

An Act

Legislative Act 19-05

ACT RELATING TO THE REGULATION OF ABOVEGROUND AND UNDERGROUND STORAGE TANKS

BE IT ENACTED BY THE CHEROKEE NATION:

Section 1. Title and Codification

Example: This act shall be known as the Storage Tank Accountability and Regulatory System (STARS) and codified as Title 63 Sections 661 through 674 of the Cherokee Nation Code Annotated.

Section 2. Purpose

The purpose of this Act is to create the Storage Tank Accountability and Regulatory System (STARS); protect the public and environment from potential harmful effects of hazardous substances and petroleum; set forth definitions; provide exemptions from STARS requirements for septic tanks, tanks used for noncommercial agriculture or heating oil and certain other facilities; empower Environmental Programs to administer federal programs related to storage tanks; specify the Commission's authorities relating to permitting, rulemaking and enforcement; specify Environmental Programs authorities relating to registration, collection of any fees, drafting of rules and forms, issuing notices of violation and making recommendations to the Commission; require owners and operators of storage tank systems to register with the Nation, obtain any necessary permit and pay permit fees that may be contained in a schedule developed by the Environmental Protection Commission; require permits prior to installation, construction or operation of certain underground and aboveground storage tank facilities; specify that fees and penalties be paid into the Environmental Quality Revolving Fund; describe rules and guidelines; establish minimum standards; establish reporting requirements for releases; require corrective action for releases; specify procedures and authorities for taking corrective action or enforcement of requirements; provide for inspections, investigations and notice to neighboring landowners; specify penalties and remedies available through administrative or judicial proceedings; and provide for public disclosure of certain records unless procedures and requirements are met for confidentiality.

Section 3. Legislative History

Underground storage tank legislation was first enacted in 1993 under Title 63 CNCA Sections 615A through 615E, which are being revoked and replaced with this Act.

Section 4. Definitions

Not applicable.

Section 5. Substantive Provisions of Law

63 CNCA Section 615A through 615E are hereby revoked and replaced with the following provisions:

661. Short title - Storage Tank Accountability and Regulatory System.

A. Sections 661 through 674 of this title shall be known and may be cited as the "Storage Tank Accountability and Regulatory System" or STARS.

662. Legislative intent - Public policy.

The Council finds that the release of hazardous substances and petroleum from storage tanks into the surface water, groundwater, air and subsurface soils of this Nation poses a potential threat to the natural resources, health, safety and welfare of the residents of this Nation and to the economy of this Nation.

Therefore the Council declares it is the public policy of this Nation to protect the public health, safety, welfare, the economy and the environment from the potential harmful effects of storage tanks used to store hazardous substances and petroleum. In order to implement this policy, it is the intent of the Council to establish a program for the regulation of storage tank systems.

663. Definitions.

As used in STARS

"Abandoned system" means a storage tank system which:

- a. has been taken permanently out of service as a storage vessel for any reason or is not intended to be returned to service,
 - b. has been out of service for one (1) year or more prior to April 21, 1989, or
 - c. has been rendered permanently unfit for use as determined by the Commission;
2. "Administrator" means the Administrator of the Cherokee Nation Environmental Protection Commission;
 3. "Commission" means the Cherokee Nation Environmental Protection Commission;
 4. "Corrective action" means action taken to monitor, maintain, minimize, eliminate or clean up a release from a storage tank system;
 5. "Corrective action plan" means the plan submitted to the regulatory program of the Commission detailing the method and manner of corrective action to be taken for a release;
 6. "Council" means the Cherokee Nation Tribal Council
 7. "Environment" means any chemical, physical or biological component of the earth, including but not limited to water, water vapor, air, land (surface or subsurface), fish, birds and other wildlife, vegetation, and all other natural resources;
 8. "Facility" means any location or part thereof containing one or more storage tanks or systems;
 9. "Hazardous substance" shall include
 - a. any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C., Section 9601, but not including:
 - i. any substance regulated as a hazardous waste under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C., Section 6903, or
 - ii. any substance regulated as a hazardous waste under the Cherokee Nation Environmental Codes;
 - b. a mixture of hazardous substances and petroleum, providing the amount of petroleum is of a de minimus quantity;
 - c. substances identified as such in 40 CFR Parts 117 and 302; and
 - d. any other substances so designated by the Commission.
 10. "Operator" means any person in control of or having responsibility for the daily operation of the storage tank system, whether by lease, contract, or other form of agreement. The term "operator" also includes a past operator at the time of a release or a violation of the STARS or of a rule promulgated hereunder;

