



Federal Register

**Wednesday,
February 27, 2002**

Part VIII

Environmental Protection Agency

**Announcement of Availability and
Request for Comment on “Completion of
Corrective Action Activities at RCRA
Facilities” Guidance; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7150-4]

Announcement of Availability and Request for Comment on "Completion of Corrective Action Activities at RCRA Facilities" Guidance**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The purpose of this notice is to provide the "Completion of Corrective Action Activities at RCRA Facilities" draft guidance memorandum for public comment. By inviting comment, the Agency hopes to involve the States, the regulated community, members of the public, and other stakeholders in the development of this guidance.

DATES: Comments may be submitted until April 29, 2002.

ADDRESSES: Commenters should send an original and two copies of their comments, referencing docket number F-2002-CC2A-FFFFF. If using regular U.S. Postal Service mail to: RCRA Docket Information Center, U.S. Environmental Protection Agency Headquarters (EPA HQ), Office of Solid Waste, Ariel Rios Building (5305G), 1200 Pennsylvania Avenue NW, Washington, DC 20460-0002. If using special delivery such as overnight express service send to: RCRA Docket Information Center (RIC), Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Hand deliveries of comments should be made to the Arlington, VA address above. Comments also may be submitted electronically through the internet to: rcra-docket@epa.gov. Comments in electronic format must also reference the docket number F-2002-CC2A-FFFFF. Electronic comments should be submitted as an ASCII file and should avoid the use of special characters and any form of encryption.

Confidential business information (CBI) should not be submitted electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste, U.S. EPA, Ariel Rios Building (5303W), 1200 Pennsylvania Avenue NW, Washington DC 20460-0002.

Any public comment received by the Agency and supporting materials will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235

Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, you should make an appointment by calling 703-603-9230. A maximum of 100 pages may be copied from any regulatory docket at no charge. Additional copies cost \$0.15 per page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice for information on accessing the index and these supporting materials.

The Agency is posting this document on the Corrective Action website: <http://www.epa.gov/correctiveaction>. If you would like to receive a hard copy, please call the RCRA Hotline at 800-424-0346 or TDD 800-553-7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703-412-9810 or TDD 703-412-3323.

For more detailed information on specific aspects of the draft guidance document, contact Barbara Foster, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703-308-7057), (foster.barbara@epa.gov).

SUPPLEMENTARY INFORMATION: The draft guidance document, which is published below, also will be available on the Internet at: <http://www.epa.gov/correctiveaction>. When issued in final form, this guidance will be issued as a memorandum from EPA headquarters to the Regional offices, and it is published below in that format for comment.

EPA developed this memorandum to identify two situations during the RCRA corrective action process where the Agency believes it generally is appropriate to make completion determinations, and to provide guidance to EPA and State regulators in making those determinations. By recognizing completion of corrective action activities, the agency can inform the owner or operator that RCRA corrective action activities are complete at the facility. This information can, among other things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use.

On October 2, 2001, EPA published a notice in the **Federal Register** requesting comment on a draft guidance document entitled "Recognizing Completion of Corrective Action Activities at RCRA Facilities" (see 66 FR 50195). Comments received by the Agency on that draft guidance largely

supported the content, but expressed concern that the Agency needed to expand the scope of the guidance, for example, to address when and under what circumstances such decisions should be made. The draft memorandum published below addresses these comments by combining the content of the October 2 draft guidance with new guidance concerning additional issues related to completion of corrective action. It is important to note, however, that this draft guidance does not address all issues suggested by commenters. For example, this guidance does not include detailed discussion of institutional controls or financial assurance. The Agency will continue to look at these and other issues surrounding completion of corrective action.

In this **Federal Register** notice, the Agency again solicits comment on issues related to completion of corrective action. The Agency requests comment on the guidance in general and, in addition, requests comment on specific issues. The specific issues on which the Agency solicits comment are identified in footnotes throughout the guidance document, and are as follows:

1. Terminology the Agency might use to describe the Completion of Corrective Action Determinations (see footnote 12 and related discussion).

