BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF MARINE POWER & EQUIPMENT COMPANY, INC., Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 82-44 & 82-45 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal from the issuance of two $250 civil penalties for the alleged violations of sections 9.15(a) and 9.03(b) of respondent's Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, David Akana and Lawrence J. Faulk, Board members, with William A. Harrison, Administrative Law Judge, presiding at a formal hearing in Lacey on October 27, 1982.

Respondent was represented by its attorney, Keith D. McGoffin; appellant Marine Power and Equipment Company, Inc., (Marine Power) was represented by its attorney, George S. Martin. Court reporter Dixie

J. Catteu recorded the proceedings.

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

FINDINGS OF FACT

I

On March 4, 1982, at about 10:00 a.m, after prior notice of inspection to Marine Power, respondent's inspector visited Marine Power's premises located at 6701 Fox Avenue South in Seattle. After being refused entrance to the premises, the inspector visually observed appellant's operations from a public area. The inspector could see an emission visible in the air for 10 to 15 feet from a barge being sandblasted in the open. No shrouds or other pollution control equipment were seen at the work site. After properly positioning himself, the inspector recorded an opacity of 25 to 50 percent for eight consecutive minutes. The inspector notified Marine Power of his observations, by mail on March 8, 1982, via notices of violation of section 9.15(a) and 9.03(b) from which followed a $250 civil penalty (Nos. 5461 and 5462) for each alleged violation.

II

On March 4, 1982, appellant used best known methods and a superior abrasive material (copper) in the open to surface clean the steel sides of a barge. The visible particulate matter (rust) emitted from cleaning the steel surface of this barge remained, for the most part,

on appellant's property. Tarping or shrouding at this place, and in this instance as disclosed by the evidence, was apparently not practical.

III

Pursuant to RCW 43.21B.260, respondent has filed with the Board a certified copy of its Regulations I and II which are noticed.

Section 9.15(a) makes it unlawful for any person to cause or permit particulate matter to be handled, transported or stored without taking reasonable precautions to prevent particulate matter from becoming airborne.

Section 9.03(b) of respondent's Regulation I states:

> (b) After July 1, 1985, it shall be unlawful for any person to cause or allow the emission of any air contaminant for a period or periods aggregating more than three (3) minutes in any one hour which is:
>
> (1) Darker in shade than that designated as No. 1 (20% density) on the Ringelmann Chart, as published by the United States Bureau of Mines; or
>
> (2) Of such opacity as to obscure an observer's view to a degree equal to or greater than does smoke described in Subsection 9.03(b)(1); provided that, 9.03(b)(2) shall not apply to fuel burning equipment utilizing wood residue when the particulate emission from such equipment is not greater than 0.05 grain per standard cubic foot.

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 enters these

CONCLUSIONS OF LAW

I

Respondent establishes a prima facie case under section 9.15(a) when it shows that a person has caused particulate matter to become airborne. Respondent made such a showing for the event occurring on March 4, 1982. The burden of presenting evidence then shifts to appellant to show that reasonable precautions were taken. Appellant Marine Power's evidence, while not conclusive, was sufficient in this instance and under the facts of this case to show that reasonable precautions were taken. Respondent presented no further evidence, and, on balance, has failed to carry its burden of proof. Accordingly, there was no violation of section 9.15(a) as alleged and the civil penalty No 5462 should be vacated.

II

We reject appellant's contention that respondent's inspector must compare the Ringelmann Chart to an emission while observing it The Ringelmann Chart is merely a measure of darkness, section 9.03(b)(1) supra. Opacity which obscures an observer's view to the same degree as that darkness (20% density) is also prohibited. Appellant violated section 9.03(b)(2) on March 4, 1982, as alleged. Accordingly, a civil penalty (No. 5461) was properly assessed, and should be affirmed.

III

In Marine Power v. PSAPCA, PCHB Nos. 81-141, 142 and 143, a decision of this Board entered on March 23, 1982, we affirmed a prior violation by appellant of the same section 9.03(b) in connection with sandblasting at the same facility. The maximum $250 which we affirm today is amply justified.

IV

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

From these Conclusions the Board enters this

ORDER

Civil penalty No. 5462 assessed on Marine Power and Equipment Company, Inc., is vacated Civil penalty No 5461 is upheld

DONE at Lacey, Washington, this 5th day of November, 1982.

POLLUTION CONTROL HEARINGS BOARD

LAWRENCE J. FAUNK, Member

GAYLE ROTHROCK, Chairman

DAVID AKANA, Lawyer Member