

# Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19

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Once again, recognizing that adjustments to the evolving COVID-19 situation continue, on Friday, April 10, 2020, the United States Environmental Protection Agency (USEPA) announced the issuance of an [Interim Guidance on Field Work Decisions Due to Impacts of COVID-19](#).

## Background

Response field activities are underway at sites across the country under a wide range of USEPA authorities including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA/Superfund) program cleanups, Resource Conservation and Recovery Act (RCRA) corrective action activities, Toxic Substances Control Act (TSCA) Polychlorinated Biphenyls (PCB) cleanup provisions, the Oil Pollution Act (OPA), and the Underground Storage Tank (UST) program. In addition, USEPA conducts emergency responses to releases or substantial threats of releases into the environment of chemicals, oil, and other hazardous materials, as well as pollutants or contaminants that may present an imminent and substantial danger to the public health or welfare.

As such, interim guidance has been issued for response actions related to cleanup and emergency response sites for which USEPA is the lead agency or has direct oversight of or responsibility for the work being performed. While decisions on continuing, reducing, or pausing field work are to be made on a case-by-case basis and in consultation with other USEPA offices, as appropriate, the agency presented general guidance for response field work decisions.

## General Guidance for Response Field Work Decisions

USEPA Regions are directed to evaluate, and periodically re-evaluate, the status of ongoing response work at sites and the possible impact of COVID-19 on sites, surrounding communities, USEPA personnel, and response partners.

While on-site response actions *may* start or continue,<sup>1</sup> in making decisions whether to start or continue work, several factors must be weighed in making this decision including but not limited to: the safety and availability of work crews and oversight staff; the critical nature of the work; and logistical challenges such as transportation, lodging, and availability of meals. In situations in which a Region decides to start or continue work, it must review and modify, as appropriate, a response action's health and safety plan (HASP) to ensure that it accounts for the CDC's (and/or others') COVID-19 guidelines, including any potential virus transmission into or across areas. If a decision is made to temporarily pause work, Regions should continue to monitor site conditions and plan the logistics for safely resuming field work as soon as appropriate.

Regions are also directed to consider pre-construction, construction, and post-construction activities. Regional representatives are required to consider federal, state, and local health department restrictions or advisories when considering travel to a response action site. USEPA Regional response personnel, in consultation with leadership, shall ensure that the health and safety of response personnel are protected as they plan for and/or respond to releases. In

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<sup>1</sup> Only where there are no federal, state, tribal or local health declarations that prohibit or discourage such activities.

addition, USEPA should consider the personal safety of responding party personnel, including compliance with travel restrictions, health and safety regulations, and access to appropriate personal protective equipment and lodging.

Any parties who believe that COVID-19 restrictions may delay their performance of obligations should consult the applicable enforcement instrument, including any applicable provisions allowing for adjustment of schedules to be made at the discretion of USEPA's project manager and/or force majeure provisions, for directions on providing requisite notice. 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. USEPA encourages parties to regularly communicate with USEPA project managers about the status of their sites and associated field work and any anticipated challenges and mitigation measures.

## Factors to Consider for Site Field Work Decisions

The interim guidance issued presents several site-specific factors that should be a part of a Region's decision making process regarding whether response actions should continue, be reduced, or be paused. As discussed above, it is important to note that decisions to extend obligations or pause work obligations do NOT operate to supersede or amend enforcement decisions. Rather, the applicable enforcement instrument must follow its own provisions allowing for adjustments to schedules.

Regions may decide to reduce or suspend response actions for the following, or similar, situations:

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

When assessing site-specific work decisions, Regional management is directed 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 whether it is practical to continue such actions.
- Whether maintaining any response actions would lead to a reduction in human health risk/exposure within the ensuing six months (e.g., vapor intrusion investigations, drinking water work, residential site work with current residential exposure, etc.).
- 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 (e.g., periodic monitoring, routine sampling activities, field sampling for remedial investigation/feasibility study or RCRA facility investigation work, and active remediation of otherwise stable conditions).

## Effects on Non-Field Site Work

To the extent remote workstations permit project teams to work during this time, such work should continue. Important work can be conducted virtually and represents opportunities to make progress on primary activities like investigation reports including pre-NPL work, modeling, negotiations between the parties, decision documents, cleanup documentation, workplans, progress reports, and maintaining compliance with obligations such as financial assurance. Parties who believe that COVID-19 restrictions may delay their performance of non-field related work should consult the procedures set forth in the applicable enforcement instrument.

## Next Steps When Pausing Site Work

Continued vigilance and communication are vital. If a decision is made to temporarily reduce or suspend response action work, Regions should continue to monitor site conditions and plan the logistics for resuming field work when appropriate.

Vedder Price will continue to monitor the USEPA website and other sources of information. VP has a full-service environmental practice that can assist companies with every aspect of environmental compliance. VP can also assist your company with crisis management planning and execution. Visit our [Coronavirus Task Force Page](#) for additional information about how you and your colleagues can address the multitude of transactional, regulatory, litigation, and employee relations issues that you are facing as a result of this public health crisis.

If you have questions about this law, please contact **Brett D. Heinrich** at +1 (312) 609 7799, **Dana B. Mehlman** at +1 (312) 609 7509 or any other Vedder Price attorney with whom you have worked.

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