

**45CSR45**  
**STANDARDS OF PERFORMANCE FOR EXISTING CRUDE OIL AND NATURAL GAS**  
**FACILITIES**  
**RESPONSE TO COMMENTS**

The WV Department of Environmental Protection (DEP), Division of Air Quality (DAQ) commenced the public comment period for proposed legislative rule 45CSR45 on May 30, 2025. The public comment period concluded July 1, 2025, after satisfying the 30-day period. A public hearing was held virtually on July 1, 2025. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 45CSR45.

There were four written comments received during the public comment period from: Ms. Stephanie Catarino Wissman, Executive Director, API Pennsylvania Appalachia Region (API); Mr. Charlie Burd, Executive Director, Gas & Oil Association of West Virginia (GO-WV); Mr. James Kotcon, Chair, West Virginia Chapter of Siera Club (SC); and Mr. Steven Sobotka, Environmental Specialist, Williams Ohio Valley Midstream, LLC (Williams). Verbal comments were received during the public hearing from Mr. Jason Wandling representing the West Virginia Manufacturers Association (WVMA). A summary of the consolidated comments and responses are provided below.

The original comments received and the public hearing transcript are provided as part of the formal rulemaking record. The following requirements were revised or added after reviewing and considering the comments received:

- §45-45-2.36 was revised.
- §45-45-2.37 through §45-45-2.49 were renumbered.
- §45-45-4.1.5.b was revised.
- §45-45-7.1 was revised.
- §45-45-7.2.2 was revised.
- §45-45-9.5 was inserted and subsequent requirements were renumbered.
- §45-45-14.5 was revised.

Commenter 1: API Pennsylvania Appalachia Region (API)

COMMENT 1: API supports the adoption of the Draft Legislative Rule 45CSR45 (Standards of Performance for Existing Crude Oil and Natural Gas Facilities) as it overwhelmingly mirrors the model rule under the EPA's *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*.

RESPONSE 1: Thank you for your comment, a response is not necessary.

COMMENT 2: As the Trump Administration announced a reconsideration of 40CFR60, subpart OOOOo, we expect that changes could result to the model rule that would require changes to the WV Legislative Rule as well. Accordingly, we appreciate the department's willingness to adopt the provisions of the model rule by reference, thereby avoiding any discrepancy between the two rules. Likewise, we welcome WV DEP's interest in providing flexibility around other areas where the federal rule is not incorporated, such as Remaining Useful Life (RULOF) adjustments, for example.

RESPONSE 2: Thank you for your comment, a response is not necessary.

COMMENT 3: Where the department has not incorporated the federal EPA rule by reference, it should be prepared to make any changes that may result from the reconsideration of 40CFR60, subpart OOOOc to allow for regulatory consistency across government, enhanced predictability, and certainty in compliance.

RESPONSE 3: The Division of Air Quality (DAQ) is aware of the March 12, 2025, reconsideration announcement regarding the federal counterpart regulation 40CFR60, subpart OOOOc and recognizes subsequent federal actions may likely result in revisions to the corresponding state rule. The DAQ chose the rule format (providing details for affected facility standards of performance and adopting by reference the testing, recordkeeping, and reporting requirements) to allow for clarifications and flexibility in the standards sections when adopting the federal model rule requirements.

West Virginia does not allow perspective rulemaking; therefore, even if DAQ adopted 40CFR60, subpart OOOOc by referencing in its entirety, the DAQ would still need to update the state rule whenever the federal counterpart regulation is revised. The DAQ understands the need for national consistency in regulations such as this.

Commenters 2 and 3: Gas & Oil Association of West Virginia (GO-WV) and West Virginia Manufacturers Association (WVMA)

Unless otherwise specified, the comments in this section were submitted by GO-WV and the WVMA organizations.

COMMENT 4: Members have a vital interest in this proposed legislative rule designated as 45 CSR 45 (“Proposed Rule”), and have been involved in submitting comments and challenging the U. S. Environmental Protection Agency’s (“EPA”) rule establishing “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector” sometimes referred to as “OOOOc.”

RESPONSE 4: Thank you for your comment, a response is not necessary.

COMMENT 5 (GO-WV only): On April 10, 2025, GO-WV filed comments to a preliminary draft of 45 CSR 45, requesting DAQ not to publish the Proposed Rule pending final action by the EPA on reconsideration of OOOOc. GO-WV incorporates those comments by reference to these comments.

RESPONSE 5: The DAQ acknowledges receipt of the April 10, 2025, GO-WV comments on the preliminary draft of 45CSR45. The March 14, 2025 notice of open comment period for the preliminary draft solicited input and communicated that a response to comment document would not be prepared because the open comment period was not a formal public comment period. Because GO-WV incorporated those comments by reference to the July 1, 2025 comments, responses are provided below as a subset of Response 5, including the response regarding the request for DAQ to not publish the proposed rule pending final action by the EPA on reconsideration of OOOOc.

COMMENT 5a: GO-WV members have a vital interest in this proposed legislative rule designated as 45CSR45 (“Proposed Rule”), and have been involved in submitting comments and challenging the U. S. Environmental Protection Agency’s (“EPA”) rule establishing “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector” sometimes referred to as “OOOOc.”

RESPONSE 5a: Thank you for your comment, a response is not necessary.

COMMENT 5b: As noted in the Notice, on March 12, 2025, the Trump EPA announced a reconsideration of 40 C.F.R. 60, subpart OOOOc which is anticipated to result in significant revisions or elimination of that federal rule. In light of this clear change in direction of the federal rules regarding emissions guidelines for existing crude oil and natural gas facilities, GO-WV urges the DAQ to delay action implementing its draft legislative rule 45 CSR 45, until the EPA reconsideration of 40 C.F.R. 60, subpart OOOOc. To proceed with the draft legislative rule at this time will be an inefficient use of the DAQ's limited resources and the resources of the regulated community. Section 111(d) of the Clean Air Act provides states the ability to consider the remaining useful life and other factors for existing sources ("RULOF"). EPA's guidelines and timeframes in OOOOc essentially eliminate the flexibility intended by Congress. It is anticipated that EPA's reconsideration rulemaking will give states additional flexibility to consider RULOF and DAQ should not simply "rubber stamp" the current "guidelines" and tie DAQ's "hands" as it considers regulation of thousands of existing sources in WV. Therefore, GO-WV requests that the DAQ defer taking any action to implement a legislative rule until the EPA takes further action on its announced plan to reconsider OOOOc.

RESPONSE 5b: The DAQ considered the GO-WV request to delay action on proposed legislative rule 45CSR45; however, the DAQ decided to proceed as planned for the following reasons. The EPA announced it will be reconsidering the federal counterpart regulation immediately prior to the open comment period of the DAQ draft rule; therefore, most of the work to draft the rule was already completed. Because DAQ rules cannot be more stringent than the federal counterpart regulations, the DAQ did not believe moving forward with the proposed state rule created a burden on the regulated community which was already familiar with the federal counterpart regulation published in March 2024. The DAQ did not "rubber stamp" the emissions guidelines and the draft rule posted for open comment included RULOF provisions for existing sources in West Virginia.

Although the EPA announced it will be reconsidering the federal counterpart regulation through a future proposed rulemaking, the DAQ remains subject to a March 29, 2026, deadline to submit a State Plan to the EPA where it must demonstrate legal authority to implement the State Plan through a legislative rule which is a lengthy process.

COMMENT 5c: Because we believe that the draft legislative rule should be delayed until a later date and that a formal public notice and comment period will necessarily occur, GO-WV members will hold more detailed comments and concerns regarding the draft legislative rule until that formal comment opportunity.

RESPONSE 5c: Thank you for your comment, a response is not necessary.

COMMENT 6: We support your inclusion at W. Va. Code R. § 45-45-2.19 of a definition of "marginal well site" which does not have a counterpart definition in 40 CFR Part 60 subpart OOOOc. This definition recognizes the reality of oil and gas production in the State of West Virginia and acknowledges the economic reality that many facilities that meet the definition of "marginal well site" will be unable to install controls as required by 40 CFR Part 60 subpart OOOOc.

RESPONSE 6: Thank you for your comment, a response is not necessary.

COMMENT 7: While we support the WVDEP DAQ's inclusion of a definition for "marginal well site," we believe the agency should consider establishing an exemption from regulation for oil and gas wells and regulated facilities with low potential to emit methane. Simply put, some sources are too small to warrant the cost and complexities of the proposed 45 CSR 45 regime. Accordingly, we recommend that the WVDEP

DAQ adopt a categorical exemption for marginal, low-producing oil and gas wells (as defined at W. Va. Code R. § 45-45-2.19) for which regulation of the well will not be able to achieve meaningful methane reductions and for which the imposition of regulation will doubtless render the wells uneconomic. Such wells will be plugged or otherwise abandoned by small producers unable to meet the cost of compliance with the proposed regulations.

