



New Jersey Department of Environmental Protection Advisory Update

April 10, 2020

As the State of New Jersey responds to COVID-19, NJDEP continues to advise that it remains open and committed to the protection of the environment and public health. Pursuant to Governor Murphy's instructions, as of April 9, 2020, most NJDEP employees continue to work remotely. NJDEP is encouraging those who need to reach NJDEP staff to do so via email. A list of NJDEP employee email addresses can be found at:

<https://www.state.nj.us/dep/easyaccess/>. The following is a summary of current DEP initiatives.

Dedicated Email Address for Site Remediation and Waste Management Program

NJDEP has established the following dedicated email address for the Site Remediation and Waste Management Program: srp_submissions@dep.nj.gov. This email address is only for the submission of forms, documents, and applications for which services through NJDEP Online currently do not exist. Specifically, it is to be used for forms, documents, and applications that specify mailing to the Bureau of Case Assignment & Initial Notice Site Remediation Program, NJ Department of Environmental Protection, 401-05H, PO Box 420, Trenton, NJ 08625-0420. If an electronic copy is submitted, a paper copy will not be required unless specifically requested by the Department.

In matters where a NJDEP case manager is assigned, electronic copies can be emailed directly to the case manager. Hard copies are not required unless requested by a case manager. Additionally, UST Registration questionnaires and associated documents should continue to be submitted via paper copy and emailed to srpustregistration@dep.nj.gov. Should you have any questions, please contact the BCAIN Duty Officer at 609-292-2943 or the assigned case manager.

In addition, for Remediation Funding Source (RFS), Financial Assurance (FA), and laboratory data electronic submissions, NJDEP has clarified the procedures that should be followed at this time:

- All *initial* RFS submittals must be submitted via paper copy, even if a Self-Guarantee will be the mechanism and no check is required, pursuant to N.J.A.C. 7:26C-5.
- All submittals regarding a change in RFS mechanisms must be submitted via paper copy with a check for the full amount of the one percent (1%) RFS surcharge, as applicable, pursuant to N.J.A.C. 7:26C-5.
- No original RFS mechanism (Remediation Trust Fund Agreement, Letter of Credit, Line of Credit, Environmental Insurance Policy, or Self-Guarantee Application) will be accepted via email.

- For a Self-Guarantee Annual Renewal, all documents may be submitted to srp_submissions@dep.nj.gov, including a copy of the Self-Guarantee Application. The original, three-page Self-Guarantee Application must also be mailed to Bureau of Case Assignment & Initial Notice separately, pursuant to N.J.A.C. 7:26C-5. The entire 10-K Report is not required to be emailed or submitted via regular mail with a Self-Guarantee Annual Renewal. The applicable pages from the 10-K may be scanned and emailed, including the Independent Auditor's Report Page.

For questions regarding electronic submittal of RFS documents through the mailbox, contact Jennifer MacLeod at jennifer.macleod@dep.nj.gov or (609) 984-3651.

- *Initial* Financial Assurance submittals accompanying a Remedial Action Permit application that is being submitted with an application fee requires the submission of a paper copy, pursuant to N.J.A.C. 7:26C-5.
- Original Financial Assurance mechanisms (Remediation Trust Fund Agreement, Letter of Credit, Line of Credit or Environmental Insurance Policy) will not be accepted via email.

Questions regarding electronic submittal of Financial Assurance documents, contact Michael Infanger at michael.infanger@dep.nj.gov or (609) 984-4430.

- Laboratory data deliverables must still be submitted pursuant to N.J.A.C. 7:26E and N.J.A.C. 7:26C, and should not be submitted by email. Questions concerning laboratory data deliverables should be sent to toffoli@dep.nj.gov or joseph.sanguiliano@dep.nj.gov.

NJDEP Guidance on “Essential Activity” as it Relates to Environmental Service Providers

On March 26, 2020, NJDEP’s Site Remediation program addressed whether certain businesses and non-profits not specifically restricted by Executive Order 107 may continue operations. Copies of the Executive Order and DEP’s Comments are available at:

<https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>

<https://files.constantcontact.com/2d01555c601/37ec1f20-60c4-40f4-a680-ea3b3a38b678.pdf>

In a general listserv message issued by NJDEP on that date:

- NJDEP acknowledged that many regulated entities and environmental service providers perform critical functions that support public health and safety, and that some of their functions cannot be achieved remotely.
- NJDEP confirmed that if not specifically restricted by Executive Order 107, regulated entities and environmental service providers, may continue operations, if they practice social distancing by reducing on-site staff and accommodating remote work to the maximum extent practicable.
- NJDEP noted that the number of on-site staff necessary to ensure an organization’s essential operations is a matter of professional judgment on the part of every organization.

On April 8, 2020, Governor Murphy issued Executive Order 122 prohibiting the continuation of most non-essential construction projects. Exceptions or "essential" construction may continue with the appropriate personal protection measures include, but are not limited to:

- Any project that is ordered or contracted for by Federal, State, county or municipal government; and

- Any work on non-essential construction project that is required to physically secure the site of the project, ensure the structural integrity of any buildings on the site, *abate any hazards that would exist on the site if the construction were to remain in its current condition, remediate a site*, or otherwise ensure that the site and any buildings therein are appropriately protected and safe during the suspension of the project.

Site Remediation Time Frame Extensions

As of the date of this update, NJDEP has not extended Site Remediation Reform Act (SRRA) regulatory/mandatory timeframes. NJDEP has indicated that it will grant extensions of mandatory timeframes if associated with delays in obtaining access to properties not owned by the person responsible for conducting remediation. In that limited scenario, in order for NJDEP to grant an extension, the responsible person will need to show that:

- Access to properties not owned is necessary to implement remediation; and
- The requirements for gaining access to properties not owned as set forth in the Brownfield Act and its implementing regulations are adhered to;

Land Use Processes

NJDEP has yet to issue formal guidance or granted a blanket extension of the 90 Day Law deadlines. However, NJDEP has indicated the following with regard to the continuation of land use matters during this time:

- Permits: NJDEP is continuing to process applications. Extensions of the 90 day deadlines are being evaluated on a case by case basis. Electronic applications are acceptable and NJDEP will confirm when hard copies are needed. Compliance issues are being handled on a site-specific basis. The Governor is expected to authorize Remote Online Notarization.
- Site Visits: NJDEP plans to resume most site inspections in the near future, with visits related to health and safety given a priority. Vernal pool inspections are moving forward. For inspections that can be socially distanced, staff guidelines will be issued.

If you have any questions or concerns regarding any of these matters, please feel free to contact us.

This newsletter is published for informational purposes only. It does not constitute formal legal advice and should not be construed as such. This and all future updates will be posted on our website at www.cullenllp.com

If you have questions feel free to contact Amie C. Kalac at (609) 279-0900 or via email at AKalac@cullenllp.com, Herbert B. Bennett at (609) 279-0900 or via email at HBennett@cullenllp.com or Neil Yoskin at (609) 279-0900 or via email at NYoskin@cullenllp.com.

Practices

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