11. "Owner" means:

- a. in the case of a storage tank system in use on November 8, 1984, or brought into use after that date, any person who holds title to, controls, or possesses an interest in a storage tank system used for the storage, use, or dispensing of regulated substances, or
- b. in the case of a storage tank system in use before November 8, 1984, but no longer in service on that date, any person who holds title to, controls, or possesses an interest in a storage tank system immediately before the discontinuation of its use.

The term "owner" does not include a person who holds an interest in a tank system solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank system;

12. "Permit" means any registration, permit, license or other authorization issued by the Commission to operate a storage tank system;

3. "Person" means any tribe, tribal entity, individual, trust, firm, joint stock company or , limited liability company, federal agency, , including a government , partnership, association, the state or any state agency, municipality, county or other political subdivision of the state, or any interstate body. The term also includes a consortium, a joint venture, a commercial entity, and the United States Government or any other legal entity;

14. "Petroleum" means ethylene glycol-based antifreeze, crude oil, crude oil fractions, and refined petroleum fractions, including motor fuel, jet fuel, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oil which are liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). "Petroleum" also means a mixture of petroleum and hazardous substances provided, the amount of the hazardous substances is of a de minimus quantity;

15. "Pipeline facilities" means new and existing pipe rights-of-way and any equipment, facilities or buildings regulated under any applicable federal, tribal or state law, including but not limited to:

- a. the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App., 1671, et seq.),
- b. the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.),
- c. state Hazardous Liquid Transportation System Safety Act, Section 47.1 et seq. of Title 52 of the Oklahoma Statutes,
- d. Cherokee Nation Environmental Codes, Sections 50 et seq. of Title 63 of Cherokee Nation Code Annotated, or
- e. intrastate pipeline facilities;

16. "Regulated substances" means hazardous substances, petroleum and any substance otherwise designated by the Commission or this Act;

17. "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of regulated substances from a storage tank system into the environment of the state. The term "release" includes but is not limited to suspected releases identified as a result of positive sampling, testing or monitoring results, or identified in any similarly reliable manner;

18. "Storage tank system" means any one or combination of tanks, including underground or aboveground piping and equipment connected thereto, that is used to contain an accumulation of regulated substances, and shall include such tanks regardless if located aboveground or underground;

19. "Tank" means a stationary vessel designed to contain an accumulation of regulated substances, which is constructed of primarily non-earthen materials that provide structural support; and

20. "Transporter" means any person who transports, delivers or distributes any quantity of regulated substance from one point to another for the purpose of wholesale or retail gain.

664. Exemptions and case-by-case determinations.

A. The provisions of STARS do not apply to:

1. Septic tank systems otherwise approved by the Commission or exempted under regulations promulgated by the Commission;
2. Surface impoundments, pits and lagoons that are otherwise covered in a permit issued by the Commission and/or are subject to other provisions of the Cherokee Nation Environmental Codes;
3. Stormwater and wastewater collection systems;
4. Flow-through process tank systems;
5. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;
6. Hydraulic lift tank systems;
7. Storage tank systems with a capacity of less than one hundred ten (110) gallons;
8. Storage tank systems with a de minimus concentration of regulated substances including but not limited to swimming pools and coffins;
9. Storage tank systems that serve as emergency backup tanks, provided that such backup tanks hold regulated substances for only a short period of time and are expeditiously emptied after each use.
10. Storage tank systems with a capacity of one thousand one hundred (1,100) gallons or less used for noncommercial agricultural or residential purposes;
11. Storage tank systems and residential tanks for noncommercial use for storing heating oil for consumptive use on the premises where stored; and
12. Storage tank systems storing hazardous wastes regulated under Subtitle C of the federal Solid Waste Disposal Act, 42 U.S.C., Section 6921 et seq., or substances regulated as hazardous wastes under Cherokee Nation hazardous waste laws.

