

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
76 Hawthorne Street  
San Francisco, Ca. 94105-3901

November 4, 1993

**MEMORANDUM**

SUBJECT: Preconstruction Review and Cons

FROM: Dave Howekamp  
Director  
Air and Toxics Division

TO: See Below

This memorandum reiterates EPA's longstanding interpretation concerning the range of construction related activities that lawfully may occur prior to the issuance of a permit to construct or modify a facility or emissions unit.

The Clean Air Act mandates a preconstruction review program for sources subject to Prevention of Significant Deterioration (PSD) (§ 165) and New Source Review (NSR) (§§ 172 and 173) requirements. In addition, under § 110(a)(2)(c), State and local agencies are required to include in their State Implementation Plans preconstruction review programs necessary to assure that construction of any new or modified source is consistent with attainment of the National Ambient Air Quality Standards. To fulfill this requirement, most District rules require that any person building any article, machine, or contrivance which may cause the issuance of air contaminants shall obtain authorization for such construction prior to beginning actual construction.

Preconstruction review is a necessary precursor to engineering and public review processes. As a result of this process, the permitting authority may require installation of air pollution control or monitoring equipment that was not initially provided for in the design process. Thus, the pre-construction review process is mandated both to ensure that Clean Air Act requirements are met and to help sources avoid costly construction changes.

The question of what type of preliminary site activities may be conducted prior to permit issuance was addressed by EPA policy memoranda. on December 18, 1979, March 28, 1986 and May 13, 1993. These memoranda explain that certain limited activities that do not represent an irrevocable commitment to the project would be allowed, such as planning, ordering of equipment and materials, site clearing, grading, and on-site temporary storage of equipment and materials. Any of these activities, if undertaken prior to issuance of a permit, would be at the risk of the owner or operator.

In contrast, all on-site activities of a permanent nature aimed at completing construction or of the source including but not limited to installation of building supports and foundations, paving, laying of underground pipe work, construction of any permanent storage structure, and activities of a similar nature are prohibited until after the permit is issued and effective, under all circumstances.

In addition, EPA has long maintained that in order to meet legal requirements, permits to construct must require enforceable emission limitations. Limiting the potential to emit of a stationary source is of primary importance in establishing whether a new or modified source is major and thus subject to PSD or NSR requirements. For any limit or condition to be a legitimate restriction on potential to emit, that limit or condition must be federally enforceable. Such conditions and limitations ensure that:

- a source that has the potential to emit in amounts that would constitute a major source or major is restricted from doing so in a manner that is federally enforceable;
- all contemporaneous emissions increases and decreases are creditable and federally-enforceable; and
- where appropriate, emissions offsets transactions are documented clearly and offsets are real, creditable, quantifiable, permanent, and federally-enforceable.

We are committed to working with you to ensure that sources participate in the preconstruction review process and obtain permits with federally enforceable emission limitations prior to beginning actual construction (as defined at 40 CFR 51.165 (a)(1)(xv), 51.166 (b)(11), and 52.21 (b)(11)). If you have any questions or would like copies of the memoranda mentioned above, please contact Jennifer Fox of my staff at 415-744-1257.

Addressees:

All Region IX Air Agency Directors  
All Region IX New Source Review Contacts