

**A. INSTRUCTIONS:**

**Who May File a No Exposure Certification**

Clean Water Act sections 301 and 402(p), 33 U.S.C. § 1311, 1342(p) prohibit the discharge of storm water associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is “conditionally excluded” for discharges of storm water associated with industrial activities if the discharger can certify that a condition of “no exposure” exists at the industrial facility. A condition of “no exposure” means that a discharger’s industrial activities and materials are not exposed to storm water. Storm water discharges from construction and land disturbance activities are not eligible for the no exposure exclusion. Dischargers who file valid No Exposure Certifications (NEC) in accordance with these instructions are not required to implement BAT/BCT and comply with the SWPPP and monitoring requirements of this General Permit.

Obtaining and Maintaining the No Exposure Exclusion

Dischargers shall complete the NEC in accordance with the instructions provided in SMARTS and outlined in this attachment. The Conditional Exclusion does not become effective until the discharger electronically completes and submits the NEC to the State Water Resources Control Board via SMARTS and subsequently pays the annual fee. Upon receipt of the annual fee, the discharger will electronically receive an NEC acceptance notification via SMARTS which will include a Waste Discharger Identification number.

The discharger must maintain a condition of no exposure at the facility in order for the conditional exclusion to remain applicable. The NEC shall be re-certified annually to ensure the conditions of no exposure are satisfied. If conditions change resulting in the exposure of materials and activities to storm water, the discharger must obtain NPDES coverage under this General Permit immediately by filing Permit Registration Documents (PRDs).

Fees

All new NECs and NEC re-certifications require a fee that is currently \$200. This fee may be changed by regulation.

**How To Prepare and File The No Exposure Certification**

Dischargers shall electronically prepare and submit an NEC in accordance with the instructions provided at the SWRCB web site at <http://www.swrcb.ca.gov/stormwtr/nec.html>

Discharger shall complete one NEC for each facility that satisfies the conditions of no exposure. Dischargers shall certify that an evaluation to determine no-exposure has been conducted. Dischargers shall retain an electronic or paper copy of the accepted NEC and NEC acceptance notification for their records.

The following information is required in the NEC :

Discharger Information

1. The legal name of the business entity, public organization, or any other entity that operates the facility 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 and contact email address.
2. The mailing address of the operator. Include the city, State, and zip code.
3. The operator’s contact name and telephone number.

Facility Information

4. The legal business name of the facility.
5. The total acreage of the facility associated with industrial activity. If you only know the size of your facility in square feet, divide the square feet by 43,560 to determine the acres.
6. The complete physical street address (the street address used for express deliveries for example), including the city, State, and zip code. Do not use a P.O. Box number. If no physical street address exists, describe the location or provide the latitude and longitude of a point within the facility’s boundary. Latitude and longitude are available from United States Geological Survey quadrangle or topographic maps, or may be found at:  
  
<http://www.mapblast.com/myblast/index.mb>
7. The facility contact person, telephone number, and e-mail address.

8. The 4-digit Standard Industrial Classification (SIC) code or North American Industrial Classification System (NAICS) code that represents the facility’s primary industrial activity. Provide a brief description of the primary industrial activity. If applicable, enter other significant SIC/NAICS codes and descriptions. To obtain these codes, see the 1987 SIC Manual, 1997 NAICS Manual, or our web site at <http://www.swrcb.ca.gov/stormwtr/sicnum.html>.

9. If the facility is currently covered under the Industrial Activities Storm Water General Permit, include the Waste Discharger Identification (WDID) number. The WDID number will be used to terminate the facility’s coverage under the General Permit.

Facility Mailing or Billing Address

Completing this item is only required if there is a different facility mailing address or billing address than reported above. The discharger shall indicate to which address the annual fee invoice should be sent if we are unable to successfully transmit the invoice electronically.

## Exposure Checklist

At the end of this attachment, there is a list of eleven major areas for which exposure must be evaluated by the discharger. The discharger must be able to certify that none of these major areas have potential for exposure. If the discharger cannot certify that each and every of the eleven major areas do not have exposure, a potential for exposure exists at the facility and the facility is not eligible for the Conditional Exclusion. The discharger must obtain (or continue) coverage under this General permit. After obtaining permit coverage, the discharger can institute modifications to eliminate the potential for a discharge of storm water exposed to industrial activity, and then certify to a condition of no exposure.

