



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Extension of No Action Assurance for the NPDES Stormwater Multi-Sector General Permit for Industrial Activities

FROM: Susan Parker Bodine

SUSAN
BODINE

Digitally signed by
SUSAN BODINE
Date: 2021.01.19
10:45:23 -05'00'

TO: Anna Wildeman, Acting Assistant Administrator
Office of Water

This memorandum responds to your January 15, 2021 request (attached) for an extension of the termination date for the No Action Assurance for the National Pollutant Discharge Elimination System (NPDES) Stormwater Multi-Sector General Permit for Industrial Activities issued on June 3, 2020. The current Multi-Sector General Permit (referred to as the 2015 MSGP) under the National Pollutant Discharge Elimination System (NPDES) program expired at midnight on June 3, 2020 without a new permit in place. To address the gap in permit coverage until a new MSGP was in effect, I issued a No Action Assurance (NAA) on June 3, 2020 that applied to certain industrial facilities that began discharging between June 4, 2020 and the effective date of the new MSGP if those facilities complied with the conditions of the NAA. At the time I issued the NAA, EPA's Office of Water (OW) expected that a new permit would be signed on November 12, 2020 and in effect by the end of December 2020. To ensure that facilities operating consistent with the NAA had the same application deadlines as existing facilities whose permit coverage under the 2015 MSGP had been administratively extended, I included a termination date in the NAA of April 29, 2021, which gave the NAA facilities 90 days to submit a Notice of Intent (NOI) under the new MSGP plus 30 more days for permit coverage to be in effect.

Your January 15, 2021 memo notified me that the new MSGP, referred to as the 2021 MSGP, was not signed until January 15, 2021 and has an effective date of March 1, 2021, approximately two months after the original expected date. To keep the NAA facilities on the same deadlines as existing facilities whose permit coverage under the 2015 MSGP was administratively extended, you have requested that I extend the termination date for the NAA for two months until June 29, 2021. All other conditions of the NAA would remain in effect. You also state that all reasons that were provided by OW to support the original NAA are still valid: in summary, there is no other mechanism available to adequately address the gap in permit coverage, public health and the environment will not be adversely impacted, and the NAA is necessary to serve the public interest.

Based on your January 15, 2021 memo and the reasons I articulated in the June 3, 2020 NAA for why the original NAA was appropriate, I am exercising my enforcement discretion to extend the expiration date of the NAA until June 29, 2021. Specifically, where EPA is the NPDES permitting authority, EPA is providing a No Action Assurance for operators of new industrial facilities who intend to commence

discharging stormwater between June 4, 2020, and the effective date of the EPA 2021 MSGP on March 1, 2021 and who had not filed an NOI to be covered under the EPA 2015 MSGP prior to June 4, 2020. This No Action Assurance establishes that EPA will exercise its enforcement discretion to not pursue a civil or administrative enforcement action against new operators for violations of the Clean Water Act's (CWA) prohibition against the discharge of pollutants except in conformance with an NPDES permit, 33 U.S.C. § 1311, if the operator satisfies the conditions in this memorandum.

Facilities that commence discharging on or after the effective date of the final 2021 MSGP on March 1, 2021 are not be covered by this No Action Assurance and must submit an NOI under the 2021 MSGP. This exercise of enforcement discretion is subject to the following conditions:

- (1) Eligibility: Any new facility must meet the 2015 MSGP eligibility criteria (Part 1 of the permit);
- (2) Prior Notification to the EPA: Prior to the discharge of stormwater associated with industrial activity, the new facility must provide the EPA 30-days advance notice of their operator status and their intention to operate in accordance with the 2015 MSGP by submitting an "Intent to Operate" (ITO) form through the NPDES eReporting Tool (NeT) for MSGP, to allow EPA time to review the notice;
- (3) Compliance: Any new facility must satisfy all requirements of the 2015 MSGP, except for submittal of an NOI before June 4, 2020. These obligations include, but are not limited to:
 - a. Develop a SWPPP prior to submission of an ITO form, and subsequent implementation of the SWPPP (Part 5).
 - b. Proper installation and maintenance of stormwater control measures (Part 2).
 - c. Conduct site inspections (Part 3);
 - d. Conduct applicable effluent limit, impaired waters, and benchmark monitoring (Part 6);
 - e. Implement corrective action measures, if necessary (Part 4);
 - f. Meet any sector-specific requirements (Part 8);
 - g. Meet any permit conditions applicable to specific States, Indian country lands, or Territories (Part 9); and
 - h. Complete any recordkeeping and reporting under the permit (Part 7), except for those requirements related to reporting in NetDMR (Part 7.4). All discharge monitoring data collected pursuant to the permit must be kept at the facility and be made available to the EPA upon request.

This No Action Assurance does not apply to criminal violations or to situations where circumstances exist that may cause serious harm or that may present an imminent and substantial endangerment to public health or the environment. The Agency also reserves the right, at any time, to exercise its discretion to address a specific discharge should circumstances warrant.

This No Action Assurance will terminate at 11:59 PM Eastern Time June 29, 2021. Covered facilities are encouraged to submit an NOI for the 2021 MSGP as soon as it is in effect.

If you have questions about this matter, please call Mark Pollins, Director of the Water Enforcement Division, at (202) 564-4001.

Attachment

cc: Regional Administrators, Regions 1-10
Rosemarie Kelley, Director, Office of Civil Enforcement
Mark Pollins, Director, Water Enforcement Division