

THE DEC POLICY SYSTEM



New York State
Department of Environmental Conservation

PROGRAM POLICY	Department ID: NA	Program ID: DEP 01-1
Title: Transfers of Permits and Pending Applications		
Issuing Authority: Environmental Conservation Law Article 70, and 6NYCRR Part 621 Name: Jeffrey S. Sama Title: Director Signature: <u>Jeff Sama</u> Date: <u>12/19/01</u>		Originating Unit: Division of Environmental Permits Office/Division: Environmental Permits Unit: Program Management Phone: (518) 402-9167
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Abstract: This is guidance regarding applications for permit transfers in accordance with [6NYCRR Part 621.11](#), Applications for permit renewals, reissuances and modifications, including transferring or relinquishing permits. Transfer of pending applications from an existing applicant to a new applicant are also addressed.

Related References:

- [6NYCRR Part 621, Uniform Procedures](#)
- [Commissioner Policy, Department ID: DEE-16, Record of Compliance](#)
- RGM 94-04 - Role of Project Managers
- Department Application Review Tracking (DART) Computer On-line Help

I. PURPOSE ¹

The purpose of this policy is to provide guidance to staff on the transfer of Uniform Procedures program applications and permits to a new legally responsible party. Accompanying this policy are the following related revised application forms:

- [Application for Permit Transfer and Application for Transfer of Pending Application \(10/01\)](#); and
- [Application for Permit Transfer, Supplement A - Resolution of Environmental Monitor Escrow Account \(5/01\)](#).

¹ A Program Policy Memorandum is designed to provide guidance and clarify program issues for Division staff to ensure compliance with statutory and regulatory requirements. It provides assistance to New York State Department of Environmental Conservation (DEC) staff in interpreting and applying regulations and statutes to assure that program uniformity is attained throughout the State. Nothing set forth in a Program Policy Memorandum prevents DEC staff from varying from that guidance as statutes or regulations require or authorize. As this guidance document is not a fixed rule, it does not create any enforceable right by any party using the Program Policy Memorandum.

II. BACKGROUND

This policy provides guidance to supplement the limited information regarding the transfer of permits provided in the applicable regulations and statutes. When available, regulatory citations are provided to support this policy.

The guidance relies upon the following definitions:

Applicant means one or more individuals, a corporation, partnership, association, trust, estate, a unit of federal, state or local government, a public authority or public benefit corporation filing appropriate applications and supporting materials for the purpose of obtaining a permit from the department.

Legally Responsible Party means a permittee lawfully accountable for undertaking a permitted action in accordance with the provisions and conditions of a permit or an applicant lawfully accountable for the content of an application. Permittees and applicants that are not individuals can be identified by their Taxpayer identification number.

Permittee means an applicant who has received authorization from the department to undertake an activity regulated under the Environmental Conservation Law in which the authorization is provided in the form of a permit identifying the approved activity and containing standards and conditions of performance for the activity. Permittees include owners, lessees, and operators at a project site or facility.

Transfer means the department's conveyance of an existing department issued permit from an existing permittee to a proposed new permittee following department verification that:

- a) the new permittee proposes no significant change in project design or operation as approved in the permit;
- b) the new permittee has satisfied required financial obligations and insurance coverage;
- c) the new permittee is a suitable candidate, based on past compliance with the Environmental Conservation Law, to hold a permit and carry out the activities authorized by the permit; and
- d) non-compliance, if any, by the existing or former permittee, associated with the permits proposed to be transferred, are either resolved to the department's satisfaction or do not represent an impediment to permit transfer.

Transfer also means conveying legal responsibility for a pending application for permit from an existing applicant to a new applicant.

Transferee means the proposed new owner, operator, lessee or applicant.

Transferor means the existing (or former) owner, operator, lessee or applicant.

III. POLICY

The administration of permit transfers is a fundamental component of the department's permitting and record-keeping responsibilities. Proper and consistent execution of these responsibilities ensures that:

- Necessary procedures are followed;
- Required documentation is obtained;

- Department records are up-to-date and accurate;
- Parties seeking to obtain existing permits are fit;
- Regulated activities and operators are properly authorized;
- Financial sureties are in-place;
- Regulatory fees are assessed to appropriate parties;
- Responsible parties are held accountable for their actions;
- Enforcement and compliance activities are not compromised.