2. Mechanisms, other than permits and orders, that might be used to implement institutional controls following a Corrective Action Complete with Controls decision and under what circumstances those mechanisms would provide enough certainty with respect to continued compliance with required controls to justify elimination of the permit or order (see footnote 13 and related discussion).

3. Situations where a permit or order could be eliminated because no additional action is required on the part of the regulatory agency or facility owner or operator to implement the remaining controls (see footnote 14 and related discussion).

The official record for this notice will be kept in paper form. Accordingly, we will transfer all comment and input received electronically into paper form and place them in the official record, which also will include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center. EPA will review and consider all comments.

Dated: February 12, 2002.

Elizabeth Cotsworth,
Director, Office of Solid Waste.

Memorandum

Subject: Guidance on Completion of
Corrective Action Activities at RCRA
Facilities
From: OSWER; OECA
To: RCRA Division Directors, Regions I-
X; Enforcement Division Directors,
Regions I-X; Regional Counsel

Introduction

This memorandum provides guidance to the Regions and authorized States on acknowledging completion of corrective action activities at RCRA treatment, storage, and disposal facilities. It describes two types of completion determinations—"Corrective Action Complete" and "Corrective Action Complete with Controls." It provides guidance on when each type of completion determination should be made. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on the procedures EPA and the authorized States should follow when making completion determinations.¹

Background

EPA recognizes the importance of an official acknowledgment that corrective action activities have been completed. An official completion determination, made through appropriate procedures, benefits the owner or operator of a facility, the regulatory agency implementing the corrective action program, and the public. Official recognition that corrective action activities are complete can, among other

¹ This document provides guidance to EPA Regional and State corrective action authorities, as well as to facility owner or operators and the general public on how EPA intends to exercise its discretion in implementing the statutory and regulatory provisions that concern RCRA corrective action.

The RCRA statutory provisions and EPA regulations described in this document contain legally binding requirements. This document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions regarding a particular facility will be made based on the applicable statutes and regulations. Therefore, interested parties are free to raise questions and objections about the substance of this guidance, appropriateness of the application of this guidance to a particular situation. EPA will, and States should, consider whether or not the recommendations or interpretations in the guidance are appropriate in that situation. EPA welcomes public comment on this document at any time, and will consider those comments in any future revision of this guidance document.

things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, or "brownfields," to productive use. Further, once the regulatory agency implementing corrective action makes a determination that corrective action activities are complete, it can modify its workload universes, and focus agency resources on other facilities. Finally, because completion determinations should be made through a process that provides adequate public involvement, the process of making a formal completion determination assures the public an opportunity to review and comment on the cleanup activities, and to pursue available administrative and judicial challenges to the agency's decision.²

Under 40 CFR section 264.101, owners and operators seeking a permit for the treatment, storage or disposal of hazardous waste must conduct corrective action "as necessary to protect human health and the environment."³ The ultimate goal of corrective action is to satisfy the "protection of human health and the environment" standard. Thus, a determination by EPA that corrective action activities are complete is, in effect, an announcement that "protection of human health and the environment" has been achieved.⁴

With experience, the Agency has discovered that the universe of facilities subject to corrective action requirements includes facilities that vary widely in complexity, extent of contamination, and level of risk presented at the site. To address this wide variation among corrective action facilities, the Agency has developed multiple approaches to achieving "protection of human health and the environment."

When conducting corrective action, however, one of the key distinctions among remedies is the extent to which they rely upon controls (engineering and/or institutional⁵) to ensure that

² The Agency anticipates that at facilities where meaningful public involvement begins early in the corrective action process, challenges are less likely at the end of the process.

³ Likewise, section 3008(h) establishes a standard of "protection of human health and the environment" for corrective action imposed through orders. The policies established in this guidance are equally applicable to facilities that address facility-wide corrective action through a section 3008(h) order, rather than a permit.

