

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

WEST FRASER, INC.

AI # 2866

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.

\* Settlement Tracking No.  
\* SA-MM-16-0034  
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\* Enforcement Tracking No.  
\* MM-CN-15-01362  
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SETTLEMENT

The following Settlement is hereby agreed to between West Fraser, Inc. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a corporation that owns and/or operates a facility located in Joyce, Winn Parish, Louisiana (“the Facility”).

II

On February 15, 2016, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-15-01362, which was based upon the following findings of fact:

“The Respondent owns and/or operates the facility known to the Department as Joyce Sawmill, located at 6481 Highway 34 in Joyce, Winn Parish, Louisiana (the Site). The facility has been assigned EPA identification number LAD069738441, but has been classified as an inactive generator of hazardous waste.

On or about June 19, 2015, the Department received an anonymous complaint that approximately 1000 to 2000 gallons of hydraulic fluid had been leaking to the ground at the Site every week since March 2015. The Department conducted an inspection of the Site on or about June 22, 2015, which revealed that the facility has had leaks in the four (4) inch high pressure hydraulic system in a unit designated as the "B & B/OPTiMIL Log Deck" or "B & B Area." This unit conducts the debarking and cutting of green tree logs of eight (8) to twenty (20) foot lengths. The hydraulic fluid was observed leaking in pools directly onto the ground, contaminating saw dust and soils under the B & B Area and outside the B & B Area where the hydraulic fluid had flowed. Numerous 55-gallon drums and other small containers were being used to catch leaking hydraulic fluid. Purchase records of replacement hydraulic fluid were provided to the Department. These records indicate that the leaks started prior to March 2013. A representative from the facility stated that the facility has developed an oil leak repair plan, and the facility started replacing the four (4) inch rigid system with three (3) inch high pressure lines with built-in flexibility on June 20, 2015.

On or about June 25, 2015, the site was referred to the Remediation Division. The Respondent submitted a Confirmation Soil Investigation Workplan to the Department on September 2, 2015. The Soil Investigation Workplan was approved on September 25, 2015. The Respondent submitted a Confirmation Soil Sampling Workplan on November 2, 2015. This document was reviewed by the Department and approved on January 19, 2016.

On or about July 16, 2015, the Department conducted another inspection of the Site. A representative from the facility stated that eight (8) roll-off boxes were filled with oil-contaminated shavings and dirt, and a pile was created to store additional hydraulic oil-contaminated sawdust and soils until they are disposed offsite. The hydraulic lines in the B & B Area were replaced with three (3) inch lines, but leaks still existed. The leaks were scheduled to be repaired on July 18, and July

19, 2015. The inspection also revealed three (3) points where hydraulic oil and storm water from the B & B/OPTiMIL Log Deck flowed into the first pond of the waste water treatment system. Sampling was conducted on July 27, 2015, by Advanced Environmental Compliance, LLC, and was witnessed by the Department. Results from this sampling dated August 7, 2015, revealed that the concentrations of all constituents of concern (e.g., hydrocarbons, metals, etc.) were below applicable screening standards specified in the Department's Risk Evaluation and Corrective Action Program (RECAP) document. Additional sampling was conducted on September 9, 2015, by PPM Consultants and was witnessed by the Department. Results from this sampling dated September 29, 2015, revealed that the concentrations of all constituents of concern were below applicable screening standards specified in the Department's RECAP document.

On or about July 16, 2015, the facility provided copies of Used Oil Manifests from September 15, 2011 to June 3, 2015 to the Department. These records indicate that 4,988 gallons of waste oil were shipped offsite. The purchase records of replacement hydraulic fluid that were provided by the facility indicated that the Respondent purchased 192,356 gallons of hydraulic fluid from January 2, 2012 to June 30, 2015. These 192,356 gallons of hydraulic fluid represent the approximate amount of hydraulic fluid released from the hydraulic system, while less than 5,000 gallons were documented to have been shipped offsite.

