

Richmond Port Hawkesbury Paper GP Ltd. Taxation Act

CHAPTER 51 OF THE ACTS OF 2006

as amended by

2012, c. 49



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CHAPTER 51 OF THE ACTS OF 2006
amended 2012, c. 49

**An Act Respecting the Taxation
of Port Hawkesbury Paper GP Ltd.
by the Municipality
of the County of Richmond**

title *amended 2012, c. 49, s. 2.*

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Richmond Port Hawkesbury Paper GP Ltd. Taxation Act.* 2006, c. 51, s. 1; 2012, c. 49, s. 3.

Letter of Intent

2 Notwithstanding the *Assessment Act*, the *Municipal Government Act* or any other enactment but subject to Section 2A, the Municipality of the County of Richmond is hereby authorized to tax Port Hawkesbury Paper GP Ltd. to the extent and on the terms and conditions set out in the agreement between the parties, being the Letter of Intent dated May 25, 2006, the text of which is set out in Schedule A to this Act and the terms set out in paragraph 1 of that letter are hereby enacted for the term of the agreement. 2006, c. 51, s. 2; 2012, c. 49, s. 4.

Agreement dated September 27, 2012

2A Notwithstanding the *Assessment Act*, the *Municipality [Municipal] Government Act*, or any other enactment, the Municipality of the County of Richmond is hereby authorized to tax Port Hawkesbury Paper GP Ltd. to the extent and on the terms and conditions set out in the Agreement dated September 27, 2012, the

text of which is set out in Schedule B to this Act, and which is hereby enacted for the term from September 28, 2012 until March 31, 2016. 2012, c. 49, s. 5.

Taxes payable

3 Notwithstanding the *Assessment Act*, the *Municipal Grants Act* or any other enactment, for the purposes of the calculation of uniform assessment pursuant to Section 14 of the *Municipal Grants Act*, the capitalized value of taxes payable in municipal taxation years 2006-2007 through to and including taxation year 2015-2016 shall be used in place of taxable assessment. 2006, c. 51, s. 3.

First lien

4 Taxes payable pursuant to this Act are a first lien on the property of Port Hawkesbury Paper GP Ltd. in accordance with the *Municipal Government Act*. 2006, c. 51, s. 4; 2012, c. 49, s. 6.

Retroactive effect

5 This Act has retroactive effect to the extent necessary to authorize the terms of the Letter of Intent set out in Schedule A to this Act and referred to in Section 2 and the Agreement set out in Schedule B to this Act and referred to in Section 2A. 2006, c. 51, s. 5; 2012, c. 49, s. 7.

Letter of Intent not in effect

6 When the Letter of Intent set out in Schedule A to this Act and referred to in Section 2 and the Agreement set out in Schedule B to this Act and referred to in Section 2A are not in effect between the parties, taxation of Port Hawkesbury Paper GP Ltd. by the Municipality of the County of Richmond shall be in the usual manner. 2006, c. 51, s. 6; 2012, c. 49, s. 8.

SCHEDULE A

Stora Enso Port Hawkesbury Limited

May 25, 2006

Attention:

President and General Manager

Dear Mr. Suther:

Re: Tax Agreement

Further to the recent discussions held between Stora Enso Port Hawkesbury Limited and the Municipality of the County of Richmond, I/we wish to confirm the principal terms and conditions of our proposed tax agreement by this letter of intent.

These principal terms and conditions are as follows.

1. Specific tax legislation

The Municipality will approach the Province of Nova Scotia to enact legislation setting municipal taxation of Stora Enso Port Hawkesbury Limited for the next ten years. Terms sought will include the following:

- fixing municipal taxation for a ten-year period, commencing 1 April 2006 and ending 31 March 2016, inclusive;
- fixing Stora Enso Port Hawkesbury Limited's base payment, being the payment for Year I (1 April 2006 to 31 March 2007), at \$2.5 Million (Dollars), payable by Stora Enso Port Hawkesbury Limited to the Municipality of the County of Richmond;
- indexing payments for each subsequent year to the Canadian Consumer Price Index (CCPI), applying 50% of CCPI increase that year up to a maximum of 5% total increase on the preceding year's payment;
- providing that municipal taxation of Stora Enso Port Hawkesbury Limited by the Municipality of the County of Richmond for the 10-year period shall be pursuant to this specific tax legislation, and shall not be subject to the annual assessments pursuant to the Assessment Act;
- providing that capital assets acquired directly, or by lease, by Stora Enso Port Hawkesbury Limited, during the 10 year term of this agreement, will not be subject to further property taxes during the term of this agreement;
- requiring payment to the Municipality of the County of Richmond by Stora Enso Port Hawkesbury Limited through semi-annual tax billing by the Municipality of the County of Richmond in April and September of each year.

