Principal Chief.
- (c) The environmental review board is authorized and directed to establish procedures necessary for fair and careful review of appeals related to the Tribe's environmental laws.
- (d) The Tribe's legal division shall advise and assist the environmental review board in any matters that shall come before it.

Sec. 113D-61. - Appeals.

(a) If an erosion control plan is disapproved or modified, the environmental planning office shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The

applicant may appeal the environmental planning office disapproval of the plan to the environmental review board.

- (1) The appeal shall not be considered unless a written demand for a hearing is filed with the environmental planning office within 15 calendar days after receipt of written notice of disapproval or modifications.
- (2) Hearings held pursuant to this section shall be conducted by the environmental review board within 30 calendar days after the date of the appeal or request for a hearing. The environmental planning office shall participate in the hearing to explain the basis for its decision. The appealing party shall participate in the hearing to explain the basis for his or her appeal of that decision.
- (3) If the environmental review board upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, that decision shall be final for the Eastern Band of Cherokee.

Secs. 113D-62—113D-69. - Reserved.

ARTICLE VII. - ENFORCEMENT

Sec. 113D-70. - Inspections and investigations.

- (a) The environmental planning office, agents, officials, or other qualified persons authorized by the environmental planning office will periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.
- (b) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the environmental planning office while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) If it is determined that a person engaged in land-disturbing activity has failed to comply with this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.
- (d) The environmental planning office shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

- (e) The environmental planning office shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Sec. 113D-71. - Stop-work orders.

- (a) The environmental planning office may issue a stop-work order if he or she finds that a land-disturbing activity is being conducted in violation of this article or of any rule adopted or order issued pursuant to this article, that the violation is knowing and willful, and that either:
 - (1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent;
 - (2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or
 - (3) The land-disturbing activity is being conducted without an approved plan.
- (b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the environmental planning office pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials, which do not contribute to the violation, may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.
- (c) The stop-work order shall be served by the Cherokee Police or by some other person duly authorized by law to serve process as provided by Tribal law, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity; the environmental planning office shall forward a copy of the order to the person financially responsible. The Cherokee Police or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The environmental planning office shall also deliver a copy of the stop-work order to any person that the environmental planning office has reason to believe may be responsible for the violation.
- (d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in section 113D-73.
- (e) The environmental planning office shall designate an employee to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the environmental planning office, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The environmental planning office shall rescind a stop-work order that is issued in error.
- (f) The issuance of a stop-work order shall be subject to appeal to the environmental review board pursuant to article VI of this chapter.

Sec. 113D-72. - Injunctive relief.

- (a) Whenever the governing body has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the Eastern Band of Cherokee Indians, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Cherokee court.
- (b) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

Sec. 113D-73. - Civil penalties and restitution.

The environmental planning office may order and impose civil penalties upon any person for violations of this chapter. Civil penalties shall not exceed \$1,000.00 per violation. All civil penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. The environmental planning office may also order restitution to any person injured by violations of this chapter. The decision to impose a civil penalty or order of restitution shall be subject to appeal to the environmental review board pursuant to article VI of this chapter. If a civil penalty or restitution is not paid within 30 days of the order, or within 30 days after a final appeal decision by the environmental review board, then, in addition to other remedies provided by this chapter, the Eastern Band of Cherokee Indians may seek enforcement of the order in the Cherokee court.

Sec. 113D-74. - Suspension or revocation of trader's permit or business lease.

The business committee may suspend or revoke any person's trader's permit and/or business lease if, after notice and opportunity for hearing, the business committee issues written findings that a business has repeatedly violated this chapter. The business committee may not suspend or revoke any trader's permit or business lease unless the person has been given 30-days' notice and an opportunity for hearing.

Sec. 113D-75. - Criminal penalty.

A violation of this chapter is a misdemeanor, punishable in the Cherokee court by imprisonment of not more than one year and fine of not more than \$5,000.00.

Sec. 113D-76. - Sovereign immunity.

Nothing in this chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians

Chapter 113E - WATER QUALITY CODE FOR TRIBAL WATERS

Sec. 113E-1. - Purpose and scope.

