



EPA Publishes Interim Guidance on Site Field Work Decision-Making Related to COVID-19 Impacts

The COVID-19 pandemic continues to disrupt nearly all aspects of American life and business, including ongoing response activities being conducted under the authority of the U.S. Environmental Protection Agency (EPA). In connection with these impacts, on April 10, 2020, EPA published a memorandum entitled, [*Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19*](#) (“EPA’s COVID-19 Field Work Guidance” or “Guidance”). The Guidance offers guidelines, specific factors, and examples EPA Regions should consider in their decision-making processes to continue, reduce, or suspend on-site work. Driving these case-by-case decisions are EPA’s two main priorities: (1) protecting the health and safety of the public, as well as EPA’s staff and cleanup partners; and (2) maintaining EPA’s ability to prevent and respond to environmental emergencies. This *Alert* addresses questions regarding EPA’s guidelines and decision-making under the Guidance.

To What Sites Does EPA’s COVID-19 Field Work Guidance Apply?

EPA’s COVID-19 Field Work Guidance applies to ongoing and emergency response actions conducted at sites across the United States under multiple federal programs, including Superfund, RCRA, and TSCA, where EPA is the lead agency or has direct oversight of or responsibility for the work being performed. EPA acknowledges that any number of parties may actually be performing the work covered by its Guidance, including EPA, states, tribes, other federal agencies, or potentially responsible parties (PRPs). Although the Guidance does not apply directly to states, EPA specifies that Regions should share the Guidance with states and assist states conducting state-lead RCRA cleanups.

In What Types of Situations Will EPA Regions Reduce or Suspend Response Actions?

The Guidance identifies multiple situations that have informed (or may inform) Regions’ decisions to reduce or suspend response actions. Among these are where state, tribal, or local officials request a suspension of the response action, where a site worker has tested positive for COVID-19, or where field personnel are not able to work due to travel restrictions or medical quarantine. The Guidance offers other examples and indicates that the list is not exhaustive, i.e., that similar situations have supported or may support a decision to reduce or suspend on-site field work.

What Factors will Regions Consider When Deciding to Continue, Reduce, or Suspend On-Site Field Work?

EPA’s COVID-19 Field Work Guidance identifies both general guidelines and site-specific factors Regions should consider in making site field work decisions.

1. General Guidelines

Regions should evaluate (and periodically re-evaluate) their respective ongoing response work in light of potential COVID-19 impacts and restrictions. Such actions include considering applicable federal, state, tribal, or local health declarations in determining whether to continue work or secure a site until the declaration is resolved. In the absence

APRIL 15, 2020

CONTACT

LINDSAY P. HOWARD

lhoward@babstcalland.com
412.394.5444

MATTHEW C. WOOD

mwood@babstcalland.com
412.394.6583

Pittsburgh, PA

Two Gateway Center
603 Stanwix Street
6th Floor
Pittsburgh, PA 15222
412.394.5400

BABSCALLAND.COM

of such declarations, EPA instructs Regions to consider other relevant factors, such as the safety and availability of work crews and staff, the critical nature of the work, and logistical challenges. Where work starts or continues, Regions must review and revise, as necessary, Health and Safety Plans to account for COVID-19 related guidelines. If work is halted, Regions are advised to monitor site conditions and plan to safely resume work as soon as appropriate.

2. Site-Specific Factors

The Guidance lists three categories of site-specific factors that Regions should consider in determining whether response actions should continue, be reduced, or paused. The first is whether a failure to continue a response action “would likely pose an imminent and substantial endangerment to human health or the environment, and whether it is practical to continue such actions.” These types of scenarios generally include: (1) emergency response and immediate threats (e.g., Time Critical Removal Actions that address an imminent threat to public health and the environment); (2) an ongoing, or threat of, direct human exposures (e.g., on-site exposures to contaminants); and (3) prevention of exposures that pose an imminent threat to public health, welfare, and the environment (e.g., preventing groundwater plume expansion or releases to water bodies that could adversely affect drinking water sources).

The second category of factors that Regions should consider involves situations where “maintaining any response actions would lead to a reduction in human health risk/exposure within the ensuing six months.” Examples provided by EPA include activities such as continuing vapor intrusion investigations or residential site work involving current exposures to residents.

The third category advises Regions to evaluate whether situations “that would not provide near-term reduction in human health risk” may be considered for delay, suspension, or rescheduling in coordination with applicable stakeholders. Examples of these types of activities include periodic monitoring, certain types of sampling, and active remediation of stable conditions. For each of the three categories, the Guidance provides additional examples and indicates that similar situations may inform Regions’ decisions to continue, reduce, or pause response actions.

How Does the Guidance Apply to Potentially Responsible Parties Performing On-Site Work?

The Guidance directs PRPs who believe the COVID-19 pandemic will delay compliance obligations to refer to their respective enforcement instruments for provisions regarding, for example, requesting schedule adjustments or invoking a *force majeure* provision, and providing applicable notices. EPA cautions that any such modifications or *force majeure* determinations will be made on a case-by-case basis and will consider site-specific facts, including the type of work purportedly affected. Although the Guidance indicates that EPA will make such decisions promptly, EPA nonetheless encourages performing parties to communicate regularly with their project managers concerning the status of their sites, including regarding anticipated COVID-19-related challenges.

How does EPA’s Guidance Affect Non-Field Site Work?

EPA expects non-field work such as report preparation, modeling, and negotiations to continue to the extent these activities can be conducted remotely. EPA recognizes, however, that the COVID-19 pandemic may also impact off-site/non-field supporting operations (e.g., laboratories) and directs any party that believes its performance obligations may be delayed by such impacts to consult relevant provisions of its applicable enforcement instrument.

Babst Calland’s [environmental attorneys](#) are available to assist you with addressing or responding to any COVID-19-related impacts under the Guidance and other applicable policies. For more information, please contact Lindsay P. Howard at (412) 394-5444 or lhoward@babstcalland.com, Matthew C. Wood at (412) 394-6583 or mwood@babstcalland.com, or any of our other remediation attorneys.

PITTSBURGH, PA | CHARLESTON, WV | HOUSTON, TX | SEWELL, NJ | STATE COLLEGE, PA | WASHINGTON, DC

Babst Calland was founded in 1986 and has represented environmental, energy and corporate clients since its inception. The Firm has grown to 150 attorneys who concentrate on the current and emerging needs of clients in a variety of industry sectors. Our attorneys have focused legal practices in construction, corporate and commercial, creditors’ rights and insolvency, emerging technologies, employment and labor, energy and natural resources, environmental, land use, litigation, public sector, real estate and transportation safety. For more information about Babst Calland and our practices, locations or attorneys, visit babstcalland.com.

This communication was sent by Babst Calland, headquartered at Two Gateway Center, Pittsburgh, PA 15222.

This communication is privately distributed by Babst, Calland, Clements and Zomnir, P.C., for the general information of its clients, friends and readers and may be considered a commercial electronic mail message under applicable regulations. It is not designed to be, nor should it be considered or used as, the sole source of analyzing and resolving legal problems. If you have, or think you may have, a legal problem or issue relating to any of the matters discussed, consult legal counsel.

This communication may be considered advertising in some jurisdictions. To update your subscription preferences and contact information, please [click here](#). If you no longer wish to receive this communication, please [reply here](#). To unsubscribe from all future Babst Calland marketing communications, please [reply here](#).

©2020 Babst, Calland, Clements and Zomnir, P.C. All Rights Reserved.