

Cherokee County Sewage Disposal Ordinance

Section 1 – Purpose and Authority

Pursuant to the authority of §§ 11-3A-1, Ala. Code 1975, et seq., upon approval by its citizens in a referendum held on November 7, 2006, therefore be it ordained by the Cherokee County Commission as follows:

The purpose of this Ordinance is to protect the public's health by protecting the water quality of Weiss Lake, the primary water source for the citizens of Cherokee County and to minimize the adverse health effects of the improper or illegal disposal of sewage. The Cherokee County Commission declares the improper or illegal disposal of sewage to be a public nuisance menacing public health and that it is in the best interest of the citizens of the county to adopt and implement rules and regulations regarding the abatement of improper or illegal disposal of sewage in the Alabama Power flood easements around Weiss Lake and in resort areas as defined in § 45-10-170.41, Ala. Code 1975 in order to protect the health, safety and welfare of its citizens.

In order to address the aforementioned concerns and pursuant to the authority granted to the Cherokee County Commission under §11-3A-1, et seq., Ala. Code 1975, this ordinance was adopted on April 9, 2012 at a regular commission meeting of the Cherokee County Commission. Such adoption is evidenced by Resolution No. 2012-01, attached hereto as addendum A.

Section 2 – Jurisdiction

This Ordinance shall only apply within unincorporated areas of the county. This Ordinance shall in no way be in effect or in force within the municipal limits of any municipality within the county unless amended with the approval of the appropriate city council and the Cherokee County Commission. Additionally, this Ordinance shall in no way affect any protections granted to any persons or businesses pursuant to § 6-5-127, Ala. Code 1975 or §§ 11-3A-1, Ala. Code 1975, et seq.

Section 3 – Definitions

For the purpose of this Ordinance, the following terms shall have the following meanings:

Alabama Power Flood Easement – an easement owned by the Alabama Power Company on lands that are subject to the right of the Alabama Power Company to inundate, cover, or surround with water from time to time, by waters of the Coosa River or its tributaries, should such river or

its tributaries be raised and backed up to that certain datum plane of 575 feet above mean sea level as established by the U.S. Coast and Geodetic Survey, as adjusted in January 1955.

Commission – the Cherokee County Commission

Dwelling – a house, manufactured/mobile home or house trailer, shelter, structure, or building, or portion thereof, that is or could reasonably be occupied either full-time or part-time as a home, residence or sleeping place of one or more persons. This term does not include recreational vehicles or motor home coaches, unless they are rendered immobile and/or are places on a lot on a long-term basis.

Establishment – A facility other than a dwelling that generates sewage or high strength sewage and which is subject to the onsite sewage treatment and disposal rules of the State Board of Health pursuant to Chapter 420-3-1 of the Alabama Administrative Code. The term establishment may include, but is not necessarily limited to, an office, work place, or food service establishment.

Ground – The surface of land.

Ground Water – Water in a saturated zone or stratum beneath the surface of land or water, whether or not flowing through known and definite channels.

Illegal or improper treatment and/or disposal of sewage – treating sewage and/or returning sewage to the environment in a manner that is not approved or permitted by the Alabama Department of Environmental Management, the Alabama Department of Public Health or the Cherokee County Health Department. The illegal or improper treatment and/or disposal of sewage includes, but is not necessarily limited to the direct discharge of sewage into surface waters, ground water, or onto the ground; or into an unapproved or unpermitted sewage disposal system or holding tank or other device; or into an onsite sewage disposal system or device whose permit has expired.

Recreational Vehicle or Motor Home/Coach – a vehicle manufactured or modified for temporary human habitation or shelter, that is self-propelled or towed, which may have self-contained fixtures and facilities for collecting wastewater (sewage). The vehicle may be used from time to time for recreation, business, or routine transportation purposes, and which, by its design or fabrication, is neither intended for permanent or long term placement, nor to be rendered immobile. This term includes recreational trailers, but excludes manufactured/mobile homes.

