

**TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
OFFICE MEMORANDUM**

**DATE:** March 27, 2000 (last updated August 23, 2002)  
**TO:** EAC, Water Pollution Control Managers  
**FROM:** Permit Section, Division of Water Pollution Control, Nashville  
**SUBJECT:** Tennessee Multi-Sector General Storm Water Permit (TMSP)  
Conditional No Exposure Exclusion for Industrial Activity  
("No Exposure" Certification)

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EPA has revised the original "no exposure" provision, found at 40 CFR 122.26(b)(14), to be a conditional exclusion applicable to all categories of industrial activity (except construction activity) with no exposure of industrial materials and activities to storm water.

In other words, industrial activities identified in storm water regulations categories 122.26(b)14 (i) through (ix) (a.k.a. heavy industry facilities) will be able to submit a no exposure certification in lieu of obtaining or maintaining an NPDES permit. Such "no exposure" provision was previously available only for facilities described in category (xi) (a.k.a. light industry facilities). Please note that storm water discharges associated with construction activities, described in storm water regulation category (x), are NOT eligible for no exposure certification.

The revision, found at Section 122.26(g) of the Storm Water Phase II Rule, requires industrial operators claiming no exposure to submit written certification that a condition of no exposure exists at their facility/site. The final rule includes a No Exposure Certification Form (see attachments) that is intended to serve as the required written certification. No exposure certification for exclusion from NPDES storm water permitting is described in the Preamble of the Federal Register dated December 8, 1999, Vol. 64, No. 235.

Following EPA's actions, the Permit Section will make a no exposure certification available to all permittees covered under the TMSP. This memo will provide information regarding no exposure certification in the State of Tennessee.

**1. Who will be able to obtain exclusion from NPDES storm water permitting under TMSP?**

All facilities with point source discharges of storm water associated with industrial activity that satisfy criteria of no exposure (Federal Register, page 68785) and complete a no exposure certification form.

**2. What about facilities with a poor "track record" (such as exceedances of cut-off concentrations, failure to collect data and/or submit Storm Water Monitoring Report Form, failure to complete and/or implement a SWPPP, etc.)?**

History of exceedances of cut-off concentrations or non-compliance may not be relevant to current conditions at the industrial facility. Therefore, it should not be used as a single reason to deny exclusion from NPDES storm water permitting under the Storm Water Phase II Rule. Nevertheless, if the Division personnel has information showing that:

- 1.) provisions of no exposure are not satisfied;
- 2.) contaminated storm water runoff from the site is causing exceedance(s) of water quality criteria in the receiving stream; or
- 3.) a facility was in a significant non-compliance with the provisions of the TMSP,

the exclusion from NPDES storm water permitting should be denied. Please consult with the Division's Enforcement and Compliance Section on a case by case basis regarding interpretation of "significant non-compliance."

**3. Can storm water discharges associated with construction activities, described in storm water regulation category (x), obtain no exposure certification?**

No.

**4. Category (xi) facilities previously did not have to submit a certification form. Will they have to do so at this time and in the future?**

Yes. No exposure certification form is available and required for all industrial activities that were defined by the original EPA storm water rule, including the category (xi) facilities. These categories of industrial activity are all addressed in the TMSP as well. Documentation (letters, memos, inspection reports, etc.) describing no exposure conditions at category (xi) facilities currently available in the DWPC files was used in lieu of a new form submittal during the previous permit term. However, category (xi) facilities are now required to submit a completed no exposure certification form, in the same way as facilities classified in categories (i-ix).

**5. Does the no exposure certification form have to resubmitted?**

Yes, every 5 years from the date of submittal. This date does NOT have to coincide with the permit issuance date (see question #6). A complete list of all facilities that submitted a valid no exposure certification form, including the certification expiration date, can be found at <http://tn.gov/environment/wpc/stormh2o/noexposure.pdf>.

**6. Should submittal date of no exposure certification form coincide with the TMSP issuance/expiration date?**

No. Notwithstanding, the Permit Section attempted to synchronize mass mailing of the no exposure certification option with the new TMSP issuance correspondence (previous TMSP expired on December 31, 2001). Numerous facilities took advantage of exclusion from NPDES storm water permitting during the TMSP reissuance process.

**7. Will industrial facilities have to resubmit the no exposure certification form every time the TMSP is reissued?**

No. The cycle of TMSP issuance and no exposure certification form submittal do NOT have to coincide. No exposure certification is valid for 5 years from the date of submittal, as long as conditions of no exposure at a facility are maintained.

**8. Will Permit Section develop a Tennessee-specific no exposure certification form?**

Not at this time. EPA's no exposure certification form and accompanying instructions will be used at this time. If a need for a state-specific form arises in the future, it will be developed at that time. It should be noted that a completed form should not be submitted to EPA offices in Washington, but to the following address:

Storm Water NOI Processing  
Tennessee Division of Water Pollution Control  
6th Floor L & C Annex  
401 Church Street  
Nashville, TN 37243

**9. Can a no exposure certification form be obtained via Internet?**

Yes. It can be downloaded from <http://tn.gov/environment/permits/strmh2o.shtml>. To order a hard copy, please E-mail us at [Storm.Water@tn.gov](mailto:Storm.Water@tn.gov) or write to the above address.

**10. Where should one mail a completed no exposure certification form?**

Completed forms should be mailed to the following address:

Storm Water NOI Processing  
Tennessee Division of Water Pollution Control  
6th Floor L & C Annex  
401 Church Street  
Nashville, TN 37243

Environmental Assistance Center personnel may be consulted for the form evaluation and approval. The final storage location for completed forms, once reviewed and approved by EAC personnel, will be the Division's Central Office files.

