

COMMENTS OF THE POWER GENERATORS AIR COALITION ON EPA’S PROPOSED RULE BEGIN ACTUAL CONSTRUCTION IN THE NSR PRECONSTRUCTION PERMITTING PROGRAM

**91 Fed. Reg. 26958 (May 13, 2026)
Docket ID No. EPA–HQ–OAR–2025–0618**

June 29, 2026

INTRODUCTION

The Power Generators Air Coalition (“PGen”) respectfully submits these comments to the U.S. Environmental Protection Agency (“EPA” or the “Agency”) on its proposed rule entitled “Begin Actual Construction in the New Source Review (NSR) Preconstruction Permitting Program” (“Proposed Rule” or “Proposal”).¹ This action proposes revisions to the New Source Review (“NSR”) air permitting regulations to more clearly distinguish between construction of a stationary source and construction of non-emitting components or structures, while clarifying and codifying that the latter can occur without or before obtaining an NSR air permit for a new major stationary source or major modification of an existing major stationary source.

PGen is an incorporated nonprofit 501(c)(6) organization whose members are diverse electric generating companies – public power, rural electric cooperatives, and investor-owned utilities – with a mix of solar, wind, hydroelectric, nuclear, and fossil generation. PGen is a collaborative effort of electric generators to share information and expertise in the interest of effectively managing air emissions to meet and exceed environmental laws and regulations and

¹ 91 Fed. Reg. 26958 (May 13, 2026).

in the interest of informing sound regulation and public policy.² PGen as an organization does not participate in legislative lobbying or litigation. PGen and its members work to ensure that environmental regulations support a clean, safe, reliable, and affordable electric system for the nation.

PGen members own and operate electric generating units (“EGUs”) that are directly regulated by the NSR program. PGen is uniquely qualified to comment on aspects of the Proposal because its members have owned and operated EGUs for decades and are subject to various provisions of the Clean Air Act (“CAA” or the “Act”). PGen submits these comments to communicate the perspective of its members on EPA’s Proposal.

With the exponential increase in demand for electric power that the United States is currently facing, the construction of new power plants is of paramount importance to the reliability of the nation’s electric grid, which in turn affects the nation’s economic and public health security. In the past, a pronounced obstacle to constructing such facilities quickly to meet that demand has been EPA’s pre-2020 interpretation of “begin actual construction,” prohibiting construction of any permanent or costly portion of a plant that is related to an emissions unit, regardless of whether that portion is part of a pollutant-emitting activity and thus subject to regulation under the CAA. The Proposed Rule is a welcome step towards alleviating this obstacle. PGen agrees with EPA’s reading of “what” requires an NSR permit before actual construction begins (Section I). The policy rationale of EPA’s Proposed Rule is sound, as the Proposal furthers Congress’s aim of fostering economic growth in a manner consistent with protection of the environment (Section II). And, while the proposed regulatory language is a step in the right direction, PGen respectfully submits that EPA should define “pollutant-emitting

² Additional information on PGen and its members can be found at <https://pgen.org/>.

activities” to include only the equipment the operation of which potentially results in emissions of regulated pollutants and to provide additional clarity on allowable pre-permit activities (Section III). These revisions to the proposed definitions are needed to ensure the revised regulations are consistent with the “best” reading of the statute and to conform the regulations to Congress’s purpose.³

COMMENTS

I. The Regulatory and Statutory History of the Term “Stationary Source” Under the Clean Air Act’s New Source Programs Supports EPA’s Reading of “What” Requires an NSR Permit Before Construction Begins.

We agree with EPA that the best reading of the statute is that it “prohibits construction of the components of a facility that ‘emit’ or are a ‘source’ of air pollution without a permit but does not require a permit for construction of something that does not have that characteristic.”⁴ In other words, the *source* that cannot “be constructed”⁵ without an NSR permit is limited to the collection of pollutant-emitting activities that form that source. That reading is supported by the regulatory and statutory history of the CAA’s new source programs.

