

EPA Takes Steps to Address Site Cleanup and Enforcement Matters During COVID-19 Pandemic

Related People:
Leigh A. Gilligan

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On Friday, April 10, 2020, the U.S. Environmental Protection Agency (EPA) issued guidance regarding the impact of the COVID-19 pandemic on site cleanup efforts. (A copy of that guidance, titled Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19, is available [here](#).) This guidance was provided to all EPA regional offices to provide consistent information as to when site remediation may be curtailed or stopped. Despite site cleanup efforts being deemed “essential” in prior EPA COVID-19-related communications, the EPA has made clear that remediation work at federal sites may be paused or limited if (1) state, tribal, or local officials make such a request; (2) workers on-site test positive or exhibit symptoms of the COVID-19 disease; (3) workers need to interact with high-risk or quarantined groups; (4) contractors are unable to work due to state or local restrictions on travel or quarantine mandates; or (5) factors at the site impair the ability to maintain social distancing among workers.

When evaluating whether to limit or suspend cleanup at a given site, the EPA notes that consideration should be given to the importance of the cleanup, weighing the COVID-19 factors against factors relating to whether slowing the cleanup may pose imminent and substantial endangerment. The EPA will make decisions on a case-by-case basis, and the agency encourages the regions to respond quickly and to re-evaluate decisions as the COVID-19 pandemic situation evolves.

The EPA has also issued a temporary policy regarding enforcement and compliance matters during the COVID-19 pandemic, retroactive to March 13, 2020. (A copy of that guidance, titled COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program, is available [here](#).) The EPA indicated that the temporary policy is intended to address the concerns of the regulated community facing compliance challenges as a result of the COVID-19 pandemic, such as those relating to personnel illness and absence, travel restrictions, contractor availability, and lab availability and response time.

Specifically, the EPA will relax its enforcement discretion for certain non-compliances resulting from COVID-19, such as civil violations, issues of compliance concerning previously issued consent decrees and settlement agreements, and permit exceedances related to facility operations. The EPA noted its intent to address different levels of non-compliance differently. For example, the EPA will not seek penalties for non-compliance with routine monitoring and reporting obligations related to COVID-19 but will expect operators of public water supply systems to continue to ensure safety. While regulated entities are expected to make “every effort” to comply with obligations, if compliance is “not reasonably practicable,” entities need to document how, when, and why COVID-19-related non-compliance occurs and return to compliance as soon as possible.