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CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: OCT 13 2025

ORDINANCE NO.: 11 **(2025)**

An ordinance to update the Tribe's laws on Underground Storage Tanks.

WHEREAS, the Eastern Band of Cherokee Indians is a federally recognized Indian Tribe with sovereign powers for the regulation of the natural resources of its land in order to promote and protect the health, safety, and welfare of the Tribal community; and

WHEREAS, Chapter 113G of the Cherokee Code sets out the requirements and regulation of underground storage tanks (commonly referred to as "USTs"); and

WHEREAS, regulation of USTs is an important topic because they often serve as holding containers for gasoline and petroleum products, which can cause environmental damage if leaked into the ground or into a water source; and

WHEREAS, updating regulation is also important because doing so is needed to maintain the Tribe's memorandum of agreement with the North Carolina Department of Environmental Quality and U.S. Environmental Protection Agency through which UST owners and operators have access to North Carolina's Leaking Underground Storage Tank Trust Fund; and

WHEREAS, owners and operators will be given additional, but limited, time to bring any noncompliant USTs up to the modern standards; and

WHEREAS, in order to clarify the Cherokee Code to reflect the policy of adopting modern and responsible standards for USTs, the Natural Resources Department suggests amendments to the Cherokee Code.

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that in order to update the Tribe's laws on underground storage tanks, Cherokee Code Chapter 113G is hereby amended as follows:

Sec. 113G-1. Definitions.

As used in this Chapter:

Department. The EBCI Natural Resources Department, or other such office of the Tribal government responsible for regulation of USTs.

Existing UST. Any UST system already in existence as of ~~February 1, 2007~~ January 1, 2026.

~~*Gasoline.* Any refined petroleum used primarily as a fuel for internal combustion engines.~~

New UST. Any UST system in which installation is completed on or after January 1, 2026, where none previously existed ~~installed after February 1, 2007 where none previously existed~~.

~~*Non-operational storage tank.* Any underground storage tank in which gasoline will not be deposited or from which gasoline will not be dispensed.~~

Operator. Any person or entity in control of, or having responsibility for, the daily operation of the underground storage unit.

Owner. Any person~~,~~ or entity ~~or government~~ who owns an underground storage tank or the possessory holding within which an underground storage tank is located. ~~used for the storage, use, or dispensing of gasoline.~~

Petroleum or *petroleum product.* Crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. These terms do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended; or any mixture of petroleum or petroleum product containing any such hazardous substance or hazardous waste in greater than de minimum quantities.

Release. Any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from an underground storage tank into ground water, surface water, or subsurface soils.

Replacement UST. Any UST system that replaces an existing UST system.

Underground storage tank (UST). Any one or combination of tanks (including underground pipes connected thereto) which is designed, intended, or used to contain an accumulation of ~~gasoline~~ petroleum or petroleum product that has at least ten percent of its combined volume underground.

Sec. 113G-2. Notification.

(a) Each owner and operator of an underground storage tank shall notify the ~~Environmental and Natural Resource Office~~Department of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

Existing UST. Any UST system already in existence as of ~~February 1, 2007~~ January 1, 2026.

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Sec. 113G-2. Notification.

(a) Each owner and operator of an underground storage tank shall notify the ~~Environmental and Natural Resource Office~~Department of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(b) Each owner and operator of an underground storage tank shall notify the Department ~~of Environment~~ at least 30 days before an underground storage tank is permanently closed, specifying:

(1) Proposed date of permanent closure,

(2) Age of the tank on the date of proposed permanent closure,

(3) Size, type, and location of the tank, and

(4) Type and quantity of ~~gasoline~~ petroleum or petroleum product left stored in such tank on the date of proposed permanent closure.

(c) Each owner and operator of an underground storage tank shall notify the Department at least 30 days before an underground storage tank is installed, replaced, modified, changed, or is altered in its use in any way or manner.

Sec. 113G-3. Release detection.

(a) Owners and operators of underground storage tanks must provide proof of installation to the ~~Environmental and Natural Resource Office~~ Department a method or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains ~~gasoline~~ petroleum or petroleum product; and

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions~~;~~ .

(b) Owners and operators shall immediately report suspected and actual releases to the Department ~~of Natural Resources~~.

(c) ~~An UST or replacement UST within 200 feet of the areas expressed in Section 113G-6, or a new UST or replacement UST installed after February 1, 2007 between 200 and 500 feet of the areas expressed in Section 113G-6, must meet the requirements for secondary containment described at 40 CFR 20.42(b)(1) through (4) within 12 months of February 1, 2007. However, a longer period may be provided if in the Tribe's discretion, a longer period serves the best interests of the Tribe~~. All new USTs and replacement USTs must meet the requirements for secondary containment described in 15A NCAC 2N.0203(b)(8), as amended. All existing USTs which do not meet the requirements for secondary containment described in 15A NCAC 2N.0203(b)(8), as amended, shall meet such requirements or be replaced by USTs which meet such requirements on or before December 31, 2029. Operating a UST without secondary containment on or after December 31, 2029, shall be unlawful.

Sec. 113G-4. Financial responsibility.

(a) Owners and ~~/~~operators shall maintain financial responsibility for corrective actions and for compensation to third parties for bodily injury and property damage caused by ~~sudden and non-sudden accidental~~ releases arising from operating an underground storage tank.

