

ILLINOIS POLLUTION CONTROL BOARD  
January 21, 1999

WHITE CAP, INC.,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 99-41
	)	(Variance - Air)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

SUPPLEMENTAL OPINION AND ORDER OF THE BOARD (by C.A. Manning):

On November 19, 1998, the Board granted White Cap, Inc.'s (White Cap) petition for variance extension from the capture efficiency (CE) testing requirements under 35 Ill. Adm. Code 218.105(b), 218.205(c)(2), and 218.211 until December 31, 1999. White Cap, Inc. v. IEPA (November 19, 1998), PCB 99-41. White Cap requested the extension so that it could either replace its remaining six non-permanently totally enclosed (non-PTE) lines with permanently totally enclosed (PTE) lines and negate the requirement to conduct CE testing or, if it does not replace the lines, conduct CE testing pursuant to 35 Ill. Adm. Code 218.

This matter comes before the Board on a motion for modification (Mot. at \_\_) filed December 22, 1998, by White Cap. In the motion, White Cap requests that the Board amend its November 19, 1998 order to mandate that the variance terminate on the date a final CE test report must be submitted to the Illinois Environmental Protection Agency (Agency) pursuant to a final, effective Clean Air Act Permit Program (CAAPP) permit, but in no case later than December 31, 1999. Mot. at 3. The Agency filed its response (Resp. at \_\_) to the motion on January 6, 1999, and affirmed its support for White Cap's motion. The Board grants White Cap's motion to modify.

The basis for White Cap's motion is a change in circumstances since the November 19, 1998 grant of variance, *i.e.*, the conclusion of certain negotiations with the United States Environmental Protection Agency (USEPA). White Cap seeks to modify a condition of the variance order to enhance its consistency with federal law as embodied in the administrative order by consent (consent agreement) between it and the USEPA.

During the pendency of the variance petition, White Cap and the USEPA were in the process of negotiating an extension of its consent agreement. As a condition to the variance extension to maintain consistency with state and federal law, the Board, in its November 19, 1998 order, required White Cap to obtain an extension of the consent agreement with the USEPA by January 19, 1999. White Cap, Inc. v. IEPA, PCB 99-41, slip op. at 13. The

Board's order required White Cap and the USEPA to extend the consent agreement until December 31, 1999. White Cap, Inc. v. IEPA, PCB 99-41, slip op. at 13.

White Cap states it ultimately finalized a consent agreement with the USEPA, but that the consent agreement does not contain a "blanket extension" until December 31, 1999, as required by the Board's November 19, 1998 order. Mot. at 2. Rather, the consent agreement with USEPA gives White Cap up to 90 days after the issuance of a final, effective CAAPP permit to perform CE testing and submit a final report to the USEPA and the Agency, but not later than December 31, 1999. Mot. at 2, Exh. A. White Cap also maintains that the USEPA has agreed to "consider extending the Consent Agreement further to allow White Cap time to remove the lines if White Cap subsequently rectifies the problem with the new lines and is able to make a firm commitment to replace the remaining non-PTE lines by a date certain." Mot. at 2, Exh. B. Since the consent agreement does not outright extend the variance until December 31, 1999, White Cap states that, under the terms of the current variance granted by the Board on November 19, 1998, its variance expired on January 19, 1999. Mot. at 2. White Cap, therefore, requests deletion of the termination date of January 19, 1999, from the Board's November 19, 1998 order. Mot. at 2.

To ensure consistency with federal law, White Cap requests that the Board set the variance termination date to be consistent with the schedule for CE testing and report submission ultimately set forth in White Cap's CAAPP permit, but in no case later than December 31, 1999. Mot. at 2. White Cap requests that the Board not include a condition that the variance terminate 90 days after the issuance of the CAAPP permit, as outlined in the CAAPP permit, because the USEPA may extend the consent agreement beyond this period of time if White Cap subsequently is able to meet the USEPA demands and commit to a specific date to remove the lines. Mot. at 2-3. White Cap asserts that any extension of the consent agreement will be incorporated into White Cap's CAAPP permit. Mot. at 3.

The Agency concurs with White Cap that the Board should strike the January 19, 1999 variance termination date provision contained in its November 19, 1998 order. Resp. at 3. The Agency, therefore, recommends that the Board order White Cap's variance to terminate on a date consistent with the consent agreement agreed to by White Cap and the USEPA. Resp. at 3.

The Board agrees with the parties that modification of the November 19, 1998 order will ensure consistency with federal law as required by 35 Ill. Adm. Code 104.122. The Board modifies condition 1 of the November 19, 1998 order by deleting the January 19, 1999 termination date provision. The Board sets the variance termination date to be consistent with the schedule for CE testing and report submission set forth in the CAAPP permit, but in no case later than December 31, 1999. For the sake of clarity, the Board sets forth below the order as modified in its entirety.

This supplemental opinion 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 September 7, 1998, and is subject to the following conditions:

1. The variance terminates on the date a final capture efficiency (CE) test report must be submitted to the Illinois Environmental Protection Agency pursuant to a final, effective Clean Air Act Permit Program permit, but in no case later than December 31, 1999.
2. White Cap shall elect to either conduct CE testing on the remaining non-PTE lines, or to replace the non-PTE lines with PTE lines. By August 3, 1999, White Cap shall provide the Illinois Environmental Protection Agency with written notice of its elected compliance plan. White Cap shall send written notice of its elected compliance plan to the following address:

Deborah J. Williams  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276
3. White Cap shall test its applicable lines for 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.
4. White Cap shall keep daily records of the following items starting on the date of this order, including:
  - a. the amount of coating used in each coating line;
  - b. the volatile organic material (VOM) content of each coating applied (lb VOM/gal of solids); and
  - 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. 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  
Attention: Compliance Section Manager  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

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

If White Cap chooses to accept this variance, within 45 days of the grant of the variance, White Cap must execute and forward the attached certificate of acceptance and agreement to:

Deborah J. Williams  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

IT IS SO ORDERED.

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 all the terms of the order of the  
 Pollution Control Board in PCB 99-41, granted November 19,  
 1998, as modified January 21, 1999.

\_\_\_\_\_  
 Petitioner

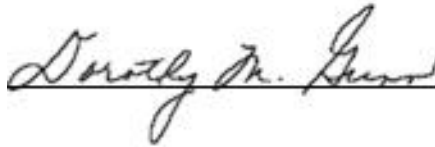
\_\_\_\_\_  
 Authorized Agent

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date

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 172 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 supplemental opinion and order was adopted on the 21st day of January 1999 by a vote of 7-0.



Dorothy M. Gunn, Clerk  
 Illinois Pollution Control Board