

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
2   WHITE CAP, INC.,           )  
3           Petitioner,        )  
4                   vs.        )   No. PCB 98-24  
5   ILLINOIS ENVIRONMENTAL    )  
6   PROTECTION AGENCY,        )  
7           Respondent.        )

8                   The following is a transcript of a  
9   variance hearing held in the above-entitled matter  
10   taken stenographically by LISA H. BREITER, CSR,  
11   RPR, CRR, a notary public within and for the  
12   County of DuPage and State of Illinois before  
13   MICHAEL L. WALLACE, Hearing Officer, at the  
14   Thompson Center, 100 West Randolph Street, Room  
15   11-500, Chicago, Illinois, on the 1st day of  
16   October 1997 commencing at 1:30 o'clock p.m.

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1                   There were present during the  
2   taking of this hearing the following counsel:

3                   GARDNER, CARTON & DOUGLAS, by  
4                   MR. RICHARD M. SAINES and  
5                   MS. TRACEY L. MIHELIC,  
6                   Quaker Tower  
7                   321 North Clark Street  
8                   Chicago, IL 60610-4795  
9                   (312) 644-3000  
10                  (312) 644-3381 Fax

11                  On behalf of the Petitioner;

12                  ILLINOIS ENVIRONMENTAL PROTECTION  
13                  AGENCY, by  
14                  MS. CHRISTINA L. ARCHER,  
15                  2200 Churchill Road  
16                  P.O. Box 19276  
17                  Springfield, IL 62794-9276  
18                  (217) 524-3333

19                  On behalf of the Respondent.

20                  ALSO PRESENT:

21                  MR. RALPH L. FASANO

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1                   HEARING OFFICER WALLACE: Pursuant to  
2     the direction of the Illinois Pollution Control  
3     Board, I now call docket PCB 9824. This is the  
4     variance petition of White Cap, Inc., vs. The  
5     Illinois Environmental Protection Agency. May I  
6     have appearances for the record, please.

7                   MS. MIHELIC: Tracey Mihelic from  
8     Gardner, Carton & Douglas with Ralph Fasano.

9                   MR. SAINES: And Richard Saines from  
10    Gardner, Carton & Douglas.

11                  MS. ARCHER: Christine Archer from the  
12    Illinois Environmental Protection Agency.

13                  HEARING OFFICER WALLACE: Let the record  
14    reflect there are no other appearances at today's  
15    date. Are there any preliminary matters?

16                  MS. MIHELIC: Not at this time.

17                  HEARING OFFICER WALLACE: Ms. Archer?

18                  MS. ARCHER: No.

19                  HEARING OFFICER WALLACE: You have a  
20    witness today?

21                  MS. MIHELIC: We have one witness.

22                  HEARING OFFICER WALLACE: Mr. Fasano,  
23    would you please raise your right-hand.

24                               (Witness sworn.)

1                   HEARING OFFICER WALLACE:  You may  
2    proceed.

3                   MS. MIHELIC:  I'd like to start with  
4    just a brief opening statement and some clarifying  
5    points of the Agency's recommendation I believe  
6    that was filed on Friday, and then we'll go into  
7    directing the witness with some questions.

8                   White Cap is seeking an extension of  
9    the variance granted by the Board in PCB 96-191.  
10   White Cap's variance expires at the time that  
11   White Cap obtains the Clean Air Act Permit Program  
12   permit also called a CAAPP permit or January 12th,  
13   1998, whichever is earlier.

14                  The board set January 12th, 1998, as  
15   the deadline since that was the latest date which  
16   the Illinois Environmental Protection agent gave  
17   the Agency time to issue White Cap a CAAPP permit  
18   as established during the variance proceeding in  
19   PCB 96-191.  White Cap needs either a state  
20   implementation plan revision to Illinois'  
21   reasonably available control technology rules or  
22   CAAPP permit allowing White Cap to use the  
23   alternative capture efficiency test methods set  
24   forth in USEPA's guidance memorandum dated

1 February 7th, 1995, to comply with Illinois' RACT  
2 rules.

3           The Agency does not intend to submit a  
4 SIP revision, and therefore, the only relief  
5 available for White Cap is through a final  
6 effective CAAPP permit. Due to the proposal and  
7 pending adoption of the Emissions Reduction Market  
8 System rules, the IEPA does not intend to issue  
9 CAAPP permits to major sources in the Chicago area  
10 until after IEPA's established ERMS emission  
11 baselines.

