

A. BACKGROUND

EPA first promulgated the NESHAPs for the II&S industry pursuant to CAA §112(d) on May 20, 2003, 68 Fed. Reg. 27,646, establishing emissions limitations for HAPs emitted from new and existing sinter/recycling plants, blast furnaces (“BFs”), and basic oxygen process furnace (“BOPF”) shops. This rulemaking required all sources to meet HAP emission standards through application of maximum achievable control technology (“MACT”). It included particulate matter emissions limitations and opacity limits for capture systems and control devices. EPA found that “[p]articulate matter and opacity serve as surrogate measures of HAP emissions.”²

In 2020, the Trump EPA issued a final rule for the II&S source category to fulfill its obligations under CAA sections 112(d)(6) and (f)(2), known as the “risk and technology review” (“RTR”). The 2020 II&S RTR Rule concluded that the original 2003 II&S Rule addressed the risk from hazardous air pollutants with an adequate margin of safety to public health, and that there were no new technologies that justified revisions to the 2003 MACT standards under CAA §112(d)(6).³

On April 3, 2024, the Biden EPA promulgated the II&S Rule, revising the Trump EPA’s 2020 RTR rulemaking for the II&S source category. The Agency maintains in the 2024 II&S Rule that the residual risk to human health and environment from the II&S source category continues to be acceptable within an ample margin of safety, based on its analysis in the 2020 RTR.⁴

As to the technology review under CAA section 112(d)(6), however, the 2024 II&S Rule establishes new hazardous air pollutant (“HAP”) emissions limits at Sinter/Recycling plants (polycyclic aromatic hydrocarbon, carbonyl sulfide, mercury, hydrochloric acid, dioxin/furan toxicity equivalence), BOPFs (total hydrocarbons, hydrochloric acid, dioxin/furan toxicity equivalence), BF stoves (total hydrocarbon, hydrochloric acid), and BF casthouses (total hydrocarbon, hydrochloric acid); and new standards, in the form of opacity limits, operating limits, and work practice standards, for five Unmeasurable Fugitive Intermittent Particulate (“UFIP”) sources (unplanned bleeder valve openings; planned bleeder valve openings; small and large bell leaks; iron beaching; and slag processing, handling and storage operations) based on the flawed conclusion that no new technology is required to meet these standards.

EPA justified the slew of new HAP emissions limitations and UFIP source standards based purportedly on a new technology review. Relying on an aggressive interpretation of the D.C. Circuit’s decision in *Louisiana Environmental Action Network v. EPA* (“LEAN”), 955 F.3d 1088 (D.C. Cir. 2020), the Biden EPA unlawfully and erroneously established new emission limits and work practice standards without consideration of the underlying CAA §112(d) obligation to only “revise as necessary (taking into account developments in practices, processes, and control technologies).” The record does not support the Biden EPA’s new technology review and resulting II&S Rule standards. As the Trump EPA had properly concluded in 2020, there is no demonstrated technically feasible or economically reasonable technology that II&S facilities can use to meet the

² *Id.* at 27,467.

³ 85 Fed. Reg. 42,074, 42,074 (July 13, 2020).

⁴ *Id.* at 23,312.