

## **Permit Extension Doubles Permit Life Again**

*by Nathaniel Stevens, Esq.*

This past summer lawmakers approved the 2012 Economic Development Act which affects the expiration dates for permits and determinations of applicability under the Wetlands Protection Act and local wetlands bylaw or ordinances (and many other state and local laws). The law went into effect August 7, 2012. Commissions and permit holders need to know how to calculate their new permit lifetimes.

Two years ago lawmakers approved a law which automatically extended many land “use or development” permits two years beyond their stated expiration date if those permits were in effect August 15, 2008 through August 15, 2010. See *Chapter 240 of Acts of 2010, Section 173*. That two-year period was called the “tolling period,” which really is the window for eligibility.

This meant that orders of conditions and determinations of applicability were extended automatically by two years if they were valid or “in effect” for any time during the two-year “tolling period.” The permit (or determination) did not have to be issued during that period or be in effect during that *entire* two-year period; it merely had to be in effect for even just one day of that tolling period. Applicants suddenly had five years, rather than the usual three years, to complete work under an order of conditions if valid any time between August 15, 2008 and August 15, 2010.

This law also applied to the Massachusetts Department of Environmental Protection (MassDEP), meaning that eligible superseding order of conditions and superseding determinations of applicability in effect August 15, 2008 through August 15, 2010 were extended automatically for two years. Many other types of land use permits were similarly extended, such as special permits, zoning variances and building permits. The idea was to give developers and landowners more time to secure financing and complete their projects during the economic downturn.

Enforcement orders were specifically exempt and thus not extended. Federal permits, “40B” comprehensive permits, and certain hunting, fishing and aquaculture licenses issued by the state also were not extended.

In approving the Economic Development Act this summer, lawmakers on Beacon Hill doubled several provisions of the law they approved in 2010. *Sections 74 and 75 of Chapter 238 of the Acts of 2012*. The amount of time a permit was automatically extended from two years to four.

At the same time, they extended by two years the “tolling period” in which a permit must fall to be automatically extended. The “tolling period” is now August 15, 2008 through August 15, 2012. This means that any order of conditions or determination of applicability that was in effect during part or all of that four-year period automatically is extended four years.

The 2012 law means that permits already extended two years under the 2010 law now get automatically extended another two years (to four years beyond their stated expiration date). The 2012 law also gives extensions to permits that became in effect after the “tolling period” in the 2010 law. That is, a permit that was in effect only after August 15, 2010 is extended automatically four years. However, any permit that becomes in effect after August 15, 2012 (the end of the new “tolling period”) does not get any automatic extension.

One common misperception is that a permit had to be approved or issued during the “tolling period.” The permit need only have been in effect during any portion, even just one day, of the “tolling period” to be extended.

Another misperception is that all permits in effect after August 15, 2008 expired on August 15, 2012. Instead, permits will expire at different times.

The Permit Extension Act requires one to look at each permit, determine whether it was in effect during at any point between August 15, 2008 and August 15, 2012, if so, determine its expiration date, and then add four years to reach the new expiration date.

Note that some permits that expired are revived. For example, a permit that had a stated expiration date of September 1, 2009 would have been extended under the 2010 law two years to September 1, 2011. Now that permit is revived by the 2012 law by being extended, retroactively, four years. It now expires September 1, 2013.

As MassDEP did not issue forms to formalize permit extensions, commissions have largely been left to handle this issue on their own. Some commissions, when requested, issue confirmation letters to applicants. Some issue generic letters acknowledging the existence of the Permit Extension Act. Others do nothing or perhaps update their internal list of permits. Yet others will issue corrected permits with new expiration dates, so the permit can be recorded showing the actual calendar dates they cease having effect, so they are self-contained on the record.

At press time, MassDEP Assistant Commissioner for Operations, Philip Weinberg, issued a guidance letter dated September 12, 2012 for amending wetlands resource delineations already approved in orders of resource area delineation, determinations of applicability and orders of conditions (including superseding orders or determinations) that have been extended by the Permit Extension Act. This guidance gives the property owner or its designee the right to file a request to amend the delineation, but that request may only be filed after the expiration date stated in the permit and during the four-year extension provided by the Permit Extension Act.

*Nathaniel Stevens is an Attorney with McGregor & Associates, P.C. and the Chair of the Arlington Conservation Commission*

To read a more about the 2012 permit extension provisions see <http://www.mass.gov/hed/economic/eohed/pro/zoning-laws/permit-extension-act-faq-updated-9-18-12-final.pdf>

***If you are a MACC Member and have a question about these changes, please contact MACC's Helpline at 617-489-3930 or email us at [staff@macweb.org](mailto:staff@macweb.org).***