



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17                      AUGUSTA MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF:

TWIN RIVERS PAPER COMPANY LLC'S	)	LICENSE
ACQUISITION OF FRASER PAPERS	)	TRANSFERS
LIMITED'S PAPER MILL AND SOLID WASTE	)	(Air; Site Location; Solid Waste;
DISPOSAL FACILITIES IN MADAWASKA	)	Wastewater; Tax Exemption
AND FRENCHVILLE, MAINE	)	Certifications)
(#	)	

Pursuant to Maine's Taxation and Environmental Laws, 36 M.R.S.A. §§ 656 and 1760, *Property Taxes: Real Estate and Exemptions*; and 38 M.R.S.A., §§: 413, *Waste Discharge Licenses*; 481, *Site Location of Development*; 581-610A, *Protection and Improvement of Air*; and 1301-1319Y, *Maine Hazardous Waste, Septage and Solid Waste Management Act*; Maine Department of Environmental Protection (Maine DEP) regulations promulgated pursuant to these laws; and the *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (April 1, 2003), Maine DEP has considered the application of **Fraser Papers Limited**, and **Twin Rivers Paper Company LLC** (Twin Rivers) with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**1. APPLICATION SUMMARY**

**A. Application.** Twin Rivers submitted an application to Maine DEP for the transfer of licenses. The application sought to transfer to Twin Rivers all active Maine DEP licenses, as defined in 06-096 CMR 2.1(J), any modifications, condition compliance orders, all other approvals, and all applications pending in the name of Fraser Papers Limited relating to the papermaking facility in Madawaska, Maine (hereinafter referred to as the "Madawaska facility") and solid waste disposal facility in Frenchville, Maine (hereinafter referred to as the "Frenchville facility"). A schedule of licenses and applications pertaining to the transfer is set forth in Appendix A. Maine DEP accepted Twin Rivers' license transfer application as complete for processing on March 15, 2010. Under 06-096 CMR 2.21(C)(1), before Maine DEP may transfer a license a transferee is required to demonstrate to Maine DEP's satisfaction the financial and technical capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory or regulatory criteria.

**B. History**

(1) **Ownership.** In 2004, Nexfor, Inc., the former ultimate parent of the company then known as Fraser Papers, Inc., reorganized its corporate structure, and transferred its United States assets to two Maine corporations. One of these, Antonio Levesque & Sons, Inc., changed its name to Fraser Papers Limited, and became the principal owner of the Madawaska facilities. At the time, a Canadian corporation, Brascan, Ltd. ("Brascan"), owned approximately 43% of Fraser Papers Inc. In 2005, Brascan was renamed Brookfield Asset Management, Inc. ("Brookfield") and its interest in

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Fraser Papers Limited increased to approximately 49%. On July 11, 2007, Brookfield bought additional shares of Fraser Papers Limited, increasing its ownership to approximately 56%. In January 2008, Brookfield again increased its ownership in Fraser Papers Limited, this time to approximately 71%. Upon completion of the sale, Brookfield will own 51% of Twin Rivers, and will be the parent company for the new subsidiaries: Twin Rivers Paper Company LLC (Twin Rivers); Twin Rivers Paper Company Corporation, and Twin Rivers Paper Company Inc.

- (2) **The Transaction.** On December 22, 2009, an Asset Purchase Agreement, signed by Sam Pollock, Senior Managing Partner, Brookfield Asset Management, Inc., and Peter Gordon, Chairman, Fraser Papers Limited, along with others associated with related Fraser holdings, was executed among Fraser Papers Limited (Fraser Madawaska), a Maine corporation, together with other Fraser entities incorporated in Canada and the United States, debtors and debtors-in-possession operating under Chapter 15 of Title 11 of the United States Code and the *Companies' Creditors Arrangement Act* (Canada) (Vendors); and Brookfield Asset Management Inc., a corporation amalgamated under the laws of the Province of Ontario (Purchaser). Vendors had filed a voluntary petition for relief under Chapter 15 of the Bankruptcy Code on June 19, 2009, following commencement of similar proceedings in the Ontario Superior Court of Justice on June 18, 2009.

On March 9, 2010, pursuant to the Asset Purchase Agreement, Brookfield designated Twin Rivers, as a Purchaser under the agreement, to assume, at the Closing, control of the purchased assets and assumed liabilities in the United States. Twin Rivers, is a Delaware limited liability company duly qualified under the laws of the State of Maine on March 11, 2010.

