

 Ontario Ministry of Natural Resources / Ministère des Richesses naturelles	<i>Subject:</i> Licence Transfer	<i>Policy No.:</i> A.R. 2.02.01	<i>New:</i> Yes
<i>Compiled by – Branch:</i> Lands & Waters	<i>Section:</i> Aggregate & Petroleum Resources	<i>Date Issued:</i> March 15, 2006	

Guiding Principles

A transferred licence will allow the continued operation of the licenced site under the same terms, conditions and site plan requirements as the original licence. The new licensee is responsible for all aspects of the site.

Any non-compliance issues, including lack of progressive rehabilitation, should be resolved prior to the approval of the transfer.

Before a transfer can occur, MNR must be assured that the new licensee has the right to extract.

Policy

Act 18(1) The *Aggregate Resources Act* (ARA) provides for the transfer of a licence. This is implemented by the issuance of an amended licence with the same licence number.

Act 8(7) All site plans are the property of the Crown and the site plans can be assigned to the new Licensee.

Note: Disputes between the landowner and the licensee regarding terms, conditions or assignment of agreements must be resolved between the two parties (MNR is not involved in determining the validity of a lease agreement). In these instances, a transfer can only occur when there is a valid lease agreement in place (i.e. proof of legal right to extract).

If the present licensee does not consent to the transfer, the transfer must be processed as a ‘no consent’ or ‘hostile’ transfer, as per subsection 18(4) of the Act.

Situations where a licence transfer would be recommended:

- a) *Licensee sells the property and transfers the right to extract and agrees to transfer the licence to a new owner/operator, or the lease is transferred and the rights have been conveyed to another individual/company:*

New person or company/corporation purchases the licenced property and acquires the extraction rights. Completely new personnel are involved. It may be difficult to determine if this situation is different from a corporation merger or a corporation name change as permitted under the *Business Corporations Act* (see A.R. 2.02.02). In this case, the assets of the licenced property are purchased by a new party, and a new owner exists. Where consent is given and the transfer form has been signed by both parties, the licence can be transferred.

- b) *Licensee doesn't have the right to extract (through sale of property, lost in bankruptcy, lease agreement has expired or forfeiture of mortgage (bank may end up with the licence and a hostile licence transfer situation)):*

A licence transfer can occur where there is concurrence by both the present licensee and the new person/corporation. This situation is where a new agreement is entered into between the owner of the aggregate (i.e. landowner) and another new person/corporation other than the present licensee of record. The present licensee then loses his right to extract. Similarly, a loss of right to extract can occur when a lease agreement expires between the landowner and the licensee and the two parties cannot come to terms on a new agreement.

Note: Where the landowner is also the licensee and the licensee loses the right to extract through bankruptcy, the licence may be transferred to the Trustee/Receivership until the bankruptcy is resolved or the property is sold.

- c) *Death of Licensee:*

The executors of the estate would make application on behalf of the estate. The Aggregate Inspector must verify that the beneficiary has acquired the extraction rights. This situation is often a complex matter involving the rights of a partnership, direction in a will (which must be probated) or other legal statutes.

The solicitor/executor of the estate should be contacted. If there are any further questions, Legal Services and/or the Aggregate and Petroleum Resources Section should be consulted.

On the death of an individual who holds a licence as a sole proprietor, the personal representative of the individual or the executor may continue to operate the pit or quarry until the estate/will has been executed and/or probated.

Situations where a licence transfer would not be recommended:

- a) *The annual licence fee or the annual production report has not been submitted to The Ontario Aggregate Resources Corporation;*
- b) *Enforcement action (i.e. charges, suspension, revocation) has been initiated for a contravention of the Act, the regulations, the site plan and/or condition(s) of the licence;*
- c) *The annual Compliance Assessment Report has not been submitted;*
- d) *There are other non-resolved compliance issues with the site (i.e. a Notice of Inspection requiring remedial work to correct a contravention but the work has not been completed); and*
- e) *A licensee has not completed the necessary progressive or final rehabilitation of the site in accordance with the site plan or the site has been depleted of aggregate. In these situations, MNR should consider issuing a subsection 48(2) rehabilitation order and once the site has been rehabilitated, transfer the licence to the new licensee.*

If the transferee (e.g. developer/operator) wants the licence and accepts all responsibilities of the rehabilitation in accordance with the site plan, MNR should complete the transfer.