



JOHN ELIAS BALDACCI
GOVERNOR

DAWN R. GALLAGHER
COMMISSIONER

November 24, 2004

Ms. Heather L. Parent, Esq.
Eaton Peabody
P.O. Box 1210
Bangor, Maine 04402

Subject: Transfer Modification for Augusta Tissue

Dear Heather:

Thank you for the hard work on Augusta Tissue LLC's license transfer modification application. Enclosed is a copy of the Transfer Order which was signed today, November 24, 2004, by Commissioner Gallagher. 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 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 today. 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 E. Dusch

cc: Bill Butler

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AUGUSTA, MAINE 04333-0017
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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)	LICENSE TRANSFERS
AMERICAN TISSUE MILLS OF MAINE, LLC)	(ORDER MODIFICATION)

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 issued this modification to its September 9, 2003, License Transfer Order based on new information submitted by Augusta Tissue LLC (AT), as a result of the bankruptcy proceedings in which American Tissue Mills of Maine, LLC (ATMM) is engaged. This Order intends to alter certain provisions in the prior Order, not to repeal or replace it in whole. Based on the new information submitted, with its supportive data, agency review comments, and other related materials on file, DEP FINDS THE FOLLOWING FACTS:

1. **APPLICATION SUMMARY.** DEP issued a license transfer Order to AT on September 9, 2003, after its evaluation of an application submitted April 16, 2003. That application was reviewed and the Order issued in anticipation of AT purchasing the former ATMM papermaking facility in Augusta, Maine, out of bankruptcy.

After more than a year of stagnation in the United States Bankruptcy Court for the District of Maine, AT approached DEP in October 2004 requesting changes to the 2003 Order because its financial conditions had changed, thus requiring modification of certain provisions in that Order. Conditions related to the 2003 Order have not otherwise changed.

2. **TRANSFER REQUIREMENTS.** The Financial Capacity and Intent portion of the 2003 Order is replaced with the following.

Financial Capacity and Intent. ATMM's assets are being purchased out of bankruptcy for approximately \$6.2 million. AT is a Limited Liability Company capitalized solely by its owners and unaffiliated as a subsidiary or parent of another corporation.

AT proposed modifications to 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 400.3(B)(3), 11(A)(2)(b), 11(A)(3)(a), and 11(A)(4)(b). The modified plan includes maintenance of ATMM's \$325,000.00 surety bond currently under demand for payment by DEP, obtaining control over \$50,000.00 in cash escrowed by ATMM, paying \$10,000.00 into that escrow at closing and continuing thereafter on a monthly basis beginning December 1, 2004, until 30 days prior to use of the landfill beginning, or June 1, 2005, whichever is first, when the remaining balance of \$150,000.00 shall be due and owing into the

escrow. 90 days after startup of the mill, meaning operation of papermaking equipment, pay by the 15th of each month, into the existing cash escrow fund, \$6,000.00 for twelve months, and \$21,000.00 monthly thereafter until closure and post closure responsibilities are fully funded. 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.

BASED ON THE ABOVE FINDINGS OF FACT, the DEP concludes that AT has demonstrated the financial capacity and intent to comply with the conditions of all licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, and condition compliance orders and pending applications associated with the facilities described in the findings above and to satisfy all applicable statutory and regulatory criteria.

THEREFORE the DEP APPROVES the requested modification of the 2003 License Transfer Order issued to AUGUSTA TISSUE LLC SUBJECT TO THE FOLLOWING MODIFIED 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 2003 Transfer Order.
2. The transfer of any licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, and 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) of the 2003 Transfer Order 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 2007 to determine whether profits shown on Augusta Tissue's audited profit and loss statement for the 2006 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 2007 calendar year, and (3) any required debt payments due during the 2007 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 2007 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 within

60 days after approval of the facility purchase by the Bankruptcy Court 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 the DEP's current Solid Waste Management rules.

5. Within 90 days after approval of the facility purchase by the Bankruptcy Court, 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) 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 required by this Order.

DONE AND DATED AT AUGUSTA, MAINE THIS 24th DAY OF NOVEMBER 2004.

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 10/1/04
 Date application accepted for processing 10/1/04
 Date filed with the Board of Environmental Protection