- (3) **Operations.** The Madawaska facility is a paper mill located adjacent to the St. John River. The paper mill is a non-integrated paper mill producing fine and lightweight papers from both mechanically- and chemically-produced pulps. Most pulp is purchased from a nearby facility in Edmundston, New Brunswick, Canada, that also belongs to Fraser, and will be owned by Twin Rivers. The pulp is conveyed by pipeline to the Madawaska facility where paper products are manufactured. Fraser Madawaska also purchases most of its steam from the facility in Edmundston. Industrial processes at or associated with the Madawaska facility include starch and clay handling/storage, eight paper machines, a coating preparation area, a finishing, converting and shipping area, a process wastewater treatment operation, and a solid waste landfill.

Licensed air pollutant emissions originating at the Madawaska facility result primarily from one (1) oil-fired boiler, two (2) diesel pumps, one (1) diesel generator, fifteen (15) propane fired dryers, eight (8) paper machines, and two (2) off machine coaters, and the starch and clay coating loading/unloading and storage areas.

Licensed wastewater discharges originating at the Madawaska facility primarily result from the papermaking processes. The facility's process wastewaters receive

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best practicable treatment via primary clarification, neutralization and, if required, biological and/or physical/chemical treatment. The Madawaska facility also has a secondary wastewater treatment facility.

Currently, sludge generated by the Madawaska facility is usually transported to a composting facility in Canada. The application includes assurance that the sludge will continue to be composted in Canada. For those limited times when the sludge cannot be delivered to the Canadian composting facility, Twin Rivers will dispose of the sludge in the Frenchville facility. The Frenchville facility is on a 52-acre parcel of land, of which 23 acres have been licensed by the Maine DEP as a landfill. The Frenchville facility will be conveyed to Twin Rivers as part of purchase. The Frenchville facility's limited operation is currently managed in accordance with an operations manual last revised in 2004. Maine DEP staff have previously recommended changes to the operations manual, and Twin Rivers has committed to submitting a revised operations manual as part of its 2009 annual report for the facility, due April 30, 2010.

## 2. TRANSFER REQUIREMENTS

The following information regarding Twin Rivers was submitted in support of the transfer application:

**A. Full Name and Address.** The full name and address of the new owner is:

Twin Rivers Paper Company LLC  
82 Bridge Avenue  
Madawaska, Maine 04756

**B. Certification.** Twin Rivers certified that there will be no increase in air emissions beyond that provided for in the air emission license, either in quantity or type.

**C. Title, Right, or Interest.** As noted, Twin Rivers submitted a copy of the Asset Purchase Agreement between Fraser Papers Limited and Twin Rivers and other related entities. Upon closing, all the assets subject to that agreement, including the Madawaska and Frenchville facilities licensed by Maine DEP, will be transferred to Twin Rivers.

**D. Financial Capacity and Intent.** Twin Rivers submitted an audited 2008 balance sheet for Fraser Papers Inc. showing a net book asset value of \$510.6 million, including Madawaska operations tangible assets of \$217.2 million. The net book value of tangible assets being transferred will be approximately \$111 million. Twin Rivers additionally asserted that it has secured a \$50 million credit facility from CIT Business Credit Canada, Inc., to cover any shortfalls in projected revenues needed to cover costs.

Twin Rivers documented the annual environmental expense related to the Facilities, including estimated closure and post-closure costs for the Frenchville facility. To satisfy closure and post-closure care financing obligations, as required by Maine's Solid Waste Management rules, *General Provisions*, 06-096 CMR 400.11, Twin Rivers submitted a

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letter dated January 29, 2010, by Sevee & Maher Engineers, Inc., reviewing and revising estimated costs for this care at the end of operating year 2010 to \$4,487,105. In a letter dated March 9, 2010, Jacques Beaudoin, Controller, Fraser Papers Ltd., asserted that the existing reserve for closure cost would be transferred to Twin Rivers at the closing.

