



# Conditional No-Exposure Exclusion from Stormwater Permit Requirements

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

This document is meant to help the operators of industrial facilities that are subject to the TPDES Multi-Sector General Permit (MSGP) for stormwater discharges determine if they can qualify for the **conditional no-exposure exclusion**. If you do qualify, the conditional no-exposure exclusion is an alternate option for authorization under the MSGP.

Operators that obtain the no-exposure exclusion must also conduct regular inspections to ensure that the facility continues to meet the qualifying conditions. Facilities operating under the no-exposure exclusion are still subject to TCEQ investigations.

## What is “No-Exposure”?

“No-exposure” means that all industrial activities are either conducted indoors or protected by a storm-resistant shelter to prevent exposure of those activities to rain, snow, snowmelt, or runoff. In this definition, “industrial activities” include, but are not limited to, the following:

- the storage, loading, unloading, or transport of raw materials, intermediate products, by-products, or final products
- the operation of machinery and equipment in manufacturing or other production processes
- waste management
- on-site fleet-maintenance

“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, equipment, or activities under the structure are not exposed to any run-on and subsequent runoff of stormwater or windblown precipitation.

To qualify for a no-exposure exclusion, the industrial materials, equipment, and activities at your facility must reside or occur under a cover as described in the previous paragraph. However, if you are unable to provide permanent and uninterrupted protection for these materials and activities, you may temporarily shelter them under nonpermanent covers (e.g., tarpaulins) and still meet the requirements for a no-exposure exclusion. Because these situations may be unique, the TCEQ can address each one on a case-by-case basis, to determine whether a nonpermanent cover will still meet the requirements for the no-exposure exclusion. If you have questions on this topic, please address them to our Stormwater and Pretreatment 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 no-exposure, the following industrial materials, equipment, 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, you should consider the following:
  - “Sealed” means “banded or otherwise secured without operational taps or valves.”
  - Only outdoor storage is allowed. Any additions of materials to, or withdrawals of materials from, these containers while they are located outdoors will disqualify you from claiming the no-exposure exclusion.
  - Moving containers while they are outdoors does not create exposure.
  - Containers that are located outdoors should be inspected to verify that they are not open, deteriorated, or leaking. Operators should conduct inspections of their outdoor containers on a regular basis to ensure compliance. Anytime an external container is opened, deteriorated, or leaking, personnel must immediately close, replace, or shelter it.

- Racks and other transport platforms (e.g., pallets or aluminum racks) that are used with containers may be stored outside, provided they are free of contaminants.
- **Aboveground storage tanks (ASTs)** are generally considered not exposed if properly maintained and managed. 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 (such as heating oil, propane, butane, and chemical feedstock) or to dispense fuel for delivery vehicles (such as gasoline, diesel, and compressed natural gas). To ensure that ASTs remain operational and qualify for the no-exposure exclusion, you should adhere to the following guidelines:
  - Keep ASTs away from vehicle-maintenance operations.
  - Make sure that absolutely no piping, pumps, or other equipment is leaking contaminants that could contact stormwater.
  - Surround ASTs with 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.
- **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. If you have open-top, roll-off containers, you must construct covers for them to qualify for the no-exposure exclusion. If constructing a cover is not feasible, you can use heavy-duty tarps, as long as you also comply with the following guidelines:
  - Securely fasten the tarps to the waste container.
  - Unfasten the tarps only whenever you add or remove waste.
  - Properly maintain the tarps and replace them whenever they begin to deteriorate.
- **Adequately maintained vehicles**—such as trucks, automobiles, forklifts, trailers, or other general-purpose vehicles (but 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 are not considered exposed.
- **Transporting materials** between buildings on the site (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.

- **Final products** that were built for use outdoors (e.g., new automobiles, swing sets, and wooden benches) can be stored outdoors without causing exposure, as long as they have not deteriorated or are not otherwise a potential source of contaminants.

#### **Final Products that *Will* Cause Exposure**

Types of final products that when stored outdoors *will disqualify* a facility for the no-exposure exclusion include:

- Products that could be mobilized by wind or rain into stormwater discharges (e.g., rock salt, wood shavings, compost, and paper).
- Products that may, when exposed, oxidize, deteriorate, leak, or otherwise be a source of contaminants (e.g., scrap cars, scrap metal).
- “Final” products from your facility that will be used in the manufacture or creation of yet another product are “intermediate products.” Examples of these intermediate products are sheet metal, tubing and paint used in making tractors, plastic pellets, and glass for 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,” it is not allowed to be exposed because it may be chemically treated or insufficiently impervious to weathering.

