



Conditional No-Exposure Exclusion for Storm Water Runoff

A Guide for Industries Operating under the TPDES Multi-Sector General Permit, TXR050000

Introduction

This document is meant to help industrial facilities subject to the TPDES Multi-Sector General Permit (MSGP) for storm water discharges determine if they can qualify for the **conditional no-exposure exclusion** allowed in the permit.

What is “No Exposure”?

No exposure means that all industrial activities are conducted indoors or protected by a storm-resistant shelter to prevent exposure of those activities to rain, snow, snowmelt, or runoff.

Industrial activities include, but are not limited to, the following:

- storage, loading, unloading, or transport of raw materials, intermediate products, by-products, and final products
- machinery and equipment used in a manufacturing process
- manufacturing and production activities
- waste management
- on-site fleet-maintenance operations

Storm-resistant shelters include buildings or structures that have complete roofs and walls, as well as structures with only a top cover but no side coverings, as long as the materials or activities under the structure are not otherwise subject to any run-on and subsequent runoff of storm water, or mobilization by wind.

Materials and activities may be temporarily

sheltered under nonpermanent covers (e.g., tarpaulins) and still meet the requirements for a no-exposure exclusion when circumstances prevent permanent, uninterrupted sheltering. However, to qualify for a no-exposure exclusion, the materials and activities must reside or occur under a cover as described in the previous paragraph. Because these situations may be unique, the TCEQ can address each, on a case-by-case basis, to determine whether a nonpermanent cover will still meet the no-exposure exclusion requirements. Questions on this topic should be addressed by the Storm Water Permitting team at 512-239-4671.

Which activities can be conducted outdoors and still allow for no-exposure certification?

While the intent of the exclusion is to promote a condition of permanent non-exposure, the following industrial materials and activities do not need to be located indoors or inside a storm-resistant shelter:

- Drums, barrels, tanks, and similar containers that are in good condition, sealed, and not leaking. When making a no-exposure determination for these types of containers, consider the following—
 - “Sealed” means ‘banded or otherwise secured without operational taps or valves.’
 - Only outdoor storage is allowed. Any additions of materials to these containers, or withdrawals of materials from them, while they are located outdoors will not allow you to claim no exposure.

ABBREVIATIONS

AST	aboveground storage tank	STEERS	State of Texas Environmental Electronic Reporting System
MS4	municipal separate storm-sewer system	SWP3	Storm Water Pollution Prevention Plan
MSGP	Multi-Sector General Permit	TPDES	Texas Pollutant Discharge Elimination System
NEC	No Exposure Certification		
NOT	Notice of Termination		

- Moving containers while they are outdoors does not create exposure.
- Containers located outdoors should be inspected to verify they are not open, deteriorated, or leaking. The TCEQ recommends that operators conduct inspections of their outdoor containers on a regular basis to ensure compliance. Any time an external container is opened, deteriorated, or leaking, personnel must immediately close, replace or shelter the container.
- Racks and other transport platforms (e.g. pallets or aluminum racks) used with containers may be stored outside, provided they are free of contaminants.
- Aboveground storage tanks (ASTs) are generally considered not exposed. ASTs may also receive exemption from the prohibition against adding material to, or withdrawing material from, external containers. ASTs typically use transfer valves to dispense materials that support facility operations (e.g., heating oil, propane, butane, chemical feedstocks) or to dispense fuel for delivery vehicles (e.g., gasoline, diesel, compressed natural gas). For ASTs to be operational and qualify for no exposure—
 - Keep ASTs away from vehicle-maintenance operations.
 - Ensure that absolutely no piping, pumps, or other equipment are leaking contaminants that could contact storm water.
 - Follow TCEQ recommendations that, where feasible, operators surround ASTs with some type of physical containment (for example, an impervious dike, berm, or concrete retaining structure) to prevent runoff in the event of a structural failure or leaking transfer valve.
- **Lidded dumpsters** containing waste materials do not create an exposure if the containers are completely covered, nothing can drain out, and no material is lost while loading the contents into a garbage truck. The TCEQ recognizes that large roll-off waste containers do not include lids. If the facility is able to construct a cover for these containers, then the TCEQ will consider these containers not exposed. If constructing a cover is not feasible, then the TCEQ will allow the use of heavy-duty tarps **in good condition** only if the operator—
 - securely fastens the tarps to the waste container.
 - unfastens tarps to add waste to the container.
 - properly maintains the tarps and replaces them if they begin to deteriorate.

