BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE BARTHEL CO., INC., Appellant, vs. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 522 and 528 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of two civil penalties of $250.00 each for alleged smoke emissions in violation of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 28th day of June, 1974, at Tacoma, Washington; and appellant, The Barthel Co., Inc., appearing through its president and chief executive officer, T. H. Van Ryck and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board member present at the hearing being Walt Woodward; and the Board having considered the transcript, exhibits, records and

files herein and having entered on the 13th day of August, 1974, its proposed Findings of Fact, Conclusions of Law and Order, and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received no exceptions to said proposed Findings, Conclusions and Order; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 13th day of August, 1974, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington, this 16th day of September, 1974.

POLLUTION CONTROL HEARINGS BOARD

WALT WOODWARD, Chairman

W. A. GISSBERG, Member

S P No 3928-A

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 19th day of [illegible], 1974, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. T. H. Van Ryck, President
The Barthel Co., Inc.
P. O. Box 1025
Tacoma, Washington 98401

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

S F No 9528-A

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF THE BARTHEL CO., INC., Appellant, vs. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 522 and 528 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of two civil penalties of $250.00 each for alleged smoke emissions in violation of Respondent's Regulation I, came before the Pollution Control Hearings Board, (Walt Woodward, presiding officer) at a formal hearing in Tacoma, at 1:30 p.m., June 28, 1974.

Appellant was represented by its president and chief executive officer, T. H. Van Ryck; Respondent appeared through Keith D. McGoffin. Gene Barker, Olympia court reporter, recorded the testimony.

EXHIBIT A

Having heard the evidence and seen the exhibits, and being fully advised, the Board makes the following

FINDINGS OF FACT

I.

Appellant is the Barthel Company, Inc., formerly known as the Barthel Chemical Construction Company. Appellant is located at 2434 E. 11th Street in Tacoma. At all relevant times in this matter Appellant owned and operated an oil-fired boiler on its premises.

II.

Appellant has had four prior notices of violation for excess boiler stack smoke emissions. From these prior violations, only one civil penalty was assessed. This penalty, assessed at $50.00, arose from the fourth notice of violation. Appellant paid this penalty.

III.

On September 21, 1973 at approximately 9:30 a.m. while inspecting his area of responsibility Victor L. Aguilar, Jr., a duly qualified air pollution inspector for the Puget Sound Air Pollution Control Agency, observed black smoke emitting from Appellant's boiler stack. He took photographs of the emissions. Following this, he took observations of the emission with the sun at his back at a distance of not more than 50 feet from the emission. He recorded a reading of 3-4 on the Ringelmann Chart for a period of 5 1/2 minutes of 8 minutes observed. He thereafter issued Notice of Violation No. 8449 (Respondent's Exhibit R-11) to Appellant for violation of Section 9.03(a) of Respondent's Regulation I (Respondent's Exhibit R-16).

IV.

From the Notice of Violation No. 8449 was assessed a Notice of Civil Penalty No. 1192 (Appellant's Exhibit A-1) for an amount of $150.00 pursuant to Respondent's Regulation I. This matter concerning Civil Penalty N[illegible] [illegible]missed by the Board on February 7, 1974 subject [illegible]ssuance of a new Notice of Civil Penalty reflecting Appe[illegible]'s correct identification at the request of the Appellant. PCHB No. 480 (Appellant's Exhibit A-2). Appellant orally mentioned to Respondent's agents Messrs. Cox and Aguilar that the smoke emission problem would be remedied.

V.

On January 9, 1974 at approximately 11:00 a.m., Victor L. Aguilar, Jr., again noticed black smoke emitting from Appellant's boiler stack. He took a photograph of the emission and thereafter made an observation of the emission in a manner as hereinbefore described. He recorded a reading of 4-5 on the Ringelmann Chart for a period of eight minutes of 16 minutes observed. He thereafter issued Notice of Violation No. 9215 (Respondent's Exhibit R-14) to Appellant for violation of Section 9.03(a) of Respondent's Regulation I.

VI.

From the Notice of Violation No. 9215 was assessed a Notice of Civil Penalty No. 1335 (Respondent's Exhibit R-14) for an amount of $250.00 pursuant to Respondent's Regulation I, which is one matter of this appeal. PCHB No. 522.

VII.

On February 8, 1974 Respondent reissued a Notice of Civil Penalty

S F No 9028-A

No. 1399 (Respondent's Exhibit R-12) based on Notice of Violation No. 8449 for $250.00 which is the second subject of this appeal. PCHB No. 528. Testimony explained the increase in the penalty of $100.00 as being due to consideration of 1) an intervening civil penalty notice (Notice of Civil Penalty No. 1335), (2) the Appellant's previous record of violations and penalties, and 3) the supposition that no corrections were being made.

VIII.

Appellant knew of its boiler emission problem as early as November, 1970. Because Appellant could find no one who would assure it that the smoke would be eliminated, Appellant made no further efforts to improve its boiler operation until recently. In February, 1974, Appellant completed an improvement which, an engineering company assured, would eliminate emissions. The cost of this improvement was approximately $1,500.00 and involved installing a new burner system. Although Appellant assigns blame for the emissions to the type of crude oil it was recently forced to use, the violations prior to the matter at hand indicate that the problem lay in Appellant's equipment. It was aware of the emission problem but did nothing to improve the system. The evidence shows that Appellant's problem is one occurring only during the fall and winter months due to the weather conditions.

IX.

Section 9.03(a) of Respondent's Regulation I provides in part:

> "(a) It shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods

S F No 9925-A

aggregating more than three (3) minutes in any one hour, which is:

(1) Darker in shade than that designated as No. 2 (40% density) on the Ringelmann Chart as published by the United States Bureau of Mines. . ."

Section 3.29 of Regulation I authorizes Respondent to levy a civil penalty of not more than $250.00 for any violation of Regulation I.

X.

Any Conclusion of Law hereinafter deemed to be a Finding of Fact is herewith adopted as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I.

The Board has jurisdiction over the persons and subject matter of these appeals.

II.

There was a violation caused by Appellant of Section 9.03(a)(1) of Regulation I on September 21, 1973.

III.

There was a violation caused by Appellant of Section 9.03(a)(1) of Regulation I on January 9, 1974.

IV.

Appellant has shown no substantial reasons for mitigation of the penalties.

V.

The Pollution Control Hearings Board Order in the matter of Barthel Chemical Construction Co. vs. Puget Sound Air Pollution Control Agency, PCHB No. 480, contemplated the correction of the Notice of Civil Penalty No. 1192 to correctly identify the Appellant. The Board holds that this Order is controlling for the September 21, 1973 violation and the penalty as then assessed, i.e., $150.00, now applies.

VI.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

Therefore, the Pollution Control Hearings Board issues this

ORDER

The appeal in the matter of PCHB No. 528 upon Notice of Civil Penalty No. 1399 is denied. The $250.00 penalty is modified to $150.00.

The appeal in the matter of PCHB No. 522 based upon Notice of Civil Penalty No. 1335 is denied. The $250.00 penalty is affirmed except that $125.00 shall be suspended for a period of twelve (12) months from the date that this Order becomes final. As a condition of this suspension in this interim period, Appellant shall cause no notice of violation to issue for emissions from its boiler stack. If such condition be breached the suspended sum shall become immediately due and payable.

S F No 2928-A

DONE at Lacey, Washington, this 13th day of August, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward

WALT WOODWARD, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

S F No 9528-A