(b) Financial responsibility may be established by any one, or any combination, of the following: Insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer.

(c) ~~Prohibition of delivery will occur with no proof of financial responsibility.~~ It is unlawful to install or operate a UST without proof of financial responsibility provided to the Department. Proof of financial responsibility shall be provided to the Department no less

than annually. Sufficiency and adequacy of financial responsibility and the proof thereof must be approved by the Department in order to comply with this section.

Sec. 113G-5. Prevention.

(a) For prevention of releases, necessary records ~~must~~ shall be kept by owners and ~~/~~operators to show compliance to the Department in the following ~~status in four major~~ areas:
  (1) Leak detection performance;
  (2) Corrosion protection performance;
  (3) Record of properly installed repairs or upgrades;
  (4) Documentation of financial responsibility.

Sec. 113G-6. Locations.

(a) No new ~~Underground Storage Tanks~~ USTs shall be installed within 200 feet of: a well supplying water for human consumption; or the Oconaluftee River; ~~or~~ a Tribal Resource Water as defined in Cherokee Code 113E; or a Trout Water as defined in Cherokee Code 113E.

(b) Replacement USTs may not be located nearer to the water supply source than the existing UST.

(c) Notwithstanding the provisions of Subsections (a) and (b), a~~n~~ new UST shall not be installed in a location determined by the ~~Tribe~~ Department to be unsuitable for installation based on an evaluation of the site by the ~~Tribe~~ Department.

Sec. 113G-7. Strictly liable.

~~The owner~~ Owners and~~/or~~ operators of a~~n~~ UST system are ~~is~~ strictly liable for the condition and operation of the system, and for injury, loss, or damage resulting from leaks, spills, and other ~~unauthorized~~ releases of petroleum, petroleum product, or other hazardous materials from the system.

Sec. 113G-8. Enforcement.

(a) The Cherokee Tribal Court shall have jurisdiction to hear all matters arising from this Chapter.

(b) Violating this Chapter and administrative regulations issued pursuant to this Chapter is unlawful and may subject the owner and the operator to any or all the following:
  (1) Administrative civil fines issued by the Department of not more than $100.00 per violation per day.
  (2) Revocation of a business license by the Tribal Business Committee.
  (3) Injunctive or declaratory relief as ordered by the Cherokee Court, including prohibition of delivery of fuel.
  (4) Civil penalties as ordered by the Cherokee Court not less than $100.00 nor more than $5,000.00 per violation per day and costs for remediation and/or abatement of hazardous materials.
  (5) Any other remedy or cause of action available to the Department or other office of the Tribal government.

(c) Any and all fines, fees, penalties, or damages issued by or payable to the Department, or other such office of the Tribal government, is a debt to the Eastern Band of Cherokee Indians.

~~(b) The Tribe will enforce this Chapter by imposing administrative or civil sanctions against owners/operators who violate the requirements contained herein. Sanctions may include the entire range of Tribal enforcement measures, including prohibition of delivery, fines, revocation of trader's licenses, or injunctive relief.~~

~~(c) Any violator of the provisions of this Chapter is subject to the imposition of civil penalties for such unlawful activities. The Department of Natural Resources, through the Tribe's Attorney General, is authorized to file a civil action against such person on behalf of the Tribe in Tribal Court for civil penalties. Any violator, who is found by the Tribal Court to have committed the violations, shall be subject to a civil penalty of not less than $100.00, or more than $5,000.00, for each day each violation occurs plus costs for cleaning up any hazardous waste, or abating the effects thereof.~~

~~(d) Any civil penalties or damages arising under this Chapter are in addition to, and do not supersede or limit, any other remedies which may be available to the Tribe, including injunctive relief, an action for civil damages, or any other relief.~~

~~(e) Any Tribal member or other person living on or around the Tribal trust land may contact the Department of Natural Resources to report a potential release or violation of this Chapter.~~

Sec. 113G-9. Compliance monitoring.

The Department ~~of Natural Resources~~ shall monitor compliance of all underground storage tanks and carry out and enforce this Chapter on behalf of the Tribal government.

Sec. 113G-10. Rules and regulations.

The ~~Division of Agriculture and Natural Resources shall~~ Department may promulgate rules and regulations ~~for the enforcement of~~ to carry out and enforce this Chapter pursuant to Chapter 150.

~~**Sec. 113G-11. Reserved.**~~

~~Ord. No. 130 , Exh. A, adopted Aug. 20, 2020, repealed § 113G-11, which pertained to prior inconsistent laws repealed and derived from Ord. No. 278, adopted May 12, 2008.~~

~~**Sec. 113G-12. Reserved.**~~

~~Ord. No. 130 , Exh. A, adopted Aug. 20, 2020, repealed § 113G-12, which pertained to severability and derived from Ord. No. 278, adopted May 12, 2008.~~

Sec. 113G-11~~13~~. Sovereign immunity.

Nothing in this Chapter shall be deemed to be a waiver of the sovereign immunity of the Eastern Band of Cherokee Indians.

BE IT FINALLY ORDAINED, that this ordinance shall become effective upon ratification by the Principal Chief.

Submitted by Michael LaVoie, Natural Resources Department.