

# **"No Exposure" Conditional Exemption For Industrial Facilities**

The proposed USEPA rules will establish a conditional exemption called a "No Exposure Exemption" for owners and operators of industrial facilities who can show that industrial materials, material handling operations and industrial processes, are not exposed to stormwater. Essentially, this exemption replaces the previous exemption for "light industry" which was remanded to USEPA from federal court to further define and substantiate the justification for such an exemption. A written certification will be required to be submitted to the permitting authority every three years on a form supplied by the authority. This potential conditional exemption applies to all industrial categories regardless of type, except construction sites and sources individually designated. The conditions for qualifying for the No Exposure Exemption will include the following:

1. Notification to the permitting authority at the beginning of each permit term;
2. Must allow the permitting authority or municipality to inspect the facility and to make the results of inspection public;
3. Upon request, submit a copy of the certification to the municipality in which the facility is located; and
4. Sign and certify the certification.

The permitting authority will still retain the legal authority to require the owner or operator of an industrial facility to apply for an individual or general NPDES permit if it determines that the discharge is, or may reasonably be, causing or contributing to a violation of a water quality standard, or is or may be interfering with the attainment or maintenance of a water quality standard, including a designated use.

In connection with the No Exposure Exemption being considered, USEPA is seeking comments on the issue of how to define "no exposure." Several important issues are listed for further review (but are not part of this proposed rule), including:

1. How to account for stormwater runoff from parking lots, roof tops, lawns and other non-industrial areas of an industrial facility;
2. Whether the construction of impervious surfaces, such as roofs to achieve no exposure that significantly increase stormwater runoff volume should be regulated to prevent adverse impacts to the receiving water simply due to increased quantity of flow;
3. Whether air emissions from roof vents or stacks should be considered in the evaluation of no exposure; and
4. Whether tight non-leaking drums, barrels or dumpsters are sufficient to qualify for the no exposure exemption, or should there be a "potential to leak" evaluation included.