On or about June 22, 2015, and June 24, 2015, inspections of the Site conducted by the Department revealed the following violations:

- A. The Respondent failed to stop the release of used oil, contain the released used oil, and clean up and properly manage the released used oil, in violation of LAC 33:V.4013.E. Specifically, used hydraulic fluid was released to the environment on a daily basis beginning in or about March 2013. The June 22, 2015, inspection revealed that the Respondent began making repairs to the hydraulic system on June 20, 2015. A follow-up inspection conducted on October 8, 2015, revealed that the system was still leaking. Based upon pictures provided by the Respondent via email correspondence on

December 9, 2015, the system was no longer releasing used oil to the environment. This violation has been addressed.

- B. The Respondent failed to report to the Department an unauthorized discharge to the ground that exceeds a reportable quantity within twenty-four (24) hours after learning of the discharge, in violation of LAC 33:I.3917.A. Specifically, used hydraulic fluid was released on a daily basis beginning in or about March 2013 and continuing until December 2015, and the Department was not notified until June 24, 2015. This violation was addressed.
- C. The Respondent failed to perform hazardous waste determinations for waste material generated at the Site, in violation of LAC 33:V.1103.B. Specifically, the Respondent failed to determine whether soils and sawdust contaminated with hydraulic oil were hazardous waste. Sampling of the hydraulic oil contaminated soils and sawdust was conducted by Advanced Environmental Compliance on June 26, 2015. Results of the sampling dated July 13, 2015, revealed that this material was a non-hazardous waste. This violation has been addressed.
- D. The Respondent failed to label containers and aboveground tanks used to store oil at the facility with the words "Used Oil," in violation of LAC 33:V.4013.D. Specifically, the used oil tank beside the maintenance shop and 55-gallon drums and 5-gallon containers used to collect used oil from the leaks in the hydraulic system were not labeled. Based upon records provided by the Respondent via email correspondence on December 10, 2015, these violations have been addressed.
- E. The Respondent failed to close a container holding hazardous waste except when it is necessary to add or remove waste as specified by LAC 33:V.2107.A, in violation of LAC 33:V.4013.B. Specifically, the containers used to collect used oil from the leaks in the hydraulic system were permanently open. Based upon records provided by the Respondent via email correspondence on December 9, 2015, and December 10, 2015, this violation has been addressed.

On or about July 16, 2015, the Department received a complaint from Louisiana State Police that the facility was hauling waste offsite and dumping it into a pit on Wyoming Road, Winn Parish, Louisiana. An inspection was conducted by the Department on or about July 16, 2015. The inspection revealed that waste material was being removed from an old silt pond and vat pond, which was closed approximately twenty (20) years ago. The dirt was black in color and had a strong odor. Mr. Phil Harris, the facility manager stated that the vat pond was being dug out to create a pond to receive condensate from the wood processing drying kilns. Mr. Harris denied that the waste from the

vat pond was going offsite and stated that the waste was being placed on-site adjacent to the vat pond. Immediately following the inspection, the Department contacted Murphy Brothers, trucking company, and was informed that they had a truck working for Alexandria Contractors, contracted by the Respondent to perform dirt work. The contracting company informed the Department that the facility was excavating the old vat pond and they were hauling material removed from the vat pond to an offsite location on Wyoming Road about half of a mile west on US 84 from LA 34. This property is owned by Mr. Mike Hudson. Mr. Hudson gave consent to the Respondent to bring cement and uncontaminated dirt to the pit on his property in order to build-up the property for trailer houses. Advanced Environmental Compliance conducted sampling and analysis of the waste material located on Mr. Hudson's property on July 17, 2015. Results of the sampling dated July 28, 2015, revealed that the concentrations of the constituents of concern were above applicable screening standards specified in the Department's Risk Evaluation and Corrective Action (RECAP) document.

