



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

**IN THE MATTER OF:**

<b>MFGR, LLC</b>	)	<b>LICENSE TRANSFER</b>
<b>Acquisition of</b>	)	Air Emission
<b>OLD TOWN FUEL AND FIBER MILL</b>	)	Site Location of Development
<b>Old Town, Penobscot County</b>	)	Solid Waste
A-180-70-J-T	)	Wastewater Discharge
L-000766-26-E-T	)	
L-001997-26-E-T	)	
L-003989-26-D-T	)	
L-004019-26-E-T	)	
L-13297-25-S-T	)	
S-021513-SX-F-T	)	
S-021513-SX-G-T	)	
S-022214-WX-M-T	)	
W-002226-5N-N-T	)	

Pursuant to Maine’s *Water Pollution Control* laws, 38 M.R.S.A. §§ 411–424-B; *Site Location of Development* laws, 38 M.R.S.A. §§ 481–489-E; *Protection and Improvement of Air* laws, 38 M.R.S.A. §§ 581–610-D; and the *Maine Hazardous Waste, Septage and Solid Waste Management Act*, 38 M.R.S.A. §§ 1301–1319-Y, rules promulgated pursuant to these laws and the Department’s *Rules Concerning the Processing of Applications and Other Administrative Matters*, 06-096 CMR 2 (effective October 19, 2015), the Maine Department of Environmental Protection (Maine DEP) has considered the application of MFGR, LLC with its supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

**1. APPLICATION SUMMARY**

MFGR, LLC, (MFGR) submitted an application to the Maine DEP for the transfer of all active Maine DEP *licenses*, as defined in 06-096 CMR 2(1)(L), any modifications, condition compliance orders, all other approvals, and all applications pending, held, or submitted by Expera Old Town, LLC (Expera) relating to the Old Town Fuel and Fiber Mill in Old Town, Maine (the Facility). Maine DEP accepted MFGR’s license transfer application as complete for processing on February 11, 2016. A schedule of permits and applications that are the subject of the application, and this Department Order, is set forth in Appendix A. The intent of this Order is to transfer any and all Maine DEP licenses, permits, certificates, registrations, applications, and decisions concerning the facility and operation purchased by MFGR, LLC. Any license, permit, certification, registration, application, or decision not specifically listed in this Order is incorporated herein.

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Old Town, Penobscot County )

**2. TRANSFER REQUIREMENTS**

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

- A. Full Name and Address.** The full name and address of the applicant is: MFGR, LLC, 1654 King Street, Enfield, Connecticut 06082.
- B. Title, Right, or Interest.** MFGR submitted a copy of a Quitclaim Deed With Covenant, From Expera to MFGR dated January 27. Based on the foregoing, MFGR has provided sufficient evidence of title, right, or interest in the Facility to allow the transfer to MFGR of the licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, and pending applications concerning the Facility, subject to the conditions set forth below.
- C. Financial Capacity and Intent.** MFGR submitted an analysis of the anticipated compliance cost of facility operations in cold shut-down. MFGR also submitted a statement from a bank indicating deposits sufficient to cover operation in cold shut-down for nearly one year. MFGR also states that income generated by operations at the facility will also be used to cover compliance costs. Prior to taking the mill out of cold shut-down MFGR would be required to submit additional cost estimates and demonstrations of financial capacity. Based on the foregoing, MFGR has demonstrated sufficient financial capacity and intent to assure compliance with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto; condition compliance orders, pending applications, as well as any statutory and regulatory criteria applicable to the Facility, subject to the conditions set forth below.
- D. Technical Capacity and Intent.** MFGR indicates that certain key employees who operated the Facility under the Expera ownership will continue to operate the Facility after the transfer. Resumes for three key management employees were provided. Based on the foregoing, MFGR has demonstrated that it has the technical capacity and intent to comply with all Maine DEP licenses, permits, approvals, permits-by-rule, registrations, variances, certifications and amendments thereto, condition compliance orders, pending applications, and any statutory and regulatory criteria applicable to the Facility, subject to the conditions set forth below.
- E. Solid Waste Facility Disclosure.** The disclosure statement provided by MFGR in accordance with the Department's Solid Waste Management Rules, *General Provisions*, 06-096 CMR 400(12) reveals that the corporation, parent, and grandparent corporations and the directors and operator, have no record of any criminal violations, or civil violations, consent decrees, administrative orders or agreements, or other ongoing court proceeding or administrative enforcement action concerning environmental laws or regulations in the last five years.

