

Swinomish Tribal Code Approved but Not Incorporated by Reference
Title 19 – Environmental Protection
Chapters 2 and 4

CHAPTER 2 – CLEAN AIR ACT

19-02.190 Enforcement.

(A) Inspections. The Department may inspect all activities subject to this Chapter to ensure compliance with this Chapter and applicable permit conditions. Department officials may enter the premises or location of activities subject to this Chapter at reasonable times to inspect such activities and otherwise perform the duties established pursuant to this Chapter. Department officials shall make a reasonable effort to locate the owner of or a person with authority over the premises to request entry. If entry is refused, the official shall have recourse to the remedies provided by law to secure entry.

(B) Orders.

- (1) In the event of any violation of this Chapter or an applicable permit condition, the Department may issue an immediately effective enforcement order:
 - (a) Revoking an operating permit, open burn permit, or special use permit issued pursuant to this Chapter; and/or
 - (b) Requiring the landowner, permittee, or other responsible party to perform any or all of the following:
 - (i) Cease or abate the activity causing the violation;
 - (ii) Pay a civil penalty in accordance with Section 19-02.200; and/or
 - (iii) Pay damages pursuant to Section 19-02.210.
- (2) Any Notice of Violation issued by the Department pursuant to this Section shall cite the nature, time, date, and location of the violation; the Section(s) of this Chapter and/or permit condition applicable to the violation; the name and address of the responsible party; contact information for the Department; and any required action(s) that must be taken by the responsible party.
- (3) A person to whom an enforcement order is issued by the Department pursuant to this Section may appeal the order in accordance with Section 19-02.220. Notwithstanding such an appeal, any orders revoking a permit, or to cease and abate violating activity shall remain in effect until rescinded by a written appeals decision.
- (4) The Director shall disclose in writing to the Planning Commission any conflicts of interest with regard to persons subject to permit and enforcement orders under this Chapter. Such disclosure shall be part of the record of any applicable permit or enforcement order.

19-02.200 Penalties.

(A) Penalties for violations of this Chapter or applicable permit conditions shall be a civil fine of not less than \$100.00 per day per violation and not more than \$10,000.00 per day per violation. The Department shall assess the fine based upon its consideration of the following factors:

- (1) The severity of the violation, in terms of the effect of the violation on Reservation air quality and public health and welfare;
- (2) Whether the responsible party has been determined to have committed past violations of this Chapter, applicable permit conditions, or other provisions of Tribal or Federal law related to environmental protection or land use;
- (3) The staff time required to correct the violation;

- (4) Whether the responsible party has cooperated with the Tribe in addressing the violation, which may allow reduction of the fine by up to 50% based on all of the following:
 - (a) Whether the responsible party immediately complied with an enforcement order to cease the violation;
 - (b) Whether the responsible party took actions to correct the violation as quickly as feasible;
 - (c) Whether the responsible party fully cooperated with investigations related to the violation; and
 - (d) Whether the responsible party fully rectified the violation within thirty (30) days of notice of violation.

(B) For the purpose of assessing a penalty, each day an activity is in violation of this Chapter or an applicable permit condition is a separate violation of this Chapter or the permit condition.

(C) If the violation was committed during a burn ban, the penalty may be doubled.

19-02.210 Damages.

In addition to any other remedies provided by this Chapter for a violation of this Chapter or an applicable permit condition, including but not limited to penalties assessed pursuant to STC 19-02.200, the Department is authorized to assess and to recover by means of a civil suit filed in Swinomish Tribal Court, on behalf of the Tribe, damages in the following amounts:

(A) Double the economic benefit the violator gained by non-compliance with this Chapter or an applicable permit condition, as determined by the Department; or Double the harm the Tribe sustained due to the person's violation of this Chapter or an applicable permit condition, as determined by the Department; or

(B) Double the amount of money the Tribe expended in mitigating the adverse effects on Reservation air quality and public health and welfare of the violation of this Chapter or an applicable permit condition, as determined by the Department.