Congress enacted the CAA’s NSR programs – Prevention of Significant Deterioration (“PSD”) in Subtitle C of Title I and nonattainment NSR in Subtitle D of Title I – in the 1977 Amendments of the CAA. In these major amendments to the CAA, however, Congress did not write on a clean slate – Congress legislated against the backdrop of preexisting NSR regulations, which themselves borrowed heavily from the New Source Performance Standard (“NSPS”)

³ See *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2265-66 (2024).

⁴ 91 Fed. Reg. at 26967.

⁵ 42 U.S.C. § 7475(a).

program of the CAA.⁶ Our analysis, accordingly, starts with the 1970 Act and the NSPS program it enacted.

The 1970 CAA regulates “stationary sources” under, among other provisions, the NSPS program. “Stationary source” was defined under NSPS as “any building, structure, facility, or installation which emits or may emit any air pollutant.”⁷ The first NSPS regulations, promulgated almost immediately after the passage of the Act, provided that “[t]he provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any proposed standard applicable to such facility.”⁸ “‘Affected facility’ means, with reference to a stationary source, any apparatus to which a standard is applicable.”⁹ Accordingly, under the NSPS program, a standard applies to – and the CAA regulates – only the affected facilities that comprise a stationary source. And it is the commencement of construction of each affected facility comprising a stationary source that determines the applicability of that standard to that affected facility. In short, under the very first NSPS regulations – promulgated less than a year after passage of the 1970 CAA, a stationary source is defined as a collection of affected facilities; i.e., a collection of pollutant-emitting activities.

EPA promulgated the first NSR regulations in response to a district court’s preliminary injunction requiring a PSD program.¹⁰ These rules, promulgated late in 1974 and still found

⁶ *Id.* § 7411.

⁷ *Id.* § 7411(a)(3).

⁸ 40 C.F.R. § 60.1 (1972).

⁹ *Id.* § 60.2(e) (1972).

¹⁰ *See generally Alabama Power Co. v. Costle*, 636 F.2d 323, 346-49 (D.C. Cir. 1979) (describing the statutory and regulatory history of the PSD program).

today in 40 C.F.R. Part 50,¹¹ borrowed heavily from the NSPS program. Consistent with NSPS, the 1974 PSD rules applied to the construction of a new or modified stationary source, which “means any building, structure, facility, or installation which emits or may emit an air pollutant for which a national standard [i.e., an NSPS] is in effect.”¹² “‘Construction’ means fabrication, erection, or installation of an affected facility.”¹³ A permit authorizing such construction must require a showing that the proposed affected facilities will not significantly degrade ambient air quality and best available control technology (“BACT”) for each affected facility.¹⁴ Again, under the 1974 PSD rules, only pollutant-emitting activities (i.e., affected facilities) comprising a stationary source are regulated. Non-emitting activities are not.

In 1976, EPA revised the NSPS regulations in an attempt to apply a “bubble” concept – i.e., basically, a netting concept, under which NSPS applies only when there is a *net* emissions increase at a stationary source. In that rulemaking, EPA defined “stationary source” as follows:

“Stationary source” means any building, structure, facility, or installation which emits or may emit any air pollutant and which contains any one or combination of the following:

- (1) Affected facilities.
- (2) Existing facilities.
- (3) Facilities of the type for which no standards have been promulgated in this part.¹⁵

¹¹ The 1974 PSD rules are currently found at 40 C.F.R. § 50.21. The relevant definitions are at § 52.01.

¹² *Id.* § 52.01 (1975).

¹³ *Id.* § 52.21(b)(6) (1975).

¹⁴ *Id.* § 52.21(d)(2) (1975).

¹⁵ *Id.* § 60.2(d) (1977). This definition was struck down in *Asarco, Inc. v. EPA*, 578 F.2d 319 (D.C. Cir. 1978), but it was in effect when Congress enacted the NSR programs in the 1977 Amendments. See *Alabama Power*, 636 F.2d at 402.

There too, under the 1976 NSPS rules, only pollutant-emitting activities (i.e., affected facilities) comprising a stationary source are regulated. Non-emitting activities are not.

