

November 14, 2019

**VIA CERTIFIED MAIL AND ELECTRONIC MAIL (Title\_VI\_Complaints@epa.gov)**

U.S. EPA External Civil Rights Compliance Office (2310A)  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

(b) (6) Privacy, (b) (7)(C) Enforcement  
Privacy

RE: Title VI Complaint re: Puget Sound Clean Air Agency

**I. Identities of the Complainant and of the Entity Receiving Financial Assistance From the EPA**

(b) (6) Privacy,  
(b) (7)(C) Enforcement  
The complaining party is the **Tribe of Indians** ("Tribe"), a federally recognized Indian Tribe with its Reservation located in the State of Washington. The entity receiving financial assistance from the U.S. Environmental Protection Agency ("USEPA") to which this complaint pertains is the **Puget Sound Clean Air Agency** ("PSCAA"). PSCAA is a regional air authority having primary authority for implementing the Clean Air Act in Pierce County, Washington, and is located at: 1904 Third Avenue, Suite 105, Seattle, Washington 98101.

This Complaint concerns the manner in which PSCAA is carrying out its authority, delegated to it by the USEPA, with respect to a liquefied natural gas facility ("Tacoma LNG") being constructed in Tacoma, Washington, in a location that will impact the airshed the facility shares with the Tribe and its Reservation. Tacoma LNG is largely enveloped by the 1872 boundary of the Tribe's Reservation. A significant portion of the Tribe's population is located within the Reservation boundary, as are virtually all of the Tribe's cultural resources. Much of the Tribe's population is comprised of low-income individuals.

Upon information and belief, PSCAA is a recipient of EPA funding and oversight with regard to its implementation of the Clean Air Act. Accordingly, the programs and activities of PSCAA, including its issuance of orders and permits for the Tacoma LNG facility under the Clean Air Act, are subject to the requirements of Title VI of the Civil Rights Act and EPA's implementing regulations (including 40 C.F.R. 7.35).

**II. Summary of Conduct Necessitating this Complaint**

(b) (6) Privacy,  
(b) (7)(C) Enforcement  
Despite the fact that the Tribe and other low-income and minority populations in the immediate vicinity of the Tacoma LNG facility already bear a disproportionately high level of pollution, including air pollution (industrial and otherwise), the project proponent, Puget Sound

Energy (“PSE”) has sought government authorization to construct a liquefied natural gas facility that includes a 8-million gallon tank for storing explosive materials, vaporizers and flares on over thirty (30) acres of land located on the Reservation’s border.

On July 22, 2019, PSCAA issued a preliminary determination (PD), signaling its intent to issue an Order of Approval – the air permit for Tacoma LNG. The permitting records indicate that PSCAA did not analyze the facility’s disparate impacts, nor did PSCAA assess the risks the Facility poses to health and safety (to ascertain whether Facility’s impacts will be sufficiently benign to protect human health and safety from carcinogenic and other toxic effects). This is notable because, as discussed above, the facility will emit a significant quantity of hazardous and toxic air pollutants into an airshed that the facility shares with the Tribe, residential neighborhoods consisting of minority and low-income populations, and the adjacent Northwest Detention Center. Both individually, and cumulatively, emissions of these pollutants pose significant health risks to the public that the Final Environmental Impact Statement (“FEIS”) for the project failed to consider or disclose.<sup>1</sup> Indeed, the FEIS contains no explanation of how toxic air emissions would affect residents that live near to the project. FEIS at 3.2-9 to 3.2-12.

The FEIS also fails to discuss cumulative air toxic impacts from industrial activities adjacent to the Tacoma LNG project. FEIS at 3.13-5, 3.13-6. The proposed location of the Tacoma LNG facility is surrounded by facilities that emit air pollution. The zip code for Tacoma LNG includes nine (9) major sources of air pollutants, and seven (7) minor sources. The FEIS acknowledges that the facility is next to two oil refineries, a paper mill, and other industrial facilities. FEIS at 3.2-6. However, it never analyzes the cumulative effects on human health of air pollutant emissions from these facilities, in addition to the current project.

Further, in the preliminary determination that it issued, PSCAA grossly underestimates the facility’s emissions. For example, the Tacoma LNG facility will have a nearly constantly operating flare to burn waste gases and pollutants. PSCAA assumes the flare will have a 99% destruction efficiency, meaning that the flare will destroy 99% of pollutants at all times operated, under all conditions. As indicated in a 2012 EPA technical report concerning flares,<sup>2</sup> this is an overly-optimistic assumption that fails to account for real world operating conditions. A destruction efficiency of even 1% less means that hazardous air pollutant emissions from the flare will double.

The Tribe recently pointed out (in its comments on the preliminary determination) a host of errors in PSCAA’s emission estimations for the facility, which errors – individually and in the aggregate – have resulted in a significant underestimation of those emissions. Correcting these errors and performing a proper analysis of the facility’s emissions may very well yield that the facility is a major source of VOCs and perhaps other air pollutants.

