



# New York State Department of Environmental Conservation Issues “Essential Activity” Guidance for Remedial Programs

April 3, 2020

The New York State Department of Environmental Conservation’s (“DEC”) Division of Environmental Remediation has issued guidance<sup>[1]</sup> on what it deems to be “essential” activity under New York Executive Order 202.6.<sup>[2]</sup> That Executive Order requires that New York businesses and not-for-profit entities implement employee telecommuting policies except for certain essential business or businesses that provide essential services or functions.

The guidance indicates that DEC considers the following activities to be essential:

- Remedial construction activities, including new construction starts, at sites that DEC has determined pose a significant threat to public health and/or the environment, including Class 2 sites on the Registry of Inactive Hazardous Waste Disposal Sites and significant threat sites in the Brownfield Cleanup Program,
- Completion of remedial construction already under way at non-significant threat sites as necessary to ensure site safety and prevent exposure to site contaminants, including completion of site cover systems,
- Operation and maintenance activities for active remedial systems that are necessary for the continued protection of human health and the environment,
- Interim remedial measures to address imminent human exposures and/or threat of significant contaminant migration,
- Spill response actions,
- Investigation, including pre-design investigations, of petroleum and hazardous waste releases as determined by DEC on a case-by-case basis to be necessary to address potential human exposures and/or threat of significant contaminant migration.

While the DEC guidance permits certain remedial activity to continue under Executive Order 202.6, it appears to be primarily focused on ensuring that those activities that are necessary to protect the environment and/or human health and safety are not halted while the Order remains in effect. Accordingly, those responsible for remedial sites should consider whether planned activity clearly satisfies that criteria.

*Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have any questions regarding DEC’s guidance discussed herein, please feel free to contact Brendan Mooney at (516) 357-3757 or at*

*[bmooney@cullenllp.com](mailto:bmooney@cullenllp.com)*

## Footnotes:

[1] NYSDEC's guidance can be found at the following website: <https://www.dec.ny.gov/chemical/brownfields.html>.

[2] A copy of New York Executive Order 202.6 can be found at the following website:

<https://www.governor.ny.gov/news/no-2026-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

## Practices

- Environmental

## Attorneys

- Brendan J. Mooney