- E. Technical Capacity and Intent.** Twin Rivers will retain all of Fraser's operating personnel. Twin Rivers submitted resumes of employees responsible for environmental compliance which satisfactorily document their technical ability to operate the facilities in accordance with applicable laws, regulations, and license and permit conditions. The history of interactions among Maine DEP staff and these individuals has demonstrated their knowledge, experience, and competence.
- F. Solid Waste Facility Disclosure.** The disclosure statement provided by Twin Rivers in accordance with the *General Provisions*, 06-096 CMR 400.12, of Maine's Solid Waste Management Rules reveals that the corporation, its directors and operator, and all other companies and persons required to report, have no record of any criminal, civil violations or consent decrees in the last five years. In its application, Twin Rivers requested a variance to 06-096 CMR 400.12(A)(2), which requires, in part, the home address, date of birth, social security number and federal employer identification numbers for the persons required to report to be provided. In support of its variance request, Twin Rivers provided the full name and business address for each person. Maine DEP finds that Twin Rivers requires variances to 06-096 CMR 400.12(A)(4), (5), (6) and (7) for the information supplied for Brookfield Asset Management to be deemed complete, since Twin Rivers did not submit the listing and evaluations of civil violations, consent decrees and administrative orders or agreements, and other proceedings required by these regulations. Instead, Twin Rivers supplied information related only to Brookfield's history in the State of Maine. Based on the information provided, Maine DEP finds that Twin Rivers has presented clear and convincing evidence that the information supplied meets the intent of State law and regulations.
- G. Solid Waste Facility Operation.** Twin Rivers will include a revised operations manual in the 2009 landfill annual report, due April 30, 2010. The revised operations manual will include the recommendations previously provided by Maine DEP staff in a July 7, 2004 letter; these recommendations were based on the existing sludge disposal rate of 40,000 to 50,000 cubic yards per year at the Frenchville facility. Currently, very limited amounts of waste are being disposed of at the Frenchville facility since the sludge from the paper mill is being composted at a facility in Canada. Maine DEP finds that Twin Rivers must submit an operations manual to Maine DEP for its review and approval for the ongoing use of the landfill. This operations manual must include the recommendations previously provided by Maine DEP staff and provisions for operations under the current limited disposal rates. The operations manual must also include additional provisions for the control of odors in the event that Twin Rivers resumes disposal of sludge at the Frenchville facility, and notification to Maine DEP if use of the landfill increases over current rates.

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**H. Solid Waste Facility Financial Assurance.** Twin Rivers will receive by transfer and has agreed to maintain a reserve account for closure and post-closure costs of the Frenchville facility. The reserve account previously established by Fraser does not meet the requirements of 06-096 CMR 400.11(A)(4)(e), as it does not include financial assurance for post-closure care of the landfill. In a notarized letter dated April 5, 2010, and signed by Jay Sheth, Vice President, Twin Rivers has committed to providing financial assurance for the entire \$4.5 million (U.S.) calculation of the costs of closure and post-closure care included in the application. Maine DEP finds that the \$4.5 million calculation needs additional consideration in accordance with 06-096 CMR 400.11, and that Twin Rivers must revise the estimated closure and post-closure maintenance costs and financial assurance documentation in accordance with those provisions.

**I. Comments on the Application.** The Commissioner received a written letter dated March 18, 2010, requesting a public hearing on the application. After reviewing the reasons given to justify the request, the Commissioner determined that they did not meet the criteria in 06-096 CMR 2.7(B), and so advised the requester by letter on March 29, 2010.

BASED ON THE ABOVE FINDINGS OF FACT, the Maine DEP CONCLUDES that Twin Rivers has demonstrated the technical and financial capacity and intent to comply with the conditions of all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders and pending applications associated with the facilities described in this Order's findings, including specifically those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria. Twin Rivers' intent to maintain operations as currently licensed, or seek amendment of those licenses, and financial capacity representations, should protect waters of the State and ambient air, prevent hazards to health or welfare or nuisance creation, and not result in pollutant release increases.

THEREFORE the Maine DEP APPROVES the variance request to 06-096 CMR 400.12(A)(2), APPROVES variances to 06-096 CMR 400.12(A)(4), (5), (6) and (7) and APPROVES the application of Twin Rivers subject to the following:

- 1. Standard Conditions.** The Standard Conditions associated with all approvals that are the subject of this Order apply hereto.
- 2. Sale Closure.** Immediately upon transfer of the deeds to the facilities that are the subject of this Order, Twin Rivers shall provide Maine DEP copies of the deeds.
- 3. Severability.** The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
- 4. Subsequent Transfer of Ownership.** If the holder of the licenses detailed in this Order

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transfers ownership of the Facilities by means of a financial transaction that would not otherwise require a new license transfer application, but as a result of which the effective operational and/or financial management of the Facilities is changed, Maine DEP will require the new owner to provide information to demonstrate that it meets the criteria for title, right, or interest; technical and financial capacity; and any other special conditions required by Maine DEP's statutes and rules.