RESPONSE 7: The Remaining Useful Life and Other Factors (RULOF) requirements for a process controller designated facility at a marginal well site or a site that does not have access to electrical power (§45-45-12.7) were adopted using the federal model rule requirements for a site in Alaska which does not have access to electrical power (40 CFR § 60.5394c(b)). The RULOF requirements for initial fugitive emissions monitoring at marginal well sites were adopted using federal model rule requirements for single wellhead only sites and small sites which may use AVO monitoring. For sources (or category of sources) which apply for RULOF requirements, the DAQ considers these requirements would be presumptively approvable in a State Plan if the RULOF requirements are satisfied because the provisions were adopted from federal counterpart language. The DAQ does not believe a categorical exemption would be presumptively approval and therefore; no change is made in response to this comment.

COMMENT 8: We request that WVDEP DAQ incorporate in the definitions the term “Routed to a process or route to a process” as defined in 40 C.F.R. 60.5430c as follows: *Routed to a process or route to a process* means the emissions are conveyed via a closed vent system to any enclosed portion of a process that is operational where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

RESPONSE 8: The DAQ added a definition of “Routed to a process or route to a process” as defined in 40 C.F.R. 60.5430c at §45-45-2.36 and renumbered the remainder of the section accordingly. See below.

2.36. “Routed to a process” or “route to a process” means the emissions are conveyed via a closed vent system to any enclosed portion of a process that is operational where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

COMMENT 9: The Proposed Rule provides at § 4.1.5.b:

4.1.5.b. The owner or operator shall calculate the potential for methane emissions as the cumulative emissions from all storage vessels within the tank battery as specified by the applicable requirements in subparagraphs 4.1.5.b.1 through 4.1.5.b.3. When making the determination, the owner or operator may consider requirements under a legally and practicably enforceable limit in a permit issued to the owner or operator under 45CSR13, 45CSR14, 45CSR19, 45CSR30, or other requirements established under federal or state authority.

Permits issued under 45CSR13, 45CSR14, 45CSR19, and 45CSR30 do not carry a legally and practicably enforceable limit for methane. We request that the criteria for what constitutes a legally and practicably enforceable methane limit in the absence of a numerical standard be clarified, or requiring methane limits be clearly defined in the permits.

RESPONSE 9: The DAQ agrees requirement 4.1.5.b needs clarification. Although existing permits may not have a legally and practicably enforceable methane emissions limit, permits issued under 45CSR13, 45CSR14, 45CSR19, and 45CSR30 have legally and practicably enforceable emissions limits, operational limits and/or pollution control device requirements to control VOC emissions which also provide an ancillary and co-benefit of controlling methane emissions. Therefore, the legally and practicably enforceable operational limits and pollution control device requirements providing ancillary and co-benefits may be used when an owner or operator calculates the potential for cumulative methane emissions from all storage vessels within the tank battery. Requirement 4.1.5.b has been revised as follows:

4.1.5.b. The owner or operator shall calculate the potential for methane emissions as the cumulative emissions from all storage vessels within the tank battery as specified by the applicable requirements in subparagraphs 4.1.5.b.1 through 4.1.5.b.3. When making the determination, the owner or operator may consider requirements under a legally and practicably enforceable limit in a permit issued to the owner or operator under 45CSR13, 45CSR14, 45CSR19, 45CSR30, or other requirements established under federal or state authority. The consideration may include limitations which provide ancillary and co-benefits for reducing methane emissions.

COMMENT 10: The WVDEP DAQ should eliminate the “super-emitter” program provisions of W. Va. Code R. § 45-45-7. Instead, enforcement of 45 CSR 45 should rest solely with the WVDEP’s DAQ. The “super-emitter” program creates unreasonable incentives to third parties to attempt “investigations” at critical energy production facilities in the State of West Virginia without meaningful or enforceable standards for third-party investigators or analysts. The proposed rule W. Va. Code R. § 45-45-7 also creates the potential for conflict between third-party investigators and analysts, which emphasizes the basic existing rationale of vesting state inspectors with the authority to perform such work in a safe and meaningful manner.

RESPONSE 10: The standards which apply to super-emitter events are included in EPA’s model rule portion of the emission guidelines which provide the presumptive standards for designated facilities. State plans must be at least as protective as the model rule. The “super-emitter” program provisions of W. Va. Code R. § 45-45-7 were adopted from the corresponding federal regulations found at 40 CFR § 60.5388c and therefore must be included in the state rule.

DAQ requirement §45-45-7.2.1 includes a requirement for owners or operators to report super-emitter events to the State in addition to reporting events directly to the EPA. In response to this comment, section 7.2.2 was modified to also add a requirement to report events to the Secretary in addition to reporting directly to the EPA. Requirement 7.2.2 was revised as follows:

7.2.2 If an owner or operator of an oil and natural gas facility receives notification of a super-emitter event from the U.S. EPA and owns or operates an oil and natural gas facility located within 50 meters of the latitude and longitude provided in the notification and which has a designated facility or associated equipment subject to 45CSR45 onsite, the owner or operator shall investigate to determine the source of the super-emitter event in accordance with this subsection 7.2 and shall report the result(s) in accordance with subsection 7.3 and report this information to the Secretary. The investigation may include and is not limited to the actions specified in paragraphs 7.2.2.a through 7.2.2.e.

COMMENT 11: With regard to W. Va. Code R. § 45-45-9, the proposed rule does not adequately address conditions where it is not technically or economically feasible to route excess associated gas to a sale line

or to flare excess associated gas. These conditions include long distances to a sales line, large sale line connection costs, and insufficient excess gas to fuel a flare. Facilities that meet the definition of W. Va. Code R. § 45-45-2.19 should be allowed to vent and/or allowed to flare without restriction.

RESPONSE 11: Section 9 has more options than only routing excess associated gas to a sales line. Condition §45-45-9.1 allows the recovered associated gas to either: (a) be routed to a gas gathering flow line or to a sales line (9.1.1); use as an onsite fuel source (9.1.2); use for another useful purpose (9.1.3); or inject into the well or another well (9.1.4). These options allow flexibility if there are long distances to a sales line or large sale line connection costs, regardless of whether the associated gas comes from a marginal well.

The control device exception (9.2), which allows flaring in lieu of one of the four options provided under section 9.1, requires one of two conditions to be satisfied. The first is annual methane contained in the associated gas from the oil well is 40 tpy or less at the initial compliance date (9.2.1). The commenter did not specify if a marginal well would satisfy this condition to allow flaring. The alternative condition to allow flaring is to conduct a technical infeasibility analysis demonstrating that none of the provisions allowed under 9.1 can be satisfied (9.2.2).

Temporary exemptions to vent the gas are limited in duration and circumstances (9.3 and 9.4). The duration ranges from 30 minutes during testing/monitoring to 30 days if there is an interruption in service from the gathering or pipeline system. Unrestricted venting of marginal wells is not justified and would not be presumptively approvable by the EPA in a State Plan.

The DAQ is adding a provision to address the scenario where there is insufficient excess gas to fuel a flare and a technical and/or economic infeasibility exists. If the owner/operator of a marginal well (as defined in §45-45-2.19) conducts a technical and/or economic infeasibility demonstration which satisfies the requirements of §45-45-9.2.2 certifying it is not feasible to comply with 9.1.1, 9.1.2, 9.1.3, or 9.1.4 and there is insufficient excess gas to fuel a flare and satisfy the control device exception, then the owner or operator shall route the associated gas through a closed vent system that meets the requirements of section 23 and 40CFR §§ 60.5411c(a) and (c). Subsection 9.5 was inserted to read as follows and subsequent requirements were renumbered:

9.5. Insufficient excess fuel gas exemption. If the owner or operator of a marginal well, as defined in §45-45-2.19, meets the conditions in subdivisions 9.5.1 and 9.5.2, the owner or operator may route the associated gas through a closed vent system that meets the requirements of section 23 and 40CFR §§ 60.5411c(a) and (c) in lieu of complying with subsections 9.1 or 9.2.

9.5.1. If the owner or operator demonstrates and certifies that it is not feasible to comply with subdivisions 9.1.1, 9.1.2, 9.1.3 and 9.1.4 due to technical or economic reasons by providing a detailed analysis documenting and certifying the technical or economic reasons for the infeasibility in accordance with paragraphs 9.2.2.a through 9.2.2.d.

9.5.2. If the owner or operator demonstrates there is insufficient excess gas to fuel a flare and therefore cannot comply with the control device exception in subsection 9.2.

COMMENT 12: We support your inclusion of a “Remaining Useful Life and Other Factors” (“RULOF”) analysis for process controller designated facilities at W. Va. Code R. §45-45-12.7.

RESPONSE 12: Thank you for your comment, a response is not necessary.

COMMENT 13: We support your adoption of a RULOF analysis at W. Va. Code R. § 45-45-15.13 for initial fugitive emission monitoring surveys and for monitoring frequency of subsequent fugitive emission monitoring surveys for marginal well sites. The requirements for fugitive emissions monitoring, as applied to marginal, low-producing wells, are unnecessarily and unreasonably expensive, as well as time consuming. The monitoring methods and frequencies are based on an erroneous component count theory rather than throughput. The recordkeeping and reporting requirements are too costly, complex, and onerous. Marginal wells have low and limited production revenue and producers are successful only if there are able to operate at low cost. We applaud the WVDEP DAQ’s recognition of these operational facts.

RESPONSE 13: Thank you for your comment, a response is not necessary.

