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Environmental Legal Services



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

**Re: Comment Period for Draft 45CSR45 (Standards of Performance for Existing Crude Oil and Natural Gas Facilities)**

### **Introduction and Overview**

Thank you for the opportunity to comment on West Virginia’s proposed Draft Rule 45CSR45 (“45CSR45” or “Draft Rule”). This letter is submitted on behalf of West Virginia Citizen Action Group and its members.<sup>1</sup> We write in support of strong methane controls and urge the state to adopt the EPA’s model rule in full unless specific improvements are incorporated. West Virginia’s proposal appropriately mirrors many provisions of EPA’s Emission Guidelines (40 C.F.R. Part 60, Subpart OOOOc). We commend the Department for including key requirements like regular leak inspections, super-emitter response, and limits on routine flaring. At the same time, we have concerns about several deviations or ambiguities that could undermine the rule’s effectiveness.

In summary, we support West Virginia’s efforts to control methane pollution and recommend full adoption of EPA’s model standards (referred to herein as the “Model Rule”) unless the state can justify alternative provisions that are at least as stringent. Strengthening the few areas of concern will better protect communities, provide regulatory certainty, and ensure West Virginia’s plan is legally sound. We urge the State to finalize Rule 45CSR45 with the improvements recommended herein.

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<sup>1</sup> Since 1974, West Virginia Citizen Action (WV CAG) has advocated for better public policy, rights of individuals, a clean environment, and a stronger democratic process. The philosophy of WV CAG is that full-time citizen participation in the decision-making processes of our state is absolutely essential. Our staff and members work to increase the voice of the average citizen in public affairs through research, education, lobbying, organizing and coalition building – speaking out on behalf of the consumer, speaking out in defense of a cleaner environment, and speaking out in favor of a government that is honest, open, and accountable to the needs of all its citizens. WV CAG works to empower individuals by providing them with resources to be effective advocates on issues that affect their lives, such as a healthy environment and government accountability and transparency.

## **Concerns Around Exemptions**

Section 4.2 is confusing and should be removed. Section 4.2 states that facilities exempt from 40CFR 60.14(e) are exempt from 45CSR45. 60.14(e) states that a number of factors, in and of themselves, do not qualify as a modification under Part 60. So, it's unclear Section 4.2 of the Draft Rule would exempt anything at all, and we cannot see any other appropriate exemptions. Section 4.2 should be removed.

Section 4.7 of the draft rule is confusing and should be modified. The Model Rule is similarly confusing but is likely a safer compliance choice than the Department's commendable attempt to write this section more clearly. It seems like the purpose of the Model Rule is to say that a source cannot be regulated under Title V just because of methane emissions. But, the Draft Rule creates some confusion about how and whether 45CSR45 gets included in Title V permits and how and whether sources exempt from other air permitting are affected by 45CSR45. We suggest sticking with the language of the Model Rule for this section.

## **RULOF (Remaining Useful Life and Other Factors) Flexibility**

We urge WVDEP to clarify and tighten the RULOF criteria and procedures in the final rule to prevent abuse. The most compliant, and efficient, way to do this is to more plainly use the language from 40CFR 64.20a. This will ensure that the RULOF flexibility built into these emissions guidelines will not be abused, and it ensures that the state is compliant with its requirements.

WVDEP should preserve the integrity of the Emission Guidelines' stringency by using the RULOF exemption only in rare, well-justified cases. The final rule or accompanying documents should state that the presumptive standards are expected to apply in the vast majority of cases, and RULOF-driven variances are the exception. By tightening the RULOF language, West Virginia can minimize legal risk and ensure that overall emissions reductions are not significantly diluted.

## **Compliance Schedule and Deadlines**

The proposed compliance timeline in Section 5 of 45CSR45 closely tracks EPA's guidelines by requiring final compliance with all controls by March 9, 2029, for existing sources. We acknowledge that some lead time is necessary for operators to plan and install controls, but we encourage West Virginia to ensure compliance occurs as expeditiously as practicable and to avoid extensions that could unnecessarily delay emissions reduction.

