

A. It is Ambiguous Whether the Proposed Rule Applies to Existing or New Sources

Although the plain language of the CAA, applicable case law, and EPA's long-standing history of applying the "new source" definition all dictate that the existing SunCoke facilities must be considered existing sources, ambiguity exists within EPA's proposed amendments as written. The redline version of the proposed amendments—which EPA did not incorporate into the *Federal Register* notice—suggests that EPA is not updating the cut-off date for what is considered a "new" or "existing" coke oven battery under these amendments, and that EPA intends to consider coke oven batteries that are almost 20 years old to be "new."¹⁹ EPA's technical analysis, however, correctly assumes that each of SunCoke's existing facilities will be considered "existing" sources under the proposed amendments and that only those coke oven batteries that are actually new after issuance of the rule would be subject to the proposed emission limits for "new" coke oven batteries, as explained in SunCoke's request for an extension. See Attachment A at 2 and n.2. As a regulated company, SunCoke has the right to understand exactly which standards are being applied to it in a proposed rulemaking, and the lack of clarity on this point is prejudicial to SunCoke and all other regulated entities.

B. The CAA and EPA's History of Interpretations Supports Designating All SunCoke Facilities as "Existing Sources"

The plain language of the CAA and EPA's own interpretations support the regulation of all SunCoke facilities as existing sources. Whether a source is considered "new" or "existing" is determined by whether the source's construction or reconstruction was commenced before or after proposal of the particular standards in question. The CAA defines a "new source" as "a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source." 42 U.S.C. § 7412(a)(4). The Act also defines an "existing source," which is "any stationary source other than a new source." *Id.* § 7412(a)(10).

EPA has a history of applying the CAA's "new source" definition in accordance with this understanding that a "new source" is that for which construction or reconstruction begins after the date of proposal for rule amendments. In doing so, EPA has interpreted "first proposed" to mean that the "new source" designation applies to sources constructed or reconstructed *after* each subsequent rulemaking. In fact, EPA applied this same understanding to its 2005 amendments to the Coke Oven Batteries NESHAP:

[EPA] concluded that it was not appropriate to increase the stringency of the current NESHAP for already-operating non-recovery batteries. This limit is appropriate for new sources, *which are those constructed after the date of proposal of these final rule amendments*, because it allows the new requirements to be incorporated into the considerations of design and operation of the new source.

¹⁹ See, e.g., EPA-HQ-OAR-2003-0051, EPA, Memorandum, *Coke NESHAP Redline Version of Proposed Rule Changes for 40 CFR part 63, subpart CCCCC*, at 3 (Jul. 1, 2023) ("An affected source at your coke plant is existing if you commenced construction or reconstruction of the affected source before July 3, 2001.")