

How “Stay at Home” Orders are Impacting the Waste Industry Across the Country

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In a matter of days, Americans have been asked to stay home as states across the country issue orders requiring non-essential businesses to cease operations. Given the essential public health role of the waste and recycling industries, however, these industries must continue service. This alert explores how the Department of Homeland Security and most states that have issued “stay at home” orders recognize the waste industry as an essential service, allowing the industry to continue operating during these unprecedented times.

Waste Industry Deemed “Essential Critical Infrastructure” by Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency

The Department of Homeland Security’s Cybersecurity and Infrastructure Security Agency (“CISA”) has recognized solid and hazardous waste collection workers and wastewater treatment workers as part of the Essential Critical Infrastructure Workforce. This classification identifies workers who conduct operations and services that are essential to continued critical infrastructure and it is intended to help state and local officials as they contemplate how to protect their communities from COVID-19. CISA listed the following waste industry personnel as critical infrastructure workers:

Transportation and Logistics

- Truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services.

Hazardous Materials

- Workers at nuclear facilities, workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits;
- Workers who support hazardous materials response and cleanup; and
- Workers who maintain digital systems infrastructure supporting hazardous materials management operations.

Water and Wastewater

- Employees needed to operate and maintain drinking water and wastewater/drainage infrastructure, including:
 - Operational staff at water authorities;
 - Operational staff at community water systems;
 - Operational staff at wastewater treatment facilities;
 - Workers repairing water and wastewater conveyances and performing required sampling or monitoring;
 - Operational staff for water distribution and testing;
 - Operational staff at wastewater collection facilities;
 - Operational staff and technical support for SCADA Control

systems;

- Chemical suppliers for wastewater and personnel protection; and
- Workers that maintain digital systems infrastructure supporting water and wastewater operations.

Public Works

- Support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste.

These classifications provide a significant benefit to the waste industry. While state, local, tribal, and territorial governments are ultimately in charge of implementing response activities in their communities, states across the nation are looking to CISA's guidance to determine which businesses and employees to deem essential. As illustrated below, 16 out of 22 states that have issued "stay at home" orders follow the CISA guidance.

How the Current "Stay at Home" Orders Impact the Waste Industry by State

California

[California's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect.

Colorado

[Colorado's Stay at Home Order](#) permits critical businesses to continue operating while the Order is in effect. The Order directs the executive director of the Colorado Department of Public Health and Environment ("CDPHE") to issue a public health order identifying those critical businesses. CDPHE [identified](#) the following as critical businesses: (1) public water and wastewater; (2) trash, compost, and recycling collection, processing and disposal; (3) firms and professionals for who provide services necessary to maintain the safety, sanitation, and critical operation of residences and other Critical Businesses or Critical Government Functions, and other essential services; (4) disinfection; (5) treatment plants; and (6) hazardous material safety.

Connecticut

[Connecticut's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also directed the Department of Economic and Community Development ("DECD") to issue guidance about which additional businesses are essential. The DECD identified "water and wastewater operations, systems, and businesses" and "trash and recycling collection, hauling, and processing" as essential businesses.

Delaware

Delaware's [fourth](#) and [fifth](#) modifications to its state of emergency declaration closed all non-essential businesses and ordered Delaware residents to stay at home. The fourth modification permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The state also published an independent [list of essential and non-essential businesses](#). This list states that following businesses are essential: (1) waste collection; (2) waste treatment and disposal; and (3) remediation and other waste management services.

Hawaii

[Hawaii's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also specifically provides that "manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pickup and disposal" are essential businesses.

Idaho

[Idaho's Stay at Home Order](#) permits essential businesses and essential infrastructure to continue operating while the Order is in effect. The Order provides that "solid waste collection and removal" is essential infrastructure. The Order further identifies "service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences" as an essential business. The Order also incorporates by reference the guidance issued by CISA.

Illinois

[Illinois' Stay at Home Order](#) permits essential infrastructure or essential businesses to continue operating while the Order is in effect. The Order defines "solid waste and recycling collection and removal" as essential infrastructure. The Order also provides that the following are essential businesses: (1) service providers who provide services that are necessary to maintaining sanitation; and (2) "manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pickup and disposal." The definition of essential businesses also encompasses workers identified in the critical infrastructure sectors, as outlined by CISA.

Indiana

[Indiana's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also specifically provides that essential infrastructure or essential businesses may continue operating while the Order is in effect. The Order defines "solid waste and recycling collection and removal" as essential infrastructure. The Order also states that the following are essential businesses: (1) "manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pickup and disposal"; and (2) service providers who provide services that are necessary to maintaining sanitation.

Louisiana

[Louisiana's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect.

Massachusetts

[Massachusetts' Stay at Home Order](#) permits [essential services](#) to continue operating while the Order is in effect. The Order lists the critical infrastructure sectors, as outlined by CISA, as essential services.

Michigan

[Michigan's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect.

Minnesota

[Minnesota's Stay at Home Order](#) permits critical sectors to continue operating while the Order is in effect. The Order lists the following as critical sectors: (1) water and wastewater workers listed in the CISA guidance; (2) transportation and logistics workers listed in the CISA guidance; (3) public works workers listed in the CISA guidance; and (4) hazardous materials workers listed in the CISA guidance.

