



RCRA 2020 – Will We Meet the Government Performance Deadlines for Corrective Action?

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A&WMA Southern Section

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RCRA

- Resource Conservation and Recovery Act – Waste? Solid waste? Hazardous waste?
- RCRA – cradle to grave (to grave)

Corrective Action

- RCRA Section 3004(u) requires corrective action for releases from Solid Waste Management Units (SWMUs) for permitted facilities; Section 3004(v) requires these releases be addressed where they have moved beyond facility boundary.
- Section 3008(h) gives EPA authority to compel corrective action at interim status facilities
- Section 7003 gives EPA authority to require action when there is evidence of past or present handling of solid or hazardous waste that may present an imminent and substantial endangerment.

Corrective Action

- For certain provisions, EPA can delegate to states the authority to administer RCRA, including many of the Corrective Action provisions.
- Have both state and EPA “lead” sites
- EPA Region 4: 560# corrective action sites
 - Alabama - 71
 - Florida - 110
 - Georgia - 76
 - Kentucky - 60
 - Mississippi - 33
 - North Carolina - 89
 - South Carolina - 53
 - Tennessee - 61

<https://www.epa.gov/hw/lists-facilities-resource-conservation-and-recovery-act-rcra-2020-corrective-action-baseline>

Corrective Action

- Corrective Action process involves many parts:
 - Initial Site Assessment
 - Site Characterization
 - Interim Actions
 - Evaluation of Remedial Alternatives
 - Remedy Implementation
 - Tracking Progress
 - Long-Term Care
- Not linear, can be loops and pieces.

GPRA - 2020

- Government Performance and Results Act (GPRA)
 - Began prioritizing sites with the “Corrective Action Universe”
 - Now have the “2020 “ lists (EPA Regions and states)
- The 2020 list represents the “facilities where EPA and the authorized States focused their attention. EPA and the authorized states have an aspirational goal of largely implementing final remedies at 95 percent of facilities requiring corrective action by the year 2020.”

<https://www.epa.gov/hw/baselines-resource-conservation-and-recovery-act-rcra-corrective-action-sites>

Corrective Action - 2020

- To get to implementing final remedy, the interim steps for meeting Environmental Indicators have been met. There are two EIs:
 - Current Human Exposures Under Control (a.k.a. "Human Exposure EI")
 - Migration of Contaminated Groundwater Under Control (a.k.a. "Groundwater EI")

Corrective Action - 2020

- The goal of final remedy implementation or final remedy construction is described as:

when a site completes construction of the final remedy designed to achieve long-term protection of human health and the environment. This goal may be met even if final cleanup levels have not yet been reached, but the constructed final remedy must be sufficient to get towards those cleanup levels with time. For example, a constructed final remedy may be a groundwater treatment system that will ensure that groundwater meets cleanup goals with time.

<https://www.epa.gov/hw/measuring-progress-resource-conservation-and-recovery-act-rcra-corrective-action-facilities>

Corrective Action - 2020

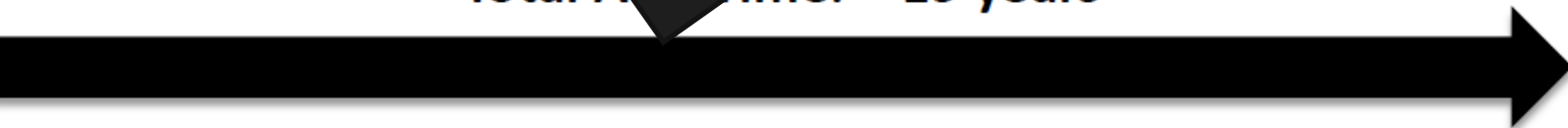
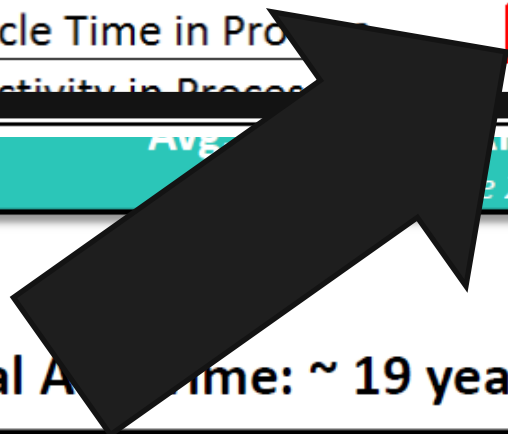
- It can take DECADES to finish Corrective Action (EPA estimates average of 19 years!)
- **With 2020 right around the corner, is there any hope for moving sites along?**

