

POLLUTION CONTROL HEARINGS BOARD  
FOR THE STATE OF WASHINGTON

ADVOCATES FOR A CLEANER TACOMA; )  
SIERRA CLUB; WASHINGTON )  
ENVIRONMENTAL COUNCIL; WASHINGTON ) PCHB NO.  
PHYSICIANS FOR SOCIAL RESPONSIBILITY; )  
STAND.EARTH )  
Appellants, ) NOTICE OF APPEAL  
v. )  
PUGET SOUND CLEAN AIR AGENCY, PUGET )  
SOUND ENERGY )  
Respondents. )

**1. Identity of Appealing Parties and Representatives**

The appealing parties are:

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7 The representatives of the appealing party are:

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13 **2. Identification of Other Parties**

14 Pursuant to WAC 371-08-340(2), the other parties in this appeal are the Puget Sound  
15 Clean Air Agency and Puget Sound Energy.

16 **3. Decision Under Appeal**

17 This is an appeal of Order of Approval to Construct No. 11386 (“Permit”) issued by the  
18 Puget Sound Clean Air Agency (“PSCAA”) to Puget Sound Energy (“PSE”) authorizing the  
19 construction and operation of the Tacoma Liquefied Natural Gas Project (“Tacoma LNG”) on  
20 December 10, 2019. A copy of the Permit is attached (Attachment 1). As directed by WAC  
21 371-08-340(3), appellants are also including a copy of the initial project application. (Attachment  
22 2). Because that application was deemed incomplete, there are other documents that might also  
23 be considered part of the application. These documents are posted on the PSCAA website at

1 <https://psccleanair.gov/460/Current-Permitting-Projects>. Appellants can provide copies if the  
2 Board so requests.

3 **4. Short and Plain Statement Showing Grounds for Appeal**

4 The Permit for the Tacoma LNG project is contrary to law because it is inconsistent with  
5 the requirements and intent of state and federal laws designed to protect the environment.

6 Specifically, the Permit relies on environmental analyses that violate the State Environmental  
7 Policy Act (“SEPA”) and otherwise clearly erroneous and contrary to law. Additionally, the  
8 Permit violates and is inconsistent with the requirements of the state and federal Clean Air Acts.

9 **5. Statement of Facts and Preliminary Identification of Issues.**

10 A. The Climate Crisis and the State’s Efforts to Address it.

11 There is an overwhelming, global scientific consensus that greenhouse gas (“GHG”)  
12 emissions must be radically reduced over the next several decades to avoid a climate catastrophe.  
13 Continuing to emit greenhouse gases at the current rate of emissions would cause serious  
14 economic and environmental disruption from a rapidly changing climate including: an increase  
15 in pollution-related illness and death due to poor air quality; declining water supply for drinking,  
16 agriculture, wildlife, and recreation; an increase in tree die-off and forest mortality because of  
17 increasing wildfires, insect outbreaks, and tree diseases; the loss of coastal lands due to sea level  
18 rise; an increase in ocean temperature and acidity; increased death and disease in fish like  
19 salmon, steelhead, and trout because of warmer water temperatures and altered flow regimes;  
20 damaged, ruined, and failed field crops and fruit harvests because of higher temperatures and less  
21 water available for irrigation.

22 To meet the demands of this crisis, the nations of the world in 2015 committed to a goal  
23 of limiting the increase in global temperatures to 1.5 degrees above preindustrial levels.

24 Between 2020 and 2040, global CO<sub>2</sub> emissions from fossil fuel combustion and industry will

1 need to decline by more than 75%, requiring deep cuts every year. The marine shipping  
2 industry—which accounts for approximately 3% of global GHG emissions—has like many  
3 industries sought to take action to reduce its GHG emissions. The International Maritime  
4 Organization (“IMO”), the global body that sets rules for the international maritime shipping  
5 industry, in 2018 adopted a goal of reducing total GHG emissions by 50% as compared with  
6 2008 levels by the year 2050.

7 Washington State has likewise adopted a number of policies intended to address the  
8 climate crisis by reducing GHG emissions and promoting clean energy and fuel alternatives.  
9 Over a decade ago, the state committed to significantly reducing its GHG emissions, setting a  
10 target of reducing GHG emissions to 50% below 1990 levels by 2050. Wash. Rev. Code §  
11 70.235.020(1)(a)(iii).