⁴ Note that for facilities that continue to require a permit for the treatment, storage, or disposal of hazardous waste, a completion determination in no way affects the ongoing requirement to conduct corrective action for any future releases at the facility.

⁵ EPA has defined institutional controls as "non-engineered instruments such as administrative and/

they remain protective. In some cases, the Agency selects a remedy that requires treatment and/or removal of waste and all contaminated media to levels that return the facility to unrestricted use.⁶ At these facilities, no additional oversight or activity is required following cleanup. When implementation of the remedy is completed successfully, protection of human health and the environment is achieved.

In other cases, the Agency selects a remedy that allows contamination to remain on site, but imposes ongoing obligations concerning, for example, operation and maintenance of physical waste controls (e.g., a cap), and compliance with institutional controls (e.g., an industrial land use restriction). Thus, in these situations, the goal of "protection of human health and the environment" often is achieved by imposing a remedy that allows some contamination to remain in place, but requires controls (engineering and/or institutional) at the facility to limit exposure and subsequent release of contamination that remains following cleanup. At such facilities, successful implementation of the remedy alone is not enough to ensure protection of human health and the environment. Following remediation, maintenance of controls and continued corrective action related activities (such as monitoring) at such facilities are fundamental elements of meeting the standard of "protection of human health and the environment."⁷

or legal controls that minimize the potential for human exposure to contamination by limiting land or resource use." They are almost always used in conjunction with, or as a supplement to, other measures such as waste treatment or containment. There are four general categories of institutional controls: governmental controls; proprietary controls; enforcement tools; and informational devices. (See Fact Sheet entitled "Institutional Controls: A Site Managers Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September, 2000, OSWER Directive 9355.0-74FS-P).

⁶ "Unrestricted use" refers to a walk-away situation, where no further activity or controls are necessary to protect human health and the environment at the site. Generally, a cleanup of soil to residential standards and of groundwater to drinking water standards would be an example of an unrestricted use scenario. By comparison, a cleanup of soil to industrial soil levels and/or groundwater to levels in excess of drinking water standards usually would not be an unrestricted use scenario. Under both scenarios, the Agency does not anticipate having to impose additional corrective action requirements because the remedy is protective of human health and the environment. The difference is that, under the second scenario, protection of human health and the environment is dependent on the maintenance of the remedy, including institutional controls.

⁷ It should be noted that, at these facilities, cleanup to unrestricted use levels and a Corrective

An example of a situation where the Agency typically chooses a remedy that relies on controls is a facility for which the reasonably foreseeable use is industrial.⁸ At those facilities, the Agency may offer the facility the option to achieve protection of human health and the environment by selecting a remedy that allows higher levels of contamination to remain at the site, but requires the use of other controls to prevent unanticipated exposure. As described above, protection of human health and the environment at the facility typically is dependent on maintenance of controls.

Types of Completion Determinations

As was discussed above, a determination by EPA that corrective action activities are complete is a statement by the Agency that protection of human health and the environment has been achieved at a facility. As also was discussed above, the Agency takes different approaches to achieving protection of human health and the environment at facilities, depending on the site-specific circumstances. Completion determinations benefit the owner or operator, the community, and the regulatory agency. Therefore, EPA recommends that regulators implementing the corrective action program make completion determinations where corrective action activities have resulted in protection of human health and the environment at a facility. EPA plans to recognize two types of completion determinations, when properly made by the Agency or an authorized State, using appropriate procedures—Corrective Action Complete, and Corrective Action Complete with Controls. These two types of completion determinations, and recommended procedures for making them, are described below.

1. Corrective Action Complete Determination

EPA or the authorized State should make a determination that Corrective Action is Complete where the facility owner or operator has satisfied all obligations under sections 3004(u) and (v).⁹ This determination generally

Action Complete determination (*see* discussion below) ultimately could be achieved if the owner or operator conducted additional cleanup and returned the facility to unrestricted use, or if the facility otherwise reached that state (e.g., through natural attenuation). At that time, the Agency could discontinue the requirement for controls.

