

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

ASHTON BELL, et al.)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:17-cv-829-JAG
)	
WESTROCK CP, LLC, et al.)	
)	
Defendants.)	

ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT

Defendant West Point Chips, Inc. (“WPC”) hereby responds to the Amended Complaint filed against it by Ashton Bell, Delilah Bell and Lucy R. Edwards, Clarence Burrell, Sheila Burrell, Linda White, Dale Saunders, Nancy Saunders, and Olen Sikes (“Plaintiffs”).

GROUND OF DEFENSE AND AFFIRMATIVE DEFENSES

1. Plaintiffs fail to state a claim against WPC upon which relief can be granted.
2. WPC incorporates by reference herein all defenses and arguments raised in its Motion to Dismiss and Memorandum in Support, and Reply, as well as in its Motion to Strike Class Allegations and Memorandum in Support, and Reply, previously filed.
3. Plaintiffs’ claims are preempted by the Clean Air Act.
4. Plaintiffs’ claims are barred by the primary jurisdiction doctrine because adjudication of Plaintiffs’ claims require resolution of issues that lie within the specific expertise of state and/or federal regulatory bodies including, but not limited to, the Virginia Department of Environmental Quality.
5. Plaintiffs’ damages, if any exist, were caused by their own actions or omissions, or by third-parties over whom WPC had no control.

6. Plaintiffs assumed any risks associated with owning property in the vicinity of a paper mill and/or wood chipping facility.

7. Plaintiffs' claims are barred to the extent that their alleged damages were caused by their contributory negligence.

8. Plaintiffs' claims are barred because the alleged damages resulted from new and independent, unforeseeable, superseding and/or intervening causes unrelated to any conduct by WPC.

9. Plaintiffs have failed to mitigate their damages, if any.

10. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

11. Plaintiffs' claims are barred, in whole or in part, by applicable statutes of limitations and/or statute of repose.

12. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches. As an example, Plaintiffs unreasonably delayed in asserting claims alleged in the Complaint and Amended Complaint, precluding any equitable relief including but not limited to injunction.

13. Plaintiffs' claims are barred by the economic loss rule.

14. WPC's wood chip facility is regulated by local, state and federal law. Plaintiffs' claims are barred, in whole or in part, because WPC complied with all applicable laws and regulations.

15. Plaintiffs' alleged damages are speculative and remote, depend upon events not reasonably certain to occur, may be mitigated by future events, and cannot be determined by reasonable certainty as required by law.

16. Plaintiffs' claims are barred because any dust that Plaintiffs complain of was not caused by WPC but rather by alternative causes or sources including, but not limited to, naturally occurring dust.

17. Plaintiffs' claims are barred because the utility of the conduct about which Plaintiffs complain outweighs Plaintiffs' alleged harm.

18. Plaintiffs' claims are barred, in whole or in part, because at all times and places relevant, WPC complied with the state of the art.

19. Plaintiffs' claims are barred because WPC has completely satisfied all legal duties.

20. Plaintiffs' claims are barred because WPC has conformed with applicable guidelines and regulations that establish the standard of care.

21. The alleged claims by Plaintiffs and the putative class are barred because the alleged conduct would have affected, at most, an insubstantial number of putative class members.

22. The purported classes cannot be certified under Federal Rule of Civil Procedure 23 because the purported classes, class representatives and/or class counsel fail to meet the typicality, commonality, adequacy, superiority, and predominance requirements for class actions.

23. Plaintiffs' purported class claims are barred because the members of the classes are not so numerous that it would be impracticable and uneconomical to require joinder of each class member.

24. Plaintiffs' purported class claims are barred because Plaintiffs' definition of the class is vague, ambiguous, overbroad and unlimited as to time.

25. Plaintiffs' claims are barred because WPC was not negligent in the construction, control, maintenance or operation of its wood chip facility.

26. Plaintiffs' claims are barred because WPC at all times acted in good faith.

27. Plaintiffs' claims are barred because Plaintiffs' knowingly acquiesced in WPC's conduct, including standing by without complaint or objection to WPC's conduct or any alleged harm.

