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EPA Eases Clean Air Rules for Faster Construction and Data Center Development

Insight — May 14, 2026

On May 11, 2026, EPA proposed revisions to Clean Air Act regulations governing what activities an owner or operator can undertake before it receives a major source preconstruction permit. Specifically, EPA is proposing to revise the definition of the key phrase “begin actual construction” and add a new definition of “pollutant-emitting activities,” thereby granting project proponents greater flexibility to distinguish between construction of stationary sources and construction of non-emitting components or structures during the permitting process.

Key Takeaways

- **Build sooner, permit later**, with limits. EPA is proposing to allow construction of non-polluting components to begin before a required air permit is issued.
- **Proceed at your own risk**. Developers who start construction before permits are issued do so at their own financial risk if a permit is later denied or issued with unexpected conditions.
- **Comment now**. The 45-day public comment window is open, and EPA is specifically seeking input on whether additional activities should qualify for the new flexibility.

Background

Historically, major source new source review (NSR) regulations have prohibited a project proponent from initiating most on-site construction activities for a pollutant-emitting source until a preconstruction permit had been formally issued. This included installation of building supports and foundations, paving, laying of underground pipework, construction of permanent storage structures, and activities of a similar nature. Specifically, EPA has interpreted its rules such that construction is prohibited on any emissions unit or any installations necessary to accommodate the emissions unit. Allowable preconstruction activities have traditionally been limited to planning, ordering of equipment and materials, site-clearing, grading, and on-site storage of equipment and materials.

What's Changing?

The proposed rule seeks to codify guidance issued by EPA in September 2025 that narrowed the agency's interpretation of the phrase “begin actual construction,” granting permittees flexibility to begin initial construction

activities for those parts of a facility that do not qualify as an emission unit.

The May 11 rulemaking proposes to redefine the phrase “begin actual construction” to mean, “initiation of physical on-site construction of pollutant-emitting activities on a stationary source.” For the first time, however, the revised definition includes a non-exhaustive list of preparatory construction activities that are *not* included within the scope of this definition (and may therefore be initiated before an NSR permit has been granted), including:

- engineering and design planning,
- geotechnical investigation,
- clearing vegetation, grading, and other stabilizing activities,
- ordering of equipment and materials,
- storing of equipment, and
- paving surfaces.

Additionally, EPA is proposing to add a new definition of “pollutant-emitting activities,” defining it as “any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant.” This proposed definition also includes a non-exhaustive list of exclusions, differentiating the pollutant-emitting parts of a stationary source that require a preconstruction permit from the non-emitting components. This list of exclusions includes:

- office buildings,
- retail stores,
- certain storage buildings,
- concrete pads, building foundations, walls, and roofs that are not closed in on the interior side and are not designed to support any equipment or component with potential to emit regulated pollutants,
- certain heating ventilation and air conditioning equipment,
- wiring, piping, and associated utility support structures, and
- sealed junctions or tie-ins designed to connect to a process at a later point.

Who Benefits—and What's at Stake

If finalized as proposed, the new definitions would allow owners or operators of data centers, manufacturing facilities, and energy projects to initiate construction on these non-emitting components prior to obtaining a preconstruction air permit. The preamble to the proposed rulemaking acknowledges the inherent risk of commencing construction before securing necessary NSR permits, stating that “permit applicants that choose to undertake on-site construction activities in advance of permit issuance do so at their own economic risk that a permit may be denied or issued with unanticipated conditions on operations.” However, the agency justified this revision as a means to stimulate construction of critical American infrastructure “and advance the next great technological

forefront,” as stated in its press release.

How to Weigh In

This proposed rulemaking is open to public comment for 45 days. EPA is specifically soliciting comment on whether additional construction activities should be included in the list of exclusions under the new definitions of “begin actual construction” and “pollutant-emitting activity.”

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