

NJDEP Announces Further Extension of Certain Remediation Timeframes Amidst Lingering Public Health Emergency

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February 17, 2021

On February 1, 2021, the New Jersey Department of Environmental Protection (NJDEP) extended the deadlines, known as timeframes, for the completion of certain milestones in the New Jersey site remediation process. The extensions, made in response to the ongoing COVID-19 public health emergency, were accomplished by a Notice of Rule Waiver/Modification/Suspension issued pursuant to the emergency authority granted NJDEP under Governor Phil Murphy's March 9, 2020 Executive Order 103 (EO 103). This action marks the third time NJDEP has issued timeframe extensions since the start of the pandemic – prior extensions for a combined total of 270 days were issued on April 24, 2020 and August 17, 2020.

NJDEP's latest timeframe extensions are very complex and must be reviewed closely before being relied upon. It should be noted that only the nineteen timeframes listed in the notice are granted an extension, and also that there are two types of extensions.

For sixteen timeframes, the deadlines are now extended by a total of 455 days, which includes the 270-day extension under the April and August 2020 notices, provided that the current timeframe ends during the public health emergency established under EO 103. Although Governor Murphy has subsequently extended the public health emergency on a month-to-month basis, it is hard to predict when he will allow it to expire.

A timeframe that comes due after the public health emergency ends will not qualify for the 455-day extension. This creates significant uncertainty for persons managing certain remediation sites. If it appears as if the public health emergency might end too early to qualify for the 455-day extension, but an extension is nonetheless needed for valid pandemic-related reasons, it may be prudent to ask NJDEP in advance for a case-by-case extension in case it turns out that the 455-day extension does not apply.

The remaining three timeframes are regulatory deadlines for the completion of remedial action and submission of a remedial action report. These timeframes are simply extended from May 6, 2021 to May 6, 2022. The 455-day extension does not apply in these instances.

It should further be noted that the extensions apply even when the timeframes are set forth in an administrative consent order (ACO). To qualify for any of the extensions authorized by the February 1, 2021 Notice, the party responsible for the remediation must have retained a Licensed Site Remediation

Professional (LSRP). No timeframe involving the mitigation of immediate impacts to human receptors has been extended.

Please contact the author of this Alert, **Daniel Flynn** dflynn@greenbaumlaw.com | 732.476.2678 with any questions. Mr. Flynn is a member of the firm's Environmental Department.

RECOMMENDED

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May 6, 2020

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May 1, 2020

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