12           Since ERMS applications are not due  
13 until January 1st, 1998, the IEPA does not expect  
14 to issue sources in the Chicago area CAAPP permits  
15 until after March of 1998. Therefore, sources  
16 will not be able to obtain final effective CAAPP  
17 permits till sometime thereafter. Based upon  
18 discussions with the IEPA, it anticipates that  
19 White Cap will have a final effective CAAPP permit  
20 by September 1998.

21           White Cap has no control over when it  
22 will obtain a final effective CAAPP permit. As  
23 set forth in the previous proceedings before the  
24 Board, it is technically or economically

1     infeasible for White Cap to comply with Illinois'  
2     RACT rules regarding capture efficiency testing  
3     without an extension of the variance.   Until such  
4     time that White Cap has a final effective CAAPP  
5     permit, there is no technical or economical method  
6     for White Cap to comply with Illinois' RACT rules.

7                 White Cap needs a CAAPP permit in order  
8     to comply with the regulations.   This hardship is  
9     not self-imposed.   White Cap is therefore seeking  
10    an extension of its current variance until White  
11    Cap obtains a final effective CAAPP permit for  
12    September 1998, whichever is earlier.   As set  
13    forth in its petition, the granting of this  
14    variance will not have a negative environmental  
15    impact.

16                White Cap believes it is in compliance  
17    with the underlying regulations.   It simply cannot  
18    demonstrate compliance.   In addition, White Cap  
19    has reduced emissions and is continuing to do so  
20    by replacing its existing lines with permanently  
21    totally enclosed lines.   As a result, White Cap  
22    has already reduced emissions by over 80 tons per  
23    year, and when its modernization and emission  
24    reduction program is complete, it will have

1 reduced emissions by approximately 300 tons per  
2 year.

3           To make some clarifications for the  
4 record, upon the Agency's recommendation, in its  
5 recommendation in paragraph 23(1), the Agency  
6 states or refers to applicable lines. White Cap  
7 would like to clarify at this time that its  
8 understanding is this means any lines which are  
9 not permanently totally enclosed. In paragraph 15  
10 of its recommendation, IEPA states that White Cap  
11 assumed 100 percent capture efficiency.

12           This assumption arises from USEPA's  
13 guidance memorandum in which USEPA directed  
14 sources such as White Cap to assume 100 percent  
15 capture efficiency when certifying compliance with  
16 overall efficiency of its lines. Also in  
17 paragraph 15 of the recommendation, the Agency  
18 states that annual emissions in 1995 and 1996  
19 based upon a computer program for White Cap are  
20 128 and 150 tons respectively.

21           Due to the pending ERMS rulemaking,  
22 White Cap is in the process of reviewing these  
23 annual emissions and will likely be revising these  
24 emission estimates when it submits it's ERMS



1 application, and last, the Agency sets forth in  
2 its recommendation a proposal that White Cap be  
3 required to amend its CAAPP permit application.

4           White Cap is willing to amend its CAAPP  
5 permit application to include alternative capture  
6 efficiency test methods. White Cap, however, is  
7 requesting until January 31st, 1998, to do so so  
8 that White Cap may make one revision to its CAAPP  
9 permit application incorporating all changes that  
10 need to be made to the application arising from  
11 its modernization program.

12           The Board should also remember that  
13 White Cap's ERMS application is due January 1st,  
14 1998, which White Cap assumes will take a  
15 significant amount of time to complete, and White  
16 Cap has holiday shutdown for the last two weeks of  
17 the year of each year, that being typically from  
18 December 20th -- December 15th or 20th until  
19 December 30th of each year, and then I think Rick  
20 Saines is going to go forward and ask the witness,  
21 Ralph Fasano, some questions.

