

Practice Update

State of Conducting Environmental Cleanup and Other Environmental Services in Florida Under COVID-19 Orders

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As a result of the COVID-19 pandemic, Florida Governor Ron DeSantis issued Executive Order 20-91 (EO 20-91) on April 1, 2020, requiring that “all persons in Florida... limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.” EO 20-91 was effective on April 3, 2020 and expires on April 30, 2020, unless it is extended by subsequent executive order.

The Governor’s executive orders raise the fundamental question whether environmental assessment and cleanup work in Florida -- and other environmental services -- are authorized essential services or essential activities. Overall, while there is some ambiguity, it appears that there is a strong argument that they are permissible, particularly if they are performed in support of an otherwise essential activity (see below), flow from a government contract, or are conducted at or in connection with an open construction site. At the same time, the scope of permissible environmental work in Florida could potentially benefit from further clarification from policymakers. Even during the performance of permissible environmental

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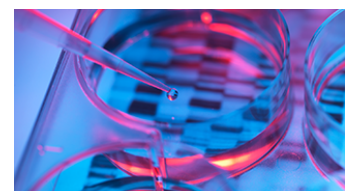
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work, environmental professionals and staff in Florida should follow relevant social distancing and other COVID-19 protective measures as set forth in any statewide or additional local requirements.

EO 20-91 specifies certain essential services and essential activities. Under EO 20-91, essential services are deemed to be those (1) described in the “Guidance on the Essential Critical Infrastructure Workforce” published by U.S. Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (CISA), and (2) set forth in Miami-Dade County Emergency Order 07-20 (as amended). The State of Florida also maintains an online list of approved essential services and essential activities at www.floridadisaster.org. Governor DeSantis subsequently issued Executive Order 20-92 (EO 20-92) reaffirming EO 20-91 and clarifying that it supersedes “any conflicting official action or order issued by local officials.”

The following services are deemed permissible essential services that may be performed, and depending on the relevant circumstances, may include environmental assessment or cleanup work or the performance of other environmental services:

Hazardous Materials

- “Workers who support hazardous materials response and cleanup.”

Waste Management Services

- “Waste management services, including collection and disposal of waste.”

Open Construction Sites

- “Open construction sites, irrespective of the type of building.”

Engineering Services

- “Architectural, engineering, or land surveying services.”

Businesses Supporting Essential Businesses

- “Businesses that supply other essential businesses with the support... necessary to operate, and which do not interact with the general public.”

Government Contract Work

- “Businesses providing services to any local, state, or Federal government, including municipalities, pursuant to a contract with such government.”

Public Works and Infrastructure Support Services

- “Workers who support... construction of critical or strategic infrastructure.”
- “Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste, including landfill operations.”

Residential/Shelter Facilities and Services

- “Workers supporting the construction of housing, including those supporting government functions related to the building and development process.”

Information Technology

- “[W]orkers supporting the... construction of essential global, national and local infrastructure for computing services... business infrastructure, financial transactions/services, web-based services, and critical manufacturing.”

Energy

- “Workers... who are needed to... engineer, and maintain the... environmental health... of the

energy system.”

- “Providing services related to energy sector fuels... supporting the... construction... waste disposal and storage, and monitoring of support for resources.”
- “Workers supporting the energy sector through renewable energy infrastructure... including those supporting construction.”
- “Environmental remediation/monitoring, limited to immediate critical needs technicians.”

Electricity Industry

- “Workers at renewable energy infrastructure... including those supporting construction.”
- “Environmental remediation/monitoring workers limited to immediate critical needs technicians.”

Petroleum Industry

- “Supporting new and existing construction projects, including, but not limited to, pipeline construction.”
- “[W]aste disposal, and maintenance, construction, and operations.”

Other Community- or Governmental-Based Operations

- “Workers supporting essential... construction for essential products, services, and supply chain and COVID 19 relief efforts.”

There are various bases above that could reasonably be evaluated and used to support conducting performing environmental assessment, cleanup, or other environmental services during the term of EO 20-91. Some grounds are broad, such as allowing workers to continue to remove hazardous materials, authorizing continued construction at open sites, permitting the continued disposal of waste generally, allowing businesses to operate in support of

essential businesses, and permitting government contracts to be fulfilled. Engineering services also are permitted and certain environmental work may fall within such authorized engineering services. Other essential services are more sector-specific and those provisions should be reviewed if industry-specific activity is at issue — there may be a nexus between the authorized sector-specific activity, such as construction, and related environmental assessment or cleanup.

Local government orders

Even if certain environmental assessment and cleanup and other environmental services in Florida may be permitted by the state executive orders, local orders and requirements must also be considered. Local governments may be more restrictive than the limitations contained in EO 20-91 and EO 20-92, as long as such restrictions do not conflict with the executive orders.

Many local governments, including municipalities such as the City of Miami Beach and the City of Fort Lauderdale, have imposed a series of additional workplace safety and social distancing measures -- in addition to the essential services and activities restrictions. These additional measures include required on-site social distancing, face coverings by employees and visitors, and other specific cleaning and screening standards. Failure to comply with any applicable order, either statewide or local, can result in work stoppages, daily fines, or criminal penalties. For environmental services being performed in accordance with these emergency orders, it is especially important to review any applicable county or municipal orders that may place additional restrictions or on-site requirements in addition to EO 20-91 and EO 20-92.

For more information regarding state and local COVID-19-based restrictions and their implications in Florida, Akerman's environmental team is available to assist.

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