COMMENT 14: With regard to oil and gas well plugging requirements, we appreciate the insertion of RULOF analyses at W. Va. Code R. §45-45-15.14 and 15.15. Your inclusion of these tools recognizes the economic reality of well plugging in the State of West Virginia and will encourage the plugging, rather than mere abandonment or orphanage, of marginal wells in the State.

RESPONSE 14: Thank you for your comment, a response is not necessary.

COMMENT 15 (GO-WV only): GO-WV requests that the WVDEP DAQ defer taking any action to implement a Proposed Rule until the EPA takes further action on its announced plan to reconsider OOOOc.

RESPONSE 15: The DAQ receives federal grants from EPA which assist with funding implementation of the Clean Air Act in West Virginia and for which the DAQ is obligated to meet certain commitments, including the development and implementation of State Plans. Although EPA made reconsideration announcements regarding the federal counterpart regulation, the final regulation remains in effect and the DAQ is required to submit a State Plan to EPA by March 9, 2026.

Given the length of time needed to promulgate a state rule (needed for a State Plan), compounded with the timing and uncertainty of what may be included in a proposed federal regulation reconsideration, the DAQ is proceeding with the next step in the rulemaking process and will continue to monitor federal developments. The DAQ state rule cannot be more stringent than the federal counterpart regulation; therefore, changes to the federal counterpart regulations will be reflected in future proposed revisions (or repeal) to the state rule.

Commenter 4: West Virginia Chapter of Sierra Club (SC)

COMMENT 16: This is a critically important rule, as methane emissions constitute a significant source of greenhouse gases.

RESPONSE 16: Thank you for your comment, a response is not necessary.

COMMENT 17: We are concerned that section 6, Remaining Useful Life and Other Factors (RULOF), requires more specificity, as it seems likely that most well owners will attempt to achieve the weaker standards.

RESPONSE 17: The RULOF requirements in section 6 are based on the corresponding federal requirements at 40 CFR § 60.5365c (subpart OOOOc) and 40 CFR § 60.24a (subpart Ba) for States to include RULOF requirements in a State Plan for designated facilities or categories of designated facilities where it can demonstrate that the facility (or class of such facilities) cannot reasonably achieve the degree of emission limitation determined by the EPA based on: (i) unreasonable cost of control resulting from plant age, location, or basic process design; (ii) physical impossibility or technical infeasibility of installing necessary control equipment; or (iii) other circumstances specific to the facility. In the absence of a specific requirement being requested for more specificity or suggested language, the DAQ is unclear what additional specificity the commentor is requesting. There is no change being made to section 6 in response to this comment.

Commenter 5: Williams Ohio Valley Midstream, LLC (Williams)

COMMENT 18: In Section 7.1, for clarity please revise "...under 40CFR60, subpart OOOOb § 60.5371b(c)." to the applicable reference of 40 CFR §60.5388c. This aligns more consistently with Section 1.1, the scope of this rule.

RESPONSE 18: The DAQ agrees and revised §45-45-7.1 accordingly and as follows:

7.1. Super-emitter events. The owner or operator shall comply with the requirements listed in subsections 7.2 and 7.3 upon receiving notification of a super-emitter event issued by the U.S. EPA under ~~40CFR60, subpart OOOOb § 60.5371b(c)~~ 40 CFR §60.5388c.

COMMENT 19: In Section 14.5 consider evaluating the inclusion of 40CFR60, Subpart Kc as a listed exemption for storage vessels. This section only references Subpart Kb while Subpart Kc was published in the Federal Register (89 FR 83319) on October 15, 2024.

RESPONSE 19: The DAQ agrees the intention was for the exemption to extend to 40 CFR 60, subpart Kc for the following reasons. The corresponding federal counterpart to section 14.5 is 40 CFR §60.5396c(e) published March 8, 2024 (89FR16820) which referenced 40 CFR 60, subpart Kb prior to promulgation of subpart Kc.

Although numerous technical corrections to 40 CFR 60, subpart OOOOc were published August 1, 2024 (89FR62872), these corrections also occurred prior to subpart Kc being published October 15, 2024. The DAQ therefore revised §45-45-14.5 as follows:

14.5. Exemptions. The requirements of 45CSR45 do not apply to storage vessels subject to and controlled in accordance with the requirements for storage vessels in 40CFR60, subpart Kb or Kc and 40CFR63, subparts G, CC, HH, or WW.



July 1, 2025

Laura Jennings  
Division of Air Quality  
WV Department of Environmental Protection  
601 57th Street SE  
Charleston, WV 25304

Submitted via Email: [laura.m.jennings@wv.gov](mailto:laura.m.jennings@wv.gov)

Re: DAQ Draft Legislative Rule 45CSR45 (Standards of Performance for Existing Crude Oil and Natural Gas Facilities)

Dear Ms. Jennings:

The American Petroleum Institute (API) represents all segments of America's natural gas and oil industry, which supports nearly 11 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. Our approximately 600 members produce, process, and distribute the majority of the nation's energy, and participate in *API Energy Excellence*<sup>®</sup>, which is accelerating environmental and safety progress by fostering new technologies and transparent reporting. API was formed in 1919 as a standards-setting organization and has developed more than 800 standards to enhance operational and environmental safety, efficiency, and sustainability.

API supports the adoption of the Draft Legislative Rule 45CSR45 (Standards of Performance for Existing Crude Oil and Natural Gas Facilities) as it overwhelmingly mirrors the model rule under the EPA's *Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review*. However, as the Trump Administration announced a reconsideration of 40CFR60, subpart OOOOc, we expect that changes could result to the model rule that would require changes to the WV Legislative Rule as well.

Accordingly, we appreciate the department's willingness to adopt the provisions of the model rule by reference, thereby avoiding any discrepancy between the two rules. Likewise, we welcome WV DEP's interest in providing flexibility around other areas where the federal rule is not incorporated, such as Remaining Useful Life (RULOF) adjustments, for example. However, where the department has not incorporated the federal EPA rule by reference, it should be prepared to make any changes that may result from the reconsideration of 40CFR60, subpart OOOOc to allow for regulatory consistency across government, enhanced predictability, and certainty in compliance.

We thank you for your time and consideration of our comments. To the extent that you have questions regarding this suggestion, or would like to discuss this matter further, please do not hesitate to contact us.

Sincerely,

Stephanie Catarino Wissman  
Executive Director, API Pennsylvania  
Appalachia Region



**GAS & OIL ASSOCIATION OF WEST VIRGINIA**

**COMMENTS CONCERNING PROPOSED LEGISLATIVE RULE 45 CSR 45**

**STANDARDS OF PERFORMANCE FOR EXISTING CRUDE OIL  
AND NATURAL GAS FACILITIES**

July 1, 2025

To: [Laura.M.Jennings@WV.gov](mailto:Laura.M.Jennings@WV.gov)

Attention: Division of Air Quality  
601 57th Street SE  
Charleston, WV 25304  
Attention: Laura M. Jennings  
Phone: (304) 926-0475  
E-mail: [Laura.M.Jennings@WV.gov](mailto:Laura.M.Jennings@WV.gov)

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The Gas & Oil Association of West Virginia (“GO-WV”) offer the following comments in response to the Notice of Public Comment Period for new Division of Air Quality (“DAQ”) Legislative Rule 45 CSR 45 “Standards of Performance for Existing Crude Oil and Natural Gas Facilities” (“Notice”). The West Virginia Department of Environmental Protection (“DEP”) filed the Notice on May 30, 2025 and requested that comments be submitted by 5:00 p.m. July 1, 2025.

GO-WV members have a vital interest in this proposed legislative rule designated as 45 CSR 45 (“Proposed Rule”), and have been involved in submitting comments and challenging the U. S. Environmental Protection Agency’s (“EPA”) rule establishing “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector” sometimes referred to as “OOOOC.”

On April 10, 2025, GO-WV filed comments to a preliminary draft of 45 CSR 45, requesting DAQ not to publish the Proposed Rule pending final action by the EPA on reconsideration of OOOOC. GO-WV incorporates those comments by reference to these comments.

## GO-WV Comments on Proposed Legislative Rule 45 CSR 45

### Specific Comments to Proposed Rule

1. We support your inclusion at W. Va. Code R. § 45-45-2.19 of a definition of “marginal well site” which does not have a counterpart definition in 40 CFR Part 60 Subpart OOOOc. This definition recognizes the reality of oil and gas production in the State of West Virginia and acknowledges the economic reality that many facilities that meet the definition of “marginal well site” will be unable to install controls as required by 40 CFR Part 60 Subpart OOOOc.

2. While we support the WVDEP DAQ’s inclusion of a definition for “marginal well site,” we believe the agency should consider establishing an exemption from regulation for oil and gas wells and regulated facilities with low potential to emit methane. Simply put, some sources are too small to warrant the cost and complexities of the proposed 45 CSR 45 regime. Accordingly, we recommend that the WVDEP DAQ adopt a categorical exemption for marginal, low-producing oil and gas wells (as defined at W. Va. Code R. § 45-45-2.19) for which regulation of the well will not be able to achieve meaningful methane reductions and for which the imposition of regulation will doubtless render the wells uneconomic. Such wells will be plugged or otherwise abandoned by small producers unable to meet the cost of compliance with the proposed regulations.

