

MEMORANDUM

State of Alaska

Department of Environmental Conservation
Division of Water

TO: Michael Solter
Compliance Program Manager

DATE: January 28, 2015

FROM: Michelle Hale 
Director, Division of Water

PHONE NO: (907) 465-5135

SUBJECT: Extension of No Action Assurance for
Newly-Discharging Facilities under the
APDES Multi-Sector General Permit

This memo 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 Alaska Department of Environmental Conservation's (DEC or Department) position on our civil enforcement response to this situation.

On September 29, 2008, the U.S. Environmental Protection Agency's (EPA) MSGP (2008 MSGP, AKR050000) became effective. The permit expired on September 29, 2013. Permittees with coverage under the 2008 MSGP were automatically granted an administrative continuance of permit coverage and are required to comply with the terms of the 2008 MSGP after its expiration if they continue to discharge. However, newly-discharging facilities that desire coverage are not able to obtain general permit coverage until a new MSGP is issued.

On October 31, 2009, administration of the EPA-issued 2008 MSGP transferred to the Department under the EPA-approved APDES Program. DEC is in the process of issuing a new MSGP and expects to finalize the permit in 2015.

To address this gap in coverage, on September 22, 2014, I exercised my enforcement discretion by issuing a "no action assurance" memorandum; which was to be effective until January 31, 2015 or 30 days after the issuance of a new APDES MSGP for discharges of storm water associated with an industrial activity, whichever comes first. Because a new MSGP has not been issued by DEC that will cover newly-discharging facilities during the period after expiration of the 2008 MSGP and before the effective date of the new permit, I have determined that it is appropriate to continue to exercise my enforcement discretion by extending this "no action assurance." Specifically, the Department will not pursue administrative or civil judicial enforcement actions for lack of permit coverage against a newly-discharging facility, provided that the operator meets the following requirements:

1. **Eligibility.** For coverage under this no action assurance, any newly-discharging facility must meet the eligibility criteria of the 2008 MSGP.
2. **Prior Notification.** Prior to the discharge of storm water associated with industrial activity after September 29, 2013 by a newly-discharging facility, the operator of such facility must:

- a. Notify DEC of its operator status and intention to operate in accordance with the 2008 MSGP by submitting a complete Notice of Intent (NOI),
 - b. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) to DEC with the NOI, and
 - c. Pay a permit fee in accordance with 18 AAC 72.956(12) and a plan review fee in accordance with 18 AAC 72.955, if applicable.
3. **Compliance.** An operator of a newly-discharging facility must comply with all terms and conditions of the 2008 MSGP, including the following obligations:
- a. Within 30 days of submitting a complete NOI, implement a SWPPP per Part 5 of the 2008 MSGP;
 - b. Select, design, install, and implement control measures (including best management practices) to meet the effluent limits per Part 2 of the 2008 MSGP;
 - c. Conduct all required site inspections per Part 4 of the 2008 MSGP;
 - d. Implement corrective actions measures per Part 3 of the 2008 MSGP;
 - e. Implement any additional sector-specific requirements outlined in Part 8 of the 2008 MSGP; and
 - f. Submit all required notices and reports pursuant to Part 7 of the 2008 MSGP to:
State of Alaska, Department of Environmental Conservation
Division of Water, Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501
Telephone (907) 269-6285
Fax (907) 269-7508
Email: DEC.Water.WQPermit@alaska.gov

This no action assurance does not apply to criminal violations, to situations where egregious circumstances exist that may cause serious harm or that may present an imminent and substantial endangerment to public health or the environment, where no best management practices are in place to protect public health or the environment, or to any enforcement proceeding related to a storm water discharge associated with an industrial activity not covered by this memorandum.

This no action assurance will terminate June 30, 2015 or 30 days after the issuance of a new APDES MSGP for discharges of storm water associated with an industrial activity, whichever comes first.

The Department reserves the right at any time to exercise its discretion to address a specific discharge should circumstances warrant. The Department also reserves the right to withdraw or revise this no action assurance at any time.