



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

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

JUN 25 2015

MEMORANDUM

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

FROM: Cynthia Giles

A handwritten signature in blue ink, which appears to read "Cynthia Giles", is written over the printed name.

TO: Regional Administrators, Regions 1 – 10

As you know, the final 2015 Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was signed and became effective on June 4, 2015 (80 FR 34403, June 16, 2015). The previous – 2008 – MSGP expired at midnight on September 29, 2013. Facilities with coverage under the 2008 MSGP were automatically granted an administrative continuance of permit coverage and were required to continue to comply with the 2008 MSGP after its expiration. However, any new facilities that began discharging stormwater associated with industrial activity after September 29, 2013, in those areas where the Environmental Protection Agency (EPA or Agency) is the National Pollutant Discharge Elimination System (NPDES) permitting authority, were not able to obtain general permit coverage until the final 2015 MSGP was issued.

Such newly-discharging facilities are now able to obtain coverage under the 2015 MSGP. However, there is a short (120 day) period following issuance of the 2015 MSGP before these facilities may be covered by the new permit. This 120 day time period, beginning June 4, 2015, represents the 90 days that the 2015 MSGP mandates is the deadline for submitting a Notice of Intent (NOI) to obtain permit coverage, plus an additional 30 days for EPA and stakeholders to review NOI information.

To address this temporary gap in coverage for newly-discharging facilities, and at the request of the Deputy Assistant Administrator for the Office of Water (attached), I have determined that it is appropriate to exercise my enforcement discretion and issue this "no action assurance." 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.
4. Submittal of NOI for 2015 MSGP. A new facility must submit an NOI within the 90-day period provided under the 2015 MSGP (*i.e.*, on or before September 2, 2015) in order to continue to be covered under this no action assurance during the subsequent 30-day period for EPA and stakeholder review of NOI information.

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. 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 does not apply to new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013, once such facilities are authorized to discharge under the final 2015 MSGP, and will terminate at 11:59 P.M. on October 2, 2015. 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



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

JUN 19 2015

OFFICE OF WATER

MEMORANDUM

SUBJECT: Request for a No Action Assurance for New Industrial Facilities Needing Stormwater Permit Coverage under the 2015 Multi-Sector General Permit

FROM: Ken Kopocis *Kenneth J. Kopocis*
Deputy Assistant Administrator

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) issue a No Action Assurance (NAA) for operators of new industrial facilities that commenced or intend to commence discharging stormwater as of September 30, 2013 (*i.e.*, the date that the 2008 Multi-Sector General Permit [MSGP] expired). Such operators need National Pollutant Discharge Elimination System (NPDES) coverage under the MSGP that was reissued on June 4, 2015, for their stormwater discharges where EPA is the permitting authority, due to timing issues with the date by which new dischargers would be covered by the new 2015 MSGP. The Office of Water (OW) requests that OECA issue the NAA until October 2, 2015, which represents 30 days plus the 90 days that the permit mandates is the deadline for submitting a Notice of Intent (NOI) to obtain coverage.

The NAA is intended to "bridge" the period for new industrial facilities seeking to commence discharging between the expiration of the 2008 MSGP and the final discharge authorization date under the new 2015 MSGP for ongoing discharges. For the reasons outlined below, there is a short period during which new operators are not yet covered by the 2015 MSGP. Accordingly, I am requesting that OECA issue a NAA to bridge this period, until new dischargers are authorized under the final permit.

Background

The 2008 MSGP expired at midnight on September 29, 2013 and a replacement MSGP was recently issued on June 4, 2015. Facilities that obtained coverage under the 2008 MSGP prior to its expiration were automatically granted an administrative continuance of permit coverage after the 2008 MSGP's expiration; the administrative continuance remains in effect until discharges are authorized under the 2015 MSGP, provided the NOI is submitted in accordance with the applicable deadline in Table 1-2 of the 2015 MSGP and provided the facility

continues to comply with all applicable requirements in the 2008 permit, including requirements for monitoring and reporting. However, operators of “new” facilities (*i.e.*, operators not covered under the 2008 MSGP) that began discharging industrial stormwater after September 29, 2013 and prior to the issuance of the 2015 MSGP were unable to submit an NOI for general permit coverage. NAAs were previously issued on September 27, 2013, March 27, 2014, and September 30, 2014 to cover these newly-discharging facilities while the new MSGP was in the process of being reissued, 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, development and implementation of stormwater pollution prevention plans (SWPPPs) and proper installation and maintenance of best management practices. The September 30, 2014 NAA expires on June 30, 2015, and while the new 2015 MSGP is effective as of June 4, 2015, as explained below new dischargers will not be able to obtain coverage for approximately 120 days (on or about October 2, 2015).

Basis and Need for an NAA

The reissuance of the MSGP was unavoidably delayed for numerous reasons. New and unique proposed provisions (*e.g.*, for discharges to certain CERCLA sites and “permit-as-a-shield” clarification language) required extended last-minute discussions within the MSGP workgroup and other EPA offices to develop appropriate requirements. There were also large amounts of challenging comments from industrial groups representing some of the MSGP’s 29 sectors (specifically, the mining sector, the air transportation sector, and the primary metals sector). Meetings with these industrial groups were being held many months after the close of the public comment period in December 2013, resulting in lengthy permit revisions. Benchmark monitoring requirements generated extensive comments from environmental groups and industry groups, as well as the U.S. Small Business Administration and Office of Management and Budget (OMB), which required much time and effort to resolve. OW expended significant resources and time completing its consultation under the Endangered Species Act (ESA) and setting up the new and complex NPDES eReporting Tool (NeT) for the MSGP. Finally, EPA notes that OMB, which is supposed to complete its review of material submitted to it from federal agencies in 90 days, received the final MSGP on December 22, 2014 and did not complete its review until May 18, 2015.

During the period of time after the MSGP expired in September 2013 and up to the final deadline for the authorization of ongoing discharges (*i.e.*, 120 days after the date the permit was issued), EPA estimates approximately 100 facilities may have commenced or will commence discharging in areas where it is the permitting authority. The NAA is intended for such facilities.

Not all operators are likely to take the full 120 days. The permit allows up to 90 days for ongoing operators to become familiar with the new permit, comply with its provisions, and submit their NOIs. Many facilities may not need significant revisions to their SWPPPs and consequently could submit their NOIs in less than 90 days. Once an NOI is submitted, there are an additional 30 days before a facility’s discharges are authorized to allow time for stakeholders to review NOI information and determine if EPA should put a “hold” on authorization until issues can be resolved.

Because these new facilities will not have the ability to obtain coverage under a general permit, OW requests that OECA provide an NAA to address this temporary gap in coverage. As conditions of the NAA, we are requesting that to be covered these 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 stormwater controls. OW requests that the NAA for new facilities that begin discharging stormwater associated with industrial activity after September 29, 2013 be provided until October 2, 2015, at which point all such dischargers would be covered under the 2015 MSGP.

Thank you for your consideration of this request. If you have questions or require additional information please contact me or Ross Brennan of my staff at 564-3248.