



Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On “No Exposure” of Industrial Activities to Storm Water



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The statements in this document are intended solely as guidance. This document is not intended, nor can it be relied on, to create any rights enforceable by any party in litigation with the United States. EPA and state officials may decide to follow the guidance provided in this document, or to act in variance with the guidance, based upon an analysis of site-specific circumstances. This guidance may be revised without public notice to reflect subsequent changes in EPA's policy.

1.0 Introduction

The 1990 storm water regulations for Phase I of the federal storm water program identify eleven categories of industrial activities under the definition of a "storm water discharge associated with industrial activity" that must obtain a National Pollutant Discharge Elimination System (NPDES) permit. The categories contain industries listed either by reference to an industry's Standard Industrial Classification (SIC) code, or by a short narrative description of the activity found at the industrial site (see text box at right for more detailed descriptions). For facilities that match the SIC codes or description in one of the categories, only those that have a storm water discharge to a *municipal separate storm sewer system (MS4)* or *waters of the United States* are required to seek permit coverage. The NPDES permit requirements vary between individual and general permits, but in general involve the development of a storm water pollution prevention plan based upon site assessments, monitoring and reporting data on storm water discharges, and mitigating any possible effects of discharges on endangered species and national historic properties (for EPA issued permits).

Under the Phase I regulations, operators of facilities within Category (xi), referred to as "light industry," were exempted from storm water permitting requirements, provided their industrial materials or activities were not exposed to precipitation or runoff (i.e., they had no "storm water discharges associated with industrial activity"). Only those facilities in Category (xi) could take advantage of this "no exposure" exemption, and such operators were not required to submit any information supporting their no exposure claim.

Storm Water Discharge Associated with Industrial Activity (40 CFR 122.26(b)(14)(i) - (xi))

- Facilities subject to storm water effluent limitation guidelines; new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N.
- "Heavy" industrial facilities with SIC codes listed in 40 CFR 122.26(b)(14)(ii), (iii), and (vi)
- "Light" industrial facilities with SIC codes listed in 40 CFR 122.26(b)(14)(xi), which conduct the activities specified in that sections.
- Hazardous waste treatment, storage, or disposal facilities.
- Landfills, land application sites, and open dumps that receive or have received industrial waste.
- Steam electric power generating facilities.
- Sewage treatment works.
- Construction activity (including clearing, grading, and excavation) disturbing five or more acres of land, or less than five acres of land if it is part of a larger common plan of development or sale of five acre or greater.

In 1992, the Ninth Circuit court remanded to EPA for further rulemaking the no exposure exemption for light industry, concluding that the exemption was arbitrary and capricious for two reasons. First, the court determined that EPA had not established a record to support its assumption that light industry not exposed to storm water was not "associated with industrial activity," particularly when other types of industrial activities included in the 1990 regulation

were required to obtain permit coverage whether or not there was “exposure.” Secondly, the court concluded that the exemption relied on the unverified judgement of light industrial facility operators to determine non-applicability of permitting requirements. In other words, the court was critical that operators would determine for themselves that there was “no exposure” and then simply not apply for a permit without any further action. The result of the 1992 ruling was a revised no exposure exemption (now a “conditional exclusion,” which may be simply referred to as “exclusion” in this guidance) promulgated as part of the Phase II storm water regulations.¹

The intent of the no exposure exclusion is to provide all industrial facilities regulated under Phase I of the NPDES Storm Water Program (with the exception of construction activity; Category (x)), whose industrial activities and materials are completely sheltered, with a simplified method for complying with the Clean Water Act. Note that runoff from separate office buildings and their associated parking lots does not need to be considered when determining no exposure at an industrial facility.

As revised at 40 CFR 122.26(g), if a condition of no exposure exists at industrial facilities regulated under Phase I of the Storm Water Program, then permits are not required for storm water discharges from the facilities. Facilities wishing to take advantage of the permitting exclusion must submit a certification to the permitting authority attesting to the condition of no exposure. **The new certification requirement now applies to all industrial facilities claiming a condition of no exposure—including the Category (xi), light industrial facilities which previously were not required to submit anything to be excluded from permitting requirements.** Facilities must maintain their condition of no exposure or, if conditions change, obtain coverage under an applicable storm water permit.

The following sections of this guidance provide detailed information on:

- who is eligible for the revised no exposure exclusion;
- the definition of no exposure;
- how to complete the No Exposure Certification Form.

