LEGISLATION NO: _0131-20__                SPONSOR: Kee Allen Begay, Jr.

TITLE: An Action Relating To Resources And Development; Approving The Navajo Nation Comprehensive Environmental Response, Compensation, And Liability Act (NNCERCLA) Regulations

Date posted: June 5, 2020 at 7:30 PM

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DATE: June 4, 2020

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (NNCERCLA) REGULATIONS

PURPOSE: The purpose of this legislation is to approve five Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act ("NNCERCLA") regulations regarding: Fees for Environmental Review Services; Release Reporting Regulations; Regulations Governing the Preservation of Records Under 4 N.N.C. § 2202; Regulations Governing Notice of Intent to bring a Citizen Suit Under 4 N.N.C. §2804; and Voluntary Cleanup Program Regulations.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.
PROPOSED STANDING COMMITTEE RESOLUTION

24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY

(Prime Sponsor)

TRACKING NO. 0131-20

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT; APPROVING THE NAVAJO NATION COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (NNCERCLA) REGULATIONS

BE IT ENACTED:

Section One. Authority

A. Pursuant to 2 N.N.C. Section §500(C), the Resources and Development Committee of the Navajo Nation Council has oversight authority over environmental protection.

B. Pursuant to 2 N.N.C. Section §500(C)(2), the Resources and Development Committee of the Navajo Nation Council has the authority "[t]o oversee regulation of activities on Navajo Nation lands for disposition or acquisition of resources, surface disturbance, or alternation of the natural state of the resource, including the enforcement and administration of applicable Navajo Nation and federal laws, regulations, guidelines, and administrative procedures in the development and use of resources as a good steward."

C. Pursuant to 2 N.N.C. Section §501(B)(1), the Resources and Development Committee of the Navajo Nation Council has the power "[t]o promulgate rules and regulations governing transportation, community development, local government..."
units, land acquisitions for the Navajo Nation, environmental protection, and the
use, sale, exchange, and development of Navajo Nation lands and/or resources,
whether held in fee or trust status."

Section Two. Findings

A. The Navajo Nation Comprehensive Environmental Response, Compensation, and
Liability Act ("NNCERCLA"), Fees for Environmental Review Services,
attached as Exhibit A, is promulgated pursuant to the NNCERCLA, 4 N.N.C. §
2105(A) (11), for the purpose of preventing the release of hazardous substances
on the Navajo Nation.

B. The Navajo Nation Comprehensive Environmental Response, Compensation, and
Liability Act, Release Reporting Regulations, attached as Exhibit B, are
promulgated pursuant to NNCERCLA, 4 N.N.C. §2801(A), for the purpose of
reporting of releases of hazardous substances in accordance with 4 N.N.C. §2201.

C. The Navajo Nation Comprehensive Environmental Response, Compensation, and
Liability Act, Regulations Governing the Preservation of Records Under 4 N.N.C.
§2202, attached as Exhibit C, are promulgated to preserve records that have been
created pursuant to the recordkeeping requirements of Section 103(d) of the
Comprehensive Environmental Response, Compensation, and Liability Act
("CERCLA"), 42 U.S.C. §9603(e). These regulations prescribe (a) the notice to
be given to the Director regarding the existence of facilities within the Navajo
Nation at which hazardous substances are or have been stored, treated, or
disposed of; (b) the records required to be retained under NNCERCLA §
2202(A); (c) requirements for preserving these records; (d) procedures for waivers
from the record preservation requirements; and (e) penalties for violations of the
record-preservation requirements.

D. The Navajo Nation Comprehensive Environmental Response, Compensation, and
Liability Act, Regulations Governing Notice of Intent to bring a Citizen Suit
Under 4 N.N.C. §2804, attached as Exhibit D, authorizes any person to bring a
civil action in Navajo Nation District Court to enforce the NNCERCLA. Such an
action may
be brought against any person except the Navajo Nation or any instrumentality of
the Navajo Nation, but not excepting tribal enterprises, who is alleged to be in
violation of a requirement or standard of the NNCERCLA, a regulation
promulgated pursuant to the NNCERCLA, or an agreement or order agreed to or
issued pursuant to the NNCERCLA. This action must be filed in accordance with
the rules of the Navajo Nation District Court in which the action is brought.
These regulations prescribe the procedures governing the notice required by the
NNCERCLA, 4 N.N.C. §2804 (B) as a prerequisite to the commencement of such
civil actions.

E. The Navajo Nation Comprehensive Environmental Response, Compensation, and
Liability Act, Voluntary Cleanup Program Regulations, attached as Exhibit E, are
promulgated pursuant to 4 N.N.C. §2402. They set forth policies and procedures
for a Voluntary Cleanup Program ("VCP") to provide for voluntary cleanup
activities at contaminated sites within the Navajo Nation that are not already
undergoing or scheduled for remediation. These regulations include requirements
for applications to the Voluntary Cleanup Program, VCP Agreements, and work
plans. The VCP is intended to increase the pace of response activities at
contaminated sites and to promote the economic security, political integrity, and
health, welfare, and environment of the Navajo Nation by returning contaminated
sites to economically productive uses.

F. The above five NNCERCLA regulations regarding Fees for Environmental
Review Services; Release Reporting Regulations; Regulations Governing the
Preservation of Records Under 4 N.N.C. §2202; Regulations Governing Notice of
Intent to bring a Citizen Suit Under 4 N.N.C. §2804; and Voluntary Cleanup
Program Regulations were published in newspapers August 23, 2012 and public
hearings were conducted September 19-21, 2012. See attached Exhibit F,
memorandum concerning the public hearings for NNCERCLA.

Section Three. Approval

A. The Resources and Development Committee of the Navajo Nation Council hereby
approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Fees for Environmental Review Services attached as Exhibit A.

B. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Release Reporting Regulations attached as Exhibit B.

C. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Regulations Governing the Preservation of Records Under 4 N.N.C. 2202 attached as Exhibit C.

D. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Regulations Governing Notice of Intent to bring a Citizen Suit Under 4 N.N.C. § 2804 attached as Exhibit D.

E. The Resources and Development Committee of the Navajo Nation Council hereby approves the Navajo Nation Comprehensive Environmental Response, Compensation, and Liability Act, Voluntary Cleanup Program Regulations attached as Exhibit E.