19-02.220 Appeals of Department Decisions.

Any person whose permit application under Sections 19-02.060, 19-02.110, or 19-02.120 of this Chapter is denied by the Department, to whom the Department issues an enforcement order under Section 19-02.190(B), or against whom the Department assesses penalties under Section 19-02.200 may appeal the decision in accordance with STC 19-04.560 through 19-04.600.

19-02.230 Tribal Administrative Remedies and Tribal Court.

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Subchapter. An applicant or other aggrieved party must exhaust any and all administrative remedies before seeking review in Tribal Court.

CHAPTER 4 – SHORELINES AND SENSITIVE AREAS ACT

19-04.560 Request for Hearing Before the Planning Commission.

(A) Any party aggrieved by a decision or action of the Planning Department or Director, for which this Chapter provides a right to request a hearing, may request such a hearing by the Planning Commission within thirty calendar days from the date of notice of the challenged decision or within thirty calendar days from the date of the challenged action, as applicable.

(B) Any request for a hearing shall be filed with the Planning Department and shall state:

- (1) The reasons for the hearing request, specifically identifying any claimed errors involving any of the following in the challenged decision or action:
 - (a) Conclusions as to Swinomish law, plans or policies/ as to Federal law, or in the application of such law/ plans or policies;
 - (b) Any factual findings or statements of facts; or
 - (c) Any arbitrary or capricious action; and
- (2) Any way in which the party requesting a hearing has been or will be substantially prejudiced by the challenged decision or action.

19-04.570 Hearings by the Planning Commission.

(A) All Planning Commission hearings held pursuant to this Chapter shall be conducted in accordance with the provisions of this Section.

(B) Notice of Public Hearing. The Planning Department shall publish and shall provide the party who requested a hearing notice of the Planning Commission hearing at least fifteen (15) calendar days in advance of the date of the hearing. The hearing shall be held within sixty (60) calendar days of the date on which the request for hearing was filed.

(C) Public Hearing Procedures. Planning Commission hearings shall proceed in the following manner:

- (1) The Planning Department shall provide copies of any application or request, supporting documents, and any documents relating to the challenged decision or action. Planning Commission members may ask questions of the staff.
- (2) The party who requested the hearing may submit written documents or materials in response to the Department's recommendation, decision or action. Planning Commission members may ask questions of the party who requested the hearing.
- (3) Members of the public may offer comments on the proposal for consideration by the Planning Commission. Questions or comments from the public shall be addressed to the Planning Commission and directed by the Chair of the Commission to staff or the party that requested the hearing, at the discretion of the Chair.
- (4) Response or clarifying statements by the Department and the party that requested the hearing.
- (5) Closing of the evidentiary portion of the hearing and deliberation on the proposal by the Planning Commission.

(D) Public Record. The Planning Commission shall make a written or audio record of all hearings.

(E) Basis of decision. The Planning Commission shall review the record of the hearing and the documents submitted at the hearing, and shall base its decision upon such record, applying the provisions of the Swinomish Code and of Federal law and considering the best interests of the Tribe.

(F) Written Decision. The Planning Commission shall issue its decision in writing. Copies shall be provided to the Planning Department and the party requesting the hearing, and shall be available for public inspection and copying at reproduction cost. The decision shall be issued within thirty (30) calendar days of the date of the hearing.

19.04.580 Appeals of Planning Commission Decisions.

(A) Any party aggrieved by a decision of the Planning Commission may appeal that decision to the Senate by filing a written notice of appeal within thirty (30) calendar days from the date of notice of the decision; provided, however, that this Section is not applicable to recommendations made by the Planning Commission to the Senate.

(B) The Senate shall make a decision on appeal based on the administrative record of the proceedings before the Planning Commission. The Senate shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Planning Commission, and shall not consider any issue that was not raised by the appealing party in the administrative proceedings before the Planning Commission. The Senate shall issue a decision within sixty (60) calendar days of the date on which the notice of appeal was filed.

