

Subject: Guidance on Air Permitting  
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As you all are aware, legislation was introduced (Senate Bill 1037) during the 2001 session of the GA to change the requirement currently in the General Statutes that an air permit must be issued prior to the construction of an air emission source. The legislation was proposed at least in part due to an Advisory Opinion issued by the Attorney General's Office in February, 2001, which indicated that basically nothing beyond land clearing and grading could be undertaken prior to the issuance of an air permit when a new source of air emissions was to be built on a site. Lengthy negotiations did not produce an agreeable compromise which could be voted on by the end of the last session. Since the new legislation to define what can and can't be done prior to receiving a permit has not been agreed upon by the General Assembly, the General Statutes remain the same and the question of what "construction" is allowed prior to receiving a permit still is somewhat unclear.

Therefore, I am providing you with some guidance on this issue. You should share this information with your staff and this guidance should be used to answer inquiries about what can be constructed prior to receiving an air permit at a site where an emission source is to be constructed.

The following activities are not considered by DAQ to constitute construction of an air contaminant source, equipment or air-cleaning device, and will be allowed to be undertaken on-site prior to the receipt of the state air quality permit at both new and existing, permitted facilities:

- 1) clearing and grading;

- 2) development of access roads, driveways and parking lots;
- 3) construction and installation of underground pipework, including water, sewer and electrical utilities; and
- 4) construction of accessory structures and buildings, including fences and separate offices, that are not a necessary part of the air contaminant source, equipment or air-cleaning device that requires the air quality permit.

Sources requiring a PSD review and permit are subject to the more stringent limitations on the beginning of construction activities prior to permitting, found at 40 CFR Section 51.166(b) (11).

Construction activities will be found to relate to the building and erection of an emission source once those activities extend beyond those specifically allowed above, and thus are not authorized to begin without a permit. DAQ will also consider any activity to be unauthorized if it prejudices the ultimate design of the emission source, and DAQ will not consider any pre-permit investment costs when reviewing the application.

If you have any questions about the guidance, please direct your questions to me or Brock.

Keith