

Alert

The COVID-19 Pandemic May Significantly Impact Environmental Requirements

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The United States is facing a disease outbreak that is unprecedented in the modern world.

The spread of the novel coronavirus COVID-19 has impacted all facets of daily life. Efforts by governing bodies to minimize transmission of the virus have included the closure or mandatory remote reporting of government offices and businesses. As a result, there are many unanswered questions regarding compliance obligations during this time. Specifically, it is unclear how the COVID-19 outbreak will affect environmental reporting and monitoring requirements. This uncertainty leaves regulatory-conscious businesses in an extremely tough position.

First and foremost, if it is plausible, businesses should continue to fulfill their monitoring and reporting requirements in the normal course. This will ensure that there is no chance of fines or other action for non-compliance.

If it is not plausible to continue to monitor and report as normal, it is important to make sure businesses make informed decisions regarding regulatory compliance. The most telling indicator of an entity's environmental responsibilities is its governing document. A governing document is an agreement or order issued by a government agency containing reporting and monitoring requirements. Examples of governing documents include consent decrees, permits, and consent orders. A governing document will include site-specific requirements for reporting and monitoring. The requirements contained in a site's governing document will determine what action, if any, is necessary during this time.

In addition, it is important to determine if a governing document contains a *force majeure* clause. *Force majeure* is a Latin phrase that means "superior force." A *force majeure* clause in a document relieves a party from its duties if that party is unable to perform as a result of an unforeseen circumstance or "act of God." In the past, *force majeure* clauses have been triggered by natural disasters, wars, and other major events. It is extremely likely that the COVID-19 pandemic will trigger *force majeure* clauses contained in governing documents and relieve entities of their reporting and monitoring obligations for a period of time.

Although there has not been an official announcement by government officials regarding compliance obligations at this time, it is likely that the situation will develop in the near future. Coughlin Midlige & Garland will continue to publish E Alerts as the landscape evolves. If you have specific questions about interpreting your site's governing document or how the COVID-19 pandemic may impact your business in general, please feel

free to contact Timothy Duffy, Heidi Minuskin or Hannah Bartges.