

been implemented successfully,¹³ and no further activity or controls are necessary to protect human health and the environment.

Under the approach described in this guidance, a determination that Corrective Action is Complete without Controls means that no additional remedial activity would be 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. It is likely that the facility will be eligible for release from financial assurance for corrective action, 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 will likely 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.

2. Corrective Action Complete With Controls Determination

EPA generally believes it is appropriate to make a Corrective Action Complete with 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; and (4) all that remains is performance of required operation and maintenance and monitoring actions, and/or compliance with and maintenance of any institutional controls. A Corrective Action Complete with Controls determination provides the owner or operator with recognition that protection of human health and the environment has been achieved, and will continue as long as the necessary operation and maintenance actions are performed, and any institutional controls are maintained and complied with.

It is important to ensure that an enforceable mechanism is in place so that there is compliance with and maintenance of the controls. Regions and States have often ensured that controls are maintained through a RCRA permit or order at the facility in that 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 allows an opportunity for the agency to assure that compliance with corrective action requirements will continue).¹⁴ Permits and orders will continue to be used as enforceable mechanisms to assure compliance. However, the Agency believes that other enforceable mechanisms also may be appropriate for implementing institutional controls. For example, several States have passed legislation that creates mechanisms to enforce institutional controls, a development that EPA encourages. For facilities where long-term institutional controls are necessary to ensure continued protection of human health and the environment, the regulator may explore a variety of options including permits, orders, and other enforceable mechanisms to maintain the institutional controls. In addition, where necessary, financial assurance for corrective action should be maintained at facilities following a Corrective Action Complete with Controls determination.

It should be noted that, at some point, many facilities that obtain a Corrective Action Complete with Controls determination might later obtain a Corrective Action Complete without Controls determination if circumstances were to change. For example, the owner or operator at a facility cleaned up to industrial levels could decide to conduct additional cleanup because there was a desire to change land use to unrestricted use levels, and/or because they no longer wished to maintain controls. Should a facility later seek a Corrective Action Complete without Controls determination, the regulatory agency should process that determination through appropriate procedures, such as those described below. If the Corrective Action Complete without Controls determination were made, it would be appropriate to remove whatever enforceable mechanism is in place, and

release the facility from financial assurance for corrective action, 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 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, EPA believes that the agency should consider, when appropriate, subdividing a particular facility for purposes of corrective action. In these situations, the Agency might, for example, select a cleanup approach based on unrestricted use at parts of the facility, while cleanup at other parts of the facility may be based on the restricted use assumptions and rely on institutional and/or engineering controls to maintain the protectiveness of the corrective action. Alternatively, the Agency may select a cleanup approach based on unrestricted use for the entire facility, with some parcels requiring a longer time period to achieve the same cleanup goals.

Under this approach, a Corrective Action Complete without Controls determination could be made for a portion of a facility when it is returned to unrestricted use. A Corrective Action Complete without Controls or a Corrective Action Complete with Controls determination, as appropriate, could be made for remaining portions of the facility when the cleanup goals are achieved, and any necessary controls then would be implemented under an appropriate mechanism.

In some situations, following a Corrective Action Complete without Controls 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

¹³ See (61 FR 19432, at 19432, at 19453, May 1, 1996, and (55 FR 30798, at 30837, July 27, 1990) for guidance regrading selection, implementation, and completion of remedy.

¹⁴ The September, 2000 Fact Sheet on institutional controls discusses that, under RCRA, institutional controls typically are imposed through permit conditions, or through orders issued under section 3008(h) or 7003. 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 over the entire duration that the institutional control must remain in place. (See *Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups*, EPA 540-F-00-005, OSWER 9355.0-74FS-P, September 2000.)