

# APPENDIX 1

## NO EXPOSURE CERTIFICATION (NEC) COVERAGE FILING INSTRUCTIONS

### NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) GENERAL PERMIT FOR STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITIES (GENERAL PERMIT)

#### A. INSTRUCTIONS

##### Who May File for NEC Coverage

Sections 301 and 402(p) of the Clean Water Act (CWA) and Sections 1311 and 1342(p) of 33 U.S.C. prohibit the discharge of storm water associated with industrial activity to waters of the U.S. without a National Pollutant Discharge Elimination System (NPDES) permit. However, NPDES permit coverage is "conditionally excluded" for discharges of storm water associated with industrial activities (industrial storm water discharges) if the Discharger can certify that a condition of "No Exposure" exists at the industrial facility. A condition of "No Exposure" means that a Discharger's industrial activities and materials are not exposed to storm water. Industrial storm water discharges from construction and land disturbance activities are not eligible for the NEC coverage. Dischargers who file valid NECs in accordance with these instructions are not required to implement BAT/BCT and comply with the SWPPP and monitoring requirements of this General Permit.

##### Obtaining and Maintaining NEC Coverage

Dischargers shall electronically certify and submit NEC Permit Registration Documents (PRDs) via SMARTS to obtain NEC coverage. This conditional exclusion does not become effective until the PRDs are submitted and the annual fee is paid. Upon receipt of the annual fee, the Discharger will electronically receive an NEC coverage acceptance notification via SMARTS which will include a Waste Discharger Identification (WDID) number.

Dischargers shall maintain a condition of "No Exposure" at the facility in order for the conditional exclusion to remain applicable. The Discharger shall annually electronically re-certify the NEC via SMARTS to confirm that the conditions of "No Exposure" are being maintained. If conditions change resulting in the exposure of materials and activities to storm water, the Discharger must electronically certify and submit PRDs via SMARTS for NOI coverage.

##### Fees

Initial NEC coverage and re-certifications require a fee that is currently set at \$200. This fee may be changed by State Water Board regulation, independent of this General Permit adoption.

##### How to Prepare and File PRDs for NEC Coverage

Dischargers shall electronically certify and submit PRDs for NEC coverage in accordance with the instructions provided at the State Water Board web site for SMARTS:

<https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp>

Dischargers with multiple facilities that satisfy the conditions of "No Exposure" shall certify and submit PRDs for each facility. Dischargers are required to inspect and evaluate the facility to determine the condition of no-exposure. Dischargers shall retain an electronic or paper copy of the NEC coverage acceptance notification for their records.

The following information is required in the PRDs:

##### Discharger Information

1. The legal name of the business entity, public organization, or any other entity that operates the facility described in this certification. The name of the operator may or may not be the same as the name of the facility. The operator is the legal entity that controls the facility operations, rather than the plant or site manager.
2. The mailing address of the facility operator, including the city, State, and zip code.
3. The facility operator contact name and e-mail address and telephone number.

##### Facility Information

4. The legal business name of the facility.
5. The total acreage of the facility associated with industrial activity (Facility size in acres is calculated by taking the square footage and dividing by 43,560).
6. The complete physical street address (e.g. the street address used for express deliveries), including the city, State, and zip code. Do not use a P.O. Box number. If no physical street address exists, describe the location or provide the latitude and longitude of a point within the facility boundary. Latitude and longitude are available from United States Geological Survey quadrangle or

topographic maps, or may be found using many mapping sites on the internet.

7. The facility contact person, telephone number, and e-mail address.
8. The 4-digit Standard Industrial Classification (SIC) code that represents the facility's primary industrial activity. Provide a brief description of the primary industrial activity. If applicable, enter other significant SIC codes and descriptions. To obtain these codes, see the 1987 SIC Manual, 1997 NAICS Manual or Occupational Health and Safety Administration's site:

<http://www.osha.gov/pls/imis/sicsearch.html>

9. If the facility currently has NOI coverage, include the WDID number.

#### Facility Mailing or Billing Address

Completing this item is only required if there is a different facility mailing address or billing address than reported above. The Discharger shall indicate to which address the annual fee invoice should be sent if we are unable to successfully transmit the invoice electronically.

#### **Site Map**

Site maps are to be prepared consistent with the requirements in Section X.E of this General Permit.

