

Cherokee Nation Code Annotated

Title 27: Environmental Quality

Chapter 4: Air Quality

§ 412. Comprehensive permitting program—Issuance, denial or renewal

Cite as: 27 CNCA § 412

A. Upon the effective date of permitting rules promulgated pursuant to the Cherokee Nation Clean Air Act, it shall be unlawful for any person to construct any new source, or to modify or operate any new or existing source of emission of air contaminants except in compliance with a permit issued by the Commission, unless the source has been exempted or deferred or is in compliance with an applicable deadline for submission of an application for such permit.

B. The Commission shall have the authority and the responsibility to implement a comprehensive permitting program for the Nation consistent with the requirements of the Cherokee Nation Clean Air Act. Such authority shall include but shall not be limited to the authority to:

1. Expeditiously issue, reissue, modify and reopen for cause, permits for new and existing sources for the emission of air contaminants, and to grant a reasonable measure of priority to the processing of applications for new construction or modifications. The Commission may revoke, suspend, deny, and refuse to issue or to reissue a permit:

a. upon a determination that any permittee or applicant is or would be in violation of any substantive provisions of the Cherokee Nation Clean Air Act, or any rule promulgated thereunder, or any permit issued pursuant thereto, or any local, regional or national air quality plan, or

b. when the Commission determines that the emissions or activity will pose an unreasonable threat to health, safety property or the environment;

2. Refrain from issuing a permit when issuance has been objected to by the Environmental Protection Agency in accordance with Title V of the federal Clean Air Act;

3. Revise any permit for cause or automatically reopen it to incorporate newly applicable rules or requirements if the remaining permit term is greater than three (3) years; or incorporate insignificant changes into a permit without requiring a revision;

4. Establish and enforce reasonable permit conditions which may include, but not be limited to:

a. emission limitations for regulated air contaminants,

b. operating procedures when related to emissions,

c. performance standards,

d. provisions relating to entry and inspections, and

e. compliance plans and schedules;

5. Require, if necessary, at the expense of the permittee or applicant:

a. installation and utilization of continuous monitoring devices,

b. sampling, testing and monitoring of emissions as needed to determine compliance,

c. submission of reports and test results, and

d. ambient air modeling and monitoring;

6. Issue:

a. general permits covering similar sources, and

b. permits to sources in violation, when compliance plans, which shall be enforceable by the Commission, are incorporated into the permit;

7. Require, at a minimum, that emission control devices on stationary sources be reasonably maintained and properly operated;

8. Require that a permittee certify that the facility is in compliance with all applicable requirements of the permit and to promptly report any deviations therefrom to the Commission;

9. Issue permits to sources requiring permits under Title V of the federal Clean Air Act for a term not to exceed five (5) years, except that solid waste incinerators may be allowed a term of up to twelve (12) years provided that the permit shall be reviewed no less frequently than every five (5) years;

10. Specify requirements and conditions applicable to the content and submittal of permit applications; set by rule, a reasonable time in which the Commission must determine the completeness of such applications; and

11. Determine the form and content of emission inventories and require their submittal by any source or potential source of air contaminant emissions.

C. Rules of the Commission may set de minimis limits below which a source of air contaminants may be exempted from the requirement to obtain a permit or to pay any fee,

or be subject to public review. Any source so exempted, however, shall remain under jurisdiction of the Commission and shall be subject to any applicable rules or general permit requirements.

D. The Commission shall notify, or require that any applicant notify, all nations or states whose air quality may be affected and that are contiguous to Cherokee Nation, or are within fifty (50) miles of the source of each permit application or proposed permit for those sources requiring permits under Title V of the federal Clean Air Act, and shall provide an opportunity for such nations or states to submit written recommendations respecting the issuance of the permit and its terms and conditions.

E. No person, including but not limited to the applicant, shall raise any reasonably ascertainable issue in any future proceeding, unless the same issues have been raised and documented before the close of the public comment period on the draft permit, unless the Commission or Court finds good cause exists to allow the same.

F. A change in ownership of any facility or source subject to permitting requirements under this section may require such action, including but not limited to permit modification or a new permit, as the Commission in its discretion shall determine appropriate. If transferred, any permit applicable to such source at the time of transfer shall be enforceable in its entirety against the transferee in the same manner as it would have been against the transferor, as shall any requirement contained in any rule, or compliance schedule set forth in any variance or order regarding or applicable to such source. Provided, however, no transferee in good faith shall be held liable for penalties for violations of the transferor unless the transferee assumes all assets and liabilities through contract or other means. For the purposes of this subsection, good faith shall be construed to mean neither having actual knowledge of a previous violation nor constructive knowledge which would lead a reasonable person to know of the violation. It shall be the responsibility of the transferor to notify the Commission in writing within ten (10) days of the change in ownership.

G. Operating permits for new sources. Operating permits may be issued to new sources without public review upon a proper determination by the Commission that:

1. The construction permit was issued pursuant to the public review requirements of the Code and rules promulgated thereunder; and
2. The operating permit, as issued, does not differ from the construction permit in any manner which would otherwise subject the permit to public review.

Historical Data

LA 42-04, eff. November 23, 2004. Renumbered from 63 CNCA § 2-5-112.