

San Joaquin Valley Unified Air Pollution Control District

Procedures for Unconverted Authority to Construct Permits and Pending Applications Upon a Change in Ownership of a Stationary Source

Approved By: SIGNED _____ Date: 3/23/06 _____
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Purpose: The purpose of this policy is to establish procedures applicable to Authority to Construct permits and pending applications for Authority to Construct permits when there is a change in ownership of the stationary source.

I. Applicability:

This policy applies when a stationary source is transferred from one owner to another, when one or more new owners are added to the existing ownership, or when one or more existing owners relinquish their ownership.

II. Background:

District Rule 2031, Transfer of Permits, prohibits the transfer Authorities to Construct (ATCs) or Permits to Operate (PTOs) from one person to another unless a new application is filed with and approved by the APCO. Applications to transfer the ownership of PTOs and are processed ministerially upon receipt of the application identifying the new ownership, the required filing fee per permit unit, and a signed letter of release from the previous owner of record.

The District's new source review rule, Rule 2201, establishes minimum requirements for obtaining ATCs for new and modified emission units. Some of the requirements, such as whether the issuance of an ATC is at a major stationary source or not, whether the issuance of an ATC is a Title I modification or not, and the certification of statewide compliance, are related to the ownership of the stationary source. Depending on the circumstances, different ownership of a stationary source may result in different NSR requirements, such as different offset requirements, public noticing requirements, or certification of compliance requirements.

III. Analyzing Validity of ATCs and Applications for ATCs for Stationary Sources with a Change in Ownership

CASE 1 Operation Has Commenced Under The ATC But The PTO Has Not Been Converted

The equipment must be installed and operated as per the ATC and the operator must notify the District upon commencement of operation in which case the ATC serves as a temporary PTO by operation of law (Rule 2010 Sections 4.1 or 4.2). Because the unit is operating under a temporary Permit to Operate, the new owner is able to submit an application for transfer of ownership of the permit unit with a filing fee. Upon conversion of the ATC to PTO, the PTO will be issued to the new owner.

CASE 2 Construction Has Commenced Under The ATC Or The New Owner Has Otherwise Acquired A Vested Right To Proceed Under California Law

The new owner shall file an application and filing fee to have the ATC re-issued to the new owners. The application review of such an application will include a determination that construction has commenced (as defined in Rule 2050) (or that the new owner has otherwise acquired a “vested right” to proceed under California law), and that all other ownership-specific requirements of Rule 2201 are met (e.g.; that any required demonstration of state-wide, major source compliance has been made by the new owners, that any public or EPA noticing requirements have been satisfied, and that offsets have been appropriately provided). The re-issued ATC will carry the same issuance date as the originally issued ATC so that they will expire when the original ATCs would have expired. In addition to the owner’s name, only the ERC Certificate numbers are likely to be different on the new ATC unless the equipment will merge into an existing stationary source (such as when one owner of two side-by-side oil refineries buys out the other and continues to operate both or when one oil producer buys a competitor in one of the “oilfield” stationary sources).

Case 2 includes permit units constructed but not operated when a transfer of ownership occurs after construction is completed but before the equipment is operated.

Case 2 includes permit units which would have otherwise been included in Case 1 but for which a temporary PTO does not exist by operation of law because all of the criteria of Rule 2010 Sections 4.1 or 4.2. were not satisfied.

CASE 3 Construction Has Not Commenced And The New Owner Does Not Have A Vested Right To Proceed

- A. An existing ATC for which construction has not commenced (as defined in Rule 2050) shall convey no authorization to the new owner unless the new owner has otherwise acquired a “vested right” to proceed under California law (see Case 2, above). The new owner may apply for ATCs to be issued to the new owner and may specify the details are the same as contained in the application support information in the previous owner’s submittal or the new owner may submit new support information in whole or in part.

Such application requires a filing fee and may be submitted only after, or concurrent with, the transfer of ownership application for the stationary source’s Permits to Operate. The ATC application will be subject to current District Rules and Regulations, including Rule 2201, and BACT in effect at the time the application to issue the ATCs to the new owner is deemed complete.

- B. Any pending (i.e., un-issued) application for Authority to Construct may be assumed by the new owners through a written request to do so, and such applications will be subject to the District Rules and Regulations, including Rule 2201, and BACT in effect at the time such applications to issue the ATCs to the new owners are deemed complete. In absence of such a request, any pending applications for ATC will be canceled pursuant to Rule 2031 effective the date of the change in ownership of the stationary source.