

# **Guidance Manual for Conditional Exclusion from MDE’s Stormwater Permitting, Based On “No Exposure” of Industrial Activities to Stormwater**

**(updated 12/8/2024)**



Maryland Department of the Environment

1800 Washington Blvd., Ste. 455

Baltimore, MD 21230-1708

410-537-3323

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## 1. Introduction

The 1990 stormwater regulations identify eleven categories of industrial activities under the definition of a “stormwater 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 Permit Part I for complete listing). For facilities that match the SIC codes or description in one of the categories, only those that have a stormwater discharge to Waters of this State are required to seek permit coverage. The industrial stormwater permits involve the development of a stormwater pollution prevention plan (SWPPP) based upon site assessments, monitoring and reporting data of stormwater discharges.

The intent of the no exposure exclusion is to provide all industrial facilities regulated under the industrial stormwater permit (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 do not need to be considered when determining no exposure at an industrial facility.

If a condition of no exposure exists, then the facility is eligible for exemption for permitting for stormwater discharges from the facilities. Facilities wishing to take advantage of the permitting exclusion must submit the required certifications 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.

There are several General Permits (SW, MM, MA, CM, and SE) issued by MDE that include stormwater coverage, and also provide the No Exposure Exclusion. The terms are included in this document and guidance is provided for those completing the paperwork. 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;
- what is expected for additional professional certification or self certification;
- additional expectations related to water quality.

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 – Federal Regulatory Language for the No Exposure Exclusion

If you have any questions regarding this guidance or any part of the overall NPDES Stormwater Program, please contact the Department’s Industrial Stormwater Permits Division at 410-537-3323.

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

All industrial categories, save for construction or those described in the Limitations (2.1), 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:

- SECTOR P, Q and S: Land, Water and Air TRANSPORTATION have the potential to have vehicles waiting to be serviced parked outside where they are a potential source of pollution. Therefore, facilities that perform maintenance are not eligible for this exclusion. However, for transportation operators that don’t include fluid replacement, fueling, lubrication or repairs subject to leaks; that involve only fleets made up entirely of electric vehicles; or new facilities that provide parking for all vehicles to be serviced or waiting to be serviced inside can be eligible.
- SECTOR L: Landfills or Transfer Stations with a refuse disposal permit or Land Application Sites with a marginal land permit are not eligible for this 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, or there are past sources of stormwater contamination that remain on site, the no exposure exclusion is not available to that facility.
- If the permitting authority 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 NPDES permit for stormwater discharges at least two days before the changes happen that cause the condition of exposure.

### **3. 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 to 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 any material under the structure is not otherwise subject to any run-on or subsequent runoff of stormwater.

The Department 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., tarps) 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, the Department 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 stormwater 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. The Department 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 stormwater.
- The Department 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 Clean Water Act.

### **3.1.3. Lidded Dumpsters.**

Lidded dumpsters containing waste materials will be considered not exposed, 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. Temporary covers such as tarps are not considered lids for dumpsters.

### **3.1.4. Vehicles.**

Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general-purpose vehicles found onsite—except for industrial machinery—which are not leaking or are otherwise a potential source of contaminants may be considered not exposed.

- 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.
- 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 resulting from a leak or spill.

### **3.1.5. 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 may qualify for the No Exposure certification without additional shelter.

#### **3.1.5.1. 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.

## **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 stormwater contamination. However, deposits of particles or residuals from roof stacks / vents not otherwise regulated and with mobilization potential by stormwater runoff, are considered exposed. Exposure also occurs when pollutants resulting from particulate emissions 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 stormwater discharges which contain pollutants resulting from the leaching effect of acidic precipitation on metal building structures. Therefore, when attempting to certify a condition of no exposure, operators must be aware of the existence of soluble structural elements resulting from contact with precipitation (e.g., uncoated copper roofs). If it is possible for the dissolved metals or other contaminants to 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. Operators should be aware that situations where materials are partially sheltered from precipitation can still be deemed exposed if the materials can be mobilized by wind.

## **4. 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 is found on the Department’s [website](#) with each of our permits.



## **4.1. Form Requirements**

The Department's certification form, similar to the EPA's version, 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 every question.

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

If you answer "yes" to any of the questions about possible exposure, appropriate changes must be made at the facility before re-applying for the conditional exclusion. These changes must permanently remove the particular material, process or activity from exposure to stormwater.

If "no" was marked for every question, your facility may qualify for the no exposure exclusion. To complete the process, you must complete and submit the signed form to the Department. You must sign with a legal wet signature since we CANNOT accept electronic signatures. You must also provide the additional Professional Certification (refer to 5.0), or otherwise required photographic evidence (refer to 4.2).

## **4.2. Considerations for Smaller Facilities**

Smaller operators (less than 5 acres) , that are not in a census tract with higher environmental justice (EJ) concerns (EJ Score less than 0.75), and not in a flood plain (BFE), may not be subject to the requirement to have additional professional certification, and may instead submit personal evidence to support your claim including: satellite image of your property, photographs of your dumpsters, outside storage areas, loading/unloading areas, material handling areas and parking areas. To understand each of these qualifiers refer to 4.2.1- 4.2.2. After reviewing the information submitted the Department may also require professional certification to be submitted.

### **4.2.1. EJ Score.**

This environmental justice score is discovered by using the EJ Screen Tool Map found on MDE's [website](#) and obtaining the "Final EJ Score Percentile" value for a facility's location. A score of 0.75 (75%) or greater is considered an elevated EJ concern area subject to additional considerations, and will require written certification by a professional (refer to Part 5), regardless of your site size.