- (a) *Purpose.* The Eastern Band of Cherokee Indians recognizes Tribal waters are the source of life, tranquility, and prosperity. Tribal waters include streams, rivers, natural springs, and wetlands that support a diverse array of environmental, cultural, and economic values. The Tribe recognizes that protecting these waters requires a strategic and integrated approach across all Tribal watersheds to encourage prudent use of the Tribe's water resources and enhance its quality and productivity.
- (b) *Scope.* The Division of Agriculture and Natural Resources (DANR) is responsible for establishing water quality standards, taking into consideration the designated, beneficial uses of Tribal waters established under the classification system set out in section 113E-4 of this chapter, including ceremonial uses, recreational uses, public water supply, propagation of fish and wildlife, and agricultural, industrial and other purposes. The water quality standards are intended to protect these designated uses by facilitating the following management goals:
 - (1) To restore, maintain, and enhance the water quality for all beneficial uses of tribal waterbodies;
 - (2) To protect human health, social welfare, aquatic life, wildlife and the economic well-being of the Eastern Band of Cherokee Indians;
 - (3) To ensure that no contaminants are discharged into Cherokee waters from either point sources or non-point sources without being given the degree of treatment or control necessary to prevent pollution;
 - (4) To establish numeric and narrative standards that provide a legal basis for water pollution control; and
 - (5) To encourage prudent use of the Tribe's water resources and enhance its quality and productivity as stated in goals of the Cherokee Legacy Plan.

Sec. 113E-2. - Use and revision of standards.

- (a) *Use.* These standards will be used to protect the quality of tribal waters which have a major impact on the health, safety, welfare, and economy of the Tribal communities. These water quality standards shall provide the basis for all water management decisions affecting water quality within the Reservation boundaries, including, but not limited to, point-source permitting, non-point source controls and the physical alterations of water bodies including wetlands.
- (b) *Revision.* These water quality standards may be revised as the DANR determines necessary consistent with the following:
 - (1) These water quality standards shall be reviewed every three years and may be subject to amendment or modification at such time or as the need arises. Any revisions shall first be duly adopted through the mechanisms of the Tribal Administrative Procedures Act (C.C. ch. 150) and submitted to the Environmental Protection Agency (EPA) Regional Administrator (Region 4 Office) for review and approval.

- (2) Any potential modification of water quality standards shall be subject to public participation, consistent with the requirements of 40 CFR 131.20(b) and 40 CFR 25.

Sec. 113E-3. - Definition of Cherokee waters.

As used in this chapter, *Cherokee waters* means all water within the exterior boundaries of the Qualla Boundary and all other lands held in trust for the Eastern Band of Cherokee Indians, including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps, wetlands, and any subterranean waters flowing in well-defined channels and having a demonstrable hydrologic connection with the surface.

Sec. 113E-4. - Designation of uses.

(a) The Tribal waters support a diverse array of cultural, environmental, and economic values, such as spiritual healing, cleansing, drinking water, recreation, and habitat uses. The uses of Cherokee surface waters are as follows:

- (1) *Ceremonial use (C)*. The quality of water is suitable for traditional purposes by members of the Eastern Band of Cherokee Indians that involve immersion and intentional or incidental ingestion of water.
- (2) *Public water supply use (PWS)*. The quality of water is suitable for a source of raw water supply for drinking and food processing purposes.
- (3) *Recreation use (REC)*. The quality of water is suitable for recreational activities in or on the water when the ingestion of small quantities of water is likely to occur, such as swimming, wading, and other activities likely to result in immersion.
- (4) *Cold water aquatic habitat use (CAH)*. The water quality is suitable for propagation and survival of cold water aquatic communities such as trout.
- (5) *Warm water aquatic habitat use (WAH)*. The water quality is suitable for the propagation and maintenance of a healthy, well-balanced population of fish, wildlife, and other aquatic life.

Sec. 113E-5. - Enforcement.

(a) The DANR shall periodically test Cherokee surface waters at different locations to determine if the standards for uses designated in this Chapter are being met. Instances where the DANR demonstrates that water quality standards are not being met and Tribal resources are being threatened shall be grounds for the following actions:

- (1) The DANR may, after notice and opportunity for hearing, order the entity to cease and desist from the violations and to comply with this chapter. The DANR may enforce compliance with an order issued pursuant to this section by imposing and collecting civil penalties as authorized under this section.
- (2) The DANR may order and impose civil penalties upon any person or entity for violations of this chapter. All civil money penalties collected under this chapter shall be paid to the Eastern Band of Cherokee Indians. If a civil penalty is not paid within 30 days, then, in addition to other remedies provided by this chapter, the DANR may seek

enforcement of the DANR's order through remedies in the administrative regulations and in the Cherokee Court.

- (3) If the discharger fails to comply with a cease and desist order or to pay civil penalties, then the DANR may petition the Business Committee for the suspension or revocation of any violator's business license and/or lease.

