

Executive Order 103 (2020) - Timeframe extension information (May 21, 2021)

Subject: Future actions regarding Notice of Rule Waiver/Modification/Suspension - extension of certain timeframes for remediation activities

By way of Executive Order No. 103, dated March 9, 2020 (EO 103), Governor Murphy declared that a Public Health Emergency and State of Emergency exists as a result of the Coronavirus 2019 (COVID-19) pandemic (see nj.gov/infobank/eo/056murphy/pdf/EO-103.pdf). EO 103 allows for the waiver of certain provisions of the Department of Environmental Protection's (Department) rules. The Site Remediation & Waste Management Program (SRWMP) applied this waiver to certain remediation timeframe requirements promulgated in the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS), N.J.A.C. 7:26C, and the Technical Requirements for Site Remediation (Technical Requirements), N.J.A.C. 7:26E. Three Notices of Rule Waiver/Modification/Suspension (Notice) were issued related to SRWMP rules:

1. April 24, 2020 (www.nj.gov/dep/covid19regulatorycompliance/docs/srp-remedial-timeframes20200424.pdf);
2. August 17, 2020 (www.nj.gov/dep/covid19regulatorycompliance/docs/srp-remedial-timeframes-20200817.pdf); and
3. February 1, 2021 (www.nj.gov/dep/covid19regulatorycompliance/docs/srp-remedial-timeframes-20210201.pdf).

Based on the February 1, 2021 Notice, remediation timeframes are extended only if an LSRP was retained, pursuant to N.J.A.C. 7:26C-2.3, by March 18, 2021 as follows:

- For remediations that **were not** subject to the statutory timeframes set forth in the Site Remediation Reform Act (SRRRA) at N.J.S.A. 58:10C-27 and 27.1 to complete the remedial investigation by either May 7, 2014 or May 7, 2016, this third Notice further extends certain remediation timeframes that are due provided EO-103 is still in effect, including those in ACOs, a total of 455 days, inclusive of the prior 270-day extension allowed by the August 17, 2020 Notice. The February 1, 2021 Notice also extends all subsequent case specific timeframes listed in the Notice.
- For remediations that **were** subject to the statutory timeframes set forth in the SRRRA at N.J.S.A. 58:10C-27 and 27.1 to complete the remedial investigation by either May 7, 2014 or May 7, 2016, including where the timeframes are set forth in an ACO, this third Notice extends the timeframe to complete the remedial action from May 6, 2021 to May 6, 2022.

Subsequent to issuing the February 1, 2021 Notice, the Department recognized that certain timeframes were omitted. The Department issued a listserv on February 18, 2021 (www.nj.gov/dep/srp/srra/listserv_archives/2021/20210218_srra.html), addressing "soil-only" cases subject to the statutory requirement to complete the remedial investigation by May 7, 2014 (and that did not obtain the statutory extension to complete the remedial investigation by May 7, 2016). The listserv stated that the LSRP retained by the person responsible for conducting the remediation of such a "soil-only" case may submit a mandatory timeframe extension request to the Department by May 1, 2021 and the Department will approve a 1-year extension of the February 6, 2021 mandatory timeframe to February 6, 2022.

Three additional omissions are noted. Generally, the timeframes pertain to (a) completion of site investigation for regulated underground storage tanks; (b) completion of remedial investigation for certain remediations subject to an ACO; and (c) completion of remedial action for certain remediations subject to an ACO. Additional information regarding these omissions and means available to the person responsible for conducting the remediation to obtain extensions to effected timeframes are detailed on the Department's web page at www.nj.gov/dep/srp/executive_order/extension_information.html.

It should be noted that, at this time, the Department does not foresee granting an additional rule waiver/modification/suspension. The February 1, 2021 Notice extended timeframes sufficiently such that remediations can be completed within the newly established timeframes for submissions required pursuant to ARRCs and Technical Requirements. Furthermore, environmental service providers, including LSRPs, who perform critical functions that support public health and safety were able to continue operations following guidance outlined by EO 107 (see <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf>) during the public health emergency. If additional time is required to complete a remedial phase, remediating parties can submit a site-specific extension request pursuant to N.J.A.C. 7:26C-3 without the need of future Notices.

For extended regulatory and mandatory timeframes that will be coming due between June 7, 2021 (455 days from signing of EO 103) and August 16, 2021, inclusive, the Department will allow for submittal of extension requests as follows. The person responsible for conducting the remediation will be given until August 16, 2021 to submit a timeframe extension request (whether for a regulatory timeframe or mandatory timeframe). Extension requests submitted for submittal of such documents after August 16, 2021 will not be approved.

For timeframes on or after August 17, 2021, the person responsible for conducting the remediation is required to submit timeframe extension requests a minimum of either 30 (regulatory) or 60 (mandatory) days prior to the timeframe and pursuant to ARRCs, N.J.A.C. 7:26C-3.2(b) and N.J.A.C. 7:26C-3.5(d), respectively. Note that the description of the cause or causes of the need for the extension should not be limited to simply stating "because of COVID." The three Notices, as well as EO 107, allowed for persons responsible for remediation to continue with remedial activities during this public emergency, and therefore other substantive causes need to be stated.

For timeframes due between March 9, 2020 and January 31, 2021, inclusive, if the person responsible for conducting the remediation did not retain an LSRP by March 18, 2021 (45 days after issuance of the February 1, 2021 Notice), then the timeframe is extended 270 days in accordance with the August 17, 2020 Notice.

However, in accordance with the February 1, 2021 Notice, **for timeframes due on or after February 1, 2021**, if the person responsible for conducting the remediation did not retain an LSRP by March 18, 2021 (45 days after issuance of the February 1, 2021 Notice), then the timeframe will not be extended any number of days.

Lastly, be advised that if EO 103 is rescinded, the Department will issue additional guidance detailing whether and how extension requests may be submitted to the Department for timeframes due immediately after the EO is rescinded.