



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

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DEPARTMENT OF PLANNING AND NATURAL RESOURCES

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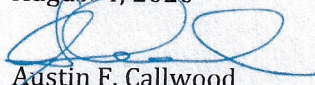
St. Thomas, U.S. Virgin Islands 00802

Office of the Commissioner

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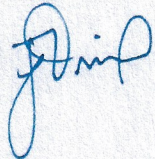
MEMORANDUM

DATE: August 4, 2020

TO: 
Austin F. Callwood
Director, Division of Environmental Protection

Marlon Hibbert 
Director, Division of Coastal Zone Management

Douglas Hodge 
Director, Division of Building Permits

FROM: Jean-Pierre L. Oriol 
Commissioner

SUBJECT: **No Action Assurance Policy: TPDES General Permit for Stormwater Discharges Associated with Construction Activity**

This memorandum is to inform you of the Department of Planning and Natural Resources' (DPNR or Department) current approach to addressing a gap in permit coverage due to the lack of a current TPDES General Permit for Stormwater Discharges from Construction Activity (CGP). Obtaining coverage under the CGP is the mechanism operators of regulated construction activities use to meet their obligation to obtain a TPDES permit under the Water Pollution Control Act for stormwater discharges from construction activity and small construction activity. The CGP issued in 2012 under the Territorial Pollutant Discharge Elimination System (TPDES) Water Pollution Control Program expired on November 30, 2017. The Division of Environmental Protection (DEP) is in the process of re-issuing the CGP, which will take approximately six (6) more months. Operators that obtained coverage for construction projects under the 2012 CGP prior to its expiration date have been automatically granted an administrative continuance of permit coverage and are required to continue to comply with the 2012 CGP until they submit a Notice of Termination (NOT) or DPNR issues a new CGP. Any operator that begins or began discharging storm water associated with

construction activity and/or small construction activity after November 30, 2017 (a "New Project") will not be able to obtain general permit coverage until DPNR issues a new CGP.

Because a new construction general permit has not yet been promulgated, I have determined that, to address this gap in coverage, it is appropriate to exercise my enforcement discretion and issue this temporary No Action Assurance Policy. Specifically, DPNR will not pursue administrative or civil judicial enforcement actions for lack of TPDES permit coverage against operators of new regulated construction activities that began or begin discharging storm water associated with construction activity and small construction activity after November 30, 2017, provided that these New Projects meet the following criteria:

1. Eligibility: For coverage under this No Action Assurance policy, any New Project and its operator must meet and document the 2012 CGP eligibility criteria.
2. Prior Notification: Prior to discharge of stormwater from a New Project, the operator must notify DPNR of both their operator status and intention to operate in accordance with the 2012 CGP. This prior notification requirement can be met by timely submission of a complete and accurate Notice of Intent (NOI) form to obtain coverage under the 2012 CGP, together with a signed, dated and certified copy of the Stormwater Pollution Prevention Plan (SWPPP) developed for the New Project. All of the information required to apply for coverage under the 2012 CGP must be provided, including identification of the stormwater team and documentation that the required personnel were trained in accordance with the SWPPP requirements.
3. Compliance: The operator of any New Project must comply with the same obligations and requirements in or related to the 2012 CGP as if coverage had been granted under the General Permit. These obligations and requirements include:
 - a. Installation of perimeter and stormwater run-off controls into the construction site;
 - b. Implementation of the project-specific SWPPP;
 - c. Identification of a qualified person to inspect the site;
 - d. Performance and documentation of site inspections; and
 - e. Submission of a timely and complete Notice of Termination (NOT) when construction activity at the site is completed.

If construction activities at a New Project continue after the Department issues the revised CGP, an operator discharging stormwater under this Policy must provide DPNR with notice that its construction activities are continuing after the re-issuance of the CGP. Submittal of a complete and accurate NOI form within the timeframe included in the re-issued CGP will meet this notification requirement.

For purposes of issuing other permits or determining economic development zone benefit eligibility, DPNR shall treat operators of New Projects that meet these criteria as if they had met the obligation to obtain a TPDES permit for their stormwater discharges associated with construction activity or

small construction activity. This No Action Assurance Policy 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 neither best management practices nor stormwater pollution prevention controls are in place to protect public health or the environment. DPNR also reserves the right, at any time, to exercise its discretion to address a specific discharge should circumstances warrant.

This No Action Assurance Policy for operators with New Projects will terminate 60 days after DPNR issues a revised CGP or such later time as specified in the CGP. DPNR also reserves the right to withdraw or revise this No Action Assurance Policy at any time.

If you have any questions about this matter, please contact Austin Callwood, Director of the Division of Environmental Protection, via email at austin.callwood@vi.gov.

cc: Mary Stiehler, Water Program Manager, DEP
Jedidah Morrell, Legal Counsel, DEP