

ILLINOIS POLLUTION CONTROL BOARD
May 3, 1972

ABC GREAT STATES, INC.)
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 v.) # 72-39
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 ENVIRONMENTAL PROTECTION AGENCY)

Opinion and Order of the Board (by Mr. Currie):

Great States owns a building in Aurora containing "a theatre, a bowling and billiard academy and three stores." It alleges that it first learned on September 29, 1971, that "the toilet fixtures in the building were connected to a storm drain which discharges directly into the Fox River." Great States' petition, received February 3, 1972, requested a variance to allow continued discharges until February 29, when the situation allegedly would be corrected. An attached addendum extended the requested compliance date to March 15 on the basis of a letter received from the consulting engineers employed to prepare plans and specifications. In a letter received March 20 Great States requested a further extension to April 15, 1972, because the work had allegedly proved "quite complicated." The Agency thereafter filed a complaint (# 72-165) against Great States on the basis of the continuing discharge, and a hearing will be held in the near future on that complaint. The Agency's recommendation in the variance case, received May 3, argues that "petitioner was aware of this problem at least from September, 1971 through January, 1972, but no progress was made toward correction until after threat of prosecution." The Agency further charges that Great States has been "dilatatory" is "requesting additional time to complete corrective work which could have been completed months ago," and "intends to amend its petition and request additional time." The Agency asks that no extension be allowed beyond March 15.

Substantial factual issues are presented with respect to the question of unjustified delay. There comes a time when the discharge of raw sewage into a public stream designated for recreational purposes must stop. Great States alleges it has acted with diligence to surmount a difficult problem, justifying the delay from September to February because of the need to obtain permission to dig on adjoining land owned by others. We think proof at a

hearing is necessary to demonstrate, if such be the case, that Great States is entitled to permission to discharge raw sewage. On the facts before us we find it difficult to believe it can take upwards of six months to connect a single building to a nearby sewer if the party proceeds with all due speed. Great States has not proved it is entitled to a variance, for the record suggests, as EPA argues, that any hardship that Great States will suffer from enforcement of the law may be self-inflicted. The variance is accordingly at this point denied, without prejudice to such further proof as may be presented by way of defense to the pending enforcement case.

The denial of a variance is not in itself an order to shut down. We cannot, however, on the facts before us afford a shield against the pending prosecution. All the issues raised by the present petition may be raised in defense of the complaint.

The petition for variance is hereby denied.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order of the Board this 3 day of May, 1972, by a vote of 1-0.

