



# How to use the Notice of Termination/Permit Modification Form

It is common for property to change ownership during the construction process. In addition to a change in ownership, a change in operator may or may not happen. The Notice of Termination (NOT)/Permit Modification Form provides a means of transferring existing permit coverage to new owners and operators. The same form is also used to terminate permit coverage once the site has achieved final stabilization as defined by the permit. The operator is defined as the person (usually the general contractor), designated by the owner, who has day to day operational control and/or the ability to modify project plans and specifications related to the Stormwater Pollution Prevention Plan (SWPPP). Any time there is a change in ownership or operator for an entire site or a portion of a site, the NOT/Permit Modification form must be submitted to the Minnesota Pollution Control Agency (MPCA). As a result, permit coverage is extended to the new owner and/or operator and terminates coverage to the former owner and/or operator. The new permittees then become responsible for the terms of the permit. The NOT/Permit Modification form replaces the Subdivision Registration form, Permit Transfer/Modification form, and the Notice of Termination form that were used under the previous National Pollutant Discharge Elimination System (NPDES) Permit which expired on August 1, 2008. The NOT/Permit Modification form ensures that the proper entities (as defined by owner and operator) are responsible for the NPDES requirements at any given time, on any given portion of a site. There is no fee associated with this process.

## A common scenario

In a common scenario, a residential developer owns a large tract of land and performs mass grading and installation of utilities and roads. The developer obtains NPDES coverage prior to grading, listing himself as the owner and the hired contractor as the operator (note: if the developer is performing the grading, the developer is listed as both owner and operator). Next, lots or groups of lots are sold to various home builders or individuals. This may occur while the developer is still performing construction activity or after that work is complete. At this point, it is both the original permit holder and the new builder's responsibility to submit an NOT/Permit Modification form to the MPCA. The original owner completes the form indicating what portion of the site was sold. The original owner then provides a copy to the purchaser to complete their portion of the form, including the signatures. The original owner submits the form to the MPCA. For the new permittees, this form acts as the application for NPDES coverage for their portion of the site. For the original permittee, the form acts as an NOT only for the portion of the site which was sold. The rest of the site remains under permit coverage with the original owner.

Note that the original owner is responsible for ensuring the sold portion of the site is compliant with the permit by having temporary erosion and sediment controls in place prior to the transfer. Once the site is transferred to the new owner, the new owner becomes responsible for compliance with the permit.

Only one NOT/Permit Modification form needs to be completed for all parties. It is not necessary for the original permittees and the new permittees to submit one form each. At or near the time of closing, the two parties involved can work together to fill out one form. The MPCA hopes that this is how most transfers will take place and only one form will be submitted. However, if the two parties are in

disagreement in regards to any aspect of the form or one of the parties cannot be located, both parties still have the opportunity to be in compliance by completing the section they are responsible for and submitting it to the MPCA.

## Completing the form

The form requires some basic site information to be entered first, followed by three sections of which only one will be filled out; depending on the type of action you want to take.

### Existing permit identification

**Line a:** This is the permit number that you wish to take the action on that was assigned by the MPCA back at the time of coverage. For every NPDES application that is submitted to the MPCA, a coverage letter is returned and a unique permit number is assigned to the project. Initially, sites obtain coverage using the standard application and are assigned a number formatted like this: C00012345. If a permit is later transferred in whole, the number will remain the same. If a permit is transferred in part (subdivision registration), those portions are assigned a new number formatted like this: SUB0012345. This form can be used to transfer or terminate any "SUB" numbered permit or "C" numbered permit. You can search for active permits on the MPCA website: <http://www.pca.state.mn.us/mvric9b>.

**Line b:** Enter the project name and location. You should attempt to locate the original project name that the site was permitted under. This may be difficult as occasionally a site name may change. Entering the project location will aid MPCA staff to understand what project you are referring to. Use street names, city names, or GPS location.

### Select option 1, 2, or 3

The form can be used for any one of three actions:

#### 1. Notice of Termination (NOT) for entire site by existing owner.

**Line c:** Check this box if you wish to terminate your project because all planned construction activity has been completed and the site has met all of the conditions for "final stabilization". This section can also be used to terminate a subdivision site that was transferred from another permit. The termination will apply to the site identified on *Line a*.

If you are terminating a permit in which subdivision permits were taken out (i.e. you sold portions of the site during the construction process) those subdivisions must be terminated first. The original permit must remain active while the other "Sub" permits are active, even if no construction activity is occurring on those portions of the site still covered under the original permit.

