

ILLINOIS POLLUTION CONTROL BOARD  
December 4, 1997

WHITE CAP, INC.,	)	
	)	
Petitioner,	)	
	)	PCB 98-24
v.	)	(Variance - Air)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

TRACEY L. MIHELIC and RICHARD M. SAINES, GARDNER, CARTON & DOUGLAS,  
APPEARED ON BEHALF OF PETITIONER;

CHRISTINA L. ARCHER APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board on a petition for extension of variance filed August 1, 1997, by White Cap, Inc. (White Cap). The petition requests an extension of variance from certain testing requirements of the Board's air emissions regulations.<sup>1</sup> 35 Ill. Adm. Code 218.105(b), 218.205(c)(2), 218.207, 218.211. White Cap originally requested the Board to extend the variance granted in PCB 96-191 until December 5, 1998, and allow White Cap until such time to conduct capture efficiency testing on its coating lines. By motion on September 12, 1997, White Cap seeks to change the termination date of the variance from December 5, 1998, to September 7, 1998, or the date by which White Cap obtains a final, effective CAAPP permit, whichever is earlier.

The Illinois Environmental Protection Agency (Agency) filed its recommendation on September 26, 1997. The Agency agrees that an arbitrary or unreasonable hardship would continue to result if the requested relief is denied and therefore recommends a grant of

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<sup>1</sup> The Board previously granted White Cap a variance from the capture efficiency test methods in Continental White Cap, Inc. v. IEPA (April 22, 1993), PCB 92-155. An extension of this variance was granted in White Cap, Inc. v. IEPA (August 11, 1994), PCB 94-93; the extension expired on April 22, 1996. On November 7, 1996, the Board extended White Cap's variance until White Cap obtains a federally enforceable state operating permit pursuant to the Clean Air Act Permit Program (CAAPP), or 90 days after Illinois revises its State Implementation Plan to include alternative test methods for capture efficiency, but in any case, no later than January 12, 1998. White Cap, Inc. v. IEPA (November 7, 1996), PCB 96-191.

variance. (Rec. at 7.)<sup>2</sup> However, pursuant to petitioner's motion to change effective date of variance, the Agency recommends that the variance expire on September 7, 1998, or the date by which White Cap obtains its CAAPP permit, whichever occurs first. Rec. at 7.

In its petition White Cap requested a hearing in this matter. A hearing was held October 1, 1997, in Chicago, Illinois before Chief Hearing Officer Michael L. Wallace. No members of the public attended. At hearing, the parties waived filing post-hearing briefs. Hearing Report.

For the reasons set forth below, the Board finds that to require immediate compliance with capture efficiency test method regulations would continue to impose an arbitrary or unreasonable hardship on White Cap. The Board further finds that White Cap has demonstrated satisfactory progress toward achieving compliance during the term of its prior variance. The Board therefore grants White Cap an extension of its prior variance, subject to certain conditions set forth in the attached order.

The Board's responsibility in this matter arises from the Illinois Environmental Protection Act (Act). 415 ILCS 5/1 et seq. (1996). The Board is charged therein with the responsibility of granting variance from Board regulations whenever it is found that immediate compliance with the regulations would impose an arbitrary or unreasonable hardship upon the petitioner. 415 ILCS 5/35(a) (1996). A request for extension of variance may be extended from year to year upon a showing of satisfactory progress during the prior variance. 415 ILCS 5/36(b) (1996). The Agency is required to appear at hearings on variance petitions (415 ILCS 5/4(f) (1996)), and is charged, among other things, with the responsibility of investigating each variance petition and making a recommendation to the Board as to the disposition of the petition. 415 ILCS 5/37(a) (1996).