⁸ See Land Use in the CERCLA Remedy Selection Process, May 25, 1995, OSWER Directive 9355.7-04 for discussion of reasonably foreseeable land use.

⁹ Or the owner or operator has completed facility-wide corrective action, as necessary to protect

indicates that either there was no need for corrective action at the facility or, where corrective action was necessary, the remedy has been implemented successfully,¹⁰ and no further activity or controls are necessary to protect human health and the environment.

In a situation where EPA or the authorized State makes a determination that Corrective Action is Complete, no additional activity is required on the part of the regulatory agency or the owner or operator to maintain protection of human health and the environment. No controls are necessary at the facility to maintain protection of human health and the environment. Thus, the corrective action requirements can be eliminated. The facility should be eligible for release from financial assurance, as no funds should be needed in the future for corrective action-related activities. In addition, when there no longer are RCRA-regulated activities at the facility, the regulatory agency should have no concerns associated with transfer of the property, nor any reason to want to be informed of, or take an action regarding, that transfer.¹¹

2. Corrective Action Complete with Controls Determination¹²

EPA or the authorized State should make a Corrective Action Complete with

human health and the environment, imposed through a section 3008(h) order.

¹⁰ See (61 FR 19432, at 19453, May 1, 1996), and (55 FR 30798, at 30837, July 27, 1990) for guidance regarding completion of remedy.

¹¹ In September, 2001, EPA issued a guidance entitled *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action* (The Groundwater Handbook). Unlike this draft Completion Guidance, which discusses completion of corrective action for all media, the Groundwater Handbook discusses completion of corrective action for groundwater remedies. It recognizes three "phases" of completion for groundwater remedies: (1) implementing the final remedy, (2) achieving final cleanup goals, and (3) fulfilling all cleanup obligations associated with the contaminated groundwater, including long-term monitoring.

This draft Completion Guidance is not intended to modify the Agency's guidance in the Groundwater Handbook on completion for groundwater remedies—rather, it goes beyond the scope of that guidance in that it addresses additional subjects and adds detail. Under this draft Completion Guidance, a Corrective Action Complete determination would be appropriate when: (1) the third phase of completion of the groundwater remedy has been achieved (as described in the Groundwater Handbook), and no controls are necessary to protect human health and the environment, and (2) the land has been returned to unrestricted use. A description of achieving final cleanup goals can be found in the September 2001 Groundwater Handbook (*See id.*, Section 15).

¹² EPA seeks to use terminology that is precise, clear in meaning and, to the extent possible, consistent with Superfund. EPA welcomes commenters' suggestions on terminology that may be more accurate and/or less cumbersome than "Corrective Action Complete with Controls" to describe this determination.

Controls determination at a facility where: (1) A full set of corrective measures has been defined; (2) the facility has completed construction and installation of all required remedial actions; (3) site-specific media cleanup objectives have been met, which reflect current and reasonably expected future land use and maximum beneficial groundwater use, and (4) all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and implementation of any institutional controls. A Corrective Action Complete with Controls determination provides the owner or operator with recognition that protection of human health has been achieved, and will continue as long as the required operation and maintenance actions are performed, and the institutional controls are maintained. A Corrective Action Complete with Controls determination provides an owner or operator with recognition of the significant progress made at the facility, and of the resulting reduction in risk.

EPA or the authorized State generally should maintain a permit or order at the facility following a Corrective Action Complete with Controls determination. Continuation of the permit or order assures periodic review by the regulatory agency, compliance with any operation and maintenance requirements and institutional controls, and notification to the regulatory agency of transfers of the facility (which will allow opportunity for the agency to assure compliance with corrective action requirements will continue at the site).¹³ At facilities where long-term

¹³ In the September 2000 Fact Sheet on Institutional Controls (*id.*), EPA identified an array of institutional controls that regulators can use to ensure continued protection of human health and the environment at RCRA corrective action facilities. These include governmental controls, proprietary controls, enforcement and permit tools with institutional control components, and informational devices.

