### C. Case Law Further Supports Designating All SunCoke Facilities as "Existing Sources"

Pertinent case law analyzing the distinction between a new source and an existing source in this context is limited, likely due to the commonsense nature of EPA's previous rulemakings. The limited case law that does discuss this distinction confirms that new sources are those whose construction is commenced after promulgation of a new rule. Therefore, all previously existing SunCoke facilities must be considered "existing sources" according to the CAA.

The D.C. Circuit supports this understanding. In *U.S. Sugar Corporation v. EPA*, the D.C. Circuit confirmed, "new sources" were "those built after promulgation of a HAPs limit." 830 F.3d 579, 594 (D.C. Cir. 2016). Further, "'new' sources are those 'on which construction begins after EPA publishes emission standards' . . . most of the others are 'existing' sources, see 42 U.S.C. § 7412(a)(10)." *Id.* (citing *Cement Kiln Recycling Coal. v. EPA*, 255 F.3d 855, 858 (D.C. Cir. 2001)).

Sixth Circuit jurisprudence has long supported this same understanding. In *United States v. City of Painesville, Ohio*, the Sixth Circuit held, "The statute [CAA] plainly provides that new sources are those whose construction is commenced after the publication of *the particular standards of performance in question* . . . ." 644 F.2d 1186, 1191 (6th Cir. 1981) (emphasis added). The Sixth Circuit makes clear that whether a source is considered "new" or "existing" is determined by whether the source's construction began before or after publication of the particular standards in question. Like the D.C. Circuit, the Sixth Circuit's holding in *City of Painesville* supports the argument that the determinative date for whether a source is "new" or "existing" is analyzed based on the proposal date of the standard or revision itself. Only sources whose construction begins after publication of a particular revision are considered "new sources" for purposes of applying that revision's standards for new sources. Accordingly, only the standards for existing sources under the current revision should apply to existing SunCoke facilities.

## VIII. THE PROPOSED BTF LIMITS FOR SUNCOKE'S JEWELL FACILITY ARE BASED ON FLAWED ASSUMPTIONS, INACCURATE DATA, AND THE LEGALLY ERRONEOUS USE OF A COST-EFFECTIVENESS THRESHOLD FROM A DIFFERENT INDUSTRY

EPA's proposed beyond-the-floor ("BTF") measures for SunCoke's Jewell facility are unwarranted under the applicable legal standard and are based on faulty data and assumptions regarding both the costs of the measures and their expected emissions benefits. The CAA requires that proposed emission controls be "achievable"; this has not been demonstrated here. EPA has not justified nor could it justify its decision to require BTF measures that SunCoke expects are far from technically, physically, and economically achievable. Ironically, even if these measures were technically, physically, and economically feasible, these measures would have significant energy requirements and non-air quality health and environmental impacts that EPA insufficiently considered, including an estimated increase of over 46,000 ton annually in $CO_2$ emissions from the extra electricity needed to operate the system. Additionally, EPA's determination that the BTF measures were "cost-effective" was based on erroneous data concerning not only the costs of such measures, but also their effectiveness at reducing mercury and other HAP emissions. EPA's determination also improperly relied on a dollar threshold used in an entirely different regulatory