

The Agency received many comments related to implementation of institutional controls. Commenters were not in agreement on the issue of whether permits and/or orders should be maintained at facilities where Corrective Action Complete with Controls determinations are made, or, more broadly, on more effective methods for implementing institutional controls.

After reviewing comments, the Agency generally believes that the approach it took in the draft guidance is appropriate, although the Agency is also interested in exploring and evaluating alternative methods for the continued effectiveness of institutional controls at a facility. The Agency recognizes that effective implementation of institutional controls is vital to continued protection of human health and the environment following a Corrective Action Complete with Controls determination at RCRA facilities (and at facilities where cleanup is conducted under other programs, such as Superfund) where the remedy depends upon institutional controls, and continues to explore the complex issues related to institutional controls. However, the Agency did not attempt to address those complex issues in this guidance.

The Agency continues to focus attention on the evolving and complex issues associated with institutional controls. In the near future EPA will finalize a cross-program guidance entitled, "Institutional Controls: A Guide to Implementing, Monitoring, and Enforcing Institutional Controls at Superfund and RCRA Corrective Action Cleanups" that will serve as a companion to guidance issued in 2000 entitled "Institutional Controls: A Site Manager's Guide to Identifying, Evaluating, and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups," September 2000, OSWER Directive 9355.0-74FS-P. Additionally, the Agency is currently at work developing a national institutional control tracking system; supporting the development of a model state institutional control law; and evaluating the need for guidance on estimating institutional control costs, institutional control implementation plans, and ensuring compliance with institutional controls.

Comments Not Addressed in This Federal Register Notice

The final guidance published in this Federal Register notice describes two types of completion of corrective action, and suggests processes for recognizing completion. The comments discussed above were directly related to the issues

discussed in the guidance. The Agency recognizes that completion of corrective action raises many issues for regulators and for owners and operators, including issues related to transfer of RCRA facilities (or portions of facilities), sometimes referred to as "parceling," financial assurance, and institutional controls. In addition, completion of corrective action at some facilities, such as Federal Facilities, may present unique issues. EPA received comments on these related issues as part of the comment it received on the October 2, 2001 and February 27, 2002 draft guidances. The Agency reviewed all of those comments, but those that were not directly related to issues discussed in the draft guidance documents are not addressed in this notice.

EPA believes that, because of the multitude and complexity of the issues related to completion of corrective action, the best approach to these issues is to make continuous incremental progress in addressing them. Using this approach, the Agency has limited the scope of the discussion in this final guidance, but hopes that it has opened dialogue on, and will establish a foundation for, some of the broader issues related to completion of corrective action, to be addressed at a later time. The Agency encourages commenters to continue to provide input on these important issues as they are addressed.

Dated: February 13, 2003.

Robert Springer,

Director, Office of Solid Waste.

Dated: February 12, 2003.

Susan E. Bromm,

Director, Office of Site Remediation Enforcement.

Memorandum

Subject: Guidance on Completion of Corrective Action Activities at RCRA Facilities.

From: Robert Springer, Director, Office of Solid Waste; Susan E. Bromm, Director, Office of Site Remediation Enforcement.

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 without Controls" and "Corrective Action Complete with Controls." It provides guidance on when

each type of completion determination is appropriate. It also discusses completion determinations for less than an entire facility. Finally, it provides guidance on procedures for EPA and the authorized States when making completion determinations.

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, and the appropriateness of the application of this guidance to a particular situation. EPA will consider whether or not the recommendations or interpretations in the guidance are appropriate in that situation. The Agency welcomes public comment on this document at any time, and will consider those comments in any future revision of this guidance document.

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 things, promote transfer of ownership of the property and, in some cases, can help return previously used commercial and industrial properties, such as "brownfields," to productive use. Further, once the regulatory agency implementing corrective action makes a determination that corrective action activities are complete, it can focus agency resources on other facilities. Finally, if completion determinations