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# New Source Review/Clean Air Act: U.S. Environmental Protection Agency Guidance Addressing "Begin Actual Construction"

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The United States Environmental Protection Agency ("EPA") issued a September 2nd interpretive letter addressing the definition of "Begin Actual Construction" in the Clean Air Act New Source Review ("NSR") regulations.

The interpretive letter is transmitted from Aaron Szabo, EPA Assistant Administrator for Air and Radiation, to Philip McNeely, Maricopa County Air Quality Department Director.

The September 2nd letter revises EPA's view of the phrase "Begin Actual Construction" under the Clean Air Act NSR regulations.

The Clean Air Act NSR constitutes a preconstruction permitting program that establishes and documents air pollution emission limits from "major" sources of air pollution. The NSR regulations include two permitting programs:

- Nonattainment
- Prevention of Significant Deterioration

Nonattainment NSR applies in nonattainment areas where air quality is classified as failing to meet the National Ambient Air Quality Standards ("NAAQS") for one or more criteria air pollutants regulated under the Clean Air Act. The program is intended to allow construction of newer modified sources of air pollution in areas while still making progress toward NAAQS.

PSD applies in attainment areas. Such areas are classified as meeting the NAAQS. PSD review in permitting is intended to allow construction of new or modified sources of air pollution in those areas while protecting (i.e., not significantly degrading) air quality.

The NSR program is triggered by new major sources of air pollution and existing major sources that are making a significant modification.

Application of NSR permitting can be significant from a timing standpoint. Section 165(a) of the Clean Air Act states that:

...no major emitting facility ... may be constructed ... unless a permit has been issued.

The September 2nd letter arguably narrows the scope of the phrase "Begin Actual Construction". The project addressed in the letter indicates that the referenced company:

...proposes to construct the core and shell of a building that will eventually house emission units without contemporaneously beginning construction on any semiconductor manufacturing equipment that could be classified as an emissions unit.

This phase of the construction is also stated to not include air pollution capture or control equipment or foundations for any emission units.

The company is also stated to build its semiconductor manufacturing facilities in three stages:

1. Core and shell building, which is simply the foundation, steel superstructure, and external walls and does not include any emissions units;
2. Mechanical, electrical and process piping, which involves installing the systems that will support the operations of the fab, including the cleanroom and equipment in the cleanroom; and
3. Tool hookup, which involves “emissions unit” to suggest that it includes installations necessary to accommodate an emissions unit.

EPA in the September 2nd letter states that it is within the company’s discretion to interpret its existing regulations to allow the company to undertake, prior to obtaining an NSR permit, the activities listed under stage 1, provided that the construction of the core and shell of the building does not involve the physical construction of an emission unit or the laying of underground piping or construction of supports and foundations that are part of any emissions unit.

EPA states that it intends to initiate a rulemaking to revise the definition of “Begin Actual Construction” in the NSR regulations and codify how permitting authorities may distinguish between emission units and other parts of a stationary source facility that are not an emissions unit or part of an emissions unit.

A copy of the September 2nd interpretive letter can be downloaded [here](#).