- **Particulate emissions** from roof stacks or vents do not cause a condition of exposure, as long as they comply with other applicable TCEQ rules (e.g., air-quality rules) and do not contaminate stormwater.

#### **Emissions that *Will* Cause Exposure**

There are certain emissions or conditions that *will disqualify* a facility for the no-exposure exclusion.

- Deposits of particles or residuals from roof stacks or vents not otherwise regulated that could be carried by stormwater runoff.
- When accumulated particulate emissions are visibly being tracked out or carried on the tires of vehicles.

## ***What are the 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 entire facility is ineligible for the no-exposure exclusion. If we, the TCEQ, determine that your facility's stormwater discharges have a reasonable potential to cause or contribute to a violation of applicable water-quality standards, we can deny the exclusion. Materials sheltered from precipitation are considered exposed if the materials can 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 no longer applies. In such a case, you, the operator, must obtain coverage under the MSGP or an individual water-quality permit before making any changes that will expose industrial activities or materials.

## **How do I obtain the conditional no-exposure exclusion?**

To obtain the exclusion, you must submit the No-Exposure Certification (NEC) form and the \$100 application fee to us. You can download the form (TCEQ-10383) from our website, at [www.tceq.texas.gov/goto/forms](http://www.tceq.texas.gov/goto/forms) (search by keyword or form number).

**Step 1:** Determine if your industrial activity is eligible for coverage under the general permit by referring to Part II Section C of the Multi-Sector General Permit (MSGP). See Part V for additional information about applicability as it relates to specific sectors of industry. You can download a copy of the MSGP from our website, at

<https://www.tceq.texas.gov/assets/public/permitting/stormwater/tr050000.pdf>.

For assistance making this determination, refer to our “Stormwater Discharges from Industrial Facilities: Am I Regulated?” web page, at

[www.tceq.texas.gov/goto/msgpcoverage](http://www.tceq.texas.gov/goto/msgpcoverage). For more information about the MSGP, visit [www.tceq.texas.gov/assistance/water/stormwater/sw-industrial.html](http://www.tceq.texas.gov/assistance/water/stormwater/sw-industrial.html).

**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***

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*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 stormwater (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 stormwater inlets exposed to stormwater?
  - Are any materials or products from past industrial activities exposed to stormwater?
  - Is any material-handling equipment (except adequately maintained vehicles) exposed to stormwater?
  - Are there any materials or products that may be exposed to stormwater 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 stormwater (except for final products intended for outdoor use where exposure to stormwater 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 stormwater?
  - 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 stormwater?
  - Is any waste material (except waste in covered, non-leaking containers) exposed to stormwater?
  - 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 deposits of residuals from roof stacks or vents not otherwise regulated (i.e., under an air-quality permit) and evident in the stormwater discharge?
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If you did not check any boxes, the site meets the definition of “no-exposure,” and you should proceed to Step 3. If you checked at least one box, then the site is not eligible for exclusion and you will need to either make changes to the facility to qualify, or obtain permit coverage under the MSGP or an individual water-quality permit.

**Step 3:** Complete the NEC form (10383) and submit it with the application fee to us, the TCEQ.

## Submission of Your NEC Form and Application Fee

### Electronic Submission

You can submit your NEC form and the application fee electronically through the State of Texas Environmental Electronic Reporting System, or STEERS. You can sign up for a STEERS account at [www.tceq.texas.gov/goto/steers](http://www.tceq.texas.gov/goto/steers).

If you choose to submit a paper copy of your NEC form, you can still submit your application fee electronically through the e-Pay System at [www.tceq.texas.gov/goto/epay](http://www.tceq.texas.gov/goto/epay).

### Paper Submission

You can submit your NEC form and the application fee by mail. Please note that each one must be mailed to a different address, as indicated below.

Your NEC Form

To submit your NEC form by mail, you can download the form (TCEQ- 10383) from our website, at [www.tceq.texas.gov/goto/forms](http://www.tceq.texas.gov/goto/forms) (search by keyword or form number). Once you have the form, you can either fill it out on your computer and print it out, or you can print it out and fill it in by hand. In either case, you should then submit it to the appropriate address of the two provided below.

*By regular U.S. mail:*

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

*By overnight or express mail:* Stormwater  
Processing Center, MC 228 TCEQ  
12100 Park 35 Circle  
Austin, TX 78753

## Your Application Fee

Attach your payment to the General Permit Payment Submittal Form (TCEQ 20134), which is included with the NEC form (at the end), and submit it to the appropriate address of the two provided below. (*Note:* These addresses are different from the addresses for the NEC form.)

