

Cherokee Nation Code Annotated

Title 27: Environmental Quality

Chapter 13: Hazardous Waste Code

**§ 1316. Permits—Application—Liability insurance—Bond—Financial responsibility—
Operation of facility—Insolvency—Liability of guarantors**

Cite as: 27 CNCA § 1316

A. Except for emergency permits issued in accordance with this title, no permit shall be issued except upon proper application, proof of sufficient liability insurance and financial responsibility, formal public meeting, if requested, and compliance with the requirements of the Cherokee Nation Environmental Quality Code including, but not limited to, requirements of the Cherokee Nation Hazardous Waste Code.

B. Liability insurance shall be provided by the applicant and shall apply to sudden and nonsudden bodily injury or property damage on, below or above the surface, as required by the rules of the Commission. Additional insurance shall be required as deemed necessary by the Commission to protect the Nation, Cherokee communities, property rights including but not limited to rights of owners or leaseholders of underground resources such as oil, gas, water or other mineral substances, natural resources and public health, safety and welfare. Adequate insurance shall be maintained for the period of operation of the facility through closure and postclosure, and at a minimum shall provide coverage for damages resulting from operation of the facility during operation and after closing, remediation and full restoration of damaged properties and resources. In lieu of liability insurance required by this or any other section of Cherokee Nation statutes or rules, an equivalent amount of cash, securities or alternate financial assurance of a type and in an amount acceptable to the Commission, may be substituted: provided, that such deposit shall be maintained for a minimum period of five (5) years after the date of last operation of the facility.

C. Prior to the issuance of any permit, the applicant shall post a bond or acceptable alternate financial assurance guaranteeing proper closure and guaranteeing the performance of closure and post-closure maintenance and monitoring functions. The applicant shall supplement the bond or financial assurance when requested by the Commission.

D. The Commission shall require additional insurance and security upon an application for expansion of the facility. The increase in insurance and security shall be in a sufficient amount to provide adequate coverage for damages resulting from such expansion during operation of the facility and after closing.

E. Prior to the issuance of any permit and at any time upon request of the Commission, the applicant shall produce evidence of the applicant's financial status or other qualifications indicating that the applicant is financially able and qualified to operate and maintain a hazardous waste facility and to comply with all applicable requirements.

F. The operation of a hazardous waste facility shall be under the supervision of a person meeting qualifications set by the Commission appropriate to the type of facility.

G. The Commission is authorized and shall require the construction of monitoring wells, pond liners, fencing, signs or other equipment deemed necessary by the Commission to ensure the suitable operation of the facility.

H. 1. In any case where the owner or operator of a hazardous waste facility is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or if jurisdiction in any Cherokee Nation court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility is required pursuant to this Code may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action taken pursuant to this section, such guarantor shall be entitled to claim all rights and defences which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the guarantor by the owner or operator.

2. The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility for the owner or operator pursuant to this Code. Nothing in this subsection shall be construed to limit any other Cherokee Nation or federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

Historical Data

LA 41-05, eff. December 15, 2005. Renumbered from 63 CNCA § 1316.