On or about August 3, 2015, the Department received an anonymous complaint that the facility was disposing boiler ash on site in a landfill without a permit. The inspector reviewed the circumstances and determined the boiler ash at the facility is classified as woodwaste, and the facility was using an exemption from permitting as described in LAC 33:VII.305.A.8. On or about August 10, 2015, the Department conducted another inspection of the Site. The inspection revealed that the facility used the vat pond to store/dispose of some of the boiler ash. Boiler ash was in the material from the vat pond that was transported to Mr. Mike Hudson's property. Since the waste was being moved offsite, the exemption from permitting provided under LAC 33:VII.305.A.8 no longer applies to the waste.

A site visit was conducted by the Department on or about August 24, 2015. The facility was advised that sampling of the vat pond waste both onsite and offsite needed to be conducted.

Sampling of the black dirt located onsite and offsite was conducted on September 9, 2015 by PPM Consultants and was witnessed by the Department. Results of the sampling dated September 29, 2015, revealed the concentrations of aromatics C16-C21 and aliphatics C16-C35 exceeded the applicable RECAP Non-Industrial Screening Standards, and that Mr. Hudson's property would thus require remediation. PPM Consultants prepared and submitted to the Department a "Risk Evaluation/Corrective Action Program Screening Option Evaluation for Pond and Offsite Location" dated October 7, 2015. This document was reviewed by the Department and approved on January 19, 2016.

On or about July 16, 2015, an inspection conducted by the Department on Mr. Hudson's property located on Wyoming Road revealed the following violations:

- A. The Respondent failed to perform hazardous waste determinations for waste materials at the Site, in violation of LAC 33:V.1103.B. Specifically, the Respondent failed to determine whether the black dirt and sludge removed from the vat pit, both onsite and offsite were hazardous. Sampling of the black dirt located onsite and offsite was conducted by PPM Consultants on September 9, 2015. Results of the sampling dated September 29, 2015, revealed that the material was a non-hazardous waste. This violation has been addressed.
- B. The Respondent caused and/or allowed the unauthorized disposal of solid waste without a permit and/or the authority of the Department, in violation of La R.S. 30:2155 and LAC 33:VII.315.C. Specifically, the black dirt and sludge from the vat pit which includes boiler ash was taken from the Site and transported to Mr. Hudson's property, an unpermitted site.
- C. The Respondent caused and/or allowed the transportation of solid waste to a disposal facility not permitted to receive such waste, in violation of LAC 33:VII.505.D. Specifically, the Respondent transported dirt from the vat pit which included boiler ash to Mr. Hudson's property."

### III

Respondent submitted a written response and timely request for a hearing dated March 24, 2016, and supplemental response dated April 13, 2016, to the Consolidated Compliance Order &

Notice of Potential Penalty (Exhibits 1 and 2).

IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TWENTY-NINE THOUSAND AND NO/100 DOLLARS (\$29,000.00), of which Two Thousand Four Hundred Thirty-Two and 45/100 Dollars (\$2,432.45) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may

be required for interpretation of this agreement in any action by the Department to enforce this agreement.

#### VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

#### IX

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

#### X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Winn Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

#### XI

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed



or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

## XII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

## XIII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

WEST FRASER, INC.

BY: Sarah Coker  
(Signature)

Sarah Coker  
(Printed)

TITLE: Secretary / Treasurer

THUS DONE AND SIGNED in duplicate original before me this 21<sup>st</sup> day of April, 20 17, at Germantown, TN.



Shenna Peterson  
NOTARY PUBLIC (ID # \_\_\_\_\_)  
My Commission Expires  
April 25, 2018

Shenna Peterson  
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]  
Lourdes Iturralde, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 26<sup>th</sup> day of July, 20 17, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 19181)

Perry Theriot  
(stamped or printed)

Approved: [Signature]  
Lourdes Iturralde, Assistant Secretary

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March 24, 2016

Louis E. Buatt

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RECEIVED  
MAR 29 2016  
ENFORCEMENT DIVISION

**Via Facsimile (225) 219-4068 and Federal Express**

Louisiana Department of Environmental Quality  
Office of the Secretary  
Post Office Box 4302  
Baton Rouge, LA 70821-4302  
**Attn: Hearings Clerk, Legal Division**

