Robert Singletary
Executive Director

OKLAHOMA Environmental Quality

Kevin Stitt
Governor

December 22, 2025

Margaret Averill, CPEA
Environmental Resources Management Inc.
95 Glastonbury Blvd, #101
Glastonbury, CT 06033

Subject: ODEQ response to ERM's Interpretation of "Begin Actual Construction"

Dear Ms. Averill:

On December 2, 2025, Environmental Resources Management Inc. ("ERM"), on behalf of Emirates Global Aluminium Inc. ("EGA"), requested concurrence from the Oklahoma Department of Environmental Quality ("ODEQ") regarding ERM's interpretation of "Begin Actual Construction" under the new source review (NSR) preconstruction regulations in 40 C.F.R. Part 52 and OAC 252:100-8 as it applies to EGA's construction of a new, primary aluminum smelter located in the Tulsa Port of Inola (the Project). EGA wishes to commence an initial construction phase of its Project prior to obtaining a PSD permit, that would include the supporting structures to house emission units but not the emission units themselves.

ERM and EGA state this approach is in line with the United States Environmental Protection Agency's ("EPA's") current interpretation of "Begin Actual Construction" based on EPA's September 2, 2025 letter to the Maricopa County Air Quality Department ("MCAQD Letter"). In this letter, EPA concluded that the Taiwan Semiconductor Manufacturing Company may begin the initial phase of construction prior to obtaining a preconstruction permit, as long as the initial phase does not constitute the construction of any emission units as defined in 40 CFR § 52.21(b)(7).

Additionally, EPA has announced that, as part of its permitting reform initiative to expedite construction of essential power generation and reshore manufacturing, it intends to amend the NSR preconstruction regulations in 40 CFR Part 52 to provide flexibility to begin certain building activities that are not related to air emissions, such as installing cement pads, before obtaining an NSR permit. Given EPA's conclusion in the MCAQD Letter and EPA's stated intention to amend the regulations, DEQ will recognize this interpretation of the definition for the purposes of the Project, with the understanding that the construction activities at issue would specifically be limited to the supporting structures to house

emissions units and not the emission units themselves. However, it is important to note that EPA stated within the MCAQD Letter that EPA intends the guidance to be on a case-by-case basis until a formal rule change is proposed. *See* MCAQD Ltr., pg. 2. To that end, while ODEQ recognizes the stated interpretation of "Begin Actual Construction" in this instance, ODEQ recommends that ERM and EGA request a specific determination directly from EPA on this matter for greater coverage under the Clean Air Act.

Finally, it is important to note the following EPA statement in the MCAQD Letter with respect to TSMC, which would apply to EGA when taking this approach:

> The EPA view expressed here is based on the project-specific facts presented by TSMC and MCAQD. This communication of EPA's view is not a final agency action, and it does not itself create or alter any binding requirements on MCAQD, TSMC, or the public. Any construction activities undertaken by TSMC prior to issuance of an NSR air permit by MCAQD would be solely at TSMC's risk, as MCAQD would retain the discretion to deny any subsequent application to construct a stationary source of air pollution (including emissions units) if the applicable criteria are not met. If TSMC submits an application to construct under the MCAQD NSR air permitting program, MCAQD may not use TSMC's time and resources expended on construction prior to obtaining a permit (what EPA has called "equity in the ground") to justify MCAQD's decision on any applicable Best Available Control Technology (BACT) or Lowest Available Emissions Rate (LAER) determinations and/or to grant the air permit. Furthermore, if changes to TSMC's proposed emissions units design are necessary to meet this or any other requirements of the permitting process (such as demonstrating that emissions from the stationary source will not cause or contribute to violations of air quality standards), MCAQD may require TSMC to meet the requirements of such conditions in the final air permit, even if it means modifying or rebuilding structures that TSMC has begun building prior to obtaining a permit. MCAQD Ltr., pg. 3.

Please contact Lee Warden, Engineering Manager, at (405) 702-4237 for any further discussion or questions.

Thank you,

Kendal Stegman, Director
Air Quality Division