

NJDEP Provides Temporary but Limited Relief of Site Remediation Deadlines Due to COVID-19 Impacts

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April 30, 2020

In response to the concerns raised by parties about their inability to meet regulatory and mandatory timeframes for completing remedial investigations and cleanup actions due to COVID-19, NJDEP has provided some limited and temporary relief. On April 24, 2020, the New Jersey Department of Environmental Protection (“NJDEP”) issued a Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103 (Murphy) (March 9, 2020) COVID-19 State of Emergency (“the Rule Modification”). By issuing the Rule Modification, NJDEP took the unprecedented step of modifying mandatory remediation timeframes without formal rulemaking process.

The relief provided under the Rule Modification attempts to address the impacts of COVID-19 and social distancing requirements on remediation efforts. Pursuant to the Rule Modification, NJDEP issued a 90-day extension of certain remediation deadlines enumerated in N.J.A.C. 7:26C (ARRCS), N.J.A.C. 7:26E (Technical Requirements), and Administrative Consent Orders that have been or will be reached when Executive Order No. 103 is in effect. In addition, the Rule Modification provides that NJDEP may waive, suspend, modify, or relax any provisions of N.J.A.C. 7:26C or N.J.A.C. 7:26E on a case-by-case and site-specific basis during the period when Executive Order No. 103 is in effect. The Rule Modification can be found in its entirety at:

<https://www.state.nj.us/dep/covid19regulatorycompliance/docs/srp-remedial-timeframes20200424.pdf>.

Unfortunately, this extension affords no relief to those who were running out of time to complete their remedial obligations under deadlines that fall outside the time period when Executive Order No. 103 is in effect. However, if responsible parties are experiencing difficulties meeting NJDEP’s remediation requirements during the COVID-19 pandemic, there are additional avenues for relief under certain circumstances. For example, NJDEP may grant an extension to a mandatory remediation timeframe if an owner of a small business can demonstrate that it does “not have sufficient monetary resources to meet the mandatory remediation or expedited site-specific timeframe.” N.J.A.C. 7:26C-3.5(d)(2)(ii). In addition, NJDEP may grant an extension to a mandatory remediation timeframe due to “circumstances beyond the control of the person responsible for conducting the remediation.” N.J.A.C. 7:26C-3.5(d)(3).

If you have specific questions about this Rule Modification or any environmental issues impacting your business due to COVID-19 or otherwise, please feel free to contact Timothy Duffy, Heidi Minuskin, and Hannah Bartges.