



ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION

WASHINGTON, D.C. 20460

April 30, 2026

MEMORANDUM

SUBJECT: Clarification of Regulatory Provisions Concerning Limits on Flaring Associated Gas for New Oil Wells

FROM: Aaron Szabo
Assistant Administrator
Office of Air and Radiation (6101A)

TO: Regional Administrators, 1-10

Several crude oil and natural gas production companies operating in Williston Basin (including the Bakken Formation), and the Permian Basin recently contacted the U.S. Environmental Protection Agency (EPA) to express concerns with respect to certain regulatory provisions governing the flaring of associated gas by new oil wells. This memorandum explains the applicability of these regulatory provisions in response to such concerns. While this memo addresses certain circumstances involving the flaring of associated gas, it is not intended to be exhaustive and does not address all scenarios in which the regulatory provisions at issue may apply.

Specifically, these companies expressed concerns¹ that Clean Air Act (CAA) regulations seeking to limit routine flaring of associated gas at new oil wells may lead to those wells being shut in because obstacles outside of their control are preventing or impeding the transportation of associated gas through pipelines and processing facilities to downstream users. The New Source Performance Standards (NSPS) for the Crude Oil and Natural Gas Source Category finalized in 2024² – commonly known as OOOOb – require that oil wells that commenced construction between May 7, 2024, and May 7, 2026, phase out routine flaring of associated gas by May 7, 2026.³ Until that phase-out date, these oil wells may flare associated gas subject to a 95% emission reduction requirement if certain conditions are met regarding the technical infeasibility of other control options.⁴

After this phase-out date, oil wells subject to NSPS OOOOb are required to route their associated gas to a gathering flow pipeline or to a sales pipeline, recover the associated gas and use it as an onsite fuel

¹ See Attachment(s).

² 89 FR 16820 (Mar. 8, 2024).

³ 40 CFR 60.5377b(b).

⁴ 40 CFR 60.5377b(f).

source or other beneficial use, or recover the associated gas and reinject it into a well.⁵ The regulations also include specific scenarios in which temporary flaring is allowed.⁶

The EPA is aware that operators are experiencing capacity constraints in the downstream pipeline, storage, and processing network used to get the associated gas to market. The companies referenced above raised several example scenarios in which conditions outside of an operator's control may result in its oil well being unable to comply with the control options specified in the regulations.

One example is when multiple oil wells are connected to a third-party sales gas gathering system for the purpose of routing all associated gas to a sales gas gathering system (which is one way to comply with the regulations). At times, the gathering system will not be able to accept all or part of the associated gas from an individual oil well because the gathering system is at full capacity or at full sales line pressure (*i.e.*, despite compression at the production facility, additional associated gas cannot physically be introduced into the sales line).

Another scenario that operators encounter arises from outages and maintenance issues in the downstream network. This situation occurs when multiple oil wells are connected to the downstream network for the purpose of routing all associated gas to sales. At times, midstream gathering facilities and other parts of the network experience upsets or maintenance (whether planned or unplanned) that adversely affect the ability to route associated gas to sales.

Operators can also experience well surges that exceed the pipeline network system capacity. This situation occurs when multiple oil wells are connected to the third-party network for the purpose of routing all associated gas to the sales gas gathering system. Because oil and gas production at a well is not constant, random and unpredictable surges in production at a facility or at other facilities served by the same sales line can reduce or eliminate the system's ability to accept all associated gas.

Another situation that operators have highlighted occurs when there is insufficient pipeline capacity to move natural gas out of an area. This situation, of having too much gas in a certain area, can arise for economic reasons. Sometimes gas supply exceeds demand, or exceeds the maximum capacity of the gathering, processing, and sales system, which can then result in negative gas prices. For example, this occurs frequently at the Waha Hub in West Texas.

