

US EPA ARCHIVE DOCUMENT



Remedy Completion

This document is part of the training materials for the RCRA Corrective Action Workshop on Results-Based Project Management. It contains summaries of EPA statutory authorities, regulations, and guidance materials. This document does not substitute for any of these authorities or materials. In addition, this document is not an EPA regulation and therefore cannot impose legally binding requirements on EPA, States, or the regulated community. EPA may change this document in the future, as appropriate.

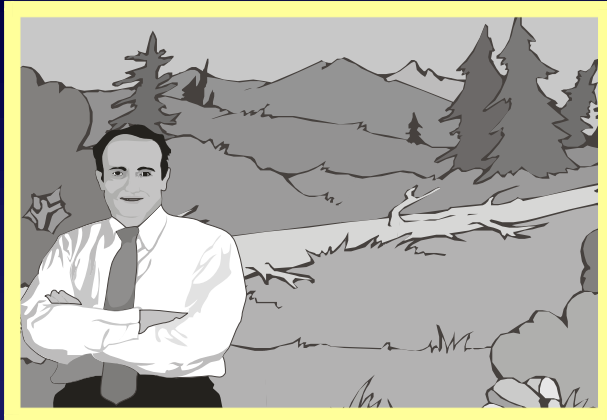
Objectives

Participants will be able to:

- Incorporate remedy completion considerations early in cleanups
- Apply EPA's guidance on when remedies are complete
- Efficiently use administrative processes to seek public participation in and record remedy completion decisions



Remedy Completion is the Ultimate Goal of Corrective Action



3

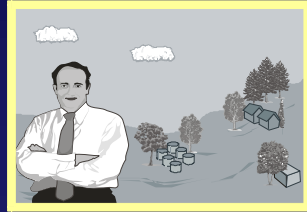


Remedy Completion

Remedy Completion can be for...



an entire Facility...



or an Individual Unit.



4 a portion of a Facility...



What Constitutes Remedy Completion?

- The elements of remedy completion depend on the remedy selected for:
 - a facility;
 - portion of a facility; or
 - individual unit
- For all remedies, EPA believes a remedy should be considered complete only when certain conditions are met



5

Notes:

EPA believes that for remedies to be considered complete the lead agency should have necessary and sufficient information about a facility and remedy to:

- Document the facility, portion of facility, or unit for which the decision is made;
- Document that the remedy was selected and implemented properly;
- Document any land use assumptions or restrictions used to inform the remedy selection and document any associated long-term care requirements for the facility, portion, or unit;
- Ensure that remedy is consistent with anticipated future land use; and
- Document that cleanup standards or other remedial goals are achieved.

Planning Remedy Completion

- Decisions about what will constitute remedy completion should be incorporated into cleanups as early as possible
- At a minimum, decisions as to what will constitute remedy completion should be explicitly included in remedy selections

6



Notes:

Making early decisions about what will constitute remedy completion is important so the public, the facility owner/operator, and the project manager all will understand and agree on what the cleanup is going to accomplish.

Examples:

1. For a groundwater cleanup, remedy completion might be monitoring that shows cleanup standards are achieved at the point of compliance in groundwater for 3 consecutive years;
2. For a soil cleanup, remedy completion might be sampling that confirms all soil above site-specific cleanup standards has been removed or that confirms cleanup standards have been achieved;
3. For a remedy that includes capping or containment, remedy completion might be construction of the containment system, documentation that the containment system is functioning properly, notification of the containment system, and that remaining hazardous wastes and hazardous constituents are included on the property deed.

Three Suggested Steps to Determine Remedy Completion

- Gather and assess data and information necessary to make a tentative decision as to whether a remedy is complete
- Make a tentative decision and provide that decision to the public, including the facility owner/operator, for review and comment
- Respond to public comments and make a final decision as to whether a remedy is complete



Step 1: Gathering and Assessing Data and Information

- Information can come from facility owners/operators, State and Federal regulators, and contractors
- Facility owners/operators' final documentation of remedy completion should be certified by an independent registered professional
- Information gathered by State and Federal regulators should be shared with the facility owner/operator

8



Notes:

Part of remedy completion decisions will generally be a determination of whether cleanup levels have been achieved at points of compliance. This will typically require application of a statistical methodology.

