

Environmental Law & Litigation

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NJDEP Announces Blanket 90-Day Extension to Remediation Deadlines in Response to COVID-19

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Since at least March 9, the day that Governor Phillip D. Murphy signed Executive Order No. 103 (EO 103) declaring a state of emergency in response to COVID-19, regulated entities and business organizations in New Jersey have been clamoring for the New Jersey Department of Environmental Protection (NJDEP) to extend outstanding remediation deadlines. It was at that time clear that the business shutdowns and general uncertainty resulting from the pandemic would (through no fault of the regulated community) lead to deadlines being breached. The NJDEP seemed hesitant to act in response. On April 27, however, Commissioner Catherine R. McCabe announced a Temporary Rule Modification (Modification) granting a 90-day extension to certain deadlines in the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, *et seq.*, and the Technical Requirements for Site Remediation (Tech Regs), N.J.A.C. 7:26E, *et seq.*. The Modification is retroactive to March 9, but importantly, it applies only to those deadlines that have expired or will expire while EO 103 is still in effect. It thus does not apply to any remedial deadline that, although undoubtedly impacted by COVID-19, would expire after the state of emergency has been lifted. The Modification can be viewed [here](#).

The specific deadlines that have been extended include:

Mandatory Remediation Timeframes:

- Preliminary assessment and site investigation reports under N.J.A.C. 7:26C-3.3(b)1
- Initial receptor evaluation reports under N.J.A.C. 7:26C-3.3(b)2

- Immediate Environmental Concern Contaminant Source Control Reports under N.J.A.C. 7:26C-3.3(b)3
- Remedial investigations for the delineation of light non-aqueous phase liquid (LNAPL) and related reports under N.J.A.C. 7:26C-3.3(b)4
- Remedial investigations for contaminated sites and related reports under N.J.A.C. 7:26C-3.3(b)5

Expedited Site-Specific Remediation Timeframes:

- NJDEP-established site-specific remediation timeframes for particular sites under N.J.A.C. 7:26C-3.4

Regulatory Timeframes:

- Delineation of LNAPL, initiation of LNAPL interim remediation, and related interim reports under N.J.A.C. 7:26E-1.10(c)
- Final remediation documents required to avoid the performance of a receptor evaluation under N.J.A.C. 7:26E-1.12(b)
- Initial receptor evaluations under N.J.A.C. 7:26E-1.12(c)
- Preliminary assessment and site investigation reports identifying no areas of concern (and thus requiring no further remediation) under N.J.A.C. 7:26E-3.14(a)1
- Preliminary assessment and site investigation reports identifying areas of concern (and thus requiring a remedial investigation) under N.J.A.C. 7:26E-3.14(b)1
- Remedial investigations and remedial investigation reports under N.J.A.C. 7:26E-4.10(a)1, 2, and 3
- Remedial actions and remedial action reports under N.J.A.C. 7:26E-5.8(b)3

- Free product removal, treatment, containment, delineation, and remedial actions (including groundwater remediation) under N.J.A.C. 7:26F-3.2

Regulatory Remedial Action Timeframes:

- Remedial actions and remedial action reports under N.J.A.C. 7:26E-5.8(b)1 for those sites that were subject to the statutory requirements of N.J.S.A. 58:10C-27.a(3) to complete a remedial investigation on or before May 7, 2014
- Remedial actions and remedial action reports under N.J.A.C. 7:26E-5.8(b)2 for those sites that were subject to the statutory requirements of N.J.S.A. 58:10C-27.a(3) and obtained an extension pursuant to N.J.S.A. 58:10C-27.1
- Remedial actions and remedial action reports under N.J.A.C. 7:26E-5.8(b)3 for all other sites not covered by N.J.A.C. 7:26E-5.8(b)1 or 2

Beyond the blanket 90-day extension, regulated entities may request additional extensions, which the NJDEP will consider on a case-by-case basis. The Modification also allows entities to apply for a relaxation of any requirement set forth in ARCCS or the Tech Regs, including those in permits issued

thereunder. To approve such an application, the NJDEP must find that the request is (1) necessary to ensure continued management of remediation and related support services, (2) narrowly tailored to only those modifications necessary to address COVID-19-related circumstances, (3) applied consistently to similarly situated entities, and (4) limited to the effective period of EO 103.

The NJDEP's Temporary Rule Modification thus affords regulated entities a variety of options for addressing remediation obligations that cannot reasonably be met while New Jersey remains in a state of emergency. However, because the Modification offers no relief to entities subject to deadlines that will expire after EO 103 has been lifted, but whose remediation has nonetheless been delayed by COVID-19, those entities (and their licensed site remediation professionals) should instead consider communicating with the NJDEP, detailing their potential delay and the reasons therefor, and requesting a site-specific extension.

To see our prior alerts and other material related to the pandemic, please visit the Coronavirus/COVID-19: Facts, Insights & Resources page of our website by clicking [here](#).

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