

Conditional No Exposure Exclusion for Industrial Activity



The Phase II stormwater rule established the conditional no exposure exclusion for certain industrial categories. 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. If the conditions are met, then a No Exposure Certification may be submitted to your permitting authority, which excludes your facility from the need to obtain a stormwater discharge permit for the current permit term.

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What is the Conditional No Exposure Exclusion?

Industrial facilities' stormwater discharges may be exempted from the definition of "stormwater discharge associated with industrial activity," and the subsequent requirement to obtain an NPDES permit, provided their industrial materials or activities are not "exposed" to stormwater.

Who is Eligible to Claim No Exposure?

As established in the Phase II rule, the conditional no exposure exclusion applies to ALL industrial categories identified in the definition of industrial activity at 40 CFR 126.22(b)(14), except for regulated construction activities disturbing 5 or more acres (category (x)). The no exposure exclusion is also not available for regulated small construction activities disturbing 1 or more acres.

What is the Regulatory Definition of "No Exposure"?

The intent of the no exposure provision is to provide facilities with industrial materials and activities that are entirely sheltered from stormwater a simplified way of complying with the stormwater permitting provisions of the Clean Water Act (CWA). This includes facilities that are located within a larger office building, or facilities at which the only items permanently exposed to precipitation are roofs, parking lots, vegetated areas, and other non-industrial areas or activities. The Phase II regulatory definition of "no exposure" is included in the blue box.

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.

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 materials handling.
- Final products, other than products that would be mobilized in stormwater discharges (e.g., rock salt).

The term "storm-resistant shelter," as used in the no exposure definition, includes 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

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subsequent runoff of stormwater. While the intent of the no exposure provision is to promote a condition of permanent no exposure, EPA understands certain vehicles could become temporarily exposed to rain and snow while passing between buildings. Adequately maintained mobile equipment (e.g., trucks, automobiles, forklifts, trailers, or other such general purpose vehicles found at the industrial site that are not industrial machinery, and that are not leaking contaminants or are not otherwise a source of industrial pollutants) can be exposed to precipitation or runoff. Such activities alone would not prevent a facility from certifying to no exposure. Similarly, trucks or other vehicles awaiting maintenance at vehicle maintenance facilities that are not leaking contaminants or are not otherwise a source of industrial pollutants, are not considered “exposed.”

In addition, EPA recognizes that there are circumstances where permanent no exposure of industrial activities or materials is not possible and, therefore, under such conditions, materials and activities can be sheltered with temporary covers (e.g., tarps) between periods of permanent enclosure. The no exposure provision does not specify every such situation, but NPDES permitting authorities can address this issue on a case-by-case basis.

The Phase II rule also addresses particulate matter emissions from roof stacks/vents that are regulated by, and in compliance with, other environmental protection programs (i.e., air quality control programs) and that do not cause stormwater contamination are considered not exposed. Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control program) and evident in stormwater outflow are considered exposed. Likewise, visible “track out” (i.e., pollutants carried on the tires of vehicles) or windblown raw materials is considered exposed. Leaking pipes containing contaminants exposed to stormwater are deemed exposed, as are past sources of stormwater contamination that remain onsite. General refuse and trash, not of an industrial nature, is not considered exposed as long as the container is completely covered and nothing can drain out through holes in the bottom or is lost in loading onto a garbage truck. Industrial refuse and trash that is left uncovered, however, is considered exposed.

What Must be Submitted as Part of the No Exposure Certification?

An operator seeking to qualify for the conditional no exposure exclusion must:

- Submit a certification that the facility meets the definition of “no exposure” to the NPDES permitting authority once every 5 years. Many states require electronic submission of the no exposure certification.
- The Phase II rule includes a four-page *No Exposure Certification* form that uses a series of yes/no questions to aid facility operators in determining whether they have a condition of no exposure. It also serves as the necessary certification of no exposure provided the operator can answer all the questions in the negative. EPA’s *Certification* is for use only by operators of industrial activity located in areas where EPA is the NPDES permitting authority.