The TCEQ recommends that the operator conduct regular inspections to ensure that these conditions are being met.
- **Adequately maintained vehicles**, such as trucks, automobiles, forklifts, trailers or other general purpose vehicles (not industrial machinery) found on-site are considered not exposed as long as they are not leaking or otherwise a potential source of contaminants. Similarly, non-leaking vehicles awaiting maintenance at facilities for that purpose are not considered exposed. The mere moving of materials or products between buildings (when outdoor storage of those materials or products would not otherwise be allowed) does not create an exposure, as long as the materials or products are adequately protected from precipitation and could not be released as a result of a leak or spill.
- **Transporting materials between buildings on the site.** Vehicles moving between buildings will likely come into contact with precipitation at some time. This will not cause an exposure if the vehicles are adequately maintained and the materials being moved are protected from possible contact with precipitation.
- **Final products** built and intended for use outdoors (e.g., new cars, swing sets, wooden benches) can be stored outdoors without causing exposure, provided the final products have not deteriorated or are not otherwise a potential source of contaminants. Types of final products that would **not** qualify for a certification of no exposure include:
 - Products that could be mobilized by wind or rain into storm water discharges (e.g., rock salt, wood shavings, compost, etc.).
 - Products that may, when exposed, oxidize, deteriorate, leak or otherwise be a source of contaminants (e.g., scrap cars, scrap metal, stockpiled train rails, metal products).
 - “Final” products that are actually intermediate products—those used in the manufacture or creation of yet another product (e.g., sheet metal, tubing and paint used in making tractors, plastic pellets, glass to be installed into vehicle

or building windows). Even if the intermediate product is “final” for a manufacturer and destined for inclusion 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.

- Particulate emissions from roof stacks or vents do not cause a condition of exposure, provided they comply with other applicable TCEQ rules (e.g., air quality rules) and do not contaminate storm water. Deposits of particles or residuals from roof stacks or vents not otherwise regulated that could be carried by storm water runoff are considered exposed. Exposure also occurs when accumulated particulate emissions are visibly being tracked out or carried on the tires of vehicles.

Limitations on Eligibility for the No-Exposure Exclusion

The exclusion from permitting is only available facility-wide, not for individual outfalls. Generally, if any exposed industrial materials or activities are found on any portion of a facility, the facility is not eligible for the no-exposure exclusion.

If the TCEQ determines that a facility’s storm water discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, TCEQ can deny the exclusion.

Windblown raw materials cause exposure. Materials sheltered from precipitation can still be deemed exposed if the materials could be carried by wind.

If a facility with a no-exposure exclusion undergoes any changes that result in industrial activities or materials becoming exposed, then the exclusion ceases to apply. In such a case, the operator must apply for coverage under an applicable water quality permit for storm water discharges before making any changes that will expose industrial activities or materials.

What do I need to do to obtain the conditional no-exposure exclusion?

To obtain the exclusion, you must submit the No Exposure Certification (NEC) form (TCEQ form 10383)—which can be downloaded from the TCEQ Web site at <www.tceq.state.tx.us/goto/forms> (search by form number)—and submit the \$100 application fee.

Step 1: Determine if your industrial activity is eligible for coverage under the general permit by referring to Part II of the MSGP. You can view or download a copy of the MSGP from the TCEQ Web site at <www.tceq.state.tx.us/goto/msgp>.

Step 2: Determine if your regulated industrial activity meets the definition of no exposure and qualifies for the exclusion from permitting. To do so, use this guide, including the No-Exposure Checklist (below), and seek assistance from personnel familiar with the site and its operations to determine if the site meets the no-exposure requirements.

No-Exposure Checklist

Put a check mark in any box below if the answer to the question next to it is “yes.”

- Are any industrial materials, activities, or areas exposed to storm water (including using, storing, or cleaning industrial machinery or equipment, and including areas where residuals from using, storing, or cleaning industrial machinery or equipment may exist)?
- Are any materials or residuals from spills or leaks on the ground or in storm water inlets exposed to storm water?
- Are any materials or products from past industrial activities exposed to storm water?
- Is any material-handling equipment (except adequately maintained vehicles) exposed to storm water?
- Are there any materials or products that may be exposed to storm water during loading, unloading, or transporting activities (except where the materials, while protected from contact with precipitation, are being moved between buildings at the site by vehicles that are adequately maintained)?
- Are there any materials or products stored outside that may be exposed to storm water (except for final products intended for outdoor use where exposure to storm water does not result in the discharge of pollutants)?
- Are any materials contained in open, deteriorated, or leaking storage drums, barrels, tanks, or similar containers that may be exposed to storm water?
- If a road or railway located at the facility is owned or maintained by the facility, are there materials or products handled or stored on that road or railway that may be exposed to storm water?
- Is any waste material (except waste in covered, non-leaking containers) exposed to storm water?

