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Ms. Kendal Stegman, Director
Air Quality Division
Oklahoma Department of Environmental Quality
700 N. Robinson Ave., PO Box 1677
Oklahoma City, OK 73101-1677

DATE
13 October 2026

SUBJECT
OPA Request re: ODEQ Interpretation of "Begin Actual Construction"

REFERENCE
Project #0793283

RECEIVED
OCT 14 2026
DEQ LEGAL

Dear Ms. Stegman:

On behalf of Oklahoma Primary Aluminum (OPA), thank you for your December 22, 2025 response to ERM's request for Oklahoma Department of Environmental Quality (ODEQ) interpretation of how the "begin actual construction" provisions at 40 C.F.R. § 52.21(b)(11) and OAC 252:100-8 would be applied to OPA. Consistent with the direction provided in your response, this letter respectfully requests that ODEQ (i) confirm in writing that the pre-permit activities identified in Attachment B do not constitute "begin actual construction" of a major stationary source, and (ii) transmit this request, together with ODEQ's December 22, 2025 response regarding the interpretation of "begin actual construction" under the New Source Review (NSR) preconstruction permitting regulations, to EPA Region 6 with a request for the Region's written views.

Background

On December 2, 2025, ERM asked ODEQ to confirm how the "begin actual construction" provisions at 40 C.F.R. § 52.21(b)(11) and OAC 252:100-8 would be applied to the project. Specifically, ERM asked for verification that certain construction activities could proceed before the Prevention of Significant Deterioration (PSD) permit is issued. Those activities would be limited to site preparation and construction of structures intended to house emissions units and would not include installing or constructing the emissions units themselves. In support, ERM cited EPA's March 2020 draft guidance on interpreting "begin actual construction." It also cited EPA's September 2, 2025, letter to the Maricopa County Air Quality Department on the Taiwan Semiconductor Manufacturing Company (TSMC) Arizona project.

ODEQ responded on December 22, 2025, and stated that it would recognize this interpretation provided construction is limited to supporting structures that house emissions units and does not include the emissions units themselves. ODEQ also noted that, in the Maricopa County letter, EPA said such interpretations would be evaluated case by case until rulemaking is complete. ODEQ therefore recommended that the project obtain a project-specific determination from EPA. ERM's request and ODEQ's response are provided as Attachment A.

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On May 13, 2026, EPA published a proposed rule that includes proposed revisions to the definition of "begin actual construction" and adds a definition of "pollutant-emitting activities" in the NSR preconstruction permitting program regulations (91 Fed. Reg. 26958). EPA explains in the proposed rule preamble that the revisions are intended to permit construction of non-emitting components, including site utility service infrastructure, concrete pads, and certain buildings and building components, before an NSR permit is obtained. OPA does not rely on the proposal as operative authority, and cites it here as evidence of EPA's current reading of the existing regulatory text, as further applied in EPA's September 2, 2025 letter to the Maricopa County Air Quality Department. The activities proposed here are consistent with the interpretation of the existing definition that EPA applied in its Maricopa County letter and would also be consistent with the May 13, 2026 proposal.

To provide additional clarity, OPA has listed the construction activities it proposes to carry out before and after permit issuance (Attachment B). Pre-permit activities are limited to work that does not involve installing, assembling, placing, energizing, commissioning, testing, starting up, or activating any emissions unit or its air pollution control equipment. The activities at Attachment B are subject to the following exclusion: no pre-permit activity includes, and OPA will not undertake before permit issuance, work on an emissions unit or any element that is intended to accommodate, is necessary to accommodate, or forms an integral part of an emissions unit or its air pollution control equipment, as supported by long-standing EPA policy. *See, e.g.,* EPA letter to Minnesota Pollution Control Agency dated December 13, 1995. This exclusion covers any foundation, pad, pedestal, anchorage, sump, penetration, trench, conduit, duct, stack support, or piping that is designed, sized, located, or configured for an emissions unit or its control equipment, and all related tie-ins, consistent with EPA's May 13, 2026 proposed rule preamble. Where an element would serve both an emissions unit and non-emitting infrastructure, OPA will defer that element until the permit is issued. Consistent with the TSMC representations that EPA relied upon in the Maricopa County letter, the pre-permit phase will include no air pollution capture or control equipment and no foundations for any emissions unit. All construction activities involving emissions units will be deferred until the applicable NSR permit is issued.