Sec. 113E-6. - Criminal penalties.

Intentionally or willfully and wantonly causing pollution of Cherokee surface waters by causing them to fall below the standards set by this chapter and the DANR is a misdemeanor, punishable in the Cherokee Court.

Sec. 113E-7. - Civil action.

Any person who suffered actual damages as a result of a violation of this chapter shall have a right of action in the Cherokee Court against a person who has violated this chapter for actual damages. A party found liable for violation of this chapter may also be ordered to pay the injured party a statutory penalty.

Sec. 113E-8. - Sovereign immunity.

Nothing in this chapter shall be deemed a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

Chapter 113F - JUNK VEHICLES, ABANDONED VEHICLES AND DEBRIS

Sec. 113F-1. - Definitions.

(a) As used in this chapter:

(1) *Abandoned motor vehicle* means:

___(A+) A motor vehicle left upon a public street, highway or right of way open to the public in violation of applicable law; or

___(B2) A motor vehicle left on land within the jurisdiction of the Tribe but held open to the public, for longer than four days; or

___(C3) A motor vehicle left on land within the jurisdiction of the Tribe without the consent of the land owner or person entitled to possession of the land, for longer than 24 hours.

(2) *Authorizing official* means the person designated in this chapter to authorize removal of motor vehicles and debris under this ordinance. For vehicles and debris located on a public street, highway, right of way open to the public, or Tribal land open to the public, the Authorizing Official is the Chief of the Cherokee Police Department or his designee. For vehicles and debris located on land possessed by an individual or the Tribe, the Authorizing Official is the Director manager of the Tribe's Department of Environmental and Natural Resources Office.

(3) *Debris* means portions of junk motor vehicles including, but not limited to, hoods, fenders, radiators, rims, motor parts, not being use for the repair of a motor vehicle, and any inoperative appliance.

(4) *Junk motor vehicle* means a motor vehicle that, if originally designed to travel on public roads, does not have a current registration and a valid license plate lawfully affixed to it and:

(A1) Is partially dismantled or wrecked; or

(B2) Cannot be self-propelled or moved in the manner in which it originally was intended to move.

(5) *Motor vehicle* means any machine designed or intended to travel over land or water by self-propulsion or while attached to any self-propelled vehicle.

(6) *Removed or removal* means towing and storage of a vehicle or debris, upon order of the authorizing official, by a person or business authorized by the Tribe to perform those services.

Sec. 113F-2. - Prohibitions; exceptions.

(a) *Prohibitions.*

- (1) It is unlawful for the registered owner or person entitled to possession of a motor vehicle to cause or allow the motor vehicle to be abandoned.
- (2) It is unlawful for the registered owner or person entitled to possession of a junk motor vehicle, or for the owner or person entitled to possession of land within the Tribe's jurisdiction upon which the junk motor vehicle is located, to cause or allow the junk motor vehicle to be deposited on or remain on the land.
- (3) It is unlawful for the owner or person entitled to possession of debris, or for the owner or person entitled to possession of land within the jurisdiction of the Tribe upon which the debris is located, to cause or allow debris to be deposited on or remain thereon.
- (4) It is unlawful for any person to use public roads, streets or rights-of-way for the storage, abandonment, repair, display or sale of any vehicle.

(b) *Exceptions.* These prohibitions do not apply to:

- (1) Any vehicle or debris located in a bona fide junk yard, salvage yard, automotive or appliance enterprise or storage facility legally operating on land within the jurisdiction of the Tribe under a valid and current Trader's License, in compliance with applicable law, at which the operator of the yard, enterprise or facility works full time and which provides his primary source of income; or
- (2) Any vehicle or debris which is in an enclosed building, or is completely shielded from view by a fence that cannot be seen through, or if a vehicle, covered with a cloth or plastic cover specifically and solely manufactured for the purpose of covering motor vehicles.
- (3) Racing vehicles. Any vehicle that does not meet the definition of abandoned or junk motor vehicle but which is adopted or designed to be used only on race tracks is exempt from subsection (a) but must be shielded from public view as provided in subsection (b)(2).

- (4) Antique vehicles. Any vehicle that does not meet the definition of abandoned or junk motor vehicle but which is adopted or designed for use or restoration as an antique motor vehicle over 25 years old is exempt from subsection (a) but must be shielded from public view as provided in subsection (b)(2).

Sec. 113F-3. - Nuisance declared.

