



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

MAR 27 2014

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:** *for* Cynthia Giles  
Assistant Administrator

**TO:** Regional Administrators, Regions 1 - 10

This memorandum is to inform you of the continued lack of a final Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) and to remind you of the Environmental Protection Agency's (EPA or Agency) position on our civil enforcement response to this situation. The current MSGP under the National Pollutant Discharge Elimination System (NPDES) program expired at midnight on September 29, 2013. The Federal Register notice announcing the proposed reissuance of the MSGP was published on September 27, 2013. While facilities with coverage under the 2008 MSGP were automatically granted an administrative continuance of permit coverage and are required to continue to comply with the 2008 MSGP after its expiration, any new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013 in those areas where EPA is the NPDES permitting authority are not able to obtain general permit coverage until a new permit is issued.

To address this gap in coverage, on September 27, 2013, I exercised my enforcement discretion to cover these newly-discharging facilities, provided that these facilities: (1) meet the 2008 MSGP eligibility criteria; (2) notify the appropriate EPA permitting authority of their operator status and their intention to operate in accordance with the 2008 MSGP; and (3) comply with all requirements of the 2008 MSGP, including, but not limited to, stormwater pollution prevention plan (SWPPP) development and implementation and proper installation and maintenance of best management practices (Attachment 1). That exercise of discretion was to be effective until March 30, 2014, or upon the issuance of a new MSGP, whichever came first. However, as detailed in a March 2014, memorandum from Nancy Stoner, Acting Assistant Administrator, Office of Water (Attachment 2), for reasons outside the Agency's control the new MSGP will not be finalized until the end of September, 2014, approximately twelve months after the expiration of the 2008 MSGP.

Because a new general permit has not yet been promulgated that will cover such new facilities during the period after expiration of the 2008 MSGP and the effective date of the new MSGP, I have determined that it is appropriate to exercise my enforcement discretion to extend the September 27, 2013, “no action assurance” to address this continuing gap in coverage. Specifically, the Agency will not pursue administrative or civil judicial enforcement actions for lack of permit coverage against new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013, provided that these newly-discharging facilities meet the following requirements:

1. Eligibility. For coverage under this no action assurance, any new facility must meet the 2008 MSGP eligibility criteria.
2. Prior Notification. Prior to the discharge of stormwater associated with industrial activity after September 29, 2013 by a new facility, such facility must notify the appropriate EPA NPDES permitting authority of both its operator status and intention to operate in accordance with the 2008 MSGP.
3. Compliance. Any new facility must comply with all obligations of the 2008 MSGP. These obligations include but are not limited to (a) Stormwater Pollution Prevention Plan (SWPPP) development and implementation, (b) proper installation and maintenance of best management practices, (c) stormwater discharge monitoring, (d) site inspections, (e) implementation of corrective action measures, and (f) any additional sector-specific requirements outlined in Part 8 of the 2008 MSGP. Any new facility must also submit the reports required pursuant to Part 7 of the 2008 MSGP directly to the appropriate EPA NPDES permitting authority.

This no action assurance does not apply to criminal violations or to situations where egregious circumstances exist which may cause serious harm or which may present an imminent and substantial endangerment to public health or the environment, or where no best management practices are in place to protect 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 approach for new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013 will terminate on September 30, 2014, or 30 days after the issuance of a new general permit, whichever comes first. EPA also reserves the right to withdraw or revise this no action assurance at any time. If you have any questions about this matter, please contact Mark Pollins, Director of the Water Enforcement Division, at (202) 564-4001.



Attachment 1  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 27 2013

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

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

**FROM:** Cynthia Giles *Cynthia Giles*

**TO:** Regional Administrators, Regions 1 - 10

This memorandum is to inform you of the pending lack of a Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) and to alert you to the Environmental Protection Agency's (EPA or Agency) current position on our civil enforcement response to this situation. The current MSGP under the National Pollutant Discharge Elimination System (NPDES) program will expire at midnight on September 29, 2013. The affected EPA Regions have signed a Federal Register notice announcing the proposed reissuance of the MSGP; however, the permit will not be finalized until approximately six months after the expiration of the 2008 MSGP. While facilities with coverage under the 2008 MSGP (available at [http://www.epa.gov/npdes/pubs/msgp2008\\_finalpermit.pdf](http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf)) will automatically be granted an administrative continuance of permit coverage and are required to continue to comply with the 2008 MSGP after its expiration, any new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013 in those areas where EPA is the NPDES permitting authority will not be able to obtain general permit coverage until a new permit is issued.

Because a new general permit has not yet been promulgated that will cover such new facilities during the period after expiration of the 2008 MSGP and the effective date of the new MSGP, I have determined that it is appropriate to exercise my enforcement discretion and issue this "no action assurance" to address this gap in coverage. Specifically, the Agency will not pursue administrative or civil judicial enforcement actions for lack of permit coverage against new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013, provided that these newly-discharging facilities meet the following requirements:

1. **Eligibility.** For coverage under this no action assurance, any new facility must meet the 2008 MSGP eligibility criteria.
2. **Prior Notification.** Prior to the discharge of stormwater associated with industrial activity after September 29, 2013 by a new facility, such facility must notify the

appropriate EPA NPDES permitting authority of both their operator status and intention to operate in accordance with the 2008 MSGP.

3. Compliance. Any new facility must comply with all obligations of the 2008 MSGP. These obligations include but are not limited to (a) Stormwater Pollution Prevention Plan (SWPPP) development and implementation, (b) proper installation and maintenance of best management practices, (c) stormwater discharge monitoring, (d) site inspections, (e) implementation of corrective action measures, and (f) any additional sector-specific requirements outlined in Part 8 of the 2008 MSGP. Any new facility must also submit the reports required pursuant to Part 7 of the 2008 MSGP directly to the appropriate EPA NPDES permitting authority.

