



Compliance Alert

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION
Compliance & Enforcement #2020-08 Issued: 4/21/2020

COVID-19 ALERT

ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT DURING COVID-19 PUBLIC HEALTH EMERGENCY

WHO IS AFFECTED BY THIS ADVISORY?

This advisory is directed to any person or entity regulated by the Department of Environmental Protection (DEP) who believes that their ability to comply with any environmental law, rule, regulation, permit or approval administered by the DEP may be constrained by circumstances related to the Public Health Emergency declared by Governor Phil Murphy due to the novel coronavirus (COVID-19) pandemic.

WHY IS DEP ADDRESSING THESE ISSUES?

Throughout this Public Health Emergency, DEP remains committed to its mission of protecting public health, safety and the environment, including efforts to ensure that all regulated entities maintain compliance with New Jersey's environmental laws. The DEP also recognizes that the unique circumstances of the pandemic and resulting restrictions at times may create limitations for some regulated entities. For example, some entities may experience workforce constraints or logistical challenges due to COVID-19, including supply chain or procurement disruptions that may be beyond any one entity's control. In some of these circumstances, regulatory flexibility may be necessary to enable a continuity of operations while also ensuring compliance continues in a manner that protects public health, safety, and the environment. Consistent with DEP's existing enforcement policy and practice, the DEP may exercise discretion on a situational basis where it determines that an alternative, case-specific compliance pathway will maintain protections for public health, safety and the environment.

The DEP will continue to publish guidance, make enforcement staff available to provide compliance assistance, and continue to respond to incidents that may pose a threat to public health, safety or the environment during this Public Health Emergency. Any regulatory flexibility afforded by the DEP will be of limited duration, intended solely to address circumstances created by or directly related to the COVID-19 pandemic, and narrowly tailored to ensure the continued protection of public health, safety and the environment.

WHAT IS DEP DOING?

The DEP is conducting a continuing assessment of each of its programs to determine where temporary regulatory adjustments may be necessary and will continue to maintain an open line of communication with all regulated entities that may face limitations created by or directly related to the COVID-19 pandemic to ensure issues are identified and expeditiously resolved in a manner that protects public health, safety and the environment. Unless specifically approved or directed by the DEP in writing, regulated entities shall continue to act in accordance with all statutory, regulatory and permit requirements.

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All published guidance will be made publicly available on DEP's COVID-19 Information website at <https://nj.gov/dep/covid19regulatorycompliance/>. Information will also be distributed via relevant listservs, through Compliance Alerts and from program area websites available from the DEP home page: <https://nj.gov/dep/>.

Consistent with existing policy and practice, the DEP will continue to respond to incidents that pose a threat to public health and the environment for the duration of the COVID-19 pandemic, while also providing routine compliance assistance to the regulated community. While DEP may prioritize actions as the circumstances of COVID-19 demand, DEP will continue to take necessary and appropriate enforcement actions to protect New Jersey's water, air, land, and natural and historic resources, including pursuing ongoing enforcement actions and matters. Nothing within this advisory relieves any entity from existing legal obligations to prevent, respond to, or report any releases of pollutants, nor should it be interpreted as an indication that the DEP will not require full compliance with all applicable statutory or regulatory standards intended to protect public health, safety and the environment.

WHAT SHOULD I DO?

1. **Requests for Guidance:** Requests for program specific guidance should be sent via email to your relevant DEP program contact with a copy to covid19help@dep.nj.gov. The DEP will review all requests on a case-by-case basis. Unless specifically approved or directed by the DEP in writing, regulated entities and individuals shall continue to act in accordance with all statutory, regulatory and permit requirements.

2. **Notification Requirements:**

All regulated entities and individuals must make every effort to comply with all applicable statutory, regulatory and permit obligations.

Where compliance is at risk due to circumstances created by or directly related to the COVID-19 pandemic, you must contact the DEP immediately as indicated below.

The DEP will notify the appropriate municipal or county authority of any acute threat and the actions taken in response to the non-compliance will be considered public information.

All regulated entities and individuals are also required to continue to notify the DEP Hotline when operational status requires such notification pursuant to statute, regulation, permit or approval.

3. **Compliance & Enforcement Requirements:**

a. In the event that non-compliance cannot be avoided due to the Public Health Emergency created by COVID-19, **notification is required within two (2) business days of discovery through the DEP Hotline at 1-877- WARN DEP (1-877-927-6337)**, unless shorter time frames are required by statute, regulation or permit.

b. Where compliance can be reestablished within seven (7) days, following disclosure to the DEP Hotline, entities must contact both covid19help@dep.nj.gov and their program specific regional enforcement office, in writing, within fourteen (14) days of notification and provide the following:



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- i. Date of non-compliance discovery and duration of non-compliance;
 - ii. A description of the decisions and corrective actions taken to regain compliance;
 - iii. A description of how the cause of non-compliance was created by or is directly related to the COVID-19 pandemic; and
- c. Where compliance cannot be achieved within seven (7) days, entities are to contact both covid19help@dep.nj.gov and their program specific regional enforcement office immediately after disclosure to the DEP Hotline to develop appropriate methods to achieve compliance as quickly as possible, which shall be detailed in a compliance plan to be approved by the DEP in writing.

4. Effect of Disclosure & Timely Compliance:

Regulated entities and individuals who discover, disclose within two days of discovery as specified above, and expeditiously correct and take steps to prevent recurrence of further violations may be eligible for a reduction of any civil administrative penalties that may apply.

5. Effect on Existing Compliance & Enforcement Actions:

All regulated entities that anticipate missing enforceable milestones set forth in any enforcement document, including any Administrative Consent Order or other enforceable document, should utilize the notice procedures set forth in the agreement, including notification of a force majeure, as applicable.

6. Minimize Physical Contact and Facilitate Social Distancing:

According to the United States Centers for Disease Control and Prevention (CDC), transmission of coronavirus in general occurs much more commonly through respiratory droplets. However, CDC also notes that current evidence suggests that novel coronavirus may remain viable for hours to days on surfaces made from a variety of materials. Accordingly, in an abundance of caution, the DEP is allowing paperwork and other submissions required pursuant to permits, approvals or general rules to be maintained and managed in a manner that minimizes physical contact and facilitates social distancing, including through electronic submissions or remote meetings. Please refer to program-specific guidance available at <https://nj.gov/dep/covid19regulatorycompliance/>. Notification of certain process change may be necessary and should be provided to DEP pursuant to [Enforcement Alert 2020-04](#).

WHERE CAN I GET MORE INFORMATION?

For guidance specifically for COVID-19 regulated activities, please refer to DEP's COVID-19 Information website at <https://nj.gov/dep/covid19regulatorycompliance/>

For guidance specifically related to notification requirements please refer to <https://www.nj.gov/dep/enforcement/advisories/2020-04.pdf>.

Contact the appropriate DEP Compliance and Enforcement offices listed at the following address: <https://www.nj.gov/dep/easyaccess/compenf.htm>



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For additional information for contact information at NJDEP, visit:

<https://www.nj.gov/cgi-bin/dep/contactdep.pl>

To comment on this advisory, visit:

<https://www.nj.gov/dep/enforcement/survey.html>

A complete list of Compliance & Enforcement Advisories is available at:

<https://www.nj.gov/dep/enforcement/advisories-date.html>

For additional information about the State of New Jersey's response to the novel coronavirus, please visit the COVID-19 Information Hub at [covid19.nj.gov](https://www.nj.gov/covid19).

This advisory is intended to be a summary explanation of a DEP initiative. It does not include all potentially applicable requirements. If you have any questions related to compliance with this initiative, please contact the Enforcement number listed above.