Historical Timeframes: RFI and Remedy Decision

| RCRA RFI Process | | |
|--|-----------------|----------------|
| Avg. Time to Complete | Current Process | Future Process |
| Process Stats | Current Process | Future Process |
| # of Hand-offs - Internal to Agency | 44 | 11 |
| # of Review / Approvals | 33 | 7 |
| # of Loopbacks / Re-sos | 25 | 2 |
| # of Documents generated | 94 | 15 |
| Total Avg. wait time in process | 4.6 years | 0.4 years |
| Total Avg. work time per process steps | 14.8 years | 1.7 years |
| TOTAL Avg. Cycle Time in Process | 19.4 years | 2.1 years |
| % Value Add activity in Process | 10% | 51% |

19.41
Years

Total Average Time: ~ 19 years

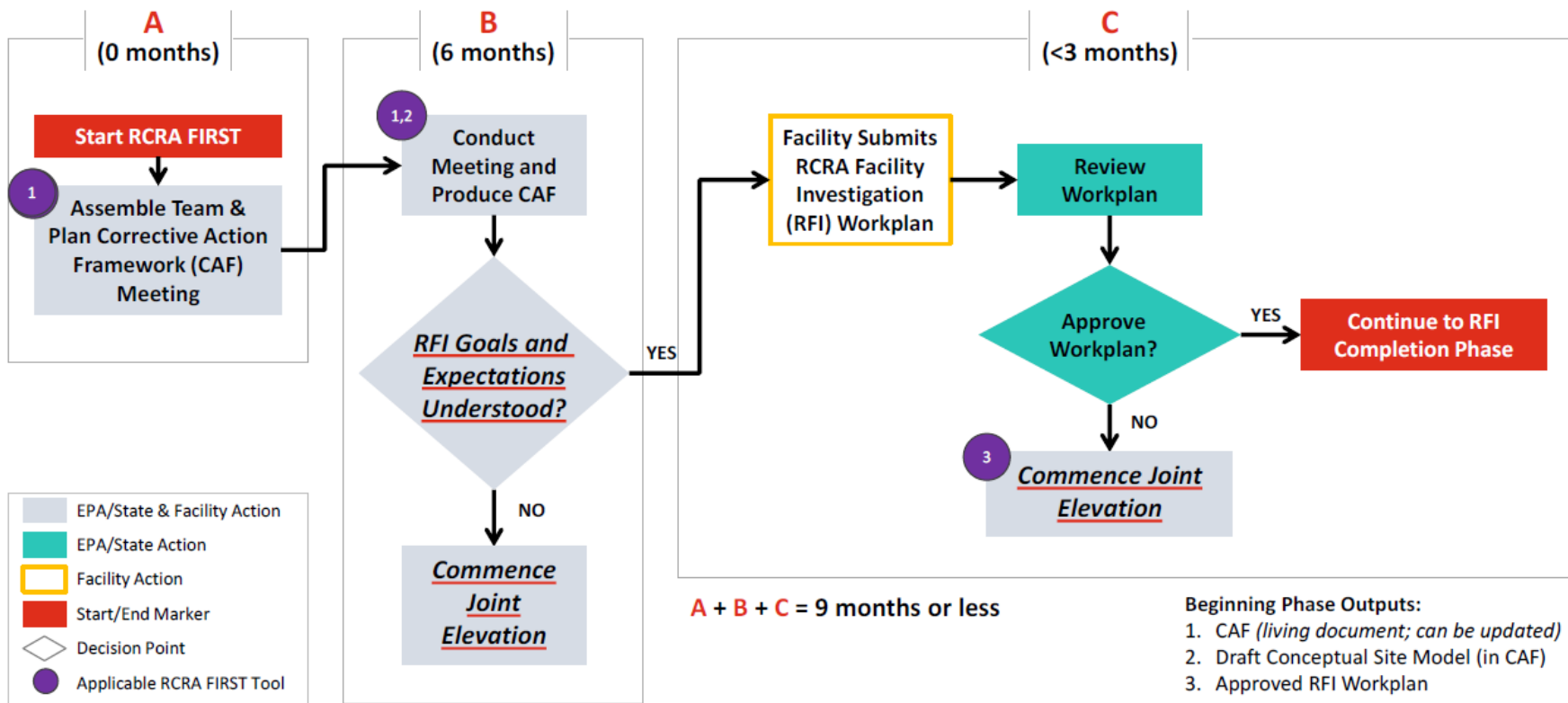


Resource Conservation and Recovery Act Facilities Investigation Remedy Selection Track

Overview of RCRA FIRST

The RCRA FIRST approach is anticipated to provide a time savings of 50 percent or more, which can translate to years of time saved. Keep in mind that RCRA FIRST is an approach to *managing* RCRA corrective action projects. The legal and technical foundation of the program remains the same.

Figure 2.1 RCRA FIRST Investigation Planning Phase



CAF

2 Corrective Action Framework Template (10 pages)