Also included are supplemental reference materials to assist you in finding out if the No Exposure Exclusion is applicable to your facility:

- Appendix A - Frequently Asked Questions
- Appendix B - Areas Where EPA is the Permitting Authority
- Appendix C - List of NPDES Permitting Authorities
- Appendix D - No Exposure Certification Form and Instructions
- Appendix E - Regulatory Language for the No Exposure Exclusion

¹ *National Pollutant Discharge Elimination System - Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule*, 64 FR 68721 - 68851, December 8, 1999

If you have any questions regarding this guidance or any part of the overall NPDES Storm Water Program, please contact either the appropriate Regional EPA or State Storm Water Coordinator.

2.0 Who is Eligible to Qualify for the Conditional No Exposure Exclusion?

The conditional no exposure exclusion represents a significant expansion, in terms of eligibility, of the original no exposure provision established in the 1990 NPDES Storm Water Permit Application Regulations (commonly referred to as Phase I). Now, all Phase I industrial categories, save for construction, are eligible to apply for the no exposure exclusion.

2.1 Limitations on Eligibility for the No Exposure Exclusion

In addition to construction projects not being eligible, the following situations limit the applicability of the no exposure exclusion:

- As of the printing date of this document, **facilities not located in States or areas where EPA is the NPDES permitting authority cannot apply for the no exposure exclusion.**
 - ▶ See Appendix B for a listing of areas where EPA is the authorized NPDES permitting authority.
 - ▶ If your facility is located in a State authorized to implement the NPDES Program, contact the state permitting authority to find out if the no exposure exclusion has been adopted in your state.
- The exclusion from permitting is available on a facility-wide basis only, not for individual outfalls. Generally, if any exposed industrial materials or activities are found on any portion of a facility, the no exposure exclusion is not available to that facility.
- If the permitting authority determines that a facility's storm water discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, the permitting authority can deny the no exposure exclusion.
- If changes at a facility result in industrial activities or materials becoming exposed, the no exposure exclusion ceases to apply. You should apply for coverage under an applicable NPDES permit for storm water discharges at least two days before the changes happen that cause the condition of exposure.
- Past sources of storm water contamination that remain on site cause a condition of exposure

3.0 What is the Definition of No Exposure?

No exposure means all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff.

Industrial materials and activities include, but are not limited to, material handling equipment or activities; industrial machinery; raw materials, intermediate products, by-products, and final products; or waste products.

Material handling activities include storage, loading and unloading, transportation or conveyance, of any raw material, intermediate product, by-product, final product or waste product.

Many final products which are meant to be used outdoors (e.g., automobiles) pose little risk of storm water contamination, i.e., the products cannot be mobilized by precipitation or runoff, and are thus exempt from the requirement that these products be sheltered to qualify for no exposure. Similarly, the containers, racks and other transport platforms (e.g., wooden pallets) used for the storage or conveyance of these final products can also be stored outside, providing the containers, racks and platforms are pollutant-free.

Storm-resistant shelters include completely roofed and walled buildings or structures, as well as structures with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of storm water.

EPA acknowledges there are circumstances where permanent, uninterrupted sheltering of industrial activities or materials is not possible. Under such conditions:

- Materials and activities may be sheltered with temporary covers (e.g., tarpaulins) until permanent enclosure can be achieved.
- The no exposure provision does not specify every such situation, but NPDES permitting authorities can address this issue on a case-by-case basis, i.e., determine if the temporary covers will meet the requirements of this section.
- In general, EPA recommends that temporary sheltering of industrial materials and activities only be allowed during facility renovation or construction.

3.1 Industrial Materials / Activities That Do Not Require a Storm Resistant Shelter

While the intent of the no exposure exclusion is to promote a condition of permanent no exposure, a storm-resistant shelter is not required for the following industrial materials and activities:

3.1.1 Drums, Barrels, Tanks and Similar Containers. Drums, barrels, tanks and similar containers that are sealed (“sealed” means banded or otherwise secured and *without operational taps or valves*), are not exposed provided those containers are not deteriorated and do not leak. Unless the drums, barrels, etc., are opened while outdoors, or are deteriorated or leak, they will likely not constitute a risk of contaminating storm water runoff. Consider the following in making your no exposure determination:

- Containers can only be stored outdoors; any addition or withdrawal of material to / from containers while outdoors will not allow you to certify no exposure.
- Simply moving containers while outside does not create exposure.
- Inspect all outdoor containers to ensure they are not open, deteriorated or leaking.
 - ▶ EPA recommends that a designated individual regularly conduct these inspections.
 - ▶ Any time external containers are open, deteriorated or leaking, they must immediately be closed, replaced or sheltered.
 - ▶ Containers, racks and other transport platforms (e.g., wooden pallets) used with the drums, barrels, etc., can be stored outside providing they are contaminant-free.