12 B. The Tacoma LNG Project and the Flawed Environmental Review.

13 1. *The Final Environmental Impact Statement failed to adequately analyze*  
14 *safety and air pollution risks from the facility.*

15 In September 2014, the City of Tacoma initiated an environmental review for a shoreline  
16 substantial development permit for the Tacoma LNG project. The project at that time was  
17 primarily oriented towards supplying natural gas for PSE’s customers during periods of peak  
18 demand, known as “peak shaving.” Additionally, the project would provide LNG for TOTE  
19 Marine and other as yet unknown customers for marine fuel, and for loading on trucks or barges  
20 for other use as a fuel source. The City of Tacoma issued the Final EIS for the project on Nov. 9,  
21 2015.

22 The Final EIS failed to adequately examine serious public health and safety risks of gas  
23 leaks, explosions, and fire from the proposed facility that would be located near to a densely  
24 populated city. For example, the Final EIS ignored the most significant disaster in recent

1 times—the explosion at the peak shaving storage facility in Plymouth, Washington in 2014. The  
2 FEIS also failed to analyze the risk of physical damage to the Tacoma LNG storage tank, which  
3 the Plymouth disaster demonstrates is a reasonably foreseeable possibility. Further, the FEIS  
4 never considered risk models showing that in the event of a disaster and major leak, the facility  
5 could would require a 12.6 mile emergency response zone. Instead, the Final EIS relied on a  
6 preliminary design of the facility that lacked sufficient detail to determine health and safety risks.

7 Further, the Tacoma LNG project would also emit a significant quantity of hazardous air  
8 pollutants close to residential neighborhoods and the adjacent Northwest Detention Center. Both  
9 individually, and cumulatively, emissions of these pollutants pose significant health risks to the  
10 public that the FEIS failed to consider or disclose. Yet, the FEIS contains no explanation of how  
11 toxic air emissions would affect residents that live near to the project. The FEIS also fails to  
12 discuss cumulative air toxic impacts from industrial activities adjacent to the Tacoma LNG  
13 project. The proposed location of the Tacoma LNG facility is surrounded by facilities that emit  
14 air pollution. Neither this Board, nor any other body, has resolved a challenge to the FEIS.

15 2. *The Supplemental Environmental Impact Statement failed to adequately*  
16 *analyze the significant adverse effect of the project on global climate*  
*change.*

17 Subsequent to the issuance of the FEIS, PSE submitted an application for a notice of  
18 construction (“NOC”), pursuant to state and federal clean air laws, seeking authorization from  
19 the Puget Sound Clean Air Agency (“PSCAA”) for the Project. PSCAA initiated a supplemental  
20 EIS process to consider the GHG issue further. By this time, however, the project had  
21 significantly changed. It was no longer a project primarily to supply LNG for peak shaving, as  
22 considered in the FEIS. By the time it reached PSCAA, it was primarily a project to supply  
23 marine fuel—with peak shaving representing only a tiny proportion of the project’s capacity, to  
24 be phased out quickly. Since the Supplemental EIS focused solely on climate change impacts,

1 there is no environmental analysis on the health and safety risks associated with increased use of  
2 the facility for LNG fueling. More ships carrying explosive gas, in close proximity to urban  
3 neighborhoods, poses significant safety risks, as well as the risk of emissions associated with  
4 fueling and transportation.

5 PSCAA issued a draft SEIS in late 2018, opening a period of public comment. The  
6 comment period generated nearly 15,000 comments, many of them scathingly critical of the  
7 document's GHG analysis. The Draft SEIS concluded that selling LNG to maritime vessels as a  
8 transport fuel would displace other fossil-based marine fuels over the full 40-year life span of the  
9 project at a 1-for-1 ratio, and thereby slightly *reduce* GHGs emissions as compared with the no  
10 action scenario. Appellants and numerous others challenged the flawed analysis in the SEIS.

11 PSCAA finalized the Supplemental EIS largely unchanged on March 29, 2019. The  
12 SEIS again concluded that GHG emissions from the Tacoma LNG Project would be insignificant  
13 because the project would slightly decrease GHG emissions as compared with the "no action"  
14 alternative. Among the document's most controversial conclusions was a finding that methane  
15 leaks in British Columbia gas production operations (a critical determinant of lifecycle GHG  
16 emissions) are significantly lower than from other sources. As such, the SEIS recommended  
17 including a requirement that the project would only source gas from British Columbia to avoid  
18 significantly higher GHG emissions. On July 2019, PSCAA released a proposed order of  
19 approval, which triggered another round of public comment. Yet again, PSCAA received  
20 thousands of comments, mostly expressing opposition to the project and concerns about  
21 problems with the GHG analysis in the SEIS.