B. The Commission may require any facility, structure or activity to comply with STARS, rules promulgated hereunder, Commission guidelines, notification requirements, restrictions, appropriate Commission orders, and may require any facility, structure, activity or person to obtain a permit prior to constructing, installing or operating any facility, whenever it determines that it is necessary or appropriate to protect the environment or public health, safety or welfare.

665. Environmental Programs designated to administer certain federal programs.

Cherokee Nation Environmental Programs and the Commission are hereby designated and empowered to administer subtitle I of Title VI of the Solid Waste Disposal Act and Section 205 of the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C.A., Section 6991 et seq. The Commission's jurisdiction shall include by is not limited to:

- a) underground and aboveground storage tanks that contain antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel, or aviation fuel and that are not located at refineries or at upstream or intermediate shipment points of pipeline operations, including, but not limited to, tanks from which these materials are dispensed into vehicles, or tanks used in wholesale or bulk distribution activities, as well as leaks from pumps, hoses, dispensers, and other ancillary equipment associated with the tanks, whether above the ground or below,
- b) point source and nonpoint source discharges of pollutants to waters of the Nation

- from storage tank facilities and related activities,
- c) site remediation and the off-site disposal of contaminated soil, media, or debris, and
- d) underground and aboveground storage tanks containing hazardous substances and other substances or facilities not otherwise listed.

666. Powers and duties.

- A. In addition to other powers and duties prescribed by law, the Commission and its duly authorized representatives shall have the power and duty to:
 - 1. Issue, renew, deny, modify, suspend, refuse to renew and revoke permits for storage tank systems and related activities pursuant to the provisions of STARS, Section 301 et seq. of this title, and rules promulgated pursuant thereto;
 - 2. Promulgate and enforce rules to implement the provisions of the STARS, including but not limited to rules setting permit fees;
 - 3. Establish minimum standards and schedules for storage tank system;
 - 4. By order, permit, rule or other lawful process require any owner or operator of a storage tank system within this Nation to:
 - a. submit such reports and information concerning the storage tank system as may be determined necessary by the Administrator pursuant to the provisions of STARS or rules promulgated thereto,
 - b. perform tests, install release detection devices, and where appropriate, monitor the environment to ensure that pollution is not occurring,
 - c. make timely reports to the Administrator of pollution or releases,
 - d. temporarily or permanently cease operation of a storage tank system, modify and immediately remove or control any regulated substance that is found to be causing pollution when such cessation, removal or control is determined to be necessary by the Commission,
 - e. provide an alternate or temporary drinking water source to any person deprived of drinking water if it is found that such owner or operator is responsible for polluting the drinking water source beyond applicable drinking water standards, or where no such standard exists, such standard as the Department of Environmental Quality shall determine,
 - f. take full corrective action if such owner or operator is found to be responsible for the release, and
 - g. take appropriate action to temporarily relocate residents affected by the release;
 - 5. Establish and enforce administrative penalties for violations pursuant to the provisions of the STARS and the Cherokee Nation Environmental Code, including but not limited to the authority to close a facility found to pose an imminent threat to the health, safety or the environment, a facility operating without a proper permit, or a facility with operating tanks for which permit fees have not been paid;
 - 6. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Commission pursuant to the provisions of the STARS to protect the health, safety and welfare of any resident of this Nation or the environment;
- B. The Administrator and Environmental Programs shall have the following powers and authority:
 - Register storage tank systems, establish a database, accept payment of fees and hire such personnel as are necessary for implementing this Act to the extent funding shall allow;
 - 2. Enter at any reasonable time upon any public or private property for the purpose of inspecting and investigating a storage tank system and taking such samples as may be necessary to determine compliance with the provisions of STARS, and rules promulgated thereto;