3.1.2 Above Ground Storage Tanks (ASTs). In addition to generally being considered not exposed, ASTs may also be exempt from the prohibition against adding or withdrawing material to / from external containers. ASTs typically utilize transfer valves to dispense materials which support facility operations (e.g., heating oil, propane, butane, chemical feedstocks) or fuel for delivery vehicles (gasoline, diesel, compressed natural gas). For ASTs to be operational and qualify for no exposure:

- They must be physically separated from and not associated with vehicle maintenance operations.
- There must be no piping, pumps or other equipment leaking contaminants that could contact storm water.
- EPA recommends, wherever feasible, that ASTs be surrounded by some type of physical containment (e.g., an impervious dike, berm or concrete retaining structure) to prevent runoff in the event of a structural failure or leaking transfer valve. *Note: any resulting unpermitted discharge would violate the CWA.*

3.1.3 Lidded Dumpsters. Lidded dumpsters containing waste materials, providing the containers are completely covered and nothing can drain out holes in the bottom, or is lost in

loading onto a garbage truck. Industrial refuse and trash that is stored uncovered, however, is considered exposed.

3.1.4 Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general purpose vehicles found onsite—but not industrial machinery—which are not leaking or are otherwise a potential source of contaminants.

- Vehicles passing between buildings will likely come into contact with precipitation at some time, but so long as they are adequately maintained they will not cause a condition of exposure. Similarly, non-leaking vehicles awaiting maintenance at vehicle maintenance facilities are not considered exposed.
 - ▶ The mere conveyance between buildings of materials / products that would otherwise not be allowed to be stored outdoors, does not create a condition of exposure, provided the materials / products are adequately protected from precipitation and could not be released as a result of a leak or spill.

3.1.5 Final products built and intended for use outdoors (e.g., new cars), provided the final products have not deteriorated or are otherwise a potential source of contaminants.

3.1.5.1 Types of final products not qualifying for a certification of no exposure:

- Products that would be mobilized in storm water discharges (e.g., rock salt).
- Products which may, when exposed, oxidize, deteriorate, leak or otherwise be a potential source of contaminants (e.g., junk cars; stockpiled train rails).
- “Final” products which are, in actuality, “intermediate” products. Intermediate products are those used in the composition of yet another product (e.g., sheet metal, tubing and paint used in making tractors).
 - ▶ Even if the intermediate product is “final” for a manufacturer and destined for incorporation in a “final product intended for use outdoors,” these products are not allowed to be exposed because they may be chemically treated or are insufficiently impervious to weathering.

3.2 Other Potential Sources of Contaminants

3.2.1 Particulate Emissions From Roof Stacks and/or Vents. As stated in the Phase II regulation, particulate emissions from roof stacks / vents do not cause a condition of exposure, provided they are in compliance with other applicable environmental protection programs (e.g., air quality control programs) and do not cause storm water contamination. Deposits of particles or residuals from roof stacks / vents not otherwise regulated and which could be

mobilized by storm water runoff, are considered exposed. Exposure also occurs when, as a result of particulate emissions, pollutants can be seen being “tracked out” or carried on the tires of vehicles.

3.2.2 Acid Rain Leachate. As affirmed by a recent Environmental Appeals Board decision against the General Motors Corporation, CPC-Pontiac Fiero Plant (CWA Appeal No. 96-5), industrial facilities are also responsible for storm water discharges which contain pollutants resulting from the leaching effect of acidic precipitation on metal building structures. Therefore, operators must be aware when they attempt to certify a condition of no exposure of the existence of structural elements that could be soluble as a result of contact with precipitation (e.g., uncoated copper roofs). If the dissolved metals or other contaminants could cause or contribute to a water quality violation, a condition of no exposure cannot be certified.

3.2.3 Pollutants Potentially Mobilized by Wind. Windblown raw materials cause a condition of exposure. This is to alert operators to situations where materials sheltered from precipitation can still be deemed exposed if the materials can be mobilized by wind.

4.0 Certifying a Condition of No Exposure

To obtain the conditional no exposure exclusion, you must submit a certification form attesting your facility meets the definition of “no exposure.” **You must do so even if you are a Category (xi) facility operator.** The No Exposure Certification Form, which is only for use in areas where EPA is the NPDES permitting authority, is found in the Storm Water Phase II Rule and is also included in this guidance in Appendix D.

EPA's certification form uses a series of yes/no questions on the nature of the industrial activities and conditions at your facility. You may only qualify for the no exposure exclusion if you answer “no” to all of the questions.

Important note: If the no exposure exclusion becomes available in States with NPDES permitting authority, each State will issue its own form. The forms may be similar to EPA’s.

The purpose of the certification form is twofold: 1) to aid you in determining whether you have a condition of no exposure at your facility or site; and 2) to furnish the necessary written certification that allows you to be relieved of permit obligations, provided you answer all the questions in the negative.

