

**JOINT GUIDANCE ON PERMIT TOLLING  
FOLLOWING THE END OF THE STATE OF EMERGENCY**

**EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS  
EXECUTIVE OFFICE OF HOUSING AND ECONOMIC DEVELOPMENT**

On March 10, 2020, Governor Baker, acting pursuant to the powers provided by Chapter 639 of the Acts of 1950 and Section 2A of Chapter 17 of the General Laws, declared a state of emergency due to the outbreak of the 2019 novel Coronavirus (“COVID-19”). Following the declaration of the state of emergency, the Governor issued a number of orders intended to prevent the spread of COVID-19 and minimize the economic disruption caused by the pandemic, including COVID-19 Order No. 42, “Order Resuming State Permitting Deadlines and Continuing to Extend the Validity of Certain State Permits” issued on July 2, 2020 (“COVID Order No. 42”). The Governor has further declared that the state of emergency will be rescinded effective 12:01 a.m. on June 15, 2021 (see COVID-19 Order No. 69, issued May 28, 2021). Accordingly, COVID-19 Order No. 42 will expire as of that date. This guidance provides clarity as to how certain provisions of COVID-19 Order No. 42 will apply to permits after the end of the state of emergency.

Section 3 of COVID-19 Order No. 42 tolls certain permits and approvals issued by a state permitting agency. It specifically provides:

An approval issued by a state permitting agency valid as of March 10, 2020 and any deadline to record said approval to establish its validity shall not lapse or otherwise expire during the state of emergency and the expiration date of the approval and the deadline to record said approval shall toll during the state of emergency. The new date for the expiration of an approval or the deadline to record said approval is calculated as follows: determine how many days remained as of March 10, 2020 until the approval or the deadline to record would have expired, and that same number of days will remain as of the date that the state of emergency is terminated. To the extent that any such approval contains or is subject to other deadlines or conditions, the state permitting agency may extend such deadlines or waive such conditions if an approval holder is not able to abide by the deadlines or conditions due to the state of emergency. This section shall not apply to a holder of an approval who was in violation of the terms and conditions of the approval as of March 10, 2020.

Permittees and other members of the public may have questions about how these tolling provisions will apply to an approval once the state of emergency has ended. The purpose of this guidance is to allow EEA and HED staff who receive such questions to provide clear and consistent answers.

COVID Order No. 42 provides that the term “approval” means any permit, including an environmental permit, certificate, license, certification, determination, exemption, variance, waiver, state building permit, or other determination of rights issued by a state permitting agency, including any order, but excluding any enforcement order concerning the use, development, or rehabilitation of real property or improvements located thereon, the allocation or use of water and other natural resources, or the discharge, emission, abatement, or management of waste or pollutants, including but not limited to approvals issued pursuant to chapter 21, section 18 of chapter 21A, chapter 21D, section 3B of chapter 21E, section 61 to 62I, inclusive, of chapter 30, section 20 to 23, inclusive, of chapter 40B, chapter 91, chapter 92A½, chapter 112, chapter 131, chapter 131A, chapter 132, chapter 142, chapter 143, and chapter 253 of the General Laws, but excluding approvals issued pursuant to chapters 92 or 132A of the General Laws.

**Q1: I am subject to and have the benefit of an approval issued by a state permitting agency before March 10, 2020 (the start of the state of emergency) that states that it will expire on June 1, 2020, i.e. before the end of the state of emergency. COVID-19 Order No. 42 tolled the expiration date during the state of emergency. What is the expiration date of this approval after the end of the state of emergency?**

A1: The new expiration date of the approval is calculated as follows:

Step #1: Determine how many days that remained as of March 10, 2020 until the approval would have expired. In this case March 10, 2020 to June 1, 2020 = 83 days.

Step #2: Add that number of days to the date on which the state of emergency ends. In this case, 83 days from June 15, 2021 = September 6, 2021.

The extended expiration date of this approval is September 6, 2021.

**Q2: I am subject to and have the benefit of an approval issued by a state permitting agency before March 10, 2020 (the start of the state of emergency). The approval states that it will expire on July 1, 2021, i.e., after the end of the state of emergency. Does this approval benefit from the tolling provisions of COVID-19 Order No. 42?**

A2: Yes. The tolling provisions of COVID-19 Order No. 42 apply to approvals that have a stated expiration date that occurs after the end of the state of emergency, as long as the approval was issued prior to March 10, 2020. The new expiration date should be calculated by adding 462 days (the number of days in the state of emergency) to the original expiration date of this approval. In this case, 462 days from July 1, 2021 = October 6, 2022. The extended expiration date of this approval is October 6, 2022.

**Q3: I am subject to and have the benefit of an approval issued by a state permitting agency after March 10, 2020 (the start of the state of emergency). The approval states that it will expire on July 1, 2021. Does this approval benefit from the tolling provisions of COVID-19 Order No. 42?**

A3: No. The tolling provisions of COVID-19 Order No. 42 do not apply to this approval, or to any state approval issued after March 10, 2020.