

ILLINOIS POLLUTION CONTROL BOARD  
August 11, 1994

WHITE CAP, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 94-93
	)	(Variance)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

TRACEY L. MIHELIC, OF GARDNER, CARTON & DOUGLAS, APPEARED ON BEHALF OF PETITIONER;

KYLE NASH DAVIS APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by G. T. Girard):

The matter before the Board is a petition for variance filed by White Cap, Inc. on March 21, 1994. White Cap seeks a variance from the requirements of the Board's air pollution control regulations found at 35 Ill. Adm. Code 218.105, 218.205, 218.207, and 218.211 (Part 218 requirements). White Cap characterized the petition for variance as an extension of its variance granted by the Board in PCB 92-155 (see Board opinion and order of April 22, 1993, as amended by Board order of July 22, 1993,). The term of the instant requested variance is until April 22, 1996, or until the United States Environmental Protection Agency (USEPA) makes a final determination on White Cap's pending federal implementation plan (FIP) request, whichever comes first.

The Illinois Environmental Protection Agency (Agency) filed its variance recommendation on April 29, 1994. The Agency contends that an unreasonable hardship would be imposed on White Cap in the absence of the requested relief. (Rec. at 7.)<sup>1</sup> Accordingly, the Agency recommends grant of variance, subject to conditions. The Agency recommends that the variance be granted until April 22, 1995, or until USEPA makes a final determination on White Cap's pending FIP request.

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<sup>1</sup> The Agency recommendation will be cited as "Rec. at \_\_\_". White Cap's petition will be cited as "Pet. at \_\_\_". The Board hearing transcript will be cited as "Tr. at \_\_\_". The joint stipulation of facts admitted at hearing will be cited as "Stip. at \_\_\_". Exhibits will be cited as "Exh. \_\_\_". Citations to the record in PCB 92-155 will be cited as "PCB 92-155, \_\_\_ at \_\_\_", where the blanks will indicate the document and page number within the record.

A hearing was held on June 20, 1994, in Chicago, Cook County, Illinois, before Hearing Officer Deborah Frank. No members of the public attended the hearing. At hearing a joint stipulation of facts was entered into the record by the parties. (Tr. at 13, 14.)

On June 29, 1994, White Cap filed a motion "to incorporate documents incorporated by reference in petition". White Cap submitted documents from the previous Board record in PCB 92-155. The Board hereby grants the motion to incorporate those documents.

As presented below, the Board finds that White Cap has met its burden of demonstrating that denial of variance would impose an arbitrary or unreasonable hardship. Accordingly, the variance request is granted.

The facts of the instant case are essentially the same as those underlying the Board's action to grant White Cap's variance on April 22, 1993 in PCB 92-155. The variance granted in PCB 92-155 expired on April 22, 1994.

#### DISCUSSION

White Cap operates a manufacturing facility located at 1819 North Major Avenue in Chicago, Cook County, Illinois. White Cap manufactures metal closures (caps) for jars. White Cap employs approximately 535 people.

As part of its manufacturing process, White Cap operates twelve sheet metal coating lines where coatings are applied to the metal. Volatile organic material (VOM) is produced and emitted during the coating operation, thereby subjecting White Cap to the Board's VOM emission regulations at 35 Ill. Adm. Code 218. White Cap constitutes a miscellaneous metal parts and products coating operation for the purposes of Part 218.

Requirements essentially identical to the Part 218 requirements occur in federal law under the provisions of the Illinois VOM/ozone FIP. It is the intention eventually to have only one body of law covering these matters in the form of a state implementation plan (SIP), but in the interim this does not exist. Part 218 has not yet been approved by USEPA as part of the Illinois SIP to attain and maintain the primary and secondary air quality standards for ozone. (Rec. at 7.)

