

BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

IN THE MATTER OF)
WEST FRASER, INC.) DOCKET NO. _____
LEOLA LUMBER MILL)
EFFICIENCY PROJECT)

PETITION FOR VARIANCE FROM REGULATION

Pursuant to Arkansas Code Ann. § 8-4-313, West Fraser, Inc. (“West Fraser”) hereby petitions the Arkansas Pollution Control & Ecology Commission (“APC&EC” or the “Commission”) to grant a limited variance from the provisions of Commission Regulation No. 19, Reg. 19.904 and Regulation No. 26, Reg. 26.301 to allow West Fraser to begin undertaking limited construction activities related to its lumber drying energy efficiency project at its Leola Lumber Mill while an application for modification of the air permit governing the facility is pending before the Arkansas Department of Environmental Quality (“ADEQ”). In support of its Petition for Variance from Regulation, West Fraser submits the following:

**I.
Introduction**

1. West Fraser owns and operates a southern yellow pine lumber mill in Leola, (Grant County) Arkansas (the “Leola Mill”). West Fraser acquired the Leola Mill from International Paper in March, 2007, and currently employs 192 persons at the Leola Mill—equivalent to almost ½ the population of Leola—with an average weekly total payroll of approximately \$175,000.00. West Fraser is the largest employer in the community and makes a sizeable impact to the local economy as more fully set forth below.

2. West Fraser has developed plans for a continuous kiln lumber drying project which will allow West Fraser to significantly improve the energy efficiency at the Leola Mill.

The project will utilize state-of-the-art lumber drying technology that has revolutionized how lumber is produced throughout North America. West Fraser plans to replace the four existing batch lumber drying kilns with two continuous, dual path kilns that will each include two lanes through which lumber will pass concurrently. This continuous, dual path design allows for heat recovery vastly improving kiln thermal efficiency. The thermal efficiencies that will result from the project will allow the Leola Mill to produce more lumber using less energy, thereby resulting in lower overall boiler emissions per board foot of lumber produced.

3. Lumber mills throughout North America are rapidly procuring this state-of-the-art technology due to the substantial improvements in efficiency and production which result from its operation and, consequently, West Fraser must proceed with converting to the new technology as quickly as possible in order to remain competitive in the industry.¹ The high demand from sawmills across North America that are converting to the continuous drying technology has resulted in a large backlog of orders for the technology with every manufacturer with patent approval to build these units. Similarly, the limited number of contractors with the expertise to install these types of units severely constrains the availability of specialists for hire to erect the equipment.

4. To keep the Leola Mill in continuous operation during the project and avoid employee layoffs, West Fraser developed a plan by which it will replace the four existing batch kilns in phases. The plan calls for one continuous kiln to be constructed and brought online, then for two of the existing units to be taken offline before the second continuous kiln is placed into service.

¹ Similar projects have already been undertaken at West Fraser's facilities in New Boston, TX; Joyce, LA; and Armour, NC; as well as by other sawmill operators in Urbana, Gurdon, and Russellville, AR. West Fraser is planning similar projects for at least seven other mills it operates in the southern United States.

5. West Fraser submitted its application for a permit modification to ADEQ on February 8, 2013, and the application was deemed administratively complete on March 4. Based on statements from ADEQ, West Fraser expects that the application will be approved and the final permit will be issued in the coming weeks. ADEQ has indicated it may make a decision on the draft permit before this request is heard by the Commission. Nonetheless, due to the high demand for and limited supply of continuous kiln equipment and the specialized erection crews needed to install such equipment, it was necessary for West Fraser to promptly proceed with securing delivery of the equipment from the vendor and contract with and reserve an erection crew. The contracts West Fraser currently has in place call for West Fraser to take delivery of the material for construction of the first continuous kiln in late July 2013, and for the erection crew to begin work in early August 2013. To date, West Fraser has invested over \$1,000,000.00 in simply securing a place in line for receipt and construction of this invaluable technology, and any interruption in the projected sequence of construction events will not only cause West Fraser to suffer financial losses, but will also cripple the Leola Mill's ability to compete in the industry and force the mill to reduce employee shift operations.

