

Title 19 – Environmental Protection
Chapter 2 – Clean Air Act

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19-02.250 Repealer
19-02.260 Severability
19-02.270 Effective Date

Legislative History

Enacted:

Ordinance 406_Amending STC Title 19, Chapter 2 (8/4/20).
Ordinance 307 Clean Air Act (3/6/12), BIA (3/9/12).
Ordinance 179 Clean Air Act, (9/30/03), BIA (10/7/03).
Ordinance 177 Codifying Title 19 – Environmental Protection and Repealing and Superseding Ordinance Nos. 168, 90, Sections, 16-5.010 through 16-5.020, 36, and Resolution 80-10-762 (9/3/03).

Repealed or Superseded:

Ordinance 36 Adopting and Enforcing Clean Air Standards (2/1/77), BIA (2/19/77).

19-02.010 Title.

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

[History] Ord. 177 (9/3/03).

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.
 - (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 a portion or the entirety of 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.
- (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.

[History] Ord. 406 (8/4/20); Ord. 177 (9/3/03).

Subchapter I – Operating Permits

19-02.050 Adoption of NWCAA Regulations.

- (A) Subject to subsection (C) of this Section, the air quality standards and regulations of the Northwest Clean Air Agency (“NWCAA”) as currently in effect or hereafter amended are hereby adopted and incorporated as Tribal law, as if fully set out herein. These standards and regulations include those used to sample, quantify, limit, and otherwise determine whether a given source of pollution is in compliance with applicable air quality standards.
- (B) A copy of the NWCAA standards and regulations shall be marked and designated as such, placed on file in the Planning Department, and made available for public inspection during regular business hours.
- (C) The following sections of NWCAA standards and regulations are excluded from adoption and incorporation as Tribal law:
 - (1) Section 324: Fees;
 - (2) Section 502: Outdoor Burning;

- (3) Section 504: Agricultural Burning;
 - (4) Sections 600 – 603: Objectives and Planning Criteria;
 - (5) Sections 113 - 135: Notice, Hearings, Orders, Appeals and Penalties.
- (D) In the event that a provision of the NWCAA standards and regulations adopted and incorporated as Tribal law is inconsistent with this Chapter, this Chapter shall control.

[History] Ord. 177 (9/3/03), Ord. 36 (2/1/77).

19-02.060 Operating Permits.

- (A) Subject to subsection (D) of this Section, any person that owns or operates a facility within the Reservation that emits a statistically significant volume of air pollutant shall obtain an operating permit from the Department prior to commencing or continuing such operation.
- (B) The Department shall maintain a current list of all persons required to obtain an operating permit pursuant to subsection (A) of this Section.
- (C) Operating permits shall be for a period of one (1) year and shall be renewable upon an application by the permittee to the Department.
- (D) The Department may waive the requirement to obtain an operating permit under subsection (A) of this Section upon a written showing that:
 - (1) The requirements would impose an undue hardship on the applicant;
 - (2) Waiver of the requirements would not significantly affect the quality of the airshed; and
 - (3) Waiver of the requirements would be in the best interest of the Tribe.

[History] Ord. 177 (9/3/03), Ord. 36 (2/1/77).

19-02.070 Operating Permit Fees.

- (A) The Tribe shall charge a reasonable fee, based on the level of emissions for a given facility, for issuing and renewing the operating permits required by Section 19-02.060.
- (B) 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.

- (C) From time to time, the Department may recommend changes in the fee schedule for Senate approval.

[History] Ord. 177 (9/3/03).

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;
- (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, PM2.5 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 exceedance of Federal ambient air quality standards for carbon monoxide, PM-10 or PM-2.5.
- (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, at other designated areas identified if the Department declares a partial Reservation burn ban, and by posting notice on the open burning hotline. In its discretion, the Department may provide notice of a burn ban 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:
- (1) Prohibit open burning including fires for cooking and recreational purposes, on a portion or the entirety of the Reservation during a burn ban; and
 - (2) Prohibit the use of woodstoves, except in homes in which woodstoves are the primary heating source.

[History] Ord. 406 (8/4/20); Ord. 307 (3/6/12); Ord. 179 (9/30/03).

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
 - (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).
 - (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 exceedance 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 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.

[History] Ord. 179 (9/30/03)).

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.
 - (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.

[History] Ord. 307 (3/6/12);

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.

[History] Ord. 307 (3/6/12);

Subchapter IV – Enforcement

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.

[History] Ord. 307 (3/6/12).

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
- (B) 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
- (C) 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.

Subchapter V – Appeals

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.

*Previously codified as 19-02.230

[History] Ord. 307 (3/6/12).

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.

*Previously codified as 19-02.240

[History] Ord. 307 (3/6/12).

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.

*Previously codified as 19-02.250

[History] Ord. 307 (3/6/12).

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.

*Previously codified as 19-02.260

[History] Ord. 307 (3/6/12); Ord. 179 (9/30/03).

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.

*Previously codified as 19-02.270

[History] Ord. 307 (3/6/12).

19-02.270 Effective Date.

This Chapter shall become effective immediately.

*Previously codified as 19-02.280

[History] Ord. 406 (8/4/20); Ord. 307 (3/6/12).