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*Woodland Signage*

### **Environmental Injustice:**

#### **From the Swinomish Indian Tribal Community in Washington to Woodlands Park, WI**

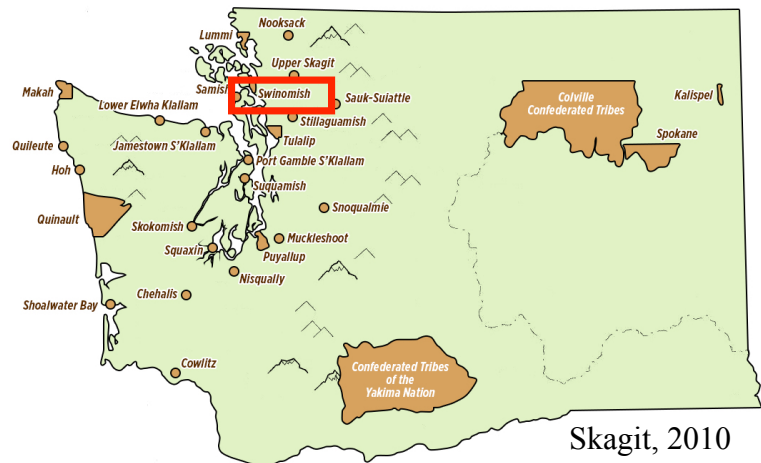
#### **Introduction**

Environmental justice entails the ability for communities to participate in decisions that affect their surrounding environment – this is achieved when ALL people can enjoy the same level of protection from hazards, and have an equal say in the decision-making. The major concern in environmental justice is dealing with inequitable distribution of hazardous wastes, and actions, within low-income, or minority communities. National attention has been focused, in the past decade, on environmental pollution that exists among the nations' poorest communities.

In 1994, President Clinton signed Executive Order 12898 that forced the government to acknowledge and respond to these prevalent issues. Soon after, the Environmental Protection Agency (EPA) created the Environmental Justice Strategy (ESJ) to promote the equal protection of citizens under all environmental statutes and regulations. (EPA, 2006) Discrimination based on race, ethnicity, or socioeconomic status would not be tolerated. These new protocols were groundbreaking, and many soon uncovered the deep environmental injustices our nation faced. The Swinomish Indian Tribal Community of coastal Washington provides an example of how Tribes are often victims of environmental injustices. The Swinomish Tribe perpetuates cultural practices despite non-Indian persons on private lands upstream causing pollution degradation.

## Background:

The Swinomish Indian Tribal Community, located on the coast an hour north of Seattle, has been a steward of the Skagit River's water and fish for thousands of years and are a historically Lushootseed-speaking Native American people.



The Swinomish moved onto reservation lands after the signing of the Point Elliott Treaty in 1855. In more recent times however, development in the Skagit River basin has led to substantial declines in its salmon runs, in part due to reductions in stream flows necessary for spawning, rearing and migration. These drops in stream flows rates could be directly attributed to the two oil refineries established in the watershed.

Before federal law controlled the release of petroleum byproducts, many refineries disposed of them in rivers and streams, which caused deep pollution crisis' and flow rate catastrophes. These two refineries contracted with a firm that used a disposal pit on privately owned, non-federal trust land within the reservation, where neither the federal government nor the Tribe had authority. These types of practices were not uncommon in the 1950's and 60's. During the 1980's however, there seemed to be some hope for the Tribe as the EPA studied the site to see if it may qualify for Superfund designation. Sadly, the legislation that governs that grant, the Comprehensive Environmental Response, Compensation, and Liability Act

(CERCLA), doesn't cover petroleum in its provisions and only addresses "hazardous substances". (Zaferatos, 2006)

The members of the Swinomish Tribal Council were ecstatic regardless of the exception because they understood that at least now they were federally recognized as a location experiencing environmental injustice. After the first failed attempt the Tribe requested the EPA conduct a limited soils investigation in 1986 around a site the Tribe members knew there were large quantities of buried caustic liquids in 55-gallon drums. In addition to testing the soil the Tribe wanted the EPA to also test the ground water, but they failed to do so for reasons still unknown. The EPA closed their investigation for a second time citing the petroleum exemption once again. (Zaferatos)

Frustrated, and concerned for wildlife in and around the Skagit river watershed, the Swinomish decided to take matters into their own hands by pleading with the nearby city of Anacortes to join them in demanding justice from the federal government. As well as attending city council meetings the Swinomish erected signs in the small town to inform the towns people of the dire situation they faced. In that time the Swinomish Tribe hired its own contractor to perform tests around the buried drums. Using GPS and GIS mapping, the Tribe provided persuasive evidence of the existence of the buried drums. Finally, after nearly a decade the area obtained enough state and federal attention that the EPA felt obligated to conduct its own tests once again. In 1998, the EPA found the drums, and under CERCLA, investigated the possible contamination of ground water. With additional pressure from the city of Anacortes the EPA also agreed to investigate PCB's, Chlorinated Organics, and other compounds in the groundwater. (Lime Storage, 2010) Finally, late in 1998, after nearly 18 years of deliberations and legal battles

the EPA conducted at Integrated Site Assessment (ISA) and concluded that a federal cleanup of the site should not be limited by the petroleum exclusion provision under CERCLA.