#### **Exposure Checklist**

At the end of this Appendix, there is a list of eleven major areas for which exposure must be evaluated by the Discharger. The Discharger must be able to certify that none of these major areas have potential for exposure. If the Discharger cannot certify that each of the eleven major areas do not have exposure, a potential for exposure exists at the facility and the facility is not eligible for the conditional exclusion. The Discharger must obtain (or continue) NOI coverage under this General Permit if the facility is not eligible for the NEC conditional exclusion. After obtaining General Permit coverage, the Discharger can institute modifications to eliminate the potential for a discharge of storm water exposed to industrial activity, and then change their form of coverage to NEC by certifying they meet the conditions of "No Exposure."

#### **Certification**

Federal and state statutes provide for severe penalties for Dischargers who submit false information on the PRDs. Federal regulations require the PRDs to be certified by a Legally Responsible Person (LRP) as follows.

1. For a corporation an LRP is a responsible corporate officer, which means:
  - a. The president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who

performs similar policy or decision making functions for the corporation, or

- b. The manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility, including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a partnership or sole proprietorship an LRP is a general partner or the proprietor; or
3. For a municipal, State, Federal, or other public facility an LRP is either a principal executive or ranking elected official.

#### **B. GUIDANCE**

Please contact your local Regional Water Board office with questions regarding this guidance.

##### **1. Who is Eligible to Qualify for NEC Coverage**

All industrial categories listed in Attachment A of this General Permit (excluding construction) are eligible to apply for the "No Exposure" conditional exclusion.

##### **2. Limitations on Eligibility for NEC Coverage**

In addition to construction activities not being eligible, the following situations limit the applicability of NEC coverage:

- a. NEC coverage is available on a facility wide basis only, not for individual drainage areas or discharge locations. Generally, if any exposed industrial materials or activities exist, or have a potential to exist, anywhere at a facility, NEC coverage is not applicable to the facility. If the Regional Water Board determines that a facility does have exposure or the facility's storm water discharges have a reasonable potential to cause or contribute to a violation of applicable water quality standards, the Regional Water Board can deny NEC coverage.
- b. If changes at a facility result in potential exposure of industrial activities or materials, the facility is no longer eligible for NEC coverage. Dischargers shall register for NOI coverage under this General Permit prior to a planned facility change that will cause exposure, or within seven (7) calendar days after unplanned exposure occurs. If an unplanned

exposure occurs due to an emergency response or one-time event that is unlikely to re-occur, Dischargers may contact the Regional Water Board to discuss whether the requirement to obtain NOI coverage can be waived. Unless the Discharger receives a written waiver from the Regional Water Board, the Discharger shall electronically certify and submit PRDs to obtain NOI coverage.

- c. Contamination resulting from historic industrial storm water discharges at the facility (e.g., soil contamination, groundwater contamination, etc.) represents a condition of exposure.

### 3. What is the Definition of No Exposure?

- a. 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.
- b. 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.
- c. Material handling activities include storage, loading and unloading, transport, or conveyance of any raw material, intermediate product, by-product, final product, or waste product.
- d. Final products which are meant to be used outdoors (e.g., automobiles) usually pose little risk of polluting storm water because they are usually uncontaminated and not mobilized by contact with storm water. These final products are exempt from the requirement that they be protected by a storm-resistant shelter to qualify for "No Exposure". Similarly, the containers, racks, and other transport platforms (e.g., wooden pallets) used for the storage or conveyance of final products can also be stored outside, providing they are pollutant-free and in good repair.
- e. Storm-resistant shelters include completely roofed and walled buildings or structures. They also include structures with only a top cover supported by permanent supports but with no side coverings, provided material within the structure is not subject to wind dispersion (sawdust, powders, etc.) or track-out, and there are no industrial storm water discharges from within the structure that has come into contact with any materials.