Unless an exception expressed in this chapter applies, the presence of an abandoned or junk motor vehicle or debris on land within the jurisdiction of the Tribe is a public nuisance in violation of section 14-25.14, Cherokee Code.

Sec. 113F-4. - Removal authorized.

- (a) Upon investigation, the authorizing official may order the removal of a motor vehicle or debris after finding in writing that it meets the definition of an abandoned or junk motor vehicle or debris and is on land within the jurisdiction of the Tribe in violation of this chapter.
- (b) The authorizing official may require a person requesting removal of a junk motor vehicle or debris from privately held land within the jurisdiction of the Tribe to indemnify the Tribe against any loss, expense or liability incurred because of the removal, storage or disposition of the vehicle or debris.
- (c) Nothing in this chapter shall preclude the possessor of land within the jurisdiction of the Tribe to consent to the removal of any junk or abandoned vehicle or debris located thereon and disposal of such but consent to removal and disposal must be provided in writing to the authorizing official.

Sec. 113F-5. - Notice before removal.

- (a) If an abandoned or junk motor vehicle, or debris, presents an emergency or an immediate health hazard; or safety hazard by blocking or restricting normal access to, or travel to or from, a utility, hydrant, street, road, right-of-way, driveway, business, residence or thing necessary for the operation of any of the aforementioned items or places, the vehicle may be immediately removed by the Cherokee Police Department or Department of Natural Resources and its authorized representative and the notice required in this section may be provided after removal.
- (b) A removal from any place for environmental or health reasons shall be noticed by and performed under authority of the Department of Environmental and Natural Resources Office.
- (c) If no emergency or immediate health or safety hazard is present, or if a removal is performed by the Environmental and Department of Natural Resources Office, the authorizing official shall notify the holder of the possessory interest on which the item is located and the person entitled to possession of the possessory interest (such as a lessee). The notice shall include the following:
- (1) A description of the vehicle or debris. A vehicle description shall include as much of the following as is available: the make, model, color, year and VIN;
 - (2) The location of the vehicle or debris;

- (3) The violation with which the owner or person entitled to possession is charged;
 - (4) That the authorizing official is ordering the holder of the possessory interest or the person entitled to possession of the land, or both, to remove and dispose of the vehicle or debris pursuant to this chapter;
 - (5) That the owner or possessor of the Tribal land where the debris is located has ten (10) calendar days in which to remedy the violation;
 - (6) That the violation is not cured within ten (10) calendar days, the authorizing official may have the vehicle and debris removed by the Tribe or its contractors and the possessory holder and/or lessee shall pay for the removal.
- (d) Notice must be provided in writing, including the information set out in subsections (b)(1)—(5), and may be mailed by first class mail to the address of the owner or person entitled to possession of land within the jurisdiction of the Tribe where the vehicle or debris is located. Notice may be waived but the waiver must be in writing executed by the person whose right to notice is being waived.
 - (e) Whenever an abandoned or junk motor vehicle is removed and it has no valid registration or license plates, the authorizing official shall make reasonable efforts, including checking the VIN, to determine the last known registered owner of the vehicle and to notify him of the information set forth in subsections (b)(1)—(5).
 - (f) The Cherokee Police Department shall cooperate and assist with the gathering of information such as names of registered owners, addresses and other information helpful or necessary for the successful prosecution of this chapter.

Sec. 113F-6. - Removal.

If the owner or person entitled to possession of the land within the jurisdiction of the Tribe where the vehicle or debris is located does not remedy the violation within the ten days provided in the notice, the authorizing official shall order the vehicle removed. The Tribe may remove the vehicle or may contract to perform the action. Removal fees and storage charges imposed must be reasonable and competitive in the vicinity of the Qualla Boundary.

A vehicle or debris shall be removed only to an appropriate storage area. When a vehicle or debris is removed, the authorizing official shall, within 48 hours after removal, notify in writing the person entitled to possession of the land from where the vehicle was removed and the last known registered owner of the vehicle, or if debris, the owner or person entitled to possession of the land within the jurisdiction of the Tribe where the debris was located, that removal has occurred pursuant to this chapter.

Sec. 113F-7. - Right to hearing.

- (a) Vehicles ordered removed by Cherokee Police Department pursuant to authority provided in section 113F-5(a). The owner or person entitled to possession of the vehicle and the owner or person entitled to possession of land within the jurisdiction of the Tribe from which the vehicle or debris was removed, is entitled to a hearing before the Clerk of the Cherokee Court to determine if probable cause existed to remove the vehicle or debris.