As mentioned previously, Congress was keenly aware of the pre-existing NSPS and NSR regulations when it enacted the NSR programs in the 1977 Amendments.¹⁶ Indeed, with the extra-statutory 1974 PSD rules heading to likely vacatur in the Supreme Court,¹⁷ Congress in the 1977 Amendments codified many elements of the existing new source rules and explicitly modified others.¹⁸ There is thus strong evidence that Congress approved – or at least did not revise – the pre-existing NSPS and NSR definitions of “source,” which, as discussed above, meant the collection of pollutant-emitting activities at a plant.

EPA first implemented the new statutory NSR program in the 1978 PSD rules. These rules included a definition of source that explicitly encompassed a combination of pollutant-emitting activities at a plant.¹⁹ These rules were the subject of the D.C. Circuit’s seminal *Alabama Power* decision. In that decision, the court struck down the 1978 rules’ definition

¹⁶ See *Alabama Power*, 636 F.2d at 402 (“EPA had its [1976 NSPS Rule] in effect at the time Congress enacted the 1977 Clean Air Act Amendments.”); *id.* at 349-51 (recounting the regulatory developments leading to the 1977 Amendments); *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 853 (1984) (noting that “prior to the 1977 Amendments, the EPA had adhered to a plantwide definition of the term ‘source’ under a NSPS program”), *overruled on other grounds by Loper Bright*, 144 S. Ct. at 2244; *id.* at 851 (noting Congress, in the 1977 Amendments adopting the NSR program, “did not disturb the definition of ‘stationary source’ contained in § 111(a)(3), applicable by the terms of the Act to the NSPS program”).

¹⁷ Shortly before the 1977 Amendments were enacted, the “Supreme Court granted industry petitions for certiorari to review [the D.C. Circuit’s] holding that EPA had authority to adopt PSD requirements under section 110 of the Act.” *Alabama Power*, 636 F.2d at 349. The Court, however, vacated the D.C. Circuit’s decision and remanded for consideration of mootness after the passage of the 1977 Amendments establishing a statutory PSD program. *Id.*

¹⁸ See *Alabama Power*, 636 F.2d at 349-50; 45 Fed. Reg. 52676, 52679 (Aug. 7, 1980).

¹⁹ 40 C.F.R. § 52.21(b)(4) (1979) (“‘Source’ means any structure, building, facility, equipment, installation, or operation (*or combination thereof*) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control).”) (emphasis added).

because it was facially inconsistent with the statute,²⁰ but nonetheless held also that, at least under PSD, EPA may include all pollutant-emitting activities at a plant within the definition of source. To do so, the Court explained, “EPA should devise regulatory definitions of the terms ‘structure,’ ‘building,’ ‘facility,’ and ‘installation’ to provide for the aggregation, where appropriate, of industrial activities according to considerations such as proximity and ownership.”²¹ EPA responded to the court’s command in the 1980 NSR rules – which largely remain in the Code of Federal Regulations to this day – by defining “[b]uilding, structure, facility, or installation’ [to] mean[] all of the *pollutant-emitting activities* which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control).”²²

In short, throughout the history of new source programs under the CAA, a “stationary source,” which is the subject of these programs, has always been defined as the aggregation of pollutant-emitting activities related closely enough to approximate a “common sense notion of a plant.”²³ What stationary source *never* encompassed are non-emitting activities, even if physically located at what one would colloquially call a plant.

²⁰ *Alabama Power*, 636 F.2d at 395-96. The court in *Alabama Power* held that EPA could not include the terms “equipment,” “operation,” or “combination thereof” in the regulatory definition of stationary source because those terms do not appear in the statute, though the Agency retains discretion “to define ‘facility’ and ‘installation’ broadly enough” to reach the same result. *Id.* at 396.

²¹ *Id.* at 397.

²² 40 C.F.R. § 52.21(b)(6) (1981) (emphasis added). The 1980 rules’ definition of “stationary source” remained similar to previous definitions. *See id.* § 52.21(b)(5) (“‘Stationary source’ means any building, structure, facility, or installation which emits or may emit any air pollutant subject to regulation under the Act.”).

²³ 45 Fed. Reg. at 52694-95.

