

RCRA PERMIT MODIFICATION FOR TRANSFER OF OWNERSHIP OR CONTROLLING AUTHORITY

Unlike other permits which ADEQ issues, RCRA permits may not be automatically transferred under the provisions of Regulation No. 8, § 2.1.11 due to federal requirements pursuant to 40 CFR 270.40 and the requirement to establish financial assurances for closure, post-closure care, third party liability, and/or corrective actions.

Transfer of a RCRA permit to a new facility owner or operator is considered a Class 1 modification, subject to notice and approval of the ADEQ Director. (See Reg. No. 23 § 270.42(a).) The following list provides the specific requirements under Regulation No. 23 for the New Owner to complete transfer of the permit from the previous facility owner or operator:

1. PERMIT APPLICATION

The New Owner must submit a revised Permit Application (e.g., Part A application form) ***not later than 90 days prior to the date of transferring ownership.*** (See Reg. No. 23 § 270.40(b).) This 90-day notice is a federal requirement, and may not be waived.

2. DISCLOSURE

The New Owner must submit to the Director a Disclosure Statement which meets the requirements of **Reg. No. 23 § 270.10(l)**. If the affected facility is considered to be a “commercial” facility, then **Reg. No. 23 § 270.10(m)** will also apply.

3. WRITTEN TRANSFER AGREEMENT

The New Owner must submit to the Director a written agreement containing a specific date for the transfer of permit responsibility between the current owner and the new owner. This agreement must contain at least the following information:

- The effective date for transfer of control and responsibility for complying with the facility’s RCRA permit. ***This date can be no earlier than 90 days after the submission of the revised permit application/Part A.***
- A narrative description of how the transfer of responsibility will be accomplished.

4. **FINANCIAL ASSURANCE**

The New Owner must establish and finalize Compliant Financial Assurance for applicable closure, post-closure, liability, and corrective action costs (Reg. No 23 §§ 264.143, 264.145, 264.147, and 264.101(b) respectively) ***no later than the effective date of the change of ownership or operational control of the facility.*** (See Reg. No. 23 § 270.40(b).) The Old Owner must continue to provide Compliant Financial Assurance until the New Owner has established Compliant Financial Assurance. ADEQ shall notify the Old Owner in writing that he need no longer provide financial assurance and release him from such responsibility as of the date the New Owner establishes compliant financial assurance.

Allowable mechanisms include:

- (Fully-funded) Trust Fund;
- Surety Bond/Stand-by Trust Fund;
- Performance Surety Bond/Stand-by Trust Fund;
- Letter of Credit/Stand-by Trust Fund;
- Insurance;
- Financial Self-Test; or
- Corporate Guarantee.

Note: Companies may not use the Financial Self-Test until they have accumulated at least one completed fiscal year of independent operations under their current business structure. These companies may, however, use the Corporate Guarantee with a valid Guarantor.

5. **PUBLIC PARTICIPATION**

a. ***Within 90 days after the Director approves the request for permit transfer,*** the New Owner (Permittee) must send a notice of the permit modification establishing the change in control/ownership to:

- All persons on the Facility Mailing List maintained by ADEQ;
- Appropriate units of State and local government.
- See Reg. No. 23 § 270.42(a)(ii).

b. The New Owner must provide written notice to all landholders and tenants of property contiguous to the facility boundary. See Reg. No. 23 § 270.7(g). This notice must be sent certified mail, return receipt requested. This notice must include:

- The name, title, and address of the New Owner;
- The location of the facility, including a description of the facility boundaries;

- The nature of the waste management unit(s) at the facility (storage, treatment, or disposal) and a brief description of how wastes are to be stored, treated, or disposed of at the unit or facility which is the subject of the application or modification; and
- The type(s) of hazardous waste to be managed at the facility.

c. ***Within 30 days of submitting the revised application***, the New Owner must provide the Director with documentation of its good faith efforts to identify all such contiguous landholders and tenants, and proof of their notification as in (b) above.