On March 27, 2020 New York State revised its definition of essential business as follows:

“All non-essential construction must shut down except emergency construction, (e.g. a project necessary to protect health and safety of the occupants, or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site).

Essential construction may continue and includes roads, bridges, transit facilities, utilities, hospitals or health care facilities, affordable housing, and homeless shelters. At every site, if essential or emergency non-essential construction, this includes maintaining social distance, including for purposes of elevators/meals/entry and exit. Sites that cannot maintain distance and safety best practices must close and enforcement will be provided by the state in coordination with the city/local governments. This will include fines of up to $10,000 per violation.

For purposes of this section construction work does not include a single worker, who is the sole employee/worker on a job site."

After reviewing the above, NESPA and PHTA have prepared the following FAQs
Q. Can I commence a new construction project as of today?
A. No. Unless the project can be completed with no more than one person at the site at a time

Q. Can I continue to open and service or maintain pools?
A. In response to an inquiry from a NY pool service company, the State has stated the following:

Dear Business Owner:

Thank you for seeking designation as an “essential business” pursuant to the revised New York State Executive Order 202.6 with respect to your business function of pool maintenance. Pool opening has NOT been determined to be an essential business. Based on the information you have provided, pool maintenance is a business function that is an essential business and/or supports an essential business and is not subject to the required 100% workforce reduction pursuant to the revised Executive Order 202.6. However, your business has been designated as essential solely with respect to those employees that must be present at the business location in support of essential business activities. No other employees/personnel shall be permitted to work from your business’s location. Any other business activities being completed at your location that are not essential are still subject to the revised Executive Order 202.6. Please continue to comply with all other Executive Orders and recommendations from the New York State Department of Health and please consider reducing your in-person workforce to the extent practicable.

While NESPA and PHTA agree that the designation of pool maintenance as essential is correct and consistent with other guidance we have received from the state, it is our position that the failure to designate openings as essential is incorrect and we are currently asking the state to change the statement made in the above email based on the essential nature of the pool opening and start up process.

Q. Can I complete a project I commenced prior to March 27?
A. Per the ESDC guidance, all non-essential construction must shut down except emergency construction or to continue a project if it would be unsafe to allow to remain undone until it is safe to shut the site. It is the position of PHTA and NESPA that the installation of code compliant barriers, and the shoring or completion of an excavation (ie. Shotcrete or completing liner or fiberglass shell installation) should be treated as necessary under this directive. However we cannot guarantee how this will be applied by the applicable state or local authorities.
Q. What is the standard for safety a contractor should use to determine if they can work?
A. Contractors should use common sense safety principles in determining what work should continue. As noted above, it is the position of PHTA and NESPA that the installation of code compliant barriers, and the shoring or completion of an excavation (ie. Shotcrete or completing liner or fiberglass shell installation) should be treated as necessary under this directive. However we cannot guarantee how this will be applied by the applicable state or local authorities.

Q. Can I continue to work on existing jobs if I only have a single employee on site?
A. Yes.

Q. Can I have deliveries made to job sites?
A. If the delivery is necessary to make the site safe, then yes. Or if the delivery will only introduce a single employee to the site.

Q. Can I (and should I) continue to monitor a site once work has been suspended?
A. Provided that only one employee is present on the site at any time, companies should consider monitoring sites and documenting their visits.

Q. If a customer complains that the site is unsafe, should the contractor approach the town about continuing work?
A. A complaint from a customer about safety may be helpful in convincing the relevant official that work must continue to a certain point. However, the customer is not the final authority on whether additional work is required.

Q. What is my liability if I do not complete work on a project and injury or property damage results?
A. If additional work is required to ensure the safety of the site, it can and should be completed. If a contractor is prohibited by the local authorities from continuing work on the site, it should secure that directive in writing, to show that they were not permitted to complete the work, to protect against any liability claim.

Important Resources

- NESPA COVID-19 Webpage
- PHTA COVID-19 Webpage