3. Issue informal letters requesting compliance, issue notices of violation, refer matters to the Commission when formal enforcement action may be appropriate;
4. Exercise any authority of the Commission when such authority has been delegated to them by the Commission;
5. Draft and propose rules, schedules, forms, permits and other documents for the Commission;
6. Request issuance of an administrative warrant or search warrant as may be necessary from the district court where such public or private property is located to allow entry, inspection, sampling, or copying;

Have access to and copy any records required to be maintained pursuant to the provisions of the STARS or rules promulgated thereunder;

8. Inspect any equipment, practice or method, which is required by the provisions of the STARS or rules promulgated thereto;
9. Have access to and inspect any monitoring stations or conduct tests to identify any actual or suspected release of a regulated substance;
10. Employ or designate personnel to conduct investigations and inspections, to make reports of compliance with the provisions of the STARS and rules promulgated thereto;
1. Report to the General Counsel or Attorney General of the Cherokee Nation, U.S. Department of Justice, or any other appropriate law enforcement entity with jurisdiction, any act committed by an owner, operator or employee of a facility which may constitute a violation of the provisions of the STARS or rules promulgated thereto; and
12. Operate the Storage Tank Program, in coordination with the Commission, in lieu of the federal government upon approval by the Environmental Protection Agency.

667. Registration, fees and permit applications.

- A. All persons who already own, operate or use aboveground or underground storage tanks on lands under the jurisdiction of the Cherokee Nation on the effective date of this act shall register such tanks with the Administrator no later than August 1, 2005. If registered before August 1, 2005, and otherwise in compliance with applicable requirements, such existing tanks are not be required to have an individual permit issued under STARS until January 1, 2007 unless the COMMISSION otherwise determines an permit is appropriate.
- B. All persons wishing to install, construct, operate or use a storage tank after August 1, 2005, shall first submit a permit application and any required permit fees to the Administrator prior to any installation, construction, operation or use.
- C. The Commission may establish a schedule of fees for issuance of any permit, registration or authorization required pursuant to the provisions of STARS or rules promulgated thereunder. The fees shall be in an amount to cover the costs of the Commission in administering STARS.
- D. The Administrator will notify persons submitting permit applications in a timely manner whether additional information, fees, engineering plans, inspections, sampling and/or laboratory analyses will be required.
- E. All permit fees, penalties and other monies collected under this Code shall be deposited into the Environmental Quality Revolving Fund established under Title 63 CNCA Section 1007 and may only be used for environmental programs and protection of natural resources.

668. Operation without permit prohibited- Application form - Denial, refusal to issue, suspension or revocation - Financial responsibility coverage.