- (b) Vehicles ordered removed by the Environmental and Department of Natural Resources Office pursuant to authority provided in section 113F-5(b) or (c). The owner or person entitled to possession of the vehicle and the owner or person entitled to possession of land within the jurisdiction of the Tribe from which the vehicle or debris was removed, are entitled to a hearing under Chapter 150 and the rules adopted by the Division pursuant to that authority, before the Environmental Review Board to determine if probable cause existed to remove the vehicle or debris.
- (c) Appeals of adverse rulings of the Clerk of the Court or the Environmental Review Board shall be to the trial court of the Cherokee Court for error of law.

Sec. 113F-8. - Redemption.

- (a) At any stage after the vehicle or debris is removed but before final disposal, the owner of the vehicle or the owner and the person entitled to possession of land within the jurisdiction of the Tribe where the debris was located, or a lienholder, may obtain possession of the vehicle or debris by paying the removal fee, including storage charges, or by posting a bond for double the amount of such fees and charges, directly to the business to which the fees and charges are owed. In addition, such person shall pay a redemption fee set by the authorizing official to cover the costs of removal as noted in this paragraph, which shall be paid directly to the Tribal Budget and Finance Office for the benefit of the Environmental and Department of Natural Resources Office.
- (b) If the person responsible for necessary fees and charges is a Tribal member, debts for unpaid fees and charges may be collected by garnishment of the member's per capita distribution of net gaming revenues and paid to the Tribe as a debt to the Tribe.

Sec. 113F-9. - Sale and disposition.

- (a) Except as provided in subsection (b), any abandoned or junk motor vehicle or debris not claimed by:
 - (1) The last registered owner of the motor vehicle; or
 - (2) The person entitled to possession of land within the jurisdiction of the Tribe from which it was removed; or
 - (3) A lienholder;

shall be disposed of by the Tribe or business having custody thereof. The process for disposal shall include notice of intent to dispose by sale or destruction and a chance to respond and redeem upon payment of all fees and charges. Notice shall be provided to persons named identified as (1), (2) or (3).

- (b) If the authorizing official reasonably determines that the abandoned or junk motor vehicle or debris has an estimated value of less than \$500.00, then disposition may be by any means deemed appropriate by the official.

Sec. 113F-10. - Protection against liability.

No person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of an abandoned or junk motor vehicle, or debris, for disposing of such vehicle or debris as provided in this chapter.

Sec. 113F-11. - Unlawful removal of impounded vehicle.

It is unlawful for any person to remove or attempt to remove from any storage facility any vehicle or debris which has been impounded pursuant to this chapter unless and until all fees, charges, bonds and other costs have been paid.

Sec. 113F-12. - Violation; penalty.

In addition to towing, storage and redemption fees a person may be obligated to pay, a violation of this chapter is a misdemeanor, punishable by a fine not to exceed \$5,000.00, by a term of imprisonment not to exceed one year, and for willful or flagrant violators, exclusion for a period to be determined by Tribal Council.

~~Sec. 113F-13. - Compliance date.~~

~~For the first six months after this chapter is ratified by the Principal Chief, the authorizing official may limit enforcement to giving warnings to violators.~~

Chapter 113G - UNDERGROUND STORAGE TANKS

Sec. 113G-1. - Definitions.

(a) As used in this Chapter:

(1) *Existing UST.* Any UST system already in existence as of February 1, 2007.

(2) *Gasoline.* Any refined petroleum used primarily as a fuel for internal combustion engines.

(3) *New UST.* Any UST system installed after February 1, 2007 where none previously existed.

(4) *Non-operational storage tank.* Any underground storage tank in which gasoline will not be deposited or from which gasoline will not be dispensed.

(5) *Operator.* Any person in control of, or having responsibility for, the daily operation of the underground storage unit.

(6) *Owner.* Any person, entity or government who owns an underground storage tank used for the storage, use, or dispensing of gasoline.

(7) *Release.* Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water, or subsurface soils.

(8) *Replacement UST.* Any UST system that replaces an existing UST system.

(9) *Underground storage tank (UST).* Any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of gasoline that has at least ten percent of its combined volume underground.

Sec. 113G-2. - Notification.

- (a) Each owner of an underground storage tank shall notify the Environmental and Natural Resource Office of the existence of such tank, specifying the age, size, type, location, and uses of such tank.
- (b) Each owner of an underground storage tank shall notify the ~~Environmental and Natural Resources Office~~Department of Environment thirty (30) days before an underground storage tank is permanently closed, specifying:
 - (1) Proposed date of permanent closure,
 - (2) Age of the tank on the date of proposed permanent closure,
 - (3) Size, type and location of the tank, and
 - (4) Type and quantity of gasoline left stored in such tank on the date of proposed permanent closure.