### 4. 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:

- a. 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, do not contain residual materials on the outside surfaces, and do not leak. Drums, barrels, etc., that are not opened while outdoors, or are not deteriorated or leak, are unlikely to constitute a risk of contaminating storm water runoff. Consider the following in making your "No Exposure" determination:
  - i. Materials shall not be added or withdrawn to/from containers while outdoors
  - ii. Simply moving containers while outside does not create exposure unless exposure occurs when pollutants are "tracked out" by the container handling equipment or vehicles.
  - iii. All outdoor containers shall be inspected to ensure they are not open, deteriorated, or leaking. When an outdoor container is observed as opened, deteriorated, or leaking, the container must immediately be closed, replaced, or sheltered. Frequent detection of open, deteriorated, or leaking containers, or failure to immediately close, replace, or shelter opened, deteriorated or leaking containers will cause a condition of exposure.
  - iv. 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 and in good repair.
- b. 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 use transfer valves to dispense materials which support facility operations (e.g., heating oil, propane, butane, chemical feedstock) or fuel for delivery vehicles (gasoline, diesel, compressed natural gas). For operational ASTs to qualify for "No Exposure":
  - i. They shall be physically separated from and not associated with vehicle maintenance operations.
  - ii. There shall be no leaks from piping, pumps, or other equipment that could contact storm water.
  - iii. Wherever feasible, ASTs shall 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 CWA.

- c. Lidded Dumpsters. Lidded dumpsters containing waste materials, providing the containers are completely covered and nothing can drain out holes in the bottom, spilled when loaded into the dumpster, or spilled in loading into a garbage truck. Industrial waste materials and trash that is stored uncovered is considered exposed.
- d. Adequately maintained vehicles, such as trucks, automobiles, forklifts, trailers or other general-purpose vehicles found onsite - but not industrial machinery - which are not leaking, are in good repair or are not otherwise a potential source of contaminants:
- i. Vehicles passing between buildings will likely be exposed to storm water at some time, but so long as they are adequately maintained, they will not cause a condition of exposure. Similarly, non-leaking vehicles awaiting maintenance at vehicle maintenance facilities are not considered exposed. However, vehicles that have been washed or rinsed that are not completely dry prior to outside exposure will cause a condition of exposure. Vehicles that track out pollutants as they exit maintenance bays are also considered exposure.
  - ii. 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 not adequately protected from storm water and could not be released as a result of a leak or spill.
- e. Final products built and intended for use outdoors (e.g., new cars), provided the final products have not deteriorated, are not contaminated, or are not otherwise potential sources of contaminants.

e. Construction Activities Permanent, uninterrupted sheltering of industrial activities or materials may not always be possible during facility renovation or construction. When such circumstances exist, the Discharger is not required to obtain coverage under an NPDES permit as long as the following conditions are met:

- i. Materials and activities are protected with temporary covers or shelters (e.g. tarpaulins).
- ii. The temporary covers or shelters shall adequately prevent the contact of storm water to materials and activities.
- iii. Materials that are subject to wind dispersion are not eligible for temporary sheltering.
- iv. Temporary shelters shall only be used when necessary during facility renovation or construction and until permanent storm-resistant shelters as described above are available.
- v. Temporary shelters shall only be used for a single period of ninety days or less. Facilities with construction and renovation projects that will need the use of temporary shelters beyond 90 days, or that will require multiple periods of ninety days or less, are required to be covered by an NPDES permit.

## 5. Other Potential Sources of Contaminants

- a. Particulate Emissions from Roof Stacks and/or Vents: Deposits of particles or residuals from roof stacks/vents which could be mobilized by storm water runoff are considered exposed.
- b. Acid Rain Leachate, Industrial facilities are also responsible for storm water discharges that contain pollutants resulting from the leaching effect of acidic storm water on metal building structures. Therefore, operators must be aware when certifying a condition of “No Exposure” of the existence of structural elements that could be soluble as a result of contact with acidic precipitation (e.g., uncoated copper roofs). If the dissolved metals or other contaminants could cause or contribute to a water quality violation, a condition of “No Exposure” cannot be certified.
- c. Pollutants Potentially Mobilized by Wind, Windblown materials cause a condition of exposure. Materials sheltered from precipitation can still be deemed exposed if the materials can be mobilized by wind.

## 6. Certifying a Condition of “No Exposure”

To obtain the NEC coverage, the Discharger must electronically certify and submit PRDs via SMARTS that the facility meets the conditions of “No Exposure.” and pay an annual fee. The Discharger shall **do this even if**

Types of final products not qualifying for a certification of “No Exposure”:

- i. Products that would be mobilized in storm water discharges (e.g., rock salt).
  - i. Products, which may, when exposed, oxidize, deteriorate, leak, or otherwise be a potential source of contaminants (e.g., junk cars, stockpiled train rails).
  - ii. “Final” products that 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).
  - iii. 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.

