



Form No.	A-L-0096
Effective Date	7/20/2022
Revision No.	02
Last Revision Date	9/25/2025
Page 1 of 2	

Guidance Regarding Construction Activities

The Maine Department of Environmental Protection (the Department) has developed this guidance document to describe the level of construction activities allowed prior to obtaining an air emission license or license amendment. This guidance is based on EPA determinations available at the time of writing and is subject to change. The Environmental Protection Agency (EPA) is considering rulemaking on this subject in 2026. In case of conflict, the most current guidance and/or rulemaking from EPA will likely take precedence. However, please contact Maine DEP Air Licensing staff for clarification regarding how this guidance may apply to your specific facility.

Any construction activities undertaken prior to issuance of a license are solely at the facility's risk, including possible economic losses, should the Department not license the project as proposed.

Definitions

Begin actual construction. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change. [*Definitions Regulation*, 06-096 C.M.R. ch. 100]

Note: This definition of "begin actual construction" is identical to the federal definition contained in 40 C.F.R. Part 52.21.

Emissions unit. "Emissions unit" means any equipment or pollutant-emitting activity of a source which emits or would have the potential to emit a regulated pollutant or hazardous air pollutant. This term is not meant to alter or affect the term 'unit' for purposes of Title IV of the CAA. [*Definitions Regulation*, 06-096 C.M.R. ch. 100]

Allowed Activities

In accordance with *Major and Minor Source Air Emission License Regulation*, 06-096 C.M.R. ch. 115, Sections 1(B) and 4, a facility must obtain a new or modified air emission license prior to beginning actual construction of the new source or modification. The term "begin actual construction" is defined above.

Previous guidance documents^{1,2,3} issued by the EPA clarify that allowed preconstruction activities include planning, site clearing and grading, ordering of materials, and temporary storage on site. Any of these activities may be undertaken at the facility's own risk. Prohibited preconstruction activities include any construction that is costly, significantly alters the site, and/or is permanent in nature.

¹ <https://www.epa.gov/sites/default/files/2015-07/documents/19951213.pdf>

² <https://www.epa.gov/sites/default/files/2015-07/documents/begin.pdf>

³ <https://www.epa.gov/sites/default/files/2015-07/documents/cnstrctn.pdf>



Form No.	A-L-0096
Effective Date	7/20/2022
Revision No.	02
Last Revision Date	9/25/2025
Page 2 of 2	

Additional guidance⁴ issued by EPA on September 2, 2025, clarifies that, although the initiation of physical on-site construction of an emissions unit is prohibited, facilities are not prohibited from initiating construction activities on those parts of a facility that do not qualify as an emissions unit. For example, it is permissible to start construction of the core and shell of a building, provided that this construction does not involve the physical construction of an emissions unit or the piping or foundation specifically for an emissions unit.

Disclaimers

Any construction activities undertaken by the facility prior to issuance of a license are solely at the facility's risk, and the Department retains the discretion to deny any air emission license application if applicable criteria are not met. Any "equity in the ground," i.e., the facility's time and resources expended on construction prior to obtaining a license, may not be used to justify any Best Available Control Technology (BACT) analysis or Lowest Achievable Emissions Rate (LAER) analysis, or to leverage issuance of the license in any way. If changes to a proposed emissions unit design are necessary to meet the requirements of the licensing process (such as demonstrating that emissions from the source will not cause or contribute to violations of ambient air quality standards), the Department may require the facility to meet the requirements of such conditions in the final license, even if that means modifying or rebuilding structures that had begun construction.

Additional Resources

EPA website with guidance documents on Begin Actual Construction:

<https://www.epa.gov/nsr/begin-actual-construction-0>

A copy of this document is available electronically at the following Maine DEP website:

<http://www.maine.gov/dep/air/publications/index.html>

For more information or assistance, please contact a Maine DEP Air Licensing staff member or email us at DEP-Air-Licensing-Help@maine.gov.

⁴ <https://www.epa.gov/system/files/documents/2025-09/tsmc-arizona-begin-actual-construction-epa-response-letter.pdf>