Sewage – wastewater from a house or households and establishments, including all fecal matter and urine and waste water generated by a water-using fixture or appliances.

Sewage Disposal or Discharge – the return of treated or untreated sewage to the environment.

Sewage treatment – the process of removing contaminants from sewage.

Surface Water – Water upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be considered “surface water” when it exists from the spring onto the surface of the earth.

Section 4 – Establishment of Sewage Disposal Nuisance

Treating or disposing of sewage by a means that is not approved or permitted by the Cherokee County Health Department constitutes a public nuisance and presents a threat to the public’s welfare, health and safety. The improper or illegal treatment or disposal of sewage is unlawful and a violation of this Ordinance. The fact that no permit was issued by the Cherokee County Health Department for the installation of an onsite sewage disposal system to serve an establishment or dwelling shall be prima facie evidence of illegal or improper treatment and/or disposal of sewage.

Section 5 – Investigation and Enforcement

The County Commission shall enter into a Memorandum of Understanding with the Cherokee County Health Department whereby the Cherokee County Health Department shall designate one or more employees as Enforcement Officer(s) to perform ordinance enforcement activities in accordance with this section on behalf of and as an agent or agents of the County Commission.

Such Enforcement Officer shall patrol the Alabama Power flood easement surrounding Weiss Lake in the unincorporated areas of the county on a regular basis in an effort to identify noncompliant properties and monitor compliance with this Ordinance. Additionally, any citizen with a complaint alleging a violation of one or more of the provisions of this Ordinance may contact the Enforcement Officer and request that the matter be investigated. The Enforcement Officer shall only investigate upon a citizen complaint where sufficient information is provided and where the citizen provides the officer with his or her name, address, and telephone numbers and agrees to sign a formal written complaint, if requested to do so.

For the purpose of discharging the duties imposed by this Ordinance and to enforce its provisions and abate a sewage nuisance, the Enforcement Officer is empowered to enter upon any premises where sewage is generated or discharged, but only as necessary to investigate potential violations of this Ordinance or to issue notices and citations for any violation thereof.

Whenever the Enforcement Officer ascertains that sewage is being treated or disposed of in such a manner as to be a public nuisance, he or she shall cause a notice of sufficient size and weatherproofing to be placed upon the property. In addition to said posting, he or she shall mail such notice by certified mail, return receipt requested, to the owner of the premises upon which

or by which sewage is being illegally or improperly treated or disposed as shown by the county's real estate tax records and to the address of the premises by which or upon which the sewage is being improperly or illegally disposed.

The Notice required shall be substantially in the following form:

NOTICE TO THE OWNER AND ALL PERSONS INTERESTED IN THE ATTACHED PROPERTY. Sewage at this property located at (set forth physical address and description of property) is being improperly or illegally stored, treated and/or disposed of resulting in a public nuisance in violation of Section ___ of Cherokee County Ordinance No. _____. The improper and illegal storage, treatment and/or disposal of sewage shall immediately cease and the owner of said property shall within thirty (30) days from the date of this notice abate such nuisance by contacting the Cherokee County Health Department to make application for a sewage disposal system that complies with the requirements of the rules of the State Board of Health and/or the Cherokee County Board of Health. If the illegal and/or improper treatment and/or disposal of sewage does not immediately cease and if application is not made to the Cherokee County Health Department within thirty (30) days from the date of this notice, a citation for violation of said ordinance shall be issued to the owner of this property who shall be subject to fines and to the administrative fees equal to any costs incurred by Cherokee County in the event the county takes action to abate said sewage nuisance. Any questions regarding this notice should be directed to (insert name, telephone number of Enforcement Officer).

Such notice shall be not less than eight (8) inches by ten (10) inches and shall be sufficiently weatherproofed to withstand normal exposure to the elements for a period of ten (10) days.

