NJDEP Issues Temporary Rule Modification Waiving Certain Rules and Extending Specific Site Remediation Timeframes and Deadlines

April 28, 2020

By: Thomas Spiesman, Lisa Bromberg

Porzio Client Alert

On April 24, 2020, the New Jersey Department of Environmental Protection ("NJDEP") issued a Notice of Rule Waiver/Modification/Suspension under Executive Order No. 103 (dated March 9, 2020 – "EO 103"), regarding the extension of certain timeframes for remediation activities. NJDEP's notice is in recognition of the impact of COVID-19 on the ability of private and public entities to perform important remediation activities regulated by the Department. Specifically, remediation timeframes identified in the Administrative Requirements for the Remediation of Contaminated Sites Rules (N.J.A.C. 7:26C)("ARRCS") and the Technical Requirements for Site Remediation (N.J.A.C. 7:26E)("Technical Requirements"), as well as timeframes set forth in an administrative consent order will be extended for 90 days. The extension will only apply to timeframes that have been or will be reached during the period EO 103 is in effect. The Notice, signed by NJDEP Commissioner Catherine McCabe, further provides that "the Department must have the ability to respond on a site-and situation-specific basis for the duration of EO 103, and extend the timeframes beyond the extensions set forth herein in order to ensure the continued appropriate management of remediation activities". Any party responsible for conducting remediation may request a further extension or waiver of applicable timeframes that the NJDEP will consider on a site and situation-specific basis, under the provisions of ARRCS or the Technical Requirements, for the duration of EO 103. To obtain a site-specific waiver, suspension, modification, or relaxation, the NJDEP must find that such action is:

1. Necessary to ensure the continued management of remediation activities and the services that support the same;
2. Narrowly tailored to include on those regulatory modifications necessary to address circumstances created or directly related to the COVID-19 pandemic;
3. Applied consistently to similarly situated entities and individuals; and
4. Limited to the period when EO 103 is in effect.

Nothing in the Notice of Rule Waiver/Modification/Suspension, which is retroactive to March 9, 2020, affects a party's response to known or suspected receptors and immediate environmental concerns.

More information and the extension notice, can be found here.

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.