### BACKGROUND

White Cap employs approximately 500 people at its manufacturing facility located at 1819 North Major Avenue in Chicago, Cook County, Illinois. Tr.96-191 at 49. White Cap is the largest U.S. manufacturer of metal closures or caps for baby food, pickles, preserves, juices and iced teas. Tr.96-191 at 7, 46. Multiple layers of coatings are applied to sheet metal. This process results in Volatile Organic Material (VOM) emissions and thereby subjects White Cap to the Board's VOM emissions regulations set forth at 35 Ill. Adm. Code Part 218. Tr.96-191 at 47, Rec. at 2. Strips of sheet metal are then fed into a dye and shells are punched out, creating the caps. Tr.96-191 at 48-49.

Originally, White Cap operated 12 process lines that consisted of four printing lines and eight coating lines. Seven catalytic oxidizers controlled VOM emissions from these lines. Tr.96-191 at 26. In November 1995, White Cap began a modernization program on its

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<sup>2</sup> The petition for variance will be cited as (Pet. at \_\_\_\_), the Agency Recommendation will be cited as (Rec. at \_\_\_\_), the hearing transcript will be cited as (Tr. at \_\_\_\_), and the hearing transcript from PCB 96-191 will be cited as (Tr.96-191 at \_\_\_\_).

lithographic operations at its Chicago facility to replace all existing lines with permanently totally enclosed lines. Tr.96-191 at 26-27. In August 1995, White Cap replaced four of its twelve coating lines with two new permanently enclosed lines, thereby allowing White Cap to assume 100% capture efficiency. Rec. at 5. White Cap also installed an ABB Preheater Regenerative Thermal Oxidizer (Oxidizer) to control emission from the two new lines as well as two existing lines. Rec. at 5. The installation of the new lines and the Oxidizer have reduced emissions from the facility. The two new lines are permanently enclosed, and no need exists to conduct capture efficiency tests on these two lines. White Cap conducted a destruction efficiency test on the Oxidizer in July 1996 which resulted in 98% efficiency. Rec. at 6.

White Cap is further committed to its modernization program. White Cap intends to remove two non-enclosed lines in August of 1997. These lines should be replaced with one permanently enclosed line by the end of 1997. Pet. at 10. White Cap intends to replace two additional non-enclosed lines with one permanently enclosed line by May of 1998. Pet. at 10. By 1999, White Cap intends to have replaced the remaining four non-enclosed lines with two final permanently enclosed lines. (Pet. at 11.) At this time, White Cap has received a construction permit to replace one additional line and has submitted construction permit applications to the Agency to replace the remaining lines. Rec. at 6.

### REGULATORY FRAMEWORK

In determining whether any variance is to be granted, the Act requires the Board to ascertain whether a petitioner has presented adequate proof that immediate compliance with the Board regulations at issue would impose an arbitrary or unreasonable hardship. 415 ILCS 5/35(a) (1996). Furthermore, the burden is upon petitioner to show that its claimed hardship outweighs the public interest in attaining compliance with regulations designed to protect the public. Willowbrook Motel v. PCB, 135 Ill. App. 3d 343, 481 N.E.2d 1032 (1st Dist. 1977). Only upon such a showing can the claimed hardship rise to the level of arbitrary or unreasonable hardship. In addition, the Board may grant a request for extension of variance on a year-to-year basis, but only upon a showing of substantial progress toward achieving compliance. 415 ILCS 36(b) (1996).

A variance, by its very nature, is a temporary reprieve from compliance with the Board's regulations, and compliance is to be pursued regardless of the hardship which eventual compliance presents an individual petitioner. Monsanto Co. v. PCB, 67 Ill.2d 276, 367 N.E.2d 684 (1977). Accordingly, as a condition to the granting of variance, a petitioner is required to commit to a plan which is reasonably designed to achieve compliance within the term of the variance, unless certain special circumstances exist.

The instant variance request concerns VOM emissions test methods set forth in Section 218.105 and relating to Section 218.108(b) of the Board's regulations. These sections read in part:

Section 218.105 Test Methods and Procedures

(c) Capture System Efficiency Test Protocols

(2) Specific Requirements

The capture efficiency of an emission unit shall be measured using one of the four protocols given below. Any error margin associated with a test protocol may not be incorporated into the results of a capture efficiency test. If these techniques are not suitable for a particular process, then an alternative capture efficiency protocol may be used, provided that the alternative protocol is approved by the Agency and approved by the USEPA [United States Environmental Protection Agency] as a SIP [State Implementation Plan] revision.