22           HEARING OFFICER WALLACE: Before you  
23 begin, any remarks, Ms. Archer?

24           MS. ARCHER: No, the clarifications are

1     amenable to the Illinois EPA. I would like to  
2     state, though, for the record if White Cap cannot  
3     amend its CAAPP application by January 31st, 1998,  
4     as soon as the modernization program -- each step  
5     becomes complete thereafter, it's fine just so we  
6     have everything on file with the application  
7     including ERMS so the Agency can have enough time  
8     to complete its review of White Cap's CAAPP  
9     application and so White Cap can obtain its final  
10    effective CAAPP permit by September of 1998.

11                 HEARING OFFICER WALLACE: Have you  
12    completed?

13                 MS. ARCHER: That's further  
14    clarifications, yes.

15                 HEARING OFFICER WALLACE: Mr. Saines,  
16    you may proceed.

17                 MR. SAINES: Thank you.

18                         RALPH L. FASANO,  
19    called as a witness herein, having been first duly  
20    sworn, was examined and testified as follows:

21                         DIRECT EXAMINATION

22                         BY MR. SAINES:

23                 Q     Please state your name for the record.

24                 A     Ralph Fasano.

1           Q     What is your position with White Cap,  
2     Incorporated?

3           A     The corporate manager of environmental  
4     affairs.

5           Q     Have you read White Cap's petition for a  
6     variance that was filed with the Board on August  
7     1st, 1997?

8           A     Yes.

9           Q     With the exception of the variance  
10    termination date requested in that petition, is  
11    that petition true and accurate?

12          A     Yes.

13          Q     Have you read White Cap's motion to  
14    change the effective date of the variance which  
15    was filed with the Board on September 12th, 1997?

16          A     Yes, I have.

17          Q     Is it true that White Cap's motion to  
18    change the effective date of the variance in that  
19    motion White Cap requested that the Board extend  
20    the variance until White Cap obtains a final  
21    effective CAAPP permit or September 7, 1998,  
22    whichever is earlier?

23          A     Yes.

24          Q     Is it your belief, based on discussions

1 with the Agency, that White Cap should have the  
2 final effective CAAPP permit by September 7, 1998?

3 A Yes.

4 Q If White Cap does not obtain a final,  
5 effective CAAPP permit by September 7, 1998, is it  
6 your understanding that White Cap may need to seek  
7 additional relief from the capture efficiency  
8 testing requirements until such time as White Cap  
9 obtains a final effective CAAPP permit?

10 A Yes.

11 Q Have you read the Agency's draft  
12 recommendation in this matter?

13 A Yes, yes, I have.

14 Q Do you agree that the granting of White  
15 Cap's petition may have an environmental impact on  
16 the ozone air quality in the Chicago  
17 non-attainment area?

18 A No, no, I don't.

19 Q Why not?

20 A Well, because White Cap has always  
21 believed that we're in compliance, but we simply  
22 could not demonstrate it because of the capture  
23 efficiency test methods, the whole reason for our  
24 variance.

1                   If anything, White Cap truly believes  
2   that we've had a positive impact, not a negative  
3   impact on air quality because we have been  
4   proceeding with the modernization program, and by  
5   granting this variance, we can continue to  
6   dedicate our time toward, you know, continuing the  
7   modernization program without these kind of  
8   disturbances, so to speak, but also for the  
9   record, I want it to be known that the  
10  modernization program has been going on and even  
11  throughout the whole process of the variance that  
12  we've had for so many years, we have been making  
13  improvements all along similar to what Tracey has  
14  said earlier.

15           Q     Thank you. Do you agree that White  
16  Cap's hardship in this matter is self-imposed?

17           A     No, no, I don't.

18           Q     Is it your opinion that the hardship, if  
19  any, which arises is due to the lack of a CAAPP  
20  permit?

