

**EPA-approved Swinomish Indians of the Swinomish Reservation Washington Regulations**

**Swinomish Tribal Code (STC)**  
**Title 19 – Environmental Protection**  
**Chapter 2 – Clean Air Act**

**19-02.020 Title.**

This Chapter shall be known and may be cited as the “Swinomish Clean Air Act.”

**19-02.020 Authority.**

This Chapter is authorized pursuant to Article VI, Sections 1(a), (l), and (s) of the Constitution of the Swinomish Indian Tribal Community, as most recently amended, and by Sections 110, 301, and 505(a)(2) of the Air Pollution Control Act (“Clean Air Act”), 42 U.S.C. § 7401 *et seq.*

Pursuant to Section 301 of the Clean Air Act, the United States Environmental Protection Agency (“EPA”) approved the Tribe on February 16, 2010 for Treatment as a State to administer Sections 110 and 505(a)(2) of the Clean Air Act.

**19-02.030 Jurisdiction.**

The provisions of this Chapter shall apply to all persons and property subject to the governing authority of the Swinomish Indian Tribal Community to the maximum extent permitted by law.

**19-02.040 Definitions.**

(A) For the purposes of this Chapter, unless explicitly stated otherwise, the following words and phrases shall have the following definitions:

- (1) **“Administrator”** means the Administrator of the EPA or an authorized representative.
- (2) **“Agricultural activity”** means a usual and customary activity of cultivating the soil, producing crops, and raising livestock for use and consumption. “Agricultural activity” includes but is not limited to activities necessary for or related to disease or pest control, crop propagation, and crop rotation, but does not include manufacturing, bulk storage, handling for resale, or the formulation of any agricultural chemical.
- (3) **“Agricultural burning”** means the burning of vegetative debris from an agricultural activity.

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- (4) “**Air Pollutant**” means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter that is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term air pollutant is used.
- (5) “**Airshed**” means a part of the atmosphere that behaves in a coherent way with respect to meteorology and to the dispersion of emissions.
- (6) “**Ambient Air**” means that portion of the atmosphere, external to buildings, to which the general public has access.
- (7) “**Burn Ban**” means a period of time when any open burning on the Reservation is prohibited, except for open burns not subject to Subchapter II of this Chapter pursuant to STC 19-02.080 and open burns that meet one of the exceptions listed in Section 19-02.100(F).
- (8) “**Commission**” or “**Planning Commission**” means the Planning Commission of the Swinomish Indian Tribal Community or its authorized designee.
- (9) “**Department**” or “**Planning Department**” means the Swinomish Office of Planning and Community Development.
- (10) “**Director**” means the Director of the Swinomish Office of Planning and Community Development or his authorized designee.
- (11) “**Emission**” means a direct or indirect release into the atmosphere of any air pollutant(s), or air pollutant(s) released into the atmosphere.
- (12) “**Extinguished**” means there is no visible smoke from a burn area and the burn pile is cool enough for human touch.
- (13) “**Garbage**” means food waste or material contaminated with food waste.
- (14) “**Non-combustible**” means materials that are not flammable, capable of catching fire, or burning.
- (15) “**Open burn**” and “**Open burning**” mean the burning of a material which results in the products of combustion being emitted directly into the ambient air without passing through a stack. “Open burn” and “Open burning” include but are not limited to burning in burn barrels.
- (16) “**Particulate matter**” means any airborne finely divided solid or liquid material other than uncombined water. Particulate matter includes but is not limited to PM-10 and PM-2.5.

