

TO: Construction Permit Section Staff  
FROM: Jim Geier / Dennis M. Myers  
DATE: November 15, 1994  
RE: Guidance on Allowable Activities Prior to Permit Issuance

I checked with Julie Wrend concerning the legality of whether the Division can allow a source to construct a building, structure, concrete pad, etc., prior to the issuance of a construction permit for a new or modified air pollution source. The answer is no for the following reason:

The definition of "stationary source" includes "any building, structure, facility, equipment, or installation...which emits or may emit any air pollutant...". Please note that building and structure are included in the definition of what is a stationary source.

The definition of "commenced construction" states "when the owner or operator has obtained all necessary preconstruction approvals or permits...and has either begun, or caused to begin, a continuous program of physical onsite construction of the source..."

Reg. 3, Part B, Section III.A.1. states that " Except where specifically authorized by the terms of this Regulation No. 3, Part B, no person shall commence construction of any stationary source or modification of a stationary source without first obtaining or having a valid construction permit from the Division.

In addition to the above EPA has provided an interpretation of "constructed" as it applies to activities undertaken prior to issuance of a PSD permit. According to EPA guidance, the following activities are allowed: planning, ordering of equipment and materials, site-clearing, grading, and on-site storage of equipment and materials. Any activities undertaken prior to issuance of a PSD permit would, of course, be solely at the owner's or operator's risk.

Prohibited activities, according to EPA include all on-site activities of a permanent nature aimed at completing a PSD source for which a permit has yet to be obtained. These prohibited activities include installation of building supports and foundations, paving, laying of underground pipe work, construction of permanent storage structures, and activities of a similar nature.

Based on the above guidance from EPA and the A.G's office I believe that the following activities are allowable prior to issuance of a permit. (Any activities undertaken prior to permit issuance are solely at the owner's or operator's risk):

1. Planning
2. Site clearing and grading
3. Ordering of equipment and materials