### **4.2.2. Facilities Susceptible to Flooding.**

Areas susceptible to flooding are identified as the Base Flooding Elevation (BFE). This is the elevation of surface water resulting from a flood that has a 1% chance of equaling or exceeding that level in a given year, also known as the “100-year flood plain” or “Special Flood Hazard Area”, as determined by U.S. Federal Emergency Management Administration, and updated on the mapping tool available at <https://mdfloodmaps.net/map/>.

If any part of your facility, regardless of size, is located within any BFE region, you will be required to obtain additional written certification by a professional (refer to Part 5) to verify your facility’s operations meet the exclusion requirements.

### **4.3. Additional Certification Requirements:**

- The Certification for the permit exemption must be completed and submitted to the Department 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 operation or site qualifying for the no exposure exclusion. This means multiple different operations under the same roof or sharing suites in a larger building must each independently gain coverage for their portion of the building.
- 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.
- Upon expiration of the associated General Permit, the reissued permit that replaces it may have additional or different requirements, and may require another certification at that time.

## **5. What is Expected for the Additional Professional Certification?**

The additional certifier must be a licensed Professional Engineer, a Certified Professional in Storm Water Quality (CPSWQ), a Certified Hazardous Materials Manager (CHMM), a Certified Environmental Professional Auditor (CEPA), a Registered Architect, a licensed Landscape Architect, or other licensed professional as recognized by the Department. The certifier is expected to examine the property, and with an understanding of the requirements for No Exposure as described in this document, provide a letter certifying that the facility meets the requirements for exemption from stormwater permitting. The letter must include:

- the certifier’s qualification with their state number or seal clearly paired with their wet signature (a licensed Professional Engineer, a Certified Professional in Storm Water Quality (CPSWQ), a Certified Hazardous Materials Manager (CHMM), a Certified

Environmental Professional Auditor (CEPA), a Registered Architect, a licensed Landscape Architect, or other licensed professional as recognized by the Department);

- verification of where the certifier is registered and under what authority;
- the certifier’s contact information;
- verification that the certifier understands the exemption requirements provided in this guidance and as specified in the Code of Federal Regulations, Title 40 - Protection of Environment, Volume: 23, Title: Section 122.26 (g) as provided in Appendix B;
- verification that the certifier has examined the property;
- and verification that the certifier agrees with the owner/operator that they meet the requirements for this exemption.

## **6. 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 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 runoff. 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. Summary of Steps to Obtain the No Exposure Exclusion?**

This section summarizes the entire aforementioned process of obtaining the no exposure exclusion.

Repeat the steps for each individual facility or site.

Step 1: Determine if your industrial activity is eligible for industrial stormwater coverage as defined in the General permit. If so, proceed to Step 2. If not, stop here.

- 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 apply for General Industrial Stormwater permit coverage.

- Using personnel familiar with the site and all 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, along with the certification letter or photos as described in Sections 4.2 and 5, 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 your permitting authority at least once every 5 years. This can only be done if the condition of no exposure continues to exist at the facility.

Step 4: Upon receipt of registration by the State, submit a copy of the registration letter to the municipality in which your facility is located.

- You must submit a copy of the registration letter to the operator of your Municipal Separate Storm Sewer System (MS4). 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 or website search, especially under the local government listings.

Step 5: When requested, allow the Department 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 stormwater, you must then immediately comply with all the requirements of the NPDES Stormwater Program, including obtaining the general stormwater discharge permit, or other equivalent as required by the Department.
- 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.

## APPENDIX A - Frequently Asked Questions

Q1. I had No Exposure Certification under several years ago. When do I need to send in another certification?

A. The exemption issued be renewed, 5 years after your exemption letter was sent to you acknowledging you had met the requirements.

Q2. Where do I send my No Exposure Certification?

A. The paperwork should be mailed to:  
Maryland Department of the Environment  
Industrial Stormwater Permits Division  
1800 Washington Blvd, Ste 455  
Baltimore, MD 21230

Q3. Can a facility that is currently authorized under the industrial stormwater 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 a permit authorization from submitting a certification.

Q4. Why am I required to submit additional verification that my facility meets the requirements for no exposure?

A. To ensure the best protection for the waters of the State. The Department does receive applications for No Exposure for facilities that do not meet the requirements based on satellite imagery, or the type of operation. Also, due to the number of facilities involved, it isn't possible for the Department to send out an inspector to assist with or verify that the facility is eligible for this exemption. Having a professional involved will ensure that the submittals are accurate, reduce confusion by operators and provide for quicker turnaround times by the Department.

Q5. Must a facility currently covered under a General Permit 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 stormwater 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 and the Department will terminate the existing SW coverage.

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

A. Submission of the No Exposure Certification Form is required at least once every five years (assuming the facility maintains 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. No Exposure is an exemption from a specific permit requirement.

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.

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 (20-SW or alternate) 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 General Permit, that have no exposure of materials or activities to stormwater, to be excluded from permit coverage requirements. The application, and therefore the approval of the exclusion, is conditional upon the Department’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 - Regulatory Language for the “No Exposure Exclusion”

Code of Federal Regulations, Title 40 - Protection of Environment, Volume: 23, Title: Section 122.26 - Storm water discharges

(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:

Code of Federal Regulations / Title 40 - Protection of Environment / Vol. 23 / 2013-07-01220

- (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.”