3. We request that WVDEP DAQ incorporate in the definitions the term “Routed to a processor or route to a processor” as defined in 40 C.F.R. 60.5430c as follows:

*Routed to a process or route to a process* means the emissions are conveyed via a closed vent system to any enclosed portion of a process that is operational where the emissions are predominantly recycled and/or consumed in the same manner as a material that fulfills the same function in the process and/or transformed by chemical reaction into materials that are not regulated materials and/or incorporated into a product; and/or recovered.

4. The Proposed Rule provides at § 4.1.5.b:

4.1.5.b. The owner or operator shall calculate the potential for methane emissions as the cumulative emissions from all storage vessels within the tank battery as specified by the applicable requirements in subparagraphs 4.1.5.b.1 through 4.1.5.b.3. When making the determination, the owner or operator may consider requirements under a legally and practicably enforceable limit in a permit issued to the owner or operator under 45CSR13, 45CSR14, 45CSR19, 45CSR30, or other requirements established under federal or state authority.

GO-WV notes that permits issued under 45CSR13, 45CSR14, 45CSR19, and 45CSR30 do not carry a legally and practicably enforceable limit for methane. We request that the criteria for what constitutes a legally and practicably enforceable methane limit in the absence of a numerical standard be clarified, or requiring methane limits be clearly defined in the permits.

## GO-WV Comments on Proposed Legislative Rule 45 CSR 45

5. The WVDEP DAQ should eliminate the “super-emitter” program provisions of W. Va. Code R. § 45-45-7. Instead, enforcement of 45 CSR 45 should rest solely with the WVDEP’s DAQ. The “super-emitter” program creates unreasonable incentives to third parties to attempt “investigations” at critical energy production facilities in the State of West Virginia without meaningful or enforceable standards for third-party investigators or analysts. The proposed rule W. Va. Code R. § 45-45-7 also creates the potential for conflict between third-party investigators and analysts, which emphasizes the basic existing rationale of vesting state inspectors with the authority to perform such work in a safe and meaningful manner.

6. With regard to W. Va. Code R. § 45-45-9, the proposed rule does not adequately address conditions where it is not technically or economically feasible to route excess associated gas to a sale line or to flare excess associated gas. These conditions include long distances to a sales line, large sale line connection costs, and insufficient excess gas to fuel a flare. Facilities that meet the definition of W. Va. Code R. § 45-45-2.19 should be allowed to vent and/or allowed to flare without restriction.

7. We support your inclusion of a “Remaining Useful Life and Other Factors” (“RULOF”) analysis for process controller designated facilities at W. Va. Code R. §45-45-12.7.

8. We support your adoption of a RULOF analysis at W. Va. Code R. § 45-45-15.13 for initial fugitive emission monitoring surveys and for monitoring frequency of subsequent fugitive emission monitoring surveys for marginal well sites. The requirements for fugitive emissions monitoring, as applied to marginal, low-producing wells, are unnecessarily and unreasonably expensive, as well as time consuming. The monitoring methods and frequencies are based on an erroneous component count theory rather than throughput. The recordkeeping and reporting requirements are too costly, complex, and onerous. Marginal wells have low and limited production revenue and producers are successful only if there are able to operate at low cost. We applaud the WVDEP DAQ’s recognition of these operational facts.

9. With regard to oil and gas well plugging requirements, we appreciate the insertion of RULOF analyses at W. Va. Code R. §45-45-15.14 and 15.15. Your inclusion of these tools recognizes the economic reality of well plugging in the State of West Virginia and will encourage the plugging, rather than mere abandonment or orphanage, of marginal wells in the State.

GO-WV appreciates the opportunity to offer the foregoing comments, including its request that the WVDEP DAQ defer taking any action to implement a Proposed Rule until the EPA takes further action on its announced plan to reconsider OOOOc. If you would like us to expand on or further explain these comments, we would welcome a chance to do so. Please contact Charlie Burd at [cburd@gowv.com](mailto:cburd@gowv.com).

**Respectfully Submitted,**

**Gas & Oil Association of West Virginia**



**SIERRA  
CLUB**

**Sierra Club**  
**West Virginia Chapter**  
P.O. Box 4142  
Morgantown, WV 26504

June 30, 2025

Laura Jennings  
601 57<sup>th</sup> Street, SE  
Charleston, WV 25304

Via email to: [laura.m.jennings@wv.gov](mailto:laura.m.jennings@wv.gov)

Dear Ms. Jennings:

Please accept the following comments on behalf of the WV Chapter of Sierra Club. The Sierra Club appreciates the opportunity to comment, and is committed to maintaining and improving air quality in West Virginia.

For rules listed below where we did not find substantive changes, we cite “No comments”. However, we reserve the right to offer additional comments if substantive changes are proposed or identified.

**45-CSR-1. Alternative emission limitations during startup and shutdown operations.**

While there do not appear to be any substantive changes, we urge that the rule be strengthened to include limits during malfunctions, as well as startups and shutdowns. These malfunctions in pollution controls often mean large pulses of pollutants that could exceed ambient air quality standards. Including limits for malfunctions would provide an incentive for facilities to develop preventive maintenance practices to avoid such pollution.

We also note that section 1.6 indicates that the rule applies to sources subject to 45CSR 2, 3, 5, 6, 7, 10 and 21; however, the new text in section 6.4 lists 45csr 1, 13, 14 and 19. Should this be clarified to assure the applicability section refers to all relevant rules?

**45-CSR-8. Ambient air quality standards**

No comments.

**45-CSR-16. Standards for New Stationary Sources**

No comments.

**45-CSR-18. Air Pollution from Combustion of Solid Waste**

No comments.

**45-CSR-25. Hazardous waste facilities**

No comments.

**45-CSR-34. Emissions standards for Hazardous Air Pollutants.**

No comments.

**45-CSR-43. CSAPR to control NO<sub>x</sub> and SO<sub>2</sub>.**

This proposed rule incorporates updates to the federal counterpart rules. We support these updates in principle, but recommend the following clarifications. Sections 5.2 through 5.7 describe a complex trading budget process for the West Virginia NO<sub>x</sub> Ozone Season. While this may be appropriate for existing facilities, WV-DEP has issued permits for several large new sources, and has applications for several more. In addition, local utilities have announced plans to add several new large gas-fired power plants. It is not clear how all of these can be accommodated given the relatively limited tons available (5 %) in the new unit set-aside. Further explanation and clarification of the “dynamic trading budget” and definition of how it works would help make the rule more understandable.

**45-CSR-45. Standards for existing oil and gas facilities,**

This is a critically important rule, as methane emissions constitute a significant source of greenhouse gases. We are concerned that section 6, Remaining Useful Life and Other Factors (RULOF), requires more specificity, as it seems likely that most well owners will attempt to achieve the weaker standards.

Thank you for your attention to these issues.

Sincerely,

James Kotcon, Chair  
West Virginia Chapter of Sierra Club



WE MAKE CLEAN ENERGY HAPPEN®

Williams Ohio Valley Midstream, LLC  
100 Teletech Drive, Suite #2  
Moundsville, WV 26041

July 1, 2025

**VIA EMAIL:** [laura.m.jennings@wv.gov](mailto:laura.m.jennings@wv.gov)

Laura Jennings  
WV Department of Environmental Protection  
Division of Air Quality  
601 57th Street, SE  
Charleston, WV 25304-2345

**RE:** 2026 Proposed DAQ Rule Comments: 45CSR45 (*Standards of Performance for Existing Crude Oil and Natural Gas Facilities*)

Dear Ms. Jennings,

Williams Ohio Valley Midstream ("Williams OVM") has reviewed the proposed West Virginia state rule (45 CSR 45) and is pleased to submit the following comments:

**Comment #1**

In Section 7.1, for clarity please revise "...under 40CFR60, subpart OOOOb § 60.5371b(c)." to the applicable reference of 40 CFR §60.5388c. This aligns more consistently with Section 1.1, the scope of this rule.

**Comment #2**

In Section 14.5 consider evaluating the inclusion of 40CFR60, Subpart Kc as a listed exemption for storage vessels. This section only references Subpart Kb while Subpart Kc was published in the Federal Register (89 FR 83319) on October 15, 2024.

Williams OVM appreciates the opportunity to review and provide these comments. Thank you for your time and consideration of the comments we have submitted.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Sobotka". The signature is fluid and cursive, with a prominent initial "S".

Steven J. Sobotka  
Environmental Specialist  
Williams Ohio Valley Midstream, LLC

PROPOSED 2026 DAQ LEGISLATIVE RULES - VIRTUAL PUBLIC HEARING

Tuesday, July 1, 2025 at 6:00 p.m.

