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Oklahoma Department of Env Quality
Owen Mills, Director of Permit Assistance and Public Outreach
P.O. Box 1677
Oklahoma City, OK, 73101-1677

DATE
2 December 2025

SUBJECT
Interpretation of "Begin Actual Construction" Under New Source Review Preconstruction Permitting Regulations

REFERENCE
0793283

Dear Owen:

As discussed during previous meeting and calls, Environmental Resources Management Inc. ("ERM") is supporting Emirates Global Aluminium Inc. ("EGA") in permitting the development and construction of a new, primary aluminum smelter located in the Tulsa Port of Inola. The construction of this new aluminum smelter, hereinafter referred to as "the Project", will require the construction of several emission sources and associated control devices related to the smelting process. These emission sources will include casting furnaces, potline gas treatment centers, and material storage silos, which have the potential to emit gaseous, liquid and/or solid pollutants into the atmosphere. ERM is supporting EGA in obtaining a Prevention of Significant Deterioration ("PSD") preconstruction permit and will support EGA in subsequently obtaining an operating permit.

ERM is familiar with the Clean Air Act's New Source Review program and is aware of the historic interpretation of the phrase "begin actual construction" in 40 C.F.R. § 52.21. ERM understands that this interpretation has historically allowed companies to conduct "limited activities that do not represent an irrevocable commitment to the project"[1], such as planning, site clearing, and ordering of equipment and materials, but that the construction of emission units and "All on-site activities of a permanent nature aimed at completing a PSD source (including, but not limited to, installation of building supports and foundations, paving, laying of underground pipe work, construction of permanent storage structures, and activities of a similar nature) are prohibited until the permit is obtained".[2]

ERM is also aware of and has recent guidance from the United States Environmental Protection Agency ("EPA") regarding the commencement of initial construction phases for facilities required to obtain a PSD permit for emission units. EPA issued draft guidance regarding the interpretation of the phrase "begin actual construction" present in 40 C.F.R. § 52.21 in March of 2020, which

[1] Memorandum, Dave Howekamp, Director, Air and Toxics Division, EPA Region IX, to all Region IX Air Agency Directors and NSR Contacts (November 4, 1993)
[2] Memorandum, Edward E. Reich, Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards, to Rober R. DeSpain, Chief Air Programs Branch, Region VIII (March 28, 1986)

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addresses the legality of beginning construction at the facility that does not involve the construction of an "emissions unit". This draft guidance concludes that the "current interpretation of the term "begin actual construction" for the major NSR program does not entirely comport with the plain language of the long-standing regulatory definition of that term" and that "EPA is adopting a revised interpretation that better conforms to the regulatory text". This revised interpretation is stated in the March 2020 draft guidance as "a source owner or operator may, prior to obtaining an NSR permit, undertake physical on-site activities – including activities that may be costly, that may significantly alter the site, and/or are permanent in nature – provided that those activities do not constitute physical construction on an emissions unit, as the term is defined in 40 CFR § 52.21(b)(7)". [3]

This draft guidance was referenced in a letter issued to the Maricopa County Air Quality Department ("MCAQD") from the EPA regarding a request from the Taiwan Semiconductor Manufacturing Company ("TSMC") in September of 2025. This request from TSMC sought for the MCAQD to provide guidance on the assessment that applicable air pollution control regulations do not prohibit the commencement of an 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). In this specific case, the EPA concluded that requiring TSMC to obtain a permit before it starts building a structure that does not include an emission unit, or any component of an emission unit (including piping or a foundation specifically configured for an emissions unit) seems an overly broad reading of EPA's regulations and is supported by the reading of this regulation reflected in EPA's March 2020 Draft Guidance" and that "the EPA continues to recognize that the definition of the term "begin actual construction" in EPA's regulation prohibits "the initiation of physical on-site construction on an emissions unit" and that this does not prohibit initiation of physical on-site construction of those parts of a facility that do not qualify as an emission unit" .[4]

We have prepared this letter to inform the Oklahoma Department of Environmental Quality ("ODEQ") that EGA may wish to commence an initial construction phase the Project prior to obtaining a PSD permit, that would include the supporting structures to house emission units but not the emission units themselves. Referencing EPA's draft guidance issued in March 2020 and the precedent set by the September 2025 letter to the MCAQD, ERM believes that EGA may begin initial construction activities at the Tulsa Port of Inola site prior to obtaining the PSD permit. It is our understanding that EGA would not be violating any regulations set by the ODEQ or the EPA if this initial phase does not involve the construction of any emission units as defined in 40 CFR § 52.21(b)(7). Consequently, we are requesting confirmation from ODEQ of this understanding.

[3] Memorandum, Anne L. Idsal, Principal Deputy Assistant Administrator, Office of Air and Radiation, to Regional Air Division Directors (March 25, 2020)
[4] Memorandum, Aaron Szabo, Office of Air Quality Planning and Standards Director, EPA Region IX Administrator, to Philip McNeely, Maricopa County Air Quality Department Director (September 2, 2025)

If there are any questions or if it would be helpful to discuss this topic during a call or meeting, please let me know and I can help coordinate and schedule.

ENVIRONMENTAL RESOURCES MANAGEMENT INC.



Margaret Averill, CPEA
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