



DAWN R. GALLAGHER
COMMISSIONER

September 12, 2003

JOHN ELIAS BALDACCI
GOVERNOR

Ms. Kate L. Geoffroy, Esq.
Pierce Atwood
One Monument Square
Portland, Maine 04101

Subject: Transfer of Maine DEP Licenses from American Tissue to Augusta Tissue

Dear Kate:

Thank you for the hard work on Augusta Tissue LLC's license transfer application. Enclosed is a copy of the Transfer Order which was signed September 12, 2003, by Acting Deputy Commissioner Garrett. This Transfer Order has been issued in conformance with provisions codified in Maine Revised Statutes Title 38, Sections 344(1) & (1-A), Maine DEP's *Rules Concerning the Processing of Applications*, 06-096 CMR 2 (April 1, 2003), Maine's Protection and Improvement of Waters Act, 38 M.R.S.A. §§ 413-424, Protection and Improvement of Air laws, 38 M.R.S.A. §§ 581-608-A, Maine Hazardous Waste, Septage, and Solid Waste Management Act, 38 M.R.S.A. §§ 1301-1319-Y, and rules promulgated pursuant to these laws.

This Order was filed with the Board of Environmental Protection that same day. Pursuant to the Department's *Rules Concerning the Processing of Applications*, 06-096 CMR 2.24(B), filing this Transfer Order with the Board opens a 30-day appeal period for persons aggrieved by the Commissioner's issuance of the Order. The transfer will not be final until this appeal period ends. Also, keep in mind that this Order's force and effect is predicated on full satisfaction of certain conditions stated therein.

If I can otherwise be of assistance, please contact me by writing to the mailing address listed below for Augusta, telephoning directly to (207) 287-8662, or sending email via the internet to jim.e.dusch@state.me.us.

Sincerely,

James L. Dusch

cc: Bill Butler
Mark Cone
Gregg Wood

AUGUSTA
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DEPARTMENT ORDER
IN THE MATTER OF:

AUGUSTA TISSUE LLC,)
acquisition of papermaking, solid)
waste disposal, and associated)
facilities in Augusta from)
AMERICAN TISSUE MILLS OF MAINE, LLC)

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Pursuant to the provisions of Maine Revised Statutes Title 38, Sections 413 *et seq.*, 581 *et seq.*, and 1301 *et seq.*, rules promulgated pursuant to these laws, and the *Rules Concerning the Processing of Applications (April 1, 2003)*, 06-096 CMR 2.21(C), the Department of Environmental Protection (DEP) has considered the application of Augusta Tissue LLC (AT), with its supportive data, agency review comments, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

A. Application. AT submitted an application to the DEP on April 16, 2003, seeking to transfer all active licenses, as defined in 06-096 CMR 2.1(J), registrations, and condition compliance orders issued by the DEP in the name of, or transferred to, American Tissue Mills of Maine, LLC (ATMM), and applications pending, regarding assets subject to purchase under the agreement referenced herein. A schedule of the permits and applications that are the subject of this DEP Order is set forth in Appendix A¹ to this Order.

B. History

(1) Facility Status. ATMM owns a recycled fiber pulp and papermaking mill in the City of Augusta, Maine. These facilities were placed in bankruptcy on or about January 17, 2003, because of ATMM's inability to meet debt obligations. The facilities have not operated since August 2001.

(2) Operations. The mill consists of approximately 30 acres located in downtown Augusta on the east bank of the Kennebec River. The facility has the capacity to produce, on average, between 160-170 tons per day of useable pulp derived from recycled paper. This recycled paper contains clay, glue, and ink that must be removed before the secondary fibers can be reprocessed into tissue products.

These papermaking operations have regulated wastewater treatment, air pollution control, and solid waste disposal facilities associated with them. The solid waste disposal facility consists of a 173-acre landfill with three licensed disposal phases, two (2) of which are currently developed.

(3) AT's Purchase of ATMM's Facilities. On March 23, 2003, AT entered into an amended asset purchase agreement with ATMM to purchase the pulp and papermaking facilities in Augusta.

¹ The intent of this Order is to transfer any and all DEP licenses, permits, certificates, registrations, applications, and decisions regulating the Augusta facilities to be purchased by AT. Any license, permit, certificate, registration, application, or decision not specifically listed in this Order is incorporated herein by.

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2. TRANSFER REQUIREMENTS

AT submitted the following information in support of its transfer application:

A. Title, Right, or Interest. AT submitted a copy of an Amended Asset Purchase Agreement entered into by AT and ATMM on March 23, 2003, which was subsequently approved by the bankruptcy court on April 15, 2003. After completing the purchase and sale of assets contemplated in that agreement, AT will have title, right, or interest in the properties and operations to which licenses and applications referred to in this Order relate. ATMM had demonstrated its title, right, or interest in the properties and operations which are the subject of the licenses and applications pending identified in Appendix A at the time each was transferred or issued to it.