List of Registrars

6/16/2025 14:58:25	bc.ro.d.spart@wv.gov	Bezie	Owner	26702P - DAQ	MT 2711 Street SE	Chapelton, WV 26010	No	None
6/16/2025 15:44:04	Laura.LaSherr@wv.gov	Laura	Chairman	DAQ	501 20th Street, SE	Chapelton, WV 26004	No	
6/24/2025 8:49:48	eric.j.walsh@wv.gov	Eric	Spokesman	TRAIL	161 Richmond Way	Georgetown, WV 26866	No	None
6/12/2025 7:03:42	mark.walsh@wv.gov	Mark	Spokesman	Quarry Postoffice	2040 Monahan Plaza	Applegate, VA 22604	No	None
6/11/2025 14:05:46	jeff@wv.com	James Patton	Chair	WV Chapter of Ciro's Club	Montgomery, WV 26366	Montgomery, WV 26366	Yes	MSDPH - Tobacco Enforcement Limitations Control
6/16/2025 14:27:28	Kathleen.Hughes@wv.gov	Kathleen	Mayor	26702P	MT 2711 St. SE	Chapelton, WV 26010	No	
7/1/2025 12:52:59	owend@wv.gov	Jenna	Mayor/Chair	Spokane Township & Stable Field	304 Marlowe Blvd E	Chapelton, WV 26014	No	
7/1/2025 13:24:19	rd@wv.com	Bill	Member	WV Chapter of Ciro's Club	2004 Duane Street	Chapelton, WV 26014	No	None

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DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF AIR QUALITY  
PUBLIC HEARINGS FOR  
PROPOSED 2026 LEGISLATIVE RULES  
45CSR1, 45CSR8, 45CSR16, 45CSR18,  
45CSR25, 45CSR34, 45CSR43, and 45CSR45

Taken On  
July 1, 2025  
at  
6:00 p.m.

on behalf of

West Virginia Department of  
Environmental Protection  
Division of Air Quality

via

Google Meet Videoconference

\*\*\*\*\*

Transcript of the public hearing in the  
above matter, held pursuant to notice remotely via  
Google Meet, on the 1st day of July, 2025.

ESQUIRE DEPOSITION SOLUTIONS  
BRAD L. COOPER, Notary Public  
713 Lee Street  
Charleston, West Virginia 25301  
(202) 429-0014  
www.esquiresolutions.com

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APPEARANCES:

Nicole Ernest, WVDEP DAQ Administrative Services  
Manager

Laura Jennings, WVDEP DAQ Assistant Director

Richard Eric Ray, WVDEP DAQ Engineer

Jason Wandling, West Virginia Manufacturers  
Association (WVMA)

Brad Cooper, Court Reporter

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P R O C E E D I N G S

(Proceedings commenced at 6:06 p.m.)

MS. ERNEST: Good evening, and thank  
you for participating in the public hearing  
tonight. My name is Nicole Ernest with the West  
Virginia Department of Environmental Protection's  
Division of Air Quality. Welcome to the public  
hearings for the Division of Air Quality's eight  
proposed rules for the upcoming 2026 West Virginia  
Legislative Session.

There will be a separate public  
hearing for each of the eight DAQ proposed rules.  
The hearings will be held sequentially and will  
commence immediately following the conclusion of  
the hearing for the previous proposed rule.

With me this evening from the Division  
of Air Quality is Laura Jennings. A court reporter  
is also in attendance this evening.

The purpose of each public hearing is  
to receive public comments on the record regarding  
each of the proposed DAQ rules. DAQ is limiting  
public comments to the proposed revisions to the  
rules and is not soliciting comments not related to  
the proposed revisions.

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Each public hearing is being recorded  
and a court reporter is in attendance to meet Clean  
Air Act requirements and to consider comments  
during the rulemaking process. The purpose of the  
public hearing is to listen to your comments. It  
is not a forum to engage the DAQ in open discussion  
or debate about proposed rules.

Unlike a public meeting, the DAQ will  
not be responding to questions during the hearing.  
All comments received will be addressed in a  
response to comments document that will be part of  
the official rulemaking record made available on  
the Secretary of State's website.

All participants are asked to mute  
their mics to ensure we are not interrupting others  
or talking over one another.

Participants were asked to  
pre-register to speak and will be called upon when  
it's your turn to speak. When called upon, you  
will be unmuted and told to go ahead with your  
comment. Please clearly state your name and  
indicate if you're representing any organization or  
group, and limit your comments to five minutes.

Please specify when your comment is

Page 5

1 finished and re-mute your mic. If you did not  
2 pre-register as a speaker but would like to speak,  
3 please use the "raise hand" feature in Google Meet.  
4 As a reminder, video demonstration and screen  
5 sharing by witnesses is not permitted.  
6 The chat feature in Google Meet will  
7 be monitored during the public hearing to assist  
8 with any technical issues. We ask everyone be  
9 respectful and considerate of each other by:  
10 Refraining from using foul language, refraining  
11 from name calling, refraining from interrupting  
12 others while they are speaking, and keeping your  
13 comments on topic of the proposed DAQ rule.  
14 I am now turning this over to Laura  
15 Jennings with the Division of Air Quality.  
16 MS. JENNINGS: Thanks, Nicole. Is the  
17 court reporter ready?  
18 COURT REPORTER: I am.  
19 MS. JENNINGS: Okay, thank you.  
20 (Public hearing for Proposed  
21 Legislative Rule 45CSR1 commenced at  
22 6:08 p.m.)  
23 Okay. The virtual hearing for the  
24 proposed legislative rule 45CSR1, Alternative

Page 6

1 Emission Limitations During Startup and Shutdown  
2 Operations, will now come to order on this 1st day  
3 of July 2025.  
4 Oral comments and testimony will be  
5 accepted until the close of this hearing and will  
6 be made part of the rulemaking record. Any  
7 question regarding revisions to the rules should be  
8 included with your comments, and any such question  
9 will be addressed as part of the response to  
10 comment in the rulemaking record.  
11 The purpose of this public hearing is  
12 to accept comments on proposed revisions to Rule 1,  
13 which was last promulgated in the 2024 session.  
14 This rule sets forth the criteria and  
15 air quality permit application requirements for  
16 establishing an alternative emission limitation  
17 during periods of startup or shutdown.  
18 The rule is being revised to address  
19 state implementation plan approvability concerns  
20 with the severability language and Section 8 by  
21 removing this language. Additionally,  
22 recordkeeping and reporting requirements were  
23 streamlined in Sections 6.2 and 6.4, and  
24 Requirements 3.2 and 3.8 were clarified.

Page 7

1 The floor is now open for comments.  
2 Nicole, has anyone pre-registered to provide  
3 comments on proposed Rule 45CSR1? If so, please  
4 unmute their line and call on them now.  
5 MS. ERNEST: Thank you. We have one  
6 person that pre-registered to speak. Jim Kotcon,  
7 if you're available, please unmute your mic, state  
8 your name, and indicate any organization that  
9 you're representing.  
10 And Jim, if you phoned in, you can  
11 unmute your mic by pressing \*6.  
12 (No response.)  
13 MS. ERNEST: Okay. We'll move on. If  
14 you did not pre-register to speak but would like to  
15 do so now, please use the "raise hand" option or  
16 unmute your mic, state your name, and indicate any  
17 group you may be representing. And if you are  
18 joining us by telephone, please unmute your line by  
19 pressing \*6.  
20 Going once, going twice. Laura, back  
21 to you.  
22 MS. JENNINGS: Thanks, Nicole. There  
23 being nothing further, the public hearing for  
24 Proposed Rule 45CSR1 is concluded. The public

Page 8

1 hearing for Proposed Rule 45CSR8 will begin  
2 momentarily.  
3 (Public hearing for Proposed  
4 Legislative Rule 45CSR1 concluded at  
5 6:11 p.m.)  
6 MS. JENNINGS: Okay. Is the court  
7 reporter ready for the next hearing?  
8 COURT REPORTER: I am.  
9 MS. JENNINGS: Thank you. Okay.  
10 (Public hearing for Proposed  
11 Legislative Rule 45CSR8 commenced at  
12 6:11 p.m.)  
13 MS. JENNINGS: The virtual public  
14 hearing for the Proposed Legislative Rule 45CSR8,  
15 Ambient Air Quality Standards, will now come to  
16 order on this 1st day of July 2025.  
17 Oral comments and testimony will be  
18 accepted until the close of this hearing and will  
19 be made part of the rulemaking record. Any  
20 question regarding revisions to the rule should be  
21 included with your comments, and any such question  
22 will be addressed as part of the response to  
23 comments in the rulemaking record.  
24 The purpose of this public hearing is