If the property owner or resident of the property described in the notice abates the nuisance by immediately ceasing the improper and or illegal treatment and/or disposal of sewage and contacts the Cherokee County Health Department within thirty (30) days after the posting of the notice, there shall be no citation issued and no fines or administrative fees assessed. However, if a second violation of this Ordinance is found on the same property within twelve (12) months from the date of notice of the first violation, the owner of the property upon which the violation is found shall be issued a citation as provided herein and shall not be granted the opportunity to avoid payment of fines and administrative fees by subsequently abating the nuisance.

If at the end of thirty (30) days after posting such Notice, the owner of the property upon which or by which sewage is being illegally or improperly treated and/or disposed fails to immediately cease illegal and improper disposal of sewage and/or fails to submit an application for a sewage

disposal system, the Enforcement Officer shall issue a citation to the owner in a form approved by the Cherokee County Commission, which citation shall state with specificity:

- a) The violation for which the citation is issued;
- b) A statement of ordinance authority under which the citation was issued
- c) The amount of the citation and any administrative fees.
- d) The time period and method of paying the fine and administrative fees.
- e) Information regarding how the owner may appeal the issuance of the fine and administrative fees to the Cherokee County Commission for a final determination.

Service of the citation may be made by any of the following methods: (a) by certified mail, return receipt requested; or (b) by any sheriff or another person authorized to make service of process in civil proceedings; or (c) by the Ordinance Enforcement Officer; or (d) any other method allowable under the Alabama Rules of Civil Procedure.

If service of process is refused or unclaimed, and the certified mail receipt or the return of the person serving process so indicates, the Enforcement Officer may serve the document by first class mail addressed to the property owner at his last known address as shown in the Enforcement Officer's records. Service shall be deemed complete three (3) days after depositing of same in the United States mail.

In addition to or in lieu of all other remedies available pursuant to this Ordinance, the Commission may pursue collection of unpaid fines and fees and compliance with this ordinance through a civil or equitable action filed in the Circuit Court of Cherokee County seeking injunctive relief or other appropriate remedy.

Section 6 – Fines and administrative fees.

A fine of \$150 may be administered against the property owner for failing to comply with a notice issued by the Enforcement Officer. Each day the violation continues shall constitute a separate offense, however, the total fine shall not exceed five thousand dollars (\$5,000). All fines and penalties paid shall be paid into the general fund of the Commission and shall be earmarked for the administration of this Ordinance.

In addition to the \$150 per day administrative fine, the Cherokee County Commission may also assess an administrative fee equal to the cost of abatement of the nuisance, if the nuisance is not abated as required herein by the property owner.

All fines and administrative fees shall be paid to the administrator of Cherokee County who shall provide the Enforcement Officer with verification of all payments made.

Section 7 – Appeal of Citations and Final Determinations by Commission

If the property owner decides to appeal the issuance of the citation, an appeal must be initiated by filing a written notice of appeal with the Enforcement Officer with a copy filed with the Commission. The notice of appeal must be received by the Enforcement Officer within thirty (30) days of the service of the citation. Failure to file a timely notice of appeal waives the right of appeal and the determination becomes final.

In the event of an appeal of the citation and accompanying fines and administrative fees, copies of all notices and citations shall be provided to the Cherokee County Commission, which shall set a date for action on the citation no less than 45 days following the issuance of the citation. The property owner shall be notified by certified mail, return receipt requested, of the date, time and place of the Commission meeting at which action will be taken. At such meeting, the person to whom the citation was issued shall have an opportunity speak and to contest the issuance of the citation. At said hearing, the Commission shall either uphold the issuance of the citation or dismiss the citation.

The Commission shall provide written notice to the property owner of the final determination of the appeal. The Notice of final determination shall be sent certified mail, return receipt requested.

If the property owner fails to abate the sewage nuisance as required in this ordinance, the Commission may take necessary steps to abate the nuisance, including any and all legal and equitable remedies that are available. The use of one method of abatement does not preclude the use of any other method.

