

Addressing Environmental Law Compliance in Restarting Your Business

Barnes & Thornburg recognizes that the COVID-19 pandemic has affected our clients in a wide variety of ways – including with respect to their environmental compliance procedures, remediation projects, and adherence to reporting requirements and deadlines.

States are beginning the “reopening” process on a limited basis, with more activity expected in the coming weeks. Barnes & Thornburg’s Environmental Law team has been keeping abreast of policies and guidance from state and federal regulatory agencies, advising clients on best practices during this unprecedented time, and analyzing issues that may arise when restarting operations.

As you prepare to restart your business, let us help you facilitate a smooth transition and advise you on compliance with environmental laws and agency policy.

The following are some issues to consider in consultation with environmental counsel.

Environmental Considerations Checklist

REPORTING REQUIREMENTS

- Identify reports required to have been submitted during shutdown
 - Were they submitted?
 - Were they submitted in a non-traditional way or through alternative channels?
 - Provide agencies all reports/data that had been deferred due to COVID-19 issues
- Evaluate duration of agency enforcement discretion policies for COVID-related non-compliance
- Document reasons why reports were delayed or not submitted and any actions taken to remedy
- Review agency policies regarding submission of follow-up copies of electronically submitted reports; some may still require hard copies
- Review any applicable defenses for late reports

COMMUNICATIONS WITH REGULATORY AGENCIES

- Inform agencies (as applicable) of resumption of any activities previously suspended due to COVID-19 issues or significant compliance concerns arising from restarting operations
- Work with agencies to agree on updated schedule for performance of any activities required by permits, orders, or decrees that had been suspended or postponed due to COVID-19 issues
- Review relevant regulatory deadlines to evaluate whether they have been delayed or remain unchanged (confer with agencies if any ambiguity)
- Plan to pay any stipulated penalties whose collection was deferred due to COVID-19 issues

OPERATIONS

- Evaluate Standard Operating Procedures regarding environmental activities and update to incorporate ongoing COVID-19 safeguards (as applicable)
- Determine whether any required trainings, certifications, or licenses were missed or lapsed during closure and make plans to obtain required approvals (many agencies have policies related to these potential occurrences)
- Review and compile documentation for any COVID-related non-compliance and make arrangements to maintain this information
- Coordinate environmental compliance with OSHA compliance efforts and other health/safety plans
 - Proper disposal of PPE, COVID-19 testing materials, and other biohazards
 - Backup plan if key environmental compliance personnel become ill
 - Cross-training EHS and other personnel
- Create environmental compliance contingency plans for another full or partial shutdown
- Review EPA and CDC guidance regarding restoring water quality in buildings and water systems that have had low or no use during the shutdown; guidance is also provided concerning other water-related issues such as minimizing mold risk during and after a prolonged shutdown

Learn More

A number of these issues require careful consideration of legal implications. We stand ready to assist you as you navigate these uncharted waters.

Visit our [Barnes & Thornburg COVID-19 Resources](#) page for more insights about COVID-19.

This checklist may not be all-inclusive.