B. Financial Capacity and Intent. ATMM's assets are being purchased out of bankruptcy for approximately \$5.9 million. AT is a Limited Liability Company capitalized solely by its owners and unaffiliated as a subsidiary or parent of another corporation.

AT submitted projected financial information for the period 2003 through 2005. For 2004, its first full year of operation at the Augusta mill, the statements indicate that AT's anticipated revenues are \$22.9 million with resulting net income of \$3.2 million.

AT submitted a bond and funding plan for closure and post closure care at the East Augusta landfill as well as a request for variance from Maine's solid waste management rules, *General Provisions*, 06-096 CMR 400, Sections 3(B)(3), 11(A)(2)(b), 11(A)(3)(a), and 11(A)(4)(b). The plan proposed a \$475,000.00 surety bond, obtains control over \$50,000.00 in cash escrowed by ATMM, and pays \$6,000.00 monthly into the existing cash escrow fund, by the 15th of each month, (\$72,000 annual total) in 2004, and \$21,000.00 monthly (\$252,000.00 annual total) beginning in 2005, and each year thereafter until closure and post closure responsibilities are fully funded. At the end of each year, AT will have the option of converting the principal and interest accumulated in the cash escrow fund into a bond or other appropriate assurance mechanism equal in amount to the accumulated cash. AT estimates that \$1.72 million will be needed to close and maintain post closure care at the East Augusta landfill. By this Order, DEP approves AT's variance proposal under the cited provisions because it demonstrates that the intent of the rules will be satisfied under the unique circumstances brought about by ATMM's bankruptcy.

C. Technical Capacity and Intent. AT's purchase will not result in any significant change to the corps of employees who operate (or formerly operated prior to the mill's shutdown) the equipment, facilities, and other activities at the mill and landfill. In general, the same experienced personnel who formerly or currently manage and operate the equipment and facilities will manage and operate the equipment and facilities for AT after the purchase and sale is consummated. These environmental personnel are experienced in administering all types of environmental permits, including air, water, and solid waste, and in complying with a variety of State and federal environmental laws.

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D. Solid Waste Facility Disclosure. In accordance with Maine's solid waste management rules, *General Provisions*, 06-096 CMR 400.12, AT provided a disclosure statement regarding criminal and civil adjudication records. Neither AT nor its principal investors has an environmental violation within the last ten years.

BASED ON THE ABOVE FINDINGS OF FACT, the DEP concludes that AT has demonstrated the technical and financial capacity and ability to comply with the conditions of all licenses, registrations, condition compliance orders, and pending applications associated with the facilities described in the findings above, including specifically those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria.

THEREFORE the DEP APPROVES the above-noted application of AUGUSTA TISSUE LLC SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. AT shall abide by the terms and conditions of all DEP licenses associated with the facilities described in the Findings above, specifically including those listed in Appendix A.
2. The transfer of any licenses, registrations, condition compliance orders, and pending applications associated with the facilities described in the Findings above or contemplated for transfer in this Order shall not become effective until AT certifies in writing to the DEP that the transaction contemplated by the Agreement identified in Finding 1(B)(3) and 2(A) has occurred and supplies the DEP with a copy of the legal instrument transferring title to the facilities described herein.
3. The variance granted in section 2(B) of this Order will be revisited in May 2006 to determine whether profits shown on Augusta Tissue's audited profit and loss statement for the 2005 calendar year exceed \$500,000 after: (1) income taxes due and owing by Augusta Tissue's owners on income from Augusta Tissue LLC, (2) capital spending budgeted to maintain normal operations during the 2006 calendar year, and (3) any required debt payments due during the 2006 calendar year that relate to funding for maintenance of the existing business operations, are deducted. The financial information submitted may be marked on each page as "confidential" due to status as a trade secret, and the DEP will segregate that information, and treat it consistent with standard operating procedures, as protected from disclosure under the Maine Freedom of Access Act, 1 M.R.S.A. § 401, *et seq.* Fifty percent (50%) of profits exceeding the \$500,000 threshold established in this condition will be contributed into the cash escrow fund for closure and post-closure care until the account is fully funded, with the parties to determine at that time how the payment is to be made and over what period of time. Triggering this condition in May 2006 will result in reassessment each May thereafter in accordance with the formula described above, until the account is fully funded.
4. Transfer of the renewal application pending for the East Augusta landfill is done with the understanding that, and contingent upon, AT supplementing the pending application by October 1, 2003, with materials necessary and appropriate to bring that application into compliance with any and all requirements which would exist for a similar application submitted under DEP's current solid waste management rules.

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- 5. Within 60 days of closing on its purchase of the landfill, AT will submit to the DEP for review and approval a work plan describing the actions to be taken to inspect the integrity of the landfill leachate management system, which will include: (a) evaluation of the permeability of West Dam, (b) repair of the wet well's 12-inch valve, (c) third-party inspection of all leachate pipes, (d) visual evaluation of the integrity of the leachate collection basin liner, and (e) evaluation of the integrity of the pump station wet well or, alternately, resealing of the walls of the pump station wet well. This plan shall be developed by a Maine registered professional engineer. Following approval and implementation of the approved evaluation, AT shall submit a report of findings and plan for remedial actions to be taken to correct deficiencies, including scheduled completion dates.
- 6. Within 30 days of closing on its purchase of the landfill, AT will submit to the DEP a revised trust agreement governing administration of the cash escrow called required by this Order.

