ILLINOIS POLLUTION CONTROL BOARD
August 13, 1971

CHAMBERS, BERING, QUINLAN CO.	)	
	)	
v.	)	PCB71-102
	)	
ENVIRONMENTAL PROTECTION AGENCY	)	

ROBERT S. MONROE, ATTORNEY FOR CHAMBERS, BERING, QUINLAN CO.
JOHN STANLEY MC CREERY, ATTORNEY FOR ENVIRONMENTAL PROTECTION AGENCY

OPINION OF THE BOARD (BY MR. KISSEL):

Chambers, Bering, Quinlan Company (CBQ) operate a gray iron foundry, drop forging, stamping and machining facilities at 700 North Jasper Street, Decatur, Illinois. CBQ filed a petition for variance with the Board on May 11, 1971, asking the Board to allow CBQ the right to operate two old cupolas, if necessary, when repairs are required on CBQ's new electric furnace. The Environmental Protection Agency (the "Agency") recommends that the variance be denied on the ground that CBQ has not shown a "substantial need" for granting of the variance. A hearing on the petition was held in Decatur, Illinois on June 24, 1971 before Sheldon J. Plager, Hearing Officer.

A short discussion of the history of CBQ and air pollution control devices is necessary. For many years, CBQ operated two cupolas with emissions of fly ash and other air contaminants. As required by law, CBQ filed a Letter of Intent on June 30, 1967, which included a calculation of the emissions from and process weight of the plant. It was obvious that some control devices would be necessary if CBQ was to comply with the then promulgated regulations governing the control of air pollution. CBQ filed and had approved an Air Contaminant Emission Reduction Program (ACERP) on June 30, 1968, just one year after the Letter of Intent had been filed. This ACERP called for the installation of an electric induction furnace which would totally replace the two operating cupolas by April 15, 1971. Actually, CBQ ordered the furnace from Brown Boveri, an international company, in February of 1968. The furnace was received in July of 1970 and the rather large transformer (ordered and received from Westinghouse Electric Company) was received in June of 1970.

Since receipt of the furnace and transformer, CBQ has experienced many difficulties. The first was that the transformer was severely jarred in shipment, and while it was not damaged from that, it was found while examining it, that the tap changer did not work satisfactorily. It took almost five weeks to find that it was the tap changer which was causing the problem. After the transformer was fixed, the furnace was installed and first operated on December 21 and 22, 1970. The furnace was operated for three days, then shut down to make adjustments until the latter part of January, 1971. Problems were occurring with the furnace; it was experiencing electrical surges, the source of which could not be determined by the Brown Boveri engineers. Since that time, the furnace has operated rather steadily - all of March except for three days, all of Arpil except for three days, and all of June, but for about three days - although these have been frustrating, little breakdowns. By the middle of February the two cupolas were replaced by the electric furnace as the principal source of heat in their foundry operation. In other words, CBQ complied, and completed their ACERP by the scheduled date of April 15, 1971. CBQ now believes that during the next six months (until November 10, 1971) there may be times when the electric induction furnace may not work, and CBQ would like to operate the two cupolas when and if such a breakdown in the electric induction furnace occurs. It cites the fact that if this is not allowed, it will be a hardship for its 160 employees. (Actually, only 140 employees would be affected by a short layoff-- the other 20 employees are supervisory and clerical, and are salaried; so they would not be affected by the short layoff, if one occurs).

The sole question in this case is whether to grant the variance to CBQ to allow them to operate the two cupolas during the next six months if and when the new electric induction furnace doesn't work. In order to grant a variance, the petition in any case must prove that compliance with the law and/or regulations would impose an "arbitrary or unreasonable hardship". We have said on many, many occasions that in determining whether such a hardship is "arbitrary or unreasonable", we will employ a balancing process, that is, the benefit to the petitioner and burden and benefit to the community in granting the variance versus the detriment to the petitioner and benefit to the community in denying the variance. We have also said that the scales are weighed heavily in favor of the community interest. In this case, one further principle is applicable, that is, we have only granted variances, except in extremely unusual cases such as the open burning of explosive waste (See Olin Corp. v. EPA, dated February 22, 1971, PCB70-11) where the petitioner has a program for compliance with the law or the regulations promulgated thereunder.

Such is not the case here. As the Agency puts it, CBQ is seeking an "insurance" policy against the breakdown of the electric induction furnace. We do not think that this should be allowed because the petitioner has had ample time (since 1968) to complete its program. All the bugs should be out of the system if due diligence had been employed. The surrounding community has suffered long enough, and they have a right, after three years, to expect that CBQ will obey the law. Yes, there may be some hardship on some employees, but if we are to have an effective pollution control program in this state, we must set adequate, achievable deadlines and stick to them. We commend CBQ in meeting its ACERP. They have shown that they are a conscientious company which is trying to solve the severe air pollution problem of this state. They have met the date and they should abide by it.

The petition for variance filed by CBQ is hereby denied.

This opinion of the Board constitutes its findings of fact and conclusions of law.

I, Regina E. Ryan, Clerk of the Board, certify that the Board has approved the above Opinion and Order this 13th day of August, 1971.

Regina E. Ryan