This tool provides a “getting started” template that helps you take the results of the CAF meeting and create a framework that will guide the course of the investigation. Here, you will find instructions and examples to develop a site-specific blueprint that will guide the workplan approval step and the subsequent investigation. As with the agenda, feel free to pick and choose those parts you find most helpful. There is also a useful fill-in-the-form for developing a Conceptual Site Model to share with the facility at the meeting. It might help you prevent any facility-specific delays for your project.

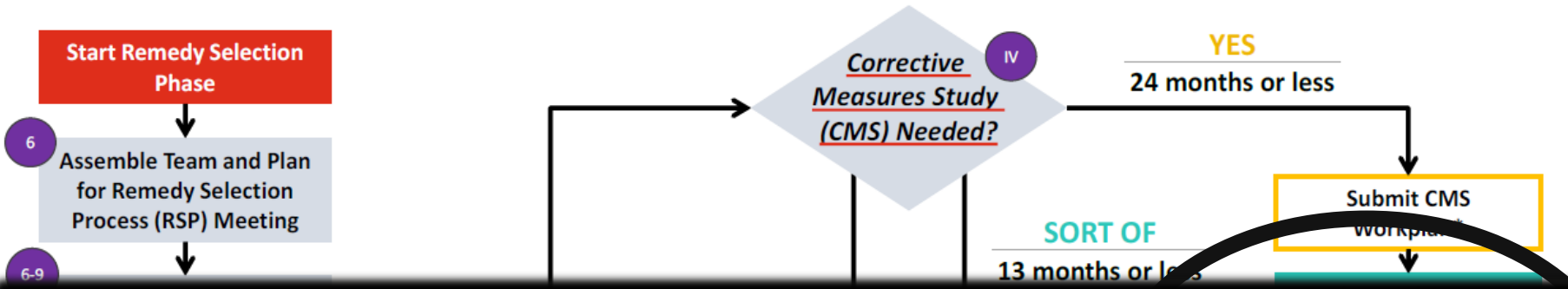
- Example Corrective Action Framework for a New RFI (10 pages)

This example illustrates a completed CAF for a facility.

SAMPLE CAF Agreement pdf p.39

https://www.epa.gov/sites/production/files/2016-06/documents/a_toolbox_for_corrective_action_resource_conservation_and_recovery_act_facilities_investigation_remedy_selection_track_rcra_first.pdf

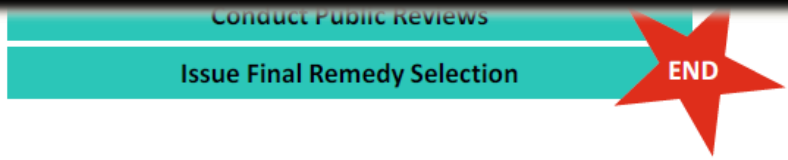
Figure 4.1 RCRA FIRST: Remedy Selection Phase Flowchart



Given those findings, do you always need to do a CMS? No! The only time a full CMS is useful is when the regulatory agencies must choose among alternative remedies. In those cases, a CMS is a necessary part of the administrative record to support the final decision.

