



## Requirements and Considerations When Selling or Buying a Landfill - PUB2429

Waste Management Program

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fact sheet

PUB2429

Division of Environmental Quality

Director: Kyra Moore

Permitted solid waste disposal areas (landfills) in the State of Missouri are regulated by the Missouri Department of Natural Resources' Waste Management Program (WMP). Before selling or buying a landfill, you need to contact WMP to ensure you understand your obligations as a landfill owner in order to comply with state law and regulations, even if the landfill is closed. Contact information for WMP is provided at the end of this document.

When a person who owns property containing a landfill decides to sell the property, the owner is required to take several actions to comply with the Missouri Solid Waste Management Law and regulations. Missouri Revised Statutes, **section 260.213, RSMo** (<http://www.moga.mo.gov/mostatutes/stathtml/26000002131.html>) states, "No person may knowingly sell, convey, or transfer title to any property that contains a permitted or unpermitted solid waste disposal site or demolition landfill without disclosing to the buyer early in the negotiation process the existence and location of the site. The seller shall also notify the buyer that he may be assuming liability to the state for any remedial action at the site..." Therefore, the property owner is under a legal obligation to notify any potential buyer of the presence of the landfill on that property to ensure the buyer is aware of the substantial responsibility he or she will be undertaking as the new landfill owner. This law applies regardless of whether the landfill is actively taking waste or has been closed for years; the requirement to disclose never expires. Failure by the seller (or someone acting on his or her behalf) to disclose the landfill's presence and the ramifications of owning it, is a serious violation.

Under Code of State Regulations **10 CSR 80-2.020(4)**

(<http://www.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c80-2a.pdf>), the change in ownership of a landfill is a transfer of the landfill permit from one owner to another owner and thereby considered a modification of that permit. This is also true whether a landfill is actively operating or no longer accepting waste. Therefore, before the property is sold, the current owner and the new owner must notify the WMP, in writing, of their intent to transfer the ownership of the landfill. In addition to the change in ownership notification letter prepared by the seller and prospective buyer of the landfill, **10 CSR 80-2.020(4)(B)**

(<http://www.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c80-2a.pdf>) requires the new owner of certain landfills to submit the following information to WMP for review and approval

- An updated post-closure care plan, per **10 CSR 80-2.030(4)(A)** (<http://www.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c80-2a.pdf>)
- A financial assurance instrument in the amount and form prescribed by the department, per **section 260.205.5(2), RSMo** (<http://www.moga.mo.gov/mostatutes/stathtml/26000002051.html>) and **10 CSR 80-2.030(4)(B)** (<http://www.sos.mo.gov/cmsimages/adrules/csr/current/10csr/10c80-2a.pdf>)

New owners must contact the WMP to determine which of these submittals apply to the landfill they are purchasing.

If the current owner, or potential buyer of a landfill, is interested in subdividing the permitted area (to sell an unfilled portion), the WMP may require the owner to take certain actions, prior to approving the sale and the transfer of the

permit. These actions may include documenting or verifying that no risk to public health and safety or to the environment is being caused by the landfill.

Once the landfill transfer has been approved by the WMP and the sale has taken place, the landfill's solid waste disposal area permit (and all its associated terms and conditions) is transferred to the new owner. The new landfill owner assumes any liability associated with the landfill or any off-site problems caused by it. For example, if the landfill has not been properly closed, the new owner may be required to take certain actions to close the site. These may include the following: adding soil to the landfill cap, establishing vegetation, removing wells in accordance with the regulations or other necessary actions.

Therefore, the WMP recommends the buyer reviews the department's files concerning the landfill prior to purchase. The files provide pertinent information concerning the landfill, such as the location of waste on the property; the location of environmental control systems and gas or groundwater monitoring wells; any monitoring requirements; any history of problems that have occurred at the landfill and past required actions; and/or recommendations for resolving problems on the site, as well as the approved post-closure use of the site. The file review allows the buyer to become more familiar with the landfill and the WMP's expectations of any landfill owner.

To ensure that the public is notified of the presence of any landfill on a piece of property, the regulations require those who own a closed landfill to file a detailed description or licensed surveyor's plat of the landfill's location with the property deed. The description/plat shall include the general types and locations of wastes, depth of waste and any leachate or landfill gas control structures that will have to be operated and maintained. The document must be submitted to the WMP for approval then filed with the county recorder of deeds. Once the plat is approved and filed with the county recorder, the legal requirement is satisfied and not required for any subsequent landfill owners. If a survey plat has not already been filed on a landfill by the previous owner, this requirement will be passed along to the current owner.

For landfills permitted prior to Jan. 1, 1987, and operating after Jan. 1, 1989, the regulations require that the landfill owner prepare an easement, notice and covenant running with the land. The easement, notice and covenant shall be submitted to the WMP for approval and signature; then the approved and signed document shall be filed with the county recorder of deeds. The easement grants the department access to the property to complete work specified in the closure plan, to monitor or maintain the landfill or take remedial action during the post-closure period. This access runs with the property itself, regardless of a change in property ownership. If an easement has not already been filed on one of these landfills by the previous owner, this requirement will also be conveyed to the current owner.

Landfill owners are required to routinely conduct maintenance activities at their landfills to comply with the approved post-closure care plan and the Missouri Solid Waste Management Law and regulations regarding post-closure care. The post-closure plan describes and lists necessary maintenance activities, repair schedules and environmental monitoring required at the site and lists the approved land uses. If a new owner of a landfill was not required to update the post-closure care plan, that owner must comply with and implement actions to meet the terms and conditions of the previously approved plan. If the landfill does not have an approved post-closure care plan, the WMP will provide guidance regarding the required maintenance activities.

The landfill must be maintained to prevent it from negatively impacting the environment or the public health and safety of those who live near the landfill. If the landfill is found to be the source of or contribute to these negative impacts, the landfill owner shall be required to address the problems. Whether the problem is methane gas migration, leachate flowing off the property into groundwater or surface waters or some other type of problem, the department has the authority to take enforcement action against an owner if any problem develops at a landfill. The goal of the enforcement action will be to protect the safety of the public and the environment and to bring the landfill back into compliance.

The WMP cautions potential buyers of property containing a landfill to be fully aware of the potential liabilities and legal obligations they will assume when they purchase the landfill. All potential buyers are strongly encouraged to contact the WMP to discuss the site-specific requirements for the landfill and review the landfill's files. This will enable them to make an educated decision regarding the purchase of the property and prevent them from experiencing the consequences of an uninformed purchase.

If you are considering the purchase of a landfill or have recently purchased property containing a landfill, you are urged to contact the WMP to discuss this purchase.

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Nothing in this document may be used to implement any enforcement action or levy any penalty unless promulgated by rule under chapter 536 or authorized by statute.

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## For more information

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