- ☐ If you answer “yes” to any of the questions about possible exposure, you must make the appropriate changes at the facility before you apply for the conditional exclusion. These changes must remove the particular material, process or activity from exposure to storm water.

- ❑ If, you answered “no” to every question, you qualify for the no exposure exclusion. To complete the process, you must sign and submit the form to your NPDES permitting authority.

Certification Facts:

- **The Certification must be completed and submitted to your permitting authority once every 5 years**, and can only be done so if the condition of no exposure continues to exist at the facility.
- A Certification must be submitted for each separate facility or site qualifying for the no exposure exclusion.
- The form is non-transferable. If a new operator takes over your facility, the new operator must immediately complete and submit a new form to claim the no exposure exclusion.

5.0 Are There Any Concerns Related to Water Quality Standards?

Yes. Operators who certified that their facilities qualify for the conditional no exposure exclusion may, nonetheless, be required by the permitting authority to obtain permit coverage, based on a determination that storm water discharges are likely to have an adverse impact on water quality.

Many efforts to achieve no exposure can employ simple good housekeeping and contaminant cleanup activities such as moving materials and activities into existing buildings or structures. In some cases industrial operators may make major changes at a site to achieve no exposure, such as constructing new buildings / shelters or constructing structures to prevent run-on. However, significant changes undertaken to achieve no exposure can increase the impervious area of the site. This occurs when a building is placed in a formerly vegetated area, for example. An increase in impervious area often leads to an increase in the volume and velocity of runoff, which, in turn, can result in a higher concentration of pollutants in the discharge, since fewer pollutants are naturally filtered out.

The concern over increased imperviousness engendered the following question on the Certification Form: “Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the no exposure exclusion? If yes, please indicate approximately how much area was paved or roofed over.” This will aid the NPDES permitting authority in assessing the likelihood of such actions impacting water quality standards. Where this is a concern, the facility operator along with the permitting authority should take appropriate actions to ensure that water quality standards are achieved.

6.0 What Do I Need To Do To Obtain the No Exposure Exclusion?

This section will walk you through the process of obtaining the no exposure exclusion. This information will be useful to non-EPA applicants as well, provided their permitting authority has issued a no exposure certification form that is similar to EPA's (alert: a State's certification form may have different requirements and deadlines than what is noted here). Repeat the steps for each individual facility or site.

Step 1: Determine if your industrial activity meets the definition of a “storm water discharge associated with industrial activity,” as defined in Phase I of the NPDES Storm Water program (refer to Section 1.0). If so, proceed to Step 2. If not, stop here.

- If your facility is defined as an “industrial activity” under the Phase I Program (including a “light industry” defined at Category (xi)), you need to **either** apply for a storm water permit **or** submit a no exposure certification, in order to be in compliance with the NPDES storm water regulations.
- Construction activities are ineligible for the exclusion.

Step 2: Determine if your regulated industrial activity meets the definition of no exposure and qualifies for the exclusion from permitting. If it does, proceed to Step 3. If not, stop here and obtain industrial storm water permit coverage.

- Using personnel familiar with the site and its operations, inspect or scrutinize all appropriate areas of the site to ascertain the site’s exposure condition as per this guidance.
- **As of the printing date of this guidance, the conditional no exposure exclusion option is only available for facilities in areas where EPA is the NPDES permitting authority.** In all other areas, facility operators will not be able to apply until their permitting authority makes the option available. (See Appendix B for a listing of areas where EPA is the NPDES permitting authority.)

Step 3: Complete and submit the No Exposure Certification Form to your NPDES permitting authority.

- Be aware that even if you certify no exposure, your NPDES permitting authority can still require you to apply for an individual or general permit if it has determined that your discharge is contributing to the violation of, or interfering with the attainment or maintenance of, water quality standards, including designated uses.
- To maintain your exclusion from permitting, a certification must be completed and submitted to your permitting authority once every 5 years. This can only be done if the

condition of no exposure continues to exist at the facility.

Step 4: Upon request, submit a copy of the certification form to the municipality in which your facility is located.

- You must submit a copy of your completed certification form to the operator of your Municipal Separate Storm Sewer System² (MS4) *if they so request or require*. An MS4 operator could be the Department of Public Works, Sewer Commission, City Engineering Department, etc.
- If you need to contact your local MS4 operator (e.g., if you are unsure about certification submittal requirements) and they are unknown to you, it may be useful to check the telephone book, especially under the local government listings.

Step 5: When requested, allow your NPDES permitting authority or, if discharging into an MS4, the MS4 operator, to inspect your facility. The permitting authority may make any inspection reports publicly available upon request.

Step 6: Maintain a condition of no exposure.

