

**AE. No Exposure Guidance**

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

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## Disclaimer

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## Introduction

The intent of the no exposure exclusion is to provide all industrial facilities regulated under this General Permit 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 do 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 Stormwater Program, then permits are not required for stormwater discharges from the facilities. Facilities wishing to take advantage of the permitting exclusion must submit a certification to the Department attesting to the condition of no exposure. Facilities must maintain their condition of no exposure, or, if conditions change, obtain coverage under an applicable stormwater permit.

The following sections of this guidance provide detailed information on:

- Who is eligible for the no exposure exclusion
- The definition of no exposure
- How to complete the No Exposure Certification form.

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

All Phase I industrial categories, save for construction, are eligible to apply for the no exposure exclusion.

#### 1.1 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:

- The exclusion from permitting is available on a facility wide basis, 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 Department determines that a facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, the Department 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 MEPDES permit for stormwater discharges at least two days before the changes happen that cause the condition of exposure.
- Past sources of stormwater contamination that remain on site cause a condition of exposure.

### 2.0 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 stormwater 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 stormwater.

DEP 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 the Department 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, DEP recommends that temporary sheltering of industrial materials and activities only be allowed during facility renovation or construction.

### 3.0 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 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 stormwater runoff. Consider the following in making your no exposure determination:

Containers can only be stored outdoors; and 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.

DEP 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.

### 3.2 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 stormwater.

DEP 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 of leaking transfer valve. Note: any resulting unpermitted discharge would violate the CWA.

### 3.3 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.

### 3.4. Adequately Maintained Vehicles

Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general purpose vehicles found on site - 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, provide the materials/products are adequately protected from precipitation and could not be released as a result of a leak or spill.

### 3.5 Final Products

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.

### 3.6 Types of Final Products Not Qualifying For A Certification of No Exposure:

Products that would be mobilized in stormwater 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.

#### 4.0 Other Potential Sources of Contaminants

##### 4.1 Particulate Emissions from Roof Stacks or Vents.

As stated in the Phase II regulation, particulate emissions from roof stacks or vents do not cause a condition of exposure, provided they are in compliance with other applicable environmental protection programs (e.g., air quality control program) and do not cause stormwater contamination. Deposits of particles or residuals from roof stacks/vents not otherwise regulated and which could be mobilized by stormwater 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.

##### 4.2 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 stormwater 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.

##### 4.3 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.

#### 5.0 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".

DEP'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.

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 stormwater.

- 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 the Department.

#### Certification Facts:

- The Certification must be completed and submitted to the Department once during the effective dates of the permit. The 2005 permit is effective from October 11, 2005 to October 11, 2010. Upon subsequent reissuance of the permit, you will be required to submit another no exposure certification form.
- 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.

#### 6.0 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 Department to obtain permit coverage, based on a determination that stormwater 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 Department in assessing the likelihood of such actions impacting water quality standards. Where this is a concern, the facility operator along with the Department should take appropriate actions to ensure that water quality standards are achieved.

#### 7.0 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.

Repeat the steps for each individual facility or site.

Step 1: Determine if your industrial activity meets the definition of a "stormwater discharge associated with industrial activity", as defined in Maine's MSGP. If so, proceed to Step 2. If no, stop here.

- If your facility is defined as an "industrial activity" under Maine's MSGP, you need to either apply for coverage under the MSGP or submit a no exposure certification, in order to be in compliance with the MEPDES stormwater regulation.

- 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 stormwater 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.

Step 3: Complete and submit the No Exposure Certification form to the Department.

- Be aware that even if you certify no exposure, the Department 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 the Department once during the effective dates of the permit. The 2005 permit is effective from October 11, 2005 to October 11, 2010. Upon subsequent reissuance of the permit, you will be required to submit another no exposure certification form. 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 System (MS4) if they so request or require. An MS4 operator could be the Department of Public Works, Sewer Commission, Municipal 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 contact the town or city municipal office in which the discharge occurs to find out which department operates the MS4.

Step 5: When requested, allow the Department or, if discharging into an MS4, the MS4 operator, to inspect your facility. The Department 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 material to stormwater, you must then immediately comply with all the requirements of the MEPDES Stormwater Program, including obtaining a stormwater discharge permit.
- Failure to maintain the condition of no exposure or obtain coverage under a MEPDES permit can lead to the unauthorized discharge of pollutants to waters of the United States, resulting in penalties under 38 M.R.S.A. § 416 and the CWA.