

C. EPA must reconsider whether its reading of the Clean Air Act is the best possible reading.

In its September 2, 2021 memorandum entitled “Use of the Upper Prediction Limit for Calculating MACT Floors,”⁶⁷ EPA noted that it had filled gaps in interpreting the Clean Air Act to address ambiguities as it applied to MACT floor emission limits, in reliance on deference afforded the agency under *Chevron*.⁶⁸ In *Nat’l Ass’n of Clean Water Agencies*, the court explained that EPA has significant discretion in establishing the MACT floors, including how to account for variability.⁶⁹

This is no longer the case. In June 2024, the Supreme Court overruled *Chevron*, which required courts to defer to an agency’s interpretation of an ambiguous statute. In *Loper Bright*, the Supreme Court held that “[t]he Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.”⁷⁰

In light of that decision, “what value the MACT floors are supposed to represent” will now be based on the best reading of the statute without deference to the agency’s interpretation. EPA must revisit a number of aspects of the Final Rule, including but not limited to the following: whether EPA adequately accounted for variability in applying the UPL; EPA’s failure to consider the variability of coal and the operational variability over the coking cycle in establishing the limits (and the achievability of those limits); the impact of the limits established by EPA on safety devices (e.g., Bypass Vent Stacks) used to protect personnel and equipment; whether EPA should have established MACT floor emission limits for some sources when it established work practice and surrogacy determinations for others; and EPA’s exclusion of relevant test data.

D. The deadlines for compliance with the new MACT floor emission limits are too short.

The new MACT floor emission limits for existing sources become effective on January 5, 2026, 18 months after the effective date of the Final Rule. As described throughout this Petition and in data provided to the agency in the docket for the rulemaking, available data exhibits substantial variability and shows that the MACT floor limits are not consistently achievable for all pollutants without additional controls, operational changes, or both.

A minimum three-year compliance schedule is needed because controls for these pollutants/sources have not been demonstrated for HNR facilities, either in the United States or internationally.

⁶⁷ Donna Lee Jones, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, Docket ID EPA-HQ-OAR-2002-0085.

⁶⁸ *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), overruled by *Loper Bright*, 144 S. Ct. 2244.

⁶⁹ See *Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1142–43 (D.C. Cir. 2013) (“EPA can decide what value the MACT floors are supposed to represent, as long as that decision is a reasonable interpretation of the statute.”).

⁷⁰ *Loper Bright*, 144 S. Ct. at 2272.