

During this interval the furnace would be operated every other day and the cupola would be used only in the event of a major breakdown (R.23, 25). At the end of the nine-month period the cupola would be made inoperable and the furnace used on an every day basis (R. 14, 38).

The Agency initially recommended that Buckler's petition be granted for a period not to exceed 30 days. Mr. Buckler pointed out that the Company melts iron only 10 or 11 days in a one-month period (R. 25). The period recommended by the Agency would thus give the Company only ten working days in which to debug the new equipment and train operating personnel. There is evidence that such procedures may take from six months to a year (Pet. Ex. 5). Mr. Buckler indicated that he and his personnel were inexperienced in these matters, making the adjustment particularly difficult (R. 16). The maximum number of operating days under the Company's proposed plan would be 99, although Mr. Buckler indicated that the cupola would not be employed on these days unless a major breakdown were to occur (R. 25). At the close of the hearing the Agency modified its original position, recommending that a variance be granted for a period not to exceed nine months (R. 80).

The Environmental Protection Act requires that for a variance to be granted, it must be shown that an arbitrary and unreasonable hardship would result should the petition be denied. In the instant case we find that Buckler has met its burden of proof. The record indicates that the debugging process and training procedures will require a considerable amount of time. Were we to deny the petition or grant a lesser period of time than that requested, petitioner's entire operation would be placed in jeopardy. Denial of permission to use the cupola on a standby basis could seriously hamper petitioner's efforts to fill orders on time. Mr. Buckler indicated that this might cause the Company to go out of business (R. 15). The amount of particulate matter released if Buckler is allowed to operate the cupola is uncertain. However, the cupola is to be used strictly on a standby basis and indeed may never be used. Three families interviewed by the Agency had no complaints about the emissions from the foundry. In our judgment the hardship on petitioner would be unreasonable and is not offset by the potential damage to the environment. In a similar case (Chambers, Bering, Quinlan Co. v. EPA, PCB 71-102, August 13, 1971) we denied a variance on the grounds that: 1) petitioner had already had ample time for debugging and 2) petitioner requested permission to use cupolas indefinitely, albeit on a standby basis. Neither of these facts is true in the instant case. Buckler's electric furnace was not ready for operation until September of 1971, and a variance is requested only until February 7, 1972. We will, therefore, grant Buckler a variance for the period of time requested.

Counsel for the Agency pointed out that the conversion project has been going on since 1968 and that since then Buckler has failed to meet a number of deadlines for completing it (R. 80). However, based on the facts elicited at the hearing he recommended that no substantial penalty be imposed. It is true that the Company has failed to meet several projected completion dates in the past. Nevertheless, we are persuaded that petitioner has been confronted with real difficulties in converting from cupola to electric arc furnace and has made a good faith effort to abate pollution. We thus impose no monetary penalty.

In granting a variance until February 7, 1972, we will take steps to ensure that the cupola is not used excessively. Petitioner has approximately four months remaining in which to achieve full compliance with the air pollution regulations. We will limit the number of days within this period during which Buckler may operate the cupola to 20. This should be sufficient time to allow for major repairs to the furnace while ensuring continued operation of the plant. We will require petitioner to make the cupola inoperable at the end of the variance period.

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

ORDER

1. Buckler Foundry Company, Inc., may use its cupola to melt iron in the event of major breakdown of the electric arc furnace, such use to be limited to 20 days during the period from the date of this order until February 7, 1972.
2. Buckler Foundry Company, Inc., shall cease the use of the cupola on February 7, 1972, and at that time shall take whatever steps are necessary to make the cupola inoperable.
3. By March 1, 1972, Buckler Foundry Company, Inc., shall submit to the Environmental Protection Agency and to the Pollution Control Board a written report indicating the dates subsequent to the filing of this order on which the cupola was used. The report is also to indicate what steps were taken subsequent to February 7, 1972, to make the cupola inoperable.
4. By February 7, 1972, Buckler Foundry Company, Inc., shall be in full compliance with the Rules and Regulations Governing the Control of Air Pollution.

I concur

I dissent

David P. Currie
James H. C. C. C.
James D. D. D.
Aut. K. K.

I, Regina E. Ryan, Clerk of the Pollution Control Board, hereby certify that the Board adopted the above opinion and order this 30 day of September, 1971.

Regina E. Ryan