BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

DENNIS SNYDER CONTRACTORS,	)	
Appellant,	)	**PCHB NO. 93-121**
v.	)	**FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**
SOUTHWEST AIR POLLUTION CONTROL AUTHORITY,	)	
Respondent.	)	

This matter was heard by the Pollution Control Hearings Board ("Board") on November 5, 1993, at the Board's office in Lacey, Washington. Robert V. Jensen, attorney member, presided Richard C Kelley, member, completed the tribunal.

Betty J. Koharski of Gene Barker and Associates, of Olympia, recorded the proceedings.

Dennis Snyder Contractors ("DSC") was represented by Dennis Snyder ("Snyder"). The Southwest Air Pollution Control Authority ("SWAPCA"), was represented by Robert D. Elliott, Executive Director.

The Board heard sworn testimony, reviewed exhibits and heard closing argument. Based thereon, the Board makes these:

FINDINGS OF FACT

I

Air quality inspector, Lance Jackson, on April 1, 1993, visited the site, the Columbia Industrial Park, in Vancouver, Washington He was responding to a complaint of dust emissions from a concrete crusher.

II

When he arrived at the property, he viewed dense, dark smoke, emitting from a burn barrel. No one was near the barrel when he arrived. A shovel operator on the site pointed the inspector to a truck owned by Snyder.

III

Snyder appeared and admitted starting the fire. He denied placing the blocks of rubber therein, however, which were causing the dark smoke. He stated that he had removed as many of the blocks as he could. He contends that the blocks were placed in the burn barrel by the subcontractor.

IV

DSC, an Oregon contractor, was the prime contractor for demolition of a building on the site. At the time of the incident, a subcontractor was pulling up a parking lot on the site. The property is owned by the City of Vancouver. The burn barrel had been on the property since the beginning of the job.

V

One of the directors of SWAPCA is Vancouver city councilman. He voted in favor of the burn ban, which was in effect at the time of the fire.

VI

The site is near the center of the burn ban area, about one and one-half miles east of downtown Vancouver. The fire occurred during the ban

VII

The inspector issued a Field Notice of Violation to Snyder on April 1, 1993. SWAPCA levied a $400 civil penalty against DSC for the fire. Snyder received the written penalty order on May 14, 1993.

VIII

DSC appealed the penalty to the Board on June 10, 1993.

IX

Any conclusion of law deemed a finding of fact is hereby adopted as such. From these findings of fact, the Board makes the following:

CONCLUSIONS OF LAW

I

The Board has jurisdiction over this appeal. RCW 43.21B.110(1)(a) and chapter 70 94 RCW.

II

SWAPCA bears the initial burden of proof. WAC 371-08-183

III

The Board takes judicial notice of the SWAPCA regulations. WAC 371-08-187(5).

IV

Section 400-035(2)(b)(v) prohibits the burning of rubber

V

RCW 70.94.040 makes it

> *[U]nlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder.*

VI

The Washington Clean Air Act is a strict liability statute Id. Moreover, the duty to comply cannot be delegated away by contract. Pearson Construction v PSAPCA, PCHB No. 88-186 (1989).

VII

A general contractor is liable for the infractions of his subcontractors. Jardeen Bros., Inc. v. PSAPCA, PCHB No. 139 (1973).

VIII

SWAPCA's regulation, section 400-035(4) provides as follows:

> *It shall be (prima facie) evidence that the person who owns or controls property on which an open fire, prohibited by this [sic] regulations, occurs has caused or allowed said open fire.*

IX

DSC failed to rebut the presumption that it controlled the fire. At the time the inspector came, Snyder was not near the fire, even though it was burning rubber, and emitting dense, dark smoke. He contends that the subcontractor placed the rubber in the fire. That may be so, but that fact does not absolve DSC for its responsibility in allowing the fire to continue burning prohibited materials. The burn barrel had been on the site since the beginning of the job. The prime contractor had the responsibility of instructing his subcontractors not to burn prohibited materials. He had the responsibility of becoming informed that the fire was in a burn ban area

X

SWAPCA assessed $400, which was the minimum amount that SWAPCA imposes for a first violation of the regulation proscribing the burning of certain materials. The law allows penalties up to $10,000 for any violation. We believe that the amount of the penalty was reasonable. DSC operates in a business which should be expected to know and obey the local air pollution control regulations.

XI

We are concerned, nevertheless, that there appears to have been no action taken by the City of Vancouver to abate the burning barrel prior to this violation. The evidence revealed that the City of Vancouver supports the burning ban It could have been assessed a civil penalty in this case, as the owner of the property. However, because it was not, we do not have any jurisdiction to make any ruling regarding it. We can only hope that the City has taken the proper steps to apprise its employees of the necessity of complying with the air pollution control laws, when working for and on behalf of the City.

XII

Any finding of fact deemed to be a conclusion of law is hereby adopted as such. From these conclusions of law, the Board enters the following:

ORDER

The $400 civil penalty issued by SWAPCA to DSC is affirmed.

DONE this 17th day of November 1993.

POLLUTION CONTROL HEARINGS BOARD

ROBERT V. JENSEN, Presiding Officer

RICHARD C KELLEY, Member

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