



EPA Response Actions: Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19

April 14, 2020

<https://www.epa.gov/superfund/interim-guidance-site-field-work-decisions-due-impacts-covid-19>

On April 10, 2020, the U.S. Environmental Protection Agency (EPA) released interim guidance in response to the unprecedented COVID-19 pandemic. This interim guidance was issued for response actions related to cleanup and emergency response sites. The guidance provides criteria that should be considered for Emergency Response, Superfund (CERCLA), Resource Conservation and Recovery Act (RCRA) Corrective Action, and leaking underground storage tank (LUST) cleanups when determining whether site field work should continue or be suspended due to the COVID-19 crisis. This policy puts in writing what many contractors, performing parties, and EPA Regions have been doing since the COVID-19 pandemic began.

The guidance targets sites where EPA is the lead agency or has direct oversight of or responsibility for the work being performed. While the guidance is applicable to EPA, it is meant to apply to any party performing the response action, including EPA, states, tribes, other agencies of the Federal Government, and by potentially responsible parties (PRPs). EPA encourages its Regions to share the guidance with states to aid state-lead RCRA cleanups. No matter the performing party, all decisions regarding whether to reduce or suspend field work are to be made on a case-by-case basis and in consultation with the appropriate EPA offices.

Under the interim guidance, each EPA Region is tasked with evaluating the status of ongoing response work at sites and the possible impact of COVID-19. In areas where federal, state, tribal, or local health declarations are in effect due to COVID-19, Regions are encouraged to consider whether to secure sites until the public health threat associated with the declaration is resolved. Even in areas where no such health declarations are in place, Regions are encouraged to consider the following factors when determining whether to begin or continue field work:

1. the safety and availability of work crews, EPA, state or tribal staff;
2. the critical nature of the work;
3. logistical challenges (e.g., transportation, lodging, availability of meals, etc.); and
4. other factors particular to each site.



Where EPA is not the performing party, these same considerations will be utilized in evaluating requests from performing parties for extensions or delays in performance.

Response activities that may more strongly be considered for suspension include periodic monitoring, five-year reviews, RI/FS field sampling, and active remediation of stable conditions such as stable groundwater plumes. Specifically, regions may reduce or suspend response actions at particular sites for the following, or similar, situations:

- state, tribal, or local health officials have requested site operations be suspended;
- any site workers have tested positive for or exhibited symptoms of COVID-19;
- site conditions are such that there may be close interaction with high risk groups or those under quarantine, such as work inside homes;
- site conditions are such that contractor field personnel are not able to work due to state, tribal, or local travel restrictions or medical quarantine; and/or
- site conditions are such that social distancing is not possible.

Considerations related to social distancing in field work are likely to be a significant limitation. For example, drilling and sampling activities frequently require teams working in close proximity. Additionally, abiding by state, tribal, and local travel restrictions will be important, including quarantine and shelter-in-place orders and restrictions on crossing state lines.

Importantly, decisions to extend obligations or suspend work obligations do not operate to supersede or amend performing party obligations under enforcement instruments. Rather, the applicable enforcement instruments (i.e. ASAOs, CDs and UAOs) contain provisions allowing for certain adjustments to schedules. Thus, if a performing party believes that COVID-19 restrictions may delay their performance, they should consult the applicable enforcement instrument — including provisions allowing for adjustments to schedules to be made at the discretion of EPA's project manager and/or force majeure provisions — for directions on providing the requisite notice and other information described in the provisions. Pursuant to EPA's interim guidance, modifications to a party's performance obligations will be made on a case-by case basis in accordance with the terms of the applicable enforcement instrument.

The guidance notes that Regions should strongly consider avoiding delay or suspension of response actions when failure to continue response actions would likely pose an imminent and substantial endangerment to human health or the environment.

Finally, non-field work is generally presumed to be unaffected by COVID-19 and will presumptively not qualify for delay or suspension. However, EPA's policy recognizes that some non-field work may be impacted because supporting operations (e.g. laboratories, equipment) and materials are unavailable or have been diverted to other uses in consideration of the national interests. If a party believes that COVID-19 restrictions



may delay their performance of non-field related work, the party should consult the procedures set forth in the applicable enforcement instrument

Where a Region (or a performing party) decides to start or continue field work even given the considerations described above, the health and safety plan (HASP) must be reviewed and modified, as appropriate to ensure that it accounts for CDC's (and/or other's) COVID-19 guidelines.

Lathrop GPM attorneys are assisting several clients performing active environmental remediations and ongoing field work in response to COVID-19. We have successfully worked for our clients and with EPA to make any necessary adjustments in remedial obligations caused by COVID-19.

If you have any questions regarding this alert, please contact Bill Ford, Sara Oishi, Environmental & Tort Practice Group Chair Mara Cohara, or your regular Lathrop GPM contact.