In the administration of permitting responsibilities under the Uniform Procedures Act, staff of the Division of Environmental Permits shall provide for consistent and effective implementation of guidelines and procedures contained in this policy when making decisions on permit transfers. As necessary and as provided for by regulation and policy of the agency, program staff shall be consulted to determine if requirements for permit transfers have been satisfied.

This guidance pertains to all categories of permitting undertaken in accordance with the Uniform Procedures Act. However, the concepts and procedures contained in this policy may also be utilized in the administration of non-UPA permits and registrations (e.g., Air, Solid Waste and Chemical/Petroleum Bulk Storage registrations) to ensure that proper considerations are made in the transfer of approvals and registrations for activities regulated under the Environmental Conservation Law.

The transfer of a valid permit from one responsible party to another is made at the discretion of the department. The acquisition of or obtaining rights to use a facility or property does not provide the Transferee access to permits held by the former legally responsible party as a matter of right. The department shall use its discretion in determining that continuing permitted activities under a new legally responsible party is protective of the environment and the public's health, safety and welfare, and is justified by the intended use of the facility or property.

Permit transfers require the consent of the Transferor by way of the application form or other documentation in acquisition or facility/property use agreements signifying conveyance of rights to permits held by the Transferor. When no evidence of consent is provided, the department will not consider a permit transfer and the permit seeker must make application for a new permit.

Specific requirements for permit transfers are as follows:

A. Guidance Applicable to All Permit Transfers

1. Appendix 1, Transferability of UPA Permits Summary Table, details the permits which may be transferred, and provides additional specific details for certain programs.
2. Submittal of Applications for Permit Transfer prior to actual transfer from one legally responsible party to another is to be standard practice. Applications should be submitted at least 30 days prior to transfer, except when otherwise subject to a stricter requirement by a specific program statute or regulation.² However, application made subsequent to a completed transaction changing ownership or legally responsible party may be considered, but with the understanding that until the transfer is approved, the Transferor remains legally responsible for the DEC-regulated activities.

² Industrial Hazardous Waste Management Permits must be submitted 90 days prior to transfer.

3. An Application for Permit Transfer must be submitted for changes of legally responsible party per the following:

a) Change in facility ownership resulting in new permittee

The proposed acquisition of a facility or project site by a new owner that results in the new owner or another new entity becoming the permittee (legally responsible party) requires an Application for Permit Transfer.

Examples:

- Sale of facility from one individual to another individual.
- Sale of facility from one corporation to another corporation.
- Individual owner places ownership and legal responsibility in a newly formed corporation or partnership (individual Transferor may maintain controlling interest in the corporation or be one of the partners).
- A developer obtains a permit for multiple lots comprising a residential subdivision, then subsequently sells individual lots to one or more future homeowners or contractors who then undertake the work. Alternately, the department may require the homeowner/contractor(s) to apply for a new application for activities on their specific lot(s).

b) Change in lessee or operator, no change in ownership

When a lessee or operator is the legally responsible party named as the permittee on the existing permit, and that lessee or operator proposes to transfer the permit to another lessee or operator, regardless of actual facility ownership, an Application for Permit Transfer is required.

Examples:

- An existing legally responsible party lessee transfers responsibility for facility operations to a new lessee.
- A parent company transfers facility operations responsibility to a subsidiary company.

c) Change in name, no change in underlying responsible party

A change in permittee name, even if its Taxpayer I.D. remains the same, requires an Application for Permit Transfer. In some cases, comparable information and explanation may be contained in a notification letter instead of an application form. Permittee name changes can have significance as they may affect the validity of legal instruments supporting the provisions of a permit, i.e. financial assurance.

Example:

- A corporation changes the name of its existing corporation but does not re-incorporate.

4. The following scenarios require notification by letter to the department but do not require the filing of an Application for Permit Transfer form nor do they result in a change in the legally responsible party:

a) Change in controlling interest; no change in legally responsible party

When the underlying ownership or controlling interest in a legally responsible party changes but the legally responsible party's Taxpayer ID and permittee name remain the same, no Application for Permit Transfer is required. However, notification of the new parent company or controlling interest is to be provided to the department.

