



ASSISTANT ADMINISTRATOR FOR ENFORCEMENT AND COMPLIANCE ASSURANCE

WASHINGTON, D.C. 20460

February 27, 2026

MEMORANDUM

SUBJECT: No Action Assurance for New Industrial Facilities Needing Stormwater Permit Coverage under EPA's Multi-Sector General Permit

FROM: Jeffrey A. Hall

TO: Jessica Kramer
Assistant Administrator
Office of Water

This memorandum responds to your February 25, 2026 Request for a No Action Assurance for New Industrial Facilities Needing Stormwater Permit Coverage under EPA's Multi-Sector General Permit. The current Multi-Sector General Permit (referred to as the 2021 MSGP) under the National Pollutant Discharge Elimination System (NPDES) program will expire at 11:59 PM (Eastern Time) on February 28, 2026. The Federal Register Notice announcing the proposed reissuance of the next MSGP was published on December 13, 2024 (89 Fed. Reg. 101000). As described below, EPA will be unable to finalize the next MSGP before the 2021 MSGP expires. Facilities with coverage under the 2021 MSGP will automatically be granted an administrative continuance of permit coverage and are required to continue to comply with the 2021 MSGP after its expiration. Any new facilities, however, located in areas where EPA is the NPDES permitting authority, that begin discharging stormwater associated with industrial activity after February 28, 2026, and that have not submitted a Notice of Intent (NOI) to be covered by the 2021 MSGP prior to its expiration will not be able to obtain general permit coverage until a new permit is issued.

Because EPA has not yet promulgated a new general permit that will cover such new facilities during the period after expiration of the 2021 MSGP and the effective date of the next MSGP, I have determined that it is appropriate to exercise my enforcement discretion and issue this no action assurance (No Action Assurance) to address this gap in coverage. Specifically, in areas 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 March 1, 2026, and the effective date of the next MSGP and who have not filed an NOI to be covered under the EPA 2021 MSGP prior to its expiration. As explained more fully below, 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 (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.

Background

CWA Section 402(p) (33 U.S.C. § 1342(p)) and NPDES regulations at 40 C.F.R § 122.26(b)(14) require EPA to regulate the discharge of pollutants in stormwater to waters of the United States associated with 11 categories of industrial activity. Under these authorities, EPA issued the first MSGP in 1995 to provide coverage for stormwater discharges from these industries in areas where EPA is the permitting authority. The MSGP has been issued four times since then, most recently on January 15, 2021.¹ Facilities that discharge stormwater pollutants without NPDES permit coverage are in violation of CWA Section 301 (33 U.S.C. § 1311).

The 2021 MSGP covers approximately 2,200 facilities. Since 1995, the permit has required facilities to: develop a stormwater pollution prevention plan (SWPPP); implement and maintain stormwater control measures; conduct inspections; conduct analytical monitoring, where applicable; conduct effluent guideline compliance monitoring; take corrective action, when necessary; and submit monitoring data and annual reports. To obtain coverage, industrial facilities must submit an NOI that provides information on the operator and facility, including the facility's industrial activities, pollutant discharges, and SWPPP. The NOI must also certify to EPA that eligibility conditions are met, including those related to endangered species and preservation of historic properties.

The 2021 MSGP will expire on February 28, 2026. The Federal Register Notice announcing the proposed reissuance of the next MSGP was published on December 13, 2024 (89 Fed. Reg. 101000) with an initial 60-day comment period. At the request of multiple stakeholders, the comment period was extended by an additional 90 days and ended on May 19, 2025. During this time, EPA received 90 comment letters providing extensive feedback on the proposed permit. Given the breadth and scope of the public comments, EPA's Office of Water (OW) is taking more time to re-engage with stakeholders and consider next steps before finalizing the next permit. In addition, OW must complete required procedural steps and external consultations prior to finalization, including Endangered Species Act consultation and CWA Section 401 certification, which alone can take six months to a year to complete. For these reasons, EPA will be unable to finalize the next permit before the 2021 MSGP expires on

¹ The 2021 MSGP authorizes stormwater discharges associated with industrial activity in Massachusetts, New Hampshire, New Mexico, Washington, D.C.; all U.S. territories except the U.S. Virgin Islands; all Indian Country lands, except in Maine; and federal facilities in Vermont, Delaware, Colorado, and Washington.

February 28, 2026. While facilities that have already submitted an NOI under the 2021 MSGP will remain covered by that permit, new facilities will not have a general permit under which to apply for coverage.

