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Swinomish Indian Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant to 25 U.S.C. § 476
* 11404 Moorage Way * La Conner, Washington 98257 *

February 18, 2026

Anthony Bruma
Rulemaking Lead
anthony.bruma@ecy.wa.gov

Sent electronically via email

RE: Preliminary draft rule language for a new rule under Chapter 173-448 WAC, Air Quality in Overburdened Communities Highly Impacted by Air Pollution.

Dear Mr. Bruma,

The Swinomish Indian Tribal Community (“Swinomish Tribe” or the “Tribe”) submits these comments in response to the informal comment period on the preliminary draft of rule language of Chapter 173-448 WAC, intended to implement parts of RCW 70A.65.020, Environmental justice review.

Background and setting

The Swinomish Indian Tribal Community is a federally recognized Indian tribe and political successor in interest to certain tribes and bands that signed the 1855 Treaty of Point Elliott, which among other things reserved fishing, hunting and gathering rights and established the Swinomish Reservation on Fidalgo Island in Skagit County, Washington. The Swinomish Reservation sits at the mouth of the Skagit River, the largest river system draining to Puget Sound and the only river in the Lower 48 states that still has all species of wild Pacific salmon and steelhead spawning in its waters. Since time immemorial, the Swinomish Tribe and its predecessors have occupied and utilized vast areas of land and water in northern Puget Sound up to the Canadian border to support the Swinomish way of life.

Identifying overburdened communities highly impacted by air pollution

The lack of adequate localized data collection points across Washington’s air quality monitoring network results in “identified communities” (per WAC 173-448-030) that may not be fully reflective of the health inequities and barriers to clean air that many communities face. Under the proposed draft rule language, identified communities are “overburdened communities highly impacted by air pollution that are determined through Ecology’s current Policy as required under RCW 70A.65.020(1)(a).” RCW 70A.65.020(1)(a) includes the provision that the identification of overburdened communities “*may* be accomplished through the department’s process to identify overburdened communities under chapter 70A.02 RCW” (emphasis added), leaving open the option to alternate methods of community identification.

Overburdened communities, as identified in alignment with the Climate Commitment Act (CCA) and the Healthy Environment for All (HEAL) Act, include tribal reservation lands across the state. Tribal reservation lands are often situated near point source polluters, and the Swinomish Reservation is located adjacent to two of Washington’s five oil refineries: Marathon and HF Sinclair. While Ecology’s initial determination of identified communities does not include the Swinomish Reservation, past events demonstrate that disproportionate negative air quality impacts are not limited to the already-identified communities. The Swinomish Tribe implores Ecology to ensure tribal communities and Reservation Lands are included as “overburdened,” regardless of the presence of timely air quality data on reservations. The February 2015 chemical release from the former Shell (now HF Sinclair) refinery adjacent to the Swinomish Reservation affected hundreds of area residents, causing several Tribal members to seek emergency health care, and resulted in a Notice of Violation from the Northwest Clean Air Agency (NWCAA).¹ In addition, two separate chemical release events in August and September 2020 exceeded regulatory limits and resulted in another Notice of Violation to Shell. These releases caused visible smoke plumes over Swinomish Reservation lands, noticeable odors, and complaints to NWCAA.² NWCAA’s investigation found that in both events, visible emissions persisted for more than 5 minutes in two consecutive hours at one or more flares in excess of regulatory limits.

Without considering additional air quality data, the draft rules proposed by Ecology are insufficiently protective of air quality concerns for vulnerable communities and tribal nations, including Swinomish. The Tribe’s active air quality monitoring program collects data on the Swinomish Reservation near the Swinomish Casino and the west shore of the Reservation, and a third monitoring location has been proposed in Swinomish Village. Not including tribal air quality data and monitoring capabilities in community identification limits the environmental justice outcomes intended by RCW 70A.65.020 and fails to include tribes as “vulnerable

¹ <https://nwcleanairwa.gov/news-release/shells-puget-sound-refinery-penalized-for-chemical-release/>

² <https://nwcleanairwa.gov/news-release/nwcaa-penalizes-shell-for-2020-odor-incident/>

populations” as defined in RCW 70A.02.010(14).³ This puts the burden on Tribes to prove their overburdened status through having skilled personnel, expensive equipment, and available funding to further monitoring programs. Furthermore, only relying on criteria air pollutants does not incorporate Hazardous Air Pollutants (HAPs) and Toxic Air Pollutants (TAPs) as defined in 40 CFR Part 61.01 and WAC 173-460-150. Possible acute exposure to HAPs and TAPs should be considered in determining overburdened communities. Funding monitoring programs for these pollutants is challenging for Tribes and local air monitoring partners alike.

Determining protective air quality targets

In the proposed draft rule language under WAC 173-448-050(2), Ecology intends to select the option most protective of public health when determining methodology for setting air quality targets. As many Washington communities are usually in compliance with the National Ambient Air Quality Standards (NAAQS), it seems likely that air quality targets should be determined by option (a) that will compare design values of criteria pollutants to design values in neighboring communities not highly impacted by air pollution. While the intent behind option (a) may be to protect public health beyond the NAAQS, this process must not bind identified communities to their neighbors irrespective of potential changes in the neighboring community’s air quality. If air quality conditions substantially deteriorate in the neighboring community, the identified community should not suffer accordingly. We encourage the methodology to allow for standardization of neighboring community air quality data, ensuring that identified communities across the state have equitable opportunities to clean air regardless of their neighbors and protecting public health to the greatest degree.

Thank you for the consideration of our comments.

Sincerely,



Allison Work
Climate Policy Analyst
Swinomish Indian Tribal Community

³ <https://app.leg.wa.gov/RCW/default.aspx?cite=70A.02.010>