6. In order to meet this aggressive timetable, West Fraser must begin undertaking limited construction activities at the site to prepare for receipt of materials and arrival of the erection crew. If West Fraser is unable to begin laying the foundation for the continuous kilns before final approval of the permit modification, the erection crew will not be able to begin work as scheduled, thus forcing the Leola Mill project to be "placed at the back of the line." If the Leola Mill is unable to begin work as scheduled, West Fraser will lose most or all of its existing investment in the project, and will be forced to delay the project until at least October 2014, which is the earliest possible future date a specialized erection crew may be available.

Additionally, if the Leola Mill does not begin work on the continuous kiln project as scheduled, other related components of the overall capital improvements to the Leola Mill will be jeopardized or lost altogether, which would result in over \$30 million in lost investments in the community. Accordingly, West Fraser respectfully requests that the Commission grant a variance allowing West Fraser to undertake certain limited construction activities related to the Leola Mill efficiency project, at its sole risk, while the application for modification of the existing air permit is being processed. Due to the expected issuance of the final permit in the near-future, West Fraser anticipates that the only significant construction activity it will need to undertake before the final permit is issued will be to pour the foundation for the continuous kilns. Regardless, nothing in this variance would allow West Fraser to operate any of the modified equipment unless and until ADEQ issues the final permit.

II.

The Project Modifications are Subject to Unique Time Constraints Beyond West Fraser's Control.

7. As discussed above, continuous, dual path steam-heated drying kilns are the product of recently developed proprietary and patented technology. There are very few vendors capable of supplying the necessary equipment and the demand for the equipment and the construction specialists to install the equipment is extremely high. If West Fraser is unable to commence construction on its current schedule, it will lose its existing contracts with the equipment manufacturer and construction contractor, and will have to go to the back of the line, which is rapidly growing. Even a small delay in commencing construction will result in a minimum delay of more than a year before a suitable vendor and contractor can be procured, and will result in the loss of tens of millions of dollars in forfeited investments and lost production opportunities. The lack of availability of replacement equipment vendors and construction crews

if West Fraser is not able to commence construction on schedule is a factor beyond West Fraser's control.

8. A renewal of West Fraser's Title V permit was completed on March 23, 2013. The timing of the Title V renewal constrained West Fraser's submittal of the permit modification application which is the subject of this Petition. However, due to the critical nature of this project, even before receiving the Title V renewal, West Fraser began taking steps towards obtaining a permit modification and securing a place in line for receipt and construction of the revolutionary technology necessary for the Leola Mill to remain competitive in the industry and, further, necessary for West Fraser to continue its operations without reducing employee operations. On February 8, 2013, West Fraser submitted to ADEQ a complete permit modification application for continuous kiln project at the Leola Mill. As noted above, West Fraser expects the draft permit modification to be issued within the next few weeks. The regulatory process, combined with the fact that the plan must be commenced on a very aggressive schedule in order for it to have a chance to succeed, constitutes conditions beyond West Fraser's control.

**III.
The Commission Has the Clear Legal Authority
to Grant the Requested Variance.**

9. APC&EC Regulation 26.301 provides, in part, that a party shall not commence construction of an emission source that is subject to permitting prior to the issuance of the relevant air permit. Prevention of Significant Deterioration ("PSD") regulations, which are incorporated by reference into APC&EC Regulation 19.904(A), prohibit sources subject to PSD from beginning actual construction on a major modification without a permit stating the requirements for the major modification. By definition, "beginning actual construction" includes

initiation of physical on-site construction activities which are of a permanent nature, such as the pouring of foundations. See 40 C.F.R. § 52.21(b)(11).

