

# Phasing Certificates of Completion

**Effective Date:** February 2,2000

To help achieve cleanup of contaminated areas and facilitate timely completion of real estate transactions, applicants may phase response actions for on-site and off-site contaminated areas under separate schedules within a single voluntary cleanup agreement. This approach is briefly described in 30 Texas Administrative Code §333.10 which states “the executive director may authorize an applicant to conduct a phased response only when in the executive director’s evaluation, the schedule is reasonable” and is discussed in greater detail in the sections from the preamble to the proposed and final Voluntary Cleanup Program (VCP) rules. This memo outlines the criteria necessary for evaluating an applicant’s proposal to phase the issuance of Certificates of Completion (COCs) for on-site and off-site properties affected by on-site sources of contamination.

Phasing is only appropriate if on-site and off-site cleanup activities can be split into separate response actions. For example, if a pump and treat system will be implemented on-site and an additional pump and treat system is planned for the off-site affected properties, then these actions can be performed in separate phases. If natural attenuation is utilized as a response action, where contaminant levels in off-site wells at the leading edge of the plume will be used to evaluate the effectiveness of the remediation system on-site, phasing the response action is not appropriate.

For situations where on-site and off-site response actions can be separated, the project manager must determine whether the schedule for implementing each of the phased activities is reasonable. In addition, the project manager must confirm that the following activities have been completed per the VCP agreement:

1. Complete a site investigation which has defined the nature and extent of the entire contaminated area to residential health-based levels regardless of property boundaries;
2. Complete an exposure analysis which identifies all current and reasonably anticipated future exposure pathways and determines whether they are complete or are reasonably likely to be complete in the future due to migration of the contamination;
3. Provide a statement describing why a phased response action is necessary to achieve project goals;
4. Submit a Response Action Work Plan that addresses on-site and off-site response actions, including a discussion of how the response actions will be implemented/completed independently;
5. Prepare a detailed schedule of planned activities for on-site and off-site affected properties that will lead to issuance of a COC. The schedule should provide for issuance of a COC for both properties within a reasonable time-frame.

Once these five activities have been completed and the Site Investigation Report (SIR) concludes that either:

1. A known current exposure to contamination exists (e.g. a drinking water well is impacted); or
2. A reasonable likelihood of future exposure to contamination exists because of contaminant migration to an on-site or off-site property (e.g. drinking water well is unimpacted, but is threatened by a contaminant plume);

then response actions should be initiated on the on-site or off-site property with the highest current or potential exposure to contamination. If the SIR concludes that there is no difference between on-site and off-site exposure, then response actions for on-site or off-site properties may be prioritized at the discretion of the applicant. Deed restrictions or notices may be considered when determining the appropriate sequence of phased activities; however, the ease of obtaining an on-site notice/ restriction should not automatically result in a preference for the off-site property to receive a COC before the on-site property.

After the necessary investigation is completed and the sequence of COC issuance has been determined, the applicant should submit a modified schedule to the VCP agreement. It is important that the schedule include a description of all future response actions which will be completed in order to address remediation of the entire contaminated area. Enforcement action may not be initiated against the applicant for on-site or off-site areas of contamination which have not received a COC, as long as the party remains in compliance with the terms of the VCP agreement.

If an on-site COC is sought prior to obtaining a COC for an affected off-site property, then the applicant must provide documentation of the financial capability to adequately address all necessary proposed off-site response actions pursuant to Section 361.604(b)(2)(A)(i) of the Texas Health and Safety Code before an on-site COC will be issued.

COCs issued for on-site properties will not include language that links the on-site COC to successful completion of the off-site response action.