While new facilities have the option to apply for an individual NPDES permit during the gap in general permit coverage, EPA would still need to follow the same procedural steps and external consultations required for general permit issuance for each individual permit application. Therefore, the expected timeline for reissuing the next MSGP is not significantly different than that for issuing individual permits. Further, significant additional resource and administrative burdens would fall on EPA Regions from an influx of individual permit applications.

Without a general or individual NPDES permit, new facilities will be unable to discharge in compliance with the CWA, and most new facilities will therefore be unable lawfully to begin operating their facility. This barrier to facilities' operations could potentially cause significant and avoidable disruptions, including undue losses in productivity, revenue, and jobs during the gap in permit coverage; interruptions to current and future supply chains and business relationships; and adverse impacts on communities attempting to stimulate new business development. For these reasons, OW has requested that the Office of Enforcement and Compliance Assurance provide a No Action Assurance to address the temporary gap in permit coverage until the next MSGP is in effect, provided that new facilities satisfy certain conditions, primarily compliance with most of the requirements in the 2021 MSGP.

OW does not believe that a No Action Assurance would have an adverse impact on public health and the environment because new facilities covered by the No Action Assurance would meet all the pollution reduction requirements that current permittees must meet under the 2021 MSGP. These requirements include development and implementation of a SWPPP, installation and maintenance of stormwater control measures, periodic site inspections, benchmark monitoring, and corrective action measures where necessary. Based on historical information, OW believes that approximately 90 new facilities will begin operating and need coverage under the No Action Assurance between the expiration of the 2021 MSGP and the anticipated effective date of the next MSGP.

No Action Assurance

In light of the undue economic hardship that would be imposed on new facilities, through no fault of their own, and the communities where they are located due to the gap in general permit coverage, EPA will exercise its discretion not to pursue civil and administrative enforcement for the following violation:

- The discharge of stormwater pollutants into navigable waters by any person from a point source not in compliance with an NPDES permit. 33 U.S.C. § 1311.

This exercise of enforcement discretion extends only to the following new facilities:

- Facilities that commence discharging stormwater on or after March 1, 2026, but prior to the effective date of the next MSGP, that have not submitted an NOI for coverage under the 2021 MSGP prior to its expiration.

Facilities that commence discharging after the effective date of the next MSGP are not to be covered by this No Action Assurance and must submit an NOI under the next MSGP. This No Action Assurance also does not apply to existing facilities that commenced discharging prior to February 28, 2026 but failed to obtain NPDES coverage under the 2021 MSGP.

This exercise of enforcement discretion is subject to the following conditions:

- 1) Eligibility: Any new facility must meet the 2021 MSGP eligibility criteria (Part 1 of the permit);
- 2) Prior Notification to EPA: Prior to the discharge of stormwater associated with industrial activity, the new facility must provide EPA notice of their intention to operate in accordance with the 2021 MSGP by submitting an NOI form (Appendix G of the permit) to msgp@epa.gov. Note that submission of the NOI form does not constitute permit coverage.
- 3) Compliance: Any new facility must satisfy all applicable requirements of the 2021 MSGP. These obligations include, but are not limited to:
 - a) Develop a SWPPP (Part 6);
 - b) Properly install and maintain stormwater control measures (Part 2);
 - c) Conduct site inspections (Part 3);
 - d) Conduct applicable effluent limit, impaired waters, indicator, and benchmark monitoring (Part 4);
 - e) Implement corrective action measures, if necessary (Part 5);
 - f) Meet any sector-specific requirements (Part 8);
 - g) Meet any permit conditions applicable to specific states, Indian Country Lands, or territories (Part 9);
 - h) Complete recordkeeping (Part 7); and
 - i) If requested, provide EPA with all required reporting information that would otherwise be submitted electronically under the permit (Part 7).
- 4) Obtain Coverage: A facility that is covered by this No Action Assurance and intends to continue discharging after the effective date of the next MSGP must submit a NOI to be covered by the next MSGP within 90 days of its effective date (which will provide permit coverage 30 days after submission of the NOI).

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 on February 28, 2027, or 120 days after the effective date of the next MSGP, whichever comes first. Covered facilities are encouraged to submit an NOI for the next MSGP as soon as it is available. However, EPA is providing additional time after the effective date of the next MSGP, if needed, for facilities covered by this No Action Assurance to submit an NOI. As noted in your request for this No Action Assurance, this additional time is likely to be consistent with the time provided in the next MSGP for facilities to submit an NOI along with the time for EPA NOI review. EPA reserves the right to withdraw or revise this No Action Assurance at any time.

If you have any further questions regarding this matter, please contact Joseph Theis, Acting Director, Water Enforcement Division, at (202) 564-4053 or Theis.Joseph@epa.gov.

cc: Rosemarie Kelley, Director, Office of Civil Enforcement