New Hampshire

[New Hampshire's Stay at Home Order](#) permits [essential services](#) to continue operating while the Order is in effect. The Order lists the following as essential services: (1) water and wastewater workers listed in the CISA guidance; (2) "truck drivers who haul hazardous and waste materials to support critical infrastructure, capabilities, functions, and services"; (3) "support to ensure the effective removal, storage, and disposal of residential and commercial solid waste and hazardous waste"; (4)

¹ New Hampshire's Order includes the entire "waste and wastewater" section of CISA's guidance, with one modification. CISA's guidance provides that "chemical suppliers for wastewater and personnel protection" are essential. Whereas New Hampshire's Order provides that "chemical *disinfectant* suppliers for wastewater and personnel protection" are essential.

"solid waste collection and removal"; (5) "municipal transfer stations"; (6) "waste pickup and disposal"; (7) "wastewater treatment"; (8) hazardous materials workers listed in the CISA guidance; and (9) "licensed site clean-up professionals and other workers addressing hazardous spills, waste sites, and remediation."

New Jersey

[New Jersey's Stay at Home Order](#) does not explicitly identify waste removal as an essential business or service. Clarifying [guidance](#), however, provides that all businesses, aside from non-essential retail businesses and recreational and entertainment businesses, may continue to operate.

New Mexico

[New Mexico's Stay at Home Order](#) permits essential businesses to continue operating while the Order is in effect. The Order lists the following as essential businesses: (1) solid waste collection and removal; (2) trash and recycling collection; (3) processing and disposal; and (4) contractors and suppliers engaged in water and wastewater supply.

New York

[New York's Stay at Home Order](#) permits essential businesses and essential services to continue operating while the Order is in effect. Further [guidance](#) issued by the New York Department of Economic Development provides that "essential services necessary to maintain the safety, sanitation and essential operations of residences or other businesses" are essential services.

The New York State Department of Environmental Conservation ("NYSDEC") has advised its Staff and Standby Consultants and Contractors that these services are being interpreted as "any service related to emergency (spill) response and remedial activities at inactive hazardous waste sites, including the operation and maintenance of remedial systems put in place for the protection of public health."

The guidance also lists "trash and recycling collection, processing and disposal" as an essential service. NYSDEC has [explained](#) that this includes "collection, transportation, processing and disposal activities for any solid wastes, regulated medical waste, hazardous wastes, radioactive wastes and other associated waste categories". NYSDEC also noted "[r]egulations associated with these activities continue to be in effect and any related questions should be directed to appropriate DEC program staff."

"Public water and wastewater" is also identified as essential infrastructure.

Ohio

[Ohio's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also specifically provides that essential infrastructure or essential businesses may continue operating while the Order is in effect. The Order defines "solid waste and recycling collection and removal" as essential infrastructure. The Order further provides that "manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pick up and disposal" are essential businesses.

Oregon

[Oregon's Stay at Home Order](#) lists those businesses which must cease operations, as opposed to defining which businesses are essential and may remain open. Waste-related businesses were not included in the list.

Vermont

[Vermont's Stay at Home Order](#) permits businesses deemed critical to public health and safety to continue operating while the order is in effect. The order lists "trash collection and disposal recycling, and operations and maintenance of drinking water and wastewater/drainage infrastructure" as critical.

Washington

[Washington's Stay at Home Order](#) permits essential critical infrastructure to continue operating while the Order is in effect. In accordance with the Order, the Governor designed the following waste-related businesses as “[essential critical infrastructure workers](#),” (1) the critical infrastructure sectors, as outlined by CISA; and (2) service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of construction sites and construction projects (including support to ensure the effective removal, storage, and disposal of solid waste and hazardous waste).

West Virginia

[West Virginia's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also specifically provides that essential infrastructure or essential businesses may continue operating while the Order is in effect. The Order defines “solid waste and recycling collection and removal” as essential infrastructure. The Order also provides that “manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pickup and disposal” are essential businesses.

Wisconsin

[Wisconsin's Stay at Home Order](#) permits the critical infrastructure sectors, as outlined by CISA, to continue operating while the Order is in effect. The Order also specifically provides that essential infrastructure or essential businesses may continue operating while the Order is in effect. The Order defines “wastewater testing laboratories” and “solid waste and recycling collection and removal” as essential infrastructure. The Order also provides that “manufacturing companies, distributors, and supply chain companies producing and supplying essential products and services in and for industries such as . . . waste pickup and disposal” are essential businesses.

Take-Away

Given the essential public health role of the waste industry, most states have explicitly recognized that the waste industry is an essential business and have adhered to the CISA's guidance. However, potential challenges and uncertainty may arise in states that have not provided clarity with respect to certain sectors of the industry.

If you have any questions, please contact Hannah Vanderlaan, or visit [Freeborn's COVID-19 webpage](#) as this situation develops.

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Hannah's practice focuses primarily on environmental-based litigation and regulatory counseling. Prior to joining Freeborn as an attorney, Hannah was a Law Clerk at the firm in the Environment and Energy Law practice group. In addition to working at Freeborn, while in law school, Hannah served a Legal Extern at the U.S. Environmental Protection Agency and The Office of Illinois Attorney General, Environmental Bureau.

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