**11. Who will review and evaluate no exposure certification forms?**

Division's Permit Section and the EAC personnel. Submittal and consequent approval of no exposure conditions at any facility is essentially equivalent of a permit termination. Permit Section routinely requests EAC's assistance and approval for termination of permits.

**12. What should EACs do with a form that they approve?**

Stamp it, or mark it as "approved." Make a copy if you'd like to keep one for EAC's files. Send the original form to the Central Office. We'll enter data into the Permstat database, and place completed form in a permittee's file folder. All the paperwork and data tracking related to exclusion from NPDES storm water permitting will be done by the Permit Section.

**13. Will exclusion from storm water permitting be automatic?**

Yes, other than exceptions described in question no. 2. Similarly to many other self-monitoring aspects of the NPDES permitting program, information submitted on no exposure certification forms will be assumed to be accurate and current. Therefore, the Division's personnel does not necessarily have to perform a site inspection for the exclusion from storm water permitting to be effective.

**14. How, if at all, will facilities know that no exposure certification form has been reviewed and "approved"?**

"Approved" is in quotation marks because, as stated above, the exclusion from storm water permitting will be automatic. Nevertheless, Permit Section intends to generate a reply to no exposure certification form submittal in the form of a letter, for those facilities that are currently covered under the TMSP. Facilities that never had permit coverage will be considered automatically "approved."

**15. Can the DWPC disapprove or disagree with content and applicability of submitted no exposure certification forms?**

Yes. Information and general knowledge obtained from previous inspections and Division's files regarding particular industrial facilities, or types of facilities, can be (and should be) used during evaluation of no exposure certification forms (see also question #2). When the EAC observes that a facility does not actually qualify for the no exposure condition, the EAC should inform the Permit Section, by e-mail or memo. After any questions are resolved, the Permit Section will notify the industry that the no exposure certification is no longer valid and that the previous permit coverage is re-activated, or that an NOI for permit coverage must be submitted. Such decisions should be made on a case by case basis.

**16. Will the DWPC be responsible to inspect any facility where a permittee is uncertain whether or not the no exposure conditions at the site are satisfied?**

No. The Division's personnel should make every reasonable effort to assist permittees in interpretation of no exposure conditions, but will not be responsible for making a final decision or performing an inspection. The Exposure Checklist (December 8, 1999 Federal Register, page 68809) is simple and straight-forward; it should not present a challenge to any permittee, even with only elementary understanding of the storm water program.

**17. What if only a small portion of a facility has industrial activities exposed to storm water?**

Please note that the definition of "storm water associated with industrial activity" was not changed as a result of the Storm Water Phase II Rule. If there is any exposure of industrial activity to storm water and a point source discharge, a facility is required to obtain coverage under a permit. Nevertheless, TMSP does have an "Alternative Certification" provision for each of the sectors with monitoring requirements, which states, in part:

"A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall or on a pollutant-by-pollutant basis in lieu of monitoring reports required under paragraph b below, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water

and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to the Division of Water Pollution Control in accordance with Part VI.C. of this permit. In the case of certifying that a pollutant is not present, the permittee must submit the certification along with the monitoring reports required under paragraph (b) below. If the permittee cannot certify for an entire period, they must submit the date exposure was eliminated and any monitoring required up until that date. This certification option is not applicable to compliance monitoring requirements associated with effluent limitations."

**18. Who will keep track of no exposure certification forms?**

Permit Section. EAC personnel are welcome to keep track of it, although it may be a duplication of effort. A database (Permstat) of all facilities is already compiled in the Permit Section. Provisions were also made to track submittal of no exposure certification forms.

**19. What if a subsequent inspection shows that false information was submitted on a no exposure certification form?**

The exclusion from NPDES storm water permitting will be immediately revoked and the NPDES permit reinstated. Similarly to other NPDES permits (See Section 309 of the Federal Water Pollution Control Act, as amended, and Section 69-3-115 of the Tennessee Water Quality Control Act.), all facilities that submit false information will be subject to enforcement action. The TMSP, Part VII, 2, Penalties for Violations of Permit Conditions, states, in part:

"c) any person who willfully and knowingly falsifies any records, information, plans, specifications, or other data required by the board or the commissioner, or who willfully and knowingly pollutes the waters of the state, or willfully fails, neglects or refuses to comply with any of the provisions of this part (T.C.A. ' 69-3-101, et.seq.) commits a Class E felony and shall be punished by a fine of not more than twenty-five thousand dollars (\$25,000) or incarceration, or both."

Any enforcement requests should be coordinated with the Enforcement and Compliance Section, on a case by case basis.

**20. What if facility changes the nature of business, or significantly expands current operations? Will they be able to maintain the exclusion from NPDES storm water permitting, or will they need to submit a new form?**

If the changes result in exposure of materials, material handling activities, etc., then they will need to obtain permit coverage. If not, then they can maintain the no exposure status. Regardless of a nature and size of an industrial activity at a site, as long as condition of no exposure is satisfied, facility will not have to resubmit a no exposure certification form.

If you have any questions, please contact Jim McAdoo at (615) 532-0684 or Vojin Janjic at (615) 532-0670. You can also reach Permit Section by E-mail at [Storm.Water@tn.gov](mailto:Storm.Water@tn.gov)