- EPA/State & Facility Action
- EPA/State Action
- Facility Action
- Start/End Marker
- Decision Point
- Applicable RCRA FIRST Tool

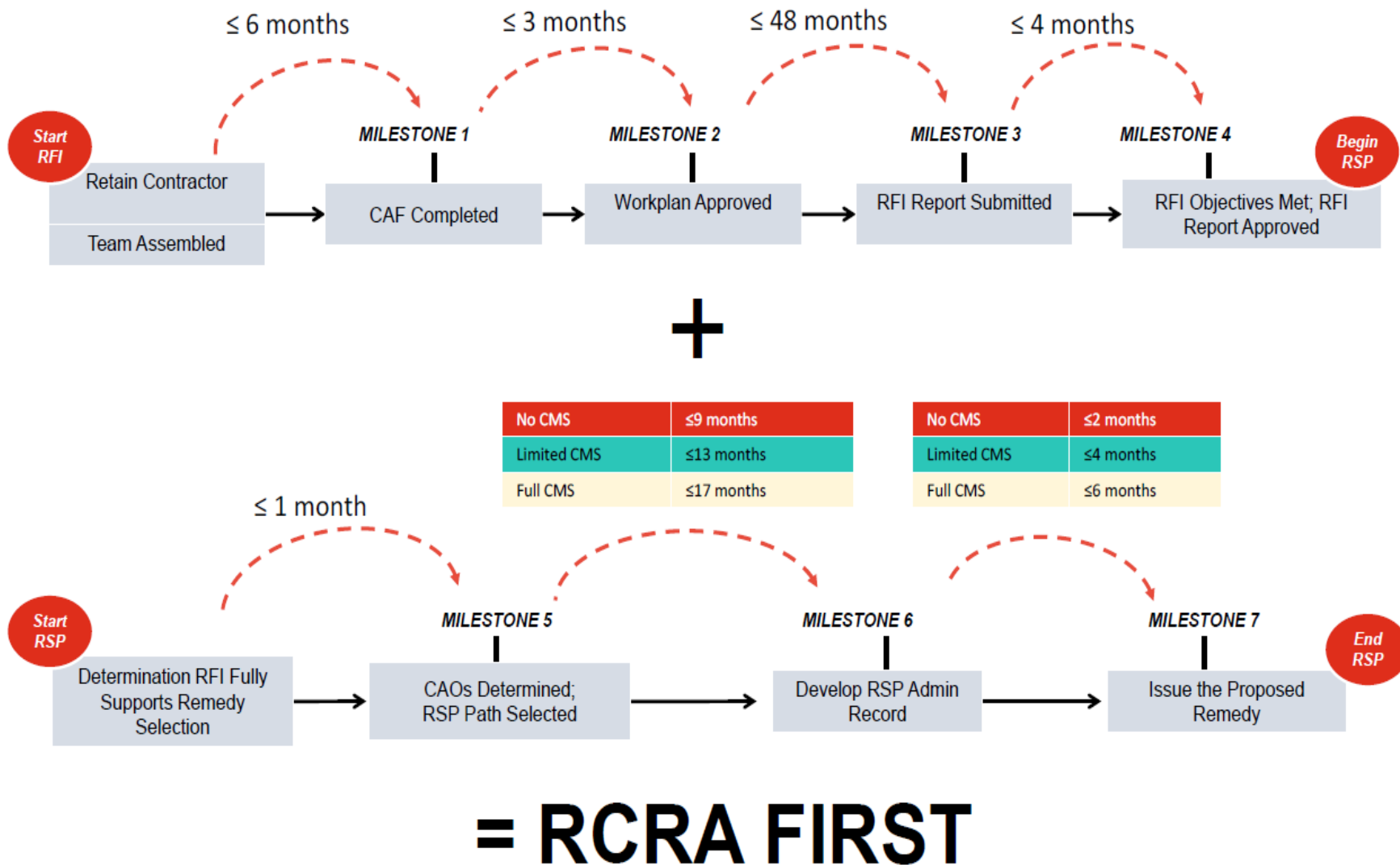
• **Outputs:** Corrective Action Objectives, Remedy Selection and Documentation