## Certification

Federal and state statutes provide for severe penalties for submitting false information on the NEC Federal regulations require the NEC to be certified as follows:

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

1. 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
2. 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;
3. For a partnership or sole proprietorship: by a general partner or the proprietor; or
4. For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

### GUIDANCE:

Please contact your local RWQCB office with questions regarding this guidance.

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

The no exposure conditional exclusion represents a significant expansion, in terms of eligibility, of the original no exposure provision established in 1990

NPDES Storm Water Permit Application Regulations (commonly referred to as Phase I). Now, all industrial categories, except construction, are eligible to apply for the no exposure conditional exclusion.

## 2. Limitations on Eligibility for the No Exposure Conditional Exclusion

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

- a. The exclusion from permitting is available on a facility-wide basis only, not for individual drainage areas or discharge locations. Generally, if any exposed industrial materials or activities exist, or have a potential to exist, anywhere at a facility, the no exposure conditional exclusion is not applicable to the facility. If the RWQCB determines that a facility does have exposure or the facility's storm water discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, the RWQCB can deny the no exposure exclusion.
- b. If changes at a facility result in potential exposure of industrial activities or materials, the no exposure conditional exclusion ceases to apply. Dischargers shall register for coverage under this General Permit for storm water discharges prior to a planned facility change that will cause exposure, or within 7 calendar days after unplanned exposure occurs. If an unplanned exposure occurs due to an emergency response or one-time event that is unlikely to re-occur, dischargers may contact the Regional Board to discuss whether the requirement to obtain NPDES permit coverage can be waived. Unless the discharger receives a written waiver from the Regional Board, the discharger shall electronically file for permit coverage.
- c. Past sources of storm water contamination related to industrial activities that remain on the facility cause a condition of exposure.

## 3. What is the Definition of No Exposure?

- a. 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.
- b. 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.
- c. Material handling activities include storage, loading and unloading, transport, or conveyance of any raw material, intermediate product, by-product, final product, or waste product.
- d. Final products which are meant to be used outdoors (e.g., automobiles) usually pose little risk of polluting

storm water because they are usually uncontaminated and not mobilized by contact with storm water. These final products are exempt from the requirement that they be protected by a storm-resistant shelter to qualify for no exposure. Similarly, the containers, racks, and other transport platforms (e.g., wooden pallets) used for the storage or conveyance of final products can also be stored outside, providing they are pollutant-free and in good repair.

- e. Storm-resistant shelters include completely roofed and walled buildings or structures. They also include structures with only a top cover supported by permanent supports but with no side coverings, provided material within the structure is not subject to wind dispersion (sawdust, powders, etc) or track-out, and there is no storm water discharged from within the structure that has come into contact with any materials.

#### 4. 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:

- a. Drums, Barrels, Tanks, and Similar Containers that are sealed ("sealed" means banded or otherwise secured and without operational taps or valves), are not exposure provided those containers are not deteriorated, do not contain residual materials on the outside surfaces, and do not leak. Drums, barrels, etc., that are not opened while outdoors, or are not deteriorated or leak, are unlikely to constitute a risk of contaminating storm water runoff. Consider the following in making your no exposure determination:
- i. Materials shall not be added or withdrawn to/from containers while outdoors
  - ii. Simply moving containers while outside does not create exposure unless exposure occurs when pollutants are "tracked out" by the container handling equipment or vehicles.
  - iii. All outdoor containers shall be inspected to ensure they are not open, deteriorated, or leaking. When an outdoor container is observed as opened, deteriorated, or leaking, the container must immediately be closed, replaced, or sheltered. Frequent detection of open, deteriorated, or leaking containers, or failure to immediately close, replace, or shelter opened, deteriorated or leaking containers will cause a condition of exposure.
  - iv. 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 and in good repair.
- b. 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 use transfer valves to dispense materials which support facility operations (e.g., heating oil, propane, butane, chemical feedstock) or fuel for delivery vehicles (gasoline, diesel, compressed natural gas). For operational ASTs to qualify for no exposure:
- i. They shall be physically separated from and not associated with vehicle maintenance operations.
  - ii. There shall be no leaks from piping, pumps, or other equipment that could contact storm water.
  - iii. Wherever feasible, ASTs shall 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.
- c. Lidded Dumpsters. Lidded dumpsters containing waste materials, providing the containers are completely covered and nothing can drain out holes in the bottom, spilled when loaded into the dumpster, or spilled in loading into a garbage truck. Industrial waste materials and trash that is stored uncovered is considered exposed.
- d. Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general-purpose vehicles found onsite - but not industrial machinery - which are not leaking, are in good repair or are not otherwise a potential source of contaminants:
- i. Vehicles passing between buildings will likely be exposed to storm water 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. However, vehicles that have been washed or rinsed that are not completely dry prior to outside exposure will cause a condition of exposure. Vehicles that track out pollutants as they exit maintenance bays are also considered exposure.
  - ii. 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 not adequately protected from storm water and could not be released as a result of a leak or spill.
- e. Final products built and intended for use outdoors (e.g., new cars), provided the final products have not deteriorated, are not contaminated, or are not otherwise potential sources of contaminants.