Notably, the draft rule allows for extensions of the final compliance date on a case-by-case basis if a RULOF demonstration is approved. While this is permissible under the federal framework, it should remain the exception (as discussed in the RULOF section above). To help with compliance, WVDEP should set an earlier "as soon as achievable" compliance

target in the rule’s intent, even if March 2029 is the outer bound. For instance, the state might encourage operators to comply well before the deadline by phasing requirements. This is especially important given methane’s immediate climate impact – any reductions we can achieve in the next few years will have outsized benefits in slowing warming.

The rule appropriately includes incremental progress deadlines to ensure sources are on track. By July 2028 (28 months after the state plan submission deadline), owners must submit a final compliance control plan outlining the controls for each facility. And by 60 days after the final compliance date (i.e. May 2029), owners must submit a Notification of Compliance report. These are valuable checkpoints. We suggest that WVDEP also require interim updates or status reports, perhaps on an annual basis, on progress toward implementing the required controls (e.g. how many pneumatics replaced, which tanks controlled, etc.). Regular reporting prior to 2029 will help the agency identify any compliance obstacles early and assist operators in staying on schedule.

In sum, we recommend West Virginia finalize the compliance schedule substantially as proposed (with 2029 as the latest compliance date) and resist any pressure to extend deadlines.

### **Stakeholder Engagement and Community Input**

We thank the WVDEP for soliciting public comment on the proposed methane rule and encourage an even more robust stakeholder engagement process as the state plan is finalized. Meaningful engagement with stakeholders—including small businesses, local governments, environmental organizations, and communities most affected by oil and gas pollution—is not only wise policy but a requirement under EPA’s 111(d) implementing regulations. 40 C.F.R. § 60.5363c(a)(6) (adopted by reference in this rule) and 40 C.F.R. § 60.23a(i) mandate that state plans include documentation of meaningful engagement with pertinent stakeholders during plan development, including a summary of input and the State’s responses. This requirement reflects the Act’s fundamental goal that those impacted by pollution have a voice in crafting solutions.

To date, West Virginia’s outreach on 45CSR45 appears to have been relatively limited (however, we repeat our appreciation of this early efforts to engage with stakeholders). We urge the Department to expand upon this by actively reaching out to heavily impacted communities, public health experts, technical experts, and frontline residents in the counties with significant oil and gas operations. These community members can provide valuable information on the health and welfare impacts they experience – for example, residents living near well sites might report odors, respiratory issues, or other effects that underscore the importance of leak detection and repair. Engaging with workers in the industry is also important, as they can offer practical insights into implementation and safety. We note that EPA has identified best practices for meaningful engagement, such as holding meetings at convenient times and locations for community members, providing materials in layperson’s terms (and other languages if needed), and allowing for dialogue

rather than just one-way comment submission. West Virginia should strive to meet these best practices.

### **Commendable Provisions in the Proposed Rule**

West Virginia's proposed methane rule contains several provisions that exemplify strong environmental standards and align well with EPA's model rule and the intent of the Clean Air Act. While we support all of the provisions in this rule that strengthen protections of public health and the environment, we want to highlight a few of the provisions that are key to effective regulation of methane emission. In particular, the State has appropriately included:

- A "Super-Emitter" Response Program
- Rigorous Leak Detection and Repair (LDAR) Standards
- Limits on Routine Flaring of Associated Gas
- Other EPA-Consistent Controls on Equipment and Operations

These measures are the backbone of an effective methane control program. West Virginia should preserve these provisions through final adoption and ensure they are fully enforced on the ground.

### **Conclusion**

West Virginia's proposed methane regulation (45CSR45) is essential to reduce methane emissions and protect human health and the environment. We strongly support the thrust of this rule and urge its adoption, with a few targeted improvements as noted above. In particular, we recommend that West Virginia fully embrace EPA's model emission guidelines by maintaining stringency.

We urge that the suggestions herein be included in 45CSR45 and look forward to further opportunities to discuss and comment on these rules. Thank you for considering our comments.

**Respectfully submitted,**

/s/ Andrew C. Earley

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