



EPA Stepping Off the Gas at Cleanup Sites in Response to COVID-19

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The Guidance directs Regional Offices to determine whether to proceed with response actions at EPA-lead sites (as opposed to state- or private party-lead) on a case-by-case basis based on the following factors:

- Stoppage requests from state, tribal or local health officials.
- Positive tests or exhibited symptoms of COVID-19 among site workers.
- Extent to which workers interact with high-risk or quarantined groups.
- Applicable state, tribal or local travel restrictions that prevent worker travel to the site.
- How effectively social distancing at the worksite can be maintained.
- The likelihood that work stoppage would pose “an imminent and substantial endangerment to human health or the environment,” and the practicality of continuing the work.
- The likelihood that continued work would lead to a reduction in human health risk/exposure in the next six months.

In a press release accompanying the Guidance, EPA indicated it already paused or reduced fieldwork at approximately 34 EPA or potentially responsible party (PRP)-lead Superfund National Priority List sites (representing 12 percent of all EPA sites with ongoing remedial actions) due to the crisis.³

The Guidance also suggests use of the above factors by Regional Offices in responding to requests for dispensation by PRPs and others in non-EPA lead sites. These requests to modify a schedule or for other relief may complement force majeure provisions in the applicable

enforcement instrument or other schedule adjustments at the discretion of EPA's project lead. In the least, such parties should regularly communicate with their site's EPA project manager about the status of their sites and associated field work, and any anticipated challenges and corresponding mitigation measures as a result of COVID-19.

As mentioned, the Guidance applies only to EPA-lead sites, leaving it to the states to issue their own policies that may apply to fieldwork. Some already have, and we anticipate others will follow suit.⁴ In all, the Guidance may allow measured, site-specific responses to disruptions and other impacts caused by the coronavirus pandemic.

¹ Memorandum from Peter C. Wright, Assistant Administrator, Office of Land and Emergency Mgmt., and Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, to EPA Regional Administrators, Regions I-X, U.S. Env'tl. Protection Agency (Apr. 10, 2020), https://www.epa.gov/sites/production/files/2020-04/documents/interim_guidance_on_site_field_work_decisions_due_to_impacts_of_covid.pdf.

² Memorandum from Susan Parker Bodine, U.S. Env'tl. Protection Agency, to All Governmental and Private Sector Partners (Mar. 26, 2020), <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

³ "EPA Takes Action to Guide Health and Safety Decisions at Cleanup Sites During the COVID-19 Pandemic," Press Release from the U.S. Env'tl. Protection Agency (Apr. 10, 2020), <https://www.epa.gov/newsreleases/epa-takes-action-guide-health-and-safety-decisions-cleanup-sites-during-covid-19>.

⁴ E.g., N.Y. Dept. of Env'tl. Conservation, *Environmental Cleanup & Brownfields: COVID-19 Update*, <https://www.dec.ny.gov/chemical/brownfields.html>; Minn. Pollution Control Agency, *COVID-19 and regulatory flexibility*, <https://www.pca.state.mn.us/covid-19/covid-19-and-regulatory-flexibility>.

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