



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

April 10, 2020

### MEMORANDUM

**SUBJECT:** Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19<sup>1</sup>

**FROM:** Peter C. Wright  
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**TO:** EPA Regional Administrators, Regions I-X

As all of us at the EPA and in other Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Non-governmental Organizations, and Communities continue to adjust to the evolving COVID-19 situation, we at EPA are first and foremost mindful of the health, welfare, and safety of the public, as well as our employees and cleanup partners, as we all continue our work to protect human health and the environment.

Response field activities are underway at sites across the country under a range of EPA authorities including, but not limited to, the Superfund program, RCRA corrective action, TSCA PCB cleanup provisions, the Oil Pollution Act, and the Underground Storage Tank (UST) program. EPA also conducts emergency responses to releases or substantial threats of releases into the environment of chemicals, oil, and other hazardous materials/substances, as well as pollutants or contaminants that may present an imminent and substantial danger to the public health or welfare. The following interim guidance is being issued for response actions related to cleanup and emergency response sites where EPA is the lead agency or has direct oversight of or responsibility for the work being performed. EPA will, as appropriate, update this guidance as the current situation evolves. The response action work at this broad range of sites may be conducted by EPA, states, tribes, other agencies of the Federal Government, and by other parties, including potentially responsible parties (PRPs). In addition, Regions are encouraged to share this guidance with the states and employ these considerations to provide assistance to authorized states as they encounter similar issues for state-lead RCRA cleanups.

In respect of the challenges posed by the COVID-19 situation, EPA continues to make decisions about continuing on-site activities on a case-by-case basis consistent with the following priorities:

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<sup>1</sup> This memorandum supplements the "Office of Land and Emergency Management Considerations and Posture for COVID-19 Pandemic" document dated March 19, 2020 (*see* Attachment) and provides additional criteria to be considered for Emergency Response, Superfund Removal/Remedial/Federal Facilities, RCRA Corrective Action, and leaking underground storage tank (LUST) cleanups when determining whether site field work should continue or be suspended.

- Protecting the health and safety of the public, as well as maintaining the health and safety of EPA staff and cleanup partners, is the Agency's highest priority. Integral to the protection of health and safety is the adherence to any federal, state, tribal, or local health declarations and restrictions, to the extent possible.
- Maintaining EPA's ability to prevent and respond to environmental emergencies, or in any situation necessary to protect public health and welfare and the environment, is also a critical priority for the Agency.

Decisions to be made on continuing, reducing, or pausing field work are to be made on a case-by-case basis and in consultation with other EPA offices, as appropriate. This same approach will apply to decisions based on requests from outside parties (e.g., states, tribes, local governments, other federal agencies, potentially responsible parties, property owners, etc.) for extensions or delays in performance.

### **General Guidance for Response Field Work Decisions**

The Regions should evaluate, and periodically re-evaluate, the status of ongoing response work at sites and the possible impact of COVID-19 on sites, surrounding communities, EPA personnel, and response/cleanup partners. Especially in areas where federal, state, tribal, or local health declarations are in effect due to COVID-19, Regions should consider whether to continue site operations or secure a site until the public health threat associated with the declaration is resolved. While on-site response actions may start or continue where there are no federal, state, tribal or local health declarations that prohibit or discourage such activities, in making decisions whether to start or continue work, other factors must also be weighed in making this decision including but not limited to the safety and availability of work crews, EPA, state or tribal staff; the critical nature of the work; logistical challenges (e.g., transportation, lodging, availability of meals, etc.); and other factors particular to a site. Where a region decides to start or continue work, it must review and modify, as appropriate, a response action's health and safety plan (HASp) to ensure that it accounts for CDC's (and/or other's) COVID-19 guidelines, including any potential virus transmission into or across areas. If a decision is made to temporarily pause work, Regions should continue to monitor site conditions and plan the logistics for safely resuming field work as soon as appropriate.

Regions should consider pre-construction, construction, and post-construction activities. Regional representatives' travel to a response action site should consider any federal, state, tribal, or local health department restrictions or advisories, the logistics associated with the necessary travel, the timing of the travel (i.e., whether it could be delayed or postponed), and other factors that address federal travel.<sup>2</sup> EPA Regional response personnel, in consultation with their leadership (e.g., Removal Managers, Remedial Branch Chiefs, and Division Directors) and Safety, Health, and Environmental Management organizations, should ensure that the health and safety of response personnel are protected, with respect to COVID-19, as they plan for and/or respond to releases or substantial threats of releases into the environment of chemical, oil, or other hazardous materials/substances, as well as pollutants or contaminants that may present an imminent and substantial danger to the public health or welfare. EPA should consider the personal safety of responding party personnel as well, including compliance with travel

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<sup>2</sup> <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-14-travel-guidance-OMB-1.pdf>

restrictions, health and safety regulations, and access to personal protective equipment and lodging.

Parties who believe that COVID-19 restrictions may delay their performance of obligations should consult the applicable enforcement instrument, including provisions allowing for adjustments to schedules to be made at the discretion of EPA's project manager and/or force majeure provisions,<sup>3</sup> for directions on providing the requisite notice and other information described in the provisions. Modifications to a party's performance obligations will be made on a case-by-case basis in accordance with the terms of the applicable enforcement instrument. The formal determination as to whether a particular situation constitutes force majeure or requires additional response depends on the site-specific circumstances, particularly the type of work that is affected by COVID-19. EPA expects to be able to make these determinations promptly. EPA encourages parties (and the lead agency for Federal Facility Superfund sites) to regularly communicate with EPA project managers about the status of their sites and associated field work and any anticipated challenges and mitigation measures.