21           A     True, yeah.

22           Q     Is it your understanding that White Cap  
23  cannot perform capture efficiency testing until it  
24  obtains a final effective CAAPP permit allowing it

1 to use the alternative capture test efficiency  
2 methods?

3 A Yes.

4 MR. SAINES: I have no more questions.

5 MS. ARCHER: I have a clarification.

6 Mr. Fasano, you stated that you reviewed a draft  
7 of the agency recommendation in this case, is that  
8 correct?

9 THE WITNESS: Correct.

10 MS. ARCHER: Just for the record, I'd  
11 like to state that that would be the draft that I  
12 faxed to Ms. Mihelic last Thursday afternoon which  
13 was September 25th. Ms. Mihelic did receive the  
14 final recommendation, I believe, on Monday, at  
15 which there was no changes between the drafts and  
16 the final.

17 MS. MIHELIC: For clarification, I know  
18 there are no changes. I have not reviewed a  
19 final.

20 MS. ARCHER: For the record, there are  
21 no changes between the draft and the final.  
22 That's all I have of Mr. Fasano.

23 HEARING OFFICER WALLACE: All right.  
24 Thank you, Mr. Fasano. Anything more, Mr. Saines?

1 MR. SAINES: Nothing more.

2 HEARING OFFICER WALLACE: Let's go off  
3 the record.

4 (Discussion off the record.)

5 HEARING OFFICER WALLACE: Ms. Archer.

6 MS. ARCHER: Thank you. Good afternoon.

7 The Illinois EPA stands by its recommendation  
8 filed in this matter. The Illinois EPA would  
9 recommend that the Illinois Pollution Control  
10 Board grant White Cap's variance extension in PCB  
11 98-24 until White Cap obtains its final effective  
12 Clean Air Act Permit Program or CAAPP permit until  
13 September 7th, 1998, whichever is sooner.

14 Without belaboring the facts in this  
15 case, it has quite a long and extensive history,  
16 and it's been documented in three previous  
17 variance proceedings. The underlying issue in  
18 this case is when White Cap and how White Cap is  
19 required to conduct capture efficiency testing.  
20 As laid out in PCB 96-191, the Board recognized  
21 that White Cap needed a federally-enforceable  
22 permit before they could conduct this capture  
23 efficiency testing. The Illinois EPA believes it  
24 can issue White Cap its CAAPP permit by September

1 7, 1998, and will stand by that date accordingly.

2 MS. ARCHER: Thank you.

3 HEARING OFFICER WALLACE: Thank you,  
4 Ms. Archer. Just for point of clarification, is  
5 White Cap asking the Board really just to extend  
6 the prior variance?

7 MS. MIHELIC: It's asking the Board to  
8 extend its prior variance and actually to slightly  
9 amend the language so the variance is until it  
10 obtains a final effective CAAPP permit and not  
11 just until the Agency issues a CAAPP permit, which  
12 I believe is the previous language.

13 So that when the Agency issues a CAAPP  
14 permit, it is not final, nor is it truly effective  
15 for sometime thereafter. So we're asking that  
16 language be modified to say until White Cap  
17 obtains a final effective CAAPP permit or  
18 September 7th, 1998, since that's the date  
19 everybody believes White Cap will have a final  
20 effective CAAPP permit.

21 HEARING OFFICER WALLACE: I'm looking at  
22 the order in 191 and the first conditions,  
23 variance shall terminate upon the date upon the  
24 which the Agency issues White Cap a



1 federally-enforceable state operating permit  
2 pursuant to the Clean Air Act Permit Program or 90  
3 days following the date Illinois revises its state  
4 implementation plan to include alternative test  
5 methods, blah, blah, blah. That's the condition  
6 you want changed?

7 MS. MIHELIC: Right, to state until  
8 White Cap obtains a final effective Clean Air Act  
9 Permit Program permit, and because we've  
10 determined that Illinois will not amend its SIP  
11 provision, I don't believe that that language is  
12 any longer necessary.

13 HEARING OFFICER WALLACE: So we would  
14 take out the sentence "or 90 days following" and  
15 then we would change the date, but we would leave  
16 the words "but no later than September."