Example:

- A subsidiary corporation is sold to another parent corporation with the subsidiary remaining as the responsible party for activities at a permitted facility.

NOTE: The department need not be notified of a change in controlling interest when:

- i) there is a change in stockholder percentages for a legally responsible party, or
- ii) the controlling interest is in that of an individual.

b) Responsible party address change only

If the business address of a legally responsible party changes with no change in responsible party status, no Application for Permit Transfer is required. However, the department must be notified so that records can be changed to ensure that fee billings, and other notifications can be properly directed.

Example:

- A corporation moves its headquarters from one location to another.

5. A Notice of Intent to Transfer Permits may be issued by the department prior to the actual transaction resulting in the change in the legally responsible party. This Notice may contain contingencies related to the purchase and transfer of the permit which the department requires the parties to fulfill (i.e., proof of new sureties by the Transferee, final bill of sale by the Transferor, or payment of outstanding regulatory fees by the Transferor) before a final department approval can be granted, but it provides the parties with an assurance that approval is forthcoming so that they may finalize their transaction. Final issuance of the Permit Transfer awaits receipt by the Permit Administrator of notification that the actual sale has been finalized and that any department-imposed contingencies have been satisfied. See Appendix 2 for a sample Notice of Intent to Transfer Permits letter.

B. SEQR Responsibility

An Application for Permit Transfer with no material changes in permit conditions or the scope of permitted activities is a SEQR Type II action [[6NYCRR Part 617.5\(c\)\(26\)](#)].

C. Permit Modification at Time of Transfer

Generally, permit transfers do not involve a change in the nature or scope of regulated activities to be undertaken by the proposed Transferee as compared to existing permits [[6NYCRR Part 621.11](#), [621.13](#)]. However, there may be instances when consideration of permit modifications at the time of permit transfer are appropriate, as follows:

1. Administrative modifications associated with the permit transfer, such as new facility contacts and mailing addresses.

2. Department-imposed conditions that address increased department oversight of a new permittee, such as more stringent reporting requirements or clarifying the restrictions included in a previously approved construction or operation plan.
3. A reduced scope of authorized activities requested by the prospective permittee, if the reduction is not in conflict with facts supporting the original permit issuance.

Other circumstances may justify separate processing of the transfer from other permit modifications, which are to be processed as new applications.

Example:

- Modifications either requested by the applicant or initiated by the department that serve to substantially modify the type of activity undertaken or increase the scope of activity (e.g., rate of production or operational thresholds).

Still other circumstances may justify treating the request for transfer and other modifications as a new application requiring a new application for permit.

Example:

- The proposed activity is significantly different from that previously undertaken at the permitted site or facility. Transferring permits under such circumstances would preclude the department's review responsibilities under SEQR for review of an overall action that is subject to a discretionary approval by the department, as well as the opportunity for public review.

D. Financial Surety

An Application for Permit Transfer shall be denied, without prejudice, if there are outstanding financial assurance guaranties not yet assumed by or assigned to the Transferee. Reviewers should ensure that the name on the financial surety instrument coincides with the Transferee's name. This can be in the form of an amendment to the instrument or a new instrument. Determining acceptability of financial assurance guaranties is the responsibility of the appropriate department program.

E. SAPA

1. SAPA-extended permits (i.e., those renewal applications which are timely and sufficient, pursuant to the State Administrative Procedures Act, Section 401) may be transferred in the same manner as any other permit via use of an Application for Permit Transfer and Application for Transfer of Pending Application. The new legally responsible party assumes responsibility for obtaining the renewal permit.
2. Expired permits may not be transferred; the proposed new legally responsible party must submit a new application for the activity.

F. FERC Licenses

The Federal Energy Regulatory Commission licenses certain hydroelectric facilities, interstate gas transmission and gas storage, and interstate electric transmission lines. The department issues Water Quality Certifications pursuant to Section 401 of the Clean Water Act for these projects and may issue permits under the Environmental Conservation Law. FERC considers the WQC and department permits part of the federal license. FERC's review of permit transfers addresses only the

new licensee, not a new review of the project; therefore FERC does not require a change in the department's WQC or other permits.