The instant action is before the Board because of a difference that exists between the FIP and the Part 218 regulations. In particular, the regulations at 218.207 require White Cap to undertake testing so that it may certify VOM capture

efficiency<sup>2</sup>. The testing method under Illinois law is based on a methodology previously adopted by USEPA, but now under reassessment by USEPA<sup>3</sup>. If the reassessed method is adopted by USEPA, Illinois will presumably be required to also adopt the reassessed method within Part 218 in order to gain an acceptable SIP. The Illinois testing procedures therefore exist in something of a limbo, and White Cap is faced with the prospect that the existing Illinois testing procedures will soon be inapplicable<sup>4</sup>.

Moreover, USEPA has stated that it plans to temporarily suspend the date by which a source must certify the capture efficiency of a control system under the FIP until July 1, 1993. (Exh. 3; 57 Fed. Reg. 49662, 1992.) Again, Illinois law will presumably be required to follow suit. White Cap is thereby also faced with a uncertain certification date, both federally and at the state level.

In addition to the instant action, White Cap has also attempted to address its concerns at the federal level by filing with USEPA a proposal to amend the FIP. (Exh. 4.) Among other matters, the proposal identifies possible alternative testing strategies. USEPA has indicated, however, that it intends to defer action on such proposals until its capture efficiency study is complete. (Exh. 3; 57 Fed. Reg. 49664, 1992.) According to

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<sup>2</sup> White Cap contends that it is in compliance with the substantive requirements of Part 218, "but is unable to demonstrate compliance through the required test methods". (Stip. at 2.) The Board does not today address the contention of compliance with the substantive rules.

<sup>3</sup> On March 20, 1992 USEPA issued a memo indicating that it was undertaking a reassessment of its previously endorsed capture efficiency testing procedures with the intent of developing and reviewing less costly methods. (PCB 92-155, Agency Recommendation at 6.) It originally proposed to complete the reassessment within a period of one year. (PCB 92-155, Opinion and Order at 2.) In December 1993, the Can Manufacturing Institute proposed an alternative test method to USEPA after an extension review of test methods. (Tr. at 6-7.) USEPA commented on the proposed methods in January or February 1994. (Tr. at 7.) White Cap reported on-going discussions with USEPA prior to the June 20, 1994, Board hearing. (Tr. at 7.)

<sup>4</sup> White Cap also contends that under the circumstances at its facility it is technically and economically infeasible for White Cap to comply with the current Part 218.207 test procedures. (PCB 92-155, Board Hearing Transcript at 67.) The Board does not today address that issue.

the Agency, USEPA presently appears to be delaying an opinion on this issue in one year intervals. (Tr. at 12.) White Cap is engaged in on-going discussions with USEPA. (Tr. at 7.)

Both White Cap and the Agency contend that under the conditions outlined above, immediate compliance with the Part 218 regulations would constitute an unreasonable hardship for White Cap. (Stip. at 2.) The remedy that the parties propose is basically to await the federal position, and to use that as a guide for directing White Cap's action. The Board finds this an acceptable course of action.

The Board also finds it appropriate to reimpose the conditions recommended by the Agency as assurance that this matter will not suffer from inaction, and to assure that White Cap will be poised to proceed upon disclosure of the USEPA position. The conditions will further assure that any negative environmental impact will be minimized by causing this matter to be addressed with maximum expedition.

#### TERM OF VARIANCE

The term of the variance is the only significant item at issue for this case. White Cap has requested that the instant variance be granted for two years, until April 22, 1996. (Pet. at 3.) The Agency recommends that the variance be granted until April 22, 1995. (Rec. at 1.)

White Cap argues that the April 22, 1995, deadline is unrealistic given the present pace of on-going negotiations with USEPA. (Tr. at 8.) White Cap expects negotiations about the alternative capture efficiency test method to continue through Summer 1994. (Pet. at 3.) Once an alternative test method is agreed upon, USEPA must amend the FIP or make a determination on White Cap's FIP revision petition. Considering the required public notice and comment requirements, White Cap anticipates that this federal process will take approximately one year. (Pet. at 3.) White Cap estimates that six months would be required to conduct capture efficiency tests and prepare reports after adoption. (Pet. at 3.)

