

## CHAPTER 4-23 COLVILLE ENVIRONMENTAL QUALITY COMMISSION

### 4-23-1 Establishment of Commission

There is hereby created the Colville Environmental Quality Commission (CEQC). The CEQC shall consist of five voting members, which shall include the Director of the Natural Resources Department, the Director of the Planning Department, the Director of the Fish & Wildlife Department, the Director of the Parks & Recreation Department, and the Director of the History and Archaeology Department. If one of these positions becomes vacant, the acting departmental director shall serve as Commission member on an interim basis.

### 4-23-2 Powers and Duties of Commission

(a) The CEQC is the environmental administrative appellate body of the Confederated Tribes of the Colville Reservation.

(b) The CEQC shall have the authority and jurisdiction to hear and decide administrative appeals of final decisions of the Water Quality Department under Chapter 4-5, decisions of the Department of Geology under Chapter 4-6, final decisions of the Environmental Trust Department under Chapters 4-7 and 4-9, final decisions of the Hydrology Department under Chapter 4-8, and final decisions of the Water Administrator under Chapter 4-10 of the Colville Tribal Code.

(c) The CEQC may adopt additional rules and regulations governing its procedures and operations not inconsistent with the provisions of this Chapter and Chapter 2-4 of the Colville Tribal Code.

### 4-23-3 Chairman of the Commission

(a) Upon its formation, the CEQC shall meet and elect from its members a Chairman, and shall at least biennially thereafter meet and elect such a Chairman.

(b) The Chairman shall have the power to call and preside over all hearings and other meetings of the CEQC. The powers of the Chairman to call and preside over CEQC hearings may be delegated by the CEQC to a hearing officer as provided under Section 4-23-6.

(c) The Chairman or his designee may administer oaths to witnesses coming before the CEQC.

(d) The Chairman may take part in all deliberations and vote on all issues.

### 4-23-4 Meetings and Hearings

(a) The CEQC shall hold meetings and hearings as necessary to fulfill its responsibilities as an administrative appellate body under the Colville Tribal Code.

(b) The CEQC shall provide notice of hearings and conduct such hearings in accordance with the procedures for contested cases set forth in the Sections 2-4-13 through 2-4-18 of the Colville Tribal Code.

(c) All hearings and other meetings of the CEQC shall be open to the public; provided, the Chairman, in his sole discretion, may call a meeting into executive session when he determines it is in the interest of the Confederated Tribes of the Colville Reservation to do so.

### 4-23-5 Voting Procedures

(a) Three members of the CEQC shall constitute a quorum. A quorum is necessary for the CEQC to take official action.

(b) All actions of the CEQC shall be taken by majority vote, a quorum being present.

- (c) A member shall be excused from voting on a particular issue under the following circumstances:
- (1) If the member has a direct financial interest in the outcome of the matter or issue; or
  - (2) If the matter at issue involves the member's own official conduct; or
  - (3) If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- (d) If as a result of recusals under Section 4-23-5, the CEQC lacks a quorum to take action in a particular case, the CBC shall appoint additional member(s) to serve on the CEQC on a temporary basis.
- (e) A roll call vote shall be taken upon the request of any member.

**4-23-6 Appointment of Hearing Officer**

- (a) The CEQC, in its sole discretion, may appoint a hearing officer to conduct the hearings on appeals provided for in this Chapter and other applicable law. The hearing officer shall have a demonstrated knowledge of administrative law and shall be admitted to the practice of law in the Colville Tribal Court and the state of Washington.
- (b) The hearing officer shall conduct the hearing in accordance with the provisions of this Chapter and Chapter 2-4 of the Colville Tribal Code and shall submit recommended findings of fact, conclusions and a proposed decision to the CEQC.
- (c) A hearing officer's decision shall not be final or effective until signed by a majority of the CEQC members eligible to decide the case.

**4-23-7 Secretary**

- (a) The CEQC shall appoint a Secretary. The Secretary shall be a Tribal employee selected by the CEQC.
- (b) The Secretary shall be responsible for maintaining the record required under Section 2-4-13(d) of the Colville Tribal Code in all appeals and other matters heard by the CEQC.
- (c) Upon written request, the Secretary shall make the record required under Section 2-4-13(d) available for public inspection at a reasonable time and location.
- (d) The Secretary shall be responsible for transmitting to the Tribal Court the original or a certified copy of the entire record of the CEQC's proceedings in the event of a petition for judicial review under Section 2-4-20 of the Colville Tribal Code.

