



(b)(6) Privacy, (b)(7)(C) Enf. Privacy

TRIBE OF INDIANS



September, 05 2024

VIA CERTIFIED MAIL AND ELECTRONIC MAIL (Title_VI_Complaints@epa.gov)

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

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

The complaining party is the (b)(6) Privacy, (b)(7)(C) Enf. Privacy **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").

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") constructed in Tacoma, Washington, in a location impacting the airshed that the facility shares with the Tribe and its Reservation. Tacoma LNG is on the boundary of the (b)(6) Privacy, (b)(7)(C) Enf. Privacy 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, a law enforced by the EPA, 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

Despite the fact that the (b)(6) Privacy, (b)(7)(C) Enf. Privacy 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"), sought government authorization to construct and operate a liquefied natural gas facility that includes a 8-million gallon tank for storing LNG; a number of tanks containing explosive refrigerants; thousands of components that release fugitive emissions of volatile organic

compounds; and a flare intended to combust waste gases created in the production of LNG – all located on over thirty (30) acres of land located on the border of the Tribe’s Reservation.

On December 10, 2019, PSCAA issued a Final Order of Approval to Construct, Install or Establish No. 11386 – the air permit for Tacoma LNG. The permitting documents and records indicate that PSCAA did not analyze the facility’s disparate impacts before making its permitting decision, 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).¹ This is notable because, as discussed above, the facility emits 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.² Indeed, the FEIS contains no explanation of how toxic air emissions would affect residents living near the Tacoma LNG facility. FEIS at 3.2-9 to 3.2-12.³

¹ On December 9, 2019, the U.S. Environmental Protection Agency’s External Civil Rights Compliance Office (ECRCO) rejected a Complaint filed by the Tribe regarding these issues (EPA Complaint No. 01NO-20-R10) because PSCAA had “not issued a final order of approval” and thus “[t]he complaint allegation is not ripe for review because it anticipates future events which may not unfold as outlined in the complaint.” ECRCO Rejection of Administrative Complaint No. 01NO-20-R10, at p. 2. Similarly, the ECRCO determined in March of 2021 that the permit could change, and, therefore, was not yet ripe for review. Similarly, the ECRCO determined in March of 2021 that the permit could change, and, therefore, was not yet ripe for review. On July 10, 2024, the Supreme Court for the State of Washington declined to accept review of the Tribe’s petition for review concerning the Court of Appeals decision upholding the permit. On July 19, 2024, OEERC’s Acting Deputy Director wrote the following to the Tribe: “You have sixty (60) calendar days from the Washington Supreme Court’s petition denial on July 10, 2024, to re-file your complaint.”

² 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) .

³ Moreover, PSCAA’s Order of Approval was not supported by a supplemental environmental impact statement, even though the project has changed significantly in a way that would result in new adverse environmental impacts. For example, the revised project contemplates much higher rates of marine fueling for which there is no infrastructure and no permits, which would result in significant impacts in the marine

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.

The Tribe and several environmental groups appealed the Final Order of Approval and that appeal was heard during a two week hearing in April 2021. The Board issued a decision on the appeals, finding for the Agency and PSE on all issues except it has added a condition to the permit to add a Continuous Emissions Monitoring System for sulphur dioxide and volatile organic compounds. However, significant air pollutants discharged into an already overburdened airshed remain unaddressed, as do the Title VI concerns that the Tribe has raised (and raises again here) with OECRC.

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 E.O. 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

waters adjacent the project, and which create enhanced safety issues in and around the Blair Waterway. These impacts have never been examined.

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 EJSCREEN⁴ and the Washington State Department of Health's Environmental Health Disparities Map⁵, indicate the population situated near Tacoma LNG – including the (b)(5) Privacy, (b)(7)(C) E Tribe – suffer disproportionately high environmental burdens. Additionally, environmental justice materials developed by PSCAA itself indicate the (b)(5) Privacy, (b)(7)(C) Tribe's members living on its reservation breathe among the highest levels of air pollution in its jurisdiction.⁶

⁴ <https://ejscreen.epa.gov/mapper/>

⁵ <https://www.doh.wa.gov/DataandStatisticalReports/EnvironmentalHealth/WashingtonTrackingNetworkWTN/InformationbyLocation/WashingtonEnvironmentalHealthDisparitiesMap>

⁶ See <https://www.pscleanair.org/DocumentCenter/View/3207/HI-C-Report---Final?bidId=> (at pg. 19, Figure 10)

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

Tacoma LNG is a significant source of VOC emissions, both from its ground flare and from fugitive emissions. The facility also has the potential to emit significant amounts of other criteria pollutants – most notably, PM 2.5, NOx and SO2. As EPA is aware with regard to NAAQS, the area at issue (the Tacoma Tideflats) is an ongoing area of concern for particle pollution.

Beyond the criteria pollutants that it emits into the airshed that it shares with the Tribe, 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 that will be emitted above *de minimis* levels: **7,12-Dimethylbenz(a)anthracene⁷; Benzene⁸; Formaldehyde⁹; Hydrogen sulfide¹⁰; Arsenic¹¹; Beryllium¹²; Cadmium¹³; Manganese¹⁴; Vanadium¹⁵; Carbon monoxide¹⁶; Nitrogen dioxide¹⁷; Sulfur dioxide.¹⁸** 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

⁷ CAS No. 57976; listed as a toxic air pollutant at WAC 173-460-150.

⁸ CAS No. 71432; listed as a HAP at 42 U.S.C. 7412.

