

Cherokee Nation Code Annotated
Title 27: Environmental Quality
Chapter 2: Definitions and General Provisions
§ 207. Administrative proceedings
Cite as: 27 CNCA § 207

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that any person is in violation of this title or any rule promulgated thereunder or of any order, permit or license issued pursuant thereto, the Commission may give written notice to the alleged violator of the specific violation and of the alleged violator's duty to correct such violation immediately or within a set time period or both and that the failure to do so will result in the issuance of a compliance order.

B. In addition to any other remedies provided by law, the Commission may, after service of the notice of violation, issue a proposed compliance order to such person. A proposed compliance order shall become a final order unless, no later than fifteen (15) days after the order is served, any respondent named therein requests an administrative enforcement hearing.

The proposed compliance order may, pursuant to subsection (K) of this section:

1. assess an administrative penalty for past violations of this title, rules promulgated thereunder, or the terms and conditions of permits, or licenses issued pursuant thereto; and
2. propose the assessment of an administrative penalty for each day the respondent fails to comply with the compliance order.

Such proposed order may specify compliance requirements and schedules, mandate corrective action, assess damages for injuries to natural resources of the Nation and/or require mitigation of damage that has occurred.

C. Failure to comply with a final compliance order, in part or in whole, may result in the issuance of an assessment order assessing an administrative penalty as authorized by law, or a supplementary order imposing additional requirements, or both. Any proposed order issued pursuant to this subsection shall become final unless, no later than seven (7) days after its service, any respondent named therein requests an administrative enforcement hearing.

D. Notwithstanding the provisions of subsection (A) and (B) of this section, the Commission, after notice and opportunity for an administrative hearing, may revoke,

modify or suspend the holder's permit or license in part or in whole for cause, including but not limited to the holder's:

1. flagrant or consistent violations of this title and/or rules promulgated thereunder, or of final orders, permits or licenses issued pursuant thereto;
2. reckless disregard for the protection of the public and the environment as demonstrated by noncompliance with environmental laws and rules resulting in endangerment of human health or the environment; or
3. actions causing, continuing, or contributing, to the release or threatened release of pollutants or contaminants to the environment.

E. Whenever the Commission finds that an emergency exists requiring immediate action to protect the public health or welfare or the environment, the Commission or their designee may without notice or hearing issue an order, effective upon issuance, requiring that such action be taken as deemed necessary to meet the emergency. Any person to whom such an order is directed shall comply therewith immediately but may request an administrative enforcement hearing thereon within fifteen (15) days after the order is served. A hearing shall be held as promptly as possible after receipt of a request. A hearing may be held at any time the Commission, in their discretion, may deem appropriate. On the basis of the hearing record, the Commission may sustain, modify or rescind such order.

F. Except as otherwise expressly provided by law, any notice of violation, order, or other instrument issued by or pursuant to authority of the Commission may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by certified mail return-receipt requested directed to such person at his last-known post office address as shown by the files or records of the Nation. Proof of service shall be made as in the case of service of a summons or by publication in a civil action.

G. Every certificate or affidavit of service made and filed shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

H. Any order issued by the Commission shall become final upon service.

I. Any party aggrieved by a final order may petition the Commission for rehearing, reopening or reconsideration within ten (10) days from the date of the entry of the final order. Any party aggrieved by a final order may petition for judicial review thereof.

J. 1. Unless specified otherwise in this title, any penalty assessed or proposed in an order shall not exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance.

2. The determination of the amount of an administrative penalty shall include, but not be limited to, the consideration of factors such as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the respondent from the violation, the history of such violations and respondent's degree of culpability and good faith compliance efforts. For purposes of this section, each day, or part of a day, upon which such violation occurs, shall constitute a separate violation.

K. Any order issued pursuant to this section may require that corrective action be taken. If corrective action must be taken on adjoining property, the owner of such adjoining property shall not give up any right to recover damages from the responsible party by allowing corrective action to occur.

L. The Commission may delegate the authority to issue orders or take other appropriate actions under this chapter to the Administrator.

Historical Data

LA 31-04, eff. July 16, 2004. Renumbered from 63 CNCA § 1005.