The clean up effort resulted in many political and environmental outcomes, including: the digging up and off-site removal of nearly 59,000 tons of hazardous waste found in the barrels, the attainment of Tribe developed environmental standards for the left-over soil clean up, federal assurances that off-site contamination movement would not entail further risk to human or environmental health, and most importantly the expansion of the Tribes ability to collaborate with the EPA during the clean up process. (Skagit River Water Allocation, 2010)

**Policies affecting the case:**

Like many cases involving federally recognized Tribes there are many rules, regulations, and policies affecting the outcome – of which come from all levels of government. Working our way from local/tribal to federal we can begin to see the complexity and the inner-workings of what seems to be a straightforward case.

On the Tribal level much of the laws at play are delegated from the US EPA to the control of the Tribe leaders themselves. Section 518(e) of the Clean Water Act (CWA) contains provisions allowing Tribes delegation of authority to implement EPA-approved tribal water quality standards. (EPA, 2006) Also, the CWA, under Section 319 established the Nonpoint Point Source (NPS) Management Program to manage nonpoint sources of pollution. This played a major role in altering and reprimanding the two oil refineries located in the Skagit River. In addition, section 404 of the CWA establishes a program to regulate the discharge of dredged or fills material into waters of the United States, including wetlands. This means that once the EPA completed its Integrated Site Assessment a 404 permit could have been legally applied for by the

refineries, but of course the Swinomish Tribe and the City of Anacortes would have vehemently petitioned it.

On the state level, Washington Department of Ecology has a few guidelines of its own. It states, “No right to divert or store public waters shall be granted by the department of ecology which shall conflict with regulations adopted pursuant to RCW 90.22.010 and 90.22.020 establishing flows or levels. All regulations establishing flows or levels shall be filed in a "Minimum Water Level and Flow Register" of the department of ecology.”(Justice Water Alliance) This means that all three levels of government must be on coordination with each other before the natural resources, namely the water, of the area can be altered for human use.

#### **Analysis of Environmental and Social Implications:**

In the early 1980’s the Swinomish Tribal law was certainly overlooked in favor of U.S. Federal regulations. The 1979 oil crisis occurred in the United States due to decreased oil output in the wake of the Iranian Revolution. Despite the fact that global oil supply decreased by only ~4%, widespread panic resulted, driving the price far higher. The price of crude oil more than doubled to \$39.50 per barrel over the next 12 months, and long lines once again appeared at gas stations, as they had in the 1973 oil crisis. (EarthJustice) This caused many states to turn a blind eye to oil refineries impinging on state and federal regulations as the demand for oil was ravenous. Those environmentally affected had little to no voice.

This swirl of state and national events led to ample distrust between city/state/federal/tribal entities, and shoring up relations were crucial to establishing clean working relations. “Excessive demand is depriving too many rivers of water, and fish and wildlife are suffering,” said Janette Brimmer, an Earthjustice attorney. “It is [Washington Department of] Ecology’s job to protect the water resources of the state, but Ecology has chosen

to avoid the hard work of protecting water and instead uses the so-called public interest exemption with increasing frequency to hand out water beyond what is actually available. Limiting this exemption to the emergency uses contemplated by the legislature will help protect rivers and streams throughout the state from Ecology's increasing failure to adequately regulate water use in the state." (Justice Water Alliance) Everyone seems to have control over the land, and when jurisdictions overlap those that do not have the strength or resources to fight back suffer – this is environmental “injustice”.

### **Lessons Learned/Applications:**

There are two main lessons that can be extruded from this case that, if noted and corrected, can shorten or even prevent future environmental injunctions. The first lesson was the realization that relief of tensions between multiple agencies do not have to come in a legal decree but can be alleviated through public outreach and signage campaigns. It is a much more cost effective way to make points and let your voice be heard while maintaining a positive and open outlook for discussion.

The second lesson was the necessity to spend time setting aside your differences to find partnerships. Both the Swinomish Tribe and the Oil Refineries wanted to take care of the land (to what degree was where the issues lay...), but noting that commonality was a starting point for future collaboration. The EPA and the state of Washington wanted to maintain regulations that created fair opportunities in areas of watershed for human development while again preserving and protecting nature. These small threads of similarities can sometimes be a last hope when all seems to be lost. Through agreement on common goals major environmental issues can be resolved for the betterment of all.

These issues and remedies can be brought to many other cases as well, as our case study involves a smaller environmental dilemma; it is pertinent to our local community. Creating signage for Woodland Park may not stop oil refineries from wreaking havoc on the city of Monona, but they may create awareness in the public, which is just as valuable. By using QR codes, detailed maps, and Ho-Chunk/English translations these signs will accommodate all technological and educational ability levels. In addition, I hope to possibly integrate other groups projects to our own through possibly linking the QR codes to the website being created. With public support condominium developers have already been turned away from breaking ground and destroying linear mounds, with the addition of informational signs imagine what great partnership the parks can make with the city. This relationship can foster a mindset that would not even conceive of destroying mounds in the first place.

**Conclusion:**

Looking at cases like these can give us background or at least a starting point for cases in the future – how to handle them, alleviate them, etc. Public health is always the main concern of any level of government, doing that in tandem with morally sensitive behavior is important. Whether it is on the global, national, state, or local level environmental injustice cannot be tolerated in society that prides itself on equality and forward progress. When the realization, that we cannot strengthen as a society unless all of its members are treated fairly comes, is when environmental justice can subside. Until that point, those of us willing and capable of making our voices heard about the environmental discrepancies we see must do whatever we can to alleviate them. The Swinomish Tribe didn't let "big oil companies" or grudgingly slow federal regulations tie them down, they took matters into their own hands. It may start as small as a simple sign in a town or a park, but this is the seed of justice for the environment and its people.

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