ILLINOIS POLLUTION CONTROL BOARD
February 3, 1972

ENVIRONMENTAL PROTECTION AGENCY	)	
	)	
	)	
v.	)	# PCB 71-319
	)	
	)	
HOLLAND ICE CREAM & CUSTARD CO.	)	

Larry Eaton, Attorney for the Environmental Protection Agency
Max E. Reynolds, Appearing for Holland Ice Cream & Custard Co.

OPINION & ORDER OF THE BOARD (by Mr. Currie):

The respondent processed dairy products near Taylorville (R. 9-10). It was charged by the Agency with various violations concerning its liquid wastes. We find certain charges proved and others not, as indicated below.

Milky wastes from the processing plant are fed to a holding tank that equalizes rates of flow and thence to aeration and settling tanks in which some oxidation and settling take place. The effluent passes over a weir into a private sewer leading ultimately to the South Fork of the Sangamon River (R. 10-11, 18, 21-23).

Paragraphs (a) and (b) of the complaint allege that this effluent caused pollution of the stream in violation of section 12(a) of the Act and caused violations of the water quality standards of Rules and Regulations SWB-14 with respect to nuisance conditions such as color, odor, and objectionable sludge deposits. But no evidence was introduced as to the condition of the stream that was alleged to have been polluted, and such proof is necessary on these charges. See EPA v. John P. LaForge Co, #70-39 (April 28, 1971). Paragraphs (a) and (b) fail for complete want of proof.

The evidence shows effluent concentrations of both oxygen demand (ODI) and suspended solids on one occasion (March 29, 1971) of no less than 1400 mg/l (R. 48), which is seven times the strength of raw sewage and grossly in excess of any effluent standard. But no violation of the standards for BOD or suspended solids was alleged, and we cannot therefore find such a violation.

Paragraph (c) charges a failure to obtain certification of treatment plant operators (SWB-2) and to submit monthly operational reports (SWB-6). No evidence was introduced as to the certification count, so we cannot find it proved. The company's answer stated that it had applied for operator certification in March 1971 but had received no reply. It may be implicit that the operator was not previously certified, but we think it incumbent on the Agency to offer better proof than such an inference. It should be sufficient to warn the company that it may risk serious penalties in the future if it does not have a certified operator. The failure to file any reports over a considerable period was both proved (R. 40) and admitted (letter of Nov. 10), and we find a violation of SWB-6. The company's general manager has ordered that reports be submitted from now on.

Paragraphs (d) and (e) charge a failure to remove color, odor, or turbidity to below obvious levels (SWB-14, Rule 10(b)(3)) and to operate its treatment works up to design efficiency (id., Rule 11(c)). Both these allegations were proved. An Agency inspector testified that when he visited the plant on March 29, 1971 the overflow notches in the final weir were partially clogged, so that the velocity of the effluent through the remaining notches was increased and large particles of waste were carried into the sewer that leads to the river. The effluent, he testified, was turbid (R. 34-38). This testimony was not refuted. The company conceded that its equipment was not adequate to meet present standards (R. 7, 69; letter of Nov. 10); testified that it had diverted stormwater away from the treatment plant to stop overloads (R. 17, 23-25); and committed itself to bringing itself into compliance (R. 8; letter of Nov. 10). The failure to comply earlier was attributed to lack of money, to the preoccupation of the general manager with other matters such as putting an end to large business losses, and to the fact that "attention was not called to... the whole water pollution program until, let's say, 1971" (R. 75-76). None of these justifies the violations. The company is required to find out about its water pollution problems, and admits to being "very aware" of them now for about a year (R. 68).

Thus we find the company has failed to file reports required by SWB-6, to meet the color and turbidity effluent standards of SWB-14, and to operate at design efficiency under SWB-14.

The record is strangely silent as to what we should do about it. The complaint asks for money penalties up to the maximum authorized and for an order to cease violations. The Agency's closing argument simply asked us to get the company

into compliance as quickly and completely as is possible (R. 87-88). The company in a letter that was deemed an answer to the complaint (R. 5) in effect sought a variance to permit it to stay in business while correcting its problems.

The evidence in support of this variance request is that the company has employed a consulting firm that was to begin December 2, 1971 to analyze the effluent and prescribe a solution (R. 69-71). The company's preference, shared by the City of Taylorville, is to connect to the municipal sewers, but the local Sanitary District refuses to take additional loads for fear of an overload, and apparently this solution depends upon the construction of an additional municipal plant (R. 70, 79-86; letter of Nov. 10), which we point out, might conflict with federal and state policies against the proliferation of small plants. If this idea falls through, the company is prepared to build its own treatment plant to meet the applicable standards (R. 72).

In the absence of a firm program for compliance, we cannot enter a definitive order, either a variance, see York Center v. EPA, # 72-7 (Jan. 17, 1972), or an order to cease and desist, see EPA v. Chicago Housing Authority, #71-320 (Dec. 9, 1971). We shall order the company, in accord with its own promises, to submit to the Agency and to the Board by March 1, 1972 a firm program for achieving compliance in the shortest practicable time. Upon receipt of that program, and of the Agency's response within 20 days thereafter, we shall determine what additional order to enter, including the question of money penalties, and the possibility of an immediate cease-and-desist order in the event of an unsatisfactory program.

ORDER

1. Holland Ice Cream & Custard Co. (Holland) shall operate and maintain its wastewater treatment plant so as to achieve the best treatment consistent with design limitations.

2. Holland shall submit monthly operational reports to the Agency in accord with applicable regulations.

3. Holland shall submit to the Board and to the Agency, on or before March 1, 1972, a firm program for achieving compliance with all applicable requirements respecting its discharge of liquid wastes. Such program shall provide for compliance in the shortest practicable time.

4. The Agency shall file with the Board and serve upon Holland, within 20 days after receipt of the program specified in paragraph 3 of this order, a response containing its recommendations respecting the program and respecting a further order by the Board.

5. Upon receipt or default of the report and response required by paragraphs 3 and 4 of this order, the Board shall take such further action and enter such further order as may be appropriate, and jurisdiction is hereby retained for that purpose.

6. Holland's letter of November 10, 1971, construed as a petition for variance, is hereby denied for want of a firm compliance program.

I, Christan Moffett, Clerk of the Pollution Control Board, certify that the Board adopted the above Opinion and Order of the Board this 3rd day of February, 1972 by vote of 5 0.

Christan Moffett