2. Tax Payments

Stora Enso Port Hawkesbury Limited will make payments in accordance with the proposed specific tax legislation directly to the Municipality of the County of Richmond during the 10-year term.

3. Dismissal of Outstanding Appeals and Court Actions

Stora Enso Port Hawkesbury Limited shall file and obtain dismissal of all outstanding assessment appeals and court applications and / or actions in respect of the assessment, assessability and / or taxation of its property. Without limiting the generality of the foregoing, the following shall be dismissed:

- Assessment appeals (2004) in re Assessment Accounts #06437109, #06437125;

- Assessment appeals (2005) in re Assessment Accounts #06437109, #06437125;
- Assessment appeals (2006) in re Assessment Accounts #06437109, #06437125;
- Application to Supreme Court of Nova Scotia, Court File S.H. No. 250726; and
- such other related appeals or court proceedings

and the parties hereto shall waive costs against each other in the same.

4. Taxes Paid

The Municipality will accept the \$3,093,014 for year ending 31 March 2005; and \$3,078,006 for year ending 31 March 2006 as comprising full and final satisfaction of property taxes owed to the Municipality by Stora Enso Port Hawkesbury Limited for those tax years.

5. Resumption of Ordinary Operations

The resolution of its current labour dispute by Stora Enso Port Hawkesbury Limited, and the return of its work force, including the start-up of both paper machines and resumption of ordinary plant operations and production, shall be a condition precedent to the Municipality's obligations herein.

6. Enabling Legislation

This entire agreement is dependent upon the enactment and coming into force of the enabling legislation described here above. The parties will cooperate with the Province in the drafting of the legislation.

7. Exclusivity

The tax agreement contemplated and described herein is to be exclusive to these two parties and is not negotiated on behalf of nor intended to benefit any other, including any other municipality, and Stora Enso Port Hawkesbury Limited agrees that it is not and will not solicit or discuss or enter into similar negotiations with any other municipality which may seek to exercise some interest in the subject property and operations.

8. Costs and expenses

Each party will be responsible for its own legal, accounting and other costs and expenses incurred in connection with the proposed legislation and this agreement.

9. Plant Closure

In the event that the mill is closed on a permanent basis, this agreement is terminated, and future property taxes will be subject to the normal property assessment and taxation process in place at the time for the Municipality of Richmond.

10. Governing Law

The agreement between the parties and all related documents shall be governed by the laws of the Province of Nova Scotia and the federal laws of Canada applicable in that province and each party irrevocably and unconditionally submits to the jurisdiction of the courts of that province.

11. Legal Effect of this Letter

You and we acknowledge that this letter is intended to be binding and to give rise to binding legal obligations between the parties conditional on the enactment and coming into force of the specific Provincial tax legislation and the other terms and conditions as are set out here above.

Yours very truly,
Municipality of the County of Richmond

(signed)

By Louis A. Digout, CAO

(signed)

By Richard Cotton, Warden

ACCEPTED AND AGREED:

Stora Enso Port Hawkesbury Limited

(signed)

By Tor Suther, President and General Manager

2006, c. 51, Sch.; 2012, c. 49, s. 9.