*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 NEC 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 any of the following:

- The TCEQ regional office in your area (see <[www.tceq.texas.gov/goto/region](http://www.tceq.texas.gov/goto/region)>).
- The Stormwater and Pretreatment Team, at 512-239-4671.
- The Small Business and Local Government Assistance (SBLGA) Program, at 800-447-2827.

**Step 5:** Maintain a condition of no-exposure; the no-exposure exclusion is a conditional authorization and not a blanket exemption. We recommend 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 obtain permit coverage under the MSGP or an individual water-quality permit.



## Specific Issues

### ***Can a facility that is currently subject to an individual water-quality permit claim no-exposure?***

Yes. As long as it can meet the definition of no-exposure, any facility covered by an individual permit can submit a No-Exposure Certification (NEC) form. However, the facility should consult with our Wastewater Permitting Section, especially if the individual permit contains numeric effluent limitations for its stormwater; anti-backsliding provisions may prevent these facilities from qualifying for the exclusion.

### ***Must a facility currently covered under the Multi-Sector General Permit (MSGP) file a Notice of Termination (NOT) prior to applying for the no-exposure exclusion?***

If a facility qualifies for the no-exposure exclusion and is currently covered under the MSGP, the facility operator should submit the NEC form and then submit an NOT for its MSGP coverage. By submitting the NEC form before you submit the NOT, you ensure that 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, 2016) will expire at midnight on Aug. 13, 2021. At that time, the facility operator must resubmit an NEC form 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 an anticipated change at the facility, the facility operator should obtain coverage under the MSGP by submitting an NOI or another water-quality permit prior to making the change.

### ***Is my no-exposure certification transferable to a new facility operator?***

No. The new operator must submit a new NEC form to obtain authorization and the former operator must submit an NOT to terminate the existing NEC authorization.

### ***If I have secondary containment outside, can my facility 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:* Any water or liquids collected from the secondary containment must be properly disposed of (e.g., discharged in compliance with another water-quality permit or transported to an authorized treatment or disposal site).

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

No. To maintain a condition of no-exposure, scrap material and old equipment may only be stored outdoors if they are protected from precipitation and runoff. They must be covered and elevated to prevent contact with stormwater.

***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 moving materials or products between buildings)—must be covered or protected from precipitation and runoff. Material that is transferred in sealed, waterproof, weatherproof containers may still be able to meet the definition of “no-exposure,” even when the loading and 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, this will not disqualify the facility from claiming the 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 you completely remove all of the spilled material, that you use no detergents or other chemicals 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 disqualify us from obtaining authorization under the no-exposure exclusion?***

Not necessarily. These types of discharges at your site do not disqualify you from claiming no-exposure. Allowable non-stormwater discharges are described in Part II, Section A, Paragraph 6, of the MSGP. Though this list is applicable to those facilities with permit coverage and a Stormwater Pollution Prevention Plan (SWP3), the listed non-stormwater discharges are generally allowable even for a facility without permit coverage.

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. In this hypothetical case, for 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 receiving the discharge, as the MS4 may have additional requirements for non- stormwater discharges.

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

Not necessarily. If the blowdown is being discharged 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 uncovered corrugated boxes outside until we ship them away for recycling. Can we still qualify for no-exposure?***

No. Corrugated and cardboard boxes deteriorate quickly when wet and 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 must be sheltered from precipitation and runoff or moved inside.

***Can individual tenants located at airports qualify for no-exposure?***

Yes. An individual tenant's activities that are otherwise subject to stormwater permitting requirements may meet the definition of "no-exposure" even if other tenants who are also subject to stormwater permitting are unable to qualify.

***Can a trash compactor located outside qualify for no-exposure?***

Possibly. Trash compactors are considered industrial machinery and considered to be exposed if they are located outdoors and not protected by a storm-resistant shelter. However, a trash compactor or other equipment may be evaluated on an individual basis to determine if it is adequately maintained, protected from precipitation and runoff, and not a source of potential contaminants. The operator of the permitted facility may be required to demonstrate how the trash compactor meets the conditions of no-exposure.

***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 any regulated activity. Because automotive repair is not regulated under the MSGP, you qualify for the no-exposure exclusion as long as you maintain no-exposure for the manufacturing facility. 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.).

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## ***Abbreviations***

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

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