

**Cherokee Nation Code Annotated**

**Title 27: Environmental Quality**

**Chapter 6: Solid Waste**

**§ 671. Release from storage tank system—Corrective action**

Cite as: 27 CNCA § 671

A. No owner or operator, employee or agent of such owner or operator, or transporter shall knowingly allow a release from a storage tank system to occur or continue to occur without reporting the release to the Administrator within twenty-four (24) hours upon discovering such a release.

B. The owner or operator of a storage tank system shall immediately take all corrective actions necessary to prevent or halt a release or a threatened release of regulated substances from a storage tank system and to abate and remove any such releases subject to applicable federal and Nation requirements. Any corrective action taken by a tank owner or operator or authorized by the Commission shall be in compliance with all applicable tribal, state and federal statutes and rules for the protection of air quality and water quality and for the transportation and disposal of any waste.

C. If there is a release from a storage tank system, the Commission may:

1. after notice and hearing, order the owner or operator to take reasonable and necessary corrective actions;
2. without notice and hearing, issue an administrative order stating the existence of an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Commission shall be afforded a hearing within ten (10) days after receipt of the emergency order. On the basis of such hearing, the Commission shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the District Court.

D. 1. The Commission or the Nation may take corrective action if:

- a. an owner or operator of the storage tank system cannot be identified,
- b. an identified owner or operator cannot or will not comply with an order issued by the Commission,

c. an administrative or judicial proceeding is pending and the Commission determines corrective action is necessary to protect the public health, safety and welfare or the environment until the administrative or judicial proceeding is resolved, or

d. the Commission determines that the release constitutes a clear and immediate danger requiring immediate action to prevent, minimize or mitigate damage to the public health and welfare or the environment. Before taking an action under this paragraph, the Commission shall make all reasonable efforts, taking into consideration the urgency of the situation, to order an owner or operator to take corrective action and notify the owners of real property as specified by 27 CNCA § 673.

2. The owner or operator is liable for the cost of corrective action taken by the Commission or Nation, including the cost of investigating the release and administrative and legal expenses, if:

a. the owner or operator has failed to take a corrective action ordered by the Commission or otherwise required, or

b. the Commission has taken corrective action in an emergency.

3. Reasonable and necessary expenses incurred by the Commission or Nation in taking a corrective action, including costs of investigating a release and administrative and legal expenses, may be recovered in a civil action. A certification of expenses by the Nation or Commission shall be prima facie evidence that the expenses are reasonable and necessary. The Commission or Nation shall be entitled to apply for and receive payment from the Indemnity Fund or any other program on behalf of an eligible person for an eligible release upon any site upon which the Commission or Nation has taken corrective action. Such payments shall be deemed to be reimbursement of the eligible person. Expenses that are recovered under this subsection shall be deposited in the Environmental Quality Revolving Fund.

E. In addition to corrective action, persons liable for the release shall be responsible for any damage caused to natural resources, costs associated with alternative drinking water supplies if needed, emergency response, and restoration of the area to its previous state to the extent possible.

F. Any order issued by the Commission pursuant to this section shall not limit the liability of the owner or operator or both such owner or operator for any injury, damages, or costs incurred by any person as a result of the release. The owner or operator shall not avoid any liability as a result of such release by means of a conveyance of any right, title or interest in real property, or by any indemnification, hold harmless agreement, or similar agreement.

This subsection does not:

1. prohibit a person who may be liable from entering an agreement by which the person is insured, held harmless, or indemnified for part or all of the liability;
2. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement;  
or
3. bar a cause of action brought by a person who may be liable or by an insurer or guarantor, whether by right of subrogation or otherwise.

Except as otherwise provided by law, if there is more than one person liable, such persons shall be jointly liable for any injury, damages, or costs.

#### Historical Data

LA 19-05, eff. May 19, 2005. Renumbered from 63 CNCA § 671.