28. Plaintiffs are not entitled to relief because the alleged nuisance and alleged trespass have been abated.

29. Plaintiffs' alleged damages are not recoverable because there is no feasible alternative to WPC's conduct.

30. Plaintiffs' claims are barred because their alleged damages were caused by acts of God.

31. Any punitive damages against Defendant based in whole or in part on WPC's alleged conduct toward non-parties would be unconstitutional and would constitute a taking of WPC's property without due process. *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

32. Plaintiffs' claims are limited by Virginia's cap on punitive damages.

33. Any award of punitive damages against WPC would violate WPC's guarantees of due process, equal protection, property rights and protection against excessive fines under the Fourteenth Amendment to the United States Constitution and under applicable provisions of the Virginia Constitution and Virginia law.

34. Any award of punitive damages against WPC would violate WPC's guarantees of due process protection against double jeopardy, excessive fines and multiple punishments under the Fifth and Fourteenth Amendments to the United States Constitution and under applicable provisions of the Virginia Constitution and Virginia law.

35. WPC reserves the right to amend its Answer to raise any additional affirmative defenses which may be appropriate as determined through discovery.

36. All allegations not expressly admitted herein are denied.

ANSWER

Answering specifically the numbered paragraphs in the Plaintiffs' Amended Complaint, WPC states the following:

NATURE OF THE CASE

1. WPC admits that WestRock operates a paper mill in West Point, Virginia, and that WestRock maintains wood chips at the paper mill. WPC admits that it debarks and chips wood logs before delivering the wood chips to WestRock by means of conveyor. WPC denies that it maintains any wood chip piles on its facility. On information and belief, WPC admits that WestRock uses the wood chips to manufacture containerboard. WPC denies any remaining allegations in paragraph 1.

2. WPC denies the allegations in paragraph 2. WPC specifically denies that this case may proceed as a class action.

3. WPC denies the allegations in paragraph 3. WPC specifically denies that this case may proceed as a class action.

4. Paragraph 4 purports to summarize the claims brought by Plaintiffs in this action, and the relief sought by Plaintiffs in this case, and no response should be required. To the extent that any response is required, WPC admits that Plaintiffs purport to bring a class action against the Defendants, and that Plaintiffs seek monetary damages, but WPC denies that Plaintiffs' claims have merit or that they are entitled to any relief. WPC denies any remaining allegations in paragraph 4. WPC specifically denies that this case may proceed as a class action.

5. Paragraph 5 purports to summarize the claims brought by Plaintiffs in this action, and the relief sought by Plaintiffs in this case, and no response should be required. To the extent that any response is required, WPC admits that Plaintiffs purport to bring a class action against the Defendants, and that Plaintiffs seek an injunction, but WPC denies that Plaintiffs' claims have merit or that they are entitled to any relief. WPC denies any remaining allegations in paragraph 5. WPC specifically denies that this case may proceed as a class action.

PARTIES

6. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 6, and demands strict proof thereof.

7. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 7, and demands strict proof thereof.

8. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 8, and demands strict proof thereof.

9. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 9, and demands strict proof thereof.

10. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 10, and demands strict proof thereof.

11. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 11, and demands strict proof thereof.

12. WPC admits that WestRock operates a paper mill in West Point, Virginia. WPC lacks sufficient knowledge or information to admit or deny the remaining allegations in paragraph 12, and demands strict proof thereof.

13. WPC admits that it is an Arkansas corporation with its principal place of business at 218 Midway Route, Monticello, AR 71655, and that it debarks and chips wood logs before delivering the wood chips to WestRock by means of conveyor. WPC admits that its facility is on property owned by WestRock. WPC denies that it maintains any wood chip piles on its facility, and WPC denies any remaining allegations in paragraph 13.

JURISDICTION AND VENUE

14. WPC states that the allegations in paragraph 14 purport to state conclusions of law to which no response is required. To the extent any response is required, WPC denies the allegations in paragraph 14. WPC specifically denies that this case may proceed as a class action.

15. WPC states that allegations in paragraph 15 purport to state conclusions of law to which no response is required.

FACTS COMMON TO ALL COUNTS

16. On information and belief, WPC admits the allegations in paragraph 16.

17. WPC admits that WestRock stores and maintains wood chips on the paper mill facility. WPC denies the remaining allegations in paragraph 17. WPC specifically denies that it stores and maintains any wood chip piles on its facility.

18. WPC admits that it debarks and chips wood logs before delivering the wood chips to WestRock's adjacent paper mill by means of conveyor. WPC denies any remaining allegations in paragraph 18. WPC specifically denies that it stores and maintains any wood chip piles on its facility.

19. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 19, and demands strict proof thereof.

