Robert Singletary
Executive Director

OKLAHOMA Environmental Quality

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October 19, 2026

VIA ELECTRONIC MAIL

Abigale Tardif, Acting Assistant Administrator
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Re: Request for Case-Specific Interpretation of "Begin Actual Construction"; Oklahoma Primary Aluminum, Rogers County, Oklahoma; DEQ Permit Application No. 2026-0100-C PSD.

Dear Acting Assistant Administrator Tardif:

The Oklahoma Department of Environmental Quality (DEQ) requests that the U.S. Environmental Protection Agency (EPA) indicate whether EPA concurs that Oklahoma Primary Aluminum's (OPA) proposed construction activities, as identified below, are consistent with EPA's interpretation of "begin actual construction" as outlined in EPA's September 2, 2025, letter to the Maricopa County Air Quality Department. OPA submitted a permit application to DEQ for this project on February 10, 2026, requesting a PSD construction permit authorizing construction of a new major stationary source consisting of an aluminum smelter in Rogers County, Oklahoma and has indicated that OPA may wish to conduct certain construction activities prior to obtaining a DEQ air quality permit. DEQ submits this request in the manner EPA invited in its September 2, 2025, letter to the Maricopa County Air Quality Department, in which EPA stated that, until its rulemaking on this subject is complete, the Agency "may advise on these matters on a case-by-case basis" (Maricopa Letter).[1]

[1] Letter from Aaron Szabo, Assistant Administrator, Office of Air and Radiation, EPA, to Philip McNeely, Director, Maricopa County Air Quality Department, at 1 (Sept. 2, 2025) (Maricopa Letter).

Oklahoma's PSD program, OAC 252:100-8, Part 7, is approved into the Oklahoma SIP. Under OAC 252:100-8-30(a)(3), no new major stationary source or major modification subject to the PSD requirements may begin actual construction without first obtaining a DEQ-issued permit. OAC 252:100-8-31 defines “begin actual construction” in terms identical in substance to 40 C.F.R. §§ 51.166(b)(11) and 52.21(b)(11): OAC 252:100-8-31 states:

> **"Begin actual construction"** means in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature.
> (A) Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures.
> (B) With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

While 40 C.F.R. §§ 51.166(b)(11) and 52.21(b)(11) both state:

> ***Begin actual construction*** means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

“Emissions unit” is likewise defined consistent with 40 C.F.R. § 52.21(b)(7) as any part of a stationary source that emits or would have the potential to emit a regulated NSR pollutant.

OPA’s consultant, ERM, first indicated its desire to begin certain construction activities that do not fall under the definition of “begin actual construction” prior to obtaining a DEQ air quality permit on December 2, 2025. In DEQ’s letter dated December 22, 2025, DEQ stated it would recognize EPA’s interpretation of the definition consistent with the Maricopa Letter’s interpretation but also stated that ERM should request a case-by-case determination from EPA. DEQ also notes that the construction permit provisions of Oklahoma’s non-PSD permitting rules in OAC 252:100-8-1.1 already tie "begin actual construction" only to the construction or installation of emitting equipment on a pad or in its final location at the facility.

Via letter received by DEQ on October 14, 2026, OPA requested this specific determination and provided DEQ with a list of construction activities that OPA is

requesting to initiate prior to obtaining a DEQ air quality construction permit, listed below. The specifically listed activities appear permissible under the definition of "begin actual construction" currently in effect, as EPA construed that definition in the Maricopa Letter. However, DEQ requests EPA indicate whether it concurs that DEQ's SIP-approved rule is consistent with EPA's current reading of the federal definition on which that rule is based and further seeks whether EPA concurs that the below-listed activities would be outside the definition of "begin actual construction:"

1. Surveying, geotechnical investigations, planning, engineering, and construction mobilization.
2. Clearing and grubbing; demolition or removal of existing non-process features; erosion and sediment controls.
3. Mass grading, cut-and-fill, excavation, soil improvement, drainage, and general earthwork.
4. Construction of general access roads, temporary roads, parking, laydown areas, fencing, and construction support areas.
5. 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.
6. Water, sanitary sewer, wastewater, stormwater, firewater, telecommunications, and electrical service infrastructure, including work to the property boundary.
7. Utility corridors, trenches, sleeves, conduits, underground services, and general distribution infrastructure not connected to an emission unit.
8. Temporary construction power and temporary generators used by contractors, subject to any separately applicable requirements.
9. 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.
10. Full construction of support buildings and associated infrastructure, including excavation, foundations, concrete, undergrounds, structural steel, mechanical and electrical systems, and building enclosures.
11. Development of the barge unloading area, and use of the barge facility to unload construction related materials.
12. 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.

DEQ notes that even if certain activities are allowable prior to obtaining a permit, certain conditions still apply. First, DEQ would point out that regarding Item 8, where temporary construction power and temporary generators are anticipated to be used beyond a twelve-

month period they must be permitted prior to commencement of operation and no temporary generators used to support construction activities can continue to be used after commencement of operations of any portion of the OPA project. Further, regarding Item 9, the applicant will need to document that there are no emission units within the cathode-sealing facility. Regarding Item 10, it should be clarified that the support buildings in question do not constitute an emission unit. Finally, regarding Item 11, it should be clarified that development of the barge unloading area will not include any construction of permanent storage or conveyor systems associated with the OPA project that constitute an emission unit. OPA goes on to list construction activities that will be deferred until after permit issuance, which include activities more clearly connected to emission units. *See* Attachment B to the OPA letter included herein.

Because Oklahoma's definitions are drawn from the federal rules and are intended to be implemented consistently with them, EPA's reading of the federal text bears directly on the interpretation of the Oklahoma SIP. DEQ respectfully requests EPA to indicate whether EPA concurs that the above-listed activities would not fall under the definition of "begin actual construction" as written in OAC 252:100-8-31 and 40 C.F.R. §§ 51.166(b)(11) and 52.21(b)(11). DEQ understands that any EPA response will reflect EPA's views on only the project-specific facts presented, and will not constitute final agency action, and will not itself create or alter binding requirements.

As EPA stated in the Maricopa letter, any construction activities undertaken by OPA prior to issuance of an NSR permit by DEQ would be solely at OPA's risk, as DEQ would retain discretion to deny any subsequent application to construct a stationary source of air pollution (including emission units) if the applicable criteria are not met. Further, DEQ may not use OPA's time and resources expended on construction prior to obtaining a permit to justify DEQ's decision on any applicable Best Available Control Technology determinations and/or to grant the air permit. If changes to OPA's proposed emissions units designs are necessary to meet this or any other requirements of the permitting process, DEQ may require OPA to meet those requirements even if doing so requires modification or reconstruction of structures built or that have begun to be built prior to obtaining a permit.

Sincerely,

Kendal Stegmann
Division Director, Air Quality Division
Oklahoma Department of Environmental Quality

Enclosures:

1. Letter from OPA dated October 14, 2026.

cc: Dinesh Senghani, Air Permits Section Supervisor, U.S. EPA Region 6