

2. Meeting EPA's 18-month compliance deadline is impossible.

When EPA established 17 new HAP emission limits—purportedly based on MACT—it wrongly concluded that SunCoke could comply with the new floor emission limits with its existing controls.¹²³ This conclusion was not supported by the data.¹²⁴ SunCoke has exceeded the new limits. EPA's overconfidence in SunCoke's ability to comply with the new emission limits caused the agency to commit a cascade of costly errors. For example, in overestimating SunCoke's ability to comply, EPA underestimated the time SunCoke needs to achieve full compliance with the new limits (assuming full compliance is even possible). The expedited timeline, in turn, needlessly increases SunCoke's costs to comply with the new limits, which EPA significantly underestimated in the first place.

It is impossible for SunCoke to meet the 18-month compliance deadline imposed by EPA. Contrary to EPA's conclusion that no new technology needs to be installed to meet the Final Rule's emission limits, meeting the requirements of the Final Rule will require engineering, design, and installation of brand new, state of the art technology. No matter how much SunCoke spends, the work of designing, engineering, and installing the new technology cannot be done in the 18-month timeline. Assuming compliance is even feasible, EPA overestimated SunCoke's ability to comply with the new emission limits and underestimated the amount of time that SunCoke needs to comply. EPA gave SunCoke only "18 months after publication of the final rule."¹²⁵ This places SunCoke in the difficult position of having to *immediately* design, engineer, and install new controls, at exorbitant cost, or risk enforcement in 18 months.

For SunCoke to use HH1 Hg controls, for example, it would need to significantly expand the scope of its controls. The cost of the basic carbon injection system \$3 million. That FGD is smaller and has more challenges. SunCoke knows that upgrades and modifications to its existing system would need to be made before SunCoke could put in carbon injection and have it function without compromising operation and SO2 control. SunCoke does not know what upgrades and modifications would be, but it believes they would cost far more than \$3M for the carbon injections system.

Even if the court ultimately concludes that EPA lacked legal authority to set the new MACT floor limits, the ruling could offer little more than cold comfort to SunCoke. By the time SunCoke could obtain a favorable ruling, it would have already spent the time and money designing and installing the required, expensive controls. That time and money is unrecoverable. And installation of such controls would benefit nobody in light of EPA's determination that the existing PQBS rule "provides an ample margin of safety to protect public health."¹²⁶ EPA should grant a § 705 stay to avoid inflicting unnecessary, irreparable harm on SunCoke.

¹²³ See 89 Fed. Reg. at 55707 ("Based on the data we had at proposal, we expected all sources could meet the 17 new MACT floor limits without additional controls."); *id.* at 55710 ("[B]ased on the data submitted to the EPA by the industry, all facilities should be able to meet the MACT floor limits developed for the previously unregulated HAP and unregulated sources of HAP without the installation of additional controls.").

¹²⁴ See 89 Fed. Reg. at 55710 ("Commenters who raised claims of exorbitant costs to meet the new MACT floors did not provide any additional data contradicting the EPA's findings; thus, the EPA does not find any support for these claims."). SunCoke collected additional data, but EPA did not consider it.

¹²⁵ 89 Fed. Reg. at 55721.

¹²⁶ *Id.* at 55685.