The department, however, expects FERC licensees to apply for a transfer of all their DEC permits to ensure the consistency of all agency records. DEC will transfer these permits to the new legally responsible party in concert with and at the same time as FERC's review of the federal license transfer, in the same manner as any other permit.

Federal regulation prohibits transfer of FERC licenses to a new entity where the licensee has previously filed an official notice of project abandonment. The department will, accordingly, deny transfer or renewal of permits for previously abandoned projects and await reconsideration of the proposal under a new application for FERC license.

G. Transfer of Pending Applications for Permits

Applications for permits that are being reviewed by the department but for which a final permit decision has not been issued, may be transferred from an existing applicant (Transferor) to a new proposed legally responsible party (Transferee) who will undertake the role of applicant. The Transferor must consent to the Transferee assuming the role of applicant and acquiring rights to the documents comprising the application. The Transferee must also attest to their accepting responsibility for the application including support for the content of application documents. The Application for Permit Transfer form is being amended with this policy to also request and document transfers of pending applications for permit.

Unlike a request for permit transfer, the department cannot refuse to transfer responsibility for an application where Transferor consent and Transferee responsibility acceptance are documented. However, the department may request that a Transferee provide information on legal entity organizational structure or submit record of compliance information in order to complete or supplement information provided in the pending application. The Transferee must also remedy any application deficiency identified during the review of the application whether or not they originally submitted information contained in the application.

Applications that have been withdrawn by an applicant can not be transferred to a new applicant. A new application must be submitted.

IV. RESPONSIBILITY

In accordance with RGM 94-04 - Role of Project Managers, the assigned analyst/project manager in the Division of Environmental Permits is responsible for ensuring a timely and thorough review of UPA permit applications, and for recommending a final decision (approving/denying the permit application) to the Permit Administrator. The analyst/project manager works with the DEC Review Team in reviewing the permit application, requesting additional information, and in making the recommendation for a final decision. These same project management responsibilities pertain to requests for Permit and Pending Application Transfer.

In cases where UPA project management is delegated to another program, that program assumes this responsibility.

V. PROCEDURE

A. Basic Procedures for Permit Transfers

An Application for Permit Transfer is a specific type of application for permit modification. Procedures for review of these applications are:

1. A final decision or a determination regarding the sufficiency of the Application on the Permit Transfer is due within 15 days of receipt of the application [[6NYCRR Part 621.11\(f\)](#)]. As with any application, any time period may be extended by mutual consent if it is not possible to meet the deadline [[6NYCRR Part 621.14\(a\)](#)].
2. The assigned analyst/project manager should do a DART inquiry and a review of any other records to ascertain which applications/permits are to be transferred, including any applications/permits for facilities in other regions. (It is left to the discretion of the assigned analyst/project manager whether a separate Application for Permit Transfer should be utilized for each facility.)
3. The assigned analyst/project manager should send a Notification of Availability for Review to all affected or interested programs seeking comments on (or proposed conditions for transfer) the application. The Notification should be sent to any identified non-UPA programs and other regions as necessary (i.e., programs with registrations which may be involved, Regulatory Fee Unit). This review should include a verification that purported SAPA-extended permits are not in fact expired.
4. The department may require information to supplement the Application for Permit Transfer, including:
 - Application for Permit Transfer, Supplement A - Resolution of Environmental Monitor Escrow Account – applicable only if a monitor account already exists.
 - Record of Compliance - Permit Application Supplement – applicable in accordance with [Commissioner Policy, Department ID: DEE - 16, Record of Compliance](#), dated 08 August 1991, revised March 5, 1993.
 - Proof of ownership, including corporate resolutions, leases, or deeds of sale – applicable if the Transferor cannot complete the Application for Permit Transfer, or if otherwise required.
 - Proof of financial guaranties, bonds, or liability insurance – applicable if such assurances must be transferred or are required.
5. An Application for Permit Transfer may be treated as new for purposes of review or public comment and/or hearing as required by law or as deemed necessary by the department [[6NYCRR Part 621.11\(h\)](#)].
6. When the application is approved, the assigned analyst/project manager should update the legally responsible fields and the facility contact information for the subject facility(s) in DART. The specific procedures for ownership transfers are described in the DART On-line Help.
7. Approval of the Permit Transfer may be by the following method(s):