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**3. COMMENCEMENT OF OPERATIONS**

At the time of this transfer the mill is in cold shut-down and the timing and nature of future operations at the site is undetermined. When plans are finalized regarding potential future operations the applicant or subsequent operator will be required to confirm financial capacity to support the proposed operations and meet with DEP staff to review compliance requirements relevant to the proposed operations. If the recommencement of operation of the air emissions sources covered under the air licenses has not begun within 24 months of this transfer the applicant will be required to surrender the air emission licenses.

BASED ON THE ABOVE FINDINGS OF FACT, the Maine DEP CONCLUDES that MFGR, LLC has demonstrated title, right, or interest to the Facility as well as 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 Facility described in this Order’s findings, including without limitation those licenses and applications listed in Appendix A, and to satisfy all applicable statutory and regulatory criteria, subject to the conditions set forth below.

THEREFORE the Maine DEP APPROVES the application of MFGR, LLC, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. EFFECT ON EXISTING ORDERS. All other Findings of Fact, Conclusions, and Conditions associated with all approvals that are the subject of this Order remain as approved and are incorporated herein.
2. 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.
3. Prior to restarting the mill, the permittee shall submit cost estimates for restarting and operation and evidence of the financial capacity to cover those costs, to the Department for review and approval. The permittee or new owner/operator shall meet with the Department’s permitting and compliance inspection staff at least ninety (90) days prior to commencing production/operations at the facility to review the applicability of the permit limitations, monitoring requirements, and reporting requirements.
4. If the recommencement of operation of the air emissions sources covered under the air licenses has not begun within 24 months of this transfer then the permittee shall surrender the air emission licenses.

MFGR, LLC  
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DONE AND DATED AT AUGUSTA, MAINE THIS 26 DAY OF APRIL, 2016.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

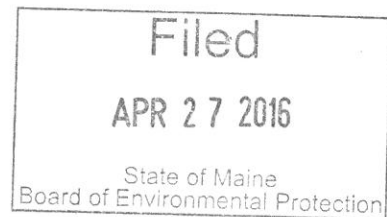
By:   
Paul Mercer, Commissioner

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

Date of initial receipt of application: February 10, 2016

Date application accepted for processing: February 11, 2016

Date filed with the Board of Environmental Protection:



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APPENDIX A: CURRENT LICENSES AND APPLICATIONS

AIR EMISSION ORDERS

NUMBER	DESCRIPTION	EFFECTIVE
A-180-75-G-N	Tax Exemption Cert.: Smelt Tank Scrubber	1/14/91
A-180-75-H-N	Tax Exemption Cert.: Electrostatic Precipitator	1/14/91
A-180-75-I-N	Tax Exemption Cert.: Non-Condensable Gas System	3/25/91
A-180-75-J-N	Tax Exemption Cert.: Hardwood digester cold blow cooler	3/25/91
A-180-75-N-N	Tax Exemption Cert.: Cl/CIO2 scrubber	3/24/93
A-180-75-S-N	Tax Exemption Cert.: Boiler Air Pollution Control equipment	3/31/97
A-180-75-W-X	Tax Exemption Cert.: Upgrades to Non-Condensable Gas System	2/8/99
A-180-70- A-I	Part 70 Initial Air Emission License	12/2/09
A-180-70-B-A	Part 70 Amendment: Lime Kiln stack test time extension	9/22/10
A-180-77-2-A	NSR: burn natural gas in Recovery Furnace	1/29/10
A-180-70-C-A	Part 70 Amendment: Incorporate burn natural gas in Recovery Furnace	11/29/11
A-180-70-D-A	Part 70 Amendment: Incorporate Biomass Boiler CO	10/12/12
A-180-70-G-A	Part 70 Amendment: Adjust stack testing submittal	12/29/2014
A-180-70-H-A	Part 70 Amendment: Clarify stack testing deadlines	6/15/15
A-180-77-4-A	NSR: Biomass Boiler CO	10/12/12
A-180-77-5-A	NSR: Biorefinery	3/19/13
A-180-77-6-A	NSR: water intake diesel, remove Riley Boiler	7/26/13
A-180-77-8-A	NSR: Allow #2 fuel oil as a continuous use fuel in Boiler 5 rather than just for startup	6/17/15
A-180-70-E-R/A	Part 70 Air Emission License renewal application pending (EFIS appl ID: 563397)	Filed 5/28/14
	Part 70 Amendment application pending: Incorporate water intake diesel, remove Riley Boiler (EFIS appl. ID: 563717)	Filed 6/25/14
	NSR pending: Add natural gas to Boiler 5 and extension of compliance deadline for Biomass Boiler CO limit (EFIS appl. ID: 567400)	Filed 9/24/15
	Part 70 Amendment application pending: Incorporation of NSR amendment to add natural gas to Boiler 5 and extend compliance deadline for Biomass Boiler CO limit. (EFIS appl. ID: 567401)	Filed 9/24/15

