

Environmental Compliance in the Time of COVID-19

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Now that the Gov. Tom Wolf has ordered the closure of non-life-sustaining businesses across Pennsylvania, questions arise as to whether businesses must continue to comply with environmental requirements.

These requirements may be contained in statutes and regulations, permits, Pennsylvania Department of Environmental Protection or U.S. Environmental Protection Agency orders, or binding agreements with these regulatory agencies. There is no question that life-sustaining businesses that remain open must continue to comply with all environmental requirements. The evolving circumstances related to the COVID-19 pandemic has not changed this requirement.

These businesses, however, must be prepared to cope with potential obstacles to compliance. These include planning for various scenarios. For example, permits require that certified operators run sewage treatment and drinking water facilities. Permittees must be prepared to meet this requirement even if their operators are unable to work because of being infected with COVID-19. Operators must also be prepared to address breaks in supply chains for essential chemicals. Planning now can help reduce the potential for future violations.

The thornier question is whether non-life-sustaining businesses that are closed must continue to comply with environmental requirements. DEP has stated that even these facilities must continue to comply with all environmental requirements. The rationale for this position is that such compliance is necessary to protect human health and the environment. Therefore, even businesses that are closed must ensure that they continue their compliance efforts. For example, a construction company that is closing still must stabilize disturbed areas and maintain erosion and sedimentation measures even after closure. It is possible, but not certain, that the DEP may be more forgiving regarding requirements such as routine reporting that is more remotely related to protecting human health and the environment.

It is certainly possible that business closures and other impacts related to the pandemic could impede businesses' ability to comply with schedules included in agreements and orders. Businesses should simply not assume that the DEP will grant extensions, and businesses should be proactive in their communications with the department. If you expect you will not be able to meet a schedule, inform the DEP as soon as possible and request an extension. Do not wait until the last minute.

Circumstances and policies related to addressing this pandemic will continue to evolve. Regulated entities must continue to monitor the situation so as not to face potential compliance orders and penalties. Please [contact me](#) or anyone in our [Environment & Energy Practice Group](#) with any questions you may have regarding environmental compliance.

Disclaimer: As we face an unprecedented time of legal and business uncertainty, we are working to provide updates on the status of important legal news related to COVID-19. It is important to note that the situation is changing rapidly and the information provided in our alerts is not intended to create an attorney-client relationship. The information contained in our alerts is for general informational purposes only and should not be construed as legal advice or a substitute for legal counsel. If you have questions about your legal situation or about how to apply information contained in this alert to your situation or about how any other information found on our website may affect your business, you should reach out to one of our attorneys. We assume no responsibility for the accuracy or timeliness of any information provided herein or by any linked site. As information changes rapidly, users are strongly advised to verify any information before relying upon it.

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