Section 218.108 Exemptions, Variations, and Alternative Means of Control or Compliance Determination

Notwithstanding the provisions of any other Sections of this Part:

- (b) Any equivalent alternative control plans, equivalent device, or other equivalent alternative practice authorized by the Agency where this Part provides for such alternative or equivalent practice or equivalent variations or alterations to test methods approved by the Agency shall be effective only when included in a federally enforceable permit or approved as a SIP revision. 35 Ill. Adm. Code 218.105(c)(2), 218.108(b)

### COMPLIANCE PLAN

As previously stated, White Cap is in the process of replacing its 12 coating lines with new lines which will be permanently closed and which White Cap believes will achieve 100% capture efficiency. White Cap has replaced four lines in the last year, and installed an ABB Preheater Regenerative Thermal Oxidizer which controls emissions from two new lines, as well as two existing lines. Rec. at 5. White Cap expects to complete its modernization program by 1999. Pet at 11.

White Cap asserts that, although it has had variance relief since 1993, it is only now that White Cap is asking for an extension of time by which it must actually conduct the capture efficiency tests. White Cap explains that the previous variance extensions were sought because either the USEPA had not developed the necessary test methods, or the Agency had not yet

provided for the use of said test methods in a federally enforceable state operating permit or in Illinois' SIP.

In PCB 96-191, the Board extended White Cap's variance until the Agency issued White Cap a CAAPP permit allowing White Cap to conduct capture efficiency tests using the alternative test methods or until 90 days following a SIP revision incorporating the alternative capture efficiency test methods, but no later than January 12, 1998. The January 12, 1998, date was established because this was the statutory deadline by which the Agency was required to issue White Cap a CAAPP permit. White Cap asserts that the Agency has now determined it is not practical to issue White Cap a CAAPP permit by January 12, 1998, and that the Agency intends to delay the issuance of CAAPP permits in the Chicago nonattainment area until the Agency completes review of the Emission Reduction Market System (ERMS) applications<sup>3</sup>. White Cap states that the CAAPP permit is necessary before it can use alternative test methods to achieve compliance with Board regulations. White Cap states it is requesting the variance to terminate on September 7, 1998, as the latest date by which the Agency believes White Cap will obtain a final, effective CAAPP permit, and so that White Cap will not be required to spend money to test coating lines it intends to replace with permanently enclosed lines.

The Agency asserts that it could, in fact, issue a CAAPP permit by January 12, 1998, but that to do so would be impractical because of the ERMS considerations already noted. The Agency recommends that White Cap amend its CAAPP permit application to include the alternative capture efficiency test methods White Cap intends to implement. The Agency asks that if the Board grants the variance in this matter, the amendment of the CAAPP permit application occur no later than 30 days after the order granting the variance becomes final. Although White Cap is willing to amend its CAAPP permit to include alternative capture efficiency test methods, it requests until January 31, 1998, to submit the amended permit application. White Cap asserts that this would alleviate the considerations involving the ERMS application as well as allowing White Cap to make one revision to its CAAPP permit application that incorporates all necessary changes arising from the modernization program.

#### ARBITRARY OR UNREASONABLE HARDSHIP

White Cap states that in PCB 96-191, the Board found an arbitrary or unreasonable hardship would result if no extension of the previous variance was granted. White Cap maintains that the situation has not changed. White Cap further states that although it applied for a CAAPP permit, no such permit has been issued, and it is not practical for the Agency to issue one before the variance expires. White Cap states that until such time that a CAAPP permit is issued, there is no technical or economically reasonable method for White Cap to comply with the regulations in question. Pursuant to a December 5, 1995, consent agreement with the USEPA, White Cap is required to achieve compliance with the instant regulations by

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<sup>3</sup> The Board has recently adopted the ERMS rules substantially as proposed by the Agency. See In the Matter of: Emissions Reduction Market System Adoption of 35 Ill. Adm. Code 205 November 20, 1997, R97-13.