Regions are expected to work to provide notification to, coordinate with, and collaborate with States, Tribes, and other Federal agencies to optimize communication and share information about the status of particular response work.

### **Factors to Consider for Site Field Work Decisions**

Below are some site-specific factors that should be part of a Region's decision regarding whether response actions will continue, be reduced, or be paused. Consideration of these factors should help with making nationally consistent decisions when addressing similar factual situations. However, these factors should not be considered in a manner that would override protection against unnecessary potential exposure to COVID-19. Decisions to extend obligations or pause work obligations do not operate to supersede or amend enforcement instruments. Instead, and as set forth above, the applicable enforcement instruments contain provisions allowing for adjustments to schedules to be made at the discretion of EPA's project manager, and/or force majeure provisions, including directions to responsible parties on providing the requisite notice and other information described in the provisions.

Regions have decided and may continue to decide to reduce or suspend response actions at particular sites for the following or similar situations:

- State, tribal, or local health officials have requested particular site operations or types of operations that would pertain to particular sites be suspended.
- Any site workers have tested positive for or exhibited symptoms of COVID-19.
- Any 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.

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<sup>3</sup> To the extent available under the instrument, EPA intends to be flexible regarding the timing of the notices.

Regarding site-specific work decisions, Regional management should consider the following factors:

- Whether failure to continue response actions would likely pose an imminent and substantial endangerment to human health or the environment, and whether it is practical to continue such actions.
  - This may include sites or activities such as:
    - Emergency Responses (including Superfund and Oil Spill Responses)
    - Emergency Response Preparedness necessary to remain ready to respond immediately
    - Time Critical Removal Actions that address imminent threat to public health and welfare and the environment
  - It may include sites with ongoing or a threat of imminent acute or direct human exposures that would compromise public health:
    - EPA or responsible parties (including Federal facilities) providing alternative water supplies (e.g., bottled water, Point of Entry Systems (POET Systems), replacement filters, etc.) to individuals who otherwise would be exposed to or consume contaminated drinking water
    - Individuals with ongoing on-site exposures, such as lead, arsenic, other heavy metals, PCBs, asbestos, vapor intrusion, etc.
  - It may also include sites with prevention of exposures that pose an imminent threat to public health and welfare and the environment:
    - Response actions to prevent a catastrophic event (e.g., mine blow outs, breach of gyp stacks, sites with high probability of fire or explosion, etc.)
    - Prevent contaminated groundwater plume expansion that is reasonably likely to adversely affect drinking water sources (private or public), including continued operation of groundwater pump and treat systems
    - Prevent releases to waterbodies that are reasonably likely to adversely affect drinking water intakes or communities downstream, including treatment of acid mine drainage
    - On-site security or activities necessary to prevent unauthorized access to sites for the safety of life and/or the protection of government property
    - Disposal of materials off-site (e.g., mine waste, chat, unsafe cylinders) that create an imminent safety issue if not promptly removed
    - Assess potential or actual vapor intrusion, especially into structures with sensitive populations (consideration should be given to the relative risks and be coordinated with residents as appropriate)
    - Complete, continue, or take measures to stabilize in-process response actions to ensure unacceptable releases to the environment do not occur (e.g., deactivation and decommissioning of a former nuclear facility, soil excavation, partial closure of a landfill disposal cell)
- Whether maintaining any response actions would lead to a reduction in human health risk/exposure within the ensuing six months. This may include, but are not limited to:
  - Vapor intrusion investigations

- Residential site work with current exposures to residents
- Drinking water work
- Whether work that would not provide near-term reduction in human health risk could be more strongly considered for delay, suspension, or rescheduling of site work, in coordination with state, tribal, and local officials and with updated HASPs as appropriate. This may include:
  - Periodic monitoring
  - Routine sampling activities that typically are considered for five-year reviews or compliance with existing agreements
  - Field sampling for remedial investigation/feasibility study (RI/FS) or RCRA facility investigation (RFI) work
  - Active remediation of otherwise stable conditions (e.g. active remediation of stable groundwater plumes)

### **Effects on Non-Field Site Work**

Note that much of the work to advance cleanup of sites is performed away from sites. To the extent remote workstations permit project teams to work during this time, this work should continue. Important work can be conducted virtually and represent opportunities to make progress on primary activities like investigation reports (including pre-NPL work), modeling, negotiations between the parties, decision documents, cleanup documentation, workplans, progress reports, and maintaining compliance with obligations such as financial assurance. It is also recognized that because of the national scope of COVID-19, some work that normally takes place away from a site may be impacted because supporting operations (e.g. laboratories, equipment) and materials are unavailable or have been diverted to other uses in consideration of the national interests. Parties who believe that COVID-19 restrictions may delay their performance of non-field related work should consult the procedures set forth in the applicable enforcement instrument.

### **Next Steps When Pausing Site Work**

Continued vigilance and communication are vital. If a decision is made to temporarily reduce or suspend response action work, Regions should continue to monitor site conditions and plan the logistics for resuming field work when appropriate. Throughout this process, Regions should utilize the internal EPA document, CERCLA Interim Guidance on Public Engagement During COVID-19, to continue conducting Superfund community involvement work at all sites, regardless of whether work has been paused or continues.

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