

EPA plans to ease air permit rules for new, upgraded facilities

(March 26, 2020) - Power plants, factories and industrial operations can begin major work on their facilities before getting a New Source Review permit as long as the work doesn't directly involve an air emissions source under draft guidance from the Environmental Protection Agency.

"Under EPA's revised interpretation, a source owner or operator may, prior to obtaining an NSR permit, undertake physical on-site activities — including activities that may be costly, that may significantly alter the site, and/or are permanent in nature — provided that those activities do not constitute physical construction on an emissions unit," EPA said in draft guidance released Wednesday.

The NSR permitting program requires up-to-date air pollution controls on new and expanded stationary facilities with air emissions. A permit is required for "major modifications" to existing facilities. Under the Trump administration, the agency has scaled back the scope of the NSR program by limiting what emissions are counted when determining whether pollution controls are required.

Many of the changes are being made using non-binding guidance documents instead of through a rulemaking process, Janet McCabe, head of the EPA's air office during the Obama administration, said in an October report released by Harvard Law School's Environmental and Energy Law Program.

The draft guidance released Wednesday focuses on a revised interpretation of when "actual construction" begins.

The agency currently considers almost all physical on-site construction to be "actual construction," even if it doesn't involve work on an emissions unit, according to the draft guidance. As a result, facility operators generally cannot begin preparatory activity without an NSR permit.

Industry stakeholders contend the EPA's interpretation of when construction begins is overly restrictive and has delayed projects, the agency said.

"Upon review, EPA has determined that its current interpretation of the term 'begin actual construction' for the major NSR program does not entirely comport with the plain language of the long-standing regulatory definition of that term," the agency said.

Under the draft guidance, work can start on anything except directly on an emissions unit, according to the draft guidance.

The EPA defines an "emissions unit" as "any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant."

The EPA is taking comments on the draft guidance through May 11.

By Ethan Howland, CQ Roll Call

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