December 5, 1998<sup>4</sup>. White Cap states that to require it to conduct testing before this date would require White Cap to test lines which will ultimately be replaced thus costing White Cap an inordinate amount of money with no corresponding environmental benefit. Pet. at 17. However, in its motion to change the termination date of the variance, White Cap requests that the variance be extended to September 7, 1998.

The Agency agrees that the Board previously found an arbitrary or unreasonable hardship existed in its grant of the original variance in PCB 92-155, the extension in PCB 94-93, and the second extension in PCB 96-191. The Agency acknowledged that USEPA has extended the time for White Cap to conduct capture efficiency testing until November 10, 1998. Since White Cap does not have a federally enforceable permit allowing the use of alternative capture efficiency test methods, the Agency agrees that requiring immediate compliance with the capture efficiency testing requirements of the Board's regulations would continue to impose an arbitrary or unreasonable hardship. However, the Agency concludes White Cap's hardship would be self-imposed because it may address the use of an alternative equivalent plan for capture efficiency testing by amending its compliance schedule in its CAAPP permit application. Rec. at 7. The Agency recommends that the Board grant White Cap an extension of its prior variance until September 7, 1998, or until White Cap obtains a CAAPP permit, whichever is earlier. Rec. at 7; Tr. at 15.

#### ENVIRONMENTAL IMPACT

White Cap states that it is in compliance with the emission standards set forth in the Board's regulations and therefore a grant of variance extension regarding the date by which emissions testing must be completed would not pose an environmental or human health threat. (Pet. at 15.) White Cap further states that, because of its ongoing modernization program, it has had a positive impact on the air quality in the Chicago nonattainment area. Tr. 7, 15.

The Agency maintains that the issuance of the requested variance may result in an environmental impact. The Agency states that White Cap emitted 128 tons per year (TPY) of VOM in 1995, and 115 TPY of VOM in 1996. Rec. at 5. Based on Section 302 of the Clean Air Act (42 U.S.C. 7401 et seq. (1996)) and Section 39.5 of the Act (415 ILCS 5/1 et seq. (1996)), the Agency asserts that White Cap is a major source of air pollution. Since VOM contributes to the formation of ozone, the Agency concludes that a grant of the requested extension of variance may have an adverse impact on the ozone air quality in the Chicago nonattainment area.

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<sup>4</sup> In the petition for a variance, White Cap notes that the termination date of the consent agreement is December 5, 1998, not November 10, 1998, as suggested by the Agency. A review of paragraph 23 of the consent agreement proves the termination date of the consent agreement to be December 5, 1998.

### CONSISTENCY WITH FEDERAL LAW

Pursuant to Section 35 of the Act, the Board may grant variances only if they are consistent with the provisions of the Clean Air Act. (42 U.S.C. 7401 et seq.) The Agency states that USEPA has approved the coating rules set forth in Subpart F of Part 218 of Illinois' RACT regulations as part of Illinois' SIP, as well as 35 Ill. Adm. Code Section 218.108(b). (Rec. at 6.) The Agency notes that the consent agreement into which White Cap and USEPA entered grants White Cap an extension of time to conduct capture efficiency testing, and the requested variance would, therefore, be consistent with federal law. Rec. at 6.

### DISCUSSION

The Board finds the hardship that existed during the prior variance continues to exist for White Cap. Specifically, the Board finds that an arbitrary or unreasonable hardship would result if White Cap were required to conduct coating line testing pursuant to Section 218.105 before alternative test methods are available through a FESOP.