Sec. 113G-3. - Release detection.

- (a) Owners and operators of underground storage tanks must provide to the Environmental and Natural Resource Office a method or combination of methods, of release detection that:
 - (1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains gasoline;
 - (2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions;
- (b) Owners and operators shall immediately report suspected and actual releases to the ~~Environmental and Natural Resources Office~~Department of Environment.
- (c) An UST or replacement UST within 200 feet of the areas expressed in Section 113G-6, or a new UST or replacement UST installed after February 1, 2007 between 200 and 500 feet of the areas expressed in Section 113G-6, must meet the requirements for secondary containment described at 40 CFR 20.42(b)(1) through (4) within 12 months of February 1, 2007. However, a longer period may be provided if in the Tribe's discretion, a longer period serves the best interests of the Tribe.

Sec. 113G-4. - Financial responsibility.

- (a) Owners/operators shall maintain financial responsibility for corrective actions and for compensation to third parties for bodily injury and property damage caused by sudden and non-sudden accidental releases arising from operating an underground storage tank.
- (b) Financial responsibility may be established by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.
- (c) Prohibition of delivery will occur with no proof of financial responsibility.

Sec. 113G-5. - Prevention.

- (a) For prevention of releases, necessary records must be kept by owners/operators to show compliance status in four major areas:
 - (1) Leak detection performance;
 - (2) Corrosion protection performance;
 - (3) Record of properly installed repairs or upgrades;
 - (4) Documentation of financial responsibility.

Sec. 113G-6. - Locations.

- (a) No new Underground Storage Tanks shall be installed within 200 feet of: a well supplying water for human consumption; or the Oconaluftee River; or a Tribal Resource Water as defined in Cherokee Code 113E; or a Trout Water as defined in Cherokee Code 113E.
- (b) Replacement USTs may not be located nearer to the water supply source than the existing UST.
- (c) Notwithstanding the provisions of Subsections (a) and (b), an new UST shall not be installed in a location determined by the Tribe to be unsuitable for installation based on an evaluation of the site by the Tribe.

Sec. 113G-7. - Strictly liable.

The owner and/or operator of an UST system is strictly liable for the condition and operation of the system, and for injury, loss or damage resulting from leaks, spills and other unauthorized releases of hazardous materials from the system.

Sec. 113G-8. - Enforcement.

- (a) The Cherokee Tribal Court shall have jurisdiction to hear all matters arising from this Chapter.
- (b) The Tribe will enforce this Chapter by imposing administrative or civil sanctions against owners/operators who violate the requirements contained herein. Sanctions may include the entire range of Tribal enforcement measures, including prohibition of delivery, fines, revocation of trader's licenses, or injunctive relief.
- (c) Any violator of the provisions of this Chapter is subject to the imposition of civil penalties for such unlawful activities. The ~~Department of Environmental~~ Natural Resources Office, through the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for civil penalties. Any violator, who is found by the Tribal Court to have committed the violations, shall be subject to a civil penalty of not less than \$100.00, or more than \$5,000.00, for each day each violation occurs plus costs for cleaning up any hazardous waste, or abating the effects thereof.
- (d) Any civil penalties or damages arising under this Chapter are in addition to, and do not supersede or limit, any other remedies which may be available to the Tribe, including injunctive relief, an action for civil damages, or any other relief.

- (e) Any Tribal member or other person living on or around the tribal trust land may contact the Environmental and Department of Natural Resources Office to report a potential release or violation of this Chapter.

Sec. 113G-9. - Compliance monitoring.

The Environmental and Department of Natural Resources Office shall monitor compliance of all underground storage tanks.

Sec. 113G-10. - Rules and regulations.

The Division of Agriculture and Natural Resources Environmental and Natural Resource Office shall promulgate rules and regulations for the enforcement of this Chapter pursuant to Chapter 150.

~~Sec. 113G-11. - Prior inconsistent laws repealed.~~

~~To the extent that they are inconsistent with this Chapter, all prior environmental rules, ordinances or regulations of the Tribe are hereby repealed.~~

~~Sec. 113G-12. - Severability.~~

~~If any provision of this Chapter, or any portion of any provision to this Chapter, is found to be invalid, the full remainder of such provisions shall not be affected.~~

Sec. 113G-13. - Sovereign immunity.

Nothing in this Chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.