10. Ark. Code Ann. § 8-4-313(a) provides, in pertinent part, that:

- (1) The [Commission] may grant specific variances from the particular requirements of any rule, regulation, or general order to such specific persons or class of persons or such specific air contamination source, upon such conditions as it may deem necessary to protect the public health and welfare, if it finds that strict compliance with the rule, regulation, or general order is inappropriate because of conditions beyond the control of the person granted the variance or because of special circumstances that would render strict compliance unreasonable, unduly burdensome, or impractical due to special physical conditions or causes or because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation or because no alternative facility or method of handling is yet available.
- (2) Variance may be limited in time.
- (3) In determining whether or not a variance shall be granted, the commission shall weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

11. Under Ark. Code Ann. § 8-4-313, the Commission has clear legal authority to grant West Fraser a variance from the provisions of Regulation 19.904 and Regulation 26.301 which would otherwise prohibit West Fraser from commencing construction until the Director issues her final decision on the permit application.

**IV.
West Fraser's Request Meets the
Strict Statutory Standards Required for a Variance**

A. Strict Compliance is Inappropriate Because of Conditions Beyond West Fraser's Control

12. Ark. Code Ann. § 8-4-313 provides that the Commission may grant a variance:

if it finds that strict compliance with the . . . regulation . . . is inappropriate because of conditions beyond the control of the person granted the variance.

13. The very critical time constraints which have prompted West Fraser's Petition are clearly beyond West Fraser's control. Knowing that the continuous kiln project is time-sensitive and will have a significant impact on the Leola Mill's competitiveness and long-term viability, West Fraser has attempted to work with ADEQ at every opportunity to expedite processing of its permit modification. Nonetheless, due in part to ADEQ's backlog of permit applications—a condition also beyond West Fraser's control—West Fraser will not be able to procure the final permit modification in time to maintain the project schedule. These unique conditions render strict compliance with the regulations inappropriate, particularly in view of the fact that West Fraser only anticipates needing to undertake limited construction activities before the final permit is issued.

B. Strict Compliance is Inappropriate Because of Special Circumstances that would Render Strict Compliance Unreasonable, Unduly Burdensome, or Impractical.

14. Ark. Code Ann. § 8-4-313 provides that the Commission may grant a variance:

if it finds that strict compliance with the . . . regulation. . . is inappropriate . . . because of special circumstances that would render strict compliance unreasonable, unduly burdensome, or impractical due to special physical conditions or causes.

15. The fact that West Fraser is extraordinarily constrained by the supply of and demand for this crucial technology and contractors able to install the technology constitutes a special circumstance not normally present in an air permit application which renders strict compliance with the normal prohibition on all types of construction activities unreasonable and unduly burdensome. In this connection, it is important to note that West Fraser plans to

continue operating the Leola Mill's fully permitted facilities at the same time that it is constructing the modifications that will be governed by the pending permit modification.

16. Additionally, strict compliance with the aforementioned regulations is unreasonable given the nature of the construction activities West Fraser seeks to commence while the permit modification application is pending. West Fraser seeks a variance for the sole purposes of preparing the foundation and conducting preliminary construction activities. Given the insignificance of the construction activities West Fraser seeks to commence before the final permit modification is issued and the severity of the consequences if West Fraser is unable to have the foundation prepared before the arrival of the erection crew, strict compliance with Regulations 19.904 and 26.301 is unreasonable, unduly burdensome and impractical.

17. West Fraser has conferred with its permit consultants and ADEQ engineers, and feels confident that there is nothing about ADEQ's expected decision on the permit modification application that will have any meaningful impact on the configuration of the facilities it proposes to begin constructing under the variance. Nevertheless, West Fraser understands that any construction it may undertake in reliance upon the variance will be at entirely at its sole risk.

C. Strict Compliance with the Regulation Would Result in Substantial Curtailment or Closing Down of West Fraser's Business, Plant or Operation.