20. WPC admits that Plaintiffs purport to bring this case on behalf of a class of individuals located within .75 miles of 200 14th Street in West Point, Virginia. WPC denies the remaining allegations in paragraph 20. WPC specifically denies that this case may proceed as a class action.

21. WPC denies the allegations in paragraph 21. WPC specifically denies that this case may proceed as a class action.

22. WPC denies the allegations in paragraph 22.

23. WPC denies the allegations in paragraph 23.

24. WPC denies the allegations in paragraph 24.

25. WPC denies the allegations in paragraph 25.

26. WPC denies the allegations in paragraph 26.

27. WPC denies the allegations in paragraph 27.

19. [Defendant's Amended Complaint restarts numbering from 19] WPC denies the allegations in paragraph 19. WPC specifically denies that this case may proceed as a class action.

20. WPC denies the allegations in paragraph 20.

21. WPC denies the allegations in paragraph 21. WPC specifically denies that this case may proceed as a class action.

22. WPC denies the allegations in paragraph 22. WPC specifically denies that this case may proceed as a class action.

23. WPC denies the allegations in paragraph 23.

24. WPC denies the allegations in paragraph 24. WPC specifically denies that this case may proceed as a class action.

25. WPC denies the allegations in paragraph 25. WPC specifically denies that this case may proceed as a class action.

26. WPC denies the allegations in paragraph 26.

CLASS ACTION ALLEGATIONS

27. WPC admits that Plaintiffs purport to bring this case on behalf of a putative class of individuals located within .75 miles of 200 14th Street in West Point, Virginia. WPC denies that the requirements of Fed. R. Civ. P. 23 have been met, and WPC denies that Plaintiffs have properly identified a class. WPC denies any remaining allegations in paragraph 27. WPC specifically denies that this case may proceed as a class action.

28. WPC lacks sufficient knowledge or information to admit or deny the allegations in paragraph 28, including whether the map shows the location of the properties of the putative class

members, and WPC demands strict proof thereof. WPC specifically denies that this case may proceed as a class action.

29. WPC denies that Plaintiffs have properly identified a class, and avers that a list of exclusions is moot inasmuch as Plaintiffs have failed to identify a proper class for class certification. WPC further denies that the purported list of exclusions is complete. WPC denies any remaining allegations in paragraph 29. WPC specifically denies that this case may proceed as a class action.

30. WPC denies the allegations in paragraph 30. WPC specifically denies that this case may proceed as a class action.

31. WPC denies the allegations in paragraph 31. WPC specifically denies that this case may proceed as a class action.

32. WPC denies the allegations in paragraph 32. WPC specifically denies that this case may proceed as a class action.

33. WPC denies the allegations in paragraph 33. WPC specifically denies that this case may proceed as a class action.

34. WPC denies the allegations in paragraph 34. WPC specifically denies that this case may proceed as a class action.

FIRST CLAIM FOR RELIEF (NUISANCE)

35. WPC adopts and incorporates its responses to each and every paragraph as if fully set forth herein.

36. WPC denies the allegations in paragraph 36. WPC specifically denies that this case may proceed as a class action.

37. WPC denies the allegations in paragraph 37. WPC specifically denies that this case may proceed as a class action.

38. WPC denies the allegations in paragraph 38.

SECOND CLAIM FOR RELIEF (TRESPASS)

39. WPC adopts and incorporates its responses to each and every paragraph as if fully set forth herein.

40. WPC denies the allegations in paragraph 40.

41. WPC denies the allegations in paragraph 41. WPC specifically denies that this case may proceed as a class action.

42. WPC denies the allegations in paragraph 42. WPC specifically denies that this case may proceed as a class action.

.PRAYER FOR RELIEF

WPC denies that Plaintiffs are entitled to any judgment or other relief.

WHEREFORE, having fully answered, Defendant West Point Chips, Inc respectfully request that the Amended Complaint herein be dismissed with prejudice, that the Court determine that this case cannot proceed as a class action, that the Court award of all WPC's costs incurred, including attorney's fees, and that the Court award such other relief as the Court deems just.

DEFENDANT DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: November 1, 2018

Respectfully submitted,

/s/ Robert E. Draim

David D. Hudgins (VSB No. 20602)

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CERTIFICATE OF SERVICE

I hereby certify that on November 1, 2018, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF filing system which will send notification of electronic filing to all counsel of record.

/s/ Robert E. Drain

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