

ILLINOIS POLLUTION CONTROL BOARD
April 22, 1993

CONTINENTAL WHITE CAP, INC.,)
)
Petitioner,)
)
v.) PCB 92-155
) (Variance)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

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

PAUL R. JAGIELLO APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by R.C. Flemal):

This matter comes before the Board on the October 19, 1992 filing by petitioner, Continental White Cap, Inc. (CWC), of a petition for variance. CWC seeks variance from 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). The term of the requested variance is until July 1, 1993, or until the United States Environmental Protection Agency (USEPA) makes a final determination on CWC's pending federal implementation plan (FIP) request, whichever is later.

The Illinois Environmental Protection Agency (Agency) filed an initial variance recommendation on January 19, 1993 and an amended recommendation (Rec.) on March 3, 1993. The Agency contends that an unreasonable hardship would be imposed on CWC in the absence of the requested relief. (Rec. at 8.) Accordingly, the Agency recommends grant of variance, subject to conditions.

Hearing was held on March 4, 1993 in Maywood, Illinois. CWC presented two witnesses; no members of the public attended the hearing. At hearing CWC stipulated to its acceptance of the conditions set forth in the Agency's recommendation. (Tr. at 9, 17.)

As presented below, the Board finds that CWC has met its burden of demonstrating that immediate compliance with the Act or Board regulations would result in an arbitrary or unreasonable hardship upon CWC. Accordingly, the variance request is granted.

0141-0217

DISCUSSION

CWC operates a manufacturing facility located at 1819 North Major Avenue in the City of Chicago, Cook County, Illinois. CWC manufactures metal closures for jars.

As part of its manufacturing process, CWC operates twelve sheet metal decorating lines where coatings are applied to the metal. Volatile organic material (VOM) is produced and emitted during the coating operation, thereby subjecting CWC to the Board's VOM emission regulations of Part 218; CWC 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.

The instant action is before the Board because of a difference that exists between the FIP and the Part 218 regulations. In particular, the Part 218 regulations require that CWC undertake testing so that it may certify VOM capture efficiency¹. The testing method under Illinois law is based on a methodology previously adopted by USEPA, but now under reassessment by USEPA². 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 CWC is faced with the prospect that the existing Illinois testing procedures will soon be inapplicable³.

¹ CWC contends that it is in compliance with the substantive rules of Part 218, and that it fails only in its ability to demonstrate that compliance via approved tests. (Tr. at 5, 15.) The Board does not today address the contention of compliance with the substantive rules.

² 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. (Rec. at 6.) It proposed to complete the reassessment within a period of one year.

³ CWC also contends that under the circumstances at its facility it is technically and economically infeasible for CWC to comply with the current Part 218 test procedures. (Tr. at 67.) The Board does not today address this issue.

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. 5; 57 Fed. Reg. 49662, 1992.) Again, Illinois law will presumably be required to follow suit. CWC is thereby also faced with a uncertain certification date, both federally and at the state level.

In addition to the instant action, CWC 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. (57 Fed. Reg. 49664, 1992.)

Both CWC and the Agency contend that under the conditions outlined above, immediate compliance with the Part 218 regulations would constitute a hardship upon CWC. The remedy that the parties propose is basically to await (within reason) the federal position, and to use that as a guide for directing CWC's action. Given the special circumstances found here, the Board finds this an acceptable course of action.

The Board also finds it appropriate to impose the agreed-upon conditions as assurance that this matter will not suffer from inaction, and to assure that CWC 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

CWC originally requested that the term of variance be until September 1, 1997. At hearing CWC modified the request to conform it with that recommended by the Agency (see above). Based upon the facts of this case, the Board finds acceptable the general nature of the term of variance offered by the parties. Nevertheless, there is some difficulty with using the later of a date certain or of a USEPA action as the termination date: failure of the USEPA to act would cause the variance to be non-ending, in contradiction with Illinois law⁴.

The parties seem to be of the belief that USEPA will indeed act, and moreover, will act with some dispatch. This notwithstanding, the prudent and necessary course of action is to

⁴ Pursuant to Section 36(b) of the Illinois Environmental Protection Act, a variance may be for a period of time not to exceed five years.

set some time limit within which USEPA's decision must be rendered or the variance terminates. One year would seem to be ample time, and accordingly the Board will today use this time frame.

CONCLUSION

Based upon the record before it, the Board finds that CWC has presented adequate proof that immediate compliance with the regulations at issue would result in an arbitrary or unreasonable hardship on CWC. The requested variance accordingly will be granted, subject to conditions consistent with this opinion.

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

ORDER

Petitioner, Continental White Cap, Inc. (CWC), 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 July 1, 1993.
- (2) Condition (1) notwithstanding, if the United States Environmental Protection Agency makes its final determination on CWC's federal implementation plan (FIP) amendment after July 1, 1993, variance terminates on the date of that final action or on April 22, 1994, whichever is earlier.
- (3) CWC shall submit to the Agency, in writing, an operation and maintenance program for the coating line VOM control systems within 30 days after the entry of this order. This program must address the operation and maintenance of the entire length of the coating lines starting from the applicators, including wash-up solvents, through the bake ovens and afterburners. The program must focus on minimizing VOM emissions along the coating lines and provide for continuous monitoring of the temperature rise across each catalytic afterburner bed.
- (4) CWC shall develop a program that provides for the upgrade of the incinerator that controls emissions from the tandem coating lines 8A, 9A and PC10 and the incinerator that controls emissions from multiple coating lines C-6 and C-7 with a goal towards achieving a VOM loading destruction efficiency of 90 percent and shall submit the program to the Agency in writing for comment and approval by May 15, 1993.

CWC shall complete this program, which includes the destruction efficiency testing, within ninety (90) days of receipt of the Agency's comments and approval of the program. CWC shall submit a written report of the test results within sixty (60) days of the destruction efficiency testing.

(5) CWC shall keep daily records of the following items starting on the date of entry of the final Board order:

- (a) Amount of each coating used in each coating line;
- (b) VOM content of each coating applied (lb. VOM/gal of solids);
- (c) Required overall efficiency of the capture system and control device for each coating line pursuant to Section 218.105(e); and
- (d) Weight of VOM per volume of coating solids applied daily on each coating line (VOMa, pursuant to Section 218.105(e)(2)).

(6) CWC shall prepare a monthly report for Agency inspection on the daily records required in paragraph (4) above. The report must also demonstrate CWC's compliance with Section 218.207(b)(2). CWC shall submit one copy of the monthly compliance demonstrations on a quarterly basis to each of the following Agency offices:

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 Ann Zwick, Division of Legal Counsel, Illinois Environmental Protection Agency, 2200 Churchill Road, Post Office Box 19276, 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 92-155, April
22, 1993.

Petitioner

Authorized Agent

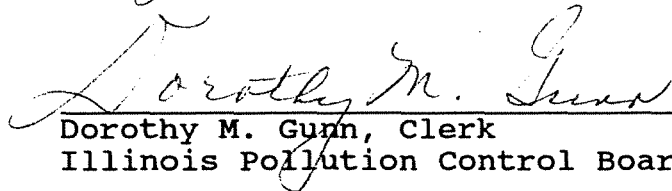
Title

Date

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, 415 ILCS 5/41 (1992), provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437; Stube v. Illinois Pollution Control Board, No. 3-92-0468, slip op. at 4-5 (3rd Dist. March 15, 1993).)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 22nd day of April, 1993, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board