MICHIGAN DEPARTMENT OF
ENVIRONMENT, GREAT LAKES, AND ENERGY

No Exposure Certification (NEC) Compliance Assistance

State of Michigan Industrial Stormwater Program

Water Resources Division (WRD)
EGLE Environmental Assistance Center 800-662-9278
Michigan.gov/EGLE

This document provides information on Michigan's NEC for exclusion from the permitting program for the discharge of industrial stormwater regulated under the National Pollutant Discharge Elimination System (NPDES). The majority of the information included in this document was taken directly from the United States Environmental Protection Agency document titled: *Guidance Manual for Conditional Exclusion from Stormwater Permitting Based on "No Exposure" of Industrial Activities to Stormwater*.

Who May File a No Exposure Certification (NEC)?
The Phase II Final Rule, published December 8, 1999, allows for a conditional no exposure exclusion to be applied to ALL industrial categories listed in the 1990 stormwater regulations, except for construction activities.

Terms to Understand
Industrial materials and activities include but are not limited to material handling equipment (pallets, boxes, racks, totes, etc.) or activities; industrial machinery and equipment; 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. Vehicle maintenance such as routine fluid top offs, fueling, washing, etc. is also considered material handling activities.

Storm-resistant shelters include completely roofed and walled buildings or structures, as well as structures with only a top cover, but no side walls, provided materials under the structure are not subject to any run-on and subsequent runoff of stormwater.

What does "No Exposure" mean?
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. The Michigan Department of Environment, Great Lakes, and Energy's (EGLE) WRD 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 until PERMANENT enclosure can be achieved. Tarps, shrink wrap, or similar coverings are not considered by the WRD as a permanent enclosure. Temporary sheltering of industrial materials and activities is generally only allowed during facility renovations or while a storm-resistant shelter is being constructed.

The no exposure provision does not specify every situation, therefore the WRD will address scenarios not specifically described in this document on a case-by-case basis.

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:

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 considered not exposed if stored outdoors provided those containers are not deteriorated, do not leak, and have no material residues on the outsides of the containers. Consider the following in making your no exposure determination:

- ✓ Containers that will have material removed or added to while outdoors will not allow you to certify no exposure.

- ✓ Inspect all outdoor containers to ensure they are completely sealed and are not deteriorated, leaking, or have residuals on the outsides. The WRD recommends that a designated, trained individual regularly conduct these inspections.

- ✓ Any time external containers are not sealed, begin to deteriorate, or start leaking, they must immediately be moved indoors or placed inside a permanent storm-resistant shelter.

- ✓ Containers must be stored in a manner so that it can be easily determined if they are deteriorating or leaking. Containers, racks, and other transport platforms such as wooden pallets used with the drums, barrels, etc., can be stored outside providing they are visibly clean.

Secondary Containment Structures
Secondary containment structures and the materials enclosed within them are not considered exposed and do not require a storm-resistant shelter if stormwater accumulated within the containment is not discharged to surface waters of the state. However, secondary containment structures must be managed and maintained in a way that effectively eliminates any negative impact on stormwater runoff from the site. If stormwater collected in the containment is discharged to surface waters of the state, stormwater permit coverage is required.

Prior to certifying a condition of "no exposure," facilities will need to evaluate the potential for industrial materials to be exposed during loading or unloading activities.

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. The ASTs typically utilize transfer valves to dispense materials which support facility operations such as 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 WRD recommends, wherever feasible, that ASTs be surrounded by some type of physical containment such as an impervious dike, berm, or concrete retaining structure to prevent runoff in the event of a structural failure or leaking transfer valve.

Lidded Leak Proof Containers and Compactors
Lidded leak proof containers and compactors containing waste or recyclable materials may meet the definition of no exposure if the containers are managed so that no material can drain, spill, leak, or otherwise be released from the containers. **Due to the difficulty in meeting and maintaining a condition of no exposure for these items it is recommended that facilities seek input from WRD Industrial Stormwater Program staff if these items are managed at the facility.** For additional clarification, please refer to the "Lidded Leak-Proof Containers and Compactors" compliance assistance document at Michigan.gov/IndustrialStormWater.

Any material lost during handling or by loading containers onto vehicles for transport is considered exposed. In addition, industrial refuse and trash that is stored uncovered is considered exposed.

Adequately Maintained Vehicles
Vehicles found onsite, such as trucks, automobiles, forklifts, trailers, or other general-purpose vehicles, are considered to be adequately maintained if they are not leaking and are not a potential source of contaminants. This exposure exemption does not include industrial machinery.

- ✓ Vehicles passing between buildings will likely encounter precipitation at some time, but so long as they are adequately maintained they will not cause a condition of exposure. Similarly, non-leaking vehicles staged outdoors for indoor routine maintenance at vehicle maintenance facilities are not considered exposed.

