BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF MRS. STANLEY G. SPRAGUE, Appellant, v. SOUTHWEST AIR POLLUTION CONTROL AUTHORITY, Respondent.	)	PCHB No. 85-69 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of two notices of violation and associated civil penalties of $50 for allegedly maintaining an open fire containing prohibited material came on for formal hearing before the Pollution Control Hearings Board; Lawrence J. Faulk (presiding) and Gayle Rothrock, on September 6, 1985, in Vancouver, Washington. A tape recording was made of the proceedings.

Appellant Mrs. Sprague represented herself. Respondent Southwest Air Pollution Control Authority (SWAPCA) appeared by its attorney David Jahn.

Witnesses were sworn and testified. Exhibits were examined. From the testimony heard and exhibits examined, the Board makes these

FINDINGS OF FACT

I

Respondent SWAPCA is a municipal corporation with responsibility for conducting a program of air pollution prevention and control pursuant to the Washington Clean Air Act, chapter 70.94 RCW, in a multi-county area which includes Clark County, the site of the events at issue in this case.

SWAPCA has, pursuant to RCW 43.21B.270, filed with this Board a certified copy of its revised general regulations, as adopted and amended, the contents of which are noticed.

II

Appellant Mrs. Sprague is a resident of Battle Ground, Washington, whose husband died last summer. She has a grown son. Appellant, following her husband's death, hired two people to clean up the property surrounding her residence at 13426 N.E. 199th Street. The contract was signed February 7, 1985 and the job was to be completed April 1, 1985.

III

On April 8, 1985, the assistant chief of the Battle Ground Fire Department visited the residence of appellant to investigate black smoke in the area. He observed a pile of miscellaneous wood products, tires and vehicle seats burning. There was no one attending the fire. He extinguished the fire and wrote a report. He filed a fire

incident report attributing ownership of the property where the fire occurred to appellant's son Paul L. Sprague. SWAPCA then addressed a field notice of violation to Mrs. Sprague's grown son. Mrs. Sprague's son did not live at the subject property and was not there at the time of the fire.

IV

SWAPCA, after evaluating the fire department's report, issued a Notice of Violation on April 18, 1985, asserting a violation of Section 400-035 of SWAPCA's General Regulations for Air Pollution Sources and of RCW 70.94.775. The Notice assessed a civil penalty of $50.

Mrs. Sprague timely appealed the violation notice and penalty by letter received by the Board on May 6, 1985.

V

On April 9, 1985, as a result of a neighbor's alert and fire district alert, an inspector visited the residence of appellant. He observed a fire pile three and one-half feet wide by two feet high in which rubber tire remains were burning. He observed several timbers and trash adjacent to and around the perimeter of the fire. He discussed the fire with an individual apparently tending and observing the fire. This individual indicated he didn't know anything about the fire; that it was burning when he arrived on the site. This individual extinguished the fire on request. The inspector explained the SWAPCA fire regulations. However, the inspector did not ask for, or record, the name of the man he talked to on April 9, 1985.

VI

Mrs. Sprague testified that her husband died August 28, 1984. She then hired a Mr. Dennis Pierce and Mr. Heywood to clean up her property. She never gave them permission to burn. She was out of town on April 8 & 9, 1985 visiting her parents, one of whom just had a stroke. Her son has recently had some difficulties with the law (unrelated to this case) resulting in his being sent to jail.

She requested that the penalties be vacated as she has very little money, gave no permission for burning as a method of disposal and clean-up, and was at a loss to understand how she could have been legally responsible for the fires. Her notice of appeal to the Board was made by her attorney to SWAPCA and was passed on to the Board.

VII

Mrs. Sprague has no previous violations of any SWAPCA regulations and suspects Mr. Pierce is responsible for these unlawful open fires.

VIII

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

From these Findings of Fact the Board comes to these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over the issues and parties. Chapter 43.21B and 70.94 RCW.

II

SWAPCA's General Regulations, Section 400-035 provides, in pertinent part:

> No person shall ignite, cause to be ignited, permit to be ignited, or suffer, allow, or maintain any open fire within the jurisdiction of the Authority, except as provided in this Regulation.
>
> (1) Open Burning may be done under permit:
>
> (a) Burning permits may be provided by the local fire department, fire district or Washington State Department of Natural Resources.
>
> (b) No permit shall be issued unless the Control Officer is satisfied that:
>
> (i) No practical alternate method is available for the disposal of the material to be burned. (The Authority has a written Open Outdoor Fire Policy describing times, areas and kinds of permitted open fires).
>
> (ii) No salvage operation by open burning will be conducted.
>
> (iii) No garbage will be burned.
>
> (iv) No animals will be disposed of by burning.
>
> (v) No material containing asphalt, petroleum products, paints, rubber products, plastic or any substance which normally emits dense smoke or obnoxious odors will be burned.

RCW 70.94.775 states, in pertinent part:

> No person shall cause or allow any outdoor fire:
>
> (1) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation which emits dense smoke or obnoxious odors. . .

III

We conclude that the fires on Mrs. Sprague's property on April 8 & 9, 1985 contained prohibited materials and therefore violated both SWAPCA regulations Section 400-035 and RCW 70.94.775. The fires contained rubber and metal and finished wood products which are prohibited in an open fire.

IV

The Clean Air Act is a strict liability statute. Landowners are prima facie responsible for unlawful fires on their property. Landowners can, however, be absolved of responsibility by showing that neither their actions nor their ownership are so connected with the unlawful event as to have "caused," "permitted," "suffered," or "allowed" it.

V

Normally a landowner is held responsible for unlawful fires started on his property by trespassers. This, however, is not just because the landowner is the only person available to charge. It is rather because in the usual case, the landowner created a substantial risk that an unauthorized fire would occur. Landowners who leave unattended piles of burnable debris in circumstances which can be said to invite a fire to be started, are held to have allowed such fires as are started.

The case here does not present such circumstances. All of the clean up activity which led to the assembly of the material that was burned was done by independent contractors. The landowner was

responsible for these conditions only in the sense of having set the train of events in motion by contracting for the clean up. She did not supervise the job. She did not ask for the burning.

We conclude that her position in the chain of causation is too remote for her to be held accountable under Section 400-035.

VI

The respondent agency made no effort to learn the identity of a person contacted at the site who may very well have had some responsibility for the fires or make further inquiries of him to get further perspective on the cause of the fires. Clearly, this should have been done.

VII

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

From these Conclusions of Law the Board enters this

ORDER

The SWAPCA formal Notices of Violation issued to Mr. and Mrs. Stanley Sprague and the associated civil penalties are reversed.

DATED this 14th day of October, 1985.

POLLUTION CONTROL HEARINGS BOARD

10/14/85

LAWRENCE J. FAULK, Chairman

GAYLE ROTHROCK, Vice Chairman