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June 29, 2026

Honorable Lee Zeldin
Administrator
U.S. Environmental Protection Agency,
Mail Code 28221T
1200 Pennsylvania Avenue NW,
Washington, DC 20460

Re: Comments of the American Public Power Association on EPA’s Proposed Rule Begin Actual Construction in the New Source Review Preconstruction Permitting Program; 91 Fed. Reg. 26958 (May 13, 2026); Docket ID No. EPA–HQ–OAR–2025–0618.

Dear Administrator Zeldin:

The American Public Power Association (APPA) appreciates the opportunity to submit comments on the Environmental Protection Agency’s (EPA or Agency) proposal to revise “Begin Actual Construction in the New Source Review (NSR) Preconstruction Permitting Program” (Proposed Rule).¹ The Proposed Rule seeks to update the Agency’s NSR permitting rules to clarify when certain construction activities may begin before an NSR permit is issued. Specifically, the proposal would distinguish between construction of a stationary source and construction of non-emitting components or structures, allowing work on the latter to begin before a permit is obtained. The Proposed Rule would revise key definitions—including “begin actual construction,” “begin construction,” and “commence construction”—and add a new definition for “pollutant-emitting activities” across major NSR programs, minor NSR rules in Indian country, and related non-attainment new source review (NNSR) applicability procedures.

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. APPA represents public power before the federal government to protect the interests of the more than 55 million people that public power

¹ 91 Fed. Reg. at 26,958 (May 13, 2026).

utilities serve, and the over 100,000 people they employ. APPA advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

APPA members own and operate electric generating units that are directly regulated under the NSR program. APPA is well positioned to comment on EPA’s proposal because its members have decades of experience developing, owning, and operating power plants subject to the Clean Air Act. APPA submits these comments to provide the public power perspective on how EPA’s proposal would affect the planning and construction of needed electric infrastructure.

As electricity demand continues to grow rapidly across the country, timely construction of new power generation is increasingly important to reliability, economic growth, and public health and safety. Historically, one of the most significant barriers to bringing new facilities online has been the NSR program’s broad restriction on beginning construction before a permit is issued—even for activities that do not themselves emit regulated pollutants. The Agency’s Proposed Rule is an important step toward addressing that problem. APPA supports EPA’s interpretation of which activities require an NSR permit before actual construction may begin. APPA also agrees that the proposal is consistent with Congress’s intent to allow economic growth while protecting air quality. To provide greater certainty, APPA recommends that EPA clarify that “pollutant-emitting activities” include only equipment or components whose operation emits, or has the potential to emit, regulated pollutants, and provide additional examples of activities that may proceed before permit issuance.

Policy Rationale and Regulatory Implications

Congress designed the NSR permitting programs to support economic growth while protecting and improving air quality. The Agency’s proposal is consistent with that balance by recognizing that project developers should be able to move forward with non-emitting construction activities before receiving an NSR permit. The prior interpretation, which broadly restricted nearly all preparatory site work before permit issuance, created unnecessary delays and increased project costs, sometimes jeopardizing important infrastructure investments altogether. Allowing work on non-emitting components to proceed can help projects come online sooner, supporting reliability, economic productivity, and job creation without undermining the environmental protections at the core of the NSR program.

The balance is that NSR is not meant to stop economic development; it is meant to ensure development occurs in a way that protects air quality.

In this context, the Agency’s proposal supports that balance by allowing project developers to begin work on non-emitting components—such as site preparation or structures that do not release regulated pollutants—before receiving the final NSR permit. That can reduce unnecessary delays, help manage construction schedules, and support timely investment in needed infrastructure.

At the same time, the proposal preserves the core environmental safeguards of the NSR program. Before any pollutant-emitting activity can begin, the permitting authority would still need to complete the required review and impose applicable requirements, such as air quality analyses, emissions limits, offsets in nonattainment areas, and pollution control technology requirements.

APPA supports EPA’s policy rationale as it provides more construction flexibility where there is no emissions impact, while maintaining full permitting protections before any activity begins that could affect air quality.

Clarifying Pollutant-Emitting Activities

EPA’s proposed definition of “pollutant-emitting activities”—the activities that may not begin before an NSR permit is issued—should be clarified to include only equipment or components whose operation may result in emissions of regulated NSR pollutants.

The proposed definition of “begin actual construction” would prohibit the “initiation of physical on-site construction of pollutant-emitting activities on a stationary source” before an NSR permit is issued.² By doing so, it appropriately allows other construction activity to proceed, including any “installation necessary to accommodate”³ pollutant-emitting activities, consistent with the 2020 Draft Guidance and the September 2025 Letter.⁴

The Agency’s proposed definition of pollutant-emitting activities is properly limited to “any equipment or component in a process or operation that emits or has the potential to emit a regulated NSR pollutant.”⁵ However, APPA recommends that EPA

² 91 Fed. Reg. at 26,970.