<p style="text-align: right;">Page 9</p> <p>1 to accept comments on proposed revisions to 45CSR8, 2 which was last promulgated in the 2025 session. 3 This rule establishes and adopts 4 ambient air quality standards in West Virginia for 5 carbon monoxide, lead, nitrogen dioxide, ozone, 6 particulate matter, and sulfur dioxide, equivalent 7 to the national primary and secondary ambient air 8 quality standards established under Section 109 of 9 the Clean Air Act and promulgated by the United 10 States Environmental Protection Agency under 40 11 C.F.R. Part 50. 12 This rule also establishes and adopts 13 ambient air monitoring reference methods and 14 equivalence methods promulgated by the U.S. EPA 15 under 40 C.F.R. Part 53. Reference, excuse me, 16 reference methods are used to determine attainment 17 or non-attainment of the NAAQS. 18 Revisions to the rule include the 19 annual incorporation by reference of 40 CFR Parts 20 50 and 53 promulgated by the U.S. EPA as of June 21 1st, 2025, by updating the IBR date in section 1.6 22 and the adoption of standard states in sections 3.1 23 and 3.2. The severability language in section 5 24 was removed to address State Implementation Plan</p>	<p style="text-align: right;">Page 11</p> <p>1 MS. JENNINGS: Okay, thank you. 2 (Public hearing for Proposed 3 Legislative Rule 45CSR16 commenced at 4 6:15 p.m.) 5 MS. JENNINGS: The virtual public 6 hearing for the proposed legislative rule 45CSR16, 7 Standards of Performance For New Stationary 8 Sources, will now come to order on this 1st day of 9 July 2025. 10 Oral comments and testimony will be 11 accepted until the close of this hearing and will 12 be made part of the rulemaking record. Any question 13 regarding revisions to the rules should be included 14 with your comments and any such question will be 15 addressed as part of the response to comments 16 document in the rulemaking record. 17 The purpose of this public hearing is 18 to accept comments on proposed revisions to rule 19 45CSR16. This rule, last promulgated in the 2025 20 session, establishes and adopts national standards 21 of performance for new stationary sources and other 22 regulatory requirements promulgated by the United 23 States Environmental Protection Agency pursuant to 24 section 111(b) of the Federal Clean Air Act. This</p>
<p style="text-align: right;">Page 10</p> <p>1 (SIP) approvability concerns. 2 The floor is now open for comments. 3 Nicole, has anyone pre-registered to provide 4 comments on proposed rule 45CSR8? If so, please 5 unmute their line and call on them now. 6 MS. ERNEST: Thanks, Laura. We do not 7 have anyone pre-registered to speak. If you did 8 not pre-register to speak but would like to do so 9 now, please use the "raise hand" option. If you 10 are joining us by telephone, please unmute your 11 line by pressing *6. 12 Going once, going twice, back to you, 13 Laura. 14 MS. JENNINGS: Okay. Thanks, Nicole. 15 There being nothing further, this public hearing 16 for proposed rule 45CSR8 is concluded. The public 17 hearing for the proposed rule 45CSR16 will begin 18 momentarily. 19 (Public hearing for Proposed 20 Legislative Rule 45CSR8 concluded at 21 6:15 p.m.) 22 MS. JENNINGS: Is the court reporter 23 ready for the next hearing? 24 COURT REPORTER: I am.</p>	<p style="text-align: right;">Page 12</p> <p>1 rule codifies general procedures and criteria to 2 implement standards of performance for new 3 stationary sources set forth in 40 CFR Part 60. 4 The rule also adopts associated 5 appendices, reference methods, performance 6 specifications, and other test methods which are 7 appended to such standards. Revisions to this rule 8 are necessary to maintain consistency with current 9 federal regulations and for the State to fulfill 10 its responsibilities under the Clean Air Act and 11 enable the West Virginia Department of 12 Environmental Protection to continue to be the 13 primary enforcement authority for such national 14 standards promulgated by the U.S. EPA. 15 Revisions to this rule include 16 updating the annual incorporation by reference of 17 the New Source Performance Standards, or NSPS, 18 promulgated by the EPA under 40 CFR part 60 as of 19 June 1st, 2025, by updating the IBR dates in 20 subsections 1.6 and 4.1. The severability language 21 in section 8 was removed to address program 22 delegation approvability concerns. 23 The floor is now open for comments. 24 Nicole, has anyone pre-registered to provide</p>

Page 13

1 comments on proposed rule 45CSR16? If so, please  
2 unmute their line now and call on them. Thank you.  
3 MS. ERNEST: Thanks, Laura. We do not  
4 have anyone pre-registered to speak. If you did  
5 not pre-register to speak but would like to do so  
6 now, please use the "raise hand" option or unmute  
7 your mic.  
8 If you're joining us by telephone,  
9 please unmute your line by pressing \*6.  
10 Going once. Going twice. We'll  
11 return to you, Laura.  
12 MS. JENNINGS: Thanks, Nicole. There  
13 being nothing further, this public hearing for  
14 proposed rule 45CSR16 is concluded. The public  
15 hearing for proposed rule 45CSR18 will begin  
16 momentarily.  
17 (Public hearing for Proposed  
18 Legislative Rule 45CSR8 concluded at  
19 6:19 p.m.)  
20 MS. JENNINGS: Is the court reporter  
21 ready for the next hearing?  
22 COURT REPORTER: I am.  
23 MS. JENNINGS: Okay, thank you.  
24 (Public hearing for Proposed

Page 14

1 Legislative Rule 45CSR18 commenced at  
2 6:19 p.m.)  
3 MS. JENNINGS: The virtual public  
4 hearing for the proposed legislative rule 45CSR18,  
5 Control of Air Pollution From the Combustion of  
6 Solid Waste, will now come to order on this 1st day  
7 of July 2025.  
8 Oral comments and testimony will be  
9 accepted until the close of this hearing and will  
10 be made part of the rulemaking record. Any  
11 question regarding revisions to the rules should be  
12 included with your comments, and any such question  
13 will be addressed as part of the response to  
14 comments document in the rulemaking record.  
15 The purpose of this public hearing is  
16 to accept comments on proposed revisions to rule  
17 45CSR18, which was last promulgated in 2022. This  
18 rule adopts standards of performance, and  
19 implements the federal emission guidelines and  
20 compliance times pursuant to §§ 111(b), 111(d) and  
21 129 of the federal Clean Air Act to control certain  
22 designated pollutants from new and existing  
23 affected large municipal waste combustors, small  
24 municipal waste combustion units; hospital,

Page 15

1 medical, and infectious waste incinerators;  
2 commercial and industrial solid waste incineration  
3 units; other solid waste incineration units; and  
4 sewage sludge incineration units in West Virginia.  
5 The rule is being revised to address  
6 deficiencies identified by EPA and comport with EPA  
7 Method 23. Revisions to the rule include: (1)  
8 changed Secretary to Administrator in section 9.6.I  
9 to reflect that EPA retains this authority; revised  
10 performance testing sections 9.7.g.2 and 9.7.j.2 to  
11 reflect reorganization in EPA Test Method 23;  
12 corrected numbering references in sections 9.13.b  
13 and 9.13.e; corrected the reference in footnote c  
14 and clarified the averaging time for cadmium and  
15 dioxins in Table 45-18M; updated the numbering and  
16 text formats to comport with 153CSR1 and replaced  
17 alphabetic numbers with numbers throughout; updated  
18 the incorporation by reference (IBR) of the New  
19 Source Performance Standards (NSPS) promulgated by  
20 the EPA under 40 CFR part 60 as of June 1st, 2025,  
21 by updating the IBR dates in section 1.8.  
22 The floor is now open for comments.  
23 Nicole, has anyone pre-registered to  
24 provide comments on proposed rule 45CSR18?

Page 16

1 MS. ERNEST: Thanks, Laura. We do not  
2 have anyone pre-registered to speak. If you did  
3 not pre-register to speak but would like to do so  
4 now, please use the "raise hand" option or unmute  
5 your mic.  
6 If you are joining us by telephone,  
7 please unmute your line by pressing \*6.  
8 Going once. Going twice. We'll  
9 return to you, Laura.  
10 MS. JENNINGS: Thanks, Nicole. There  
11 being nothing further, this public hearing for  
12 proposed rule 45CSR18 is concluded. The public  
13 hearing for proposed rule 45CSR25 will begin  
14 momentarily.  
15 (Public hearing for Proposed  
16 Legislative Rule 45CSR18 concluded at  
17 6:23 p.m.)  
18 MS. JENNINGS: Is the court reporter  
19 ready for the next hearing?  
20 COURT REPORTER: I am.  
21 MS. JENNINGS: Okay. Thank you.  
22 (Public hearing for Proposed  
23 Legislative Rule 45CSR25 commenced at  
24 6:19 p.m.)