The Board further finds that White Cap has made substantial progress towards achieving compliance during the term of its prior variance. Namely, White Cap has applied for a CAAPP permit, receipt of which will allow it to conduct either the DQO or LCL alternative test method. In addition, White Cap is committed to reducing its total VOM emissions. It has implemented a modernization program to replace all of its coating lines with five permanently totally enclosed lines by 1999. Pet. at 10-11. In 1995, White Cap replaced four lines and four oxidizers with two permanently totally enclosed lines and an ABB preheater regenerative thermal oxidizer which controls emissions from the two new lines and two existing lines. Rec. at 5. White Cap's modernization efforts have resulted in 80% reduction in emissions per year, and will, in theory, reduce emissions by approximately 300 tons per year. Tr. at 7-8. The Board therefore grants White Cap an extension of its prior variance.

### Termination Date

Section 218.108 of the Board's regulations states that "[n]otwithstanding the provisions of any other Sections of this Part" any alternative test methods approved by the Agency "shall be effective only when included in a federally enforceable permit or approved as a SIP revision." 35 Ill. Adm. Code 218.108(b). The Board construes this section to mean that, regardless of other language found in Part 218, alternative test methods are acceptable provided they are included in either a FESOP or approved as a SIP revision. By its terms, Section 218.108 supersedes Section 218.105 regarding alternative test methods. Accordingly, the logical termination date for the requested variance would be the earlier occurrence of the two options provided in Section 218.108(b). The Board's order must provide a date certain by which the variance will terminate and the Board believes this date should be tied to the option that will further the Act's underlying policy of achieving compliance as soon as possible.

White Cap applied for a CAAPP permit, which is a federally enforceable permit, on December 7, 1995. The Agency found the application complete on January 12, 1996. Tr.96-

191 at 21. The Agency is required to issue the CAAPP permit within two years of application; therefore, the permit should issue on January 12, 1998 at the latest. However, the Agency has stated that it would be impractical to issue the CAAPP permit by January 12, 1998. As noted, issues involving ERMS such as determining baseline emissions must be resolved prior to incorporation into a CAAPP permit, and under the ERMS proposal, sources are not required to submit applications to address ERMS until March 1, 1998. The Agency does not intend to submit a SIP revision. The relief available to White Cap is, thus, limited to that provided via a final, effective CAAPP permit. Tr. at 6. At the time of the hearing in this matter, October 1, 1997, the parties assumed the ERMS applications would be due on January 1, 1998. As adopted, ERMS requires applications to be submitted on or before March 1, 1998. In the Matter of: Emissions Reduction Market System Adoption of 35 Ill. Adm. Code 205 (November 20, 1997), R97-13. Neither party has requested an extension of the variance based on this information. White Cap has stated that the Agency intends to delay the issuance of CAAPP permits until after review of the ERMS applications. The Agency is allowed 120 days to review ERMS applications. The Agency must complete review of applications submitted on March 1, 1998, on or about July 1, 1998; approximately two months before the variance terminates. The Agency expects that it will be able to issue a CAAPP permit to White Cap on or before September 7, 1998. Both parties agree to this date as the termination date of the variance. Tr. at 11-12, 15.

Accordingly, this variance extension shall terminate on September 7, 1998, or when White Cap obtains its CAAPP permit, whichever is earlier. This termination date resolves the considerations involving the ERMS proposal, and provides White Cap time to continue its modernization program of replacing its coating lines.

#### Inception Date

By its terms, the variance granted in PCB 96-191 expires no later than January 12, 1998. Regarding the inception date for the requested variance, the Board notes its well-established rule of beginning the term of a variance on the date the Board renders its decision, absent unusual or extraordinary circumstances. DMI, Inc. v. IEPA, (December 19, 1991), PCB 90-227, 128 PCB 245-249. The reasoning behind this general rule is to discourage untimely filed petitions for variance. Fedders-USA v. EPA, (April 6, 1989), PCB 86-47, 98 PCB 15, DMI, Inc. v. EPA, (February 23, 1987), PCB 88-1332, 96 PCB 185. As stated in DMI, Inc., if a petitioner wishes a variance to commence on a certain date, its petition must be filed at least 120 days prior to the desired inception date. *Id.* Here, no request to commence the variance on a date certain was received. Thus, the inception date for this variance will be December 4, 1997; the date on which the Board renders this decision.

