

May 2020

Client Advisory

Covid-19 Environmental Remediation and Enforcement Policy Updates

As the COVID-19 pandemic continues, federal and state environmental agencies continue to issue policies and guidance to assist in navigating compliance with requirements under applicable state laws and directives set forth in executive orders, which we discuss below in more detail.

Executive Order No. 122: Remediation Continues in Accordance with Social Distancing Guidelines

Amidst all the uncertainty, one thing has remained clear: where possible, remediation activities should continue in New Jersey - with precautions, which were addressed in the State's [Executive Order No. 122](#) (EO 122), issued April 10, 2020. EO 122 required a halt to "non-essential construction," but designated all government-ordered construction projects as essential, allowing the construction "required to . . . remediate a site" to continue. The New Jersey Department of Environmental Protection (NJDEP) then affirmed this in an [April 21, 2020 update](#).

However, remediation may only continue in accordance with social distancing and preventative practice directives set forth in [Executive Order No. 107](#) (EO 107) and in EO 122, which require businesses engaged in essential construction projects to adopt a policy that includes the following restrictions:

- Reduced on-site staff to only essential workers. Non-essential workers cannot be on-site.
- A limit of 10 people at worksite meetings, inductions and workgroups.
- Social distancing (6 ft.) whenever possible.
- Staggered work start and stop times to limit crowds at the beginning and end of shifts.
- Staggered lunch breaks and work times to utilize the least number of people possible for operations to continue safely.
- A limit on how many people can use common areas, like bathrooms and break rooms, at one time.
- Workers must wear face masks and gloves on the premises, except if they can't wear a face mask for a medical reason. The employer must provide (at their own expense) face masks and gloves to their workers.
- Visitors must wear a mask on the premises, unless they have a medical reason. If a visitor refuses for a non-medical reason, the visitor may not enter the site.
- Infection control practices: regular hand washing, coughing and sneezing etiquette.
- Limits sharing tools, equipment and machinery.
- Provides hand sanitizers and sanitizing wipes to employees and visitors.
- Requires frequent sanitization of high-touch areas,

including restrooms, breakrooms, equipment, and machinery.

- Cleaning and sanitation practices in accordance with Center for Disease Control (CDC) guidance. The [CDC recommends](#) routine use of household cleaners, sanitizers or a diluted bleach solution on all frequently touched surfaces.

Most importantly, if an essential worker has symptoms of COVID-19, the employer **must send the person who is sick home** and promptly notify other employees of the exposure. In accordance with [CDC guidance](#), operations do not necessarily have to cease, but all areas used by the person who is sick must be closed off and disinfected after a 24-hour waiting period. The area can open for use once it is disinfected. Workers who had no close contact with the person who is sick can immediately return to work. [Workers who have no symptoms, but had close contact](#) (within 6 feet) with a person who is sick must be pre-screened with a daily temperature check before work for 14 days after exposure, and sent home if they are sick.

New Jersey Department of Environmental Protection Relaxes Certain Deadlines and Compliance Requirements

NJDEP seems to be recognizing the real world impact that COVID-19 has had upon worker and subcontractor availability, and consequently is allowing some flexibility. On April 24, 2020, NJDEP issued an emergency [Remediation Rule Waiver](#) relaxing certain timeframes to complete remediation by 90 days. The Rule Waiver is tied to New Jersey's first COVID-19 [Executive Order No. 103](#) (EO 103) declaring a State of Emergency and will operate to give 90-day extensions to qualifying remediation timeframes as long as EO 103 remains in effect. Governor Murphy has implemented EO 103 indefinitely, and will lift the order when the COVID-19 emergency no longer exists.

Specifically, the Remediation Rule Waiver addressed deadlines established by the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), [N.J.A.C. 7:26C](#), and the Technical Requirements for Site Remediation (Technical Requirements), [N.J.A.C. 7:26E](#), including timeframes set forth in an Administrative Consent Order (ACO).

The Rule Waiver extends requirements to complete the following by 90 days (please refer to the waiver and specific section references for applicable exceptions):

- **Mandatory Remediation Timeframes** pursuant to ARRCs Section 3.3(b)1-5:
 - **Preliminary Assessment and Site Investigation** pursuant to the Industrial Site Recovery Act (**ISRA**) within 2 years of date established by Section 3.3(b)1.
 - **Site Investigation** pursuant to the New Jersey Underground Storage of Hazardous Substances Act (**USHSA**) within 2 years of date established by Section 3.3(b)1.
 - **Initial Receptor Evaluation Report** within 2 years of date established by Section 3.3(b)2.
 - **Immediate Environmental Concern Contaminant Source Control Report**, pursuant to the Technical Requirements, within 2 years of date established by Section 3.3(b)3.
 - Light non-aqueous phase liquid (**LNAPL**) remedial investigation, interim remedial measure implementation, monitoring, and submission of LNAPL **interim remedial measure report** within 2 years of date established by Section 3.3(b)4.
 - Remedial Investigation and Remedial Investigation Report 2 years after the regulatory timeframes established by the Technical Requirements Section 4.10.
 - **Expedited Site-Specific Remediation Timeframes** pursuant to ARRCs Section 3.4 are extended by 90 days.
 - **Regulatory Timeframes** pursuant to the Technical Requirements:
 - **LNAPL**: documentation of actions taken within first year of discovery of LNAPL to delineate, and initiate implementation and monitoring of interim remedial measures.
 - **Exemption from Receptor Evaluation**: if a final remediation document is filed within 1 year of the earliest applicable requirement to remediate, no requirement to complete a receptor evaluation.
 - **Initial Receptor Evaluation**: due within 1 year after the earliest applicable requirement to remediate.
 - **ISRA Sites**: Preliminary Assessment Report and Site Investigation Report due within 1 year after the applicable requirement to remediate (whether contamination found or no).
 - **Remedial Investigation Report**.
 - **Implementation of Remedial Action and submission of Remedial Action Report**.
 - **Free Product**: requirement on Owner to initiate removal or treatment of free product within 60 days of discovery, complete remediation within 1 year, and treat groundwater.
 - **Regulatory Remedial Action Timeframe** pursuant to Technical Requirements:
 - Implementation of remedial action and submission of remedial action report within specific regulatory timeframes.
- Parties conducting remediation may request a further extension of timeframes affected by the waiver or other applicable remediation timeframes, which will be considered on a case-by-case basis. If COVID-19 has created obstacles to meeting regulatory deadlines at your site, we recommend ensuring your site LSRP has thoroughly documented such obstacles in any request for a site-specific extension.
- NJDEP also issued [Extensions for Monitoring and Emission Reports Requirements for Air Quality Permits](#) on April 27, 2020, and a general [Environmental Compliance and Enforcement During COVID-19 Alert](#), which encourages regulated entities to contact their relevant DEP program contact by email with a copy to covid19help@dep.nj.gov if they are concerned about meeting regulatory obligations.
- Federal and state agencies continue to adjust their COVID-19 related policies and guidance as new compliance challenges arise. It appears most agencies will take a reasonable approach to enforcement that does not punish companies operating under pandemic-related constraints, as long as there is no threat to the environment or public health.
- Archer's environmental attorneys and staff hydrologist have extensive experience working with NJDEP. For any questions you may have, or for help in navigating your company through remediation during these uncertain times, please contact Marc Rollo at 856-354-3061 or mrollo@archerlaw.com, Lauren Krohn at 856-354-3035 or lkrohn@archerlaw.com, or Daniel Farino at 856-673-3906 or dfarino@archerlaw.com.
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