



May 11, 2020

U.S. Environmental Protection Agency  
Air and Radiation Docket and Information Center  
Mail code: 28221T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Interpretation of “Begin Actual Construction” Under the New Source Review Preconstruction Permitting Regulations Guidance Memorandum (March 25, 2020)

Dear Administrator Wheeler:

The Pennsylvania Department of Environmental Protection (DEP) appreciates the opportunity to provide comments on the United States Environmental Protection Agency’s (EPA) proposed Interpretation of “Begin Actual Construction” Under the New Source Review Preconstruction Permitting Regulations Guidance Memorandum dated March 25, 2020.

EPA is proposing to reinterpret the term “Begin Actual Construction” as follows: 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). Further, under this revised interpretation, an “installation necessary to accommodate” the emissions unit at issue is **not** considered part of that emissions unit, and those construction activities that may involve such “**accommodating installations**” may be undertaken in advance of the source owner or operator obtaining a major NSR permit.

The term “begin actual construction” is currently defined in 40 CFR § 52.21(b)(11) to mean, 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 underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

Prior to this draft revision, EPA considers almost every physical on-site construction activity that is of a permanent nature to constitute the beginning of “actual construction,” even where that activity does not involve direct construction “on an emissions unit”.

DEP believes that the concept of allowing a source owner or operator to undertake certain on-site activities prior to receiving a major NSR permit is acceptable in the sense that it will speed up the overall process of a major project. In fact, DEP has already allowed certain activities which do not involve direct construction of an emission unit to be taken prior to obtaining a plan

approval authorization for non-major NSR sources.

One of the possible concerns that might arise for major NSR sources is that DEP's regulations (25 Pa Code § 127.1) require that new sources must control emissions to the maximum extent, consistent with the best available technology (BAT) determined by DEP at the time of plan approval issuance. This is to ensure that the source will not prevent or adversely affect the attainment or maintenance of ambient air quality standards. This is a risk that the company or operator has to accept should the need to redo or re-design certain parts of a project be required as a result of the BAT determination by DEP.

Another concern is under 25 Pa. Code 127.44, DEP is required to publish proposed plan approvals in the Pennsylvania Bulletin for public comment, as well as give notice to EPA, any state within 50 miles of the facility, and any state whose air quality may be affected and that is contiguous to Pennsylvania for project at major sources. If there is public opposition to a proposed facility and the owner/operator begins to build it before obtaining the NSR permit, the public may lose trust that their input will not have any impact on the permitting decision.

Lastly, although DEP appreciates the opportunity to comment, a more transparent approach of soliciting comments through formal action on the Federal Register is preferred, instead of the EPA seeking comments on draft interpretations through the EPA website.

Thank you for your consideration in this matter. Should you have questions or need additional information, please contact Viren Trivedi, Bureau of Air Quality, at 717.787.4325 or [vtrivedi@pa.gov](mailto:vtrivedi@pa.gov).

Sincerely,



Patrick McDonnell  
Secretary