**the Discharger was not previously required to file for NEC coverage under the previous General Permit.** These PRDs include a checklist requiring the Discharger to evaluate eleven major areas to determine whether there is exposure of industrial activities and materials at the facility. To qualify for NEC coverage, the Discharger must satisfy all the NEC conditions in the General Permit and certify that there is “No Exposure”. The purpose of the checklist is twofold: 1) to aid the Discharger in determining whether the Discharger’s facility is eligible for NEC coverage, and 2) to furnish the necessary documentation that allows the Discharger be relieved of most of the General Permit’s requirements. Dischargers with NEC coverage are not required to develop and implement SWPPPs or complete the monitoring requirements.

If the Discharger cannot certify that there is “No Exposure” at the facility, the Discharger must make appropriate changes at the facility to eliminate exposure prior to registering for future NEC coverage. These changes must remove the particular material, process or activity from exposure to storm water.

An annual inspection and evaluation, re-certification, and fee is required thereafter.

## 7. Other NEC Coverage Facts:

- a. NEC coverage is only legally valid if the condition of “No Exposure” exists and is reasonably expected to continue to exist. Dischargers shall file for NOI coverage when the condition of “No Exposure” is no longer is expected to exist.
- b. Dischargers must file PRDs for NEC coverage for each qualifying facility.
- c. The certification is non-transferable. If a new operator takes over facility operations, the new operator shall electronically certify and submit PRDs for NEC coverage via SMARTS prior to the transfer and pay the applicable fee. NEC coverage can’t be transferred from one physical location to another regardless of ownership.

## 8. Operators May Be Required To Obtain NOI coverage Based On the Protection Of Water Quality

Operators who certified that their facilities qualify for NEC coverage may, nonetheless, be required by the Regional Water Board to obtain NOI coverage permit coverage if the Regional Water Board determines that the facility’s discharge is contributing to or causing an exceedance of applicable water quality standards or believes that exposure does occur at the facility. The Regional Water Board may request information and/or inspect the facility to assess potential water quality impacts and to determine whether to require permit coverage. The Discharger shall take appropriate actions to ensure that water quality standards are achieved.

## 9. Steps to Obtain NEC Coverage

(This section will walk you through the process of obtaining NEC coverage.

**Step 1:** Determine if your facility is subject to the NPDES storm water permit requirements (refer to Attachment A of this General Permit). If yes, proceed to Step 2. If not, stop here.

If your facility is included in Attachment A and conducts industrial activities, you are required to **either** register for NOI coverage or NEC coverage.

**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 obtain NOI coverage. When evaluating the facility, facility personnel familiar with the facility and its operations should be used. Inspect all facility areas and potential pollutant sources to determine whether the facility satisfies the “No Exposure” conditions.

**Step 3:** Electronically certify and submit the PRD for NEC coverage via SMARTS and mail the annual fee to the State Water Board.

- To maintain NEC coverage, the discharger must re-certify and pay a fee annually. This can only be done if the condition of “No Exposure” continues to exist at the facility.

**Step 4:** When requested, you must allow your Regional Water Board, local Municipal Separate Storm Sewer System (MS4), or U.S. EPA to inspect your facility. Their inspection reports will be made publicly available.

**Step 5:** Maintain a condition of “No Exposure”.

- NEC coverage is not a blanket exemption. Therefore, if facility physical or operational changes occur which cause exposure of industrial activities or materials to storm water, the Discharger must then immediately comply with all requirements of this General Permit, including obtaining NOI coverage.
- To maintain the condition of “No Exposure”, the Discharger shall annually inspect and evaluate the facility to assure that the conditions of “No Exposure” still exist. More frequent evaluations may be necessary in circumstances when facility operations change seasonally or rapidly.
- Failure to maintain the condition of “No Exposure” for NEC coverage or otherwise obtain NOI coverage can lead to the unauthorized discharge of storm water associated with industrial activity to waters of the United States, resulting in penalties under the CWA.

## C. FREQUENTLY ASKED QUESTIONS

### Q1. Who Is Eligible for NEC Coverage?

- A. Any Discharger operating a facility described in Attachment A may register for NEC coverage if their facility has a condition of "No Exposure".