Re: West Fraser, Inc.  
Enforcement Tracking No. MM-CN-15-01362  
Agency Interest No. 2866

Dear Hearings Clerk:

Enclosed please find the original and two copies of West Fraser, Inc.'s Request for Adjudicatory Hearing for filing in connection with the above-captioned matter. We ask that you please date stamp the extra copy and return it to us in the enclosed self-addressed, stamped envelope. Please contact me if you have any questions concerning this Request for Adjudicatory Hearing. Thank you for your attention to this matter.

Very truly yours,



Louis E. Buatt  
Attorney for West Fraser, Inc.

LEB:sb  
Enclosure

cc: **Via Federal Express and Electronic Mail**  
Louisiana Department of Environmental Quality  
Office of Environmental Compliance  
Enforcement Division  
Post Office Box 4312  
Baton Rouge, LA 70821-4312  
Attn: Cynthia Arrison



**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

**IN THE MATTER OF:**

**WEST FRASER, INC.  
WINN PARISH  
ALT ID NO. LAD069738441  
T164974**

**PROCEEDINGS UNDER THE  
ENVIRONMENTAL QUALITY ACT,  
La. R.S. 30:2001, et seq.**

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**ENFORCEMENT TRACKING  
NO.**

**MM-CN-15-01362**

**AGENCY INTEREST NO.**

**2866**

**REQUEST FOR ADJUDICATORY HEARING**

NOW COMES West Fraser, Inc. (“West Fraser”), appearing through undersigned counsel, to file this request for hearing on the above-captioned Consolidated Compliance Order and Notice of Potential Penalty (“CONOPP”) issued by the Louisiana Department of Environmental Quality (“LDEQ”). West Fraser hereby requests an adjudicatory hearing to review disputed issues of material fact and law arising out of the CONOPP. Pursuant to La. R.S. § 30:2050.4(D), this Request describes the provisions of the CONOPP on which a hearing is requested and describes the basis for the request. This request for adjudicatory hearing is timely filed within thirty days after West Fraser’s receipt of service of the CONOPP.

1.

West Fraser admits the facts set forth in Findings of Fact Paragraph I.

## 2.

- A. West Fraser admits the following facts set forth in Findings of Fact Paragraph II: West Fraser admits that the Department conducted an inspection of the Site on or about June 22, 2015, which revealed that the facility has had leaks in the four (4) inch high pressure hydraulic system in a unit designated as the "B & B Area." West Fraser wishes to clarify that the B&B and OPTiMAL Log Deck are separate areas of the facility. West Fraser further admits that this unit conducts the debarking and cutting of green tree logs of eight (8) to twenty (20) foot lengths. West Fraser further admits that 55-gallon drums and other small containers were being used to catch leaking hydraulic fluid. Finally, West Fraser admits that the facility had developed an oil leak repair plan, and the facility started replacing the four (4) inch rigid system with three (3) inch high pressure lines with built-in flexibility on June 20, 2015. West Fraser wishes to clarify that it started making preparations to replace those lines in April 2015.
- B. West Fraser denies the following facts set forth in Findings of Fact Paragraph II: West Fraser denies that on or about June 19, 2015, the Department received an anonymous complaint that approximately 1000 to 2000 gallons of hydraulic fluid had been leaking to the ground at the Site every week since March 2015. This denial is based on the fact that The LDEQ Incident Report for Incident ID: 164469 reflects the incident description provided by the anonymous caller as, "c15-62524 leaking 1000 to 2000 gals of Hydraulic fluid to the ground every week BH." It does not reflect that the anonymous caller stated the leak was ongoing since March 2015. West Fraser further denies the hydraulic fluid was observed leaking in pools directly onto the ground, contaminating saw dust and soils under the B & B Area and outside the B & B Area where the hydraulic fluid had flowed. This