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- (17) **“Pathogenic waste”** means wastes capable of causing disease.
  - (18) **“Permittee”** means any person who holds a permit issued pursuant to the terms of this Chapter.
  - (19) **“Person”** means any natural person; any corporation, trust, unincorporated association, general or limited partnership, or limited liability company; the United States or any State or local government or any of their programs, agencies, or departments; any Indian tribe or any of its programs, agencies, or departments; or any other legal entity, and includes the Swinomish Indian Tribal Community.
  - (20) **“PM-10”** means particulate matter with an aerodynamic diameter less than or equal to 10 micrometers.
  - (21) **“PM-2.5”** means particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers.
  - (22) **“Prohibited materials”** means those materials listed in Section 19-02.090(B).
  - (23) **“Reservation”** means the Swinomish Indian Reservation and includes all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.
  - (24) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
  - (25) **“Structure”** means any human-made assemblage of materials of any nature whatsoever extending above and/or below the surface of the earth, but does not include fill material.
  - (26) **“Training fire”** means an open burn conducted by qualified firefighting personnel for the purpose of training firefighters in the methods of fire suppression.
  - (27) **“Tribe,” “Tribal,”** and **“Swinomish”** mean or refer to the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to, and is a political and legal successor in interest to, certain tribes and bands and groups of Indians which were parties to the Treaty of Point Elliott.
  - (28) **“Uncombined Water”** means droplets of water that have not combined with hygroscopic particles or do not contain dissolved solids.
- (B) All other words and phrases shall have their customary and ordinary meanings.

**SUBCHAPTER II – OPEN BURNING**

**19-02.080 Applicability of Subchapter.**

This Subchapter applies to any open burn conducted within the Reservation, except for an open burn conducted for Tribally-recognized cultural or spiritual purposes.

**19-02.090 General Rules for Open Burning.**

- (A) **Fire safety and air quality protection provisions.** No person shall commence or continue an open burn within the Reservation unless such open burn:
  - (1) Is attended at all times;
  - (2) Is conducted only during daylight hours, except for cooking and recreational fires;
  - (3) Burns only materials that have been kept as dry as practicable;
  - (4) Burns only materials that have been separated from non-combustible materials as much as practicable;
  - (5) Burns only materials that have been separated from the grass or peat layer as much as practicable;
  - (6) Is capable of being immediately extinguished;
  - (7) Is not allowed to smolder; and
  - (8) Is extinguished when the burn is complete.
- (B) **Prohibited materials.**
  - (1) Subject to subsection (B)(2) of this Section, no person shall burn or allow the burning of the following materials within the Reservation:
    - (a) Structures;
    - (b) Garbage;
    - (c) Dead animals or parts of dead animals, unless pursuant to the lawful order of a public health official;
    - (d) Junked motor vehicles or any materials resulting from a salvage operation;
    - (e) Tires or rubber materials or products;
    - (f) Plastics, plastic products, or Styrofoam;

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- (g) Asphalt or composition roofing, or any other asphaltic material or product;
  - (h) Tar, tarpaper, petroleum products, or paints;
  - (i) Paper, paper products, or cardboard other than what is necessary to start a fire;
  - (j) Lumber or timbers treated with preservatives;
  - (k) Construction debris or demolition waste;
  - (l) Pesticides, herbicides, fertilizers, or other chemicals;
  - (m) Insulated wire;
  - (n) Batteries;
  - (o) Light bulbs;
  - (p) Materials containing mercury (e.g., thermometers);
  - (q) Asbestos or asbestos-containing materials;
  - (r) Pathogenic wastes;
  - (s) Hazardous wastes, as defined under 40 C.F.R. § 261.3;
  - (t) Any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned;
  - (u) Any material from a site other than the parcel number upon which the open burn is conducted; or
  - (v) Fireworks or associated packaging, other than fireworks the burning of which is permitted under Title 15, Chapter 2 of the Swinomish Tribal Code – Fireworks.
- (2) A training fire containing prohibited materials may be permitted by the Department pursuant to Section 19-02.120, provided that such burn complies with all other provisions of this Chapter, other applicable provisions of Tribal law, and applicable provisions of Federal law.
- (C) **Carbon monoxide, PM<sub>2.5</sub> and PM-10.** No person shall commence or continue an open burn within the Reservation that is determined by the Department to contribute to an exceedence of Federal ambient air quality standards for carbon monoxide, PM-10 or PM-2.5.