<p style="text-align: right;">Page 17</p> <p>1 MS. JENNINGS: The virtual public 2 hearing for the proposed legislative rule 45CSR25, 3 Control of Air Pollution from Hazardous Waste 4 Treatment, Storage and Disposal Facilities, will 5 now come to order on this 1st day of July 2025. 6 Oral comments and testimony will be 7 accepted until the close of this hearing and will 8 be made part of the rulemaking record. Any 9 question regarding revisions to the rule should be 10 included with your comments and any such question 11 will be addressed as part of the response to 12 comments in the rulemaking record. 13 The purpose of this public hearing is 14 to accept comments on proposed revisions to rule 15 45CSR25 which was last promulgated in 2025. The 16 rule incorporates by reference emission standards 17 for the treatment, storage and disposal of 18 hazardous waste including any reference methods, 19 performance specifications and other test methods 20 that have been promulgated by the U.S. EPA pursuant 21 to the Resource Conservation and Recovery Act, or 22 (RCRA), as amended. This rule codifies the general 23 procedures and criteria to implement emission 24 standards set forth in 40 CFR Parts 260, 261, 262,</p>	<p style="text-align: right;">Page 19</p> <p>1 momentarily. 2 (Public hearing for Proposed 3 Legislative Rule 45CSR25 concluded at 4 6:26 p.m.) 5 MS. JENNINGS: Is the court reporter 6 ready to proceed to the next hearing? 7 COURT REPORTER: I am. 8 MS. JENNINGS: Okay. Thank you. 9 (Public hearing for Proposed 10 Legislative Rule 45CSR34 commenced at 11 6:27 p.m.) 12 MS. JENNINGS: The virtual public 13 hearing for the proposed legislative rule 45CSR34, 14 Emission Standards for Hazardous Air Pollutants, 15 will now come to order on this 1st day of July 16 2025. 17 Oral comments and testimony will be 18 accepted until the close of this hearing, and will 19 be made part of the rulemaking record. Any 20 question regarding revision to the rule should be 21 included with your comments, and any such question 22 will be addressed as part of the response to 23 comment in the rulemaking record. 24 The purpose of this public hearing is</p>
<p style="text-align: right;">Page 18</p> <p>1 264, 265, 266, 270, and 279. 2 Revisions to this rule include an 3 incorporation by reference update with 33CSR20 and 4 updating the air quality related incorporation by 5 reference amendments as of June 1st, 2025, by 6 revising the IBR dates in sections 1.6.1, 3.1, and 7 3.2. The severability language in section 9 was 8 removed to address approvability concerns. 9 The floor is now open for comments. 10 Nicole, has anyone pre-registered to provide 11 comments on proposed rule 45CSR25? If so, please 12 unmute their line and call on them now. 13 MS. ERNEST: Thanks, Laura. We do not 14 have anyone pre-registered to speak. If you did 15 not pre-register to speak, but would like to do so 16 now, please use the "raise hand" option or unmute 17 your mic. If you're joining us by telephone, 18 please unmute your line by pressing *6. 19 Going once. Going twice. Return to 20 you, Laura. 21 MS. JENNINGS: Okay. Thank you. 22 There being nothing further, this public hearing 23 for proposed rule 45CSR25 is concluded. The public 24 hearing for proposed rule 45CSR34 will begin</p>	<p style="text-align: right;">Page 20</p> <p>1 to accept comments on proposed revisions to rule 2 45CSR34. This rule, last promulgated in 2025, 3 incorporates and adopts national emission standards 4 for hazardous air pollutants and other regulatory 5 requirements promulgated by the U.S. Environmental 6 Protection Agency pursuant to the federal Clean Air 7 Act. Promulgation of this rule is necessary for 8 the State to fulfill its responsibilities under the 9 Clean Air Act and will enable the WV Department of 10 Environmental Protection to continue to be the 11 primary enforcement authority for such national 12 emission standards promulgated by the U.S. EPA. 13 Revisions to the rule include the 14 annual incorporation by reference amendments as of 15 June 1, 2025, by revising the IBR dates in sections 16 1.6 and 4.1. The severability language in section 17 8 was removed to address program delegation 18 approvability concerns. 19 The floor is now open for comments. 20 Nicole, has anyone pre-registered to provide 21 comments on proposed rule 45CSR34? If so, please 22 unmute their line and call on them now. 23 MS. ERNEST: Thanks, Laura. We do not 24 have anyone pre-registered to speak. If you did</p>

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1 not pre-register to speak, but would like to do so  
2 now, please use the "raise hand" option or unmute  
3 your mic.  
4 If you're joining us by telephone,  
5 please unmute your line by pressing \*6.  
6 Going once. Going twice. We'll  
7 return to you, Laura.  
8 MS. JENNINGS: Thanks, Nicole. There  
9 being nothing further, this public hearing for the  
10 proposed rule 45CSR34 is concluded. The public  
11 hearing for proposed rule 45CSR43 will begin  
12 momentarily.  
13 (Public hearing for Proposed  
14 Legislative Rule 45CSR34 concluded at  
15 6:30 p.m.)  
16 MS. JENNINGS: Is the court reporter  
17 ready for the next hearing?  
18 COURT REPORTER: I am.  
19 MS. JENNINGS: Thank you.  
20 (Public hearing for Proposed  
21 Legislative Rule 45CSR43 commenced at  
22 6:30 p.m.)  
23 MS. JENNINGS: The virtual public  
24 hearing for the proposed legislative rule 45CSR43,

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1 Cross-State Air Pollution Rule to Control Annual  
2 Nitrogen Oxide Emissions, Annual Sulfur Dioxide  
3 Emissions, and Ozone Season Nitrogen Oxide  
4 Emissions, will now come to order on this 1st day  
5 of July 2025. Oral comments and testimony will be  
6 accepted until the close of this hearing and will  
7 be made part of the rulemaking record.  
8 The purpose of this public hearing is  
9 to accept comments on proposed revisions to rule  
10 45CSR43 which was last promulgated in 2019. The  
11 rule incorporates by reference the federal Cross-  
12 State Air Pollution Rule, or CSAPR, limiting  
13 emissions of nitrogen oxides (NOX) and sulfur  
14 dioxide (SO2), through three emissions trading  
15 programs. CSAPR was promulgated by the EPA under §  
16 110 of the CAA, as amended and under 40 CFR §§52.38  
17 and 52.39 as a means of mitigating interstate  
18 transport of fine particulates, nitrogen oxides,  
19 ozone, and sulfur dioxide. The trading programs  
20 included -- or specified in the scope of the rule.  
21 The rule codifies general procedures  
22 and criteria to implement these trading programs  
23 and adopts and incorporates by reference these  
24 standards with limited exceptions, along with the

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1 associated reference methods, performance  
2 specifications and other test methods referenced by  
3 these standards.  
4 Revisions to the rule include the  
5 following: Replaced the NOX Ozone Season Group 2  
6 Trading Program with the Group 3 Trading Program in  
7 the general requirements; several definitions were  
8 updated, and the adoption of standards sections 3.2  
9 and 3.4 were revised; trading program requirements  
10 were revised; and provisions for the secretary  
11 under 7.1. Definitions were revised for the Clean  
12 Air Act and Secretary for consistency with other  
13 DAQ Rules. And the numbering was revised to  
14 comport with 153CSR1; and added severability  
15 clauses -- scratch that last one. Sorry.  
16 The floor is now open for comments.  
17 Nicole, has anyone pre-registered to provide  
18 comments on proposed Rule 45CSR43? If so, please  
19 unmute their line and call on them now.  
20 MS. ERNEST: Thanks, Laura. We have  
21 one person that pre-registered to speak.  
22 Jim Kotcon, if you're on the line,  
23 please unmute your mic and begin speaking. If  
24 you're calling by phone, you may press \*6 to unmute

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1 your line.  
2 (No response.)  
3 MS. ERNEST: Okay. If you did not  
4 pre-register to speak, but would like to do so now,  
5 please use the "raise hand" option or unmute your  
6 mic. State your name and indicate if you're  
7 representing any group or organization. If you're  
8 joining by phone, please unmute your mic by  
9 pressing \*6.  
10 Jason, go ahead.  
11 MR. WANDLING: Hey guys, is this 43 or  
12 45? I apologize.  
13 MS. ERNEST: 43.  
14 MR. WANDLING: Okay, great. I'll sit  
15 tight for another minute.  
16 MS. ERNEST: Okay. Is there anybody  
17 who would like to make a comment? Going once,  
18 going twice. We'll return to you, Laura.  
19 MS. JENNINGS: Thanks, Nicole. There  
20 being nothing further, this public hearing for  
21 proposed rule 45CSR43 is concluded. The public  
22 hearing for proposed rule 45CSR45 will begin  
23 momentarily.  
24 (Public hearing for Proposed

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1 Legislative Rule 45CSR43 concluded at  
2 6:35 p.m.)  
3 MS. JENNINGS: Is the court reporter  
4 ready to proceed to the next meeting?  
5 COURT REPORTER: I am.  
6 MS. JENNINGS: Okay, thank you.  
7 (Public hearing for Proposed  
8 Legislative Rule 45CSR45 commenced at  
9 6:35 p.m.)  
10 MS. JENNINGS: The virtual public  
11 hearing for proposed legislative rule 45CSR45,  
12 Standards of Performance For Existing Crude Oil and  
13 Natural Gas Facilities, will now come to order on  
14 this 1st day of July 2025.  
15 Oral comments and testimony will be  
16 accepted until the close of this hearing and will  
17 be made part of the rulemaking record. Any  
18 question regarding revisions to the rule should be  
19 included with your comments and any such question  
20 will be addressed as part of the response to  
21 comments document in the rulemaking record.  
22 This rule establishes emission  
23 standards, compliance schedules, testing,  
24 monitoring, recordkeeping, reporting, registration

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1 and permitting requirements, and implements the  
2 federal emission guidelines and compliance times  
3 pursuant to 40CFR60, subpart OOOOc, Emissions  
4 Guidelines for Greenhouse Gas Emissions from  
5 Existing Crude Oil and Natural Gas Facilities, and  
6 § 111(d) of the Clean Air Act to control methane  
7 emissions from existing designated facilities in  
8 the crude oil and natural gas source category which  
9 commenced construction, modification, or  
10 reconstruction on or before December 6, 2022.  
11 The designated facilities include  
12 wells, centrifugal and reciprocal compressors,  
13 process controllers, pumps, storage vessels,  
14 fugitive emissions components, super emitter  
15 events, and process unit equipment.  
16 The rule adopts test methods and  
17 performance testing, initial compliance  
18 requirements, continuous compliance requirements,  
19 recordkeeping requirements, reporting requirements,  
20 and definitions to implement the standards of  
21 performance. The rule also provides a mechanism  
22 for either less stringent standards or longer  
23 compliance times if remaining useful life and other  
24 factors criteria are satisfied. RULOF requirements

