

Cherokee Nation Code Annotated

Title 27: Environmental Quality

Chapter 6: Solid Waste

§ 673. Inspections and investigations—Violations—Notice—Failure to take corrective action—Hearings—Orders—Access to real property

Cite as: 27 CNCA § 673

A. If upon inspection or investigation, or whenever the Commission determines that there are reasonable grounds to believe that a storage tank system is in violation of STARS or of any rule promulgated thereunder or of any order of the Commission, the Commission shall give written notice to the alleged violator specifying the cause of complaint. Such notice shall require that corrective action be immediately initiated.

B. 1. If corrective action is not taken in response to the notice issued pursuant to subsection (A) of this section, the Commission shall initiate proceedings and hold a hearing to determine if:

a. the alleged violator should be found in violation of Commission rules, permit conditions or orders, or any applicable laws or regulations,

b. any permit issued to the alleged violator should be modified, suspended, revoked or not reissued,

c. an application for a permit should be denied or subject to special conditions,

d. what actions should be taken, who should take such actions, and a schedule for such actions, in order to avoid, alleviate or remedy any risk to public health, safety or welfare or any damage to the environment or the Nation's resources, or

e. whether any other appropriate relief should be granted.

3. After hearing, the Commission shall make findings of fact and conclusions of law, and enter its order reflecting its decision in the matter. The order of the Commission shall become final and binding on all parties unless appealed to the District Court within sixty (60) days.

C. The Commission shall provide notice and an opportunity for hearing to:

1. the surface owner of real property where any corrective action is to be taken if such person is not the owner or operator of the storage tank system; and

2. the owner of real property adjacent to the location of the corrective action if such real property owner will be adversely affected by the corrective action.

The notice shall advise such real property owner or owners that the corrective action is to be taken and that the owner's cooperation will be required for that action to be taken. The Commission shall give the owner or owners of such real property, as the case might be, an opportunity for hearing and to present evidence on the matter.

D. The Commission is vested with the adjudicative authority to enter orders allowing a tank owner or operator or staff of Cherokee Nation access to property not owned by such tank owner or operator when necessary to investigate, remediate or perform corrective action as the result of a release. An order granting access to a third non-governmental party shall only be entered upon a determination that access cannot be obtained by any other means and that the tank owner or operator seeking access has made a good faith effort to obtain access. The Commission shall determine the reasonable compensation, if any, to be paid to the owner of the property which is to be accessed for the use of the property to investigate, remediate or perform corrective action as the result of a release. An order granting access to property shall be upon such terms as to reasonably minimize the impact of the access upon the owners' use of the property and to protect the rights of the property owner.

Historical Data

LA 19-05, eff. May 19, 2005. Renumbered from 63 CNCA § 673.