**74:36:20:02.01.  Initiating construction prior to permit issuance.** The owner or operator of a new source or modification to an existing source may only install concrete foundations, below-ground plumbing, ductwork, associated infrastructure and excavation work, or any combination of these activities prior to issuance of the construction permit by the department if the owner or operator meets the following requirements:

 (1)  The owner or operator has submitted a complete application for a construction permit to the department in accordance with § 74:36:20:06 and received a completeness determination from the department in accordance with § 74:36:20:09;

 (2)  The owner or operator has submitted a notification to the department of its intentions to initiate construction prior to issuance of the construction permit five working days before initiating construction;

 (3)  The new source or modification to an existing source is not subject to chapter 74:36:09 or 74:36:10. The provisions in chapter 74:36:09 or 74:36:10 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in chapter 74:36:09 or 74:36:10;

 (4)  The new source or modification to an existing source is not subject to § 74:36:08:03.01. The provisions in § 74:36:08:03.01 remain applicable until the new source or modification to an existing source legally obtains a construction permit with federally enforceable conditions which limit the sources potential to emit below the applicable thresholds in § 74:36:08:03.01;

 (5)  The owner or operator must assume any liability for construction conducted on a source before the permit is issued;

 (6)  The owner or operator must cease construction if the department's evaluation demonstrates the construction of the new source or modification to the existing source will interfere with the attainment or maintenance of a national ambient air quality standard or increment.

 **Source:** 37 SDR 182, effective April 20, 2011; 42 SDR 52, effective October 13, 2015.

 **General Authority:** SDCL 34A-1-6, 34A-1-21.

 **Law Implemented:** SDCL 34A-1-21.