

NJDEP Confirms Policy Regarding Site Remediation and Issues an Alert Regarding Environmental Compliance and Enforcement

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Last week, we reported that Executive Order 122, carved out environmental remediation at a site as essential construction that can continue as long as consultants and contractors can abide by social distancing requirements, and the requirements outlined in the interim guidance on site field work decisions published by the United States Environmental Protection Agency on April 10, 2020.

On April 21, 2020 the New Jersey Department of Environmental Protection ("NJDEP") issued its own guidance confirming that site remediation and construction related to site remediation projects are allowed to continue under EO 122. Specifically, the NJDEP pronouncement distributed in a ListServe email states that "Section 2 of EO 122 defines "Essential construction projects to include "(l) Any project that is ordered or contracted for by Federal, State, county, or municipal government, or any project that must be completed to meet a deadline established by the Federal government; (m) "Any work on a non-essential construction project that is required to ... remediate a site ..." As noted, the NJDEP requires compliance with social distancing directives set forth in EO 107 and EO 122 and "All efforts should be made to minimize site activities and to protect staff, contractors, and the general public." To accomplish such minimization and to address remediation deadlines and requirements, the NJDEP also stated the following:

- Consider staggering on-site construction activities;
- Determine which construction must be accomplished immediately and which can be postponed to a later date;
- The person responsible for conducting the remediation and the environmental professional (such as a retained licensed site remediation professional or certified subsurface evaluator) should document all activities conducted during the remediation; and
- Any variation from rule or deviation from guidance must be described/documented with a thorough explanation provided, including scientific and technical rationale, in order to detail how the remediation remains protective of public health and safety and of the environment.

Additionally, on April 21, 2020, NJDEP Compliance & Enforcement issued an advisory (#2020-08) to provide direction to any person or entity regulated by the NJDEP who believes their ability to comply with any environmental law, rule, regulation, permit or approval may be constrained by circumstances related to the COVID-19 pandemic Public Health Emergency declared by Governor Murphy. While the NJDEP is conducting a continuing assessment of each of its programs to

determine where temporary regulatory adjustments may be necessary, unless specifically approved or directed by the NJDEP in writing, regulated entities are required to continue to act in accordance with all statutory, regulatory and permit requirements and in the absence of direct NJDEP approval, all deadlines and permit requirements remain in force. The NJDEP will review all requests on a case-by-case basis. In the event that non-compliance cannot be avoided due to the Public Health Emergency created by COVID-19, notification requirements through the NJDEP Hotline are applicable.

Requests for program specific guidance should be sent via email to relevant NJDEP program contacts with a copy to covid19help@dep.nj.gov.

All published guidance will be made publicly available on NJDEP's [COVID-19 Information website](#). Information will also be distributed via relevant listservs, through Compliance Alerts and from program area websites available from the

DEP home page.

Please do not hesitate to contact us with questions you may have regarding environmental compliance or to discuss your specific circumstances or the impact of COVID-19 on your business, transactions or remediation requirements.