#### CONCLUSION

The Board finds that an arbitrary or unreasonable hardship continues to exist for White Cap if White Cap is required to achieve immediate compliance with the Board's VOM emissions testing requirements. The Board further finds that White Cap has demonstrated substantial progress towards achieving compliance during its prior variance. Therefore, the



Board grants White Cap an extension of its prior variance subject to the conditions outlined in the Order. The effective inception date of this variance is December 4, 1997. The variance shall continue until White Cap obtains a final, effective CAAPP permit, or until September 7, 1998, whichever is earlier.

This finding constitutes the Board's findings of fact and conclusions of law in this matter.

### ORDER

Petitioner, White Cap, Inc., is hereby granted variance from the testing requirements found in 35 Ill. Adm. Code 218.105(b), 218.205(c), 218.207 and 218.211 for its facility located at 1819 North Major Avenue in Chicago, Illinois. This grant of variance shall begin on December 4, 1997, and is subject to the following conditions:

1. Variance shall terminate on the date upon which White Cap obtains a final, effective federally enforceable state operating permit pursuant to the Clean Air Act Permit Program, or on September 7, 1998, whichever is sooner.
2. White Cap shall test its applicable lines for Capture Efficiency (CE) pursuant to either the seven proposed test methods (Methods 204A through G) or the alternative CE test methods (i.e., Data Quality Objective or Lower Competency Level), as specified in the United States Environmental Protection Agency CE Guidance Memorandum dated February 7, 1995.
3. White Cap shall amend the compliance schedule in its CAAPP permit application to include alternative capture efficiency test methods as specified in this Order and in the United States Environmental Protection Agency CE Guidance Memorandum dated February 7, 1995. This amendment must be submitted to the Agency on or before January 31, 1998.
4. White Cap shall keep daily records of the following items starting on the date of this order, including:
  - a. the amount of each coating used in each coating line;
  - b. the VOM content of each coating applied (lb VOM/gal of solids);
  - c. the weight of VOM per volume of coating solids applied daily on each coating line (VOMs, pursuant to 35 Ill. Adm. Code 218.105(e)(2)).
5. White Cap shall prepare a monthly report for Agency inspection on the daily records required above. The report must also demonstrate White Cap's compliance with 35 Ill. Adm. Code 218.207(b)(2). White Cap shall submit one copy of the monthly compliance demonstrations on a quarterly basis to each of the following Agency officers:

Illinois Environmental Protection Agency  
Bureau of Air  
1021 N. Grand Avenue East  
Springfield, Illinois 62702  
Attn: Compliance Section Manager

Illinois Environmental Protection Agency  
Division of Air Pollution Control  
Intercontinental Center  
1701 First Avenue  
Maywood, Illinois 60153  
Attn: Mel Villalobos

If White Cap chooses to accept this variance subject to the above order, within forty-five days of the grant of the variance, White Cap must execute and forward the attached certificate of acceptance and agreement to:

Christina L. Archer  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
Springfield, Illinois 62702

Once executed and received, that certificate of acceptance and agreement shall bind White Cap to all terms and conditions of the granted variance. The 45-day period shall be held in abeyance during any period that this matter is appealed. Failure to execute and forward the certificate within 45 days renders this variance void. The form of the certificate is as follows:

CERTIFICATION

I (We), \_\_\_\_\_, hereby accept and agree to be bound by all the terms of the Order of the Pollution Control Board in PCB 98-24, December 4, 1997.

\_\_\_\_\_  
Petitioner

\_\_\_\_\_  
Authorized Agent

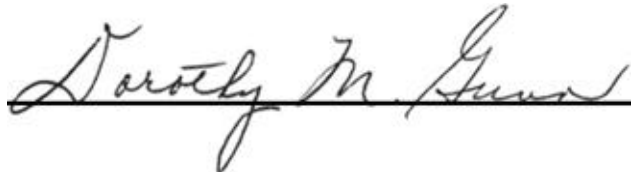
\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1996)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 145 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 4th day of December 1997, by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board