BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF JAMES E. LONG, d.b.a. PONDERS AUTO-MART, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	)	PCHB No. 946 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Nature of case: $25 civil penalty for allegedly causing or allowing an outdoor fire in violation of Section 9.02 of Regulation 1.

Formal hearing: April 1, 1976, Lacey, Washington.

Board members present: Chris Smith, Chairman, W. A. Gissberg and Walt Woodward.

Presiding officer: David Akana, hearing examiner.

Court reporter: Sherri Darkow.

For appellant: James E. Long, pro se.

For respondent: Keith D. McGoffin, attorney.

FINDINGS OF FACT

1. On November 20, 1975 at his place of business in Tacoma, Washington, appellant caused an outdoor fire without a permit. Painted wood, tar paper, and oily rags were found in the fire by respondent's inspector. For this occurrence, respondent issued a notice of violation and a notice of civil penalty wherein appellant was assessed a $25 civil penalty. Appellant does not deny the violation, but appealed this matter seeking mitigation of the penalty.

2. The $25 civil penalty is minimal in amount and reasonable in view of the nature of the violation. Appellant was unaware of the prohibition on open burning inasmuch as his neighbors were burning.

3. Pursuant to RCW 43.21B.260, respondent's Regulation 1 is noticed.

4. Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Appellant violated Section 9.02 of Regulation 1 by causing an open fire and burning prohibited materials.

2. The $25 civil penalty assessed pursuant to Section 3.29 of Regulation 1 is reasonable in amount and should be affirmed. In view of the unintentional violation and the good intentions of appellant, we believe that a warning citation would have been sufficient in this case. Therefore, a suspension of the penalty would be an appropriate disposition of this matter. Finally, although we affirm the amount of the $25 penalty, we stress to appellant that this is a civil and not criminal matter.

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

ORDER

The $25 civil penalty assessed by respondent upon appellant is affirmed. Payment of the penalty is suspended and the same shall not be due upon condition that no further violation occurs for six months from the date that this Order becomes final.

DONE at Lacey, Washington, this sixth day of April, 1976.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith

CHRIS SMITH, Chairman

W. A. Gissberg

W. A. GISSBERG, Member

Walt Woodward

WALT WOODWARD, Member

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