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EPA Loosens Air Permitting Requirement to Speed Energy and Data Center Construction

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On September 9, 2025, EPA announced new guidance on New Source Review (NSR) pre-construction permitting requirements that broadens the types of activities that can be undertaken prior to obtaining an air permit. The guidance gives permittees flexibility to begin initial construction activities such as pouring pads and constructing building shells—speeding up construction timelines on time-sensitive projects such as semiconductor manufacturers, data centers, and energy projects.

An owner or operator of a facility cannot “begin actual construction” under existing NSR regulations until an air quality permit has been issued; this term is defined as the “initiation of physical on-site construction activities on an emissions unit which are of a permanent nature,” including building supports, foundations, and pipework. Consistent with 2020 draft EPA guidance that was never finalized, EPA is revising its interpretation of the term “begin actual construction” to allow for initiation of on-site construction on those parts of a facility that are not emissions units. The guidance applies this interpretation to authorize TSMC Arizona Corporation to pour foundations and begin constructing the core and shell of a semiconductor manufacturing plant that eventually will house emissions units as long as they do not begin construction on any equipment that could be classified as an emissions unit. This approach runs contrary to historic EPA interpretations, under which sources were limited to ordering equipment, site clearing and grading, and temporary storage of equipment and materials.

According to EPA's announcement, the Agency plans to propose and finalize its revisions to NSR regulations, including the definition of “begin actual construction,” in 2026. Until that process is completed, EPA “may advise on these matters on a case-by-case basis” and will interpret the pre-construction requirements under NSR to narrowly focus on those parts of a facility that qualify as an “emissions unit,” and will allow other physical on-site construction to commence without a permit.

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