

Action Complete without Controls determination and sale on financial assurance for corrective action. 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 Processing Completion Determinations

Completion determinations should be made by the appropriate authority (EPA or the authorized State implementing the corrective action program), and made through appropriate procedures. By following appropriate procedures, the authorized agency can make a sound, well informed completion determination. The appropriate procedures for processing a completion determination will depend on various factors, including 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 suggests procedures that the Agency believes generally are appropriate for completion determinations.¹⁵

1. Corrective Action Complete Without Controls 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. It is important to provide meaningful opportunities for public participation as part of a completion determination procedure. The Agency believes that the following, generally, are appropriate procedures for making

Completion of Corrective Action determinations.¹⁶

EPA believes that permit modification is an appropriate procedure to reflect the agency's determination that corrective action is complete. In cases where no other permit conditions remain, the permit could be modified not only to reflect the completion determination, but also to change the expiration date of the permit to allow earlier permit expiration (*see* 40 CFR 270.42 (Appendix I(A)(6)).

The current regulations in 40 CFR 270.42 provide procedural requirements for facility requested permit modifications. In most cases, completion of corrective action is likely to be a Class 3 permit modification, and the regulatory agency should follow those procedures (or authorized State equivalent), including the procedures for public involvement. It should be noted that the Agency suggests Class 3 permit modification procedures are generally appropriate for completion determinations. However, Class 3 procedures may not be appropriate in all circumstances, and the regulatory agency should evaluate each situation to determine whether a less extensive procedure would be adequate. 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.

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 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.¹⁷

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

¹⁷ 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 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 124.7, 124.8, 124.10, 124.11, and 124.12). In making a final

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" or "cleanup obligations satisfied") 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 implementation of long-term monitoring procedures, have been met.

EPA or 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 corrective action obligations, rather than issuing a final permit decision. Although these procedures would not have the effect of terminating interim status, unlike the Part 124 permit denial procedures, EPA believes they can be appropriate for making a completion determination. In general, 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 facility are not the same as the completion determinations described in this guidance.¹⁸

permit determination, EPA must respond to any public comments (*see* section 124.17). Under 40 CFR 124.19, final decisions are subject to appeal.

¹⁸ An alternative approach would likely be appropriate to process Completion of Corrective Action determinations that apply to less than an entire facility (*see* discussion below). An alternative approach could also be used to process a completion of corrective action determination 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

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, this would likely be a basis to 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.