

N. Temporarily Staying the Rule Will Not Harm Anyone and the Public Interest Supports Staying the Rule or Amending It.

EPA concedes in the Final Rule that there will be no harm to the public from staying the effect of the Final Rule or the Final Rule's compliance dates. EPA states:

- “The EPA has not quantified *any benefits* associated with this final rule because all covered facilities are expected to already have HAP emissions levels that are below the final limits, based on facility data available to the EPA.”¹²⁷
- “[W]e conclude that the current [MACT] standards in the PQBS NESHAP provide an ample margin of safety to protect public health and are finalizing no changes based on the risk review.”¹²⁸
- “The potential public health benefits associated with such prevention are difficult to estimate, given that they correspond to *hypothetical scenarios of emissions beyond those indicated by current facility data*, and are thus not quantified in EPA's analysis.”¹²⁹
- “We did not identify any potential cost-effective controls or other measures to reduce risk further under our CAA section 112(f) risk review.”¹³⁰

In short, EPA cannot quantify “*any benefits*” associated with the Final Rule and that the only potential health benefits are based on hypothetical emissions—not those supported with any data. And the only possible public benefit is hypothetical—“EPA *anticipates* that the final rule's new requirements will increase the likelihood of facilities successfully detecting any HAP emissions in excess of the specified thresholds, allowing for earlier corrective action.”¹³¹

SunCoke is unaware of any time EPA has promulgated a Final Rule that will cost facilities many millions of dollars to comply with (assuming they can) that does not have any quantifiable public interest. Those admissions obviously raise serious questions about the arbitrary and capricious nature of EPA's rulemaking. But for purposes of staying the effect of the Final Rule, there is little to no public interest that a stay will harm.

EPA will likely argue that a stay of the Final Rule could result in years of delays, delaying the effective date of the new monitoring requirements for years after the current July 7, 2025 deadline.¹³² But that delay will not cause any public harm because all of the covered facilities already have “HAP emissions levels that are below the final limits.”¹³³ EPA also claims in the Final Rule that “we expect facilities will be able to comply with these limits without the need for any new controls or operating costs.”¹³⁴ If EPA is right, a stay will not injure the public interest because all

¹²⁷ 89 Fed. Reg. at 55686.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 55689.

¹³¹ *Id.*

¹³² See, e.g., Response in Opposition to the Applications for Stay at *12, *Ohio v. EPA*, Nos. 23A349, 23A350, 23A351 (S. Ct. Oct. 30, 2023).

¹³³ 89 Fed. Reg. at 55686.

¹³⁴ *Id.* at 55696.