

Submitted online via: <https://www.regulations.gov/commenton/EPA-HQ-OAR-2025-0618-0001>

June 24, 2026

U.S. Environmental Protection Agency
Attn: Andrew Kormos
Permitting & Program Support Division
Office of State Air Partnerships
Post Office Box 12055
Research Triangle Park, NC 27711

Re: U.S. Environmental Protection Agency's Proposed Rule: "*Begin Actual Construction in the New Source Review Preconstruction Permitting Program*" (Docket ID No. EPA-HQ-OAR-2025-0618)

Dear Mr. Kormos:

The Arizona Department of Environmental Quality (ADEQ) appreciates the opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) proposed rule "*Begin Actual Construction in the New Source Review Preconstruction Permitting Program*." 91 FR 26958 (Mar. 13, 2026).

ADEQ was established under the Environmental Quality Act of 1986 by the Arizona State Legislature as the state's cabinet-level environmental agency. ADEQ carries out several core functions including: planning, permitting, compliance, management, monitoring, assessments, cleanups, and outreach. ADEQ's mission is to protect and enhance public health and the environment.

This comment letter addresses ADEQ's support for the EPA's proposal to revise the definition of "Begin Actual Construction" to distinguish between construction of a stationary source and construction of non-emitting components or structures, and to codify and make clear that the construction of non-emitting components or structures can occur before the owner or operator obtains an New Source Review (NSR) Permit in the form a Prevention of Significant Deterioration (PSD) Permit or a Nonattainment New Source (NNSR) Review Permit. This comment letter will address: (1) ADEQ's support for EPA's proposed definitions to reduce permitting lead times and delays, and (2) ADEQ's concern that aspects of the definition for "pollutant-emitting activities" may generate more confusion than clarity.

1. ADEQ supports the EPA's proposed revision

ADEQ agrees with the EPA that the current definition of "begin actual construction" has caused substantial delays for the construction of stationary sources and forced developers into protracted lead times. As the U.S. Chamber of Commerce has previously commented, the "EPA's guidance from the 1970's to today has progressively limited the extent and types of preconstruction activities that project

proponents may engage upon or ‘construct’ prior to receiving their NSR permit.”¹ Reported permit processing times for natural gas facilities from 2002 to 2014 show that the timeframes often stretch from seven months to over a year.² Beyond processing times, uncertainty surrounding what pre-permit activities can occur is another source of project delays. Arizona has experienced this source of delay locally, as Maricopa County Air Quality Department (MCAQD) had to seek the EPA’s input on whether the Taiwan Semiconductor Manufacturing Company (TSMC) could engage in certain pre-permit construction activities.³ This particular example is not an exception. A joint report by the Foundation for American Innovation and the National Association of Manufacturers discussed the Clean Air Act as “something of a center of gravity for the manufacturing permitting burden.”⁴ The survey of manufacturers that informed the joint report indicated that the majority of respondents ranked air permits as the most burdensome permit approvals.⁵ Given the previous and current delays and burdens associated with NSR permitting, ADEQ agrees that revision of the EPA’s NSR program is warranted.

ADEQ supports the EPA’s proposed revision to the definition of “begin actual construction” as “in general, initiation of physical on-site construction of pollutant-emitting activities on a stationary source. This does not include the following: (1) Engineering and design planning; (2) geotechnical investigation (surface and subsurface explorations); (3) clearing vegetation, grading, surveying, soil compacting and stabilization (including associated pile driving), and excavating land (including blasting or other removal of hardrock); (4) ordering of equipment and materials; (5) storing of equipment or setting up temporary trailers to house construction management or staff and contractor personnel; (6) paving surfaces. This list is not intended to be exhaustive. 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.”⁶ ADEQ agrees with the EPA that allowing construction on non-

¹ Letter from U.S. Chamber of Commerce to Anne L. Idsal, Acting Administrator U.S. Env’tl. Prot. Agency, Re: Comments on the U.S. Environmental Protection Agency’s Memorandum “Interpretation of ‘Begin Actual Construction’ Under the New Source Review Preconstruction Permitting Regulations” (May 11, 2020), https://www.abc.org/Portals/1/Comments%20on%20EPA%20NSR%20Begin%20Actual%20Construction%20Guidance%20-%205_11_2020_1.pdf.

² See Art Fraas, Mike Neuner, and Peter Vail, RFF-DP-15-04, *EPA’s New Source Review Program: Evidence on Processing Time, 2002–2014*, RES. FOR THE FUTURE (Feb. 2015), <https://media.rff.org/archive/files/sharepoint/WorkImages/Download/RFF-DP-15-04.pdf> (indicating that permitting processing times ranged from 7 to 19 months).

³ U.S. Environmental Protection Agency. (2025). Letter from Aaron Szabo, EPA Assistant Administrator for the Office of Air and Radiation, to Philip McNeely, Director, MCAQD, available at: <https://www.epa.gov/system/files/documents/2025-09/tsmc-arizona-begin-actual-construction-epa-response-letter.pdf>.

⁴ FOUNDATION FOR AM. INNOVATION & NAT. ASS. OF MFRS., AMERICA ON HOLD: HOW PERMITTING DELAYS STALL MANUFACTURING PROGRESS 16 (2026), <https://nam.org/wp-content/uploads/securepdfs/2026/03/NAM-America-on-Hold-Report-vF.pdf>.

