BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF GO EAST CORPORATION, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	)	PCHB NOS. 84-35, 84-36, 84-37, 84-38, 84-39, 84-40, 82-41, 84-42, 84-65, 84-73, 84-74, 84-75, 84-76 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (AMENDED)

This matter, the appeal from the issuance of civil penalties for the alleged violation of Regulation I, came before the Pollution Control Hearings Board, David Akana (presiding) and Lawrence J. Faulk at a formal hearing on April 10, 1984.

Appellant was represented by its attorney, Mary MacIntosh, respondent was represented by its attorney, Keith D. McGoffin. Olympia court reporter Jane Johnson, 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 October 26, 1983, at about 9 10 a.m., respondent's inspector visited appellant Go East Corporation's disposal site located at 180th Street Southeast in Everett as a result of a citizen's complaint. A large plume of dense white smoke with a pungent odor was observed rising from burning demolition materials. The inspector properly positioned himself and recorded visible emissions of 100 percent for eleven consecutive minutes. Appellant did not possess any permit for the fire.

For the above events, appellant was issued notices of violation of sections 9.03(h), 8.02(3) and 8.05(1) of Regulation I.

II

The fire was started from an undetermined cause. The fire and resulting emissions of smoke and odor came from property which at all relevent times was in the ownership and control of appellant.

Appellant was aware of the risks of fire at a disposal site. However, the risks were not met by commensurate operable fire equipment on hand. Consequently, the fire was allowed to burn out of control.

III

During the days following the fire, appellant planned to undertake a strategy which theoretically would allow the fire to burn itself out. However, the fire department sprayed water over the face of the disposal site attempting to extinguish the fire. The fire was not extinguished. Appellant asserted that the action taken by the fire department caused greater areas of the site to be exposed to the fire.

Appellant's later attempt to put out the fire using a bulldozer and dirt were not successsful. The company ran out of funds and work stopped. The fire continues to smolder underground, emitting smoke and odorous gases continuously.

IV

For the emissions and events that were observed and reported appellant was issued various notices of violation and the following civil penalties each for $250

	DATE	TIME	CP NO.	REGULATION - DESCRIPTION
1	10/26/83	9 10am	5893	Section 8.02(3) - Prohibited materials
		9 11am	5893	Section 8.02(5) - No fire department permit
		9 12am	5893	Section 8.05(1) - No agency approval
2	10/26/83	9 28am	5894	Section 9.03(b) - Opacity WAC 173-400-040(1)
3	10/27/83	10 07am	5895	Section 9.03(b) - Opacity WAC 173-400-040(1)
4	10/27/83	10:20am	5896	Section 8.02(3) - Prohibited materials
		10·21am	5896	Section 8.02(5) - No fire department permit
		10 22am	5896	Section 8.05(1) - No agency approval
5	11/17/83	1 20pm	5898	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
6	11/18/83	8:20am	5899	Section 9.03(b) and WAC 173-400-040(1) Opacity
7	12/8/83	12 15am	5908	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
8	11/18/83	8 20am	5900	Section 8.02(5) - No fire department permit
		8 20am	5900	Section 8.05(1) - No agency approval
9	12/27/83	10 30am	5955	Section 8.02(5) - No fire department permit
		10 30am	5955	Section 8.05(1) - No agency permit

10	12/27/83	10 30am 11 00am 11 25am	5956 5956 5956	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
11	1/31/84	1 25pm	5967	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
12	2/6/84	12 15pm	5961	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions
13	1/16/84	10 00am	5947	Section 9.11(a) and WAC 173-400-040(5) Injurious emissions

From the notices of civil penalties issued, appellant appealed to this Board Appellant's first appeal was received on January 19, 1984, and the last appeal was received March 6, 1984.

V

The smoke and odor from the fire left appellant's property and intruded on the residences surrounding the disposal site on the days and times alleged. The affected residents suffered from nausea, itching burning eyes, running noses, and breathing difficulties from the smoke and stench which occurred on both days and nights. The emissions curtailed ordinary residential activities, including rest, relaxation, and entertainment. These emissions affecting the residents have been of such quantities, characteristics and duration which unreasonably interfered with their enjoyment of life and property. These emissions exceeded that which persons of ordinary and normal sensibilities would find acceptable.

VI

Residential areas either border or are near appellant's site to the north, east and west. Trees and natural vegetation are located to the south of the site. Some of the residents have commenced a lawsuit

against appellant relating to effects of emissions from the disposal site.

VII

The condition of an uncontrolled fire at appellant's disposal site has been declared a public nuisance in the Superior Court for Snohomish County (Cause nos. 83-2-04185-4 and 83-2-04207-9). A limited warrant of abatement was executed authorizing the extinguishment of all fires on the site.

VIII

The Board finds that appellant possessed no permit or other written approval for the fire and emissions occurring on the dates and times alleged. The Board also finds the emissions occurring were detrimental to the health, safety, or welfare of the complaining witnesses as alleged.

IX

Appellant has had previous contact with respondent relating to matters arising under Regulation I.

X

Pursuant to RCW 43.21B.260, respondent has filed 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 any outdoor fire containing garbage asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which normally emits dense smoke or abnoxious odors.

Section 8.02(5) makes it unlawful for any person to cause or allow any outdoor fire in violation of any applicable law or regulation of another governmental agency.

Section 8.05(1) makes it unlawful for any person to cause or allow any outdoor fire (with exceptions not here relevent) unless written approval has been issued by respondent under such conditions established by respondent.

Section 9.03(b) makes it unlawful for any person to cause or allow the emission of any air contaminant for more than three minutes in any one hour which is greater or equal to 20 percent opacity.

Section 9.11(a) makes it unlawful for any person to cause or permit the emission of an air contaminant if it causes detriment to the health, safety or welfare of any person, or causes damage to property or business.

Section 3.29 provides for a civil penalty of up to $250 per day for each violation of Regulation I. In the case of a continuing violation, each day's continuance is deemed a separate and distinct violation.

XI

WAC 173-400-040(1) makes it unlawful for any person to cause or permit the emission for more than three minutes in any one hour of an air contaminant from any source which exceeds 20 percent opacity.

WAC 173-400-040(5) provides that no person shall cause or permit the emission of any air contaminant from any source if the air contaminant causes detriment to the health, safety or welfare of any person.

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 the following

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the persons and subject matter of this proceeding.

II

The continuing nature of the fire was caused by the inability of appellant to properly contain and extinguish it.[1] Although appellant was not shown to have started the fire, the risks of the disposal business were well known and foreseeable to it.

We conclude that violation of Sections 9.03(b), 9.11(a) and 8.02(3) were shown by respondent on the dates alleged. We similarly find violations of the state regulations cited under WAC 173-400. These violations are sufficient to fully sustain the civil penalties accessed on those dates.

We conclude that Section 8.05(1) was also violated on the dates alleged other than October 26, 1983. These violations are technical in nature and would not alone support the full civil penalties assessed. Respondent did not show that Section 8.02(5) was violated.

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1. Lewis County v. SWAPCA, PCHB No. 81-7.

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

1. Civil penalties nos. 5893, 5894, 5895, 5896, 5908, 5898, 5899, 5900, 5935, 5956, 5967, 5961 and 5947 are each affirmed.

DONE this 24th day of May, 1984.

POLLUTION CONTROL HEARINGS BOARD

David Akana

DAVID AKANA, Lawyer Member

Larry Faulk 5/24/84

LAWRENCE J. FAULK, Vice Chairman