- a) The Permit Validation Section of the Application for Permit Transfer is completed, noting whether there are modifications, revisions, or additions to the previously issued permit conditions.
 - b) A Permit Modification letter is issued, noting any special concerns or modifications, revisions, or additions to the previously issued permit conditions.
 - c) A revised new permit is issued, including any required new or amended permit conditions associated with the responsibilities of the new permittee (Transferee).
8. Copies of approved and denied Permit Transfers are to be sent to each affected or interested program with applications/permits for the facility, including any identified non-UPA programs and other regions. A copy is also to be sent to the Regulatory Fee Unit when applicable. Copies of approved and denied Permit Transfers from Central Office are to be sent to the affected programs' regional and central offices.³

B. Basic Procedures for Pending Application Transfers

If an Application for Permit Transfer only involves pending applications, the above procedures for Permit Transfers are to be adapted to fit the situation, in consideration of the following:

1. Make sure the Transferee is aware of any prior Notices of Incomplete Application and the current status of the application.
2. If any additional information is required and the application has not been determined complete, send a Notice of Incomplete Application and then follow normal application review procedures and time-frames.
3. If additional information is required after a completeness determination has been made, send a request for additional information and a request to suspend timeframes to a specific deadline. If there are substantive changes to the application, it may be appropriate to treat the application as new.
4. The department's approval or acknowledgment of the application transfer can be by use of the validation section on the application form or by simple letter to the Transferee and Transferor.
5. Update DART records and inform other department staff as appropriate.

C. Multi-Regional Projects

A Central Office analyst/project manager may be assigned to manage an Application for Permit Transfer when a legally responsible party's facilities, located in more than one region, are being simultaneously transferred, or for transfers of other projects which are typically assigned to a Central Office project manager. Regional offices shall contact the Chief Permit Administrator in Environmental Permits' central office to determine the appropriate assignment of these applications.

³ See Appendix 3 for additional information on distribution of approved permit transfers.

ATTACHMENTS

Appendix 1 - Transferability of UPA Permits Summary Table

Appendix 2 - Sample Notice of Intent to Transfer

Appendix 3 - Memo from Bill Adriance, Nov. 3, 2000 - Permit Transfers & Regulatory Fee Billing

[Application for Permit Transfer and Application for Transfer of Pending Application \(10/01\)](#)

[Application for Permit Transfer, Supplement A - Resolution of Environmental Monitor Escrow Account \(5/01\)](#)

**DEP 01-1 Permit Transfers
Appendix 1
Transferability of UPA Permits Summary Table**



PROGRAM	CITATION	PROVISIONS/ GUIDANCE ¹
Protection of Waters and Water Quality Certifications	608.6(b)	Transferrable.
Water Supply	601.6(c) ; 602.6	Transferrable; new application required. ²
Transportation of Water by Vessel	ECL § 15-1506	Transferrable.
Wild, Scenic and Recreational Rivers System	666.8(a)	Transferrable.
SPDES (State Pollutant Discharge Elimination System)	750-1.17	Transferrable. ³
Air Pollution Control	201-1.3 ; 203.9 ; 215	Transferrable.
Liquefied Natural Gas and Petroleum Gas	ECL § 23-1707 ; ECL § 23-1709(4)	Transferrable.
Mined Land Reclamation	421.1(f)	Transferrable. ⁴
Freshwater Wetlands	663.4(c)(1)	Transferrable.
Tidal Wetlands	661.12(a)(1)	Transferrable.
Waste Transporter	364.6(i) ; 381.6 ; 381.11(g)	Not Transferrable; new application required.
Solid Waste Management	360-1.8(a)	Transferrable.
Industrial Hazardous Waste Management	373-1.1(f) ; 373-1.6(a) (12)(iii) ; 373-1.7(a)	Transferrable. ⁵
Siting of Industrial Hazardous Waste Facilities	361.6(a)(2)	Transferrable.
Coastal Erosion Hazard Areas	505.5(d)	Transferrable.

New York State Department of Environmental Conservation

¹ When transferrable, use an Application for Permit Transfer, and follow the procedures found at Part 621.11, Applications for permit renewals, reissuances and modifications, including transferring or relinquishing permits. Application Supplement A – Resolution of Environmental Monitor Escrow Account, may also be required. Some programs have additional specific requirements for transfers (i.e., new application required; need to transfer environmental monitor funds, bonds, or other financial sureties; new record of compliance review required).