There are many statistical methods that may be used. It is important for project managers and facility owners/operators to discuss and make clear which the statistical methods will be used to support remedy completion decisions. This should be done when remedy completion criteria are set.

Step 2: Making a Tentative Decision for Public Review and Comment

- Evaluate information/data to determine if the conditions established at remedy selection are met
- Make a tentative decision about whether the remedy meets the conditions
- Invite public review and comment on tentative remedy completion decision, and the information supporting the decision

9



Notes:

If Corrective Action is occurring under a RCRA permit, EPA recommends that public notice be accomplished through a Class III permit modification. The procedures for Class III permit modifications are found at 40 CFR 270.42(c).

Class III permit modification requires that a notice of the modification be sent to all people on the facility mailing list and to appropriate units of State and local governments. Notice must also be published in a local newspaper of general circulation. A 60-day public comment period and a public meeting are required.

If Corrective Action is occurring under an order or other nonpermit mechanism, public notice should be accomplished using a process that is similarly inclusive.

If a remedy completion decision is based, in part, on any assumptions about nonresidential future land use, the land use assumptions should be highlighted in the public notice so the community can evaluate and comment on the validity of the assumptions. Also check with appropriate land use planning agency to ensure that remedy is consistent with community development plans.

Step 3: Responding to Public Comments and Final Decision

- Carefully evaluate public comments
- Make necessary adjustments to the tentative remedy completion decision
- Final decision about remedy completion should:
 - include a response to all significant comments; and
 - be made available to the public

10



Notes:

Examples of modifications to remedies in response to public comment:

1. Public does not agree with the amount of waste that would be left in place—asks for additional removal.
2. Public does not agree with the long-term care mechanisms in place to maintain land use assumptions—asks for more long-term care or more conservative land use.
3. Public does not agree with the amount of restoration the remedy provides—asks for additional landscaping/plantings.

Remedy Completion Decisions

- Modify facility permit simultaneously with remedy completion decision if facility is operating/ conducting post-closure care under a permit.
- Terminate interim status using permit denial procedures simultaneously with remedy completion decision if:
 - Remedy completion decision is for entire facility; and
 - Closure/post-closure care are complete for entire facility

11



Notes:

For Federal actions under RCRA, permit denial procedures are generally set forth in 40 CFR Part 124.

For permit denial, 40 CFR Part 124 regulations require that EPA publish a notice of intent to deny a facility permit in accordance with 40 CFR 124.6(b). A notice of intent to deny a permit is a type of draft permit and must follow the same administrative procedures as other draft permits. A notice of intent to deny a facility permit must be accompanied by a statement of basis (40 CFR 124.7) or a fact sheet (40 CFR 124.8) and must be based on the administrative record for the facility in question (40 CFR 124.9). A notice of intent to deny a facility permit must be published for public comment and an opportunity for a public hearing is required (40 CFR 124.10 through 124.12). After public notice and comment on a notice of intent to deny a facility permit, final decisions must be made in accordance with 40 CFR 124.15 and opportunities for appeal of final decision provided in accordance with 40 CFR 124.19.

States that are authorized to implement the RCRA permitting program will have equivalent administrative procedures that must be used for permit denial.

Remedy Completion Decisions (Cont.)

- If a remedy completion decision is not for an entire facility, make clear exactly what:
 - portions of the facility; or
 - units at the facilityare covered by the decision



Remedy Completion Decisions (Cont.)

Remedy completion decisions are:

- Based on information available at the time; and
- Do not preclude future additional cleanup actions, as appropriate, in response to new information



Decisions About Remedy Completion Can Be Complicated

- Complications caused by the administrative status of individual facilities and the authorization status of a State in which a facility is located
- Complications caused by future land use/institutional controls issues

14



Notes:

Complications caused by the administrative status of a facility or the authorization status of a State.

- Who makes completion decisions?
- What administrative processes apply?

States should work with Regions to resolve these issues.

Complications caused by future land use/institutional controls issues:

- Responsibility for recording future land use assumptions
- Responsibility for monitoring/enforcing future land use limitations/institutional controls