

COVID-19

# Updates & News

## **CONSTRUCTION IS “ESSENTIAL” WORK, BUT PROCEED WITH CAUTION**

On March 17, Pennsylvania began the 14-day shutdown of non-essential businesses across the state to help mitigate the spread of COVID-19. Pennsylvania defines “construction” as an “essential business” and does not necessitate a shutdown of construction projects or businesses. Construction work in Pennsylvania is still permissible, but that is not the case everywhere. In Boston, Mayor Marty Walsh has ordered all construction projects across the city to be halted due to the COVID-19 outbreak. This was the first stop order by a government official. No such order has been made in Pennsylvania yet. Although not required by Governor Wolf, PennDOT and the Turnpike Commission elected to suspend road and bridge construction in Pennsylvania for the next two weeks. The Wolf Administration has encouraged essential businesses that do not shutdown to practice social distancing and “to act now before the governor or the Secretary of Health finds it necessary to compel closures under the law for the interest of public health, including section 7301 of the Emergency Management Services Code.”

Construction companies that remain open for business should be mindful to mitigate the impact of COVID-19 by taking proactive steps to keep the jobsite operational. Among other recommendations, the CDC urges businesses to prohibit groups of over 10 people from gathering, increase hand hygiene, and provide routine environmental cleaning. On an ongoing project, group meetings may need to be held over videoconferencing or provide information electronically to workers. Employees should have easy access to wash or sanitize their hands. They should not share tools with one another. Mitigating the impact of COVID-19 includes routine cleaning throughout the site, which should prioritize common areas. Without a vaccine for COVID-19, the best way to prevent sickness is to avoid exposure to it.

Companies should also note that as projects continue across the Commonwealth, the pressure to shutdown construction projects mounts. For example, the Shell cracker plant about 25 miles outside of Pittsburgh has received public and media attention for continued operations. The plant has around 8,000 workers on site in Beaver County, Pennsylvania. Shell is constructing a multi-billion-dollar, 368-acre Petrochemicals Complex that will process ethane from shale gas. Construction on the plant began in November 2017 and is currently expected to be completed sometime this year.

For the last few days, workers and local residents have circulated a petition demanding construction on the Shell plant to stop due to COVID-19.

In its initial response, a Shell spokesman addressed concerns regarding workplace safety. Shell confirmed changes to the way the Beaver Shell plant will operate in the wake of the quickly spreading virus such as the overcrowded buses that transport workers to the site, mandatory group meetings, and the sanitary conditions on site. Shell is obtaining more buses so workers can distance themselves from their colleagues, there will be regular cleaning of common areas, including the buses, and group meetings will be immediately suspended. Additionally, Shell has placed hand-sanitizer dispensers across the worksite.

Even with new social distancing procedures and additional sanitary measures, the media attention and pressure from public officials has continued prompting Shell to indicate that it would “reevaluate work” at the plant. However, after continued pressure, Shell announced that it would temporarily suspend construction. This change comes after the public petition and Beaver County Officials calling on Shell to stop construction.

Decisions across the state remain up to the owners and contractors. Yet, pressure from the public, particularly on large-scale projects, can be influential and should be considered.

A project shutdown could be an event of force majeure, constitute a “suspension for convenience” or governmental action, which could entitle a contractor to additional time and money to complete the project.

It is important to consider the impact of COVID-19 and navigate the appropriate response for the project.

If you have a question about this or any business matter, please contact Aubrey Hiskey of DFL Legal at [ahiskey@dflegal.com](mailto:ahiskey@dflegal.com) or (412) 926-1825.

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