³ *Id.* at 26,971.

⁴ U.S. Environmental Protection Agency. (2020). Draft Memorandum from Anne Idsal, Principal Deputy Assistant Administrator for the Office of Air and Radiation. Interpretation of “Begin Actual Construction” Under the New Source Review Preconstruction Permitting Regulations, available at: https://19january2021snapshot.epa.gov/sites/static/files/2020-03/documents/begin_actual_construction_032520_1.pdf. and 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-eparesponse-letter.pdf>.

⁵ *Id.* at 26,970.

further clarify that this definition applies only to equipment or components whose operation causes, or has the potential to cause, regulated emissions.

For example, a stationary combustion turbine may be considered a pollutant-emitting activity. Under the related new source performance standards (NSPS) program, a stationary combustion turbine is defined as:

“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.”⁶

For pollutant-emitting activities subject to an NSPS, EPA could use the relevant NSPS definition as a guide for determining what qualifies as a pollutant-emitting activity under the NSR regulations. Alternatively, EPA could define the term to include only equipment or components whose design or emissions are subject to NSR control technology requirements, such as best available control technology (BACT) or lowest achievable emission rate (LAER).

By contrast, foundations or other supporting structures for pollutant-emitting equipment should not be treated as pollutant-emitting activities. Even if such structures include “design elements (e.g., piping, ductwork, wiring, anchor bolts) specifically and uniquely configured to serve or support” the equipment, they are best understood as an “installation necessary to accommodate” the pollutant-emitting activity. EPA should therefore expressly exclude those supporting structures from the definition.

Activities That May Proceed Before an NSR Permit

APPA supports EPA’s approach of identifying in the regulatory text examples of activities that may proceed before, or without, an NSR permit. Although APPA understands these lists are not exhaustive, adding more examples would provide helpful clarity and reduce uncertainty for permitting authorities and project developers. APPA recommends that the Agency expressly include the following activities as permissible pre-permit activities:

⁶ 40 C.F.R. § 60.4220a.

- Stormwater management systems, including retention ponds, culverts, and site drainage systems;
- Fencing, site lighting, and security systems;
- Temporary construction roads;
- Fuel supply infrastructure;
- Boiler flanges and pipe fittings, similar to tie-ins;
- Supporting plant infrastructure, such as pipe bridges and scaffolding;
- Wells and associated piping needed to supply water to emissions units, including for cooling water or water injection;
- New evaporation ponds needed to manage effluent from emissions units, including cooling tower blowdown and evaporation cooler or chiller blowdown; and
- Retaining walls used to support grading activities should be allowed because they can serve as a stormwater best management practice, helping reduce soil and sediment runoff on steep slopes during storm events.

Finally, APPA recommends that EPA retain in the regulatory definition of “begin actual construction,” consistent with the prior definition, the limitation that only activities “that are of a permanent nature” are prohibited before an NSR permit is issued, and only if those activities are part of pollutant-emitting activities. Temporary or non-permanent activities should not be considered construction of the emissions source because they are not part of the final pollutant-emitting activity covered by the permit.

Conclusion

APPA appreciates the Agency’s efforts to provide needed clarity regarding when construction may begin under the NSR preconstruction permitting program. APPA recommends that EPA further clarify that supporting structures necessary to accommodate pollutant-emitting activities are not themselves pollutant-emitting activities. The Proposed Rule appropriately recognizes that activities involving non-emitting components or structures can proceed before an NSR permit is issued without compromising the air quality protections that remain central to the NSR program.

To strengthen the final rule, APPA urges EPA to clarify that “pollutant-emitting activities” include only equipment or components whose operation emits, or has the potential to emit, regulated NSR pollutants. EPA should also expressly identify additional examples of activities that may proceed before permit issuance, including

stormwater management systems, temporary construction roads, supporting infrastructure, retaining walls used as stormwater best management practices, and other non-emitting or preparatory activities.

These clarifications would reduce unnecessary uncertainty, support efficient project planning and construction, and help public power utilities make timely investments in infrastructure needed to serve their communities reliably and affordably. At the same time, the rule would preserve permitting authorities' full ability to require all applicable analyses, controls, offsets, and permit conditions before any pollutant-emitting activity begins.

For these reasons, APPA supports finalizing the Proposed Rule with the clarifications described above and appreciates the Agency's consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Cardyn Plaugher". The signature is written in a cursive, flowing style.

Senior Director, Environmental Policy
American Public Power Association