Applicable Tools: 6-9; RCRA FIRST Toolbox Section IV

**If required*

Figure 5.1 RCRA FIRST Toolbox Timeline



Challenges to Successful Implementation of RCRA FIRST Corrective Action Approach

Administrative Inertia

Pre-conceived notions of industry/RP reluctance to do cleanup work

Mutual Trust and Respect

Evolving Cleanup and Technical Standards

Normal scheduling/review delays





Rising Tide: RCRA Citizen Suits

Two Types of Citizen Suits

- Any “person” may commence a suit against *any other* “person”
...
 - “(a)(1)(A)” claim: “who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order” made effective pursuant to RCRA.
 - “(a)(1)(B)” claim: imminent and substantial endangerment.

42 U.S.C. § 6972 (a)(1)(A) & (b)

Notice and Delay

No action can be commenced until notice given to the EPA, the State, and the alleged violator and:

RCRA (a)(1)(A) suits: 60 days have passed

or

RCRA (a)(1)(B) suits: 90 days have passed

RCRA (a)(1)(B): Imminent and Substantial Endangerment

Three Requirements:

- (1) Defendant has generated solid or hazardous waste.
- (2) The defendant is contributing or has contributed to the handling, storage, treatment, transportation, or disposal of that waste.
- (3) The waste may present an imminent and substantial endangerment to health or the environment.

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and substantial endangerment to health or the environment.”

Guiding Principles

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an **imminent** and substantial **endangerment** to health or the environment.”

What is an “imminent” endangerment?

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and **substantial endangerment** to health or the environment.”

What is a “substantial” endangerment?

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and substantial endangerment **to health** or the environment.”

Whose Health?

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and substantial endangerment to health **or the environment.**”

What is endangerment to the environment?

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste **may present** an imminent and substantial endangerment to health or the environment.”

The Dreaded “May”

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and substantial endangerment to health or the environment.”

Injunctive Relief

RCRA (a)(1)(B): Imminent and Substantial Endangerment

“The waste may present an imminent and substantial endangerment to health or the environment.”

PUTTING IT ALL TOGETHER

RCRA (a)(1)(A): Violations of Seven Things

Alleged to “be in violation of:”

- Permit
- Standard
- Regulation
- Condition
- Requirement
- Prohibition
- Order

“made effective” pursuant to RCRA.

RCRA (a)(1)(A): Violations of Seven Things

* Permit * Standard * Regulation * Condition * Requirement * Prohibition * Order *
“made effective” pursuant to RCRA.

“To be in Violation?”

RCRA (a)(1)(A): Violations of Seven Things

* Permit * Standard * Regulation * Condition * Requirement * Prohibition * Order *
“made effective” pursuant to RCRA.

“To be in Violation?”

RCRA (a)(1)(A): Violations of Seven Things

* Permit * Standard * Regulation * Condition * Requirement * Prohibition * Order *
“made effective” pursuant to RCRA.

Citizen Suit Authority
Vs.
EPA/State Authority

RCRA (a)(1)(A): Violations of Seven Things

* Permit * Standard * Regulation * Condition * Requirement * Prohibition * Order *
“made effective” pursuant to RCRA.

Injunctive Relief

RCRA (a)(1)(A): Violations of Seven Things

* Permit * Standard * Regulation * Condition * Requirement * Prohibition * Order *
“made effective” pursuant to RCRA.

PUTTING IT ALL TOGETHER

RCRA (a)(1)(A) & (a)(1)(B)

Civil Penalties?

“The district court shall have jurisdiction . . . to apply any appropriate civil penalties under section 6928(a) and (g) of this title.”

42 U.S.C. 6972(a).

RCRA (a)(1)(A) & (a)(1)(B)

Attorney Fees?

In issuing a final order in connection with a citizen suit, the Court “**may** award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.”

42 USC 6972(e).

RCRA (a)(1)(A) & (a)(1)(B)

What if the Government is Acting?

QUESTIONS?



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