SCHEDULE B

THIS AMENDMENT TO TAX AGREEMENT dated as of
the 27th day of September, 2012

BETWEEN:

DECEMBER 6, 2012

**NEWPAGE PORT HAWKESBURY CORP.
(“NPPH”)
OF THE FIRST PART**

-and-

**MUNICIPALITY OF THE COUNTY OF RICHMOND
(the “MUNICIPALITY”)
OF THE SECOND PART**

-and-

**PACIFIC WEST COMMERCIAL CORPORATION
(“PWCC”)
OF THE THIRD PART**

WHEREAS NPPH (formerly known as Stora Enso Port Hawkesbury Limited) and the Municipality are parties to a letter of intent dated May 25, 2006 (the “**Tax Agreement**”) with respect to municipal real property taxes to be paid by NPPH in respect of its property located within the Municipality for a term ending March 31, 2016;

WHEREAS the creditors of NPPH have approved a plan of arrangement or compromise, as amended, restated or supplemented, sanctioned by the Nova Scotia Supreme Court by order of September 25, 2012, (the “**Plan**”) made pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”) for which Pacific West Commercial Corporation (“**PWCC**”) is the plan sponsor;

WHEREAS NPPH and the Municipality have agreed to amend the Tax Agreement with effect as and from September 28, 2012 (the “**Effective Date**”);

AND WHEREAS PWCC has made certain representations as set out herein and joins herein to signify its acceptance and agreement with the terms hereof;

NOW THEREFORE the parties agree as follows:

1. Conditional upon implementation of the Plan, Sections 1-7 of the Tax Agreement are deleted in their entirety as and from the Effective Date and replaced with the provisions in Schedule “A” attached hereto.
2. The Tax Agreement is in full force and effect, except as specifically modified above.
3. The parties hereto agree to not file any appeals and to dismiss any appeals previously filed arising from the motions filed by the Municipality in respect of the disclaimer of the Tax Agree-

ment by NPPH pursuant to the CCAA and the parties acknowledge that such failure to file or dismissal is without prejudice to any legal arguments relating thereto. NPPH shall pay \$60,000 on or before September 28, 2012 to the Municipality in respect of costs incurred and the parties agree not to seek any further or other costs in respect of those motions or appeals.

4. This Amendment to Tax Agreement is conditional upon the implementation of the Plan and the Province of Nova Scotia amending or repealing and replacing the *Richmond Stora Enso Taxation Act* (Local Acts 2006) c. 88 (the “**Act**”) contemplated by Schedule “A”. If, for any reason, the Plan is not implemented, or the Province of Nova Scotia does not amend or repeal and replace the Act as contemplated by Schedule “A” to provide the necessary authorization and empowerment of the Municipality, the parties agree that this Amendment to Tax Agreement shall automatically terminate, the Tax Agreement shall be unaffected, and the parties hereto shall have no liability to each other with respect to any matter contemplated by this Amendment to Tax Agreement.
5. The Municipality acknowledges that NPPH and PWCC have represented that, after implementation of the Plan, NPPH intends to convey legal title to certain lands owned by NPPH in the Municipality to Port Hawkesbury Paper GP Ltd. (the “**General Partner**”) in its capacity as general partner for Port Hawkesbury Paper Limited Partnership, the partnership formed to operate the restructured business of NPPH, as contemplated in the Plan (the “**Limited Partnership**”) and to assign this agreement to the General Partner. The Municipality consents to the assignment of this Amendment to Tax Agreement by NPPH to the General Partner in its capacity as general partner for the Limited Partnership at the time of such conveyance. Upon and as a condition of such assignment and Municipality consent, the General Partner on behalf of the Limited Partnership shall execute an assumption agreement binding itself to the provisions of this Amendment to Tax Agreement. Thereafter, the obligations of the Municipality shall be owed to the Limited Partnership and not to NPPH, and the Limited Partnership shall enjoy all the rights of NPPH under this Amendment to Tax Agreement. Except as contemplated by this section, this Amendment to Tax Agreement is exclusive to the parties hereto and is not negotiated on behalf of nor intended to benefit any other party, including any other municipality.
6. This Amendment to Tax Agreement may be executed in several counterparts and by transmission of pdf or facsimile signatures with original copies delivered by each party to the other, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. This agreement is binding on the parties and their successors and permitted assigns or transferees.

IN WITNESS WHEREOF the parties have executed this amendment on the day and year first written above.