The September 2000 Fact Sheet discusses that, under RCRA, institutional controls typically are imposed through permit conditions, or through orders issued under section 3008(h). The Fact Sheet cautions the regulator that those mechanisms might have shortcomings, and suggests that the regulator conduct a thorough evaluation to ensure its ability to enforce the institutional control through the permit or order mechanism.

The Agency solicits comment on mechanisms, other than permits and orders, in particular, those that are enforceable by EPA and the authorized States, that might be used to implement institutional controls following a Corrective Action Complete with Controls determination. The Agency further solicits comment on whether and under what circumstances such mechanisms (and any other mechanisms that might be used to implement other types of controls, such as operation and maintenance, in the absence of a permit or order)

institutional controls are necessary to ensure continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional controls. In addition, where necessary, financial assurance should be maintained at facilities following a Corrective Action Complete with Controls determination.

The Agency believes that a situation can arise where the Agency can support elimination of the permit or order at a facility that has not been returned to unrestricted use. This situation would occur at a facility where, following completion of the remedy, controls (engineering and/or institutional) are necessary to assure continued protection of human health and the environment, but those controls do not require action on the part of the regulatory agency or the facility owner or operator. EPA continues to consider permit or order termination in such situations, on a case-by-case basis, as they arise.¹⁴

It should be noted that, at some point, many facilities that obtain a Corrective Action Complete with Controls determination will be eligible to obtain a Corrective Action Complete determination. For example, the owner or operator at a facility cleaned up to industrial levels could conduct additional cleanup to unrestricted use levels (i.e., a point where monitoring and/or restrictions on use no longer are necessary). At that point it would be appropriate to eliminate the permit or order, and release the facility from financial assurance, so long as there are no additional RCRA activities at the facility subject to permit requirements.

Completion Determinations for a Portion of a Facility

Regulators implementing the corrective action program often develop a number of distinct and separate remedies to address different areas of a facility or different media. This approach may be necessary because a facility may include areas and media that present a range of environmental risks. For example, an industrial facility may include areas that may never have been used for industrial purposes or have never been otherwise contaminated. Alternatively, a facility

generally would provide enough certainty, with respect to continued compliance with required controls, to justify elimination of the permit or order.

¹⁴ The Agency solicits comment on this issue, and particularly solicits examples of where there is no need for further action on the part of the Agency or owner/operator to assure that remaining corrective action requirements are satisfied.

may have contaminated groundwater undergoing corrective action years after the source of contamination has been removed, and the soil cleaned up to unrestricted use levels.

To ensure that a range of appropriate cleanup and land use options are available to the facility owner or operator, the Agency, where appropriate, on a facility-specific basis, will consider the option to subdivide a facility for purposes of corrective action. In these situations, the Agency will select a cleanup approach based on unrestricted use at parts of the facility, while cleanup at other parts of the facility will be based on the restricted use assumptions and will rely on institutional and/or engineering controls to maintain the protectiveness of the corrective action.

Under this approach, a Corrective Action Complete determination could be made for the portion of a facility returned to unrestricted use. A Corrective Action Complete with Controls determination could be made for the remaining portion of the facility, and the controls generally implemented under a permit or order.

In some situations, following a Corrective Action Complete determination for a portion of a facility, the owner will sell the portion that no longer is subject to corrective action. In these situations, the regulator making the determination should consider the long-term plan for the facility, and the effect of the Corrective Action Complete determination on financial assurance. The regulator should take steps to ensure adequate financial assurance is available to address corrective action obligations at the remainder of the facility.

