

Publications

New U.S. EPA Guidance for Site Field Work Decisions Impacted by COVID-19

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On April 10th, U.S. EPA published an interim guidance memorandum titled “[Site Field Work Decisions Due to Impacts of COVID-19](#)” (Field Work Decisions). The Field Work Decisions memorandum provides guidance to U.S. EPA Regional Administrators making decisions on whether to continue or delay actions at cleanup or emergency response sites “where U.S. EPA is the lead agency or has direct oversight of or responsibility for the work being performed.”^[1]

Decisions to continue on-site activities are to be made on a case-by-case basis with two priorities in mind. First, U.S. EPA considers protecting the health and safety of the public, its staff, and its cleanup partners. Second, U.S. EPA aims to maintain its ability to prevent and respond to environmental emergencies to protect public health and welfare and the environment. With these priorities in mind, the memorandum provides general guidance and site specific factors for Regional Administrators to consider.

The Field Work Decisions memorandum instructs Regional Administrators first to consider whether federal, state, or tribal health declarations are in effect and whether actions should be delayed until the declaration is resolved. Regions should also consider the safety and availability of workers, the critical nature of the work, and logistical considerations that may impact the ability to continue activities (travel restrictions, availability of lodging and food, etc.). If the decision is made to start or continue work, the site’s health and safety plan (HASP) must be reviewed and modified for COVID-19 considerations.

Site specific factors are provided in the Field Work Decisions memorandum to help make decisions consistent across the nation under factually similar circumstances. These factors include: (1) local health officials have requested certain operations to be suspended, (2) workers test positive for COVID-19, (3) the site requires close interaction and/or social distancing is not possible, and (4) contractors are unable to work due to travel restrictions or medical quarantine. Additional considerations are whether the suspension of work would pose an imminent and substantial endangerment to human health or the

environment^[2], whether maintaining work would reduce the human health risk within six months^[3], or, if the type of work does not lead to a near-term reduction in risk, whether the work can properly be delayed or suspended.^[4]

Decisions to extend or pause work obligations under the Field Work Decisions memorandum do not supersede or amend an enforcement instrument. Rather, entities who believe they will not be able to meet performance obligations due to COVID-19 restrictions must follow the procedures in the notice, modification and/or force majeure provisions in their enforcement instrument.

Although this Field Work Decision memorandum is intended for U.S. EPA lead projects, similar considerations will likely be followed by state environmental agencies. Please contact any member of the Vorys environmental team for assistance regarding the above guidance, or any other environmental compliance issues facing your business during this tumultuous time. We will continue to provide updates to this notice as the COVID-19 situation continues to evolve.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.

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[1] The Field Work Decisions memorandum supplements USEPA's March 19, 2020 memorandum addressing how the Agency will handle non-compliance with certain regulatory obligations amid the COVID-19 pandemic. See our post on [U.S. EPA's COVID-19 Enforcement Guidance](#).

[2] This factor applies in emergency responses, time critical removal actions, sites with ongoing threats to drinking water supplies or other on-site exposures to individuals, and all other sites that pose an imminent threat to public health and welfare and the environment.

[3] This would include vapor intrusion investigations, residential site work, and drinking water work.

[4] Examples are periodic monitoring, sampling or active remediation of a stable site.