

35CSR4
OIL AND GAS WELLS AND OTHER WELLS
Response to Comments

The WV Department of Environmental Protection (DEP), Office of Oil and Gas (OOG) commenced the public comment period for proposed legislative rule 35CSR4 on June 24, 2026. The public comment period concluded July 24, 2026, after satisfying the 30-day period. A public hearing was held virtually on July 27, 2026. The purpose of the public comment period and hearing was to accept oral and written comments on the proposed revisions to 35CSR4.

Written comments were received during the public comment period from Mr. Jason Bostic, Executive Vice President of the West Virginia Coal Association and Ms. Rebecca McPhail, President-Elect of the Gas and Oil Association of West Virginia. 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.

Commenter 1: WV Coal Association (WVCA)

Comment 1: WVCA has concerns regarding the proposed changes to both rules that would allow an alternative to “traditional” above ground markers for plugged oil and gas wells. Federal and state mine safety rules and regulations require the identification and marking of oil and gas wells prior to the extraction of coal. Accurately locating wells, both plugged and active, is not only a regulatory requirement, but also critical for the safe development of mining operations.

Response 1: DEP agrees that accurately locating wells is of paramount importance, and this need is a primary consideration in the development of this alternative marker proposal. After the plugging of a well is complete, the agency has no mechanism to prevent vandalism to monuments, and traditional markers are frequently removed after plugging has been completed, thereby negating their value. By burying them with accurate recorded locations, DEP can protect them from removal while preserving their locatability. The widespread availability of accurate GPS and magnetometer technology enables these changes. As it relates to pre-mining surveys, it is the DEP's understanding that surface identification of wells starts first with a review of DEP records for well locations. Any well having a buried marker will be indicated as such on DEP mapping tools.

Comment 2: As a general matter, “traditional” markers that are required by current rules represent a *physical landmark* that *assures* the location of plugged well can be identified prior to mining development.

Response 2: In practice, monuments are often removed or otherwise destroyed after plugging operations have been completed. It is the intent of these draft rule changes to strike a balance between preserving a plugged well's locatability and minimizing surface impacts to landowners.

Comment 3: The GPS alternative proposed in both rules can prove unreliable, since GPS systems are influenced by a number of factors.

Response 3: GPS technology has proven to be an extremely reliable technology, and has become widespread in its availability and use. As pointed out later by Commenter 1, GPS can provide location measurements to low-millimeter precision.

Comment 4: Additionally, the GPS specs referenced in the proposed rule changes appear to be contradictory. "Survey-grade GPS" refers to professional survey-grade GPS (GNSS) equipment, which is quite accurate and delivers sub-centimeter to low-millimeter precision. Typically, high-end systems yield a Horizontal Accuracy of 1 to 10 millimeters and a Vertical Accuracy of 10 to 15 millimeters. This is not anywhere close to "...or other equipment capable of sub-meter RMSE or better accuracy", which is contained in the proposed revisions to both rules.

Response 4: DEP will remove "survey-grade" as a qualifier for GPS accuracy and retain the language requiring sub-meter RMSE as an accuracy standard. Recording a well's location within 1 meter precision should be sufficient to find the well at a later date using a magnetometer.

Comment 5: WVCA acknowledges the agency has proposed to maintain the "traditional" marker requirement for wells that penetrate coal seams in both rules. However, we believe the term "workable coal bed" may need further explanation and definition. Coal seams that [are] "workable" or recoverable change with advances in mining technology and evolving coal markets. Coal reserves that were thought to be "unrecoverable" just ten years ago are actively being extracted and marketed today.

Response 5: Workable coal is defined by W. Va. Code §22-6-1(e) as "any seam of coal twenty inches or more in thickness, unless a seam of less thickness is being commercially worked, or can in the judgement of the department be commercially worked and will require protection if wells are drilled through it." DEP believes that this definition already provides clarity and allows for adaptability as technological advancements in the mining industry develop.

Comment 6: In addition to these comments, WVCA would encourage WV DEP to consult with both the West Virginia Office of Miners' Health, Safety & Training and the West Virginia Board of Coal Mine Health & Safety on the potential mine safety implication for the proposed changes to 35 CSR 04 and 35 CSR 08 before the revisions are finalized.