denial is based on the fact that the majority of the leaking fluid was captured by containers or absorbed by wood debris rather than pooling directly on the ground. Moreover, the ground under the B&B area is a paved concrete surface, and not soil. While West Fraser admits that 55-gallon drums and other small containers were being used to catch leaking hydraulic fluid, West Fraser denies the contention that the containers were “numerous,” and objects to that term as being vague and ambiguous. West Fraser further denies that purchase records of replacement hydraulic fluid that were provided to the Department indicate the leaks started prior to March 2013. This denial is based on the fact that those records merely reflect the amount of hydraulic fluid that was purchased between January 2, 2012 and June 30, 2015; they do not indicate the leaks started prior to March 2013.

3.

West Fraser admits the facts set forth in Findings of Fact Paragraph III.

4.

- A. West Fraser admits the following facts set forth in Findings of Fact Paragraph IV: West Fraser admits that on or about July 16, 2015, the Department conducted another inspection of the Site. West Fraser further admits that a representative from the facility stated that eight (8) roll-off boxes were filled with oil-contaminated shavings and dirt, and a pile was created to store additional hydraulic oil-contaminated sawdust and soils until they are disposed offsite. West Fraser further admits that the hydraulic lines in the B & B Area were replaced with three (3) inch lines, but leaks still existed that were scheduled to be repaired on July 18, and July 19, 2015. West Fraser further admits that sampling at three discharge points to the wastewater treatment system was conducted on July 27, 2015 by Advanced Environmental Compliance, LLC, and was witnessed by the Department. West

Fraser further admits that results from this sampling dated August 7, 2015, revealed that the concentrations of all constituents of concern (e.g., hydrocarbons, metals, etc.) were below applicable screening standards specified in the Department's Risk Evaluation and Corrective Action Program (RECAP) document. West Fraser further admits that additional sampling was conducted on September 9, 2015, by PPM Consultants and was witnessed by the Department. Finally, West Fraser admits that results from this sampling dated September 29, 2015 revealed that the concentrations of all constituents of concern were below applicable screening standards specified in the Department's RECAP document.

- B. West Fraser denies the following facts set forth in Findings of Fact Paragraph IV: West Fraser denies the [July 16, 2015] inspection also revealed three (3) points where hydraulic oil and storm water from the B & B/OPTiMIL Log Deck flowed into the first pond of the waste water treatment system. West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph IV with respect to the July 16, 2015 inspection. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph IV with respect to the July 16, 2015 inspection revealing three (3) points where hydraulic oil and storm water from the B & B/OPTiMIL Log Deck flowed into the first pond of the waste water treatment system and requests a hearing on Paragraph IV of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.

## 5.

- A. West Fraser admits the following facts set forth in Findings of Fact Paragraph V: West Fraser admits that on or about July 16, 2015, the facility provided copies of Used Oil Manifests from September 15, 2011 to June 3, 2015 to the Department. West Fraser further admits that these records indicate that 4,988 gallons of waste oil were shipped offsite. Finally, West Fraser admits that the purchase records of replacement hydraulic fluid that were provided by the facility indicated that West Fraser purchased 192,356 gallons of hydraulic fluid from January 2, 2012 to June 30, 2015.
- B. West Fraser denies the following facts set forth in Findings of Fact Paragraph V: West Fraser denies that these 192,356 gallons of hydraulic fluid represent the approximate amount of hydraulic fluid released from the hydraulic system, while less than 5,000 gallons were documented to have been shipped offsite. This denial is based on the fact that the 192,356 gallons of replacement hydraulic fluid less the documented amount of waste oil shipped offsite does not represent the approximate amount of hydraulic fluid that was released from the hydraulic system. For example, that determination must account for hydraulic fluid that was: collected in containers (drums, buckets, catch pans, sumps), absorbed by wood debris and booms, and otherwise captured and disposed; utilized for other process purposes such as lubricant; circulating within the various systems and equipment on site; and maintained in the tanks and drums in containment areas throughout the facility, etc.