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

- i. Products that would be mobilized in storm water discharges (e.g., rock salt).
  - ii. Products, which may, when exposed, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants (e.g., junk cars, stockpiled train rails).
  - iii. "Final" products that 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).
  - iv. 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.
- f. Construction Activities Permanent, uninterrupted sheltering of industrial activities or materials may not always be possible during facility renovation or construction. When such circumstances exist, the discharger is not required to obtain coverage under an NPDES permit as long as the following conditions are met:
- i. Materials and activities are protected with temporary covers or shelters (e.g. tarpaulins).
  - ii. The temporary covers or shelters shall adequately prevent the contact of storm water to materials and activities.
  - iii. Materials that are subject to wind dispersion are not eligible for temporary sheltering.
  - iv. Temporary shelters shall only be used when necessary during facility renovation or construction and until permanent storm-resistant shelters as described above are available.
  - v. Temporary shelters shall only be used for a single period of ninety days or less. Facilities with construction and renovation projects that will need the use of temporary shelters beyond 90 days, or that will require multiple periods of ninety days or less, are required to be covered by an NPDES permit.

#### 4. Other Potential Sources of Contaminants

- a. Particulate Emissions From Roof Stacks and/or vents: Deposits of particles or residuals from roof stacks/vents which could be mobilized by storm water runoff are considered exposed.

- b. Acid Rain Leachate, Industrial facilities are also responsible for storm water discharges that contain pollutants resulting from the leaching effect of acidic storm water on metal building structures. Therefore, operators must be aware when certifying a condition of no exposure of the existence of structural elements that could be soluble as a result of contact with acidic 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.
- c. Pollutants Potentially Mobilized by Wind, Windblown materials cause a condition of exposure. Materials sheltered from precipitation can still be deemed exposed if the materials can be mobilized by wind.

#### 5. Certifying a Condition of No Exposure

To obtain the no exposure conditional exclusion, the discharger must electronically submit an NEC certifying that the facility meets the definition of "no exposure." The discharger shall **do this even if the discharger was not previously required to file an NEC under the prior regulations**. Dischargers shall complete and submit the NEC available via SMARTS for facilities located in California. This NEC requires the discharger to evaluate eleven major areas to determine whether there is exposure of industrial activities and materials at the facility. To qualify for the no exposure conditional exclusion, all eleven major areas must be certified to not have exposure. The purpose of the NEC is twofold: 1) to aid the discharger in determining whether the discharger's facility is eligible for the no exposure conditional exclusion; and 2) to furnish the necessary certification that allows the discharger be relieved of NPDES related permit obligations.

If the discharger cannot certify that there is no exposure at the facility, the discharger must make appropriate changes at the facility to eliminate exposure prior to preparing a future NEC. These changes must remove the particular material, process or activity from exposure to storm water.

Valid certification that each and every of the eleven major areas have been evaluated and do not have exposure qualifies the facility for the no exposure conditional exclusion. To complete the process, the discharger shall electronically certify and submit the NEC and subsequently mail the required annual fee to the SWRCB, and annually re-certify and pay the annual fee thereafter.

