

## *EPA Issues Corrective Action Completion Guidelines*

The United States Environmental Protection Agency (EPA) recently issued its final guidance on the completion of corrective action at hazardous waste treatment, storage, and disposal facilities regulated under the federal Resource Conservation and Recovery Act (RCRA). Under RCRA, an owner and operator of a hazardous waste facility must implement a corrective action program that addresses the release of contaminants, hazardous waste, or hazardous waste constituents into the environment. RCRA, however, does not indicate how or when an owner or operator may terminate corrective action activities. EPA's guidance is intended to address this issue.

The guidance clarifies three issues related to terminating corrective action activities. First, the guidance defines when a "completion determination" is appropriate. The guidance states that "a determination that corrective action activities are complete is, in effect, an announcement that the 'protection of human health and the environment' standard has been achieved." Second, the guidance describes how EPA will formally recognize the completion of corrective action activities. Third, the guidance specifies the procedures that EPA will follow when making completion determinations.

EPA claims in the guidance that a formal recognition of completion of corrective action will result in numerous benefits to the facility owner/operator, the agency, and the general public. A formal recognition of completion of corrective action will promote the transfer of ownership of property formerly used for hazardous waste treatment, storage or disposal, and help return "brownfields" to productive use. Such formal recognition will also allow EPA to focus its resources on other facilities and provide the public with an opportunity to review and comment on the cleanup activities before they are terminated.

The guidance defines three objectives that must be met before EPA will issue a completion determination. First, a full set of corrective measures must be defined for the facility. Second, all required remedial measures for the facility must be constructed and installed. Third, all site-specific media cleanup objectives must be met. The guidance does not, however, address the selection of cleanup objectives for any particular media. The only restriction on cleanup criteria is that it must provide long-term protection of human health and the environment.

EPA expressly rejected including an “interim completeness” designation in the guidance. The guidance does not recognize the achievement of short-term protection goals or intermediate performance goals. A “completion” determination is reserved for situations where there is no further cleanup activity to conduct – regardless of how long it might take to achieve site-specific media cleanup objectives. EPA was concerned that an “interim completion” determination would jeopardize the integrity of the determination, be potentially misleading, and minimize the accomplishment of facilities that truly have completed corrective action.

The guidance defines two types of completion determinations: (i) corrective action complete without controls; and (ii) corrective action complete with controls. In order to receive a determination of “corrective action complete without controls,” the areas that are subject to the determination must not require any additional action or measures to ensure that the remedy remains protective of human health and the environment. The guidance provides that, upon a determination of “complete without controls,” the corrective action requirements can be eliminated and the facility may be eligible for release from any financial assurance obligations. Further, the guidance states that “the regulatory agency should have no concerns associated with the transfer of the property.”

In order to receive a determination of “corrective action complete with controls,” corrective action activities must have progressed to the point where, all that remains is performance of any required operation and maintenance and monitoring actions, and/or compliance with, and maintenance of, any institutional controls. The guidance states that an enforceable mechanism (e.g., an order, permit, other enforceable mechanism) must remain in place to ensure compliance with any maintenance of the controls, and notification to the regulatory agency of transfers of the facility. Financial assurance may also be required as part of the determination.

Although a determination of “corrective action complete with controls” may require future monitoring and maintenance, the guidance recognizes that this is a *final* determination. It is not merely a stepping stone toward “corrective action complete without controls.” EPA expressly recognizes in the guidance that the use of institutional controls to maintain protection of human health and the environment is a final remedy. EPA further states that it will not require additional corrective action at a later date so long as the controls are effective. The guidance notes, however, that a person may choose to conduct future additional cleanup and obtain a “corrective action complete without controls” determination, but that choice would be solely that of the owner or operator. The guidance provides examples of when a subsequent determination might be appropriate, including converting the property from industrial to residential use, returning the property to unrestricted use, or if the contamination has naturally attenuated.

The procedures that EPA intends to follow for processing a completeness determination will depend on whether the facility has been issued a permit under RCRA. For determinations regarding permitted facilities, EPA will follow the permit modification procedures contained in the administrative regulations promulgated under RCRA. These procedures generally require

public notice and comment on the modification. For a facility operating under interim status, EPA states that it will terminate corrective action through final administrative disposition of the facility's permit application. At all other non-permitted facilities, EPA intends to follow nay similar alternate procedure that involves public notice with an opportunity to comment.

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