## ILLINOIS POLLUTION CONTROL BOARD May 30, 1972

ENVIRONMENTAL PROTECTION AGENCY ) v. ) STATE LINE FOUNDRIES, INC. )

ALVIN LIEBLING, Assistant Attorney General, appeared for Environmental Protection Agency

EUGENE BRASSFIELD appeared for State Line Foundries, Inc.

OPINION OF THE BOARD (by Mr. Kissel):

On March 13, 1972, State Line Foundries, Inc. ("State Line") filed a Motion with the Board to modify its previous Order of August 5, 1971 with regard to the penalty. That Order provided in part as follows:

"State Line shall pay a penalty in the amount of \$7,500 for violation of the Act and the Rules and Regulations promulgated thereunder, as described in the document hereinbefore referred to, and in this opinion."

State Line's Motion contends that the \$7,500 penalty will impose a severe and extreme hardship upon it. State Line indicates that it has completed the installation of the electric induction furnace provided for under the variance. The president of State Line has submitted an affidavit showing that the Company expended \$113,000 to install the induction furnace and the accompanying facilities. To meet its current obligations and pay for the pollution abatement installation, State Line is presently attempting to induce its stockholders to personally guarantee the Company's notes. An audit completed prior to the installation of the new furnace showed that the liabilities of State Line exceeded its assets by over \$25,000. Net profits for 1971 were approximately \$7,900. State Line also directs the Board's attention to the generally poor current economic situation of most foundries. State Line asks that the Board suspend the penalty, reduce it to 10 to 20% of State Line's 1971 net profits, or assess State Line an amount commensurate with State Line's ability to pay.

The Board's opinion of August 1971 indicated that the monetary penalty was being imposed due to State Line's "inaction . . . in failing to follow the basic fundamentals of State law on air pollution." State Line had never sought a permit from the Agency; and, since May, 1968, its operations had emitted substantially more particulates than allowed under State regulation. In regard to the amount of the penalty, the Board expressly stated, "the penalty would be much greater in amount if State Line were not so heavily committed financially now." Despite the passage of time and State Line's good faith efforts to comply with its variance and with the existing Illinois regulations, the reasons for the imposition of the \$7,500 penalty still remain. Further, the original opinion in this case was filed in August, 1971; this Motion was not made until March 1972. After this seven-month hiatus, we are not inclined to re-open the case for a reconsideration of the amount of the penalty imposed. If State Line had sought to mitigate the amount of the penalty, it should have applied within a reasonable amount of time after the entry of the criginal order, not seven months later. We commend State Line for the completion of its pollution abatement program but do not find cause at this late date to re-open the case for any further discussion of the penalty.

The Motion is hereby denied.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Pollution Control Board, certify that the above Opinion and Order was adopted on this  $30^{-2}$  day of Man, 1972, by a vote of 4-1.

Christen A. M. affett