Procedures for Acknowledging Completion Determinations

EPA will recognize completion determinations made by the appropriate authority (EPA or the authorized State implementing the corrective action program), and made through proper procedures. By following appropriate procedures, the authorized agency can make a sound, well informed completion determination. The proper procedures for acknowledging a completion determination will depend on the status of the facility (permitted or non-permitted), and on whether the determination applies to part of the facility or to the entire facility. The following section describes procedures that the Agency believes generally are

appropriate for completion determinations.¹⁵

1. Corrective Action Complete Determinations for Entire Facility

The regulations in 40 CFR that govern the RCRA program do not provide explicit procedures for recognizing completion of corrective action activities, so regulators have considerable flexibility in developing procedures for making completion determinations. The regulatory agency implementing the corrective action program in that State (i.e., the authorized State program or, in unauthorized States, EPA) should ensure that a completion determination has been made through appropriate procedures. Providing meaningful opportunities for public participation in the decisionmaking process should be a crucial component of a completion determination procedure. The Agency believes that the following, generally, are appropriate procedures for making Completion of Corrective Action determinations.¹⁶

At permitted facilities, the agency (EPA or the authorized States) should modify the permit to reflect the agency's determination that corrective action is complete. The current regulations in 40 CFR section 270.42 provide procedural requirements for facility requested permit modifications. In most cases, completion of corrective action will be a Class 3 permit modification, and the agency should follow those procedures (or authorized State equivalent), including the procedures for public involvement.¹⁷ In cases where no other permit conditions remain, the permit could be modified not only to reflect the

¹⁵ EPA notes that, whether at a permitted or non-permitted facility and regardless of the completion determination procedure used, if EPA or the authorized State discovers unreported or misrepresented releases subsequent to the completion determination, then EPA and the authorized State may conclude that additional cleanup is needed. And, of course, if EPA subsequently discovers a situation that may present an imminent and substantial endangerment to human health or the environment, EPA may elect to use its RCRA section 7003 imminent and substantial endangerment authority, or other applicable authorities, to require additional work at the facility.

¹⁶ Of course, if a facility's permit provides otherwise, these procedures would not be appropriate at that facility.

¹⁷ It should be noted that the Agency suggests Class 3 permit modification procedures as a general rule for completion determinations. However, Class 3 procedures might not be necessary or appropriate in all circumstances. For example, where the regulatory agency has made extensive efforts throughout the corrective action process to involve the public and has received little or no interest, and the environmental problems at the facility were limited, more tailored public participation may be appropriate.

completion determination, but also to change the expiration date of the permit to allow earlier permit expiration (see 40 CFR section 270.42 (Appendix I(A)(6)).

At non-permitted facilities where facility-wide corrective action is complete, and all other RCRA obligations at the facility have been satisfied, EPA or the authorized State may acknowledge completion of corrective action by terminating interim status through final administrative disposition of the facility's permit application (see 40 CFR section 270.73(a)). To do so, the permitting authority at the facility (EPA or the authorized State or both, depending on the authorization status of the State) should process a final decision following the procedures for permit denial in 40 CFR part 124, or authorized equivalent.¹⁸

EPA recognizes that referring to this decision as a "permit denial" may be confusing to the public and problematic to the facility when the facility is in compliance, is not seeking a permit, and does not have an active permit "application." Therefore, regulatory agencies may choose to use alternate terminology (e.g., a "no permit necessary determination") to refer to this decision, though it is issued through the permit denial process or authorized equivalent. Regardless of the terminology used, the basis for the decision should be stated clearly, generally that: (1) There are no ongoing treatment, storage, or disposal activities that require a permit; (2) all closure and post-closure requirements applicable at the regulated units have been fulfilled; and (3) all corrective action obligations, including long-term monitoring, have been met.