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~~(D) **Nuisance.** No person shall commence or continue an open burn within the Reservation that endangers public health or welfare or that constitutes a nuisance.~~

**19-02.100 Burn Bans.**

- (A) The Department may declare a burn ban during an episode or period of impaired air quality or high fire danger.
- (B) The Department shall declare a burn ban based on impaired air quality when one or more of the following pollutant concentrations is measured or predicted within the Reservation to:
  - (1) exceed 75% of the currently effective National Ambient Air Quality Standards for PM 2.5 or PM10; or
  - (2) exceed any other of the currently effective National Ambient Air Quality Standards, 40 C.F.R. Part 50.
- (C) The Department may declare a burn ban based on data or meteorological conditions in the airshed indicating impaired air quality conditions.
- (D) The Department may declare a burn ban based on high fire danger when moisture levels in live and/or dead biomass indicate those materials have become extremely flammable.
- (E) The Department shall provide notice of a burn ban by placing a sign by the side of each main road providing access to the Reservation and by posting notice on the open burning hotline, and, in its discretion, by sending notice to all Tribal departments and posting notice on the Tribal website.
- (F) No person shall commence or continue an open burn within the Reservation during a burn ban, provided, however, that:
  - (1) An open burn for cooking or recreational purposes may be commenced or continued during a burn ban provided such burn is less than four feet in diameter, less than three feet in height, and contained within a fire ring, barbeque, or similar structure, unless the Department has issued notice pursuant to subsection (G)(1) of this Section that such an open burn is prohibited; and
  - (2) An open burn commenced prior to the declaration of a burn ban may be continued during a burn ban if the Department determines that immediate cessation of the open burn would likely cause greater emissions than allowing the open burn to continue and specifically authorizes in writing the open burn to continue.
- (G) The Department in its discretion may, based on the severity of air quality conditions or fire danger:

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- (1) Prohibit all open burning including fires for cooking and recreational purposes; and
- (2) Prohibit the use of woodstoves, except in homes in which woodstoves are the primary heating source.

### 19-02.110 Open Burn Permits.

- (A) Unless the open burn requires a special use permit pursuant to Section 19-02.120, any person who commences an open burn within the Reservation that is four or more feet in diameter or three or more feet in height shall obtain an open burn permit from the Department prior to commencing such open burn and shall comply with the conditions of the permit when conducting such open burn.
- (B) An open burn permit application shall be submitted to the Department at least three working days prior to the date that the open burn is to be commenced. The application shall be on a form approved by the Department and shall contain, at a minimum, the following information:
  - (1) Street address and parcel number of the property upon which the proposed open burn will occur;
  - (2) Name, mailing address, and telephone number of the owner(s) of the property upon which the proposed open burn will occur;
  - (3) Name, mailing address, and telephone number of the person responsible for conducting the proposed open burn;
  - (4) A plat or other map:
    - (a) Showing the area over which the proposed burn would be conducted;
    - (b) Showing the location of the proposed open burn in relation to property lines and vehicle access to the property; and
    - (c) Indicating the distances to and directions of any structures and other combustible materials, including but not limited to standing woody vegetation, within 200 feet of the proposed burn site;
  - (5) The type and quantity of materials proposed to be burned, including the estimated size of the material to be burned;
  - (6) A description of the measures that will be taken to prevent escaped fires;
  - (7) The requested date(s) when the proposed open burning would be conducted; and

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- (8) Any other information requested by the Department if such information is reasonably necessary to determine the anticipated effects of the proposed burn.
- (C) When reviewing an application for a burn permit, the Department shall, at a minimum, consider:
  - (1) The nature, size, duration, and location of the proposed burn;
  - (2) The anticipated effects of the proposed burn;
  - (3) Current and projected air quality conditions; and
  - (4) The anticipated cumulative effects of the proposed burn and other scheduled burns in the area.
- (D) The Department may issue an open burn permit if it determines that the proposed open burn will not cause an adverse impact on Reservation air quality or otherwise endanger public health or welfare.
- (E) An open burn permit shall include the standard permit conditions listed in Section 19-02.140 and may include any additional permit conditions authorized by Section 19-02.150.
- (F) A person whose application for an open burn permit is denied by the Department may appeal the denial in accordance with Section 19-02.220.