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**LAND DEVELOPMENT ORDERS**

NUMBER	DESCRIPTION	EFFECTIVE
26-766-19480	Approves construction of the facility's wastewater treatment plant	5/4/73
26-1997-19480	Approves addition of a softwood digester	3/26/75
26-1997-19480	Approves addition of chlorine dioxide and black liquor storage tanks	7/23/75
26-1997-19480	Approves expansion of the chip storage area	6/23/76
64-3989-19480	Approves addition of a maintenance garage and parking area	10/26/77
64-3989-19480	Maintenance garage condition removal	12/28/77
26-4019-19480	Approves addition of tissue machine #2	11/9/77
L-13297-25-A-N	Approves addition of a tissue warehouse	5/5/86
L-13297-25-B-M	Approves addition of a new air emission stack and precipitator	8/4/87
L-13297-25-C-A	Approves addition of two 10,000 gallon black liquor tanks	7/24/91
L-13297-25-D-A	Approves addition of a hazardous waste storage building	10/25/89
L-13297-25-E-A	Approves addition of the broke pulper building	11/21/91
L-13297-25-F-A	Approves alterations to bring Greatworks Site into compliance	9/13/93
L-13297-25-G-C	Approves addition of weak black liquor containment	7/18/94
L-13297-20-H-M	Approves a number of site alterations occurring between 1992 & 1999	2/8/99
L-13297-20-J-B	Approves updates to the woodyard	5/5/03
L-13297-20-L-B	Approves biomass boiler siting and installation	3/29/05
L-13297-20-P-M	MR/water intake structure	2/26/14
L-13297-L6-Q-N	Install cobble fill in breach in tailrace dike	2/26/14

**SOLID WASTE MANAGEMENT ORDERS**

NUMBER	DESCRIPTION	EFFECTIVE
S-21513-SG-A-N	Program approval for lime mud utilization (as amended)	2/7/96
S-21513-SG-B-M	Lime mud utilization, minor modification	9/26/02
S-21513-SE-D-N	Woodash utilization program	1/18/12
S-22214-WV-A-N	Beneficial use of solid waste – fuel substitution	8/8/2005
S-22214-WV-B-C	Compliance with condition #2	12/1/06
S-22214-WV-D-M	Minor modification-Chapter 418	6/27/07

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NUMBER	DESCRIPTION	EFFECTIVE
S-22214-WV-E-M	Minor modification-revised operations manual	1/31/09
S-22214-WV-F-M	Modification: burn pallets, crates	1/31/09

**WASTEWATER DISCHARGE ORDERS**

NUMBER	DESCRIPTION	EFFECTIVE
ME0002020/ W-2226-5N-H-R	Kraft pulp & paper mill wastewater discharges (ME0002020)	5/19/11
ME0002020/ W-2226-5N-J-M	Merc Modification	2/6/12
ME0002020/ W-2226-5N-L-M	Modification-water quality based mass limit for total phosphorus	5/19/15
ME0002020/ W-2226-5N-M-M	Modification-batch discharge and modified sampling	2/2/16
ME0002020/ W-2226-5R-P-M	Minor Revision, monitoring frequency reductions	4/19/16
S-22214-WV-E-M	Minor modification-revised operations manual	1/31/09
W-7680-63-A-A	Tax exemption certification	3/22/91
W-7681-63-A-A	Tax exemption certification	3/22/91
W-7682-63-A-A	Tax exemption certification	3/22/91
W-7719-64-A-N	Tax exemption certification	3/22/91
W-7720-64-A-N	Tax exemption certification	3/22/91
W-7721-64-A-N	Tax exemption certification	3/22/91
W-7783-64-A-N	Tax exemption certification	4/1/93
W-7784-64-A-N	Tax exemption certification	3/31/93
W-7785-64-A-N	Tax exemption certification	3/31/93



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

Dated: March 2012

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. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

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

#### **LEGAL REFERENCES**

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

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

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board 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 the Board's 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 a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of 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**

Appeal materials must contain the following information at the time submitted:



1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of 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 on the appeal 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, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that 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 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.

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

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, 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.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder 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 receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the 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 or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

## **II. JUDICIAL APPEALS**

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

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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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