In arguing for a one-year variance, the Agency does not contest White Cap's estimates on the pace of anticipated USEPA action. The Agency maintains generally that a one-year variance will allow the Board "to remain abreast of this important issue before USEPA". (Tr. at 12.) The Agency also broadly asserts that a one-year variance will allow the opportunity to review White Cap's emission prior to the 1996 deadline for the Chicago ozone nonattainment area to demonstrate a 15% overall reduction in VOM emissions.

The Board finds that granting the variance until April 22, 1996, is reasonable, given the present pace of USEPA actions in relation to White Cap's FIP revision request. The Board is not persuaded by the Agency's general assertion that a one-year variance will allow the Board to remain abreast of the issue, especially since the variance may terminate earlier than April 22, 1996, if the USEPA takes action.

#### CONCLUSION

Based upon the record before it, the Board finds that immediate compliance with the regulations at issue would impose an arbitrary or unreasonable hardship on White Cap. The requested variance accordingly will be granted, subject to conditions consistent with this opinion. The Board grants the variance until April 22, 1996.

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

#### ORDER

Petitioner, White Cap, Inc. (White Cap), is hereby granted variance from 35 Ill. Adm. Code 218.105, 218.205, 218.207, and 218.211 for its facility located at 1819 North Major Avenue in Chicago, Illinois. This grant of variance is subject to the following conditions:

- (1) Variance terminates on April 22, 1996.
- (2) Condition (1) notwithstanding, variance terminates April 22, 1996, or the date on which the United States Environmental Protection Agency makes its final determination in White Cap's federal implementation plan (FIP) amendment request, whichever comes first.
- (3) White Cap shall submit, within 180 days of the Board's order, data on the VOM contents of the representative coatings as applied, determined by laboratory analysis in accordance with 35 Ill. Adm. Code 218.105(a). The submitted data shall include the VOM contents (in terms of lb VOM/gal of coating solids as applied) of the coatings, a justification of why the coatings are representative, a description of the sampling procedures, and documentation for the analysis.
- (4) White Cap shall keep daily records of the following items starting on the date of entry of the final board 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 required overall efficiency of the capture system and control device for each coating line pursuant to Section 218.105(e); and
- (d) the weight of VOM per volume of coating solids applied daily on each coating line (VOMs, pursuant to Section 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 Section 218.207(b)(2). White Cap shall submit one copy of the monthly compliance demonstrations of a quarterly basis to each of the following Agency officers:

Illinois Environmental Protection Agency  
Bureau of Air  
2200 Churchill Road, P.O. Box 19276  
Springfield, Illinois 62794-9276  
Attn: Permit Section Manager

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

Within 45 days of the date of this order, Petitioner shall execute and forward to Kyle Davis, Division of Legal Counsel, Illinois Environmental Protection Agency, P.O. Box 19276, 2200 Churchill Road, Springfield, Illinois 62794-9276, a Certification of Acceptance and Agreement to be bound to all terms and conditions of this variance. The 45-day period shall be held in abeyance during any period that this matter is being appealed. Failure to execute and forward the Certificate within 45 days renders this variance void and of no force and effect as a shield against enforcement of rules from which variance was granted. The form of said Certification shall be as follows:

CERTIFICATION

I (We), \_\_\_\_\_, hereby accept and agree to be bound by all terms and conditions of the order of the Pollution Control Board in PCB 94-93, August 11, 1994.

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 Petitioner

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 Authorized Agent

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 Title

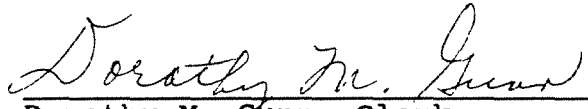
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 Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (But 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 11<sup>th</sup> day of August, 1994, by a vote of 6-0.

  
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 Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board