EPA in the past sought to expand the scope of a source, the construction of which the CAA subjects to review under NSR, through interpretations that would sweep in unrelated and/or far-away pollutant-emitting activities into a single source.²⁴ Those interpretations have been set aside by the courts or abandoned by EPA.²⁵ EPA’s pre-2020 interpretation of the activities subject to the “begin actual construction” prohibition is no different. The Proposed Rule returns EPA’s interpretation of the stationary source to which NSR applies closer to its original meaning (encompassing only pollutant-emitting activities), which is the meaning that Congress intended in the 1977 Amendments when it enacted the CAA’s NSR programs. That is the best reading of the statute.²⁶

II. EPA’s Proposed Rule Furthers Congress’s Aim of Fostering Economic Growth in a Manner Consistent with Protection of the Environment.

A. The Policy Rationale for the Proposed Rule Is Consistent with the Purpose of the NSR Permitting Programs under the CAA.

Congress intended the NSR permitting programs enacted in the 1977 Amendments to foster economic growth in a manner consistent with protecting – even improving – ambient air quality. Indeed, one of the explicit purposes of the PSD program is “to insure that economic

²⁴ See, e.g., Letter from W. L. Wehrum, Assistant Administrator, EPA Office of Air and Radiation, to P. McDonnell, Secretary, Pennsylvania Department of Environmental Protection, Attachment at 4 (Apr. 30, 2018) (hereinafter “Common Control Guidance”) (collecting examples of determinations applying an expansive view of common control based on the interrelatedness and support relationship between two facilities), available at www.epa.gov/sites/default/files/2018-05/documents/meadowbrook_2018.pdf.

²⁵ See *Summit Petroleum Corp. v. EPA*, 690 F.3d 733, 744-46 (6th Cir. 2012) (rejecting an expansive interpretation of the term “adjacent” in the relevant definition of the component terms of a source, even though “longstanding”); Common Control Guidance at 4.

²⁶ See *Loper Bright*, 144 S. Ct. at 2265-66 (2024).

growth will occur in a manner consistent with the preservation of existing clean air resources.”²⁷

And, as the Supreme Court explained, “in the [nonattainment NSR] permit program Congress sought to accommodate the conflict between the economic interest in permitting capital improvements to continue and the environmental interest in improving air quality.”²⁸

EPA’s pre-2020 interpretation of the “begin actual construction” requirement, however, was at odds with Congress’s intent. It is self-evident that the pre-2020 policy, which interpreted the “begin actual construction” requirement of the NSR regulations broadly to prohibit all but some preparatory activity before the NSR permit is issued, results in unnecessary and costly delay for important projects, and in some instances, the delay has led to the project’s cancellation. Of course, if a project will require years to construct (as most industrial facilities do), ensuring the project proponent may undertake construction on non-emitting portions of the project before the NSR permit is issued would allow the project to come online significantly faster than it would otherwise. This translates into years of accelerated economic productivity and jobs.

For example, one PGen member evaluated existing construction schedules of large-scale natural gas generating facilities under two scenarios: the existing regulatory framework, which prohibits permanent foundation work prior to permit issuance, and the framework EPA puts forth in the Proposal that would allow all foundation and underground civil work (which does not result in the construction of pollution-emitting equipment) to proceed concurrently with the air permitting process, including foundations designed to support emissions units. This analysis

²⁷ 42 U.S.C. § 7470(3); *see also Alabama Power*, 636 F.2d at 378 (“The theory of the statutory PSD program is that concentration on preconstruction review of major emitting facilities in clean air areas will preserve air quality in those areas with a minimum of economic hardship.”).

²⁸ *Chevron*, 467 U.S. at 851.

showed that the Proposal's approach results in an approximate 13-month acceleration of the overall project schedule and commercial operation date. Based on project cost data for facilities of this scale, each month of accelerated construction schedule results in approximately 12 to 17 million dollars in avoided costs, inclusive of owner's costs and construction management impacts. Applied to the 13-month schedule compression identified above, the Proposal would result in approximately 156 to 221 million dollars in avoided cost *per project*. In addition to these direct financial impacts to project developers (which in turn result in lower electricity costs to consumers), earlier commercial operation dates translate directly to earlier availability of new generation capacity to meet growing electricity demand, a reliability and public health benefit.