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1 were developed for marginal wells, abandoned wells,  
2 orphaned wells, and wells that do not have access  
3 to electrical power.  
4 The floor is now open for comments.  
5 Nicole, has anyone pre-registered to provide  
6 comments on proposed rule 45CSR45? If so, please  
7 unmute their line and call on them now.  
8 MS. ERNEST: Thanks, Laura. We had  
9 one person pre-register to speak. Jim Kotcon, if  
10 you're on the line, please unmute your mic and  
11 begin with your comment. If you're calling in by  
12 phone, press \*6 to unmute your line.  
13 (No response.)  
14 MS. ERNEST: Okay. If you did not  
15 pre-register to speak but would like to do so now,  
16 please use the "raise hand" option or unmute your  
17 mic. State your name, indicate if you're  
18 representing any group or organization.  
19 Jason, go ahead.  
20 MR. WANDLING: Hey guys. Jason  
21 Wandling. I represent the West Virginia  
22 Manufacturers Association. The West Virginia  
23 Manufacturers Association offers the following  
24 comments in response to the notice of public

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1 comment period for new Division of Air Quality  
2 Legislative Rule 45CSR45.  
3 WVMA members have a vital interest in  
4 this proposed legislative rule designated as  
5 45CSR45, the proposed rule, and have been involved  
6 in submitting comments and challenging the U.S.  
7 Environmental Protection Agency's rule establishing  
8 "standards of performance for new reconstructed and  
9 modified sources and emissions guidelines for  
10 existing sources," oil and gas, natural -- "and oil  
11 and natural gas sector," sometimes referred to as  
12 OOOOc.  
13 Specific comments include: One, we  
14 support your inclusion at West Virginia Code Rule  
15 4545 2.19 of a definition of marginal well site,  
16 which does not have a counterpart definition in 40  
17 CFR part 60 subpart OOOOc.  
18 This definition recognizes the reality  
19 of oil and gas production in the state of West  
20 Virginia and acknowledges the economic reality that  
21 many facilities that meet the definition of  
22 marginal well site will be unable to install  
23 controls as required by OOOOc.  
24 Two, while we support the DEP DAQ's

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1 inclusion of a definition for marginal well site,  
2 we believe the agency should also consider  
3 establishing an exemption from regulation for oil  
4 and gas wells and regulated facilities with low  
5 potential to emit methane. Simply put, some  
6 sources are too small to warrant the cost and  
7 complexities of the proposed 45CSR45 regime.  
8 Accordingly, we recommend that the DAQ  
9 adopt a categorical exemption for marginal low  
10 producing oil and gas wells as defined at 2.19, for  
11 which regulation of the well will not be able to  
12 achieve meaningful methane reductions and for which  
13 the imposition of regulation will doubtless render  
14 the wells uneconomic. Such wells will be plugged  
15 or otherwise abandoned by small producers unable to  
16 meet the cost of compliance with the proposed  
17 regulations.  
18 Three, we request the DAQ incorporate  
19 in the definitions the term, "routed to a  
20 processor" or "route to a processor," as defined in  
21 40 CFR 60.5430(c) as follows: Routed to a process,  
22 or route to a process, means the emissions are  
23 conveyed via a closed vent system to any enclosed  
24 portion of a process that is operational where the

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1 emissions are predominantly recycled and/or  
2 consumed in the same manner as a material that  
3 fulfills the same function in the process and/or  
4 transformed by chemical reaction into materials  
5 that are not regulated materials and/or  
6 incorporated into a product and/or recovered.  
7 Four, the proposed rule provides  
8 section 4.1.5.B, "the owner or operator shall  
9 calculate the potential for methane emissions as  
10 the cumulative emissions from all storage vessels  
11 within the tank battery as specified by the  
12 requirements in sub paragraphs 4.1.5.B.1 through  
13 4.1.5.B.3. When making the determination, the  
14 owner or operator may consider requirements under a  
15 legally and practicably enforceable limit issued to  
16 the owner or operator under 45 CSR 13, 14, 19, 30,  
17 or other requirements established under federal or  
18 state authority."  
19 The WVMA notes that permits issued  
20 under those rules do not carry legally and  
21 practically enforceable limit for methane. We  
22 request that the criteria for what constitutes the  
23 legally and practically enforceable methane limit  
24 in the absence of a numerical standard be clarified

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1 or requiring methane limits be clearly defined in  
2 the permits.  
3 Five, DAQ should eliminate these super  
4 emitter provisions of 45-45-7. Instead, enforcement  
5 of 45 CSR 45 should rest solely with DAQ. The  
6 super emitter program creates unreasonable  
7 incentives to third parties to attempt  
8 investigations at critical energy production  
9 facilities in the state of West Virginia without  
10 meaningful or enforceable standards for third party  
11 investigators or in the analyst.  
12 The proposed rule 45-45-7 also creates  
13 the potential for conflict between third  
14 investigators and analysts which emphasize the  
15 basic existing rationale of investing state  
16 inspectors with the authority to perform such work  
17 in a safe and meaningful manner.  
18 Six, with regard to West Virginia code  
19 rule 45-45-9, the proposed rule does not adequately  
20 address conditions where it is not technically or  
21 economically feasible to route excess associated  
22 gas to a sale line or to a flare or to flare excess  
23 associated gas. These conditions include long  
24 distances to a sales line, large sale line

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1 connection costs, and insufficient excess gas to  
2 fuel a flare.  
3 Facilities that meet the definition of  
4 2.19 should be allowed to vent and or to flare  
5 without restriction.  
6 Seven, we support your inclusion of  
7 the remaining useful life and other factors, or  
8 RULOF, analysis for process controller designated  
9 facilities at West Virginia code 45 section 12.7.  
10 Eight, we support your adoption of  
11 your RULOF analysis at 45-45-15.13 for initial  
12 fugitive emission monitoring surveys and for  
13 monitoring frequency of subsequent fugitive  
14 emission monitoring surveys for marginal well  
15 sites. The requirements for fugitive emissions  
16 monitoring as applied to marginal low producing  
17 wells are unnecessarily and unreasonably expensive  
18 as well as time consuming.  
19 The monitoring methods and frequencies  
20 are based on an erroneous component count theory  
21 rather than throughput. The record keeping and  
22 reporting requirements are too costly, complex, and  
23 onerous. Marginal wells have low and limited  
24 production revenue and producers are successful

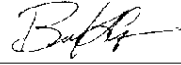
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1 only if they are able to operate at low cost.  
2 We applaud the DAQ's recognition of  
3 these operational facts.  
4 Nine, lastly, with regard to oil and  
5 gas well plugging requirements, we appreciate the  
6 insertion of RULOF analysis at West Virginia code  
7 rule 45-45-15.14 and 15.15. Your inclusion of  
8 these tools recognizes the economic reality of well  
9 plugging in the state of West Virginia and will  
10 encourage the plugging rather than mere abandonment  
11 or orphanage of marginal wells in the state.  
12 I appreciate your time and thank you  
13 for having this hearing and I appreciate the court  
14 reporter.  
15 MS. ERNEST: Thank you, Jason. If  
16 there's anyone else who would like to speak, please  
17 use the "raise hand" feature in Google or unmute  
18 your mic, state your name and any organization that  
19 you may represent.  
20 Going once. Going twice. Laura,  
21 we'll return to you.  
22 MS. JENNINGS: Okay, thank you.  
23 (Public hearing for Proposed  
24 Legislative Rule 45CSR45 commenced at

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1 6:47 p.m.)  
2 MS. JENNINGS: There are no further  
3 public hearings this evening. I'd like to thank  
4 everybody for their interest and participation in  
5 the public hearings for the 2026 DAQ proposed  
6 rules.  
7 Response to the comments presented  
8 this evening will be addressed in the response to  
9 comment document filed with the respective rule as  
10 part of the official rulemaking record and will be  
11 available on the Secretary of State's website.  
12 Have a good night and thank you again  
13 for your interest.  
14 (Proceedings concluded at 6:48 p.m.)  
15 --oOo--  
16  
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21  
22  
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1 STATE OF WEST VIRGINIA,  
2 COUNTY OF RALEIGH, to wit:  
3 I, Brad L. Cooper, a Notary Public within  
4 and for the County and State aforesaid, duly  
5 commissioned and qualified, do hereby certify that  
6 the foregoing proceedings were duly taken by me and  
7 before me at the time and place and for the purpose  
8 specified in the caption hereof.  
9 I do further certify that the said  
10 proceedings were recorded by means of digital audio  
11 and/or video recording, Stenomask, and/or correctly  
12 taken by me in shorthand notes, and that the same  
13 were accurately written out in full and reduced to  
14 typewriting by means of computer-aided  
15 transcription by me or under my supervision.  
16 My commission expires May 14, 2028.  
17 Given under my hand this 6th day of July,  
18 2025.  
19  
20   
21 BRAD L. COOPER, Notary Public  
22  
23  
24