- The no exposure exclusion is conditional and not a blanket exemption. Therefore, if onsite changes occur which cause exposure of industrial activities or materials to storm water, you must then immediately comply with all the requirements of the NPDES Storm Water Program, including obtaining a storm water discharge permit.
- Failure to maintain the condition of no exposure or obtain coverage under an NPDES permit can lead to the unauthorized discharge of pollutants to waters of the United States, resulting in penalties under the CWA.

² See 40 CFR 122.26(b)(8) for the definition of a municipal separate storm sewer.

APPENDIX A - Frequently Asked Questions

Q1. Who can submit the No Exposure Certification?

A. At present, only those facilities located in areas where EPA is the NPDES permitting authority can submit the No Exposure Certification. Facilities located where EPA is not the permitting authority will not be able to submit the certification until the permitting authority completes any necessary statutory or regulatory changes to adopt the no exposure provision. EPA recommends that facilities contact the appropriate permitting authority (see Appendix C) for guidance on when and how to apply for a no exposure exclusion in their area.

Q2. Where do I send my No Exposure Certification?

A. If your facility is located in a State or area where EPA is the NPDES permitting authority, the completed form and signed certification statement should be mailed to:

Storm Water No Exposure Certification
U.S. Environmental Protection Agency
Ariel Rios Building (4203)
1200 Pennsylvania Ave, NW
Washington, DC 20460

If your facility is located in a state that is authorized to implement the NPDES Program, you must contact the state permitting authority. (See Appendix C)

Q3. Can a facility that is currently permitted under an individual storm water permit claim no exposure?

A. Yes. As long as a facility can meet the definition of no exposure, there is nothing to preclude a facility covered by an individual permit from submitting a certification. However, the facility should consult with their permitting authority, especially if the individual permit contains numeric effluent limitations for their storm water (“antibacksliding” provisions may prevent these facilities from qualifying for the no exposure exclusion).

Q4. My facility was originally excluded from the Phase I regulations because it was classified as a “light industrial facility” under category (xi). The facility has never had any exposure to storm water runoff. With the publication of the final Phase II regulations do I now need to certify that the facility meets the No Exposure Exclusion from NPDES Storm Water Permitting?

A. Yes. See answer provided to question number 9, “What is the exclusion ‘conditional’ upon?”

Q5. Must a facility currently covered under the Multi-Sector General Permit (MSGP) file a Notice of Termination (NOT) prior to applying for no exposure?

A. No. If a facility believes it meets the definition of no exposure, then storm water discharges at that facility are no longer considered to be associated with industrial activity. Therefore, the requirement to have a permit no longer exists. Upon this determination, the facility need only submit a no exposure certification.

Q6. When and how often is a certification form required to be submitted?

A. Submission of the No Exposure Certification Form is required once every five years (assuming the facility maintaining its no exposure status). Industrial operators applying for the no exposure exclusion should note the date they first submitted the Form so they can resubmit a new one five years hence.

Operators of new facilities must submit the Form before beginning operations. If new operators fail to do so, the permitting authority will assume that the facility is required to be covered under a storm water discharge permit.

Existing facility operators have two options for submitting Certification Forms:

- 1) Facilities that want the storm water permitting exemption before being subject to the mandatory permit application filing deadline, may submit the Form at any time up to the final termination of the original MSGP. The earliest possible termination will occur on December 30, 2000. This is especially relevant for all Category (xi) "light industrial" facilities who have been operating under their original, no-certification-required permitting exemption.
- 2) Facilities who presently have and intend to maintain permit coverage for their discharges, but will attain a condition of no exposure later, may submit a Certification Form at any time during the permit's term following completion of the on-site changes that will result in the condition of no exposure. As suggested above, note when the Form is submitted so a new one can be submitted five years thereafter.

After the point of permit termination, any facility that has not submitted a No Exposure Certification Form or otherwise applied for permit coverage will be out of compliance and subject to enforcement.

Q7. What happens if a facility plans changes that may cause exposure?

A. If exposure could occur in the future due to some anticipated change at the facility, the discharger should apply for and obtain coverage under an NPDES permit prior to such discharge to avoid enforcement for violations of the Clean Water Act..

Q8. Is the Certification Form transferable to a new facility operator?

A. No. If a new operator takes over your facility, the new operator must complete, sign and submit a new form to claim the no exposure exclusion.

Q9. What is the exclusion “conditional” upon?

