BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF STARROW ENTERPRISES, Appellant, v. PUGET SOUND AIR POLLUTION CONTROL AGENCY, Respondent.	PCHB Nos.:85-160, 85-192, and 85-228 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of three Notices of Violation and three civil penalties totaling $1,750 for allowing the emission of an ojectionable odor from appellant's plant located at 4611 South 134th Place, in Seattle, Washington, on June 28, August 6, and October 4, 1985, came on for hearing before the Pollution Control Hearings Board on December 13, 1985, in Seattle, Washington. Seated for and as the Board were Lawrence J. Faulk (presiding), Wick Dufford, and Gayle Rothrock. The proceedings were officially reported by Lynn Tarry of Calmes and Associates. Respondent elected a formal hearing pursuant

to RCW 43.21B.230.

Appellant was represented by Floyd Darrow, owner of Starrow Enterprises. Respondent Agency was represented by its attorney Keith D. McGoffin.

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

FINDINGS OF FACT

I

Appellant Starrow Enterprises is a manufacturer of cultured marble and onyx products. In order to manufacture these products, the appellant mixes calcium carbonate with a resin and casts the mixture in molds. The product is then sealed with a Gel-Coat.

II

Respondent PSAPCA is a municipal corporation with the responsibility for conducting a program of air pollution prevention and control in a multi-county area which includes the site of appellant's plant.

PSAPCA, pursuant to RCW 43.21B.260 has filed with this Board a certified copy of its Regulation I (and all amendments thereto) which is noticed.

III

In the morning of June 28, 1985, PSAPCA received a complaint from a neighbor couple who live and maintain a business across the street from appellant's plant, about 200 feet northwest of the discharge point for emissions from the Gel-Coat spray booth. Respondent

Agency's inspector that morning visited and spoke with the complainants and personally sniffed and detected a noticeable and distinct styrene (vinyl benzene) odor with unpleasant characteristics.

To the complainants the effect was "nauseating" and smelled like fiberglass. The complainants experienced eye irritation, loss of sleep and found the odor highly objectionable. They also stated their families have experienced unreasonable interference with the enjoyment of the outdoors and their property.

In testimony relating to the event, the complainants stated their ability to distinguish a fiberglass-like smell from other odors.

The inspector, during his visit, rated the odor as equivalent of a "2" on an odor rating scale ranging from 0 to 4, and delineated as illustrated:

0--No detectable odor

1--Odor barely detectable

2--Odor distinct and definite, any unpleasant characteristics recognizable

3--Odor strong enough to cause attempts at avoidance

4--Odor overpowering, intolerable for any appreciable time.

This rating scale is used by PSAPCA not as a regulatory standard, but as a shorthand method for preserving impressions for evidentiary purposes.

IV

On June 28, 1985, Notice of Violation (No. 20914) was issued to Starrow Enterprises for violating Section 9.11(a) of PSAPCA

Regulation I.

V

On July 31, 1985, Notice and Order of Civil Penalty No. 6314 was sent to appellant assessing a penalty of $250 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on June 28, 1985. From this, appellant appealed to this Board on August 16, 1985, the appeal becoming our cause number PCHB No. 85-160.

VI

On the morning of August 6, 1985, again acting on a complaint, respondent Agency's inspector visited the neighborhood adjacent to appellant's plant and spoke with the same complainants. The inspector independently noted a distinct styrene (vinylbenzene) odor which he concluded, could induce nausea, curbed appetite and breathing, nose and throat irritation, and generally offend the senses of smell and taste. He rated the odor at "2."

By affidavit and testimony the complainants stated that the odor of styrene on this occasion caused eye and nose irritation, nausea and loss of sleep. They found it a highly objectionable interference with their enjoyment of life and property. Finally, they indicated that customers entering their place of business often complain of odor.

VII

On August 6, 1985, Notice of Violation (No. 20917) was issued to Starrow Enterprises for violating Section 9.11(a) of PSAPCA Regulation I.

VIII

On September 16, 1985, Notice and Order of Civil Penalty No. 6329 was sent to appellant assessing a penalty of $500 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on August 6, 1985. From this, appellant appealed to this Board on October 4, 1985, the appeal becoming our cause number PCHB No. 85-192.