Another PGen member's analysis found that the ability to install deep foundations (i.e., micropiles) before issuance of an NSR permit can expedite the overall construction schedule for new combustion turbines and combined cycle turbines by 6 to 8 months. As shown in the preceding paragraph, the ability to accelerate the construction schedule leads to millions of dollars in savings.

Moreover, there are many states in the nation in which cold weather (e.g., most northern states in the contiguous United States, Alaska) or seasonal avoidance of protected species (e.g., to avoid nesting and breeding sites) results in significant seasonal constraints on construction activity, leading to even longer construction schedules than for similar projects elsewhere. In these states, accounting for seasonal constraints in staging the critical path for construction is crucial for construction timelines of any project, especially a multi-year construction project such as a power plant or industrial factory. Confirming in regulatory language that the critical path construction of non-emitting portions of a project may proceed before the NSR permit is issued,

as EPA proposes, would alleviate some of the additional delays and scheduling difficulties associated with cold weather and allow the project proponent to stage construction efficiently.²⁹

Finally, in some circumstances, lack of certainty regarding the time it would take to complete the project may be determinative as to whether the project can obtain the needed financing and be constructed at all. In such circumstances, EPA's Proposed Rule could be the difference between whether the project is constructed, or if it must be scrapped because construction will take too long.

Equally important, allowing the construction of non-emitting portions of a project does not result in *any* emissions of NSR-regulated pollutants. It would not impact the permitting agencies' authority to require all of the analyses and conditions required under the Act and regulations before any pollutant-emitting activity is allowed to begin construction. This includes the analyses necessary to protect ambient air quality in PSD areas, the offsets to maintain or improve air quality in nonattainment areas, and as appropriate, state-of-the-art controls for facilities in either area. EPA's Proposed Rule thus reasonably seeks to balance economic growth and environmental protection, consistent with the statutory purpose of the NSR programs.³⁰

B. The “Equity in the Ground” Policy Rationale for EPA’s Pre-2020 Policy Is a Fiction that Never Made Sense.

Before 2020, EPA interpreted the “begin actual construction” provision of the NSR rules broadly to prohibit all but some preparatory site activity before issuance of the NSR permit. EPA

²⁹ Cf. Letter from J. S. Seitz, Director, EPA Office of Air Quality Planning and Standards, to C. W. Williams, Commissioner, Minnesota Pollution Control Agency at 3 (Dec. 13, 1995), available at <https://www.epa.gov/sites/default/files/2015-07/documents/19951213.pdf> (noting “EPA’s general view” at that time (pre-2020) that there is not any “flexibility under the Clean Air Act ... or rules to allow construction of footings for emissions units without a PSD permit in cold weather States such as Minnesota”).

³⁰ See *New York v. EPA*, 413 F.3d 3, 23 (D.C. Cir. 2005) (“There can be no doubt that EPA is entitled to balance environmental concerns with economic and administrative concerns....”).

provided only a single rationale for this interpretation: allowing more significant construction, even if on non-pollutant-emitting activities, before issuance of the NSR permit would result in “equity in the ground,” which the project proponent might use to gain “leverage” in the permitting process, and to “undermine” “the ability of EPA and citizens to challenge the permit that is eventually issued.”³¹

As EPA explains in the Proposal, there is nothing in the statute, and even in legislative history (which, for the 1977 CAA Amendments, is prolific), indicating that “equity in the ground” was an animating concern for Congress in enacting the 1977 Amendments. More importantly, that rationale rests on a deeply flawed, and unrealistic, premise. The major premise underlying this rationale is that state permitting authorities – even EPA’s own permitting personnel in jurisdictions where EPA is the permitting authority – will shirk their responsibilities to grant permits consistent with the law and be influenced in such decisions by whether the project proponent has already invested in construction of non-emitting portions of the project. There is simply no basis for such a presumption; state personnel, as EPA’s own personnel, are obligated to uphold the law and, in PGen members’ overwhelming experience, invariably take their responsibilities to do so seriously. If anything, some state permitting authorities often tend to go beyond the most conservative view of the NSR regulations, for fear of being second-guessed by EPA or members of the public.