A. The submission of the No Exposure Certification Form is, in effect, an application. It allows any facility listed or described in the industrial categories covered by the Multi-Sector General Permit (including the “light industrial” or Category (xi) facilities), that have no exposure of materials or activities to storm water, to be excluded from permit coverage requirements. The application, and therefore the approval of the exclusion, is conditional upon the permitting authority’s acceptance of the certification. The permitting authority can review the information, and contact or inspect the facility if there are questions regarding the facility’s no exposure claim. In addition, if the facility discharges into an MS4, the operator of the MS4 can request a copy of the certification and inspect the facility. The public can also request a copy of the certification and any inspection reports.

Q10. Can secondary containment outside qualify for the no exposure exclusion?

A. In general, if the secondary containment is adequately engineered to prevent any failure, leakage or overflow such that there would simply be no discharge from that area of the facility, no exposure could be claimed. Note: there must be proper disposal of any water or liquids collected from the containment (e.g., discharged in compliance with another NPDES permit, treated or trucked offsite).

APPENDIX B - Areas Where EPA is the Permitting Authority

(Where the Conditional No Exposure Exclusion is Available)

See [Appendix C: Areas Covered](#) in EPA's 2008 Multi-Sector General Permit for a list of areas where EPA is the permitting authority.

APPENDIX C - List of NPDES Permitting Authorities

As of the printing date of this document, only those facilities that are under EPA's permitting authority (Regions 1 through 10 below) have the option to apply for the no exposure exclusion. Such facilities should send their completed, signed originals of the No Exposure Certification Form to: **Storm Water No Exposure Certification, U.S. Environmental Protection Agency, Ariel Rios Building (4203), 1200 Pennsylvania Ave, NW, Washington, DC 20460**. Facilities in all other parts of the country, who are under the auspices of a particular state run program (designated below by the name of the state) should contact the relevant state authority to obtain information on whether or not the state has, or will, adopt the no exposure exclusion. A list of state permitting authority contacts is available at: www.epa.gov/npdes/stormwatercontacts.

APPENDIX D - Applying for the No Exposure Exclusion:

NO EXPOSURE CERTIFICATION for Exclusion from NPDES Storm Water Permitting

NPDES Form 3510-11

You may also obtain the form and instructions (ADOBE Acrobat Version) from:
http://www.epa.gov/npdes/pubs/msgp2008_appendixk.pdf



Submission of this No Exposure Certification constitutes notice that the entity identified in Section A does not require permit authorization for its stormwater discharges associated with industrial activity in the State identified in Section B under EPA's Stormwater Multi Sector General Permit due to the existence of a condition of no exposure.

A condition of no exposure exists at an industrial facility when all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. A storm resistant shelter is not required for the following industrial materials and activities:

- drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;
- adequately maintained vehicles used in material handling; and
- final products, other than products that would be mobilized in stormwater discharges (e.g., rock salt).

A No Exposure Certification must be provided for each facility qualifying for the no exposure exclusion. In addition, the exclusion from NPDES permitting is available on a facility-wide basis only, not for individual outfalls. If any industrial activities or materials are or will be exposed to precipitation, the facility is not eligible for the no exposure exclusion.

By signing and submitting this No Exposure Certification form, the entity in Section A is certifying that a condition of no exposure exists at its facility or site, and is obligated to comply with the terms and conditions of 40 CFR 122.26(g).

ALL INFORMATION MUST BE PROVIDED ON THIS FORM.

Detailed instructions for completing this form and obtaining the no exposure exclusion are provided on pages 3 and 4.

A. Facility Operator Information

1. Name: 2. Phone: - -

3. Email:

4. Mailing Address: a. Street

b. City: c. State d. Zip Code: -

B. Facility/Site Location Information

1. Facility Name:

2. a. Street Address:

b. City: c. County:

d. State: e. Zip Code: -

3. Is the facility located on Indian Lands? ☐ YES ☐ NO

4. Is this a Federal facility? ☐ YES ☐ NO

5. a. Latitude: ° ' " b. Longitude: ° ' "

6. a. Was the facility or site previously covered under an NPDES stormwater permit? ☐ YES ☐ NO

b. If yes, enter NPDES permit number or tracking number:

7. SIC/Activity Codes: Primary: Secondary (if applicable):

8. Total size of site associated with industrial activity: acres

9. a. Have you paved or roofed over a formerly exposed, pervious area in order to qualify for the no exposure exclusion? ☐ YES ☐ NO

b. If yes, please indicate approximately how much area was paved or roofed over. Completing this question does not disqualify you for the no exposure exclusion. However, your permitting authority may use this information in considering whether stormwater discharges from your site are likely to have an adverse impact on water quality, in which case you could be required to obtain permit coverage.