17 MS. MIHELIC: 7.

18 HEARING OFFICER WALLACE: 7.

19 MS. ARCHER: Right.

20 HEARING OFFICER WALLACE: Are there any  
21 other conditions, changes that have been  
22 requested?

23 MS. MIHELIC: I think you requested that  
24 it require White Cap to amend its CAAPP permit

1 application to include a request to use the  
2 alternative capture efficiency test methods that's  
3 not set forth in that variance.

4 MS. ARCHER: Condition 2, I believe  
5 96-191, "White Cap shall test its applicable lines  
6 for capture efficiency to either of the seven  
7 proposed test methods," is that what that says?

8 HEARING OFFICER WALLACE: Yes.

9 MS. ARCHER: We would like that to still  
10 be in there.

11 MS. MIHELIC: Still be in there, right.

12 HEARING OFFICER WALLACE: Was there  
13 something that you wanted added?

14 MS. ARCHER: I did. We are modifying  
15 that White Cap would admit its compliance schedule  
16 in its CAAPP application by January 31st, 1998.  
17 That would be a condition as well as the previous  
18 record keeping and reporting.

19 MS. MIHELIC: And it's set forth in what  
20 paragraph because it was not in the previous Board  
21 order.

22 MS. ARCHER: It's paragraph 23 in our  
23 recommendation, and I believe it was in the  
24 Board's order of November 7th in the text, but it

1 wasn't in the actual order.

2 HEARING OFFICER WALLACE: So on 24 -- on

3 your recommendation --

4 MS. ARCHER: Yes.

5 HEARING OFFICER WALLACE: -- paragraph

6 24 with numerical 2 and 3, would you ask that

7 those be added --

8 MS. ARCHER: Yes.

9 HEARING OFFICER WALLACE: -- if they're

10 not already in?

11 MS. ARCHER: Those should already be in

12 there. Those are conditions from the 92155.

13 HEARING OFFICER WALLACE: All right,

14 you're correct.

15 MR. FASANO: I have a question

16 regarding --

17 HEARING OFFICER WALLACE: So that's all

18 that you have?

19 MS. ARCHER: Correct.

20 HEARING OFFICER WALLACE: Okay. And

21 then both parties are agreeable that the Board can

22 administratively adopt the record in 96-191?

23 MS. ARCHER: Yes.

24 MS. MIHELIC: Yes.

1                   HEARING OFFICER WALLACE: And White Cap  
2 is agreeable to waiving the decision deadline to  
3 December 4th, 1997?

4                   MS. MIHELIC: Yes.

5                   HEARING OFFICER WALLACE: Even though  
6 we've put it on the record, the office does like a  
7 letter. Thank you. Anything further from White  
8 Cap?

9                   MS. MIHELIC: Nothing further.

10                  HEARING OFFICER WALLACE: The Agency?

11                  MS. ARCHER: No.

12                  HEARING OFFICER WALLACE: All right.

13                  MS. MIHELIC: We appreciate the Board's  
14 patience in this matter.

15                  HEARING OFFICER WALLACE: We certainly  
16 try to be patient, I guess. Thank you, there will  
17 be nothing further. This hearing is closed, thank  
18 you.

19                               (Which were all the proceedings  
20                               had in the above-entitled  
21                               hearing.)  
22  
23  
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1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
2           LISA H. BREITER, CSR, RPR, CRR, being  
3 first duly sworn, on oath says that she is a court  
4 reporter doing business in the City of Chicago;  
5 that she reported in shorthand the proceedings at  
6 the taking of said hearing and that the foregoing  
7 is a true and correct transcript of her shorthand  
8 notes so taken as aforesaid, and contains all of  
9 the proceedings had at said hearing.

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14           LISA H. BREITER, CSR, RPR, CRR  
15           L.A. REPORTING  
16           79 West Monroe Street  
17           Suite 1219  
18           Chicago, Illinois 60603  
19           (312) 419-9292  
20           (312) 419-9294 Fax

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