6.

- A. West Fraser denies the factual allegations set forth in Findings of Fact Paragraph VI(A). West Fraser denies it failed to stop the release of used oil, contain the released used oil, and clean up and properly manage the released used oil in violation of LAC 33:V.4013.E. This denial is based on the fact that the hydraulic fluid that leaked from the high-pressure system does not constitute “used oil” that is subject to LAC 33:V.4013.E. That provision applies to containers and aboveground tanks used to store used oil at generator facilities. Further, West Fraser did take measures to stop releases from the hydraulic system, and to contain, clean-up, and properly manage the hydraulic fluid at the facility in accordance with industry practices and as set forth in the facility’s SPCC Plan. West Fraser specifically denies that used oil or hydraulic fluid was released to the environment on a daily basis beginning in or about March 2013. West Fraser further denies that the June 22, 2015 inspection revealed that the Respondent began making repairs to the hydraulic system on June 20, 2015. This denial is based on the fact that aside from replacing the lines, West Fraser made various additional repairs to the system prior to June 20, 2015. West Fraser further denies that a follow-up inspection conducted on October 8, 2015 revealed that the system was still leaking, and that based upon pictures provided by West Fraser via e-mail correspondence on December 9, 2015, the system was no longer releasing oil to the environment. West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph VI(A) with respect to the October 8, 2015 inspection revealing that the system was still leaking, and the December 9, 2015 correspondence regarding same. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph VI(A) with respect to the October 8, 2015 inspection and December 9,

2015 correspondence and requests a hearing on Paragraph VI(A) of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.

- B. West Fraser denies the factual allegations set forth in Findings of Fact Paragraph VI(B). West Fraser denies that it failed to report to the Department an unauthorized discharge to the ground that exceeds a reportable quantity within twenty-four (24) hours after learning of the discharge, in violation of LAC 33:I.3917.A. This denial is based on the fact that West Fraser denies the occurrence of any unauthorized discharge to the ground that exceeded a reportable quantity. West Fraser specifically denies that hydraulic fluid was released on a daily basis beginning in or about March 2013 and continuing until December 2015. West Fraser submits that it cooperated with the LDEQ's instructions to make a report on June 24, 2015 even though it did not and does not believe a reportable quantity was exceeded.
- C. West Fraser admits the following facts set forth in Findings of Fact Paragraph VI(C): West Fraser admits that sampling of hydraulic oil contaminated soils and sawdust was conducted by Advanced Environmental Compliance on June 26, 2015. West Fraser further admits that Results of the sampling dated July 13, 2015, revealed that the material was a non-hazardous waste.
- D. West Fraser denies the following facts set forth in Findings of Fact Paragraph VI(C): West Fraser denies it failed to perform hazardous waste determinations for waste material generated at the Site [specifically soils and sawdust], in violation of LAC 33:V.1103.B. This denial is based on the fact that LAC 33:V.1103.B2 allows the generator to determine if waste is a hazard by "applying knowledge of the hazard characteristic of the waste in

light of the materials or the processes used.” West Fraser complied with this provision by making a “knowledge of process” determination that certain soils and sawdust impacted by hydraulic fluid were not hazardous waste.

- E. West Fraser admits the following facts set forth in Findings of Fact Paragraph VI(D): West Fraser admits that the used oil tank beside the maintenance shop was not labeled or that the label was no longer visible. West Fraser submits that the tank had been labeled appropriately in the past, but the “Used Oil” label had either deteriorated or become obscured. West Fraser further admits that it provided records via email correspondence on December 10, 2015 reflecting this violation had been addressed.
- F. West Fraser denies the following facts set forth in Findings of Fact Paragraph VI(D): West Fraser denies that it failed to label 55-gallon drums and 5-gallon containers used to collect used oil from the leaks in the hydraulic system with the words, “Used Oil,” in violation of LAC 33:V.4013.D. This denial is based on the fact that LAC 33:V.4013.D applies to “[c]ontainers and aboveground tanks used to store used oil at generator facilities.” As stated above, West Fraser disputes that the hydraulic fluid leaking from the high-pressure system qualifies as “used oil,” and submits that the containers referenced were not storage containers but were containers used on a temporary basis to capture short term leaks of usable hydraulic fluid; therefore, the containers used to collect the fluid were not required to be labeled.
- G. West Fraser denies the factual allegations set forth in Findings of Fact Paragraph VI(E). West Fraser denies that it failed to close a container holding hazardous waste except when it is necessary to add or remove waste as specified by LAC 33:V.2107.A, in violation of LAC 33:V.4013.B. West Fraser specifically denies that the containers it used to collect