- Are there any activities that include the application or disposal of process wastewater that are not covered by a current permit?
- Is there any particulate matter or visible deposit of residuals from roof stacks or vents not otherwise covered by permit and that is evident in the storm water discharge?

If you did not check any boxes, the site meets the definition of no exposure—proceed to Step 3. If you checked at least one box, then the site is not eligible for exclusion and you will need either to make changes to the facility to qualify, or to obtain permit coverage either under the MSGP or under an individual water quality permit.

Step 3: Complete the NEC (Form 10383) and submit it with the application fee to the TCEQ.

Electronic Submission of Your NEC and Payment

You can submit your NEC and payment electronically through the State of Texas Environmental Electronic Reporting System. You can sign up for a STEERS account at <www.tceq.state.tx.us/goto/steers>.

If you choose to submit a paper copy of your NEC application you can still submit an electronic payment through the e-Pay System at <www6.tceq.state.tx.us/epay/>.

Paper Submission of Your Hard-Copy NEC and Payment

By regular U.S. mail

Storm Water Processing Center, MC 228
TCEQ
PO Box 13087
Austin TX 78711-3087

By overnight or express mail

Storm Water Processing Center, MC 228
TCEQ
12100 Park 35 Circle
Austin TX 78753

Attach your payment to the General Permit Payment Submittal form (TCEQ-20134) included with the NEC and submit it to the appropriate address:

By regular U.S. mail

Cashier's Office, MC 214
Financial Administration Division
TCEQ
PO Box 13087
Austin TX 78711-3087

By overnight or express mail

Cashier's Office, MC 214
Financial Administration Division
TCEQ
12100 Park 35 Circle
Austin TX 78753

Step 4: Submit a copy of your completed certification form to the operator of the municipal separate storm-sewer system (MS4) for your area. Operators of MS4s can include cities, counties, or other public entities that operate the storm drain system to which you discharge. If you are unsure of who that might be, you can contact:

- the TCEQ regional office in your area, <www.tceq.state.tx.us/goto/region>, or
- the Storm Water and Pretreatment Permits Team at 512-239-4671, or
- the Small Business and Local Government Assistance (SBLGA) Program at 1-800-447-2827.

Step 5: Maintain a condition of no exposure. The no-exposure exclusion is conditional and not a blanket exemption. The TCEQ recommends that you conduct regular facility inspections to ensure that you continue to qualify for the no exposure exclusion. If you discover that you no longer meet the no-exposure requirements, you must immediately make changes to regain a no-exposure condition or you must apply for and obtain permit coverage under the MSGP or an individual water quality permit.

Specific Issues

Can a facility that is currently subject to an individual storm water permit claim no exposure?

Yes. As long it can meet the definition of *no exposure*, there is nothing to preclude a facility covered by an individual permit from submitting a certification. However, the facility should consult with the TCEQ's Wastewater Permits Section, especially if the individual permit contains numeric effluent limitations for its storm water. Anti-backsliding provisions may prevent these facilities from qualifying for the exclusion.

Must a facility currently covered under the MSGP file a Notice of Termination (NOT) prior to applying for no exposure?

If a facility believes that it meets the definition, and is currently covered under the MSGP, then the facility should submit the NEC form and then submit a Notice of Termination for its MSGP

coverage. Submitting the NEC before submitting the NOT ensures there will be no lapse in coverage for the site.

Will my no-exposure certification ever expire?

Yes. Coverage for facilities claiming no exposure under the current MSGP (issued Aug. 14, 2006) will expire on Aug. 14, 2011. At that time, the facility will need to resubmit an NEC or apply for coverage under the provisions of the renewed permit.

What happens if a facility anticipates changes that may cause exposure?

If exposure could occur in the future due to some anticipated change at the facility, the facility operator should apply for and obtain coverage under the MSGP or an individual water quality permit (or alternative general permit) prior to making any changes to the site that would cause an exposure.

Is the No Exposure Certification form transferable to a new facility operator?

No. The new operator must submit a new NEC to obtain coverage and the old operator must submit a Notice of Termination to terminate the existing coverage.

Upon what is the no-exposure exclusion “conditional”?

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 MSGP to be excluded from permit coverage requirements if it allows no exposure of materials or activities to storm water. The application, and therefore the approval of the exclusion, is conditional upon the agency’s acceptance of the certification. The TCEQ can review the information and contact or inspect the facility if the agency has questions regarding the certification.

Can secondary containment outside qualify for the no-exposure exclusion?

In general, if the secondary containment is adequately engineered to prevent any failure, leakage, or overflow, such that there would be no discharge from that area, the facility may qualify for the exclusion. *Note:* there must be proper disposal of any water or liquids collected from the secondary containment (e.g., discharge in compliance with another water quality permit or trucking offsite for proper disposal).