### **19-02.120 Special Use Permits.**

- (A) A special use permit is required for:
  - (1) Training fires, including but not limited to training fires containing any prohibited materials; and
  - (2) Agricultural burning.
- (B) Any person who commences an open burn within the Reservation requiring a special use permit shall obtain a special use permit from the Department prior to commencing such open burn and shall comply with the conditions of the permit when conducting such open burn.
- (C) Application requirements.
  - (1) A special use permit application shall be submitted to the Department at least three working days prior to the date that the open burn is to be commenced. The application shall be on a form approved by the Department and shall contain, at a minimum, the information described in Section 19-02.110(B).



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- (2) An application for a special use permit to conduct a training fire shall also include:
  - (a) A statement regarding the qualifications of the firefighting personnel who will conduct or participate in the training fire; and
  - (b) A description of any prohibited materials that will or may be burned during the training fire.
- (3) An application for a special use permit to conduct agricultural burning shall also include a description of the nature and volume of the vegetative debris proposed to be burned.
- (D) When reviewing an application for a special use permit, the Department shall, at a minimum, consider:
  - (1) The nature, size, duration, and location of the proposed burn;
  - (2) The anticipated effects of the proposed burn;
  - (3) Current and projected air quality conditions; and
  - (4) The anticipated cumulative effects of the proposed burn and other scheduled burns in the area.
- (E) The Department may issue a special use permit if it determines that the proposed open burn:
  - (1) Will not cause an adverse impact on Reservation air quality, including but not limited to an exceedence of any applicable Tribal or Federal air quality standard;
  - (2) Does not otherwise endanger public health or welfare; and
  - (3) Is in the best interest of the Tribe.
- (F) A special use permit shall include the standard permit conditions listed in Section 19-02.140 and may include any additional permit conditions authorized by Section 19-02.150.
- (G) A person whose application for a special use permit is denied by the Department may appeal the denial in accordance with Section 19-02.220.

### **19-02.130 Open Burn and Special Use Permit Fees.**

- (A) The Tribe shall charge a reasonable fee, based on the estimated level of emissions for a given burn, for issuing open burn permits pursuant to Section 19-02.110 and special use

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permits pursuant to Section 19-02.120. The fee shall be at least \$100.00 for the first day of burning and at least \$50.00 for each additional day of burning.

- ~~(B) For open burns likely to emit 1 ton or more of carbon dioxide, an additional fee not less than \$5 per ton of carbon dioxide estimated to be emitted shall also be assessed.~~
- (C) Subject to Senate approval, the Department shall publish the fees in a fee schedule. A copy of the fee schedule shall be marked and designated as such, placed on file in the Department, and made available for public inspection during regular business hours.
- (D) From time to time, the Department may recommend changes in the fee schedule for Senate approval.

### 19-02.140 Standard Permit Conditions.

- (A) The following conditions apply to any open burn permit issued pursuant to Section 19-02.110 or special use permit issued pursuant to Section 19-02.120 and shall be included in such permit:
  - (1) The permittee shall comply with Section 19-02.090, General Rules for Open Burning, and Section 19-02.100(F), Burn Bans.
  - (2) A burn pile shall not exceed 20 feet in diameter or 16 feet in height.
  - (3) A burn pile shall be setback from structures and standing woody vegetation at least six and one-half (6.5) feet for every one (1) foot in diameter of the burn pile, provided, however, that the Department may increase minimum setback requirements in order to protect public health and welfare.
  - (4) The following shall be present at the burn site during the open burn:
    - (a) At least one piece of heavy land clearing equipment (for example, a bulldozer, track excavator, or backhoe);
    - (b) A tank containing at least 500 gallons of water with a pump capable of delivering at least 35 gallons of water per minute;
    - (c) A person qualified to operate the equipment required in subsections (A)(4)(a) and (b) of this Section; and
    - (d) A copy of the open burn or special use permit.
  - (5) An open burn shall not be commenced if wind speeds are greater than 7 miles per hour and shall be extinguished if wind speeds are greater than 15 miles per hour or are gusting to 20 or more miles per hour.