EPA and the authorized States may develop procedures for recognizing completion of corrective action at non-permitted facilities other than the permit decision process described above. For example, a regulatory agency may have procedures for issuing a notice informing the facility and the public that the facility has met its

¹⁸ Under EPA permit denial procedures in 40 CFR Part 124, EPA must issue, based on the administrative record, a notice of intent to deny the facility permit (see 40 CFR section 124.6(b) and 124.9). The notice must be publicly distributed, accompanied by a statement of basis or fact sheet, and there must be an opportunity for public comment, including an opportunity for a public hearing, on EPA's proposed permit denial (see 40 CFR sections 124.7, 124.8, 124.10, 124.11, and 124.12). In making a final permit determination, EPA must respond to any public comments (see section 124.17). Under 40 CFR section 124.19, final decisions are subject to appeal.

corrective action obligations, rather than issuing a final permit decision. EPA believes the alternative procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by EPA's 40 CFR part 124 requirements (or the authorized State equivalent). Owners and operators should be aware that informal communications regarding the current status of cleanup activities at the site are not the same as completion determinations.¹⁹

2. Corrective Action Complete With Controls Determinations

To recognize a determination that Corrective Action with Controls is complete, the procedures that regulatory agencies should follow should be determined by the regulatory status of the facility. For permitted facilities, the regulatory agency should modify the permit to reflect the decision, following the procedures in 40 CFR section 270.42. For non-permitted facilities, the agency should follow alternate procedures (e.g., issue a notice with an opportunity to comment) that provide procedural protections equivalent to, although not necessarily identical to, those required by part 124 requirements (or the authorized State equivalent). Interim status should not be terminated at a RCRA facility where corrective action requirements remain. If corrective action was implemented through an order, the regulator should not eliminate the order until the facility meets all corrective action obligations required under the order.

As was discussed above, at facilities (permitted or non-permitted) where a Corrective Action Complete with Controls determination is made, and long-term institutional controls are necessary to continued protection of human health and the environment, the regulator should explore options in addition to a permit or order to maintain the institutional control.

¹⁹ An alternative approach should be used to acknowledge completion of corrective action determinations that apply to less than an entire facility (see discussion below). An alternative approach could also acknowledge completion of corrective action at a facility with ongoing RCRA activities. For example, a facility may be conducting post-closure care at a regulated unit under an alternate non-permit authority, as allowed under the October 22, 1998 Post-Closure rule (see 63 FR 56710), yet may have completed corrective action at its solid waste management units. In this case, interim status generally should not be terminated because all RCRA obligations have not been met, but it may be appropriate to issue a notice (as described above) recognizing completion of the corrective action obligations to bring finality to that process.

It should be noted that a facility for which a Corrective Action Complete with Controls determination has been made might later be returned to unrestricted use (e.g., the owner or operator conducts additional cleanup). At that point, the regulatory agency should acknowledge the Corrective Action Complete determination through appropriate procedures.

3. Corrective Action Complete Determinations for Less Than the Entire Facility

As was discussed above, EPA or the authorized State could make a Corrective Action Complete determination for a portion of a facility and a Corrective Action Complete with Controls determination at the remaining portion. Where the regulatory agency determines that a Corrective Action Complete decision is appropriate for a portion of the facility, it should acknowledge that decision using procedures that will not affect portions of the facility where corrective action requirements remain.

For example, at a permitted facility, the agency should acknowledge Corrective Action Completion for a portion of the facility by modifying the permit following the procedures in 40 CFR 270.42. The agency should not eliminate the permit, however, because corrective action responsibilities (and possibly other RCRA responsibilities) remain at the facility.

At non-permitted facilities, the Agency or authorized State should utilize alternate procedures as described above (e.g., issue a notice) to acknowledge the Corrective Action Completion determination for a portion of the facility. Those procedures should provide procedural protections equivalent to, although not necessarily identical to, those required by Part 124 requirements (or the authorized State equivalent). However, interim status generally should not be terminated at a facility where RCRA obligations remain. If the corrective action was implemented through an order, the regulator should not eliminate the order or terminate interim status until the facility satisfies all corrective action obligations.

FOR FURTHER INFORMATION CONTACT: For further information on completion of corrective action, please contact Barbara Foster at 703-308-7057 or Jim McCleary at 202-564-6289.

[FR Doc. 02-4647 Filed 2-26-02; 8:45 am]

BILLING CODE 6560-50-P