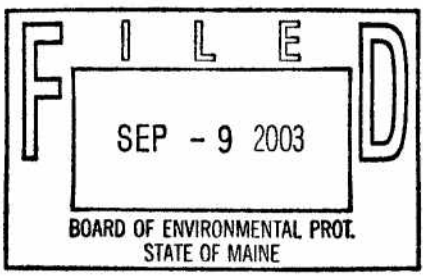
DONE AND DATED AT AUGUSTA, MAINE THIS 9th DAY OF SEPTEMBER 2003.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By *Dawn R. Gallagher*
Dawn R. Gallagher, Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application 4/16/03
 Date application accepted for processing 4/21/03
 Date filed with the Board of Environmental Protection



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Appendix A:

LICENSES AND APPLICATIONS TRANSFERRED TO
AUGUSTA TISSUE LLC

WASTE WATER DISCHARGES

NUMBER	DESCRIPTION	EXPIRES
W-247-5N-D-R	MEPDES and Waste Discharge Renewal for 6M/gal/day process waste	10/01/06

AIR EMISSIONS

NUMBER	DESCRIPTION	EXPIRES
A-195-70-A-I	Title V Air Emissions License	12/23/07

SOLID WASTE DISPOSAL

LICENSE NUMBER	DESCRIPTION	ISSUED
00-4892-11020	East Augusta landfill Phase 1 operating license	06/27/79
00-4892-11020	CC #14 in 6/27/79 operating license satisfied	06/27/79
00-4892-11020	CC #12 in 6/27/79 operating license satisfied	07/20/79
00-4892-11020	Denial of petitions for reconsideration and stay of the BEP order	07/25/79
00-4892-11020	CC #13, 15 and 5 in 6/27/79 operating license satisfied	08/01/79
00-4892-11020	CC #2 in 6/27/79 operating license satisfied	08/01/79
00-4892-11020	CC #4 in 6/27/79 operating license satisfied	08/08/79
00-4892-11020	300-foot variance	08/08/79
00-4892-11020	300-foot variance	08/26/81
00-4892-11020	East Augusta landfill Phase 2 operating license	09/08/82
00-4892-11020	CC #2 & 5 in 9/8/82 operating license satisfied	05/16/83
00-4892-11020	CC #3 & 4 in 9/8/82 operating license satisfied	07/01/83
00-4892-11020	300-foot variance	08/24/83
S-4892-WD-A-M	Minor revision allowing use of clay grit	07/27/84
S-4892-WD-D-M	Minor revision regarding presses	12/23/85
S-4892-WD-F-R	Renews 300' variance approved in 00-4892-11020	07/01/88
S-4892-WD-G-A	Amendment allowing biomass ash as final cover	10/14/93
S-4892-WD-H-M	Minor revision to allowing Phase II interior containment dike	04/13/90
S-4892-WD-L-M	Minor revision allowing 1.5 acre clay soil excavation	06/12/92
S-4892-WD-M-C	CC #14 in 6/27/79 operating license satisfied	06/17/92
S-4892-WD-N-M	Minor revision allowing use of biomass ash to stabilize landfill base	01/27/94
S-4892-WD-N-M	CC #2 of S-4892-WD-N-M satisfied	08/21/95
S-4892-WD-O-C	CC #2 of S-4892-WD-G-A satisfied	02/25/94
S-4892-WD-P-C	CC #2 of S-4892-WD-N-M satisfied	04/21/94
S-4892-WD-Q-M	Minor revision allowing new stabilization material for Phase II	05/04/94
S-4892-WD-R-M	Minor revision allowing clean demo, wood chips & bark to stabilize the base of Phase II north	05/04/94
S-4892-WD-S-C	CC #2 of S-4892-WD-N-M satisfied	05/04/94
S-4892-WD-T-M	Minor revision allowing demo debris to stabilize base of landfill	05/19/94

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LICENSE NUMBER	DESCRIPTION	ISSUED
S-4892-WD-U-M	Minor revision approving operational and closing plan sequence	10/17/94
S-4892-WD-V-C	CC #2 of S-4892-WD-N-M satisfied	10/06/94
S-4892-WD-W-M	Minor revision	12/08/94
S-4892-WD-X-C	CC #2 of S-4892-WD-N-M satisfied	09/05/95
S-4892-WU-G-N	New license for pulp prep screenings	06/28/89
S-4892-7D-G-N	Corrected version of S-4892-WU-G-N	08/18/89
S-4892-WD-AB-M	Minor revision allowing excavation non-bulked sludge from the east side of Phase I, bulk the sludge with ash, and use stabilized sludge to bring the west side of Phase I to intermediate grade.	03/09/98
S-4892-WD-A-R	License renewal application dated 3-30-90 and supplements thereto	(pending)