- A. Except as otherwise provided by STARS, no storage tank system or facility shall be installed, used or operated without first obtaining a permit from the Commission. All businesses or persons proposing to own, install, use, locate or operate a storage tank on lands owned by the Nation, held in trust by the U.S. for the Nation, or otherwise in Indian Country subject to the Nation's jurisdiction, shall comply with the permit requirements and other requirements of STARS and the Cherokee Nation Environmental Code.
2. A storage tank system is not required to be permitted if the tank system:
- a. does not contain or has not contained a regulated substance, or
 - b. has been permanently closed or has not been in operation since January 1, 1974.
- B. No person shall deposit a regulated substance into a storage tank system unless the system is operating pursuant to a permit issued by the Commission.
- C. Any person who sells a storage tank system shall notify the owner or operator, or both, of the tank of the permit requirements of STARS and the Cherokee Nation Environmental Codes.
- D. The application form for a permit shall be provided by and filed with the Administrator. In addition to other information requested by the Commission, the application shall include the type of financial responsibility coverage utilized to comply with the requirements of the STARS and by rule of the Commission and the type of leak detection method employed.
- E.
1. Permits shall be issued by the Commission for a period not to exceed three (3) years, but may be issued for a shorter duration.
 2. A permit issued pursuant to the provisions of the STARS may only be transferred with the prior approval of the Commission.
 3. Any permittee or applicant for permit subject to the provisions of the STARS shall be deemed to have given consent to any duly authorized employee or agent of the Commission to access, enter, inspect or monitor the tank system or facility in accordance with the provisions of the STARS. Refusal to allow such access, entry, or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a permit. Upon refusal of access, entry, inspection, sampling or copying pursuant to this section, the Commission or a duly authorized representative may make application for and obtain an administrative warrant or a search warrant from the district court where the facility is located to allow such entry, inspection, sampling or copying.
 4. The owner or operator of a storage tank system shall display the permit in a location or manner in which the permit can easily be visible to any person depositing a regulated substance into a storage tank even after normal business hours.
- F. Any permit or other fees collected pursuant to the STARS shall be deposited in the Cherokee Nation Environmental Quality Revolving Fund and may only be used for environmental programs and protection of natural resources.
- G. The Commission may deny approval of a permit application, or refuse to reissue, suspend or revoke a permit issued pursuant to the STARS if the Commission finds, after notice and a hearing, that the applicant or permittee has:
1. Fraudulently or deceptively obtained or attempted to obtain a permit;
 2. Failed to comply with any provision or requirement of STARS, the Cherokee Nation Environmental Codes and rules; or any order of the Commission;
 3. Not maintained in effect, the financial responsibility requirements established by this section and by rules of the Commission; or

4. The Commission otherwise finds such action appropriate in fulfilling its duties to protect the public, natural resources and environment.

H. Any person owning or operating a storage tank system containing a regulated substance who is not otherwise exempted by law or rule of the Commission, shall obtain and have in effect financial responsibility coverage for taking corrective action and for compensating third parties for physical injury and property damage caused by releases arising from operating storage tank systems. Financial assurance shall be sufficient to restore property to its previous condition or comparable condition. Proof of financial assurance shall be a prerequisite to obtaining a permit.

669. Rules governing storage tank systems.

A. The Commission shall promulgate rules, guidelines and schedules of fees for governing storage tank systems. Until such time as superceded, the following minimum requirements and provisions apply:

Standards and requirements of 40 C.F.R. Part 280;

2. Release detection methods or equipment adequate to identify releases from storage tank systems, or both detection methods and equipment, shall be installed and maintained;
3. Written procedures to follow when release detection methods or equipment or both such methods and equipment records indicate any loss or gain which is not explainable by spillage, temperature variations or other known causes, shall be prepared and maintained;
4. In the event of any release, owners and operators of storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within 24 hours, or another reasonable time period specified by the Cherokee Nation Environmental Protection Commission, as required by STARS or regulations promulgated thereunder;
5. Records documenting actions taken in accordance with paragraphs 1 through 3 of this subsection shall be prepared and maintained;
6. Notice shall be promptly given to landowners whose property has been or may be affected by a release, and such landowner shall be afforded a meaningful opportunity to have input into any activities impacting such landowners' property;
7. Adjacent property owner(s) whose property has been contaminated by a release may remediate his or her own property under the same requirements as the tank owner or operator responsible for remediating the release, if the release is not otherwise promptly remediated, and the owner or operator shall reimburse such adjacent property owner(s) unless otherwise ordered by the Commission or a court with jurisdiction.

B. Minimum schedules and standards may be established and imposed by the Administrator and the Commission in the form of written guidelines for the design, construction, installation, operation, maintenance, repair, monitoring, testing, inspection, release detection, performance, abandonment and closure, of storage tank systems, as may be necessary to protect human health, safety and welfare and the environment. Said written schedules and standards shall be enforceable as rules until otherwise modified, superceded or revoked by the Commission or a court of competent jurisdiction. Copies of all written guidelines must be provided or made available to the public upon request.