The EPA has assessed these concerns and believes that there are already flexibilities in the Agency's regulations that allow for temporary flaring in scenarios where downstream interruptions temporarily prevent companies from routing their associated natural gas to a sales line. The regulations, as well as the EPA's preamble and rulemaking record for those regulations, recognize that circumstances may arise that are beyond the control of the owner or operator and could result in the temporary inability to comply with the standards absent flaring.⁷

The EPA stated at the time that the Agency does not believe it is appropriate to require the shut-in of the well in such instances because these circumstances resulting in the need to temporarily flare are not under the control of the owner or operator of the well, among other reasons.⁸ The regulations include a

⁵ 40 CFR 60.5377b(a).

⁶ 40 CFR 60.5377b(d)(1)–(4).

⁷ See 87 FR 74702, 74780 (Dec. 6, 2022); 89 FR 16820, 16949 (Mar. 8, 2024).

⁸ 89 FR 16820, 16949 (Mar. 8, 2024).

provision, 40 CFR 60.5377b(d)(3), for situations where wells are routing recovered associated gas into a gathering flow line or collection system to a sales line and there is a temporary interruption in service from the gathering or pipeline system.

Under such circumstances, the EPA's regulations allow operators to route to a flare or control device for the duration of the temporary interruption for up to 30 days per incident. The temporary flaring provision at 40 CFR 60.5377b(d)(3) are designed to apply to wells connected to a sales pipeline when there is an interruption in service downstream that is outside the owner or operator's control and that prevents or impedes the gas from reaching a point where it can be sold.

The EPA continues to believe that applying 40 CFR 60.5377b(d)(3) in these instances is appropriate. Consistent with the text of the regulations, and as explained in and supported by the preamble to and rulemaking record for these regulations, this regulatory provision was designed to allow for temporary flaring in these situations.

If an owner or operator utilizes 40 CFR 60.5377b(d)(3) to temporarily route associated gas to a flare or control device, they must keep certain records and include certain information in their annual compliance report. The records include:

1. The reason for each temporary flaring incident;
2. The date of each incident, along with the times when routing the associated gas to the flare or control device started and ended, along with the total duration of each incident; and
3. Documentation that all closed vent system requirements and all applicable flare or control device requirements are met during each period when the associated gas is routed to the flare or control device.

There is *no* requirement in the EPA's regulations to make a "technical infeasibility" demonstration (the demonstration explained in 40 CFR 60.5377b(g)) when invoking the temporary flaring provisions in 40 CFR 60.5377b(d). As demonstrated by the text of the regulations and explained in the preamble to and record for the regulations, after May 6, 2026, the "technical infeasibility" demonstration relates only to the continuation of routine flaring by certain oil wells that are not subject to the phase-out date, and this demonstration is not required to invoke the temporary flaring provisions.

On March 12, 2025, the EPA announced plans to reconsider OOOOb/c to ensure that the regulations do not prevent America from unleashing energy dominance or continuing the Nation's trajectory as a world leader in energy.⁹ To that end, the EPA is currently developing a proposed rule to fulfill the Administrator's plans to review and reconsider OOOOb/c. In that proposed rule, the EPA intends to raise the issues described above and solicit public comments to ensure that we fully understand the challenges the industry is facing.

⁹ <https://www.epa.gov/newsreleases/trump-epa-announces-oooo-bc-reconsideration-biden-harris-rules-strangling-american>.

Thank you again for your attention to this matter. If you have further questions, please contact me, or your staff may contact Jodi Howard in the EPA's Office of Clean Air Programs at howard.jodi@epa.gov.

Attachment(s):

1. April 17, 2026, Letter from Chrod Energy Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 C.F.R. pt. 60, subpt. OOOOb: Reconsideration of the Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 C.F.R. § 60.5377b(f)
2. April 23, 2026, Letter from Continental Resources Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 C.F.R. Part 60, Subpart OOOOb: Request for EPA's reconsideration of the BSER for associated gas and the requirements governing technical infeasibility determinations under in 40 C.F.R. § 60.5377b.
3. April 24, 2026, Letter from Kraken Oil and Gas Partners LLC Re: Standards of Performance for Crude Oil and Natural Gas Facilities for Which Construction, Modification or Reconstruction Commenced After December 6, 2022, 40 C.F.R. Part 60, Subpart OOOOb: Expiration of the Associated Gas Technical Infeasibility Compliance Option, 40 C.F.R. § 60.5377b(f).