

Cherokee Nation Code Annotated

Title 27: Environmental Quality

Chapter 4: Air Quality

§ 409. Variances

Cite as: 27 CNCA § 409

A. Any person seeking a variance from any provision of the Cherokee Nation Clean Air Act, or from any applicable air quality rule, shall do so by filing a petition for variance with the Commission. The Commission may deny, grant or conditionally approve any request.

B. The Commission may, in its discretion, determine whether or not an administrative hearing is necessary in granting a variance. The Commission shall notify the petitioner of the time and place of any administrative hearing. The burden of proof shall be on the petitioner.

C. The Commission may, but is not required to, grant individual variances beyond the limitations prescribed in the Cherokee Nation Clean Air Act or Commission rules, whenever it is found, upon presentation of adequate proof, that compliance with any provision of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, will result in an arbitrary and unreasonable taking of property or in the practical closing and elimination of any lawful business, occupation or activity, in either case without sufficient corresponding benefit or advantage to the people, the environment or to public health. The Commission may also propose rules applicable to such variances.

D. In determining under what conditions and to what extent a variance from the Cherokee Nation Clean Air Act or any rule promulgated thereunder may be granted, the Commission may give due recognition to the progress which the person requesting such variance shall have made in eliminating or preventing air pollution. In such a case, the Commission shall consider the reasonableness of granting a variance conditioned upon such person effecting a partial abatement of the particular air pollution over a period of time which it shall consider reasonable under the circumstances.

E. If the Commission deems proper, such an incremental compliance schedule may be imposed and shall contain a date or dates certain by which compliance with otherwise applicable rules or provisions of the Cherokee Nation Clean Air Act shall be achieved. The Commission may also include provisions whereby a penalty of up to Five Thousand Dollars (\$5,000.00) per day, or the maximum amount otherwise allowed by law, may be assessed for failure to achieve compliance by the date(s) specified in the compliance schedule or other violations.

F. The Commission may prescribe requirements to protect health, environment, communities, wildlife, welfare and property, as conditions of granting any variance. The person who receives such variance shall comply with such conditions or the variance shall become null and void, unless and until otherwise ordered by the Commission.

G. Any variance granted pursuant to the provisions of this section shall constitute a final order, shall be in writing, and shall be granted for a period of time not to exceed three (3) years. Periodic reports that specify the progress which such person shall have made toward compliance shall be submitted to the Commission. A variance may, for good cause shown, be extended on a year-to-year basis by affirmative action of the Commission.

H. Nothing in this section shall be construed to preclude the informal disposition of any matter by stipulation, agreed settlement, consent order or default.

Historical Data

LA 42-04, eff. November 23, 2004. Renumbered from 63 CNCA § 2-5-109.