### Q2. How does an eligible Discharger file for NEC Coverage and where is the annual fee sent?

- A. The PRDs for NEC coverage shall be electronically certified and submitted in accordance with the instructions provided in SMARTS at the State Water Board website at: <https://smarts.waterboards.ca.gov/smarts/faces/SwSmartsLogin.jsp> The fee is currently \$200, but may be changed by regulation. Once NEC coverage is accepted, an invoice will be electronically sent to the Discharger. The annual fee and invoice shall be sent to:

State Water Resources Control Board  
Division of Water Quality  
Attention: Storm Water Unit  
P.O. Box 1977  
Sacramento, CA 95812-1977

### Q3. If my facility's storm water discharges are covered by an individual permit, can I file for NEC coverage?

- A. Yes. Storm water discharges covered by an individual permit are eligible for NEC coverage if the conditions at the facility satisfy the definition of "No Exposure" and you obtain approval to terminate individual permit coverage from the local Regional Water Board prior to PRD submittal. Approval from the Regional Water Board is mandatory. Many individual permits, for example, contain numeric storm water effluent limitations ("antibacksliding" provisions may prevent these facilities from qualifying for NEC coverage).

### Q4. My facility was originally excluded from the Phase I regulations because it was classified as a "light industrial facility". The facility has never had any exposure to storm water runoff. Do I now need to certify that the facility meets the No Exposure Exclusion from NPDES Storm Water Permitting?

- A. Yes. See answer provided to question number 9, "What is the exclusion 'conditional' upon?"

### Q5. Do I have to file a Notice of Termination (NOT) and a register for NEC coverage if my facility is under NOI coverage and qualifies for NEC Coverage?

- A. No. You are only required to register for NEC coverage. You must provide the WDID# in your NEC PRDs in order for the State Water Board to change permit coverage status.

### Q6. When and how often is NEC re-certification required?

- A. Re-certification of NEC coverage is required annually (assuming the facility maintains its "No Exposure" status) The State Water Board will electronically transmit an NEC re-certification and annual fee notification to each facility operator who has filed for NEC coverage.

New Dischargers must register for NEC coverage before the commencement of facility operations. Dischargers that fail to file for NEC coverage or apply for NOI coverage before the commencement of facility operations will be out of compliance with this General Permit and subject to enforcement.

Existing Dischargers have two options for submitting NECs:

1. Facility operators of "light industrial" facilities who have been operating under their original, permitting exemption (which required no certification) must register for NEC coverage at any time prior to July 1, 2013. Such Dischargers who have not registered for NEC coverage or NOI coverage by this deadline will be out of compliance with this General Permit and subject to enforcement.
2. Dischargers who have NOI coverage for their storm water discharges may register for NEC coverage at any time following completion of facility changes that result in the condition of "No Exposure".

### Q7. What happens if I know of changes that may cause exposure?

- A. If exposure could occur in the near future due to some anticipated change at the facility, you must obtain NOI coverage to avoid enforcement for violations of the CWA.

### Q8. Is the NEC coverage transferable to a new Discharger?

- A. No. If a new operator takes over your facility, the new operator must register for new NEC coverage prior to the transfer. A new annual fee is required.

### Q9. What is the exclusion "conditional" upon?

- A. The exclusion from permit coverage requirements is "conditional" upon the certification of the Discharger that the facility does not have exposure of materials or activities to storm water. PRDs for NEC coverage shall be electronically submitted to the State Water Board and will not be accepted if incomplete. The Regional Water Board may review the information, contact or inspect the facility, and invalidate the NEC and require the Discharger to obtain NOI coverage. PRDs are public documents and will be available for public review via SMARTS.

**Q10. Can secondary containment around an outdoor exposed area qualify for a condition of “No Exposure”?**

- A.** In general, if the secondary containment is engineered to always prevent a discharge of collected rainfall (based on the historical rainfall record) and a simultaneous spill of any other industrial materials or liquids, the “No Exposure” condition can 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 and discharged to the sanitary sewer, or trucked offsite to an appropriate disposal/treatment facility).

**D. NEC CHECKLIST**

An NEC Checklist must be prepared by a QISP II or III demonstrating that the facility has been evaluated; and that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

1. 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;
2. Materials or residuals on the ground or in storm water inlets from spills/leaks;
3. Materials or products from past industrial activity;
4. Material handling equipment (except adequately maintained vehicles);
5. Materials or products during loading/unloading or transporting activities;
6. 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);
7. Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;
8. Materials or products handled/stored on roads or railways owned or maintained by the Discharger;
9. Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);
10. Application or disposal of processed wastewater (unless already covered by an NPDES permit); and
11. Particulate matter or visible deposits of residuals from roof stacks/vents evident in the storm water outflow.