



## Storm Water Phase II Final Rule

### Conditional No Exposure Exclusion for Industrial Activity

#### Overview

In 1993, the Department of Environmental Management (DEM) amended the Rhode Island Pollutant Discharge Elimination System (RIPDES) Regulations to include permit requirements for certain industrial facilities with storm water discharges (commonly referred to as Phase I Storm Water Rules). The Phase I Regulations identify eleven categories of industrial activities that must obtain a RIPDES permit. Operators of certain facilities within category eleven (xi), commonly referred to as "light industry," were exempted from the requirement to obtain a RIPDES permit, provided their industrial materials or activities were not "exposed" to storm water. This Phase I exemption from permitting was limited to those facilities identified in category (xi). Although the Regulations did not require category (xi) facility operators to submit any information supporting their no exposure claim, the DEM requested information to be submitted for DEM's records.

On March 19, 2002, the DEM finalized the Storm Water Phase II Rule which expands the no exposure exclusion to ALL industrial categories listed in the 1993 Storm Water Regulations, except for construction activities disturbing 5 or more acres (category (x)). The new Regulation requires that for light industry facilities that do not have a permit and claimed "no exposure" under Phase I (including those light industry facility operators that previously voluntarily submitted documentation to the DEM under the Phase I Rule) need to apply for permit coverage or submit a signed no exposure certification form by June 17, 2002. Intermodal Surface Transportation Efficiency Act (ISTEA) facilities (facilities owned or operated by a small municipality) need to apply for permit coverage or submit a signed no exposure certification form by March 10, 2003. All remaining industrial categories were previously required to obtain permit coverage under Phase I and may submit a signed certification form at such time no exposure is achieved. Certification forms can be obtained by calling the RIPDES Program at (401) 222-3961 or visiting the DEM website at: [www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm](http://www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm).

#### What Is The Regulatory Definition of "No Exposure"?

The intent of the no exposure provision is to provide facilities with industrial materials and activities that are entirely sheltered from storm water a simplified way of complying with the storm water permitting provisions of the Clean Water Act (CWA). This includes facilities that are located within a larger office building, or facilities at which the only items permanently exposed to precipitation are roofs, parking lots, vegetated areas, and other non-industrial areas or activities.

**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. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products.

#### Rhode Island Department of Environmental Management

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A storm resistant shelter is not required for the following industrial materials and activities:

- **Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak. "Sealed" means banded or otherwise secured and without operational taps or valves;**
- **Adequately maintained vehicles used in materials handling; and**
- **Final products, other than products that would be mobilized in storm water discharges (e.g., rock salt).**

The term "storm-resistant shelter," as used in the no exposure definition, includes completely roofed and walled buildings or structures, as well as structures with only a top cover but no side coverings, provided material under the structure is not otherwise subject to any run-on and subsequent runoff of storm water and the material cannot be mobilized by wind. While the intent of the no exposure provision is to promote a condition of permanent no exposure, DEM understands certain vehicles could become temporarily exposed to rain and snow while passing between buildings. Adequately maintained mobile equipment (e.g., trucks, automobiles, forklifts, trailers, or other such general purpose vehicles found at the industrial site that are not industrial machinery, and that are not leaking contaminants or are not otherwise a source of industrial pollutants) can be exposed to precipitation or runoff. Such activities alone would not prevent a facility from certifying to no exposure. Similarly, trucks or other vehicles awaiting maintenance at vehicle maintenance facilities that are not leaking contaminants or are not otherwise a source of industrial pollutants, are not considered "exposed."

In addition, DEM recognizes that there are circumstances where permanent no exposure of industrial activities or materials is not possible and, therefore, under such conditions, materials and activities can be sheltered with temporary covers (e.g., tarps) between periods of permanent enclosure. DEM will address this issue on a case-by-case basis. The DEM has included question ten (10) on the no exposure certification regarding the nature of use of the tarpaulins. Completing this section does not disqualify the operator for the no exposure certification; however, DEM may use this information in considering whether storm water discharges from the site are likely to have an adverse impact on water quality, in which case, the operator may be required to obtain permit coverage. The Phase II Final Rule also addresses particulate matter emissions from roof stacks/vents

