

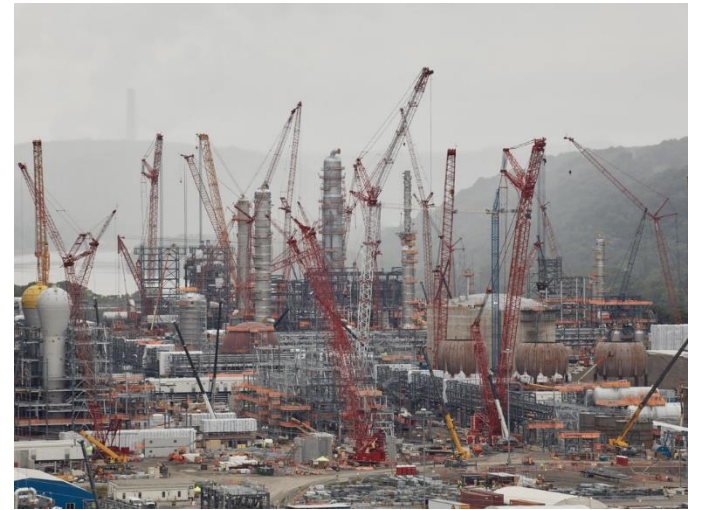
To Begin or Not to Begin: Understanding EPA's Guidance on Actual Construction

Louisiana Air & Waste Management Association
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Proposed “Begin Actual Construction” Guidance

- March 25, 2020 Draft for Public Review and Comment
- Limits construction of an “emissions unit” (i.e., actual emitting equipment) until permit issuance
- Allows undertaking activities to significantly alter site and/or are permanent in nature prior to obtaining an NSR permit
- Applies to both PSD and NNSR permit programs and would have been rule for federally-issued permits but guidance for EPA-delegated SIP programs



Deconstructing Progress

- December 8, 2020 Clean Air Act Advisory Committee Meeting statement:
EPA will not finalize the guidance, but will explore whether to address during future notice-and-comment rulemaking
- Would building projects without a permit unduly pressure regulators to write less stringent NSR permits?



Genesis of EPA's Re-Interpretation

- The CAA did not define what constitutes construction, so it concluded that Congress had left this question to EPA's discretion
- Part 52 rule from 1978 had a definition of construction of “fabrication, erection, installation, or modification of a source”, but did not specify when construction “begins”
- Re-interpretation no longer conflates relationship of source with “emissions unit”
- Consistent approach to treating different emission units as independent and with their own boundaries, like the most recent aggregation policy

Practical Benefits of EPA's Re-Interpretation

- Provides more certain FEED and purchasing timelines
- Facilitates construction and turnaround planning
- Easier to relocate utilities and manage storm water piping installation during winter season
- Re-interpretation would provide greater clarity without resulting in more industrial air pollution

What other regulatory programs would be impacted by the proposed change?



EPA “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 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. [40 CFR 52.21(b)(11)]*



LDEQ “Begin Actual Construction”

- *In general, initiation of physical on-site construction activities on an emissions unit that 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 onsite activities, other than preparatory activities, that mark the initiation of the change. [LAC 33:III.509.B]*
- Does not allow for “at risk” construction/ modification of a stationary source that emits or would have potential to emit any regulated NSR pollutant

Act 547 excludes sources with PTE < 5/15 tpy or meeting small source exemption criteria

TCEQ “Start of Construction”

- Permit is required “before work is begun on the construction of a new facility or a modification of an existing facility that may emit air contaminants”
- Construction is broadly interpreted as anything other than site clearance or site preparation
- Permit amendment applicants may, at their own risk, begin construction related to the application a draft permit for the amendment has been issued [30 TAC §116.118]

Does not apply to NNSR/PSD, PAL, major HAPs, standard permits, or permits by rule

TCEQ “Start of Construction” Guidance



Allowed

- Receive and store equipment
- Place portable equipment on the property
- Site clearance preparation, including: Land clearing, soil load bearing tests, leveling of the area, sewer and utility lines road building, power line installation, fencing, construction shack building

Not Allowed

- Assemble or connect equipment into any electrical, plumbing, or other utility system
- No work to assemble or erect equipment
- Excavation, form erection, steel laying pertaining to foundations or associated items

<https://www.tceq.texas.gov/permitting/air/newsourcereview/before.html>

Questions and Examples for “Begin Actual Construction”

- Installation of scrubber to remove ammonia from wastewater stream?
- Construction of dock for unloading construction materials, which later becomes an operating un/loading dock with permitted emissions?
- Construction of electrical substation (on site vs. off site)?
- Off-site construction of modular equipment?
- Driving support piles in laydown area?
What about planned future use as structural supports for later phase?
- Installation of dolphins for a temporary construction dock?

*Go to www.menti.com
Enter 8795 9748 for poll
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Path Forward

- Look for opportunities for pre-construction activities not associated with the source that would save time on the construction schedule
- Work with your permit engineer to determine the scope of construction before proceeding to avoid pitfall around actual construction
- Consider amending state rules to allow some at-risk construction activities for non-federal permits or guidance to identify specific actions that can be taken

Questions

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