

Cherokee Nation Code Annotated
Title 27: Environmental Quality
Chapter 2: Definitions and General Provisions
§ 208. Violations and penalties
Cite as: 27 CNCA § 208

A. Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Cherokee Nation Environmental Quality Code or who violates any order, permit or license, or rule promulgated by the Commission pursuant to the Cherokee Nation Code:

1. shall be guilty of a crime and upon conviction thereof may be punished by a fine of not less than Two Hundred Dollars (\$200.00) for each violation and not more than Five Thousand Dollars (\$5,000.00) for each violation or by imprisonment for not more than one (1) year, or by both such fine and imprisonment. Each day a violation continues may be considered a separate crime;

2. may be punished in civil proceedings in District Court by assessment of a civil penalty of not more than Five Thousand Dollars (\$5,000.00) for each violation, and for each day that the violation continues;

3. may be assessed an administrative penalty not to exceed Five Thousand Dollars (\$5,000.00) per day of noncompliance; and

4. may be subject to injunctive relief granted by a District Court. A District Court may grant injunctive relief to prevent a violation of, or to compel compliance with, any of the provisions of this title or any rule promulgated thereunder or order, license or permit issued pursuant to this title.

B. Nothing in this chapter shall preclude the Commission from seeking penalties in District Court in the maximum amount allowed by law. The assessment of penalties in an administrative enforcement proceeding shall not prevent the subsequent assessment by a court of the maximum civil or criminal penalties for violations of this title.

C. Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorney fees and costs associated with the collection of such penalties.

D. For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.

E. The Commission may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of this title, any rule promulgated thereunder, or any order, license or permit issued pursuant thereto. No bond shall be required of the Commission for such suits.

F. 1. The Commission may bring an action in a court of competent jurisdiction for injunctive relief to redress or restrain a violation by any person of this title, any rule promulgated thereunder, or any order, license, or permit issued pursuant thereto, for recovery of any administrative or civil penalty assessed pursuant to this title, and for recovery of natural resource damages, costs of mitigation and corrective action.

2. The District Court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to, mandatory or prohibitive injunctive relief, interim equitable relief, punitive damages, assessment of natural resource damages, costs of corrective action and mitigation, and costs of any measures necessary to protect public health, safety and welfare or the environment.

3. In any judicial action in which the Commission seeks injunctive relief and alleges by verified petition that:

a. the defendant's actions or omissions constitute a violation of this title or a rule, order, license or permit; and

b. the actions or omissions present an imminent and substantial endangerment to health or the environment if allowed to continue during the pendency of the action; the Commission shall be entitled to obtain a temporary order or injunction to prohibit such acts or omissions to the extent they present an imminent and substantial endangerment to health or the environment. Such temporary order or injunction shall remain in effect during the pendency of the judicial action until superseded or until such time as the Court finds that the criteria of subparagraphs a and b of this paragraph no longer exist. If a temporary order or injunction has been issued without prior hearing, the Court shall schedule a hearing within twenty (20) days after issuance of the temporary order to determine whether the temporary order should be lifted and a preliminary injunction should issue.

G. Except as otherwise provided by law, administrative and civil penalties, costs and natural resource damages recovered pursuant to this title shall be paid into the Environmental Quality Revolving Fund established in this chapter. Allowable expenditures from the fund shall include operational and program costs of the Commission and environmental programs, reimbursement of costs and fees related to the enforcement action, emergency response and projects that enhance the environment or benefit the Nation's natural resources.

H. In determining the amount of a civil penalty the Court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

I. In addition to or in lieu of any administrative enforcement proceedings available to the Commission, the Commission may take or request civil action or request criminal prosecution, or both, as provided by law for any violation of this title, rules promulgated thereunder, or orders issued, or conditions of permits, licenses, certificates or other authorizations prescribed pursuant thereto.

Historical Data

LA 31-04, eff. July 16, 2004. Renumbered from 63 CNCA § 1006.