Response 6: DEP believes that these draft changes do not compromise or otherwise degrade safety for future mining operations. The intent of these changes is two-fold: preserve well-locatability with common technology and remove the impetus for landowners or other parties to remove the monuments.

Comment 7: WVCA appreciates the opportunity to comment on these proposed changes.

Response 7: DEP thanks WVCA for their input.

Commenter 2: Gas and Oil Association of West Virginia (GO-WV)

Comment 1: The Gas and Oil Association of West Virginia (GO-WV) appreciates the opportunity to comment on the West Virginia Department of Environmental Protection Office of Oil and Gas' proposed amendments to 35 CSR 4 and 35 CSR 8. GO-WV supports the proposed revisions to both rules, which govern permanent well identification following plugging activities. The amendments represent a practical modernization of the State's plugging requirements while maintaining the Office of Oil and Gas' ability to locate plugged wells and protect public safety.

Response 1: DEP acknowledges commenter's support.

Comment 2: Traditional above-ground monuments can create practical challenges for surface owners, including interference with mowing, grading, and other routine uses of the property. Allowing below-grade identification where appropriate reduces these conflicts while maintaining the Office of Oil and Gas' ability to accurately locate plugged wells through permanent GPS records. This approach benefits operators, surface owners, and future property owners without diminishing environmental protection or regulatory oversight.

Response 2: DEP acknowledges commenter's support.

Comment 3: GO-WV notes one technical issue for the Department's consideration. Both proposed rules include a sunset date requiring the rules to be brought back before the Legislature. Because WVDEP is exempt from that requirement, GO-WV recommends deleting the sunset provision from each rule before final filing.

Response 3: DEP will remove sunset provisions.

Comment 4: The proposed amendments retain appropriate safeguards for public safety, preserve additional protections where warranted, and incorporate modern surveying practices that improve the accuracy and usefulness of well location records while reducing unnecessary

burdens on operators and landowners. For these reasons, GO-WV urges the Office of Oil and Gas to adopt the proposed amendments, with the technical correction noted above. Thank you for your consideration of these comments.

Response 4: DEP thanks GO-WV for their input.



West Virginia Coal Association

200 Association Drive, Suite 160, Charleston, WV 25311 • (304) 342-4153 • Fax 342-7651 •
www.wvcoal.com

July 24, 2026

Mr. Jason Harmon

Chief

Office of Oil & Gas

West Virginia Department of Environmental Protection

601 57th Street SE

Charleston, WV 25304

Submitted via electronic mail: Henry.J.Harmon@wv.gov

Re: Comments on Proposed Changes to 35 CSR 04 and 35 CSR 08

Dear Mr. Harmon:

Pursuant to the public notice published by the West Virginia Department of Environmental Protection (WV DEP) on June 24, 2026, the West Virginia Coal Association (WVCA) offers the following comments and observations regarding proposed changes to 35 CSR 04 and 35 CSR 08, the agency's rules governing marking requirements for plugged oil and gas wells.

WVCA is a trade association representing the interests of companies engaged in the mining of coal within the State of West Virginia. WVCA's producing membership accounts for more than 90 percent of West Virginia's underground and surface coal production of both thermal and metallurgical coal. WVCA also represents approximately 150 associate members that supply an array of services to the mining industry. WVCA's primary goal is to enhance the viability of West Virginia coal as a source of secure and efficient domestic energy by facilitating safe and environmentally responsible coal mining through reasonable, equitable, and achievable state and federal policy and regulation.