Section 8 – Records

It shall be the duty of any Enforcement Officer to keep, or cause to be kept, accurate and detailed records of:

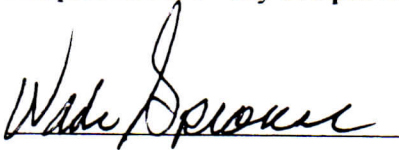
- a) All inspections and investigations conducted under this Ordinance, including but not limited to, all notices and citations issued, all correspondence to and from persons noticed or cited under this Ordinance, and minutes of all county commission proceedings relevant to any and all notices and citations issued; and
- b) All monies collected and expended in the administration and enforcement of this program.

All such records shall be open to the public for inspection at reasonable times, shall be available to such persons responsible for similar records of the county, and shall be audited in the same manner as other county records are audited.

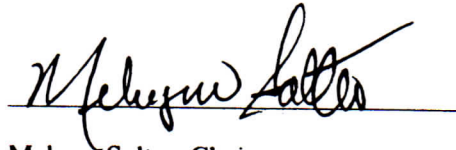
Section 9 – Effective Date

This ordinance shall become effective 90 days after the date of its adoption.

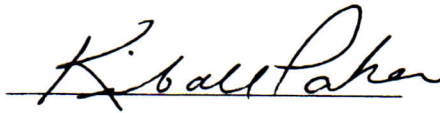
Adopted on the 9th day of April 2012.



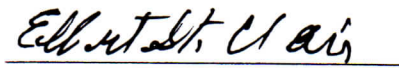
Wade Sprouse, District I



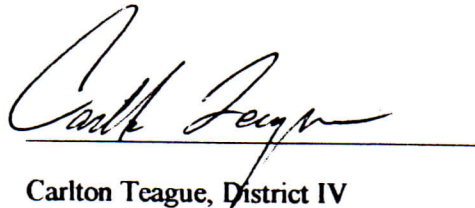
Melvyn Salter, Chairman



Kimball Parker, District II



Elbert St. Clair, District III



Carlton Teague, District IV

STATE OF ALABAMA
COUNTY OF CHEROKEE

**RESOLUTION ADOPTING THE CHEROKEE COUNTY SEWAGE DISPOSAL
ORDINANCE - RESOLUTION NUMBER 2012-01**

KNOW ALL MEN BY THESE PRESENTS: That it is the desire of the Cherokee County Commission to protect the public's health by protecting the water quality of Weiss Lake, the primary water source for the citizens of Cherokee County and to minimize the adverse health effects of the improper or illegal disposal of sewage;

WHEREAS, due to the increase in the discharge of sewage in Weiss Lake, individuals exposed to this discharge are placed in danger while enjoying recreational activities, in addition to the discharge being a threat to drinking water;

WHEREAS, the Cherokee County Commission declares the improper or illegal disposal of sewage to be a public nuisance menacing public health;

WHEREAS, it is in the best interest of the citizens of the County to adopt and implement rules and regulations regarding the abatement of improper or illegal disposal of sewage in the Alabama Power flood easements around Weiss Lake and in resort areas as defined in §45-10-170.41, Ala. Code, 1975, as amended, in order to protect the health, safety and welfare of its citizens;


WHEREAS, pursuant to the authority of §11-3-1, et seq. of the Code of Alabama, 1975, as amended, and upon approval by its citizens by referendum held on November 7, 2006:

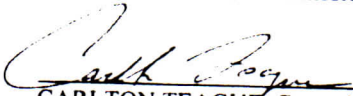
NOW THEREFORE, BE IT RESOLVED BY CHEROKEE COUNTY, ALABAMA, ACTING BY AND THROUGH THE COUNTY COMMISSION OF CHEROKEE COUNTY, STATE OF ALABAMA, AS FOLLOWS:

That the County Commission, in order to address the aforementioned concerns, hereby adopts the Cherokee County Sewage Disposal Ordinance Number 2012-02 as evidenced by this Resolution.

Done, approved and adopted at a regular meeting of the County Commission of Cherokee County, Alabama on this the 9th day of April, 2012.


MELVYN W. SALTER, Chairman


WADE SPROUSE, Commissioner


CARLTON TEAGUE, Commissioner


ELBERT ST. CLAIR, Commissioner


KIMBALL PARKER, Commissioner