

## COVID-19 and Environmental Matters – New EPA Remediation Guidance

April 17, 2020

On Friday, April 10, the U.S. Environmental Protection Agency (EPA) issued an interim guidance [document](#) focused on addressing risks associated with the novel coronavirus (COVID-19) pandemic on remediation projects under certain U.S. federal laws and regulations, including when remedial work may be reduced or suspended due to COVID-19 risks. This follows an earlier EPA interim guidance on the impact of COVID-19 on compliance with certain federal environmental laws discussed [here](#).

The guidance applies to remediation projects where EPA is the lead agency or has direct oversight of the work being performed. While noting that decisions about whether to halt or continue remediation activities will be made by EPA's regional offices on a case-by-case basis, EPA states that its two main priorities in making such decisions are the health and safety of the public, EPA staff and remediation partners, and maintaining EPA's ability to prevent and respond to environmental emergencies. With these priorities as a backdrop, and with the aim of a consistent national approach by EPA's regional offices, the guidance lays out the following factors to consider when determining whether any on-site remedial activities should be continued, reduced or suspended:

- Where state, tribal, or local health officials have requested that particular site operations or types of operations that would pertain to particular sites be suspended.
- Where any site workers have tested positive for or exhibited symptoms of COVID-19.
- 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.
- Other sites where social distancing is not possible.

The guidance also notes that additional factors should be considered, including whether failure to continue remediation would likely pose an imminent and substantial endangerment to human health or the environment, and whether continuing remedial work would actually lead to a reduction in human health risk within the next six months (for example, vapor intrusion investigations or work relating to residential sites where residents face the risk of exposure to hazardous substances). Examples of work that would not provide near-term reduction in human health risk may include periodic monitoring, routine sampling activities, field sampling for certain remedial investigations/feasibility studies and active remediation of otherwise stable conditions. Additionally, according to the guidance, lab work, document preparation, negotiations and other tasks that can be done remotely should continue.

Companies involved in site investigation or remediation subject to EPA oversight seeking to delay or otherwise modify fieldwork in accordance with the guidance should consult the force majeure or similar provisions in the relevant consent decree, order or other governing document. As the guidance notes, it is not intended to supersede or amend the enforcement provisions in documents governing a cleanup but rather to guide EPA decision-making within the context of these documents. In addition, companies should keep in mind that remediation projects under state oversight or pursuant to state voluntary cleanup programs are not subject to the guidance. The relevant state agencies should be consulted in connection with any requests to delay or modify fieldwork under these programs.

---

If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

<b>Loyti Cheng</b>	212 450 4022	<a href="mailto:loyti.cheng@davispolk.com">loyti.cheng@davispolk.com</a>
<b>David A. Zilberberg</b>	212 450 4688	<a href="mailto:david.zilberberg@davispolk.com">david.zilberberg@davispolk.com</a>
<b>Michael Comstock</b>	212 450 4374	<a href="mailto:michael.comstock@davispolk.com">michael.comstock@davispolk.com</a>
<b>Cristina Harshman</b>	212 450 4166	<a href="mailto:cristina.harshman@davispolk.com">cristina.harshman@davispolk.com</a>