#### 6. Other No Exposure Certification Facts:

- a. **An NEC shall be electronically completed and submitted to the SWRCB using SMARTS and annually re-certified thereafter**, and can only be legally valid if the condition of no exposure exists and is reasonably expected to continue to exist. PRDs shall be electronically submitted via SMARTS when the

condition of no exposure is no longer is expected to exist.

- b. A NEC must be submitted for each separate facility qualifying for the no exposure conditional exclusion.
- c. The form is non-transferable. If a new operator takes over facility operations, the new operator shall electronically complete and submit a new NEC via SMARTS prior to the transfer and pay the applicable fee to claim the no exposure conditional exclusion. The NEC can't be transferred from one physical location to another regardless of ownership.

## 7. Can An Operator Be Required To Obtain a Permit Based On The Protection Of Water Quality?

Yes. Operators who certified that their facilities qualify for the conditional no exposure exclusion may, nonetheless, be required by the RWQCB to obtain permit coverage, based on a determination that storm water discharges are likely to have an adverse impact on water quality. The RWQCB may request information and/or inspect the facility to assess potential water quality impacts and to determine whether to require permit coverage. The discharger shall take appropriate actions to ensure that water quality standards are achieved.

## 8. 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.)

**Step 1:** Determine if your facility is subject to the NPDES storm water permit requirements (refer to Attachment 1 of this General Permit). If yes, proceed to Step 2. If not, stop here.

If your facility is included in Attachment 1 and conducts industrial activities, you are required 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.

**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. When evaluating the facility, facility personnel familiar with the facility and its operations should be used. Inspect all facility areas and potential pollutant sources to determine whether the facility satisfies the no exposure conditions.

**Step 3: Electronically** complete and submit the NEC via SMARTS and mail the annual fee to the State Board.

- Be aware that even if you certify no exposure, your local Regional Board can still require permit coverage if the Regional Board determines that the facility's discharge is contributing to or causing an exceedance

of applicable water quality standards or believes that exposure does occur at the facility.

- To maintain the conditional exclusion from NPDES permitting, the NEC must be re-certified annually. This can only be done if the condition of no exposure continues to exist at the facility.

**Step 4:** When requested, allow your RWQCB, Municipal Storm Water Management Agency, or U.S. EPA to inspect your facility. Their inspection reports will be made publicly available.

**Step 5:** Maintain a condition of no exposure.

- The no exposure conditional exclusion is not a blanket exemption. Therefore, if facility physical or operational changes occur which cause exposure of industrial activities or materials to storm water, the discharger must then immediately comply with all the NPDES requirements of this General Permit, including obtaining NPDES storm water permit coverage.
- To maintain the condition of no exposure, the discharger shall annually evaluate the facility to assure that the conditions of no exposure still exist. More frequent evaluations may be necessary in circumstances when facility operations are rapidly changing.
- Failure to maintain the condition of no exposure or obtain coverage under an NPDES permit can lead to the unauthorized discharge of storm water associated with industrial activity to waters of the United States, resulting in penalties under the CWA.

## C. Frequently Asked Questions:

### Q1. Who can submit the No Exposure Certification?

- A. Any discharger operating a facility described in Attachment 1 may submit an NEC if their facility has a condition of no exposure.

### Q2. How does an eligible discharger file a No Exposure Certification and where is the annual fee sent.?

- A. The NEC shall be electronically submitted

in accordance with the instructions provided in SMARTS at the SWRCB web site at:

<http://www.swrcb.ca.gov/stormwtr/nec.html> The fee is currently \$200, but may be changed by regulation. Once the NEC is accepted, an invoice will be electronically sent to the discharger. The annual fee and invoice shall be sent to:

State Water Resources Control Board  
Division of Water Quality  
Attention: Storm Water Unit  
P.O. Box 1977  
Sacramento, CA 95812-1977

**Q3. If my facility's storm water discharges are covered by an individual permit, can I file a NEC?**

- A. Yes. Storm water discharges covered by an individual permit are eligible for the no exposure exclusion if the conditions at the facility satisfy the definition of no exposure and you obtain approval to terminate individual permit coverage from the local Regional Board prior to NEC submittal. Approval from the Regional Board is mandatory. Many individual permits, for example, contain numeric storm water effluent limitations ("antibacksliding" provisions may prevent these facilities from qualifying for the no exposure conditional exclusion).