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<sup>1</sup> The Final EIS can be accessed at:

[https://cms.cityoftacoma.org/planning/pse/Reissued%20Final%20Tacoma%20LNG%20EIS%20\(11-9-15\).pdf](https://cms.cityoftacoma.org/planning/pse/Reissued%20Final%20Tacoma%20LNG%20EIS%20(11-9-15).pdf).

<sup>2</sup> <https://www3.epa.gov/airtoxics/flare/2012flaretechreport.pdf>



### **III. Environmental Justice Background**

The purpose of Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” is to prevent or reduce the disproportionately high pollution burden on racial minority and low-income populations. The EPA additionally developed the “Environmental Justice Implementation Plan,” which sets out a strategy for integrating environmental justice in regulatory review of permits and other activities pursued through compliance assurance and enforcement. EPA, Environmental Justice Implementation Plan, EPA/300-R-96-004, April 1996. In the context of EPA’s regulatory function, the goal of the Environmental Justice Implementation Plan is to,

Ensure that EPA’s enforcement and compliance assurance activities include a focus on minority communities and low-income communities which suffer from disproportionately high and adverse human health and environmental effects.

*Id.* at 16.

It is notable that prior to EO 12898, the EPA published “Environmental Equity: Reducing Risk for All Communities,” which explained how provisions of the 1990 Clean Air Act Amendments, in addition to other environmental statutes, served as tools for protecting racial minority and low-income communities that were “surrounded by multiple sources of air pollution” and other serious environmental health risks. EPA, Environmental Equity: Reducing Risk for All Communities, EPA230-R-92-008A, Volume 2, June 1992, p. 1. The report was based on health studies that identified racial minority and low-income individuals as being sensitive to the adverse health effects of air pollution and several demographic analyses on the concentration of air pollutants in predominantly racial minority and poor communities. *Id.* at 21. The report identifies and analyzes key environmental laws that govern permit issuance and enforcement as a means to target environmental protection on “problems [that] pose the greatest risks nationwide to human health and the environment.” *Id.* at 1.

Pursuant to this environmental protection strategy, EPA set a priority for protecting racial minority and low-income communities that are disproportionately burdened with the adverse environmental and health effects of pollution.

### **IV. Information Specific to the Tacoma Tidelands and the Environmental Burdens Faced by Tribe**

Clearly, the EPA acknowledges the vital necessity of protecting communities like the Reservation as part of its mission to ensure environmental protection for all people by focusing on those who are the most vulnerable to pollution. As a recipient of EPA financial assistance, the programs and activities of PSCAA, including its issuance of the NOC and operating permits for the Tacoma LNG facility under the Clean Air Act, are subject to the requirements of Title VI of the Civil Rights Act and EPA’s implementing regulations (including 40 CFR 7.35).

Environmental health disparity tools, including EPA's EJSCREEN<sup>3</sup> and the Washington State Department of Health's Environmental Health Disparities Map<sup>4</sup>, indicate the population situated near Tacoma LNG – including the (b) (6) Privacy, (b) Tribe – suffer disproportionately high environmental burdens. Additionally, environmental justice materials developed by PSCAA itself indicate the (b) (6) Privacy, (b) Tribe's members living on its reservation breathe among the highest levels of air pollution in its jurisdiction.<sup>5</sup>

**V. The Tacoma LNG Facility constitutes an additional source of toxic air pollution to an area that already bears a disproportionately high level of pollution**

Tacoma LNG's permit application itself establishes that a host of Toxic Air Pollutants (TAPs) and Hazardous Air Pollutants (HAPs) will be emitted from the facility, including the following pollutants which will be emitted above *de minimis* levels: **7,12-Dimethylbenz(a)anthracene<sup>6</sup>; Benzene<sup>7</sup>; Formaldehyde<sup>8</sup>; Hydrogen sulfide<sup>9</sup>; Arsenic<sup>10</sup>; Beryllium<sup>11</sup>; Cadmium<sup>12</sup>; Manganese<sup>13</sup>; Vanadium<sup>14</sup>; Carbon monoxide<sup>15</sup>; Nitrogen dioxide<sup>16</sup>; Sulfur dioxide<sup>17</sup>**. These chemicals are of great concern because of their known or suspected toxic effects on humans. For example, the facility's aforementioned flare would emit large quantities of hazardous air pollutants, including benzene, toluene, and xylene. Benzene causes blood disorders, and chronic exposure can cause leukemia.<sup>18</sup> Toluene can cause respiratory illness and is a developmental

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<sup>3</sup> <https://ejscreen.epa.gov/mapper/>

<sup>4</sup> <https://www.doh.wa.gov/DataandStatisticalReports/EnvironmentalHealth/WashingtonTrackingNetworkWTN/InformationbyLocation/WashingtonEnvironmentalHealthDisparitiesMap>

<sup>5</sup> See <https://www.pscleanair.org/DocumentCenter/View/3207/HI-C-Report---Final?bidId=> (at pg. 19, Figure 10)

<sup>6</sup> CAS No. 57976; listed as a TAP at WAC 173-460-150.

<sup>7</sup> CAS No. 71432; listed as a HAP at 42 U.S.C. 7412.