⁹ CAS No. 500000; listed as a HAP at 42 U.S.C. 7412.

¹⁰ Potentially a HAP. *See* 42 U.S.C. 7412(n)(5). Identified as a TAP at WAC 173-460-150.

¹¹ Identified as a HAP at 42 U.S.C. 7412(b)(1).

¹² Identified as a HAP in table at 42 U.S.C. 7412(b)(1).

¹³ Identified as a HAP in table at 42 U.S.C. 7412(b)(1).

¹⁴ Identified as a HAP in table at 7412(b)(1).

¹⁵ Identified as a TAP at WAC 173-460-150.

¹⁶ CAS No. 630080; identified as a TAP at WAC 173-460-150.

¹⁷ CAS No. 10102440; identified as a TAP at WAC 173-460-150.

¹⁸ CAS No. 74460905; identified as a TAP at WAC 173-460-150.

exposure can cause leukemia.¹⁹ Toluene can cause respiratory illness and is a developmental toxicant.²⁰ Xylene can cause developmental effects such as delayed bone development in fetuses, and chronic exposure can cause neurological effects.²¹ 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.²²

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)(7)(C) Tribe's Reservation. And significantly, many of the chemicals the Tacoma LNG facility emits into the Tribe's airshed are persistent and bioaccumulative and, therefore, will remain in the environment for generations and accumulate through the food chain. This poses a danger to tribal food sources and cultural practices.

Ultimately, PSCAA's Order of Approval for Tacoma LNG allows for the addition of too much additional air pollution to an area that bears a disproportionately high level of industrial pollution from existing facilities.²³ In other words, the granting of this permit, for this facility in this

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

²⁰ U.S. Env'tl. Prot. Agency, "Toluene," <https://www.epa.gov/sites/production/files/2016-09/documents/toluene.pdf>

²¹ U.S. Env'tl. Prot. Agency, "Xylenes (Mixed Isomers)," <https://www.epa.gov/sites/production/files/2016-09/documents/xylenes.pdf>

²² 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.

²³ 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/>.

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.”²⁴

The lifecycle greenhouse gas emissions from Tacoma LNG also presents the Tribe with grave disparate impact concerns. Because the Tribe’s entire Reservation is located near and, in places, adjacent to the coast (where sea levels are rising and extreme weather events are becoming more frequent because of climate change), the Tribe is uniquely sensitive to and disproportionately impacted by the consequences of climate change and the greenhouse gas impacts that the Project presents.

VI. Tacoma LNG has been venting waste gas directly to the airshed that it shares with the Tribe

On May 12, 2023, PSCAA issued numerous Notices of Violation (NOVs) to PSE for violations of the Tacoma LNG facility’s air permit. These NOVs document significant violations of several permit conditions, including multiple instances of flare bypass events, in which waste gases that should have been flared were instead released directly to the atmosphere without flaring; such bypass events significantly increase the facility’s total actual emissions.

The violations discussed above present serious environmental justice impacts and exemplify precisely the concerns that the Tribe has consistently raised with OECRC about the Tacoma LNG facility for years. Carbon monoxide provides a useful example as to why intense bursts of pollutants to the ambient air are a problem (and notably, Tacoma LNG emits carbon monoxide). High levels of carbon monoxide can be lethal in just a few minutes of exposure, which is why people are told not to run their car while the garage door is closed.

The Tribe provided OECRC with information concerning these NOVs on October 23, 2023. The Tribe further notes that a significant amount of time passed between the time many of the violations occurred and the time PSCAA issued NOVs for those violations in May 2023.²⁵ As explained in those materials, the air permit anticipates (because the air permit requires) that the flare at Tacoma LNG will destroy over 99% of the toxic air pollutants in the waste gases. This high level of

²⁴ 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/

²⁵ The NOVs that the Tribe provided to OECRC on October 23, 2023 were not issued to PSE until May 12, 2023 were not issued to PSE until May 12, 2023, even though the first known violation at the facility (a flare bypass event) occurred on December 31, 2021.

destruction efficiency is necessary for the Tacoma LNG facility to remain in compliance with its permitted emission thresholds. When the flare is bypassed and Tacoma LNG waste gases are released directly to the atmosphere, the facility's emissions are approximately 100 times higher than when the flare is properly operated. Thus, each minute of a bypass event at the Tacoma LNG facility emits the equivalent of 100 minutes of emissions during flaring.

The PSCAA NOVs issued for flare bypass events document 394 minutes (over six- and one-half hours) that waste gases were released without flaring. That is as of the first half of 2023; the Tribe understands that there have been subsequent venting events at the facility but has met difficulty in procuring information from PSCAA concerning those later events, which is particularly concerning regarding PSCAA's track record for timely issuance of NOVs to the Tacoma LNG facility.

VII. Conclusion

PSCAA's failure to look at the Environmental Justice implications of its permitting decision necessitated this Complaint. At this juncture, the potential is gone for PSCAA's permitting decision to change or be remanded. As to the concerns presented in this Title VI Complaint, the Tribe remains without adequate relief and submits that this matter is ripe for review by OECRC. The Tribe, therefore, respectfully requests intervention by the U.S. Environmental Protection Agency at this time.

Please contact (b)(6) Privacy, (b)(7)(C) Enf. Privacy with any questions or concerns regarding this matter at (b)(6) Privacy, (b)(7)(C) Enf. Privacy

Sincerely,

(b)(6) Privacy, (b)(7)(C) Enf. Privacy