The status of all permits can be found using the construction stormwater website shown above. If your site consists of lots that are awaiting sale where construction activity will occur in the future, the construction permit must remain active. There is one exception to this policy; if a project is nearly complete (defined as 90 percent by land area) of all land-disturbing activity covered under the original permit and construction activity has ceased for a period of at least 90 days and all remaining areas have permanent stabilization, a permittee has the option to terminate coverage. Remember, in order to terminate any permit, all "Sub" permits taken out under the original permit must be terminated as well. Please note that if the permit is closed when there is still construction to be completed at the site, a new permit, including the fee, will be required for any party once construction resumes. See Part IV.G.6 of the permit for all required conditions for termination.

#### 2. Transfer of entire site to a new owner or contractor.

**Line d-g:** Use this section if you are buying or selling an entire site that already has permit coverage or a change in contractor is occurring. This process requires two actions. First, permit coverage is needed for the new owner and/or contractor and permit coverage must be terminated for the

previous owner and/or contractor. This section of the form can accomplish both actions by checking the appropriate boxes for all parties and providing the corresponding signatures in the signature section for each party. This is the preferred method of transferring coverage as it will clearly indicate which project the transfer applies to and who the involved parties are. However, if for any reason one or more of the parties are not willing to sign the form, it can still be submitted to the MPCA. If a sale occurs and the MPCA receives the form with the original permit holders signatures but not the new owners signature, the original permit holders will no longer be responsible for the site and the new owner/contractor will be working without a permit and subject to possible enforcement action.

The form must be submitted within seven days of change in operational control of the site, commencing work on their portion of the site, or of the legal transfer, sale, or closing on the property. The permit number will remain the same.

### **Additional requirement for the current owner**

The construction permit requires the new owner information section to be filled out even if the new owner is not providing the authorized signature. This provides the MPCA with the information needed to contact the new owner who is responsible for the site. The permit also requires a copy of the filled out form to be provided to the new owner if they are not going to be signing the form that is submitted to the MPCA by the current owner. This provides the new owner with information needed to apply for coverage at a later time. This requirement also applies to permit transfers of a portion of a site (see section 3 below).

### **Other uses for this form**

It is common for owners to want to apply for permit coverage before a contractor has been determined. This can be accomplished by the owner signing both the owner and contractor section of the application. After the contractor has been determined, the owner can use section 2 of this form to transfer the contractor responsibility to the new party.

It is also common for a contractor to finish all of the construction activity they intend to do while other construction activity is occurring on other areas of the site that have been transferred to another party. For example, a contractor may be hired to perform mass grading and utility and road construction with the intention that lots will be sold to builders for home construction. Many contractors want to end their permit responsibilities as they will no longer be active at the site. Section 2 of this form can be used to transfer the contractor responsibility back to the owner. Part II.B.5.c of the permit allows this to occur, however, this is not a requirement and transfers of this nature should be agreed upon by the owner and contractor in writing prior to construction.

### **3. Transfer of a portion of site to a new owner or contractor (subdivision registration).**

**Line h-I:** This section is used to transfer a portion of a project that already has permit coverage to another owner and/or operator. This is equivalent to the subdivision registration process used under the previous (2003) construction permit. This allows multiple permittees to work on different portions of a project and each will only be responsible for those portions in which permit coverage was applied for using this form. For example, in the common scenario described above where a residential development is being sold in parts (single lots or groups of lots) this section would be used for each of those purchases. The process and requirements are the same as described in section 2 above; however, a new permit number will be assigned for each form that is submitted to the MPCA. The number will be formatted in this way: SUB0012345. This form will need to be submitted again after the construction is complete in order to terminate the coverage by entering this number on *Line a* and completing section 1 of the form. It is important to note that the original permit must remain active until all of the "Sub" permits are terminated.

On *Line h*, a description of the portion of the project is entered. You can describe the portion in any manner that clearly indicates the area that is being transferred. You may use addresses, Photoionization Detectors (PIDs), lot numbers, or any other description. A map showing the area of intended coverage may also be submitted.

## Signature section

For each box that is checked in the previous sections, an authorized signature should be provided in this section. An alternate contact name can also be provided; however, this is not required. Permittees that have signed this section will be legally responsible for all of the NPDES requirements for the project or portion of a project indicated on the first page of the form.

## Limitations of the Notice of Termination/Permit Modification process

Change of coverage is not limited to residential development. Although less common, there may be a situation in which a commercial development should have the NPDES responsibility transferred to another entity. For example, a business may hire a contractor to prepare a site and install utilities. Upon completion of that work, the business hires a new contractor to build the structure. Although the owner remains the same throughout, the responsibility of the original operator should be transferred to the new operator using this form. Any project, including highway construction, can take advantage of the transfer process.

## For more information

If you have questions about the administrative details of the permit process, go to the MPCA website at <http://www.pca.state.mn.us/wfhy5b>, or call the Stormwater Hotline at 651-757-2119 or toll-free at 800-657-3804.