C. In promulgating rules establishing schedules and standards pursuant to this section, the Commission may distinguish in such standards between requirements appropriate for new tanks, existing tanks and for abandoned tanks. In making such distinctions, the Commission may consider such factors as:

1. Location of the tanks;
2. Soil and climate conditions;
3. Uses of the tanks;
4. History of maintenance;
5. Age of the tanks;
6. National industry codes;
7. Hydrogeology;
8. Water table;
9. Size of the tanks;
10. Quantity of regulated substances periodically deposited in or dispensed from the tank;
 - 1 The compatibility of the regulated substance and the materials of which the tank is fabricated; and
12. Any other factors as deemed appropriate or necessary by the Commission.

- D. The Commission may promulgate rules establishing different requirements for different areas or regions of the Nation if the Commission finds that more stringent rules are necessary:

To protect specific waters or other resources of the Nation including but not limited to those waters of the Nation designated for additional protection in Cherokee Nation's water quality standards; or

2. Because conditions peculiar to that area or region require different standards to protect public health, safety, welfare or the environment.

- E. In promulgating rules pursuant to the provisions of the STARS, the Commission shall consider all relevant federal standards and regulations on storage tank systems and shall not promulgate any rule less stringent than federal requirements.

670. Releases from storage tank systems – reporting

- A. Until the Environmental Protection Commission may adopt rules that differ, the following minimum requirements apply to releases from storage tank systems:

Owners and operators of underground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission. Underground storage systems must comply with substantive and procedural requirements of 40 CFR Part 280 including, but not limited to, the procedures in 40 CFR §280.52.

2. Owners and operators of aboveground storage tank systems must report to the Administrator and/or the designated agent(s) of the Administrator within twenty-four (24) hours, or such other reasonable time period as is specified by the Cherokee Nation Environmental Protection Commission.

- B. In the event of a discharge of a “pollutant” to “waters of the Nation” or in the event that “pollution” may occur, as those terms are defined in the Cherokee Nation Environmental Code, 50 CNCA Sections 201, a release must be immediately reported to the Administrator regardless of its source. The initial report may be by telephone or in person, but shall be followed with a written report within forty-eight (48) hours.

- C. Nothing in STARS shall be deemed to supercede reporting requirements elsewhere in the Cherokee Nation Environmental Code or rules promulgated thereunder.

671 Release from storage tank system - Corrective action.

- 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 a corrective action and notify the owners of real property as specified by Section 310 of this title.
 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/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:

- a. 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,
- b. prohibit the enforcement of an insurance, hold harmless, or indemnification agreement, or
- c. 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.

2. 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.

672. Emergency response plans, coordination and incidental powers

The Commission, Administrator and their authorized representatives shall have the authority to

Require the preparation and submission of an emergency response plan to include but not be limited to spills or releases of regulated substances and any other waste or pollutant, require certain plans be implemented, and review/approve/disapprove of emergency response plans;

2. Create and implement an internal coordinated management system between all Cherokee Nation programs, corporations and business entities; and
3. Exercise any and all incidental powers that may be necessary and proper to administer STARS and other programs necessary to protect the Nation's resources, public health and safety, and the environment.

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

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 the STARS, Section 301 et seq. of this title, 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 60 days.

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

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 the 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.