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- EPA's *Certification* must be submitted electronically through the NPDES eReporting Tool (NeT) for the Multi-Sector General Permit (MSGP) located at <https://cdxnodengn.epa.gov/net-msgp/action/login>. If the EPA Regional Office has granted you a waiver from electronic reporting, a paper copy of the *No Exposure Certification* (Appendix K of the MSGP) can be obtained from the EPA industrial stormwater website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>. The Phase II rule version of the *No Exposure Certification* can be found in Appendix 4 (p. 88) of the final rule (<https://www.govinfo.gov/content/pkg/FR-1999-12-08/pdf/99-29181.pdf>). You can also contact your permitting authority to determine if they have a specific certification form that they use.
- Submit a copy, upon request, of the *Certification* to the municipality in which the facility is located.
- Allow the NPDES permitting authority or, if discharging into a municipal separate storm sewer system, the operator of the system, to: (1) inspect the facility; and (2) make such inspection reports publicly available upon request.

Regulated industrial operators need to either apply for a permit or submit a no exposure certification form to comply with the NPDES stormwater regulations. Any permit held becomes null and void once a certification form is submitted.

Even when an industrial operator certifies to no exposure, the NPDES permitting authority still retains the authority to require the operator to apply for an individual or general permit if the NPDES permitting authority determines that the discharge is contributing to the violation of, or interfering with the attainment or maintenance of, water quality standards, including designated uses.

Is an Excluded Facility Required to Obtain NPDES Permit Coverage if there are Water Quality Concerns?

Yes. An operator certifying that its facility qualifies for the conditional no exposure exclusion may, nonetheless, be required by the NPDES permitting authority to obtain permit authorization. Such a requirement would follow the permitting authority's determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses. Designated uses, for example, can include use as a drinking water supply or for recreational purposes.

In many instances, no exposure can be achieved by employing simple good housekeeping and contaminant cleanup activities such as moving materials and activities indoors into existing buildings or structures. In limited cases, however, industrial operators may need to make major changes at a site to achieve no exposure.

These efforts may include constructing a new building or cover to eliminate exposure or constructing structures to prevent run-on and stormwater contact with industrial materials and activities. Major changes undertaken to achieve no exposure, however, can increase the impervious area of the site, such as when a building with a smooth roof is placed in a formerly

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vegetated area. Increased impervious area can lead to an increase in the volume and velocity of stormwater runoff, which, in turn, can result in a higher concentration of pollutants in the discharge, since fewer pollutants are naturally filtered out.

The concern of increased impervious area is addressed in one of the questions on the EPA *Certification* form, which asks, “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 question has no effect on an operator’s eligibility for the exclusion. It is intended only to aid the NPDES permitting authority in assessing the likelihood that such actions raise concerns about water quality standards. Where this is a concern, the facility operator and its NPDES permitting authority should take appropriate actions to ensure that water quality standards can be achieved.

What Happens if the Condition of No Exposure Is Not Maintained?

Under the Phase II rule, the no exposure exclusion is conditional and not an outright exemption. Therefore, if there is a change in circumstances that causes exposure of industrial or materials to stormwater, the operator is required to comply immediately with all the requirements of the NPDES Stormwater Program, including obtaining coverage under a permit.

Failure to maintain the condition of no exposure or obtain coverage under an NPDES stormwater permit can lead to a violation caused by the unauthorized discharge of pollutants to waters of the United States, resulting in penalties under the CWA. Where a facility operator determines that exposure is likely to occur in the future due to some anticipated change at the facility, the operator should acquire stormwater permit coverage prior to the exposed discharge to avoid such penalties.

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For Additional Information

Contacts

A list of names and telephone numbers for the U.S. EPA's Office of Wastewater Management (Headquarters), each EPA regional office, and state office is located at:
<https://www.epa.gov/npdes/contact-us-stormwater>

Your NPDES Permitting Authority

Most states and territories are authorized to administer the NPDES Program, except the following, for which EPA is the permitting authority:

- American Samoa
- District of Columbia
- Guam
- Johnston Atoll
- Massachusetts
- Midway and Wake Islands
- New Hampshire
- New Mexico
- Northern Mariana Islands
- Puerto Rico
- Most Indian country lands

Reference Documents

- [EPA's Stormwater Website](#)
- [Stormwater Phase II Final Rule \(64 FR 68722\)](#)
- [Final MS4 General Permit Remand Rule \(81 FR 89320\)](#)
- [Final Small MS4 Urbanized Area Clarification \(88 FR 37994\)](#)
- [Industrial Stormwater website](#)
- [Stormwater Phase II Rule Fact Sheet Series](#)
- [National Menu of Best Management Practices for Stormwater Phase II](#)
- [No Exposure Certification Paper Form \(MSGP Appendix K\)](#)

Disclaimer: This information is guidance only and does not establish or affect legal rights or obligations. Agency decisions in any particular case will be made by applying the law and regulations to the specific facts of the case.