(C) The Senate shall affirm the decision of the Planning Commission unless the appealing party demonstrates to the Senate both (1) and (2) below:

(1) The decision of the Planning Commission is either:

(a) Contrary to Swinomish or Federal law; or

(b) Arbitrary or capricious; or

(c) Not supported by substantial evidence in the record of proceedings held before the Planning Commission; or

(d) Not in the best interests of the Tribe; and

(2) The appealing party has been or will be substantially prejudiced by the challenged action.

(D) If the Senate determines that the aggrieved party has met the burden set forth in Subsection (C)(1) and (2), then the Senate, in its discretion, may issue a decision on the merits or may send the matter back to the Planning Commission for further proceedings in accordance with the Senate's ruling.

19-04.590 Appeal of Senate Decisions.

(A) Any party aggrieved by a decision of the Senate pursuant to this Chapter may appeal such decision to Tribal Court within thirty (30) calendar days from the date of notice of the decision. Any appeal to the Tribal Court shall be in writing and shall identify the name of the party petitioning for review, the interest of the petitioning party in the decision appealed from, and shall name as respondent only the Planning Director, in his or her official capacity.

(B) The review by the Tribal Court shall be limited to the evidentiary record made in the administrative proceedings held before the Planning Commission. The Department may charge an appealing party the reasonable costs of preparing copies of the administrative record or of transcribing a recording of a hearing for the Tribal Court and for the appealing party.

(C) The Tribal Court shall not receive or consider any additional evidence not contained in the administrative record of the proceedings before the Planning Commission. The Tribal Court shall not consider any issue that was not raised by the appealing party in the administrative proceedings before

Planning Commission and before the Senate.

(D) The Tribal Court review shall be conducted by the Court, without a jury. The review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court.

(E) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.

(F) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the administrative proceedings held before the Planning Commission. The Court of Appeals shall not consider any issue that was not raised by the appealing party in both the administrative proceedings before the Planning Commission and the Senate and in the record of proceedings before the Tribal Court.

(G) The Tribal Court and the Court of Appeals shall affirm the decision of the Senate upon review unless the appealing party demonstrates to the Court both (1) and (2):

(1) The decision of the Senate either:

(a) Is contrary to Swinomish or Federal law;

(b) Is arbitrary or capricious; or

(c) Is not supported by substantial evidence in the record of proceedings held before the Senate; and

(2) The appealing party has been or will be substantially prejudiced by the challenged action.

(H) If the Court determines that the aggrieved party has met the burden set forth in Subsection (G)(1) and (2), then the Court shall reverse the decision appealed from and shall remand the matter to the Senate for further proceedings in accordance with the Court's ruling. The Senate, in its discretion, may send the matter to the Planning Commission for further proceedings in accordance with the Court's ruling. The Tribal Court and the Court of Appeals shall not have authority to issue a permit, impose a penalty or to grant an exemption, exception or a variance under this Chapter, and shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Senate for further proceedings.

(I) The decision of the Court of Appeals shall be final, and is not subject to further review.

19-04.600 Time and Finality.

(A) The date of notice of any decision shall be the date on which the decision is mailed by the body making the decision to the last known address of the applicant. The date of notice shall be stated in the decision.

(B) All time periods set forth in Sections 19-04.560 to 19-04.590 shall be calculated in accordance with Rule 3-02.080(A), "Computation and Extension of Time", of the Swinomish Rules of Civil Procedure.

(C) Any decision issued by any person or body under this Chapter shall inform the recipient of any right to request a hearing or to appeal that is provided by this Chapter, of the procedure for requesting a hearing or filing an appeal, and of the time period in which such a request for hearing or notice of appeal must be filed.

(D) If a decision or action of the Department, Planning Commission, Senate, or Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.