<sup>8</sup> CAS No. 500000; listed as a HAP at 42 U.S.C. 7412.

<sup>9</sup> Potentially a HAP. See 42 U.S.C. 7412(n)(5). Identified as a TAP at WAC 173-460-150.

<sup>10</sup> Identified as a HAP at 7412(b)(1).

<sup>11</sup> Identified as a HAP in table at 7412(b)(1).

<sup>12</sup> Identified as a HAP in table at 7412(b)(1).

<sup>13</sup> Identified as a HAP in table at 7412(b)(1).

<sup>14</sup> Identified as a TAP at WAC 173-460-150.

<sup>15</sup> CAS No. 630080; identified as a TAP at WAC 173-460-150.

<sup>16</sup> CAS No. 10102440; identified as a TAP at WAC 173-460-150.

<sup>17</sup> CAS No. 74460905; identified as a TAP at WAC 173-460-150.

<sup>18</sup> U.S. Env'tl. Prot. Agency, "Benzene," <https://www.epa.gov/sites/production/files/2016-09/documents/benzene.pdf>



toxicant.<sup>19</sup> Xylene can cause developmental effects such as delayed bone development in fetuses, and chronic exposure can cause neurological effects.<sup>20</sup> But the issues are by no means limited to three chemicals; many of the others listed above are carcinogenic, some are mutagenic or teratogenic, and most can have toxic effects on the respiratory system, the skin, and other vital organs.<sup>21</sup>

In short, there can be no serious dispute that the Tacoma LNG facility will represent an increase in a number of pollutants to Washington's air. Yet these contaminants will not be spread out throughout the state; they will be confined to the area near the Tacoma LNG facility, including the (b) (6) Privacy, (b) Tribe's Reservation. And significantly, many of the chemicals the Tacoma LNG facility (b) (6) will emit into the Tribe's airshed are persistent and bioaccumulative and, therefore, would remain in the environment for generations and accumulate through the food chain. This poses a danger to tribal food sources and cultural practices.

This constitutes an addition of too much additional air pollution to an area that bears a disproportionately high level of industrial pollution from existing facilities.<sup>22</sup> In other words, the granting of these permits, for this facility in this location constitutes an instance of disparate impact discrimination. This fact was recently recognized by the Tacoma Human Rights Commission (THRC) in a letter seeking a Supplemental Environmental Impact Statement focusing on "the potential environmental hazards and human-rights injustices to vulnerable, frequently marginalized populations in and near the [Tacoma] Tideflats area."<sup>23</sup> See Attachment A.

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<sup>19</sup> U.S. Env'tl. Prot. Agency, "Toluene," <https://www.epa.gov/sites/production/files/2016-09/documents/toluene.pdf>

<sup>20</sup> U.S. Env'tl. Prot. Agency, "Xylenes (Mixed Isomers)," <https://www.epa.gov/sites/production/files/2016-09/documents/xylenes.pdf>

<sup>21</sup> Indeed, the toxic chemicals that PSE plans to release have been termed "hazardous air pollutants" by Congress, 42 U.S.C. § 7412(b)(1), and have been determined by peer-reviewed scientific studies to be carcinogenic and otherwise damaging to humans.

<sup>22</sup> Additionally, as to safety, the Washington State Department of Health's Environmental Health Disparities Map's "Proximity to Risk Management Plan Facilities" tool indicates the Tribe's reservation is already disproportionately exposed to environmental risks. In fact, the geographic area making up the Tribe's Reservation ranks at the top of the tool's exposure risk scale (10 out of 10). See <https://fortress.wa.gov/doh/wtn/WTNIBL/>.

<sup>23</sup> The THRC is an arm of the City of Tacoma created to "study and investigate problems of prejudice, bigotry, and discrimination and to encourage and coordinate the implementation of programs consistent with the needs and the rights of all residents of the City of Tacoma." See, [https://www.cityoftacoma.org/government/committees\\_boards\\_commissions/human\\_rights\\_commission/](https://www.cityoftacoma.org/government/committees_boards_commissions/human_rights_commission/)

## **VI. PSCAA Has Refused to Consult with the Tribe**

As a final matter, PSCAA has, to date, refused to engage in government-to-government consultation with the Tribe regarding (*inter alia*) the issues and concerns outlined in this Complaint. PSCAA's unwillingness to consult not only violates the Tribe's and its members' rights under the Treaty of Medicine Creek, but also ignores the agency's legal obligation to exercise its delegated authority in a manner consistent with applicable State and Federal law.

## **VII. Conclusion**

PSCAA's failure to look at the Environmental Justice implications of the permitting decision before it necessitates this Complaint and request for USEPA intervention. PSCAA should be required to perform a thorough analysis of Tacoma LNG's disparate impacts before making a final permitting decision. Additionally, PSCAA should be required to engage in meaningful consultation with the Tribe.

Please contact <sup>(b) (6) Privacy, (b) (7)(C) Enforcement Privacy</sup> of the Law Office, with any questions or concerns regarding this matter at <sup>(b) (6) Privacy, (b) (7)(C) Enforcement Privacy</sup>

Sincerely,

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy

Attachment