

How COVID-19 is Affecting Environmental Permitting

✘ As government agencies at every level continue to implement programs to combat the spread of the Coronavirus, many environmental practitioners are struggling to make sense of what this means for their environmental permitting timelines. Below, we have compiled an overview of the main federal, state, and local changes that are likely to impact environmental permitting in Massachusetts.

Federal Permitting

1. **Army Corps of Engineers (ACOE):** The ACOE is still conducting business, but like the rest of the country, has tried to move everything remote. The regulatory division is in the process of transitioning to an electronic submittal process. All office visits are postponed until further notice and the ACOE states they will be conducting meetings virtually when possible. Site visits will continue to be evaluated on case-by-case basis.
2. **American Council on Historic Preservation (ACHP):** The ACHP will conduct meetings via teleconference. Deadlines in the Section 106 process as set forth in 36 C.F.R. Part 800 will remain the same with exception of State or Tribal Historic Preservation consultation. These deadlines are to be tolled while a local/tribal offices are closed due to COVID-19. The ACHP “strongly encourages federal agencies to be flexible with Section 106 deadlines when they have reason to believe the relevant consulting parties may be facing challenges in meeting such deadlines due to the outbreak.”

Massachusetts State Permits:

On March 26, 2020, Governor Baker issued [COVID-19 Order No. 17](#), which suspends state permitting deadlines and extends the validity of existing state permits for all state permit granting authorities that fall under the jurisdiction of the Executive Office of Energy and Environmental Affairs. Specifically, the Order addresses five distinct aspects of permit functionality: (1) Constructive Approvals; (2) Hearing Deadlines; (3) Decision Deadlines; (4) Appeal Rights; and (5) Permit Tolling.

1. **Constructive Approvals:** There are to be no constructive approvals or denials even if a state permitting authority fails to act within the statutorily prescribed time. The

running of applicable time periods shall resume 45 days after the termination of the state of emergency (SOE).

2. Hearing Deadline: Deadlines for statutorily required hearings are suspended, with the applicable time period resuming 45 days after the termination of the SOE. Existing hearings must be rescheduled no later than 45 days after the termination of the SOE. All hearings or meetings scheduled to take place during the SOE must be conducted in accordance with the [Governor's March 12, 2020 Open Meeting Law Order](#).
3. Decision Deadlines: All deadlines for state agency decisions are suspended, with the applicable time period resuming 45 days after the termination of the SOE.
4. Appeal Rights: Any person whose appeal rights would expire during the SOE has 45 days following the termination of the SOE to file any such appeal.
5. Permit Tolling: All permits that were valid as of March 10, 2020 shall not lapse during the SOE, unless the permit holder was in violation of the terms of the permit on or before March 10, 2020.

State agencies are working remotely but continuing to review and process license and permit applications as quickly and efficiently as possible. State environmental permitting agencies that are offering specific updates are:

- [MassDEP Waterways \(Chapter 91\)](#): Staff are working remotely and will continue to review and process License and Permit Applications and Requests for Minor Modifications. All applicants should submit applications and supporting materials electronically, if possible.
- [Massachusetts Environmental Policy Act \(MEPA\) Office](#): Applicants must submit materials electronically by 5 pm on the day of a submittal deadline. If submitting using file share, the link must be accessible by others, not just the recipient, and must be able to be forwarded. Site visits will be remote until further notice. Project applicants are responsible for providing virtual consultation sessions with screen sharing and 25 person call capacity.

Local Permitting

On April 3, 2020, Governor Baker signed into law "[An Act to Address Challenges Faced by Municipalities and State Authorities Resulting from COVID-19](#)." This section enacts special provisions for the permit[1] application and review process at the local level. Those provisions include:

1. Permit applications may be filed electronically, including by attaching application materials to an email to the permit-granting authority, with the application deemed filed on the date that receipt is confirmed by the authority.
2. All time periods for review of applications or hearings by authorities are suspended during the state of emergency and for 45 days after it is lifted. For example, if a local board had five days left to act on an application as of March 10, then it must act on that application within 50 days after the state of emergency is lifted
3. A pending hearing continued as of March 10 is automatically tolled but must be rescheduled no later than 45 days after the termination of the SOE.
4. Expiration dates for any issued permit, or dates for meeting a deadline or satisfying a condition of the permit, are tolled during the SOE.
5. There are no constructive approvals or denials of permit applications during the SOE, provided the authority acts on the application within 45 days of the termination of the SOE.
6. Hearings or deadlines on applications may be scheduled or rescheduled by the chair of a permit-granting authority, with or without a quorum of the board, for a date not later than 45 days after the SOE is terminated.
7. Recording requirements for permits are suspended while public access for recording is restricted, and failure to record a permit shall not preclude a permit holder from commencing construction or obtaining other required approvals, such as a building permit.
8. A permit-granting authority may still revoke or modify a permit as allowed by law, except, for 60 days after the state of emergency is lifted, it may not do so because of the permit-holder's failure to exercise their rights under the permit due to the state of emergency.
9. Permit-granting authorities may conduct meetings and hearings remotely, consistent with the Governor's March 12 Order on OML.
10. Nothing in the bill precludes a permit-granting authority from holding hearings and issuing permits during the state of emergency if they are able and choose to do so.

effect. Conservation Commissions should submit Determinations of Applicability, Orders of Conditions, and Orders of Resource Area Delineation via email and through eDEP. Applicants should continue to send supporting documents via both email and traditional mail.

We will continue to update this blog post as more information becomes available. Anderson & Kreiger has also published COVID-19 guidance for other practitioners.

- [COVID-19 AND THE IMPACTS ON CONSTRUCTION PROJECTS: Force Majeure, Notice Obligations, the Right to Recovery, Keeping People and Places Safe, and More....](#)
- [7 Things You Need to Know About Massachusetts Municipality Act Gov. Baker Signed Today](#)

[1] The bill defines a “permit” broadly as: “a permit, variance, special permit, license, amendment, extension or other approval issued by a permit granting authority pursuant to a statute, ordinance, bylaw, rule or regulation, whether ministerial or discretionary.”