5. **Frenchville Landfill Operations.** Twin Rivers shall provide a revised operations manual incorporating previous recommendations from Department staff; provisions for operations under the current limited disposal rates; and additional provisions for the control of odors in the event that Twin Rivers resumes disposal of sludge at the Frenchville facility, in its 2009 annual report, due April 30, 2009. Twin Rivers shall notify Maine DEP prior to the disposal of any secondary sludge or other than *de minimis* amounts of any waste in the landfill. If necessary, Twin Rivers may be required to apply for any necessary modifications to the Facility license. Twin Rivers shall operate this Facility in a manner consistent with the provisions of the most recently approved Landfill Operations Manual.
6. **Frenchville Landfill Financial Assurance.** No later than 14 calendar days after transfer of the deeds, as contemplated by condition #2 of this Order, Twin Rivers shall provide corrected estimates for closure and post-closure maintenance costs and revised financial assurance documentation consistent with the financial assurance requirements of 06-096 CMR 400.11.

DONE AND DATED AT AUGUSTA, MAINE THIS 16<sup>th</sup> DAY OF APRIL 2010.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: *David P. Littell*  
David P. Littell, Commissioner

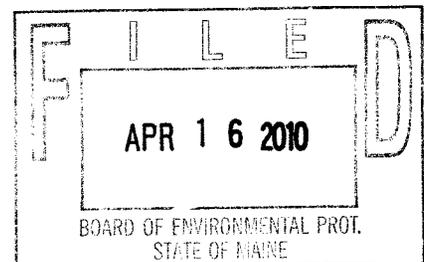
**PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES**

Date of initial receipt of application: March 15, 2010

Date application accepted for processing: March 15, 2010

Date filed with the Board of Environmental Protection \_\_\_\_\_

This Order prepared by Malcolm Burson, Office of the Commissioner.



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**APPENDIX A: CURRENT LICENSES AND APPLICATIONS**

AIR POLLUTANT EMISSION DECISIONS & APPLICATIONS

NUMBER	DESCRIPTION	ISSUED
A-263-70-C-R	Part 70 Air Emission License	1/20/2010

LAND DEVELOPMENT DECISIONS

NUMBER	DESCRIPTION	ISSUED
L-19888-26-A-N	Site location of development	7/8/99

SOLID WASTE DECISIONS & APPLICATIONS

NUMBER	DESCRIPTION	ISSUED
S-021839-SE-A-N	Woodash Utilization Program Approval	6/8/98
S-021839-SE-B-M	Minor revision: transfer to new rules	4/18/01
S-021839-SJ-C-M	Bioash program license	1/22/02
S-021875-SK-A-P	Permit by rule – Woodash utilization	3/12/99
S-007843-WD-E-R	Paper mill sludge landfill (Frenchville)	2/5/96
S-007843-WD-H-M	Minor revision	6/10/03

WASTEWATER DISCHARGE DECISIONS

NUMBER	DESCRIPTION	ISSUED
W-2727-5N-J-R	Waste Discharge license (Madawaska)	10/16/09

TAX EXEMPTION CERTIFICATION DECISIONS

NUMBER	DESCRIPTION	ISSUED
W-7923-64-A-N (SUP)	Tax Certification: Property, Sales and Use exemption: leachate equipment	3/27/96
W-7924-64-A-N (SUP)	Tax Certification: Property, Sales and Use exemption: wastewater, effluent and oil spill equipment	3/27/096
W-8144-6T-A-N (SUP)	Tax Certification: Property, Sales and Use exemption: outfall diffuser	3/29/02
W-8145-6T-A-N (SUP)	Tax Certification: Sales and Use exemption: secondary wastewater treatment plant	3/29/02



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

**Dated:** May 2004

**Contact:** (207) 287-2811

### **SUMMARY**

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

#### **HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD**

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### **WHAT YOUR APPEAL PAPERWORK MUST CONTAIN**

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

#### **II. APPEALS TO MAINE SUPERIOR COURT**

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

#### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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**Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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