Moreover, the presumption of permitting authorities being influenced by money invested before the NSR permit is issued is belied by half a century of history. The NSR program (first started with the 1974 PSD rules, even before Congress enacted it) has governed pre-construction

³¹ 91 Fed. Reg. at 26973 (discussing “equity in the ground” rationale); *id.* n.125 (quoting 61 Fed. Reg. 38250, 38270 (July 23, 1996)).

permitting for major sources of air pollutants for more than 50 years. In that period, project proponents, even if prohibited from investing in early construction of non-emitting activities for a project, often have spent significant dollars on designing, fabricating, and procuring equipment for the project, well before the NSR permit is issued. For example, for gas-fired combustion turbine power plants (both simple-cycle and combined-cycle), the owners often purchase the turbines and even have them delivered to the site before the NSR permit is issued. Indeed, one PGen member has secured more than 10 gigawatts of new gas-fired turbine capacity from major manufacturers in advance of the issuance of NSR permits at a cost of tens of billions of dollars. These turbines will eventually be deployed to meet rapidly growing load expectations in that member's service territory. There is no evidence of a single instance, in the 50-year history of NSR, in which this pre-permit "equity," even if not "in the ground," has ever been used to pressure a state agency to relax permit conditions to accommodate the particular equipment that the project proponent contracted for and is procuring, or to unlawfully grant a permit (where the proper legal result would have been to deny it).

Whether and when the project proponent begins constructing the non-emitting portions of a project does not undermine the ability of either EPA or citizens to enforce NSR requirements. The CAA, quite evidently, regulates pollutant-emitting activities; it is not concerned with non-emitting activities. Regardless of whether construction of non-emitting activities has begun, nothing prevents either EPA or citizens from taking action "to prevent the construction" of any pollutant-emitting activities without or before obtaining an NSR permit.³²

PGen supports EPA's suggestion to "add regulatory text to explicitly prohibit permitting authorities from considering economic losses [stemming from any construction undertaken

³² 42 U.S.C. § 7477 (EPA and state enforcement); *see id.* § 7604(a)(3) (citizen suit).

before or without a required NSR permit] for permit applicants if a valid permit cannot be issued.”³³ Even if such language is not needed to ensure permitting authorities apply the NSR program as required, it would counter, once and for all, the purported “equity-in-the-ground” rationale for EPA’s pre-2020 broad interpretation of what activities may be undertaken at a proposed site without or before a required NSR permit is issued.

III. EPA Should Define “Pollutant-Emitting Activities” to Include Only the Equipment the Operation of Which Itself Results in Emissions of Regulated Pollutants and Provide Additional Clarity on Allowable Pre-Permit Activity.

A. EPA Should Define “Pollutant-Emitting Activities” to Include Only the Equipment the Operation of Which Itself Results in Emissions of Regulated Pollutants.

EPA’s proposed definition of pollutant-emitting activities – the activities on which construction may not begin before an NSR permit is issued – should be revised to more clearly encompass only the equipment the operation of which potentially results in emissions of regulated pollutants.

The proposed revised definition of “begin actual construction” clearly prohibits the “initiation of physical on-site construction *of* pollutant-emitting activities on a stationary source” without or before an NSR permit is issued.³⁴ It thus clearly allows other construction activity, including any “installation necessary to accommodate” pollutant-emitting activities, as did the 2020 Draft Guidance and the September 2025 Letter.³⁵ The definition of pollutant-emitting activities in the Proposed Rule is properly limited to “any equipment or component in a

³³ 91 Fed. Reg. at 26974 (Question #7).

³⁴ *Id.* at 26970 (emphasis added).

³⁵ *See id.* at 26964.

process or operation that emits or has the potential to emit a regulated NSR pollutant.”³⁶ EPA should clarify exactly what that encompasses. We propose, and request, that the definition of pollutant-emitting activities be revised to clearly and explicitly encompass only the equipment and components the operation of which results in emissions of regulated pollutants. For example, a stationary combustion turbine is a pollutant-emitting activity. Under the closely related NSPS program, a stationary combustion turbine

means all equipment including, but not limited to, the combustion turbine engine, the fuel, air, lubrication and exhaust gas systems, control systems (except post combustion emissions control equipment), heat recovery system (including heat recovery steam generators and duct burners); steam turbine; fuel compressor and/or pump, any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any combined cycle combustion turbine, and any combined heat and power combustion turbine based system; plus any integrated equipment that provides electricity or useful thermal output to the combustion turbine engine (e.g., onsite photovoltaics), heat recovery system, or auxiliary equipment.³⁷