IX

On the morning of October 9, 1985, once more acting on a complaint, respondent Agency's inspector visited the neighborhood adjacent to appellant's plant and spoke with the same complainants. The inspector independently noted a distinct styrene (vinylbenzene) odor which he concluded, could induce nausea, curbed appetite and breathing, nose and throat irritation, and generally offend the senses of smell and taste. He rated the odor at "2."

By affidavit and testimony the complainants stated that the odor of styrene on this occasion produced physical effects like those experienced on other occasions and was highly objectionable.

X

On October 9, 1985, Notice of Violation (No. 021201) was issued to Starrow Enterprises for violating Section 9.11(a) of PSAPCA Regulation I.

XI

On October 30, 1985, Notice and Order of Civil Penalty No. 6345 was sent to appellant assessing a penalty of $1,000 for allegedly violating PSAPCA Regulation, Section 9.11(a) and WAC 173-400-040(5) on

October 9, 1985. From this, appellant appealed to this Board on November 18, 1985, the appeal becoming our cause number PCHB No. 85-228.

XII

PSAPCA's inspector via his affidavit indicated that styrene has an odor threshold of 0.05 to 0.08 ppm which indicates that it is detectable in very small concentrations. The threshold limit value (TLV) of styrene is 50 ppm and refers to airborne concentrations under which it is believed that nearly all persons may be repeatedly exposed day after day without adverse effects (similar TLV as carbon monoxide). Styrene is known as a cause of eye and nasal irritation, violent itching of the eyes, lachrymation, and severe human eye injury. Its toxic effects are usually transient.

XIII

The appellant in these cases does not contend that the effects experienced on the dates in question did not occur. Neither did the appellant show that any of the complainants nor inspector possessed idiosyncratic sensibilities.

The appellant acknowledged that his manufacturing operation occasionally generates unpleasant odors. But, on the dates in question he attributed the smell to fiberglassing operations at a machine shop in the neighborhood. PSAPCA's inspector stated that his personal investigations on the dates in question convinced him that appellant's plant was the odor source.

The Board finds on the record before it, that the odors complained

of emanated from appellant's plant and were, in fact, offensive to persons of normal sensitivity; and that they did, in fact, unreasonably interfere with the enjoyment of good health, life, and property on each of the dates involved here.

XIV

Appellant testified that he has investigated various systems for filtering the Gel-Coat emissions but has not, since receipt of the violation notices and penalties at issue, ordered or installed anything to upgrade his system.

XV

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 these persons and these matters Chapters 43.21 and 70.94 RCW.

II

Under terms of Section 9.11(a) of PSAPCA Regulation, certain air emissions are prohibited. This section reads as follows:

> (a) It shall be unlawful for any person to cause or allow the emission of any air contaminant in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

This formulation parallels the definition of "air pollution" contained

in the State Clean Air Act at RCW 70.94.030(2). The language is similar to the traditional definition of a nuisance. See RCW 7.48.010.

III

On June 28, 1985, August 6, 1985, and October 9, 1985, odors emanating from appellant's manufacturing plant wafted onto a nearby residence and had such effects on human health and the enjoyment of life and property as to violate Section 9.11(a) of respondent's Regulation I.

IV

The notices and orders of civil of penalty at issue assert violations of both Section 9.11(a) of PSAPCA Regulation I and WAC 173-400-040(5). Since we here decide that Section 9.11(a) was violated, we need not consider WAC 173-400-040(5).

V

PSAPCA's Regulation I and the Washington State Clean Air Act provide for a maximum civil penalty of $1,000 per day in occurences of this kind. In consideration of all the facts and circumstances, we conclude the civil penalties levied in these three cases were not excessive.

VI

The purpose of the civil penalty is not primarily punitive, but rather to influence behavior. The need to promote compliance among members of the public generally supports the imposition of monetary sanctions. However, if by suspending all or a portion of penalty, compliance can be achieved, then the objectives of the law will have

been served. We conclude that the Order set forth below is appropriate.

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

Notice and Order of Civil Penalty Numbers 6314, 6329, and 6345 issued by PSAPCA are affirmed; provided however that $900 is suspended on condition that appellant satisfy PSAPCA by June 30, 1986, that it has in place an odor control system which meets the statutory formula of "all known available and reasonable means of emission control."

DONE this 30/th day of December, 1985.

POLLUTION CONTROL HEARINGS BOARD

12/30/85

LAWRENCE J. FAULK, Chairman

GAYLE ROTHROCK, Vice Chairman

WICK DUFFORD, Lawyer Member