

ILLINOIS POLLUTION CONTROL BOARD
March 29, 1973

ENVIRONMENTAL PROTECTION AGENCY)
)
 v.) PCB 71-319
)
 HOLLAND ICE CREAM AND CUSTARD COMPANY)

THOMAS IMMEL, ASST. ATTORNEY GENERAL, APPEARED ON BEHALF OF
ENVIRONMENTAL PROTECTION AGENCY
ARTHUR **NORDHOFF** ATTORNEY, APPEARED ON BEHALF OF RESPONDENT

OPINION AND ORDER OF THE BOARD (BY MR. HENSS):

Respondent, Holland Ice Cream and Custard Company, processes dairy products near Taylorville, Illinois. On February 3, 1972 this Board found that Respondent had failed to submit monthly operational reports in violation of SWB-6, and had failed to remove color, odor or turbidity from it's effluent in violation of SWB-14, Rule 10 (b) (3), and had failed to operate it's treatment works at design efficiency. We ordered Respondent to submit a firm program for achieving compliance; and, subsequently, upon request of the company, granted a 60 day delay to April 30, 1972 for the submission of the program.

Within the time allowed, Respondent submitted its program providing for disposal of its effluent on 90 acres of agricultural land by spray irrigation. The Agency found this program to be satisfactory. In a supplementary opinion on June 6, 1972 the Board ordered Respondent to submit complete plans, with a permit application, to the Environmental Protection Agency by August 31, 1972. At the same time the company was to set forth a schedule for completion of the facilities. We ordered Respondent to post security in the amount of \$50,000 in thirty-five days.

All of the things we ordered Respondent to do have now been done. However, the Agency points out that the Respondent did not meet our deadlines in several instances. The final plans were filed by the August 31, 1972 deadline, however, the project completion schedule was not filed at that time. The Agency requested additional information and analysis, and on October 4, 1972 wrote a letter stating that Respondent had thirty days to submit the construction schedule. The construction schedule was filed twenty-three days later. Correspondence and meetings between Agency and company during the fall of 1972 resulted in the filing of various additional reports and revisions of the plan and completion schedule. The Agency apparently regards November 6, 1972 as the date when the plans and construction schedule were complete and, therefore, accepts this as the date of filing.

Even after that date, however, the parties corresponded regarding new problems and new information. This new information apparently deals with the Agency's discovery that the 90 acres to be used for the spray irrigation are subject to flooding or possible drainage directly to the river. No reason is given why the parties failed to

detect this problem earlier. On December 15, 1972 the Agency requested that we grant Respondent an additional three weeks to propose changes to alleviate the potential flood and drainage problem.

Respondent states that its delay in filing the construction schedule was the result of the Agency failure to approve its initial plan--claiming that it could not predict construction dates without such Agency action. We are not impressed by this argument. Nor are we convinced that the \$50,000 bond could not have been filed earlier. Respondent apparently had problems in purchasing such surety and eventually placed the entire \$50,000 in escrow with a bank, whereupon the bank agreed to serve as surety. No excuse is offered for the failure to post the \$50,000 at an earlier date.

We believe that the company's failure to meet the deadlines is not entirely excusable. Nevertheless Respondent did take the necessary action to file those forms, reports and documents, which eventually resulted in a completed application and a final plan. Respondent's action was not always timely, but in view of the fact that work was being conducted on the project continuously and Respondent is now in compliance with our order, the penalty will be nominal. For failure to meet the deadlines, we impose a monetary penalty of \$100. We grant the request for an additional three weeks for Respondent to resolve the problems discovered in the late inspection by the Agency. We also establish a construction schedule by this order but urge that Respondent make every reasonable effort to complete construction and commence full operation at an earlier date than that which we order.

ORDER

IT IS THE ORDER of the Pollution Control Board:

1. Respondent shall pay to the State of Illinois by May 3, 1973 the sum of \$100 as a penalty for the violations found in this proceeding. Penalty payment by certified check or money order payable to the State of Illinois shall be made to: Fiscal Services Division, Illinois Environmental Protection Agency, 2200 Churchill Drive, Springfield, Illinois 62706.
2. Respondent and the Environmental Protection Agency shall report to this Board by April 12, 1973 the complete details of the final plan to bring Respondent into compliance, and the Agency shall as soon as possible consider the issuance of the necessary permit to Respondent.
3. The following time table shall be followed after issuance of the necessary permit:
 - a. Date by which contracts
are to be awarded.....30 days after Agency
permit for installa-
tion of the system is
issued.

- b. Start of construction.....15 days after contracts are awarded.
 - c. Completion of construction...4 months after construction is started.
 - d. Start of full operation.....1 week after construction is completed.
4. All provisions of prior Board orders not inconsistent with this opinion and order shall remain in full force and effect.

I, Christan Moffett, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion this 29th day of March, 1973, by a vote of 4-0.

Christan L. Moffett