18. Ark. Code Ann. § 8-4-313 provides that the Commission may grant a variance:

if it finds that strict compliance with the . . . regulation . . . is inappropriate . . . because strict compliance would result in substantial curtailment or closing down of a business, plant, or operation.

19. If West Fraser cannot successfully implement the project in substantially the fashion described in this Petition, there is a very real risk that the long-term prospects for the

Leola Mill will be adversely affected. The timber industry is in a depressed state and lumber producers operate on thin margins. Many companies are closing lumber production facilities because of the extremely depressed market and the profound uncertainties facing lumber producers in the near-term. Despite the prevailing climate in the industry, West Fraser has achieved a record of worker safety and production efficiency that is at the top of the industry's class, but it must be able to increase the production capacity of the Leola Mill for the facility to maintain its competitiveness and long-term viability. If West Fraser is unable to maintain its project schedule due to the prohibition on commencing any type of construction activity prior to the final issuance of its permit, the Leola Mill will be forced to curtail its operations due to its inability to compete in the industry and the resulting lost business opportunities. As such, strict compliance with the regulation is inappropriate, and the Commission should grant the variance as requested.

D. The Equities Weigh in Favor of Granting the Variance as do the Relative Advantages and Disadvantages to the Residents and the Occupation and Activity Affected.

20. Ark. Code Ann. § 8-4-313(a)(3) provides that:

In determining whether or not a variance shall be granted the commission shall weigh the equities involved and the relative advantages and disadvantages to the residents and the occupation and activity affected.

21. The equities clearly weigh in favor of granting the variance, as do the relative advantages and disadvantages to the residents and the occupation and activity affected. West Fraser's plans for modernization of the Leola Mill will preserve and enhance the security of the Leola Mill's 192 employees and the community as a whole. The modernization project will also indirectly preserve and enhance the security of the jobs and the investments of individuals and companies who raise and harvest timber in the "wood basket" that supplies timber to the Leola Mill, as well as the bi-product handlers and parts suppliers whose

businesses rely on continued operation of the mill. Conversely, failure or abandonment of the plans to modernize the Leola Mill could seriously jeopardize jobs of the Leola Mill employees and those who rely on the timber market that is increasingly dependent on the Leola Mill.

22. As for the residents and members of the community, West Fraser is aware of significant community support for the modernization plans generally, and for this Petition specifically. West Fraser is not presently aware of any person or group that is opposed to the modernization plan, the permit modification, or this Petition for variance. Taken together, the relative advantages and disadvantages to the residents and the occupations affected weigh strongly in favor of granting the variance as requested.

**V.
Granting the Variance will not have an
Adverse Environmental Impact**

23. The variance requested by West Fraser will have no adverse effect on the environment. The variance will only allow West Fraser to commence limited preliminary construction activities. It will not allow the operation of any new source of air emissions. Moreover, there is nothing about the kiln project, once completed, that will have any adverse effect on the environment. Quite the contrary, the kiln project will result in a number of older, less environmentally friendly pieces of equipment being taken out of service permanently. As a result, emission of almost all pollutants, except the Volatile Organic Compounds (“VOCs”) emitted by the wood itself as it dries, will be reduced. Even the increase in VOCs that will ultimately occur when the updated plant reaches full capacity will cause no unreasonable environmental impact based on technical consideration in accordance with State and federal statutes and regulations.

VI.
The Requested Variance will be Limited in Scope and Time

24. The variance requested by this Petition is only to commence construction, and not to operate any new or modified source. The variance is also limited in duration. The variance will last only for 120 days, or until the final permit modification is effective, whichever is earlier.

VII.
Construction will be at West Fraser's Own Risk

25. West Fraser understands and fully accepts the fact that if the Commission grants the requested variance, any construction West Fraser may undertake prior to issuance of the final permit will be entirely at West Fraser's sole risk.