⁵ *Id.*

⁶ 91 FR 26958, 26962 (May 13, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-05-13/pdf/2026-09524.pdf>.

emitting components before permit issuance could accelerate the schedules of major projects.⁷ In particular, the proposal will better preserve procurement windows, minimize weather-related delays, offer additional scheduling flexibility, and align commissioning schedules.⁸

2. Probable issues with the definition of “pollutant-emitting activities”

EPA’s proposed rule defines “pollutant-emitting activities” as:

“any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant. Pollutant-emitting activities do not include the following: (1) office buildings; (2) retail stores; (3) buildings or structures designed for storage if the product or material to be stored therein is not capable of producing airborne vapors or particles; (4) concrete pads and building foundations, walls, and roofs that are not closed in on the interior side and do not have design elements (e.g., piping, ductwork, wiring, anchor bolts) specifically and uniquely configured to serve or support any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant; (5) equipment or components whose sole purpose is heating ventilation and air conditioning for human workspaces or spaces within a building used to store supplies related to the habitation of the building; (6) wiring, piping, and associated support structures that supply utility services (including electrical, water, wastewater, or telecommunications) to a property site or a building on a site; (7) sealed junctions or tie-ins within one process that may serve equipment or components in another process constructed at a later time.”⁹

While ADEQ supports EPA’s definition for “begin actual construction,” it is concerned about two negative definitions in EPA’s proposed definition for “pollutant-emitting activities”. The first negative definition that concerns ADEQ is the fourth, which defines pollution-emitting activities as not inclusive of “concrete pads and building foundations, walls, and roofs that are not closed in on the interior side and do not have design elements (e.g., piping, ductwork, wiring, anchor bolts) specifically and uniquely configured to serve or support any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant.”¹⁰ The second definition that

⁷ See Alexandra Magill Bromer et al., *Accelerating AI Infrastructure: What EPA’s New NSR Proposal Means for Developers*, PERKIN & COIE (June 3, 2026), <https://perkinscoie.com/insights/update/accelerating-ai-infrastructure-what-epas-new-nsr-proposal-means-developers>.

⁸ Karl F. Kumli & John D. Surma, *EPA Proposes to Loosen “Begin Actual Construction” Limits: What it Could Mean for Data Centers and Other Capital Projects*, FISHER PHILLIPS (June 2, 2026), <https://www.fisherphillips.com/en/insights/insights/epa-proposes-to-loosen-nsr-begin-actual-construction-limits>; and Tim Roth & Trudy D. Fisher, *EPA Proposes New Rule Clarifying “Begin Actual Construction” Under Clean Air Act NSR Program*, BUTLER SNOW (May 28, 2026), <https://www.butlersnow.com/news-and-events/epa-proposes-new-rule-clarifying-begin-actual-construction-under-clean-air-act-nsr-program>.

⁹ *Supra* note 6 at 26970.

¹⁰ *Id.*

concerns ADEQ is the seventh, which defines pollutant-emitting activity as not inclusive of “sealed junctions or tie-ins within one process that may serve equipment or components in another process constructed at a later time.”

To begin, ADEQ does not find any issues with the objects included in the fourth negative definition; however, the qualifying phrase “that are not closed in on the interior side” requires greater explanation. It is not clear if this refers to interior surface finishes, like drywall or plaster, a wall that stops short of the ceiling, like a knee wall or pony wall, or what this means in the context of a roof. It is clear that concrete pads, foundation work, walls, and roofs are not in and of themselves pollutant-emitting structures; however, it is not clear how any of the structures would be more likely to be supporting a pollutant-emitting activity because they are “closed in on the interior side.” ADEQ does not believe that this description would “allow stakeholders to quickly and confidently recognize these listed construction-related activities as separate from the construction of a stationary source.”¹¹ The EPA could eliminate “are not closed in on the interior side and” and the definition would retain its descriptive quality without leaving a stakeholder wondering how being “closed in on the interior side” factors into whether or not pre-permit construction on a particular component of a facility is permissible.

Last, the seventh negative definition for “pollutant-emitting activities” states that pollutant-emitting activities do not include “sealed junctions or tie-ins within one process that may serve equipment or components in another process constructed at a later time.”¹² Without further explanation, ADEQ presumes that this is referring to the installation of a blind flange or capped process nozzle during the initial construction of a process vessel, pipeline, or manifold. However, those activities seem to already be a part of the sixth negative definition, which may cause confusion as to what activities the EPA intended for the seventh negative definition to demarcate. Put another way, it is difficult to understand how the seventh negative definition would not already qualify as a “support structure” under the sixth negative definition. As with the fourth negative definition, ADEQ does not think the seventh negative definition makes it easier for a permit applicant to determine whether or not the construction of a particular component is a pollutant-emitting activity.


ADEQ appreciates the opportunity to provide these comments on EPA’s proposed rule “*Begin Actual Construction*” in the *New Source Review Preconstruction Permitting Program*.” 91 FR 26958 (Mar. 13, 2026). ADEQ supports EPA’s new definition for “begin actual construction.” However, ADEQ cautions the EPA on using the fourth and seventh negative definitions provided for “pollutant-emitting activities.”

¹¹ *Id.*

¹² *Id.*

Thank you for your consideration of ADEQ's comments. If you have any questions, please contact me at (602) 771-4684 or czecholinski.daniel@azdeq.gov.

Sincerely,

Signed by:

4D858E29B49B4E2...
Daniel Czecholinski, CHMM
Director, Air Quality Division