**Q4. My facility was originally excluded from the Phase I regulations because it was classified as a "light industrial facility". The facility has never had any exposure to storm water runoff. 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 no exposure exclusion 'conditional' upon?"

**Q5. Do I have to file a Notice of Termination (NOT) and a NEC if my facility is currently covered under the Industrial Activities Storm Water General Permit (General Permit)?**

- A. No. If your facility meets the definition of no exposure, then storm water discharges at that facility are no longer considered associated with industrial activity. Therefore, the requirement to have an NPDES permit no longer exists as long as you submit an NEC. You must pay the NEC fee and provide the WDID# on the NEC in order for the State Water Board to terminate NPDES permit coverage.

**Q6. When and how often is a NEC required to be submitted?**

- A. Re-certification of the NEC is required annually (assuming the facility maintains its no exposure status). You should note the NEC submittal date so that you can annually renew the NEC thereafter. The SWRCB will electronically transmit an NEC re-certification and annual fee notification to each facility operator who has filed an NEC.

New dischargers must submit an NEC before the commencement of facility operations. Dischargers that fail to file a NEC or apply for permit coverage before the commencement of facility operations will be out of compliance and subject to enforcement.

Existing dischargers have two options for submitting NECs:

- 1) Facility operators of "light industrial" facilities who have been operating under their original, no-

certification-required permitting exemption must submit the NEC at any time prior to xx xx xxxx. Such dischargers who have not submitted an NEC or applied for permit coverage by this deadline will be out of compliance and subject to enforcement.

- 2) Dischargers who have General Permit coverage for their storm water discharges may submit an NEC at any time following completion of facility changes that result in the condition of no exposure.

**Q7. What happens if I know of changes that may cause exposure?**

- A. If exposure could occur in the near future due to some anticipated change at the facility, you must obtain coverage under an NPDES permit to avoid enforcement for violations of the Clean Water Act.

**Q8. Is the NEC transferable to a new discharger?**

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

**Q9. What is the exclusion "conditional" upon?**

- A. The exclusion from permit coverage requirements is "conditional" upon the certification of the discharger that the facility does not have exposure of materials or activities to storm water. The NEC shall be electronically submitted to the State Water Board and will not be accepted if incomplete. The Regional Board may review the information, contact or inspect the facility, and invalidate the NEC and require the discharger to obtain NPDES permit coverage. NECs are public documents and will be available for public review via SMARTS.

**Q10. Can secondary containment around an outdoor exposed area qualify for the no exposure conditional exclusion?**

- A. In general, if the secondary containment is engineered to prevent a discharge from a 100-year, 24 hour storm event and a simultaneous spill of any other industrial materials or liquids the no exposure conditional exclusion can 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 and discharged to the sanitary sewer, or trucked offsite to an appropriate disposal/treatment facility).

#### D. Exposure Checklist

The facility is eligible for the No Exposure Conditional Exclusion if the discharger has evaluated the facility and can verify that there is no exposure of industrial activities and materials in the following eleven (11) major areas, now or in the foreseeable future.

1. Areas where industrial machinery or equipment are used, stored, or cleaned and areas where residuals from industrial machinery or equipment use, storage or cleaning remain and are exposed to storm water.
2. Areas which may contain materials or residuals on the ground or in storm water inlets from spills, leaks, or from materials tracked on the wheels of moving vehicles (such as by forklifts, trucks, vehicles undergoing maintenance, etc.).
3. Areas which may contain materials, products, or residuals from past industrial activity.
4. Areas where material handling equipment (except adequately maintained vehicles) is used.
5. Areas where materials or products are loaded/unloaded or transported.
6. Areas where materials or products are stored outdoors (except uncontaminated final products intended for outside use [e.g., new car] where exposure to storm water does not result in the discharge of industrial pollutants).
7. Areas where materials may be contained in containers such as storage drums, barrels, tanks, and similar containers.
8. Areas where materials or products are handled/stored on roads, railways, or immediate access areas owned or maintained by the discharger.
9. Areas where waste materials are handled (except waste in covered, non-leaking containers or dumpsters).
10. Areas where process wastewater is applied or disposed, or where rinse and/or wash waters are generated.
11. Areas which may contain particulate matter or visible deposits of residuals from roof stacks and/or vents.