
RADIOACTIVE MATERIALS PROGRAM

TRANSFER OF OWNERSHIP OR CONTROL OF LICENSED ACTIVITIES

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Dept. Of Natural Resources
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Purpose

This guide is issued to inform licensees of their responsibility to provide timely notification to the Georgia Department of Natural Resources Radioactive Materials Program (Department) before the planned transfer of ownership or control of licensed activities and obtain prior written consent to such action from the Department, as specified in the "Rules and Regulations for Radioactive Materials" Chapter 391-3-17-.02. Specific guidance is also provided outlining the information to be submitted by licensees concerning changes of ownership or control resulting from mergers, buy-outs, or majority stock transfers.

Discussion

Rule 391-3-17-.02(13)(b) states: "No license issued or granted under this Rule and no right to possess or utilize radioactive material granted by any license issued pursuant to this Rule shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Department, after securing full information, finds that the transfer is in accordance with the provisions of the Act and gives its consent in writing." Thus, the regulations are very clear that control of licenses cannot be transferred without prior written permission from the Department.

Although it is not the Department's intent to interfere with the business decisions of licensees, it is necessary for licensees to provide timely notification to the Department whenever such decisions could involve changes in the corporate structure responsible for management oversight, control, or radiological safety of licensed materials.

The purpose of such notification is to allow the Department to assure that: (1) radioactive materials are possessed, used, owned, or controlled only by persons who have valid Department licenses; (2) materials are properly handled and secure; (3) persons using such materials are capable, competent, and committed to implement appropriate radiological control; (4) licensees provide adequate financial assurance for compliance with Department requirements; and (5) public health and safety are not compromised by the use of such materials. Although the burden of notification is on the existing licensee, it may still be necessary for the transferee¹ to provide supporting information or to independently coordinate the change in ownership or control with the Department.

Licensees should note that a license cannot be sold or transferred by itself to a transferee. In situations where a licensed company is purchased in its entirety, and the transferor² will not continue in business as a separate entity, the purchase can be approved if the license is

¹ A Transferee is an organization proposing purchase or otherwise gaining control of a licensed operation.

² A Transferor is a licensee selling or otherwise giving up control of a licensed operation.

amended to reflect any name changes, compliance with financial assurance requirements, personnel changes, or any other change that would normally require an amendment. If there are no changes, an amendment may not be necessary and the transferee and transferor will be notified by letter that the Department has no objection to the sale, based on written statements from the transferee/transferor confirming that no changes in the licensed operation will occur as a result of the sale.

In cases where a licensed operation is purchased from a transferor, who continues in business as a separate entity (without the license), the transferee must submit an application for an amendment to the license to reflect the change in identity of the licensee, compliance with financial assurance requirements, and any other pertinent changes in the operation. The transferee can use the transferor's documents as a basis for preparing the license amendment application. Usually a new license will not be issued. However, the transferee can always apply for a new license by providing a complete application. If a new license is issued, the transferor must request termination of its license as a separate action.

In order to maintain their availability, records important to the safe and effective decommissioning of the facility and all records concerning public dose and waste disposal need to be transferred to the new licensee or to the Department in cases of terminations. Therefore, no transfers or changes of ownership or license terminations will be authorized until all information or records concerning decommissioning of the facility, radiation doses to the public, and waste disposal, such as releases to sewers, incineration, radioactive spills, and on-site burials, have been transferred to the new licensee, if licensed activities will continue at the same location, or to the Department for license terminations.

Notification Process

Licensees planning to transfer ownership, to change the corporate status, or to change control of licensed activities are required to provide full information about the change to the Department **90 days** prior to the proposed action. Failure to comply with this requirement may adversely affect the public health and safety and interfere with the Department's ability to inspect licensed activities. Cases where change of ownership or control has occurred without prior written consent from the Department will be treated as noncompliance with the provisions of 391-3-17-.02(13), and will be referred to the inspection staff, as appropriate. Willful failure to obtain prior Department approval of the transfer may result in escalated enforcement action, to include civil penalties and orders, if indicated by the circumstances, against one or both of the parties involved.

Attachment 1 outlines the information needed by the Department to approve changes of ownership or control. If you have any questions about the information in this guide, please contact the Department at (404) 362-2675.

ATTACHMENT 1

INFORMATION NEEDED FOR CHANGE OF OWNERSHIP APPLICATION

The applicant should provide the following information concerning change of ownership or control by the applicant (transferor and/or transferee, as appropriate):

1. The new name of the licensed organization. If there are no changes, the licensee should so state.
2. The new licensee's contact and telephone number(s) to facilitate communications.
3. Changes in personnel having control over licensed activities (e.g., officers of a corporation) and any changes in personnel named in the license such as radiation safety officer, authorized users, or any other persons identified in previous license applications as responsible for radiation safety or use of licensed material. The licensee should include information concerning the qualifications, training, and responsibilities of new individuals.
4. An indication of whether the transferor will remain in non-licensed business without the license.
5. A complete, clear description of the transaction, including any transfer of stocks or assets, mergers, etc., so that a legal determination might be made, when necessary, to differentiate between name changes and changes of ownership.
6. A complete description of any planned changes in organization, location, facility, equipment, or procedures (i.e., changes in operating or emergency procedures).
7. A detailed description of any changes in the use, possession, location or storage of the licensed materials.
8. Changes in organization, location, facility, equipment, procedures, or personnel that would require a license amendment even without the change of ownership.
9. Confirmation that all surveillance items and records (e.g., calibrations, leak tests, surveys, inventories, and accountability requirements) will be current at the time of transfer. A description of the status of all surveillance requirements and records should also be provided.
10. Confirmation that all records concerning the safe and effective decommissioning of the facility, pursuant to 391-3-17-.02(8)(g); such as public dose; waste disposal by release to sewers, incineration, radioactive material spills, and on-site burials, have been

transferred to the new licensee, if licensed activities will continue at the same location, or to the Department for license terminations.

11. A description of the status of the facility. Specifically, the presence or absence of contamination should be documented. If contamination is present, will decontamination occur before transfer? If not, does the successor company agree to assume full liability for the decontamination of the facility or site?
12. A description of any decontamination plans, including financial assurance arrangements of the transferee, as specified in 391-3-17-.02(8)(g). This should include information about how the transferee and transferor propose to divide the transferor's assets, and responsibility for any cleanup needed at the time of transfer.
13. Confirmation that the transferee agrees to abide by all commitments and representations previously made to the Department by the transferor. These include, but are not limited to: maintaining decommissioning records required by 391-3-17-.02(8)(g)7, implementing decontamination activities and decommissioning of the site, and completing corrective actions for open inspection items and enforcement actions.

With regard to contamination of facilities and equipment, the transferee should confirm, in writing, that it accepts full liability for the site, and should provide evidence of adequate resources to fund decommissioning, or the transferor should provide evidence of adequate resources to fund decommissioning; or the transferor should provide a commitment to decontaminate the facility before change of control or ownership.

With regard to unresolved inspection items, etc., the transferee should confirm in writing that it accepts full responsibility for those items and/or any resulting enforcement actions; or the transferee proposes alternative measures for meeting the requirements; or the transferor provides a commitment to close out all such actions with the Department before license transfer.

14. Documentation that the transferor and transferee agree to the change in ownership or control of the licensed material and activity, and the conditions of transfer.
15. A commitment by the transferee to abide by all constraints, conditions, requirements, representations and commitments identified in the existing license. If not, the transferee must provide a description of its program, to ensure compliance with the license and regulations.