OPA respectfully requests that ODEQ confirm in writing that the pre-permit activities identified in Attachment B do not constitute "begin actual construction" of a major stationary source, and transmit this request, with ODEQ's December 22, 2025 letter, to EPA Region 6 for the Region's written views.

Thank you for considering this request. We look forward to your response.

Best Regards,

Margaret Averill

Partner

Attachment A

2 December 2025, ERM Correspondence; and

22 December 2025, ODEQ Response

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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
Partner, Engineering Consultant

Copy: Ziad Fares, EGA
Sulaiman Abdulla, EGA
Phillip Fielder, ODEQ

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

Attachment B
OPA Construction Sequencing

Construction activities planned before permit issuance

- Surveying, geotechnical investigations, planning, engineering, and construction mobilization.
- Clearing and grubbing; demolition or removal of existing non-process features; erosion and sediment controls.
- Mass grading, cut-and-fill, excavation, soil improvement, drainage, and general earthwork.
- Construction of general access roads, temporary roads, parking, laydown areas, fencing, and construction support areas.
- Gas-line relocation, decommissioning/removal of the existing lines where required for earthwork, and installation of new site distribution infrastructure without connecting process emission units.
- Water, sanitary sewer, wastewater, stormwater, firewater, telecommunications, and electrical service infrastructure, including work to the property boundary.
- Utility corridors, trenches, sleeves, conduits, underground services, and general distribution infrastructure not connected to an emission unit.
- Temporary construction power and temporary generators used by contractors, subject to any separately applicable requirements.
- General-purpose foundations, slabs, undergrounds, and structural work for non-emitting support buildings and infrastructure, where not intended to accommodate, necessary to accommodate, or integral to an emission unit or its air pollution control equipment. Example: this could include excavation, concrete, structural steel, and cladding for the cathode-sealing facility.
- Full construction of support buildings and associated infrastructure, including excavation, foundations, concrete, undergrounds, structural steel, mechanical and electrical systems, and building enclosures.
- Development of the barge unloading area, and use of the barge facility to unload construction related materials.
- Off-site or near-site precast-concrete fabrication and batch-plant activities, with separate permitting as applicable, and delivery/storage of non-emitting construction materials.

Construction activities deferred until after permit issuance

- Physical construction or installation of potlines, pots, pot-room process equipment, and other reduction area emission units.
- Installation of carbon-area and cast-house process equipment that constitutes or is integral to a permitted emission unit.
- Installation of the cathode-sealing induction furnace and other cathode-sealing process equipment, including equipment connections needed for operation.
- Installation of permanent process furnaces, combustion equipment, and associated burners, fuel trains, or stacks.

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- Delivery, installation, connection, and energization of the loader and other permanent process-material unloading, conveying, transfer, storage, or handling equipment where identified as part of a permitted emission unit. Note: off-site fabrication may proceed.
- Installation of permanent process exhaust systems, hoods, ductwork, stacks, baghouses, scrubbers, dust collectors, or other air-pollution-control equipment serving smelter emission units.
- Permanent electrical connection, energization, fuel connection, piping connection, duct connection, or controls integration that would make an emission unit or its air-pollution-control equipment capable of operation.
- Pre-commissioning, commissioning, startup, testing, or operation of any permitted emission unit or associated control device.
- Receipt and staging on the primary project parcel of emission-unit equipment where the circumstances could reasonably constitute the beginning of physical construction; such equipment would instead be located offsite.
- Permanent emergency generators or other stationary combustion units covered by the PSD permit.

Other activities, outside of OPA control and property footprint, which are not tied to permit issuance

- Rehabilitation and improvement of the barge slip and port infrastructure
- Off-site roadway realignment, including the E 620 Road connection to Sofidel
- Third-party utility work to the facility boundary