BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF SCARSELLA BROTHERS, INC., Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos. 82-125, 82-126 82-127, 82-128 & 82-129 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW & ORDER

This matter, the appeal from the issuance of five $250 civil penalties for the alleged violations of Sections 8.02(3), 8.02(5), and 8.05(1) of Regulation I, came before the Pollution Control Hearings Board, Gayle Rothrock, Chairman, and Larry Faulk (presiding), at a formal hearing on February 9, 1983, in Lacey.

Appellant was represented by its attorney John D. Blankenship; respondent was represented by its attorney, Keith D. McGoffin. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits, and

having considered the contentions of the parties, the Board makes the

FINDINGS OF FACT

I

Appellant, Scarsella Brothers, Inc., is a general contractor operating in the State of Washington.

II

On July 6, 1982, appellant obtained a valid burn permit from the City of Tacoma Fire Department. The permit gave Scarsella Brothers, Inc., (hereinafter Scarsella) permission to burn material at the Tacoma Industrial Airport, which Tacoma owns. This material was obtained from brush, trees and torn down buildings resulting from construction of highway overpasses at Sixth and Pearl Streets in the City of Tacoma. The burn permit, re-issued on July 6, 1982, was a copy of a previous permit issued by the City of Tacoma Fire Department. It did not have printed on the reverse side, which are normally on such a permit, a list of the general requirements for safe controlled open burning. The conditions listed on the front side of the permit limited the size of the burn pile(s); established the location of the burn pile, and established the necessary fire control measures.

III

On July 7, 1982, respondent's inspector was drawn to the Tacoma Industrial Airport by a telephone call from a firefighter for Pierce County Fire Protection District #5 in Gig Harbor, Washington.

The respondent's inspector proceeded to the Tacoma Industrial Airport and observed four piles of burning material. Three of the

piles contained natural vegetation such as stumps and branches and a fourth pile contained various types of material from the A&W Root Beer building, gas station and fruit stand previously located at Sixth and Pearl in the City of Tacoma.

IV

Respondent's inspector talked to the bulldozer operator for Scarsella at the site. The operator showed him a copy of a burn permit issued by the City of Tacoma Fire Department. Respondent's inspector then contacted Pierce County Fire Protection District #5, assistant chief Allen Stenback and was informed that the burn site (Tacoma Industrial Airport) is within the jurisdiction of Fire District #5 and that no permits or authorization to conduct such a burn had been issued by District #5.

Respondent's inspector then contacted Deputy Fire Marshal, Ron Larkin of the City of Tacoma Fire Department, who informed him that a burn permit was obtained by Don Scarsella of Scarsella Brothers, Inc. The inspector was not able to determine from Chief Larkin if the City of Tacoma Fire Department had jurisdiction of the burn site.

Respondent's inspector then spoke to Frank Scarsella of Scarsella Brothers, Inc., and informed him of the notices of violation. Mr. Scarsella indicated he was not aware that the respondent agency needed to be contacted once a fire department burn permit was obtained. The inspector explained Sections 8.02(3), 8.02(4), 8.02(5) and 8.05(1) of Regulation I to Mr. Scarsella.

V

On July 9, 1982, respondent's inspector mailed five notices of violation Nos. 18876, 18877, 18878, 18879 and 18880. From these notices followed, on August 30, 1982, five civil penalties of $250 each for the alleged violations.

Civil penalty No. 5605 is for alleged violation of Sections 8.02(5) and 8.05(1) of Regulation I; No. 5606 for 8.02(5) and 8.05(1); No. 5607 for 8.02(5) and 8.05(1); No. 5608 for 8.02(3), 8.02(4), and 8.02(5) and No. 5609 for 8.05(1).

From these notices of violations and civil penalties appellant has appealed to this Board.

VI

Neither respondent nor Pierce County Fire Protection District No. 5 issued a written permit or approval of the fires in question. The Tacoma City Fire Department did issue a permit for the fires in question.

VII

Pursuant to RCW 43.21B.260, respondent has filed with this Board a certified copy of its Regulation I and amendments thereto which are noticed.

Section 8.02(3) makes it unlawful for any person to cause or allow an outdoor fire containing certain materials, including asphalt, paints and plastics.

Section 8.02(4) prohibits an outdoor fire for purpose of demolition of materials.

Section 8.02(5) makes it unlawful for any person to cause or allow any outdoor fire in violation of any applicable law, rule or regulation of any governmental agency having jurisdiction over such a fire.

Section 8.05(1) makes it unlawful to conduct an outdoor fire other than for land clearing, burning, or residential burning, unless written approval has been issued by respondent.

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

VIII

Appellant was fined for one previous violation of Regulation I.

X

An exhibit at the hearing, a September 27, 1982 letter from Assistant Chief Stenback of Pierce County Fire Protection District #5 to Mr. W. D. DeHaan of the Puget Sound Air Pollution Control Agency quotes Deputy Chief Larkin as saying, "The entire property of the Tacoma Narrows Airport is under the direct control of the City of Tacoma Fire Department for the purposes of fire prevention, fire supression and control, and burning regulations, including burn permits."

XI

Appellant testified that Scarsella Brothers were under the impression that the burn permit obtained from the Tacoma City Fire Department gave them permission to burn at the Tacoma Industrial Airport.

XII

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

Outdoor fires to dispose of natural vegetation and construction debris did occur at the Tacoma Industrial Airport on July 7, 1982, without the express approval of the respondent.

II

Appellant's assertion that he had permission to burn is supported by the fact that he; 1) did receive a valid burn permit from the City of Tacoma. The facts also show that the City of Tacoma does, in fact own and have jurisdiction over the Tacoma Industrial Airport. No evidence was presented to indicate the City gave over responsibility for fire prevention and control to Pierce County Fire District #5.

III

The Board, however, believes that the City of Tacoma should have alerted Mr. Scarsella that he also needed the approval of the Puget Sound Air Pollution Control Agency. The City of Tacoma should also have notified Pierce County Fire Protection District #5 that they had given permission for the subject fires. The City additionally should only issue permits which are legal under Regulation I and the Clean Air Act.

IV

Prohibited materials most likely were burned and therefore a technical violation of Section 8.02(3) occurred.

V

Appellant did not violate Sections 8.02(4), 8.02(5), and 8.05(1) as alleged.

VI

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

The four $250 civil penalties (totaling $1000) assessed on Scarsella Brothers, Inc., and the City of Tacoma are vacated for appellant, Scarsella Brothers, Inc.

The $250 civil penalty for the technical violation of 8.02(3) is suspended.

DONE this 3rd day of March, 1983.

POLLUTION CONTROL HEARINGS BOARD

LAWRENCE J. FAULK, Member

GAYLE ROTHROCK, Chairman