Less than one acre ☐ One to five acres ☐ More than five acres ☐

C. Exposure Checklist		Yes	No
Are any of the following materials or activities exposed to precipitation, now or in the foreseeable future? (Please check either "Yes" or "No" in the appropriate box.) If you answer "Yes" to any of these questions (1) through (11), you are <u>not</u> eligible for the no exposure exclusion.			
1. Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater	☐	☐	☐
2. Materials or residuals on the ground or in stormwater inlets from spills/leaks	☐	☐	☐
3. Materials or products from past industrial activity	☐	☐	☐
4. Material handling equipment (except adequately maintained vehicles)	☐	☐	☐
5. Materials or products during loading/unloading or transporting activities	☐	☐	☐
6. Materials or products stored outdoors (except final products intended for outside use [e.g., new cars] where exposure to stormwater does not result in the discharge of pollutants)	☐	☐	☐
7. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers	☐	☐	☐
8. Materials or products handled/stored on roads or railways owned or maintained by the discharger	☐	☐	☐
9. Waste material (except waste in covered, non leaking containers [e.g., dumpsters])	☐	☐	☐
10. Application or disposal of process wastewater (unless otherwise permitted)	☐	☐	☐
11. Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater outflow	☐	☐	☐

D. Certification Statement

I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from NPDES stormwater permitting.

I certify under penalty of law that there are no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2)).

I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the operator of the local municipal separate storm sewer system (MS4) into which the facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of stormwater from the facility.

Additionally, I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Print Name:

Print Title:

Signature:

Date: / /

Mo Day Year

Email:

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Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Stormwater Permitting

Who May File a No Exposure Certification

Federal law at 40 CFR Part 122.26 prohibits point source discharges of stormwater associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is not required for discharges of stormwater associated with industrial activities identified at 40CFR 122.26(b)(14)(i)-(ix) and (xi) if the discharger can certify that a condition of "no exposure" exists at the industrial facility or site.

Stormwater discharges from construction activities identified in 40 CFR 122.26(b)(14)(x) and (b)(15) are not eligible for the no exposure exclusion.

Obtaining and Maintaining the No Exposure Exclusion

This form is used to certify that a condition of no exposure exists at the industrial facility or site described herein. This certification is only applicable in jurisdictions where EPA is the NPDES permitting authority and must be re-submitted at least once every five years.

The industrial facility operator must maintain a condition of no exposure at its facility or site in order for the no exposure exclusion to remain applicable. If conditions change resulting in the exposure of materials and activities to stormwater, the facility operator must obtain coverage under an NPDES stormwater permit immediately.

Where to File the No Exposure Certification Form

No Exposure Forms sent regular mail: Forms sent overnight/express:

SW No Exposure Certification (4203M) USEPA 1200 Pennsylvania Avenue, NW Washington, D.C. 20460	SW No Exposure Certification US EPA East Building, Rm. 7420 1201 Constitution Avenue, NW Washington, D.C. 20004 (202) 564-9545
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Completing the Form

You must type or print, using uppercase letters, in appropriate areas only. Enter only one character per space (i.e., between the marks). Abbreviate if necessary to stay within the number of characters allowed for each item. Use one space for breaks between words. One form must be completed for each facility or site for which you are seeking to certify a condition of no exposure. Additional guidance on completing this form can be accessed at EPA's website: www.epa.gov/npdes/stormwater. Please make sure you have addressed all applicable questions and have made a photocopy for your records before sending the completed form to the above address.

Section A. Facility Operator Information

1. Provide the legal name of the person, firm, public organization, or any other entity that operates the facility or site described in this certification. The name of the operator may or may not be the same as the name of the facility. The operator is the legal entity that controls the facility's operation, rather than the plant or site manager.
2. Provide the telephone number of the facility operator.
3. Provide the email address of the facility operator.
4. Provide the mailing address of the operator (P.O. Box numbers may be used). Include the city, state, and zip code. All correspondence will be sent to this address.

Section B. Facility/Site Location Information

1. Enter the official or legal name of the facility or site.
2. Enter the complete street address (if no street address exists, provide a geographic description [e.g., Intersection of Routes 9 and 55]), city, county, state, and zip code. Do not use a P.O. Box number.
3. Indicate whether the facility is located on Indian Lands.
4. Indicate whether the industrial facility is operated by a department or agency of the Federal Government (see also Section 313 of the Clean Water Act).

5. Enter the latitude and longitude of the approximate center of the facility or site in degrees/minutes/seconds. Latitude and longitude can be obtained from United States Geological Survey (USGS) quadrangle or topographic maps, by calling 1-(888) ASK-USGS, or by accessing the Census Bureau at: www.census.gov/cgi-bin/gazetteer

Latitude and longitude for a facility in decimal form must be converted to degrees (°), minutes ('), and seconds (") for proper entry on the certification form. To convert decimal latitude or longitude to degrees/minutes/seconds, follow the steps in the following example.

