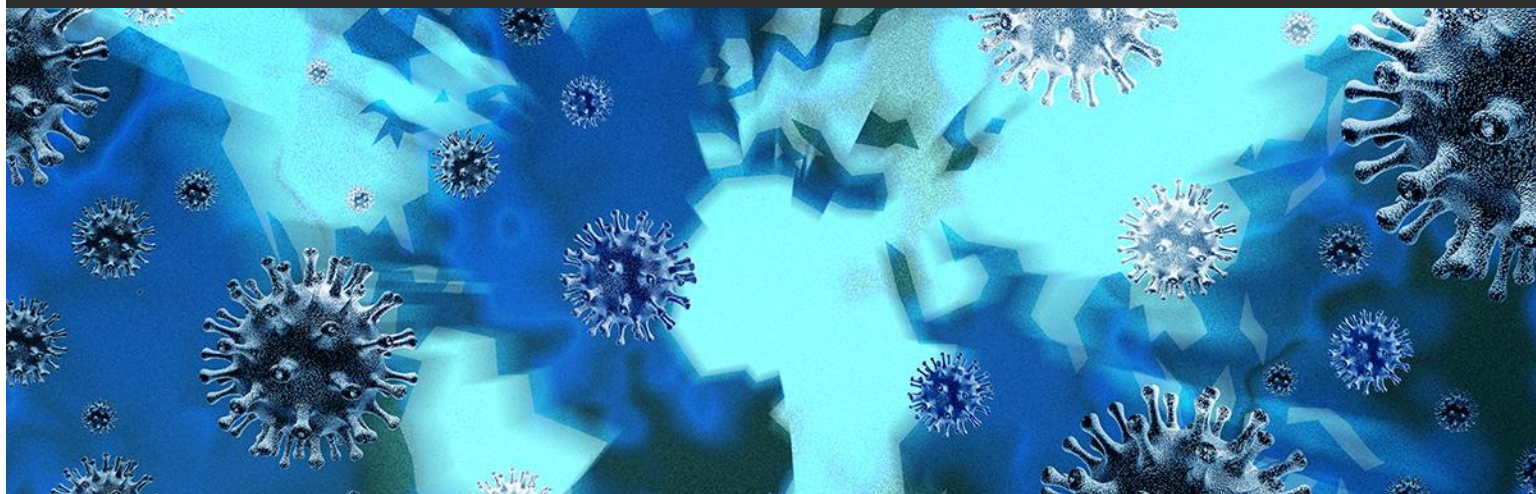


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



March 31, 2020

New York Environmental Regulator Issues Guidance on Essential Construction in Support of Cleanup Activities

The New York State Department of Environmental Conservation (DEC) recently released guidance on what constitutes “essential” construction in support of remedial activities pursuant to Executive Order (EO) [202.6](#) signed by Gov. Cuomo on March 18. EO 202.6 was tightened to limit non-essential construction activities in EO [202.13](#), issued March 29.

Empire State Development (ESD) has published [revised guidance](#) stating that non-essential construction must be shut down, “except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site).” Essential construction “includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters.” Further, “[e]ssential services necessary to maintain the safety, sanitation and essential operations of residences or other businesses including . . . emergency management and response” are considered essential businesses.

DEC announced its own interpretation of the ESD guidance as it pertains to DEC remedial and Brownfield projects on March 30:

- Construction of remedies, implementation of interim remedial measures and the operation and management of remedial systems that have been or are being implemented for the protection of

human health and the environment are considered emergency construction being performed by “essential” businesses.

- Emergency Spill Response is deemed “essential.”
- Emerging contaminant sampling involving private drinking water wells will be evaluated on a case-by-case basis by the DEC Project Manager assigned to the project in consultation with his or her supervisor.
- Investigation work and sampling activities should be postponed.

This guidance, developed by DEC’s Division of Environmental Remediation is helpful for determining when remedial activities may go forward under the more stringent limits on construction activities. In follow-up correspondence, the agency confirmed that a site participating in the Brownfield Cleanup Program (BCP) and currently engaging in remedial measures that also serve to advance project development such as contaminated soil excavation, installation of support for such excavation and related sampling would be deemed “essential” because (i) the work would be “unsafe to allow to remain undone” per ESD guidance and (ii) the remedial construction was determined necessary by DEC when it accepted the site into the BCP and approved the remedial action work plan. The guidance that site investigation activities be postponed will likely delay many Brownfield investigations, although there may be an opportunity to obtain exceptions under ESD’s health and safety exception in cases where the applicant can demonstrate that there is a significant risk to public health and the environment.

Site owners, environmental consultants and contractors should closely track DEC guidance on what constitutes “essential” construction for cleanup activities, and consult DEC representatives if unclear on a particular site. Further, every business is strongly urged by DEC and the state to maintain social distance to the extent possible.

For more information and updates on the developing COVID-19 situation, visit [GT’s Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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