WVCA has concerns regarding the proposed changes to both rules that would allow an alternative to “traditional” above ground markers for plugged oil and gas wells. **Federal and state mine safety rules and regulations require the identification and marking of oil and gas wells prior to the extraction of coal. Accurately locating wells, both plugged and active, is not only a regulatory requirement, but also critical for the safe development of mining operations.**

As a general matter, “traditional” markers that are required by the current rules represent a *physical landmark* that *assures* the location of plugged well can be identified prior to mining development. The GPS alternative proposed in both rules can prove unreliable, since GPS systems are influenced by a number of factors. Additionally, The GPS specs referenced in the proposed rule changes appear to be contradictory. “Survey-grade GPS” refers to professional survey-grade GPS (GNSS) equipment, which is quite accurate and delivers sub-centimeter to low-millimeter precision. Typically, high-end systems yield a Horizontal Accuracy of 1 to 10 millimeters and a Vertical Accuracy of 10 to 15 millimeters. This is not anywhere close to “. . . or other equipment capable of sub-meter RMSE or better accuracy”, which is contained in the proposed revisions to both rules.

WVCA acknowledges the agency has proposed to maintain the “traditional” marker requirement for wells that penetrate coal seams in both rules. However, we believe the term “workable coal bed” may need further explanation and definition. Coal seams that “workable” or recoverable change with advances in mining technology and evolving coal markets. Coal reserves that were thought to be “unrecoverable” just ten years ago are actively being extracted and marketed today.

Regarding the proposed changes to 35 CSR 08, the state rule governing horizontal wells, the requirement for “traditional” monuments for wells that penetrate coal seams is less concise. The rule as proposed *does not* differentiate between horizontal wells that penetrate coal seams and those that do not. Instead, the proposed changes appear to allow the operator to choose between an aboveground marker “or” a below grade marker *at the operator’s discretion and without mention whether the well penetrates a workable coal seam. In fact, other portions of the rule seem to have expressly removed the “traditional” monument requirement for wells penetrating workable coal seams in favor of the proposed provisions in §5.8 giving the operator the option to choose an aboveground or below grade marker.* Based on this language, the public notice published by the agency seems to be at odds with the proposed rule and could potentially compromise or at the very least confuse an important protection for mining development and coal extraction operations.

In addition to these comments, WVCA would encourage WV DEP to consult with both the West Virginia Office of Miners’ Health, Safety & Training and the West Virginia Board of Coal Mine Health & Safety on the potential mine safety implication of the proposed changes to 35 CSR 04 and 35 CSR 08 before the revisions are finalized.

WVCA appreciate the opportunity to comment on these proposed changes.

Respectfully Submitted,



**Jason D. Bostic
Executive Vice President**

July 22, 2026

Jason Harmon, Chief
West Virginia Department of Environmental Protection
Office of Oil and Gas
601 57th Street SE
Charleston, WV 25304



Re: Proposed Amendments to 35 CSR 4 and 35 CSR 8

Dear Mr. Harmon:

The Gas and Oil Association of West Virginia (GO-WV) appreciates the opportunity to comment on the West Virginia Department of Environmental Protection Office of Oil and Gas' proposed amendments to 35 CSR 4 and 35 CSR 8. GO-WV supports the proposed revisions to both rules, which govern permanent well identification following plugging activities. The amendments represent a practical modernization of the State's plugging requirements while maintaining the Office of Oil and Gas' ability to locate plugged wells and protect public safety.

Traditional above-ground monuments can create practical challenges for surface owners, including interference with mowing, grading, and other routine uses of the property. Allowing below-grade identification where appropriate reduces these conflicts while maintaining the Office of Oil and Gas' ability to accurately locate plugged wells through permanent GPS records. This approach benefits operators, surface owners, and future property owners without diminishing environmental protection or regulatory oversight.

GO-WV notes one technical issue for the Department's consideration. Both proposed rules include a sunset date requiring the rules to be brought back before the Legislature. Because WVDEP is exempt from that requirement, GO-WV recommends deleting the sunset provision from each rule before final filing.

The proposed amendments retain appropriate safeguards for public safety, preserve additional protections where warranted, and incorporate modern surveying practices that improve the accuracy and usefulness of well location records while reducing unnecessary burdens on operators and landowners.

For these reasons, GO-WV urges the Office of Oil and Gas to adopt the proposed amendments, with the technical correction noted above. Thank you for your consideration of these comments.

Respectfully submitted,

Rebecca McPhail
President-Elect
Gas and Oil Association of West Virginia (GO-WV)