that are regulated by, and in compliance with, other environmental protection programs (i.e., air quality control programs) and that do not cause storm water contamination are considered not exposed. Particulate matter or visible deposits of residuals from roof stacks and/or vents not otherwise regulated (i.e., under an air quality control program) and evident in storm water outflow are considered exposed. Likewise, visible "track out" (i.e., pollutants carried on the tires of vehicles) or windblown raw materials is considered exposed. Leaking pipes containing contaminants exposed to storm water are deemed exposed, as are past sources of storm water contamination that remain onsite. The DEM has included question eleven (11) on the no exposure certification regarding any history or significant spills or leaks of toxic or hazardous pollutants at the facility. Completing this section does not disqualify the operator for the no exposure certification; however, DEM may use this information in considering whether storm water discharges from the site are likely to have an adverse impact on water quality, in which case, the operator may be required to obtain permit coverage. General refuse and trash, not of an industrial nature, is not considered exposed as long as the container is completely covered and nothing can drain out holes in the bottom, or is lost in loading onto a garbage truck. Industrial refuse and trash that is left uncovered, however, is considered exposed.

## What is Required Under the No Exposure Provision?

Under the new Phase II Rules, an operator seeking to qualify for the revised conditional no exposure exclusion, including light industry operators (i.e., category (xi) facilities), must:

- **Submit written certification that the facility meets the definition of "no exposure" to RIPDES once every 5 years.**

Certification forms may be download at [www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm](http://www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm) or by contacting Margarita Chatterton or Greg Goblick at (401) 222-3961 extensions 7605 and 7265 respectively.

- **Submit a copy, upon request, of the certification to the municipality in which the facility is located.**
- **Allow the DEM or, if discharging into a municipal separate storm sewer system, the operator of the system, to: (1) inspect the facility; and (2) make such inspection reports publicly available upon request.**



Regulated industrial operators need to either apply for a permit or submit a no exposure certification form in order to be in compliance with the RIPDES storm water regulations. Any permit held becomes null and void once a certification form is submitted. Even when an industrial operator certifies to no exposure, the DEM still retains the authority to require the operator to apply for an individual or general permit if the DEM has determined that the discharge is contributing to the violation of, or interfering with the attainment or maintenance of, water quality standards, including designated uses.

### Are There Any Concerns Related to Water Quality Standards?

Yes. An operator certifying that its facility qualifies for the conditional no exposure exclusion may, nonetheless, be required by the DEM to obtain permit authorization. Such a requirement would follow RIPDES determination that the discharge causes, has a reasonable potential to cause, or contributes to a violation of an applicable water quality standard, including designated uses. Designated uses can include use as a drinking water supply or for recreational purposes.

Many efforts to achieve no exposure can employ simple good housekeeping and contaminant cleanup activities such as moving materials and activities indoors into existing buildings or structures. In limited cases, however, industrial operators may make major changes at a site to achieve no exposure. These efforts may include constructing a new building or cover to eliminate exposure or constructing structures to prevent run-on and storm water contact with industrial materials and activities. Major changes undertaken to achieve no exposure, however, can increase the impervious area of the site, such as when a building with a smooth roof is placed in a formerly vegetated area. Increased impervious area can lead to an increase in the volume and velocity of storm water runoff, which, in turn, can result in a higher concentration of pollutants in the discharge, since fewer pollutants are naturally filtered out. These factors should be considered in any effort taken to prevent exposure to prevent actions that could interfere with water quality.

### What Happens if the Condition of No Exposure Is Not Maintained?

Under the Phase II Final Rule, the no exposure exclusion is conditional and not an outright exemption. Therefore, if there is a change in circumstances that causes exposure of industrial activities or materials to storm water, the operator is

required to comply immediately with all the requirements of the RIDES Storm Water Program, including applying for and obtaining a permit.

Failure to maintain the condition of no exposure or obtain coverage under an RIPDES storm water permit can lead to the unauthorized discharge of pollutants to waters of the State, resulting in enforcement action by the DEM or exposure to third party lawsuits. Where a facility operator determines that exposure is likely to occur in the future due to some anticipated change at the facility, the operator should submit an application and acquire storm water permit coverage prior to the exposed discharge. In order to maintain certification, the operator must submit a signed certification to the DEM once every five years.

### For Additional Information

#### Contacts

RIPDES Storm Water Program:

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#### Reference Documents

The following documents are available at:

[www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm](http://www.state.ri.us/dem/programs/benviron/water/permits/ripdes/stwater/t2regula/regulat.htm)

- RIPDES Industrial Storm Water General Permit
- RIPDES No Exposure Certification Form
- RIPDES Storm Water Regulations