This no action assurance does not apply to criminal violations or to situations where egregious circumstances exist which may cause serious harm or which may present an imminent and substantial endangerment to public health or the environment, or where no best management practices are in place to protect 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 approach for new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013 will terminate on March 30, 2014, or 30 days after the issuance of a new general permit, whichever comes first. EPA also reserves the right to withdraw or revise this no action assurance at any time. If you have any questions about this matter, please contact Mark Pollins, Director of the Water Enforcement Division, at (202) 564-4001.



Attachment 2  
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

MAR 27 2014

OFFICE OF  
WATER

**MEMORANDUM**

**SUBJECT:** Request to Extend the No Action Assurance for New Industrial Facilities Needing Stormwater Permit Coverage

**FROM:** Nancy Stoner *Michael Albin*  
Acting Assistant Administrator  
Office of Water (OW)

**TO:** Cynthia Giles  
Assistant Administrator  
Office of Enforcement and Compliance Assurance (OECA)

The purpose of this memorandum is to request that the Office of Enforcement and Compliance Assurance (OECA) extend the No Action Assurance (NAA) issued on September 27, 2013 (copy attached). This NAA addressed new industrial facilities needing National Pollutant Discharge Elimination System (NPDES) general permit coverage for their stormwater discharges in areas where EPA is the permitting authority after the expiration of the 2008 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP). The NAA was intended to “bridge” the period between the expiration of the 2008 MSGP and the issuance of the new MSGP. The NAA is scheduled to expire on March 30, 2014 or upon the issuance of the new MSGP, whichever is earlier. However, for the reasons outlined below, events, many of which were unanticipated and unpreventable, have served to delay the final MSGP. Accordingly, I am requesting that OECA extend the September 27, 2013 NAA to continue the bridge to the final permit, which we now expect to issue by September 30, 2014.

**Background**

The 2008 MSGP expired at midnight on September 29, 2013. The Federal Register notice announcing the proposed reissuance of the MSGP was published on September 27, 2013. Because of this timing, the final MSGP could not be finalized for several months after the expiration of the 2008 MSGP. Facilities that obtained coverage under the 2008 MSGP prior to its expiration were automatically granted an administrative continuance of permit coverage; the administrative continuance will remain in effect until a new permit is issued. Therefore, facilities already covered under the 2008 MSGP are not required to submit a new Notice of Intent (NOI) for permit coverage until the new MSGP is issued, and these facilities must continue to comply with all of the requirements in the 2008 permit, including requirements for monitoring and reporting. Until the new MSGP is issued, however, “new” facilities (*i.e.*, those facilities not covered under the 2008 MSGP) that begin discharging industrial stormwater after September 29, 2013 are unable to file an NOI for general permit coverage. The

September 27, 2013 NAA covered these newly-discharging facilities, provided that these facilities: (1) meet the 2008 MSGP eligibility criteria; (2) notify the appropriate EPA permitting authority of their operator status and their intention to operate in accordance with the 2008 MSGP; and (3) comply with all requirements of the 2008 MSGP, including, but not limited to, stormwater pollution prevention plan (SWPPP) development and implementation and proper installation and maintenance of best management practices.

### Basis and Need for an Extension

The reissuance of the MSGP is behind schedule for several reasons, many of which were beyond the Agency's control. The government shutdown occurred immediately after the permit was proposed, which prevented progress on various tasks required to reissue the permit, including consultations under the Endangered Species Act (ESA), the National Historic Preservation Act (NHPA), and the development of the electronic Notice of Intent (eNOI) system. Additionally, at the request of commenters and the Office of Management and Budget (OMB), the original 60-day public comment period was extended an additional 30 days, and did not close until December 26, 2013. Seventy-six comment letters were received which raised 550 separate issues that need to be addressed prior to options selection and final agency review (FAR). Several issues raised by commenters (*e.g.*, comments on new requirements for discharges to Federal CERCLA sites, comments on the incorporation of the new aircraft deicing Effluent Limitation Guideline, comments from the mining industry) are particularly challenging to address, and are requiring a significant expenditure of additional staff resources. The breadth and scope of many of the issues raised in the comments was unanticipated. Consequently, the Office of Water (OW) anticipates that it will take approximately six additional months to issue the final MSGP. The required steps to finalize the permit include approximately two months to address all of the comment issues and to make final changes to the permit, approximately one month to complete the options selection and FAR processes, and 90 days of OMB review. During this timeframe, OW will continue to be engaged in consultations under the ESA and the NHPA, will complete an Environmental Assessment under the National Environmental Policy Act and will work with your staff to complete the new eNOI system.

During the period of time that the MSGP expired in September 2013 and before it is reissued later this year, OW anticipates that approximately 40 new industrial facilities will need NPDES general permit coverage for their stormwater discharges in areas where EPA is the NPDES permitting authority. Because these new facilities will not have the ability to obtain coverage under a general permit, OW requests that OECA extend the September 27, 2013 NAA. As provided under the current NAA, we are requesting that to be covered under an extended NAA facilities must continue to: (1) meet the 2008 MSGP eligibility criteria; (2) notify the appropriate EPA permitting authority of their operator status and their intention to operate in accordance with the 2008 MSGP; and, (3) comply with all requirements of the 2008 MSGP, including, but not limited to, SWPPP development and implementation and proper installation and maintenance of best management practices.

Thank you for your consideration of this request. If you have questions or require additional information please contact me or Connie Bosma of my staff at 564-6773.

Attachment