DULY EXECUTED in the presence of:) NEWPAGE PORT HAWKESBURY CORP.)
Witness _____) Per: _____
	Name: Peter Wedlake Title: Chief Restructuring Officer
)
) MUNICIPALITY OF THE COUNTY OF RICHMOND
Witness _____) Per: _____
	Name: Warren Olsen Title: Chief Administrative Officer
)
Witness _____) Per: _____
	Name: Victor David Title: Deputy Warden
)
) PACIFIC WEST COMMERCIAL CORPORATION
Witness _____) Per: _____
	Name: Title:

Schedule A
(Replacement of Sections 1-7 of Tax Agreement)

1. NewPage Port Hawkesbury Corp. (formerly known as Stora Enso Port Hawkesbury Limited) (together with its permitted assign in accordance with section 7 hereof, “**NPPH**”) and the Municipality will jointly approach the Province of Nova Scotia to amend or repeal and replace the *Richmond Stora Enso Taxation Act* (Local Acts 2006) c. 88 (the “**Act**”) and to otherwise authorize and empower the Municipality with necessary retroactive effect to set municipal real property taxes for the lands described in Annex 1 attached hereto (the “**Mill Lands**”) for a term from September 28, 2012 (the “**Effective Date**”) until March 31, 2016 (the “**Term**”) on the following basis:

- a) For the balance of the taxation year commencing on the Effective Date and ending March 31, 2013, property taxes payable in respect of the Mill Lands will be no greater than \$1,326,227.00, payable: (i) by a \$200,000.00 credit from the Municipality to and in favour of the legal owner in respect of its real property tax obligation, (ii) a promissory note from the legal owner in the principal amount of \$450,000.00 bearing no interest and repayable in four equal annual instalments payable on September 28 of each year from 2013 to 2016; and (iii) \$676,227.00 payable by the legal owner at any time on or before March 31, 2013;
 - b) There will be no interest payable to the Municipality or otherwise in respect of any taxes due or payable as set forth in subsection (a) provided that all payments are made as and when required by this amended agreement;
 - c) Municipal property taxes for the Mill Lands payable for the three municipal taxation years from April 1, 2013 until the end of the Term shall be fixed in an annual amount of \$1,300,000.00, payable to the Municipality through semi-annual tax billing by the Municipality in April and September of each year of the Term commencing April 1, 2013;
 - d) Municipal property taxation of the Mill Lands by the Municipality for the Term shall be pursuant to this amended agreement and the Act, as amended or repealed and replaced, and not subject to the annual assessments pursuant to the *Assessment Act*;
 - e) Any capital assets acquired directly, or by lease, by NPPH, or, if applicable, the General Partner on behalf of the Limited Partnership, during the Term will not be subject to further property taxes during the Term and the disposition of any capital assets shall not reduce the property taxes during the Term.
2. [intentionally left blank]
 3. [intentionally left blank]
 4. [intentionally left blank]
 5. [intentionally left blank]
 6. This amended agreement is conditional upon the Province of Nova Scotia amending or repealing and replacing the Act to authorize and empower the Municipality as contemplated herein. All parties agree to work in good faith with the Province in relation to the amendment, or repeal and replacement, of the Act
 7. The Municipality consents to the assignment of this amended agreement by NPPH to Port Hawkesbury Paper GP Ltd (the “**General Partner**”) in its capacity as general partner for Port Hawkesbury Paper Limited Partnership (the “**Limited Partnership**”). Upon and

as a condition of such assignment, the General Partner on behalf of the Limited Partnership shall execute an assumption agreement binding itself to the provisions of this amended agreement. Thereafter, the obligations of the Municipality shall be owed to the Limited Partnership and not to NPPH, and the Limited Partnership shall enjoy all the rights of NPPH under this amended agreement. Except as contemplated by this section, this amended agreement is exclusive to the parties hereto and is not negotiated on behalf of nor intended to benefit any other party, including any other municipality.

Annex 1

Mill Lands

PID

1. 75203976 - Richmond County
2. 75196998 - Richmond County
3. 75107821 - Richmond County
4. 75030759 - Richmond County
5. 75203992 - Richmond County
6. 75196980 - Richmond County
7. 75167668 - Richmond County
8. 75167676 - Richmond County
9. 75167684 - Richmond County

2012, c. 49, s. 10.