² A new water supply permit application must be filed by the proposed owner before the transfer or sale takes place. Unless the Project Justification section of the application is completed and substantiated, the application cannot be approved.

³ Supplement the Application for Permit Transfer with a SPDES application if any changes to the permit are proposed.

⁴ Proof of reclamation surety from the new permittee is required.

⁵ Applications for Permit Transfer must be submitted 90 days prior to transfer.

Division of Environmental Permits, <OFFICE>

<OFFICE ADDRESS>

Phone: (...) ...-.... • **FAX:** (...) ...-....

Website: www.dec.ny.gov

**DEP 01-1 Permit Transfers
Appendix 2
Notice of Intent to Transfer
SAMPLE**

<DATE>

<TRANSFEROR/CONTACT NAME>
<& ADDRESS>

Re: Notice of Intent to Transfer Permits
<FACILITY NAME>
DEC #: <.-....-...../.....>
Town of <...>, <...> County

Dear <TRANSFEROR/CONTACT NAME>:

This is in response to your <DATE> Application for Permit Transfer for all current permits (and current permit applications) for your company's <FACILITY NAME> to <TRANSFEREE NAME>.

This letter serves as our Notice of Intent to issue the permit transfers contingent upon written notification from you that the sale has been finalized. This notification is to be sent to Regional Permit Administrator <RPA NAME> at the above address. Upon our receipt of this notification, we will sign and validate the Application For Permit Transfer and forward a copy to you and <TRANSFEREE NAME>. <TRANSFEREE NAME> will then be authorized to operate the facility under the terms of the existing permits and will be responsible for complying with all the terms and conditions of the permits. <TRANSFEREE NAME> is also responsible for obtaining any additional DEC permits, registrations or other authorizations required for the facility.

If you require any additional information or assistance, you may call me at <ANALYST'S PHONE>. Thank you.

Sincerely,

<ANALYST NAME>
<ANALYST TITLE>

Enclosures:

<LISTING OF ALL PERMITS/APPLICATIONS AT THIS FACILITY BEING TRANSFERRED>

cc: <TRANSFEREE NAME>

New York State Department of Environmental Conservation

Division of Environmental Permits, Room 538

50 Wolf Road, Albany, New York 12233-1750

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DEP 01-1 Permit Transfers
Appendix 3
(8/08 revisions - DEC staff contact names deleted)

M E M O R A N D U M

TO: Regional Permit Administrators & Sub-office Deputies
FROM: Bill Adriance /s/
SUBJECT: Permit Transfers & Regulatory Fee Billing
DATE: November 3, 2000

A certain proportion of Regulatory Fee Bills sent out each year get challenged because the permittee of record claims that they no longer own the facility to which the billing applies. In some cases the permittee has not notified the Department of the change and the individual or company is sent an Application for Permit Transfer and is directed to complete it and return it to the appropriate regional office. In other circumstances, the Permittee of record has requested a permit transfer but Department records on which fee billing is based do not reflect the change. Improperly directed fee billings create unnecessary mailings and dispute resolution transactions that waste Department resources.

To ensure that information on permit transfers, name changes, and mailing address changes are available to those in the Department responsible for Department records concerning permittees, in addition to making changes in DART/FIS, I am requesting that transactions of this nature be distributed as follows:

Generically, a copy of all approved Applications for Permit Transfer, name changes and mailing address changes should be sent to the appropriate regional program office.

Where permits with regulatory fees (Air, Hazardous Waste, regionally issued Waste Transporters, SPDES, Water Transport, and Mined Land) are involved, a copy should also be sent to the central office Regulatory Fee Unit in Management and Budget, _____, mail code 5013.

For certain permit categories, specific additional individuals in central office should also be copied as follows:

For SPDES P/C/I General Permit,
_____, Environmental Permits, mail code 1750;

For all other SPDES,

____ , Bureau of Water Permits, Division of Water, mail code 3505.

For Air Permits

____ , Division of Air Resources, mail code 3250.

If there are any questions, please contact ____.

CC: