

APRIL 2020

**AUTHORS**

CATHLEEN M. DEVLIN

PAMELA S. GOODWIN

MELISSA A. CLARKE

# EPA Issues Guidance On Site Response Actions During COVID-19 Pandemic

On April 10, 2020, the U.S. Environmental Protection Agency (EPA) released a Memorandum titled "[Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19](#)." This Interim Guidance follows on the heels of EPA's recent issuance of a [temporary policy memo on COVID-19 implications for EPA'S Enforcement and Compliance Assurance Program](#).

## **To Whom and Under What Circumstances Does the Interim Guidance Apply?**

EPA's Interim Guidance applies to any and all field work related to cleanup and emergency response actions at sites across the nation that is occurring pursuant to an array of programs and statutory authorities in which EPA is positioned as the lead agency or has direct oversight of or responsibility for the work being performed. These include the Superfund program, Resource Conservation and Recovery Act (RCRA) corrective actions, Toxic Substances Control Act (TSCA) cleanup provisions, the Oil Pollution Act, and the Underground Storage Tank (UST) program. The Interim Guidance sets forth instructions for EPA's regional administrators about when to reduce or suspend field activities at particular sites.

## **For What Reason(s) Might EPA Order a Temporary Slowdown or Shutdown of Work at a Site?**

- State, tribal or local health officials have requested operations be suspended.
- Workers have tested positive for or exhibited symptoms of COVID-19.
- Workers may come into close contact with high-risk groups or those under quarantine.
- State, tribal or local travel restrictions or medical quarantine prevent contractors from working.
- Proper social distancing of workers is not feasible.

EPA regional management making site-specific work decisions are also to consider the following factors:

- Whether failure to continue response actions would likely pose an imminent and substantial endangerment to human health or the environment, and the practicality of continuing work.
- Whether maintaining any response actions would lead to a reduction in human health risk or exposure within the ensuing six months.
- Whether work that would not provide near-term reduction in human health risk could be more strongly considered for delay, suspension or rescheduling of site work.

### **What About Ongoing Site Work Not Being Performed in the Field?**

The Interim Guidance encourages project teams to continue work from remote workstations on investigation and progress reports, work plans, development of decision documents, modeling, cleanup documentation and PRP negotiations, even if field activities at a site must be reduced or paused. If such non-field site work is adversely impacted by COVID-19 restrictions, parties are advised to consult applicable enforcement instruments to determine their ability to invoke *force majeure* or to otherwise adjust schedules or modify performance obligations in collaboration with EPA.

### **Takeaways**

During the COVID-19 pandemic, parties should prioritize regular communications with EPA project managers about the status of site response actions, about any and all anticipated or actual delays or other challenges arising from COVID-19 threats or restrictions, and about mitigation measures for addressing these challenges – including whether field work at a site should be reduced or suspended.

This alert was written by Cathleen M. Devlin and Pamela S. Goodwin, co-chairs of the Firm's Environmental Practice, and Melissa A. Clarke, a member of the practice. Cathleen can be reached at (215) 972-8562 or at [Cathleen.Devlin@saul.com](mailto:Cathleen.Devlin@saul.com). Pamela can be reached at (609) 452-3109 or at [Pamela.Goodwin@saul.com](mailto:Pamela.Goodwin@saul.com). Melissa can be reached at (609) 452-3142 or at [Melissa.Clarke@saul.com](mailto:Melissa.Clarke@saul.com). This alert has been prepared for information purposes only.

**Did you find this information useful? Please provide your feedback [here](#) and also let us know if there are other legal topics of interest to you.**

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."