Example: Convert decimal latitude 45.1234567 to degrees (°), minutes ('), and seconds (").

- a) The numbers to the left of the decimal point are the degrees: 45°.
 - b) To obtain minutes, multiply the first four numbers to the right of the decimal point by 0.006: $1234 \times 0.006 = 7.404$.
 - c) The numbers to the left of the decimal point in the result obtained in (b) are the minutes: 7'.
 - d) To obtain seconds, multiply the remaining three numbers to the right of the decimal from the result obtained in (b) by 0.06: $404 \times 0.06 = 24.24$. Since the numbers to the right of the decimal point are not used, the result is 24".
 - e) The conversion for 45.1234567 = 45° 7' 24".
6. Indicate whether the facility was previously covered under an NPDES stormwater permit. If so, include the permit number or permit tracking number.
 7. Enter the 4-digit SIC code which identifies the facility's primary activity and second 4-digit SIC code identifying the facility's secondary activity, if applicable. SIC codes can be obtained from the Standard Industrial Classification Manual, 1987.
 8. Enter the total size of the site associated with industrial activity in acres. Acreage may be determined by dividing square footage by 43,560, as demonstrated in the following example.

Example: Convert 54,450 ft² to acres

Divide 54,450 ft² by 43,560 square feet per acre:
 $54,450 \text{ ft}^2 \div 43,560 \text{ ft}^2/\text{acre} = 1.25 \text{ acres}$.

9. Check "Yes" or "No" as appropriate to indicate whether you have paved or roofed over a formerly exposed, pervious area (i.e., lawn, meadow, dirt or gravel road/parking lot) in order to qualify for no exposure. If yes, also indicate approximately how much area was paved or roofed over and is now impervious area.

Instructions for the NO EXPOSURE CERTIFICATION for Exclusion from NPDES Stormwater Permitting

Section C. Exposure Checklist

Check "Yes" or "No" as appropriate to describe the exposure condition at your facility. If you answer "Yes" to **ANY** of the questions (1) through (11) in this section, a potential for exposure exists at your site and you cannot certify to a condition of no exposure. You must obtain (or already have) coverage under an NPDES stormwater permit. After obtaining permit coverage, you can institute modifications to eliminate the potential for a discharge of stormwater exposed to industrial activity, and then certify to a condition of no exposure.

Section D. Certification Statement

Federal statutes provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means:

- (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or
- (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit

application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor, or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 1.0 hour per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), USEPA, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed No Exposure Certification form to this address.

APPENDIX E - Regulatory Language for the “No Exposure Exclusion”

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(g) Conditional exclusion for “no exposure” of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (g)(1) through (g)(4) of this section. “No exposure” means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(1) Qualification. To qualify for this exclusion, the operator of the discharge must:

(i) Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and runoff;

(ii) Complete and sign (according to §122.22) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in paragraph (g)(2) of this section;

(iii) Submit the signed certification to the NPDES permitting authority once every five years;

(iv) Allow the Director to inspect the facility to determine compliance with the “no exposure” conditions;

(v) Allow the Director to make any “no exposure” inspection reports available to the public upon request; and

(vi) For facilities that discharge through an MS4, upon request, submit a copy of the certification of “no exposure” to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

(2) Industrial materials and activities not requiring storm resistant shelter. To qualify for this exclusion, storm resistant shelter is not required for:

(i) Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak (“Sealed” means banded or otherwise secured and without operational taps or valves);

(ii) Adequately maintained

vehicles used in material handling; and

(iii) Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

(3) Limitations. (i) Storm water discharges from construction activities identified in paragraphs (b)(14)(x) and (b)(15) are not eligible for this conditional exclusion.

(ii) This conditional exclusion from the requirement for an NPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be “no exposure” discharges, individual permit requirements should be adjusted accordingly.

(iii) If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

(iv) Notwithstanding the provisions of this paragraph, the NPDES permitting

authority retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(4) Certification. The no exposure certification must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(i) The legal name, address and phone number of the discharger (see § 122.21(b));

(ii) The facility name and address, the county name and the latitude and longitude where the facility is located;

(iii) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(A) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(B) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(C) Materials or products from past industrial activity;

(D) Material handling equipment (except adequately maintained vehicles);

(E) Materials or products during loading/unloading or transporting activities;

(F) Materials or products

stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(G) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(H) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(I) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(J) Application or disposal of process wastewater (unless otherwise permitted); and

(K) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow;

(iv) All “no exposure” certifications must include the following certification statement, and be signed in accordance with the signatory requirements of § 122.22: “I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of “no exposure” and obtaining an exclusion from NPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (g)(2)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the NPDES permitting authority and, if requested, to the

operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under an NPDES permit prior to any point source discharge of storm water from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”