

not a stepping stone toward Corrective Action Complete without Controls. For example, EPA recognizes that a final remedy that involves the use of institutional controls to maintain protection of human health and the environment is, nonetheless, a final remedy. EPA believes that owners and operators should be able to implement a final remedy, including one that involves institutional controls, with assurance that the Agency generally will not require additional corrective action at a later date so long as the controls, which help assure protection of human health and the environment, are effective.

It should be noted, however, that in the case of a Corrective Action Complete with Controls determination, protection of human health and the environment is dependent upon the maintenance of the controls. Should the controls fail, a risk to human health and/or the environment might require additional action. That action might include different or additional controls, or it might involve additional cleanup. This does not mean that the Agency intends to revisit Corrective Action Complete with Controls determinations for the purpose of achieving Corrective Action Complete without Controls determinations. Rather, the Agency expects final remedies to be effective not just at the moment that the completion determination is made, but in the long-term as well.

In addition, the Agency anticipates that there may be circumstances where an owner or operator of a facility that has received a Corrective Action Complete with Controls determination may choose in the future to conduct additional cleanup and obtain a Corrective Action Complete without Controls determination. For example, if a remedy included a restriction that the property be used only for industrial purposes, and the owner or operator were to decide to convert the property to residential use, additional cleanup would likely be necessary. Or, an owner or operator might choose to conduct additional cleanup and return the property to unrestricted use in order to end the responsibility for maintaining controls at the facility. However, under these examples, the decision to conduct additional corrective action would be that of the owner or operator.

In response to commenters' concerns described above, the Agency made two modifications to the guidance. In the February 27, 2002 **Federal Register** notice, the two types of completion were designated "Corrective Action Complete" and "Corrective Action Complete with Controls." The Agency

modified the terms used to refer to the two types of completion by adding "without Controls" to "Corrective Action Complete." The Agency believes that the resulting two designations—Corrective Action Complete without Controls and Corrective Action Complete with Controls—more clearly reflect that both are forms of completion. The Agency also added language to the guidance to clarify that Corrective Action Complete with Controls is, in and of itself, a form of completion, and not a stepping stone toward Corrective Action Complete without Controls.

One additional modification to the definition of Corrective Action Complete with Controls should be noted. In the February 27, 2002 **Federal Register** notice, the fourth factor for a Corrective Action Complete with Controls determination stated "all that remains is * * * compliance with and implementation of any institutional controls." In this final guidance, the Agency changed "implementation" to "maintenance" in this phrase. The Agency made this change to avoid an interpretation that "implementation" includes actions related to getting institutional controls in place, such as selection or securing institutional controls. "Maintenance," more clearly conveys that the phrase "Corrective Action Complete with Controls" means that the appropriate controls are in place.

Comments Related to Procedures for Completion Determinations

The draft guidance published in both the October 2, 2001 and the February 27, 2002 **Federal Register** notices suggested procedures for making completion determinations at permitted and non-permitted facilities. Generally commenters agreed with those procedures, and they are included in this guidance. However, commenters expressed concerns about language in the guidance related to permit modifications. The draft guidance suggested that at permitted facilities, Class 3 permit modification procedures generally would be appropriate for modifying a permit to recognize a completion determination. Commenters on the October 2, 2001 **Federal Register** notice suggested that, in many cases, a Class 1 procedure would be appropriate. The Agency added language (in a footnote) to the draft guidance in the February 27, 2002 notice to recognize that, in some cases, Class 3 procedures might not be necessary (see 67 FR 9174 at 9177). However, commenters on the February 27, 2002 notice repeated the same concerns that the guidance

suggested that Class 3 procedures were appropriate for recognizing completion and that those procedures would be unduly burdensome.

The Agency believes that when it recognizes completion of corrective action at a facility, it is taking a step that is significant not only to the facility, but to the local community as well. Thus, the Agency believes it is important that the community have an opportunity to be involved in the Agency's decision. The Agency agreed with commenters that there may be circumstances where Class 3 procedures might be burdensome and reap little benefit, and recognized those situations in the February 27, 2002 draft completion guidance. However, the Agency continues to believe that Class 3 procedures will be appropriate procedures for recognizing completion determinations at most facilities.

To address commenters concerns, the Agency has emphasized in this guidance that Class 3 procedures might not be appropriate in all situations by strengthening that discussion and moving it to the text of the guidance from the footnote.

Completion Determinations for Portions of a Facility

In the February 27, 2002 draft guidance, the Agency discussed making completion determinations for a portion of a facility. There was widespread support among commenters for recognizing completion determinations for a portion of a facility, and this final guidance retains that discussion. At the same time, the Agency recognizes that the discussion in this guidance addresses only a few of the issues related to parceling of RCRA facilities. The Agency agrees with the commenter who accurately pointed out that by supporting completion determinations for portions of a facility under the circumstances described in this guidance, the Agency has taken the first step toward addressing related issues.

Methods To Implement Institutional Controls

The February 27, 2002 draft guidance discussed and requested comment on the issue of implementation of institutional controls at facilities that receive Corrective Action Complete with Controls determinations. The draft guidance suggested that, in most cases, a permit or order should be maintained following a Corrective Action Complete with Controls determination, but noted that regulators might find alternative methods for ensuring continued effectiveness of the institutional controls at a facility.