

# Information Sheet for SPDES No Exposure Certification for Exclusion from Stormwater Permitting

## Background

The Stormwater Phase 1 regulations identified 11 categories of activities as discharges associated with industrial activity that needed NPDES authorization for discharging runoff to surface waters. The eleventh category, often referred to as the "light industry" category, needed a permit only if materials were exposed to runoff.

Light industry activities needed to assess their own situations. If there was exposure, they needed a permit. If there was no exposure, they did not have to report anything to the permitting authority.

In 1992, the Ninth Circuit Court remanded the light industry no exposure provision to EPA. They concluded that the restricted eligibility of the no exposure criterion to only the light industry was arbitrary. They further determined that EPA relied on the unverified judgement of the facility.

The final Stormwater Phase 2 regulations addresses these two issues by: 1) allowing for the no exposure exemption for all the categories of activities (except construction); and 2) requiring written certification (no exposure certification form).

## 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.

## Limitations on Eligibility for the No Exposure Exclusion

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

- 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 the SPDES general permit for storm water 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.

## Certifying a Condition of No Exposure

The electronic No Exposure Exclusion (NEC) form is used to certify that a condition of no exposure exists at the industrial facility. If you answer "no" to every question given on the form, you qualify for the no exposure exclusion. The industrial facility operator must maintain a condition of no exposure at the facility 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 a SPDES stormwater permit immediately. Either the Multi-Sector General Permit (MSGP) or an Individual Permit. The electronic NEC can be accessed through the Department's nForm portal:

<https://www.dec.ny.gov/pubs/95925.html>

Please Note: If you currently have permit coverage under the MSGP, be sure to include your permit identification number (which begins "NYR00 \_\_\_\_") on the electronic NEC form. Inclusion of your permit identification number will serve as automatic termination of your current MSGP coverage. Failure to do so will result in your permit coverage remaining active and you will be subject to the annual regulatory fee.

In addition, you must comply with the following:

- The certification must be completed and submitted once every five years.
- 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.