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- (6) The permittee shall immediately extinguish the fire if instructed to do so by the Department, a law enforcement officer, or public health or safety official.
- (B) The following condition applies to any special use permit issued pursuant to Section 19-02.120 authorizing a training fire to demolish a structure by fire and shall be included in such permit: Prior to igniting any structure, the permittee shall ensure that the structure does not contain any asbestos or asbestos-containing materials; batteries; stored chemicals such as pesticides, herbicides, fertilizers, paints, glues, sealers, tars, solvents, household cleaners, or photographic reagents; stored linoleum, plastics, rubber, tires, or insulated wire; or hazardous wastes.

### **19-02.150 Additional Permit Conditions.**

- (A) The Department may impose conditions in addition to those listed in Section 19-02.140 on open burn permits issued pursuant to Section 19-02.110 and special use permits issued pursuant to Section 19-02.120 if it determines that additional conditions are necessary to minimize the anticipated adverse effects of an open burn on Reservation air quality or public health or welfare. If additional permit conditions are imposed, they shall be included in the permit.
- (B) Without limitation, the Department may require that:
  - (1) The permittee employ a high volume fan (for example, a fan capable of circulating at least 12,000 cubic feet per minute) immediately after the open burn is ignited in order to reduce smoke and prevent smoldering; and
  - (2) If two or more burn piles are permitted to be burned at the same site, the permittee not ignite the second or subsequent burn pile(s) until previously-ignited burn piles are 75% or more consumed.

### **19-02.160 Burn Notification and Inspection.**

For all permitted burns, the permittee shall:

- (A) Call the Department inspection line at least two working days prior to commencing an open burn to notify the Department of the burn;
- (B) Comply with any request by the Department to inspect the open burn site prior to ignition; and
- (C) Not less than one hour prior to commencing an open burn, and during regular business hours, notify Fire Dispatch of his or her intent to commence an open burn.

**SUBCHAPTER III – PUBLIC INVOLVEMENT**

**19-02.170 Public Information.**

The Department shall institute a program designed to provide the public with information regarding the development and implementation of this Chapter. Such program shall meet the requirements for public notification per 40 C.F.R. §51.285.

**19-02.180 Public Hearings.**

- (A) Public hearings required or authorized to be conducted pursuant to 40 C.F.R. Part 51 or this Chapter shall be conducted in accordance with 40 C.F.R. §51.102, as currently in effect or hereafter amended.

**SUBCHAPTER V – APPEALS**

**19-02.240 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any appeal commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Planning Commission, the Department, the Department Director, all Tribal officials, employees, staff, and agents, as to all actions taken pursuant to this Chapter, or taken in, pursuant to, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

**SUBCHAPTER VI – REPEALER, SEVERABILITY AND EFFECTIVE DATE**

**19-02.250 Repealer.**

This Chapter repeals and supersedes all prior inconsistent provisions of a Tribal ordinance or resolution, the Swinomish Tribal Code, or a part thereof, provided, however, that the repeal or amendment of any prior inconsistent provision of a Tribal ordinance or resolution, the Swinomish Tribal Code, or a part thereof by this Chapter shall not affect, release, or extinguish any civil or criminal liability, penalty, or forfeiture incurred, or any right to prosecute or recover based on the same accrued, under such provision prior to the repeal or amendment thereof, and such provision shall be treated as still remaining in force as to liabilities, penalties, forfeitures, and rights arising under such provision, and the repeal or amendment of such provision shall not affect any proper prosecution or action thereunder.

**19-02.260 Severability.**

If any provision of this Chapter or its application to any person or circumstances is held invalid, the remainder of the Chapter, or the application of the provision to other persons or circumstances is not affected and to this end the provisions of this Title are declared to be severable.

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**19-02.270 Effective Date.**

This Chapter shall become effective immediately upon approval of the Secretary of the Interior or his or her designee.