

ILLINOIS POLLUTION CONTROL BOARD  
March 14, 1974

HOLIDAY INN OF EDWARDSVILLE, ILLINOIS

v.

ENVIRONMENTAL PROTECTION AGENCY

PCB 73-394

MR. IRVIN C. SLATE, JR., LUEDERS, ROBERTSON & KONZEN, appeared  
on behalf of Holiday Inn of Edwardsville, Illinois  
MR. DALE TURNER, ASSISTANT ATTORNEY GENERAL, appeared on behalf  
of the Environmental Protection Agency

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

Holiday Inn of Edwardsville, Illinois (Holiday Inn) filed a Petition for Variance on September 19, 1973. The Pollution Control Board (Board) required Holiday Inn to submit an Amended Variance Petition by February 25, 1974 in an Order dated September 20, 1973. On October 26, 1973 Holiday Inn submitted an Amended Petition which sought a variance from Rule 404(f) of the Water Pollution Regulations (Water Regulations). The Environmental Protection Agency (Agency) filed a Recommendation to deny the variance on November 16, 1973. The hearing was held on February 11, 1974.

Holiday Inn owns and operates a motel and a restaurant facility located near Edwardsville, Illinois. Holiday Inn treats the waste generated in the motel and restaurant facility and the waste discharge from 16 nearby apartments which are operated by the Bluff Road Development Company of Clayton, Missouri into a waste stabilization lagoon. This 1.5 acre single-cell lagoon was installed pursuant to Sanitary Water Board Permit 1962-G-393. Unchlorinated lagoon overflow enters an unnamed intermittent drainage channel, tributary to the Cahokia Creek, which ultimately flows to the Mississippi River (R. 20). The area surrounding this unnamed drainage channel and the lagoon discharge point is uninhabited and removed from public access (R. 23). The record shows that horses are grazed on part of the area which borders this channel (R. 23). During dry weather periods all lagoon effluent percolates into the receiving drainage channel, thereby precluding its entry into the Cahokia Creek (R. 29). Holiday Inn purchased the motel in August, 1969 (R. 11).

The Joseph H. Vatterott Management Company (Vatterott) managed the motel facility for Holiday Inn from February, 1970 to January, 1973 (R. 11). Vatterott hired a consulting engineer in February, 1971, to design a pollution treatment plant for the facility (R. 12, 17). The preliminary engineering design was sent to the Agency on March 17, 1972 (R. 32). On March 28, 1972 the Agency approved the preliminary design computations (R. 32). The final plans were completed on February 5, 1973 (R. 33). On February 13, 1973, the engineer hired by Vatterott was informed that he would be designing a treatment plant for a possibly expanded Holiday Inn facility and would be working for Holiday Inn (R. 34). The engineer proceeded to re-design the treatment facility on a basis of 960 population equivalent (P.E.) and completed the new design in September, 1973 (R. 35). The Agency issued a construction permit on September 21, 1973 (R. 35). Bids for construction of the facility were received by November 13, 1973. The low bid for the construction of a treatment facility totalled \$263,734 which was approximately \$110,000 above the engineering estimate (R. 33). Holiday Inn and its engineer proceeded to redesign the treatment facility to continue using the existing lagoon as a polishing lagoon with the addition of a package treatment, submerged rock filter, and a chlorination facility (R. 40). On February 5, 1974 Holiday Inn received a construction permit to construct a interim chlorination facility (R. 40). Holiday Inn's engineer estimates that the interim chlorination facility will be constructed and in operation sometime in June, 1974 (R. 45). He further estimates that the additional equipment should be in operation by the end of 1974 (R. 47).

Holiday Inn seeks a variance from Rule 404(f) of the Water Regulations which require that dischargers whose dilution ratio is less than 1 shall not exceed a 4 mg/l BOD or a 5 mg/l suspended solid standard by December 31, 1973 except that those (such as Holiday Inn) which employ a third-stage treatment lagoon shall be exempt provided they comply with the conditions of Rule 404(c)(iii). This so-called lagoon exception would apply to Holiday Inn (R. 46 ). Holiday Inn has not sought a variance from Rule 405 of the Water Regulations which require that dischargers not exceed a 400 fecal coliform per 100 ml concentration by July 31, 1972. When asked why Holiday Inn had not previously constructed an interim chlorination facility, Holiday Inn's engineer answered, "For the reason that we knew that we were going to construct the additional facilities at the plant" (R. 42). He further testified that if the chlorination facility had been built in 1972 that Holiday Inn could have possibly still used the facility in its newly design treatment facility (R. 43) In addition, Holiday Inn has not sought a variance from Rule 404(a) of the Water Regulations which requires that all effluents containing de-oxygenating wastes shall not exceed 30 mg/l of BOD or 37 mg/l of suspended solids which became effective July 1, 1972.

Holiday Inn has failed to provide treatment which complied with Rule 404(a) and 405 (R. 55, 53, Agency Exhibit 1, 2, 3a, 4a, 5a, and 6a) Grab samples taken by the Agency show BOD values of 40 to 65 mg/l, suspended solids of 55 to 60 mg/l, and fecal coliform counts of 4,100 to 49,000 per 100 ml.

Holiday Inn, in seeking a variance from Rule 404(f) of the Water Regulations, seeks a shield from prosecution for violations of the Water Regulations. Holiday Inn has failed to present sufficient evidence to show that it is entitled to a variance. The Board rejects the argument that the absence of apparent public hazard entitles Petitioner to a variance (R. 72). Section 35 of the Environmental Protection Act (Act) states that variances may be granted upon presentation of adequate proof that "compliance with any rule...would impose an arbitrary or unreasonable hardship." Holiday Inn has failed to present evidence that would warrant grant of a variance in light of failure to comply with Rule 404(a) and 405 of the Water Regulations which became effective July, 1972. While a management decision to expand a facility might constitute sufficient grounds for the granting of a variance, in the present case this only explains six months of the delay in compliance with Rule 405.

This Opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

The Illinois Pollution Control Board hereby denies Holiday Inn's request for variance from Rule 404 (f).

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 14<sup>th</sup> day of March, 1974 by a vote of 5-0.

  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board