VIII.
Procedural Considerations

26. Pursuant to the provisions of Ark. Code Ann. § 8-4-313(b)(1), a copy of this petition has been filed with the Director of ADEQ. West Fraser anticipates that the Director will file her recommendation on this Petition with the Commission, and requests the Commission consider this Petition at its next regularly scheduled meeting on June 28, 2013. West Fraser is hopeful that the Director will recommend that the Commission grant the variance as requested, particularly in light of the fact that ADEQ has approved such projects at other facilities, including a very similar project at the Anthony Forest Products Company's Urbana, Arkansas sawmill in 2011.

IX.
Conclusion

WHEREFORE, pursuant to Arkansas Code Annotated § 8-4-313, West Fraser respectfully requests that the Director make to the Commission, and that the Commission accept,


her recommendation that West Fraser's Petition for Variance from Regulation be granted and that the Commission enter a Minute Order in the form attached hereto.

Dated: June 14, 2013.

Respectfully submitted,

GILL RAGON OWEN, P.A.

By:


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CERTIFICATE OF SERVICE

I, Chad L. Wood, certify that on this 14th day of June, 2013, I filed the foregoing Petition for Variance from Regulation with Teresa Marks, Esq., Director, Arkansas Department of Environmental Quality, via Electronic Delivery and First Class Mail, and served a true and correct copy of the foregoing by Electronic Delivery and First Class Mail to the following:

Tammera Harrelson
Legal Division
Arkansas Department of Environmental Quality
5301 Northshore Drive
North Little Rock, AR 72118.


Chad L. Wood

ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION

RECOMMENDATION FOR
PETITION FOR VARIANCE FROM
REGULATION FILED BY WEST
FRASER, INC.

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On June 14, 2013 West Fraser, Inc. ("West Fraser") filed a Petition for Variance from Regulation with the Arkansas Pollution Control & Ecology Commission ("APC&EC" or the "Commission"). The Petition asks the Commission to grant West Fraser a variance from the provisions of APC&EC Regulation No. 19, Reg. 19.904 and Regulation No. 26, Reg. 26.301 to allow West Fraser to begin limited construction activities related to its lumber drying energy efficiency project at its Leola Lumber Mill while an application for modification of the air permit governing the facility is pending before the Arkansas Department of Environmental Quality ("ADEQ"). West Fraser also filed a copy of its Petition with the Director of ADEQ, pursuant to Ark. Code Ann. § 8-4-313(b)(1).

The Commission grants the variance from regulation, as requested in West Fraser's Petition, subject to the following conditions:

- (i) The variance authorized by this Minute Order is limited to the construction activities listed in the Petition;
- (ii) Construction and related activities undertaken by West Fraser in reliance on this variance prior to the Director's final permitting decision shall be entirely at West Fraser's sole risk and no such activities will have any effect or influence on either ADEQ or the Commission's review of West Fraser's application for air permit modification;
- (iii) Actions taken and expenses incurred by West Fraser based upon this variance shall not be construed as accruing any equities in West Fraser's favor in connection with any decision to grant or deny any aspect of West Fraser's application for air permit modification;

ARKANSAS POLLUTION CONTROL
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RECOMMENDATION FOR
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- (iv) This variance shall not be construed as allowing the operation of any modified emissions source at West Fraser's Leola Lumber Mill prior to the issuance of an air permit modification allowing operation of that modified source; and
 - (v) The variance shall expire 120 days from the date of this Minute Order or on the effective date of ADEQ's final decision on the permit modification, whichever is earlier.

COMMISSIONERS:

_____ L. Sickel	_____ D. Samples
_____ J. Chamberlin	_____ J. Fox
_____ J. Bates	_____ J. Simpson
_____ L. Bengal	_____ W. Thompson
_____ L. Hitchcock	_____ B. White
_____ D. Hendrix	_____ R. Young

_____ SUBMITTED BY: Chad Wood PASSED: _____
S. Jorgenson, Chair