BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF RONALD A. AUBRY, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB No. 79-97 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the issuance of a $250 civil penalty for the alleged violation of Sections 8.02(3) and 8.05(1), came before the Pollution Control Hearings Board, Nat W. Washington, Chairman, and David Akana (presiding) at a formal hearing in Tacoma on November 26, 1979.

Appellant appeared pro se ; respondent was represented by its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes

1 these

2 FINDINGS OF FACT

3 I

4 On April 26, 1979 respondent's inspector observed an outdoor
5 fire located upon appellant's property, at or near 4112-14 Tyler
6 Street, in Tacoma. The fire, caused or allowed by appellant,
7 contained lumber and plywood from construction occurring on the
8 site. The fire, which emitted a black-bluish plume, was not allowed
9 under the regulations of the agency.

10 For the foregoing occurrences, appellant was sent a notice of
11 violation from which followed a $250 civil penalty for the alleged
12 violations of Sections 8.02(3) and 8.05(1) of Regulation I.

13 II

14 Appellant called the Tacoma fire Department the day before he
15 caused the fire and was told that he could burn materials such as
16 lumber and plywood. The fire department verbally permitted the fire
17 which thereafter occurred on April 26, 1979.

18 III

19 Pursuant to RCW 43.21B.260 respondent has filed a certified copy
20 of its Regulation I and amendments thereto which we notice.

21 Section 8.02(3) makes it unlawful for any person to cause or
22 allow any outdoor fire containing garbage, dead animals, asphalt,
23 petroleum products, paints, rubber products, plastics or any
24 substance other than natural vegetation which normally emits dense
25 smoke or obnoxious odors.

26 Section 8.05(1) makes it unlawful for any person to cause or

27

allow any outdoor fire other than landclearing or residential burning unless prior written approval has been received from the agency.

Section 3.29 provides for a civil penalty of up to $250 per day for each violation of Regulation I.

IV

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

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellant violated Sections 8.02(3) and 8.05(1) on April 26, 1979. While a civil penalty is ordinarily proper for such violations, suspension of the penalty is warranted in this case. Appellant made reasonable efforts to ascertain the lawfulness of the fire and received erroneous information from another governmental agency, the Tacoma Fire Department. In light of the circumstances as developed at the hearing and RCW 70.94.745 which provides for a one-permit system for outdoor burning, it would be unfair for appellant to be required to pay the penalty assessed.

II

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

From these Conclusions the Board enters this

S F No 9929-A

ORDER

The $250 civil penalty is affirmed and suspended in total.

DATED this 19th day of December, 1979.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington

NAT W. WASHINGTON, Chairman

David Akana

DAVID AKANA, Member

S-1 No 5978-A