At least for pollutant-emitting activities subject to an NSPS, the relevant NSPS definition may be a good guide for what should constitute pollutant-emitting activities under the NSR regulations. Alternatively, pollutant-emitting activities could be defined in a way to encompass only the equipment or component the design of which or the emissions from which are subject to the control technology requirements of the NSR programs (e.g., BACT; lowest achievable emissions rate). The foundation for the stationary combustion turbine (or any other non-emitting equipment

³⁶ *Id.* at 26970. To that end, we recommend that EPA replace the word “include” with the word “means” in the first sentence of the proposed definition. That is, the first sentence of the proposed definition should read: “*Pollutant-emitting activities*, as used in 40 CFR 52.21(b)(6)(i) and (b)(11), ~~include~~ **means** any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant.” That would avoid a potential argument in the future that the definition somehow leaves room for pollutant emitting activities to include more than just such equipment or component.

³⁷ 40 C.F.R. § 60.4420a.

or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant), even if it has “design elements (*e.g.*, piping, ductwork, wiring, anchor bolts) specifically and uniquely configured to serve or support” such equipment or component, is nothing more than an “installation necessary to accommodate” the pollutant-emitting activity. It therefore should be explicitly excluded from the definition of pollutant-emitting activities, not the other way around.

B. EPA Should Explicitly Acknowledge Additional Activities That May Be Undertaken Without or Before an NSR Permit Is Issued.

PGen supports EPA’s approach of listing in the regulatory definitions of “begin actual construction” and “pollutant-emitting activities” examples of the types of activities that are allowed without or before an NSR permit is issued. In the list included in the Proposal, however, EPA should list “Concrete pads, piles, and building foundations, walls, and roofs” and delete the following narrowing qualification – “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”).

PGen also requests that EPA include the below additional activities in the list of examples that do not require an NSR permit to have been issued. The suggested activities that PGen proposes for inclusion are clearly allowable under the proposed regulatory language, and PGen acknowledges that the list is not intended to be exhaustive. Regardless, by including as many activities as possible in its list (including those proposed by PGen below), EPA will make it clear that these common activities are permissible before an NSR permit has been issued, thus eliminating potential confusion and inconsistency that could result. The activities that PGen requests be added to the list in the regulation are:

- Stormwater management systems (e.g., retention ponds, culverts, site drainage systems);
- Fencing, site lighting, security systems;
- Roads for construction;
- Fuel (e.g., natural gas) supply infrastructure;
- Flanges and pipe fittings on the boiler (similar to “tie-ins”);
- Supporting plant infrastructure such as pipe bridges and scaffolding;
- Wells and associated piping to provide process water to the emission units (e.g., for cooling water, water injection);
- Construction of new evaporation ponds to support the emission units’ effluent (e.g., for cooling tower blowdown, evaporation cooler/chiller blowdown);
- Piling installation for equipment foundations, including piling for gas turbine, steam turbine, and heat recovery steam generator (“HRSG”) foundations;
- Concrete foundations for equipment pads, including deep foundations (micropiles), even where such foundations are designed specifically to support a gas turbine, steam turbine, or HRSG, provided no pollutant-emitting equipment has been erected on or connected to the foundation;
- Underground piping and conduit that constitutes utility service infrastructure (electrical duct banks, potable water, process water, wastewater, telecommunications, and stormwater drainage), regardless of whether such infrastructure is located in proximity to emissions units or is part of a system that will ultimately serve emissions units; and
- Structural steel and pipe rack foundations and support structures, where such structures do not themselves constitute part of an emissions unit and do not convey or contain regulated pollutant streams.

* * *

PGen appreciates the opportunity to comment on EPA’s Proposed Rule. If EPA has any questions on these comments, or if EPA would like to meet with PGen members to discuss these comments further, it should contact PGen’s counsel below, who will work with PGen’s Board of Directors to arrange a convenient time.

Dated: June 29, 2026

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