

Longleaf Energy Associates, LLC

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VIA U. S. AND ELECTRONIC MAIL

October 8, 2008

Mr. Jac Capp
Program Manager, Stationary Source Permitting Program
Georgia Environmental Protection Division
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

***Re: Request for Extension of Dates Concerning the Commencement and
Completion of Construction for Longleaf Energy Associates, LLC's PSD Air
Quality Permit No. 4911-099-0030-P-01-0***

Dear Mr. Capp:

I am writing to request the extension of the two deadlines contained in Conditions 2.1 and 2.2 of Longleaf's PSD Air Quality Permit No. 4911-099-0030-P-01-0 (the "Permit"), both of which relate to the construction of the facility. Condition 2.1 of the Permit provides that:

The Permittee shall commence construction within 18 months of the date of issuance of this Permit. In the event that construction of any of these units has not commenced in the time frame specified, and absent approval by the Division for an extension of the commencement date, this Permit shall become null and void with respect to that unit and all units yet to be constructed.

Condition 2.2 of the Permit provides that the construction of the two main boilers, among other sources at the facility, must be completed by December 31, 2013, "absent approval by the Division for an extension of the completion date."

As permitted by the express terms of Conditions 2.1 and 2.2, Longleaf now seeks EPD's approval of an extension of both the date by which construction of the facility must commence and the date by which construction of several of the sources at the facility must be completed.

As you know, the Director of EPD issued the Permit to Longleaf on May 14, 2007. Since that time, Longleaf's efforts to plan for and commence construction of the facility have been disrupted by legal challenges to the validity of the Permit. These legal challenges were initiated by the Friends of the Chattahoochee, Inc. and the Sierra Club (collectively, the "Petitioners") through the filing of a Petition for Hearing with the Office of State Administrative Hearings ("OSAH") on June 13, 2007. The OSAH proceedings lasted seven months, and concluded with a Final Decision from OSAH Judge Stephanie Howells on January 11, 2008, affirming EPD's

issuance of the Permit. The Petitioners then appealed Judge Howells' decision to Fulton County Superior Court, which unexpectedly ruled in Petitioners' favor. Fortunately, however, the Georgia Court of Appeals has exercised its discretion to hear an appeal of the Superior Court's decision, and Longleaf believes that the Court of Appeals will reverse the Superior Court. Even so, the Court of Appeals is not expected to render its decision until some time in 2009.

Had the Petitioners not filed their Petition for Hearing, the 18-month time period provided for in Condition 2.1 of the Permit would theoretically expire on November 14, 2008. Pursuant to Georgia law, however, the filing of a Petition for Review stays the effectiveness of the Permit. Specifically, Georgia law provides that the filing of an appeal "shall stay such order or action until such time as the hearing has been held and for ten days after the administrative law judge renders his or her decision on the matter." O.C.G.A. § 12-2-2(c)(2)(B). This Georgia statute effectively tolled the 18-month time limit during the OSAH proceeding such that the 18-month time period could not expire until July 21, 2009, at the earliest.¹

Conditions 2.1 and 2.2 of the Permit expressly provide EPD with the discretion to approve extensions of the construction deadlines contained therein. The Georgia Rules further provide that the Director of EPD may extend the 18-month time limit provided for in Condition 2.1 of the Permit "upon a satisfactory showing that an extension is justified." Ga. Comp. R. & Regs. r. 391-3-1-.02(7)(b)(15) (incorporating by reference 40 C.F.R. § 52.21(r)(2)). The pending appeal of the Permit provides ample justification for extending the time limits contained in Conditions 2.1 and 2.2 of the Permit. Indeed, Longleaf is aware of at least one other state permitting authority, Kentucky's Department of Environmental Protection, that has extended the 18-month time limit for a coal-fired power plant that faces the very same type of legal challenges that EPD and Longleaf face in this case.

The ongoing litigation over the Permit has prevented Longleaf from exercising its rights under the Permit to commence and complete construction within the time periods specified in Conditions 2.1 and 2.2 of the Permit. Longleaf has been diligently pursuing completion of the final steps necessary to commence construction of the facility since May 2007 and remains committed to completing all the necessary steps to enable construction to commence, including vigorously defending the Permit against the legal challenges raised by Petitioners. Longleaf is making every effort to commence construction as quickly as possible; however, certain commercial arrangements, such as the plant construction contract, electricity sales and construction financing, can only be partially completed during the pendency of the current appeal.

Longleaf therefore respectfully requests that the Director of EPD approve the extension of the time period for the commencement of construction set forth in Condition 2.1 of the Permit by 18 months from July 21, 2009. Longleaf also requests that the Director of EPD approve an

¹ There is also a question as to whether the order from the Fulton County Superior Court tolls the deadline clocks for commencing and completing construction.

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extension of the time period for completion of construction set forth in Condition 2.2 of the Permit to December 31, 2015.

Should you have any questions concerning the requested extensions, please do not hesitate to contact me.

Sincerely,

Handwritten signature of Paul G. Thessen in black ink, with the letters 'MFV' written to the right of the signature.

Paul G. Thessen
Vice President

cc: Mr. Jim Ussery
Diane Deshazo, Esq.
Patricia Barmeyer, Esq.