674. Penalties

- A. Facilities, activities and persons alleged to be in violation of any provisions of STARS or any rule promulgated or order issued pursuant to the provisions of STARS shall be subject to the general enforcement provisions of the Cherokee Nation Environmental Code. Provided, however, nothing herein shall be construed as limiting administrative, civil or criminal remedies that may be sought by the COMMISSION, the Nation, or any interested person against persons responsible for violations or damage to natural resources or property.
- B. The Commission or any court of competent jurisdiction may order such equitable relief necessary or appropriate to redress or restrain a violation by any person of a provision of the STARS or any rule promulgated or order issued pursuant thereto, including but not limited to:
- Enjoining further releases;
 2. Ordering facilities temporarily or permanently closed or activities halted;
 3. Ordering the design, construction, installation or operation of alternate facilities;
 4. Ordering the removal of facilities, contaminated soils and the restoration of the environment;
 5. Fixing and ordering compensation for any public or private property destroyed, damaged or injured;
 6. Except as otherwise provided by law, assessing and awarding damages in an amount necessary to restore any property or resources to its previous condition and punitive damages; and
 7. Ordering reimbursement to the Nation or any other governmental entity from any person whose acts caused governmental expenditures if not already reimbursed.

675. Records, reports and information - Public inspection - Confidentiality - Disclosure to federal or state representatives.
- A. Any records, reports or information obtained pursuant to the STARS shall be available to the public except as provided in subsection B of this section.
 - B. Upon a showing satisfactory to the Commission by any person that records, reports or information, or a particular part thereof is made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the Commission shall consider such record, report or information or particular portion thereof, confidential.
 - C. Nothing in this section shall be construed to prevent disclosures of such report, record or information to federal or tribal representatives as necessary for purposes of administration of any federal or tribal laws or when relevant to proceedings pursuant to the STARS.
 - D. Information concerning groundwater quality and the presence or concentration of substances in soils or groundwater, or any other condition potentially posing a risk to public health or safety, shall not be considered confidential by the Commission.

Section 6. Provisions as cumulative

The provisions of this act shall be cumulative to existing law.

Section 7. Severability

The provisions of this act are severable and if any part of provision hereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

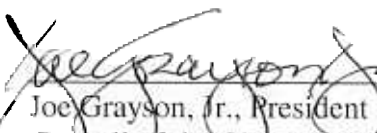
Section 8. Emergency declared

It being immediately necessary for the welfare of the Cherokee Nation, the Council hereby declares that an emergency exists, by reason whereof this act shall take effect and be in full force after its passage and approval.

Section 9. Self-Help Contributions

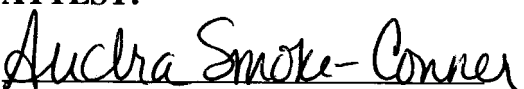
To the extent that this Act involves programs or services to citizens of the Nation or others, self-help contributions shall be required, unless specifically prohibited by the funding agency, or a waiver is granted due to physical or mental incapacity of the participant to contribute.

Enacted by the Council of the Cherokee Nation on the 16th day of May, 2005.



Joe Grayson, Jr., President
Council of the Cherokee Nation

ATTEST:

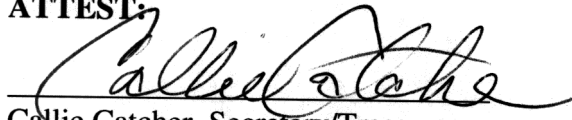

Audra Smoke-Conner, Secretary
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of May, 2005.



Chad Smith, Principal Chief
Cherokee Nation

ATTEST:



Callie Catcher, Secretary/Treasurer
Cherokee Nation

YEAS AND NAYS AS RECORDED:

Audra Smoke-Conner	<u>YEA</u>	Melvina Shotpouch	<u>YEA</u>
Bill John Baker	<u>YEA</u>	Meredith A. Frailey	<u>YEA</u>
Joe Crittenden	<u>YEA</u>	John F. Keener	<u>YEA</u>
Jackie Bob Martin	<u>YEA</u>	Cara Cowan	<u>YEA</u>
Phyllis Yargee	<u>YEA</u>	Buel Anglen	<u>YEA</u>
David W. Thornton, Sr.	<u>YEA</u>	William G. Johnson	<u>YEA</u>
Don Garvin	<u>YEA</u>	Charles "Chuck" Hoskin	<u>YEA</u>
Linda Hughes-O'Leary	<u>YEA</u>		