



GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS

-----0-----

**DEPARTMENT OF PLANNING AND NATURAL RESOURCES**

#4611 Tutu Park Mall  
2<sup>nd</sup> FL, Suite 300  
St. Thomas, U.S. Virgin Islands 00802

Telephone: (340) 774-3320

**MEMORANDUM**

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

Amanda Jackson-Acosta  
Director, Division of Building Permits

Marlon Hibbert  
Director, Division of Coastal Zone Management

FROM: Jean-Pierre L. Oriol  
Commissioner

A handwritten signature in blue ink, appearing to read "JP Oriol".

DATE: January 20, 2023

SUBJECT: **No Action Assurance Policy for TPDES Regulated Operators of Storm Water Discharges Associated with Industrial Activity**

---

Dischargers of storm water associated with industrial activity into waters of the United States Virgin Islands (“USVI”) are authorized to discharge pollutants pursuant to regulations implementing the USVI Water Pollution Control Act (“WPCA”) under the Territorial Pollutant Discharge Elimination System (“TPDES”) permits. On February 28, 2022, the TPDES Virgin Islands Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP or “2017 Permit”) expired but has not been reissued by Department of Planning and Natural Resources’ (“DPNR” or the “Department”).

Under the statutory authority of the WPCA, afforded DPNR, the Department can issue an interim measure to address the discontinuation of the regulatory provisions created by the expiration of the 2017 Permit. This No Action Assurance Policy (the “NAAP”) represents such an interim measure through

which a “**NEW OPERATOR**”<sup>1</sup>, with regulated industrial activities, can meet their obligation to obtain a TPDES permit under the TPDES Storm Water Rules during the period that DPNR’s Division of Environmental Protection (“DEP”) is in the process of re-issuing the MSGP.

This memorandum is to inform you of the DPNR’s instated provision to address the gap in TPDES permit coverage due to the expiration of the MSGP.

Operators that obtained coverage for their storm water discharges associated with industrial activity under the 2017 Permit on or before February 28, 2022, have been automatically granted an administrative continuance of permit coverage and are required to continue to comply with the 2017 Permit until they submit a Notice of Termination (“NOT”) or that DPNR reissues the MSGP. Any NEW OPERATOR that began discharging storm water associated with industrial activity on or after February 28, 2022 will not be able to obtain TPDES permit coverage under the now expired 2017 Permit until DPNR reissues the MSGP.

Because the MSGP has not yet been reissued, I have determined that, to address this gap in general permit coverage, it is appropriate under the enforcement discretion of the DPNR Commissioner, to issue this NAAP. Specifically, DPNR will not pursue administrative or civil judicial enforcement actions for lack of TPDES permit coverage against any new operators of regulated industrial activities that began discharging storm water associated with industrial activity after February 28, 2022, provided that these industrial activities meet the following criteria:

1. **Eligibility**: For coverage under this NAAP, any regulated industrial activity and its operator must meet and document the 2017 Permit eligibility criteria (Part 1.1).
2. **Prior Notification**: Prior to the discharge of storm water associated with industrial activity by a NEW OPERATOR of industrial activity on or after February 28, 2022, until the effective date of reissuance of the MSGP, the NEW OPERATOR of such industrial activity must notify DPNR of both their operator status and intention to operate in accordance with the 2017 Permit. This notification must include submission of a complete and accurate Notice of Intent (“NOI”) form (Appendix F) under the 2017 Permit in order to meet this prior notification requirement.

In addition, the operator must send to DPNR:

- a. a copy of a signed, dated, and certified Stormwater Pollution Prevention Plan (“SWPPP”) developed for the industrial site in accordance with Part 5 of the 2017 Permit; and
  - b. written certification stating that it had provided staff training, including the qualified person(s), under Part 2.1.2.8 of the 2017 Permit.
3. **Compliance**: The new operator of any identified industrial activity must comply with the same obligations and requirements in or related to the 2017 Permit, as if coverage had been granted under the general permit. These obligations and requirements are among others:
    - a. Proper installation and maintenance of stormwater control measures (Part 2);

---

<sup>1</sup> Any operator that began discharging storm water associated with industrial activity on or after February 28, 2022 is considered a “**NEW OPERATOR**”.

- b. Conduct and document site inspections (Part 3);
  - c. Implement and document corrective actions (Part 4);
  - d. Conduct applicable monitoring (Part 6);
  - e. Complete any recordkeeping and reporting (Part 7); and
  - f. Meet applicable sector-specific requirements (Part 8).
4. Other Notifications:
- a. The operator discharging storm water associated with industrial activity under this NAAP must provide DPNR with written notice that its industrial activities will continue after the re-issuance of the MSGP.
  - b. Submittal of a complete and accurate NOI form within the timeframe included in the re-issued MSGP satisfies this notification requirement.

For purposes of issuing other permits or determining economic development zone benefit eligibility, DPNR shall treat new operators of identified industrial activities that meet these criteria as if they had met the obligation to obtain a TPDES permit for their storm water discharges associated with industrial activity. This NAAP does not apply to criminal violations or existing egregious circumstances; that is, conditions that are characterized as situations which may cause serious harm, or which may present an imminent and substantial endangerment to 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 NAAP provision for new operators with regulated industrial activities that began discharging stormwater associated with industrial activity after February 28, 2022, will terminate sixty (60) days after DPNR reissues the MSGP. DPNR reserves the right to withdraw or revise this NAAP at any time.

This NAAP does not apply to operators of constructions activity and small construction activity under 12 CVIR § 184-2(86)(x) and 12 CVIR § 184-2(87).

For questions about this matter, please contact Austin F. Callwood, Director, Environmental Protection Division, at [austin.callwood@dpnr.vi.gov](mailto:austin.callwood@dpnr.vi.gov) or Mary Stiehler, Program Manager, Water Pollution Control Program at [mary.stiehler@dpnr.vi.gov](mailto:mary.stiehler@dpnr.vi.gov).