Governor Murphy and DEP Provide Temporary COVID-19-Related Extensions for Environmental Regulatory Deadlines

Client Alert

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New Jersey Governor Phil Murphy and Catherine McCabe, Commissioner of the New Jersey Department of Environmental Protection (DEP), have taken recent actions to extend several important environmental regulatory deadlines due to the COVID-19 pandemic.

Governor Murphy originally declared a state of emergency on March 9, 2020 with Executive Order 103 (EO 103) - he extended the emergency declaration for additional 30-day periods on April 7 and again on May 6. The state of emergency will expire on June 5, 2020 unless further extended by the Governor.

Executive Order 136

On May 2, 2020, Governor Murphy signed Executive Order 136 (EO 136), extending the following environmental regulatory deadlines:

Nature of extension	Environmental Regulatory Provisions Affected
The time periods allowed for DEP action on these matters will be suspended during the EO 103 state of emergency and will resume once it has ended.	All timeframes governing DEP action on public notice, review, or final action on applications for, or renewals of permits, registrations, plans, petitions, licenses, rates, and other approvals under the following statutes administered by DEP: N.J.S.A. 13:1D-32 (DEP construction permits), N.J.S.A. 13:19-8 (determining completeness of Coastal Area Review Act construction permit applications), N.J.S.A. 48:3-7 (proposed solid waste utility sales, leases, mergers or other similar transactions), and N.J.S.A. 58:16A-67 (notices to undertake certain stream cleaning activities).

This deadline is extended for 60 days plus the number of days that the EO 103 state of emergency lasts.	The April 20, 2020 registration deadline for a business to engage in soil and fill recycling services, DEP's time to review and issue such registration, the deadline after which a business may not engage in soil and fill recycling services without a valid registration, and the timeframe for a registrant to submit an administratively complete license application to the Attorney General.
60 days	July 1, 2020 deadline for municipalities' submission of yearly recycling tonnage report to DEP.
60 days	August 1, 2020 deadline for submission of semiannual report to DEP by recyclers, manufacturers, collection locations and local government units that collect electronic devices.
The length of an extension for these items is to be determined by Administrative Order to be issued by DEP Commissioner	Regulatory timeframes to accept public comment on applications for or renewals of permits, registrations, plans or other approvals

EO 136 also provides the following additional instructions for DEP:

- DEP may establish earlier deadlines for review and decisions on specific permit applications if the earlier deadlines are in the public interest and appropriate public notice is given.
- DEP must expedite, to the extent practicable and in accordance with the CDC guidelines, the review of any applications it deems necessary for the protection of public health, safety, and environment, or that are otherwise related to the federal or state response to the COVID-19 pandemic.
- DEP shall continue to review all applications within applicable timeframes to the maximum extent practicable and as necessary to satisfy its obligations of state implementation of a federal program pursuant to federal law.

DEP Temporary Rule Modification

EO 136 was preceded by a Temporary Rule Modification (TRM) issued on April 24, 2020 by DEP Commissioner McCabe. The TRM grants a 90-day extension for nineteen remediation-related deadlines, also known as "remediation timeframes," even if they are also set forth in an administrative consent order (ACO). Examples of these remediation timeframes include the deadlines for submission of preliminary investigation and site remediation reports and completion of the remedial action.

The automatic 90-day extension only applies if the deadline occurs during the state of emergency declared by EO 103. If one of the listed regulatory deadlines occurs on the day after the EO 103 state of emergency ends, the 90-day extension would not apply. As the state of emergency can only be extended for 30 days at a time, it is difficult to predict how many additional extensions will be ordered. This creates uncertainty on whether the automatic

extension can be relied upon for remediation deadlines occurring later in June.

Fortunately, the TRM also provides that, in addition to the 90-day automatic extensions, requests may be made to DEP for further extensions of these nineteen remediation timeframes or other remediation timeframes that would be granted, if at all, on a discretionary, site-specific basis. DEP may also waive, suspend, modify, or relax any other provision of the New Jersey Administrative Requirements for the Remediation of Contaminated Sites (ARRCS) on a case-by-case, site-specific basis provided it finds that such action is:

- Necessary to ensure the continued management of remediation activities and the services that support the same;
- Narrowly tailored to include only those regulatory modifications necessary to address circumstances created by or directly related to the COVID-19 pandemic;
- Applied consistently to similarly situated entities and individuals; and
- Limited to the period in which EO 103 is in effect.

A failure to comply with the remediation timeframes would trigger a requirement that the remediation be put under "direct oversight" by DEP. A person responsible for conducting a remediation that is under direct oversight is subject to substantially increased costs and less flexibility for choosing the remedy to be implemented.

If there is uncertainty about whether the EO 103 state of emergency will last long enough to qualify for the automatic 90-day extension, anyone who is in danger of missing an upcoming remediation timeframe due to the disruption of the COVID-19 pandemic should consider contacting DEP expeditiously to discuss eligibility for a site-specific extension of the remediation timeframe.