If I have scrap materials from my process, such as old equipment and metal, can I store them outdoors?

No. To maintain no exposure, scrap material and old equipment may only be stored outdoors if they are protected from storm water and storm water runoff. They must be covered and elevated to prevent contact with storm water.

The area where trucks deliver materials is not covered, but all work and storage areas are covered. Can I claim no exposure?

It depends. All activities including loading, unloading, and transportation of material or products (with the exception of the transportation of material between buildings, as discussed above) must be covered or protected from storm water and storm water runoff. However, material that is transferred in sealed, waterproof, weatherproof containers may still be able to meet the definition of no exposure, even when the loading-unloading area is uncovered.

I use granite to make headstones. The granite is delivered and stored outside until I need it to make a headstone. Since the final product is intended for outdoor use can I claim no exposure?

To maintain no exposure, raw material waiting for engraving must be stored inside until the final product, which is intended for outdoor use, is completed. However, if examples of the headstones or the types of engraving on the headstones are part of a permanent display, located outside, they will not prevent the facility from obtaining a no-exposure exclusion.

We had a small oil spill on a concrete pad outside. The oil was removed but a stain on the concrete remains. Would washing down the concrete put us out of compliance with no-exposure requirements?

Not necessarily. Concrete may generally be washed down, and the wash water allowed to run off from the site, provided that all of the spilled material has been completely removed, that no detergents or other chemicals were used to wash down the concrete, and that the wash water is not otherwise considered to be wastewater.

We wash down our buildings a couple of times per year with a pressure washer and the runoff goes into the storm drain. Does this prevent us from obtaining coverage under no exposure?

Not necessarily. A list of allowable non-storm water discharges appears in Part II, Section A, Paragraph 5 of the MSGP. Though this list is applicable to those facilities with operators who submitted a Notice of Intent (NOI) and developed a Storm Water Pollution Prevention Plan (SWP3), the listed non-storm water discharges are generally allowable even for a facility that does not have coverage under the MSGP. However, if the discharge of any water would cause or contribute to a violation of surface water quality standards, or would otherwise be defined as a wastewater discharge, then separate permitting could be required. Simply having these types of discharges at your site would not prevent you from claiming no exposure. In this example, water from the routine external washing of buildings without detergents or other chemicals, is generally allowable, but you may need to contact the operator of any MS4 that receives the discharge, as the MS4 may have additional controls for non-storm water discharges.

Will our boiler blowdown prevent us from qualifying for no exposure?

Not necessarily. If the blowdown is being discharged into water in the state under a separate permit or authorization, or is being routed into a sanitary sewer, then your facility can still qualify for no exposure, assuming all other conditions are met.

We store cardboard boxes outside (uncovered) until we ship them away to be recycled. Can we still qualify for no exposure?

No. Cardboard deteriorates quickly when wet, and can break down into particles that can be mobilized by runoff and by wind when dry again. If you want to claim no exposure, the boxes should be sheltered from storm water and storm water runoff or moved inside.

Can individual tenants located at airports qualify for no exposure?

Yes. An individual tenant subject to storm water permitting requirements who can meet no-exposure requirements for his or her operations within the

boundaries of the site may submit the NEC even if other tenants, also subject to storm water permitting, are unable to qualify.

Can a trash compactor located outside qualify for no exposure?

No. Trash compactors are considered industrial machinery and, if located outdoors and not protected by a storm-resistant shelter, are considered exposed.

I operate two businesses on the same property. My main business is a manufacturing facility that is located indoors, and I also have an automobile-repair shop, which is not related to the manufacturing activity. The wash bay and part of the maintenance area for my repair shop are outdoors. Does this mean that I have exposure?

Not necessarily. In this situation, you operate “co-located facilities.” You must comply with the permit requirements for each regulated industrial activity, and no exposure is only attainable if you meet a condition of no exposure for that regulated activity. Because automotive repair is not regulated under the MSGP, as long as you maintain a no exposure for the manufacturing facility, you will be able to maintain the exclusion. However, fleet-maintenance activities that support an industrial activity covered by the MSGP must either qualify as not exposed, or must meet the conditions of the permit (i.e., be identified and discussed in the SWP3, etc.).

My company manufactures windows that are used as replacement windows on existing structures and in new construction. Can I store the finished windows outside and still meet no exposure?

Your facility could still apply for no exposure based on the facts in your question. However, if you are manufacturing windows that go on to be used in the manufacturing of other products—like mobile homes, horse trailers, etc.—then those windows are considered intermediate products, and you would not be able to qualify for no exposure if you stored the windows outside.