- ✓ The transfer of materials or products between buildings that would otherwise not be allowed to be stored outdoors does not create a condition of exposure, provided the materials or products are adequately protected from precipitation and could not be released because of a leak or spill.

Final Products
Many final products which are meant to be used outdoors, such as new automobiles, pose little risk of stormwater contamination because the products cannot be mobilized by precipitation or runoff. These and similar types of final products do not need to be sheltered to qualify for no exposure. The containers, racks, and other transport platforms, such as wooden pallets used for the storage or conveyance of these final products, can also be stored outside provided they are visibly clean.

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

- ✓ Products that would be mobilized in stormwater discharges such as, but not limited to, rock salt, wood chips, and aggregates.

- ✓ Products which may, when exposed, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants such as, but not limited to, junk cars and stockpiled train rails.

- ✓ "Final" products which are, in actuality, "intermediate" products. *Intermediate products* are those used in the composition of yet another product such as sheet metal, tubing, and paint used in making tractors.

- ✓ Even if the intermediate product is "final" for a manufacturer and the product will be used in a "final product intended for use outdoors," these products do not meet this exposure exemption because they may be chemically treated or are insufficiently impervious to weathering.

Other Potential Sources of Exposure

Particulate Emissions from Roof Stacks and/or Vents

Particulate emissions from roof stacks/vents do not cause a condition of exposure, provided they comply with other applicable environmental protection programs, such as air quality control programs, 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. Dust collectors where particulates can be exposed during emptying or operation of the collector do not meet the no exposure criteria.

Track-out

Tracking of materials outdoors causes a condition of exposure. This may occur when materials stored indoors are carried outdoors by vehicles or foot traffic.

Pollutants Potentially Mobilized by Wind

Windblown industrial materials cause a condition of exposure. Industrial materials sheltered from precipitation can still be deemed exposed if the materials can be mobilized by wind.

General Requirements

Facilities seeking exclusion from the stormwater permitting program are also required to investigate and determine if there are any unauthorized non-stormwater discharges to the stormwater system. Any such discharges must be eliminated or authorized under an NPDES permit. Common unauthorized discharges include vehicle or equipment wash water, non-contact cooling water, and discharges from floor drains connected to the storm sewer system.

If the facility has a NPDES permit that authorizes the discharge of stormwater from industrial activity, the NEC form can be submitted as a termination request. To avoid the requirement to pay an annual stormwater permit fee, the termination request must be submitted in a timely manner so that it can be processed before January 1st.

Upon request, submit proof of the NEC to the municipality in which your facility is located. When requested, allow the WRD or, if discharging into a municipal separate storm sewer system (MS4), the MS4 operator, to inspect the facility. An MS4 operator could be the Department of Public Works, Sewer Commission, City Engineering Department, etc.

What if the Condition of "No Exposure" is not maintained?
The no exposure exclusion is conditional. Therefore, if there is a change in circumstances that causes exposure of industrial materials or activities to stormwater, the facility is required to comply immediately with all requirements of the stormwater program, including obtaining a permit.

Where a facility determines that exposure is likely to occur in the future due to some anticipated change at the facility, the facility should obtain a permit prior to the discharge of stormwater associated with industrial activities.

Failure to maintain the condition of no exposure or obtain a permit when there is exposure is considered an unauthorized discharge to surface waters of the state. Such a discharge is considered a violation of Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA) and the Part 21 Rules, Wastewater Discharge Permits, promulgated pursuant to Part 31, Water Resources Protection, of the NREPA.

Even when a facility certifies there is no exposure, WRD retains the authority to require the facility to obtain a permit if it is determined that there is exposure at the facility, or that the discharge of stormwater is exceeding any Water Quality Standards.

If you have any further questions regarding the NEC, please contact the WRD district office assigned to your area.

This section will walk you through the process of obtaining the no exposure exclusion.

Step 1: Determine if the facility is regulated under the Part 21 Rules, Wastewater Discharge Permits, promulgated pursuant to Part 31 of NREPA, as amended. This can be done by reviewing the WRD document titled "Determining if a Facility is Required to Obtain Permit Coverage" on Michigan.gov/IndustrialStormWater. If the facility is regulated, an industrial stormwater permit or an NEC is required in order to be in compliance with the NPDES stormwater regulations. If so, proceed to Step 2. If not, no further action is required.

Step 2: Determine if the regulated industrial activity meets the definition of no exposure and qualifies for the exclusion from permitting. If the facility has no exposure, proceed to Step 3. If not, stop here and obtain industrial stormwater permit coverage.

Step 3: Complete and submit the NEC form via MiEnviro. To maintain the exclusion from permitting, a NEC form must be completed and submitted via MiEnviro once every five (5) years. This can only be done if the condition of no exposure continues to exist at the facility.

Step 4: Maintain a condition of no exposure.

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For information or assistance on this publication, please contact the Water Resources Division through EGLE Environmental Assistance Center at 800 662 9278. This publication is available in alternative formats upon request.

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