

anthracene, pyrene, chrysene, and benzo(α)pyrene) is below the analytical limit of quantification. This long-time monitoring further demonstrates that SunCoke does not emit COE directly to the atmosphere.

IV. EPA SHOULD TREAT HNR AND BYP AS SEPARATE SUBCATEGORIES

HNR and ByP facilities operate in fundamentally different ways and lead to different pathways for emissions. *See, e.g.*, 66 Fed. Reg. 35326, 35336 (Jul. 3, 2001) (“Non-recovery coke oven batteries differ from by-product coke oven batteries both physically and operationally.”). EPA should use its discretion to regulate these facility types differently, as it has done in the past for this and countless other source categories. The CAA provides EPA with authority to regulate different types of sources differently for purposes of NESHAP regulations. Section 112(d)(1) provides, in establishing emission standards, “The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source” 42 U.S.C. § 7412(d)(1).

EPA has acknowledged that regulating sources differently is appropriate if “differences in emissions characteristics, processes, [air pollution control device] viability, or opportunities for pollution prevention exist within the source category.” 67 Fed. Reg. 47894, 47907 (July 22, 2002); *see also* 64 Fed. Reg. 63025, 63028 (Nov. 18, 1999). Courts have confirmed EPA’s discretion to categorize based on a number of different parameters. *See, e.g.*, *Sierra Club v. EPA*, 895 F.3d 1 (D.C. Cir. 2018) (upholding EPA’s approach to subcategorize based on size of brick kilns); *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 656–57 (D.C. Cir. 2016) (upholding EPA’s discretion to subcategorize based on the type of fuel a boiler burns because the type of fuel “affect[s] boiler emissions and the feasibility of emission controls”); *Sierra Club v. Costle*, 657 F.2d 298, 318–19 (D.C. Cir. 1981) (holding that the text of 42 U.S.C. § 7411, which allows EPA to “distinguish among classes, types and sizes,” permits distinctions based on variations in the sulfur content of coal used by utility plants). In *U.S. Sugar Corp.*, the D.C. Circuit noted that the statute “implicitly acknowledges that the EPA may need to set different emission standards within a category of major sources based on what is achievable for a subset of those sources.” 830 F.3d at 657.

Differences in the design and operation of heat and non-recovery and byproduct technology and their pollution control equipment result in differences in emissions, such that EPA should treat these distinct facility types as separate subcategories. *See, e.g.*, 66 Fed. Reg. at 35334 (establishing separate subcategories for short and tall batteries after recognizing “the greater height of fall of the coke from a tall oven can result in more visible emissions,” and establishing a subcategory for batteries with horizontal flues because of unique physical and operational differences from vertical flue batteries).

For example, byproduct coke plants control pushing emissions using stationary devices (baghouses) whereas three HNR sources (Granite City, Haverhill, Middletown) control pushing emissions using a mobile multiclone (on the flat push hot car) and two HNR sources (Indiana Harbor, Jewell) control pushing emissions using cokeside sheds, one of which has a baghouse system (Indiana Harbor). Differences in the design and operation of these types of coke plants and their pollution control equipment result in differences in emissions between HNR and ByP facilities. Installing additional controls on an HNR’s flat push hot car for controlling any of these