22 On December 10, 2019, PSCAA issued the final Permit. The Permit was signed by staff  
23 at the agency. The Board of PSCAA took no action with respect to the Permit.

1 Even though PSCAA only recently issued its approval to commence construction, PSE  
2 actually has been constructing the project for years. In early 2017, PSCCA issued PSE a “notice  
3 of violation” to PSE for failing to obtain permits prior to starting construction. Although  
4 PSCAA did not enjoin construction, PSCAA has stated that any work that PSE has done or  
5 continues to do is at its own risk should permitting require site revisions.

6 C. The Permit Violates SEPA and Clean Air Laws

7 The Permit is invalid in at least the following respects:

8 a. The Permit was supported by a supplemental environmental impact statement that  
9 concludes that the project will have insignificant GHG emissions. The SEIS relies on flawed  
10 data, utilizes flawed analytical frameworks, and reaches flawed conclusions. A legally adequate  
11 SEIS would have revealed that the project would produce GHG emissions that would be  
12 significant and that warrant denial or further mitigation under the law.

13 b. The Permit was also supported by a final environmental impact statement that  
14 addressed other environmental, safety, and health issues besides GHG emissions. That FEIS also  
15 includes faulty data, assumptions, analyses and conclusions. PSCAA should have found that the  
16 air quality and safety impacts of the project were significant and required either denial or  
17 additional mitigation.

18 c. The Permit was not supported by a lawful supplemental environmental impact  
19 statement, even though the project has changed significantly in a way that would result in new  
20 adverse environmental impacts. For example, the revised project contemplates much higher  
21 rates of marine fueling for which there is no infrastructure and no permits, and which would  
22 result in significant impacts in the marine waters adjacent the project. These impacts have never  
23 been examined.

1           d.       The Permit was signed by PSCAA staff members; the PSCAA Board took no  
2 action to issue this permit. However, the state Clean Air Act directs that permits for new sources  
3 like the Tacoma LNG project must be issued by the Board of PSCAA. That responsibility has  
4 not been delegated and cannot be delegated. As such, the Permit is *ultra vires* and invalid.

5           **6.       Interests of the Petitioners**

6           Petitioners Advocates for a Cleaner Tacoma, Sierra Club, Stand.Earth, Washington  
7 Physicians for Social Responsibility, and Washington Environmental Council are non-profit  
8 organizations that represent thousands of members and supporters dedicated to protecting the  
9 environment, and communities living in and around the Port of Tacoma. Petitioners' members  
10 and supporters work, and live near to the Port of Tacoma, where the Tacoma LNG facility would  
11 be built. The Project would undermine local and regional efforts to protect air quality, and  
12 reduce the causes and effects of climate change.

13           Issuance of the Permit injures Petitioners in several ways. First, operation and  
14 construction of the Tacoma LNG facility that would store highly explosive methane gas in close  
15 proximity to densely populated urban neighborhoods, and poses the risk of fire or explosion that  
16 threatens the safety of Petitioners' members and supporters. Second, operation of the facility  
17 would cause emission of hazardous pollutants, including benzene, a carcinogen, and other  
18 criteria pollutants that contribute to smog formation. Emission of these pollutants would worsen  
19 air quality in and around the Port of Tacoma, which already has poor air quality due to industrial  
20 activities, and would thereby expose members living near to the Project to higher levels of  
21 dangerous pollutants that could adversely affect their health. Finally, the Project would result in  
22 significant increases in Washington State's contribution to global emissions of greenhouse  
23 gasses and other pollutants. This increase would occur because operation of the Project would  
24



1 result in increased transportation and production of fracked gas, increased drilling and refining of  
2 fracked gas, and storage and combustion of liquefied methane, which in turn contributes to  
3 human induced climate instability that harms Petitioners' commercial, recreational, aesthetic,  
4 spiritual, and other interests.

5 **7. Relief Requested**

6 Appellants request that the Board: a) immediately stay the effectiveness of the Permit;  
7 and b) following a hearing, declare the Permit to be unlawful and vacate it with instructions to  
8 redo the environmental review and issue a revised permit consistent with the requirements of the  
9 law. **Appellants plan to file a motion for a stay on January 2, 2020.**

10 **8. Service.**

11 Copies of this Notice were sent to the respondents' representatives by email, by  
12 agreement of the parties, on December 19, 2019.

13 Respectfully submitted this 19<sup>th</sup> day of December, 2019.

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