

ILLINOIS POLLUTION CONTROL BOARD
August 29, 1972

ENVIRONMENTAL PROTECTION AGENCY)
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GREAT STATES THEATRES, INC. et al.)

Mr. Herman R. Tavins, Assistant Attorney General, for the Environmental Protection Agency

Mr. Arthur A. Goldberg, for Great States Theatres, Inc. et al.

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

This case first came to our attention when Great States filed a variance petition asking to be allowed to continue operating a building in Aurora while working to eliminate a direct connection between its toilet fixtures and the Fox River. The 90-day period in which we must decide variance cases having nearly expired, we denied the petition without prejudice because it did not contain allegations sufficient to justify the time requested to correct the problem, leaving the issues raised to be litigated by way of defense to a pending enforcement complaint on which hearings were to be held. ABC Great States, Inc. v. EPA, #72-39 (May 3, 1972). The enforcement hearing has since been held, and that case is ready for decision.

The parties have stipulated to the facts. Acting upon a citizen complaint, the Agency called the problem to the attention of Great States in August of 1971. The company had purchased the property some time after it was built and had no knowledge of the discharge until notified by the Agency. Great States then spent some \$26,000 in tearing up the adjacent property first to trace the sewers, of which no map was available, and then to construct facilities including a lift station to introduce the waste into a municipal sewer where it belonged. Because Great States no longer owned the property on which this work was done, it was necessary to acquire easements; this business was complicated by the fact that the property was held in trust.

The discharge has now been eliminated; the remaining question for us is whether or not to impose a money penalty. There is no doubt the discharge violated applicable effluent standards. But we think no purpose would be served by

inflicting penalties here. Great States had no reason to suspect such an illegal discharge, and we are not prepared to hold that everyone who buys property must look for bizarre drainage situations under pain of money penalties. While we noted in passing on the variance petition that the time in question seemed somewhat long for connecting one building to a sewer, the facts as brought out in the stipulation convince us Great States acted with due diligence to correct a rather refractory problem once it was called to the company's notice. The case is therefore declared closed upon a finding of violation, and no affirmative order is necessary.

This case suggests the disturbing possibility that other older buildings may be discharging directly to waterways, and we urge the Agency to investigate.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion & Order of the Board this 29th day of August, 1972, by a vote of 5-0.

Christan L. Moffett