hydraulic fluid from the leaks in the hydraulic system were permanently open. Those containers were not in storage, but were being actively used to collect leaking hydraulic fluid, necessitating them to be open. LAC 33:V.2107.A requires containers holding hazardous waste to always be closed *during storage*, except when it is necessary to add or remove waste. This provision also does not apply because the leaking hydraulic fluid from the active hydraulic system that was collected was not a waste, solid waste, hazardous waste or used oil.

## 7.

West Fraser denies the factual allegations set forth in Findings of Fact Paragraph VII. West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph VII regarding the material removed from the vat pond area and hauled to Wyoming road. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph VII and requests a hearing on Paragraph VII of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.

## 8.

West Fraser denies the factual allegations set forth in Findings of Fact Paragraph VIII. West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph VIII regarding the boiler ash material removed from the vat pond area and hauled to Wyoming road. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph VIII and requests a hearing on Paragraph VIII of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.

9.

West Fraser admits the facts set forth in Findings of Fact Paragraph IX.

10.

- A. West Fraser admits the following facts set forth in Findings of Fact Paragraph X(A): West Fraser admits that sampling of the black dirt located onsite and offsite was conducted by PPM Consultants on September 9, 2015. West Fraser further admits that results of the sampling dated September 29, 2015, revealed that the material was a non-hazardous waste.
- B. West Fraser denies the following facts set forth in Findings of Fact Paragraph X(A): West Fraser denies that it failed to perform hazardous waste determinations for waste materials at the Site (specifically, the black dirt and sludge removed from the vat pit, both onsite and offsite) in violation of LAC 33:V.1103.B. LAC 33:V.1103 requires a person who generates a solid waste to determine if that waste is classified as hazardous waste. This denial is based on the fact that West Fraser did not recognize there was any waste material mixed in with the concrete and clean dirt it was excavating and had no reason to believe that a hazardous waste determination was necessary. Prior to undertaking excavation and construction of the condensate pond, West Fraser had a geotechnical investigation conducted by Geotechnical Testing Laboratory, Inc. to determine the suitability of the project. The geotechnical investigation consisted of soil borings and soil sampling for geotechnical characteristics. The soil borings did not reflect the presence of the black dirt that was ultimately encountered.

- C. West Fraser denies the factual allegations set forth in Findings of Fact Paragraph X(B). West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph X(B) regarding the alleged unauthorized disposal of solid waste without a permit and/or the authority of the Department. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph X(B) and requests a hearing on Paragraph X(B) of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.
- D. West Fraser denies the factual allegations set forth in Findings of Fact Paragraph X(C). West Fraser is currently conducting an evaluation of the facts sets forth in Findings of Fact Paragraph X(C) regarding the alleged unauthorized disposal of solid waste without a permit and/or the authority of the Department. Out of an abundance of caution, West Fraser denies the facts sets forth in Findings of Fact Paragraph X(C) and requests a hearing on Paragraph X(C) of the CONOPP in order to ensure that all facts and legal defenses are adequately considered in this enforcement action.

11.

Regarding the requirements set forth in the Compliance Order portion of the CONOPP, the requirements are overly broad, not reasonably related to the alleged violations, and do not provide "Fair Notice". For these reasons, West Fraser also requests a hearing on Paragraphs I, II, III, and IV of the Compliance Order.