**4-23-8 Appeals of Departmental Decisions**

- (a) Consistent with the jurisdictional limits provided for in Section 4-23-2 of the Colville Tribal Code, any person having received notice of an final appealable decision made by a Tribal department under Chapters 4-5 through 4-10 of the Colville Tribal Code may appeal to the CEQC within thirty (30) days from the date of receipt of the notice of such decision. The appeal shall be perfected by serving a copy of a Notice of Appeal upon the issuing Tribal department within the time specified herein and by filing the original thereof with proof of service with the Secretary of the CEQC. The time for filing an appeal is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday or a legal holiday, and then it is excluded and the next succeeding day which is neither a Saturday, Sunday nor a legal holiday is included.
- (b) Any appeal must contain the following information: (1) The appellant's name and address; (2) A description of the substance of the decision that is the subject of the appeal; (3) A clear, separate, and concise statement of every error alleged to have been committed; (4) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and (5) A statement setting forth

the relief sought.

(c) An appealable decision shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the CEQC and serving it on the issuing department within thirty days of the date of receipt.

**4-23-9 Stays of Departmental Decisions**

(a) Except as otherwise provided in the Colville Tribal Code, a person appealing to the CEQC an order of a Tribal department, which was not stayed by the issuing department, may obtain a stay of the effectiveness of that order only as set forth in this section.

(b) An appealing party must request a stay by motion. The motion must be accompanied by a statement of grounds for the stay and evidence setting forth the factual basis upon which request is based. The CEQC shall hear the request for a stay as soon as possible. The hearing on the request for stay may be consolidated with the hearing on the merits.

(c) The CEQC may grant a motion for a stay only if the applicant demonstrates a likelihood of success on the merits of the appeal, a probability of irreparable harm, and that the interests of the Tribes or the public will not be harmed by the issuance of a stay.

(d) Any party or other person aggrieved by the grant or denial of a stay by the CEQC may petition the Tribal Court for review of that decision pursuant to Section 2-4-20 pending the appeal on the merits before the CEQC. The Tribal Court shall expedite its review of the decision of the CEQC.

**4-23-10 Conduct of Hearings**

It shall be the duty of the Chairman or a hearing officer appointed by the CEQC to conduct conferences or hearings in cases assigned in an impartial and orderly manner. The Chairman or the hearing officer shall have the authority, subject to the other provisions of these rules:

(a) To administer oaths and affirmations;

(b) To issue subpoenas and enter protective orders as provided in Section 2-4-13 of the Colville Tribal Code;

(c) To rule on all procedural matters, objections and motions;

(d) To rule on all offers of proof and receive relevant evidence;

(e) To question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the appeal;

(f) To secure and present in an impartial manner such evidence, in addition to that presented by the parties, as deemed necessary to fairly and equitably decide the appeal;

(g) To take appropriate disciplinary action with respect to representatives of parties appearing before the board;

(h) To issue orders joining other parties, on motion of any party or in the judgment of the presiding officer, when it appears that such other parties may have an interest in, or may be affected by, the proceedings;

(i) To consolidate appeals for hearing when such consolidation will expedite disposition of the appeals and avoid duplication of testimony and when the rights of the parties will not be prejudiced thereby;

(j) To hold prehearing conferences and settlement conferences;

- (k) To permit and regulate the taking of discovery;
- (l) To regulate the course of the hearing;
- (m) To take any other action necessary and authorized by the Colville Tribal Code.

#### **4-23-11 CEQC Decisions**

In all appeals and other contested cases, the CEQC shall make findings of fact and prepare a written decision, and such findings and decisions shall be effective upon being signed by a majority of those CEQC members eligible to decide the case and upon being filed with the Secretary.

#### **4-23-12 Reconsideration**

(a) After issuance of a final decision, any party may file a petition for reconsideration with the CEQC. Such petition must be filed and served on all parties within ten (10) days of mailing of the final decision. The CEQC may require an answer, or parties may elect to file an answer, to the petition for reconsideration. Any answer to a petition for reconsideration must be filed and served on all parties within five days of the receipt of the petition.

(b) The filing of a petition for reconsideration does not stay the effectiveness of the final decision of the CEQC.

(c) In response to a petition for reconsideration, the CEQC may deny it, or may reverse or modify its decision or may reopen the hearing. The CEQC is deemed to have denied the petition if, within thirty (30) days from the date the petition is filed, the CEQC does not act on the petition or specify a date by which it will act on the petition.

(d) The time for filing a petition for judicial review does not commence until disposition of the petition for reconsideration. However, the filing of a petition for reconsideration is not a prerequisite for seeking judicial review.

(e) The CEQC shall mail copies of the final decision and order and of the CEQC's disposition of any petition for reconsideration to each party to the appeal or to the attorney or representative of record. Service on the representative constitutes service on the party.

#### **4-23-13 Repeal of Prior Resolutions**

All prior resolutions establishing the CEQC, including Resolutions 1985-464 and 1998-650, are hereby superseded and repealed.

(Chapter 4-23 Adopted 9/2/10, Resolution 2010-618)