12.

Finally, concerning the Notice of Potential Penalty, West Fraser objects to the issuance of any penalty as no violations have occurred as alleged and/or to the extent any violations have occurred, such violations do not warrant a penalty under the circumstances. As such, to the extent required, West Fraser also requests a hearing concerning the Notice of Potential Penalty.

Accordingly, West Fraser respectfully requests that LDEQ grant an administrative adjudicatory hearing pursuant to La. R.S. §§ 30:2050.4, 30:2011.D, and/or LAC 33:I Chapter 3.

New Orleans, Louisiana, this \_\_\_ day of March, 2016.

Respectfully submitted,



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April 13, 2016

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Assistant Secretary  
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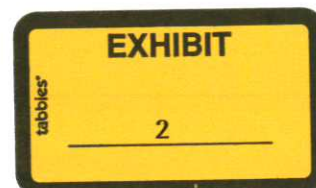
Re: West Fraser's Supplemental Response to Consolidated Compliance Order and Notice of Potential Penalty Enforcement Tracking No. MM-CN-15-01362 Agency Interest No. 2866

Dear Ms. Iturralde:

In further response to the above-captioned Consolidated Compliance Order and Notice of Potential Penalty, West Fraser, Inc. submits the following supplemental information regarding its statement of the monetary benefits of noncompliance for the cited violations as required by Paragraph III of the Notice of Potential Penalty section of the CONOPP.

As previously indicated, West Fraser disputes the alleged violations occurred as written, and is requesting an adjudicatory hearing regarding violations A, B, C, D, and E alleged in Paragraph VI, and violations A, B and C alleged in Paragraph X of the Findings of Fact section of the CONOPP. Notwithstanding its denial of all alleged violations, West Fraser will address the benefits of noncompliance out of an abundance of caution and in the spirit of cooperation.

In assessing the potential issuance of a penalty, one factor the LDEQ considers is the monetary benefits realized through noncompliance. This prong analyzes the "financial benefit to the offender of delaying capital expenditures and maintenance costs on pollution control equipment." *United States v. CITGO Petroleum Corp.*, 2015 U.S. Dist. LEXIS 171735, at \*5 (W.D. La. Dec. 23, 2015) (citation omitted). Monetary benefit can be calculated as: "(1) the cost of capital, i.e., what it would cost the polluter to obtain the funds necessary to install the equipment necessary to correct the violation; and (2) the actual return on capital; i.e., what the polluter earned on the capital that it declined to divert for installation of the equipment." *Id.* (citation omitted).





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Applying this test, West Fraser clearly realized no monetary benefits through its alleged noncompliance. The cost to replace the high-pressure lines at the B&B area totaled roughly \$63,000. This was not a delayed compliance cost, but rather was part of several pro-active upgrades to the hydraulic equipment that West Fraser undertook prior to the involvement of the LDEQ. West Fraser did not benefit from any return on the capital it ultimately invested to replace the lines. Prior to replacing the lines, West Fraser also made other efforts to maintain the equipment and correct the leaks. Moreover, in responding to the LDEQ inspection, West Fraser conducted clean-up efforts at the B&B area by pressure washing the B&B Area and removing and disposing of the impacted materials at a cost of roughly \$46,000. In connection with the ongoing remediation of Mr. Hudson's property at Wyoming road, West Fraser anticipates it will incur additional testing, hauling and disposal costs exceeding \$150,000. This is in addition to the considerable legal expenses incurred to date. Finally, West Fraser has engaged environmental consultants to assist with sampling and advice at a cost to date of roughly \$55,000. Therefore, West Fraser has mitigated the damages caused by its alleged noncompliance at considerable cost. Under these circumstances, West Fraser did not realize any monetary benefit as a result of its alleged noncompliance.

Sincerely,



Louis E. Buatt

LEB:sb

cc: Cynthia Arrison, LDEQ  
Celena Cage, LDEQ  
Craig Easley, LDEQ