

SunCoke implores EPA to establish minimum sample volumes of 70 dscf to allow one isokinetic test run to be safely completed in one day. However, as previously discussed, the intermittent nature of pushing emissions and the insignificant levels of Mercury and PAH emissions, make any new emission limits and related testing and sample collection requirements unnecessary and burdensome.

XI. EPA'S TECHNOLOGY REVIEW DOES NOT SUPPORT REQUIRING BENZENE FENCELINE MONITORING AT HNR FACILITIES UNDER SECTION 112(D)(6)

EPA lacks authority to impose fenceline monitoring at HNR facilities because there is no evidence that the monitoring requirements are “necessary” under Section 112, taking into account developments in practices, processes, and control technologies. Monitoring data shows virtually no fugitive emissions from HNR facilities because they operate under negative pressure. EPA has not provided any reason why fenceline monitoring at HNR facilities is “necessary.” It appears that EPA’s motivation is not driven by emissions reductions. Instead, the Agency suggests that the reasons for this requirement relate to environmental justice and a desire to “provide fenceline communities with greater access to information.” 88 Fed. Reg. at 55903. If EPA moves forward with the proposed monitoring requirements as applied to SunCoke, the Agency will exceed its statutory authority by regulating ambient air under a provision of the CAA that authorizes only its regulation of “sources” of HAP emissions and by usurping the legislative function to achieve policy goals unrelated to its statutory authority. In addition, the proposal does not include a sunset provision, like that proposed in the NESHAAP for integrated iron and steel plants, which would allow HNR facilities an escape from the unceasing obligation to survey and monitor for benzene based on what the surveys reveal and what degree of compliance they achieve. *See, e.g.*, 88 Fed. Reg. 49402, 49419 (Jul. 31, 2023).

Section 112(d)(6) requires EPA to “review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section.” 42 USC § 7412(d)(6). Under this process, EPA assesses whether existing standards for regulated toxics “should be tightened in view of developments in technologies and practices since the standard’s promulgation or last revision, and, in particular, the cost and feasibility of developments and corresponding emissions savings.” *Nat’l Ass’n for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015). As used in the statute, “[n]ecessary” is modified and must be interpreted by the parenthetical that follows it, i.e., “taking into account developments in practices, processes and control technologies.” *Nat. Res. Def. Council v. EPA*, 529 F.3d 1077, 1084 (D.C. Cir. 2008) (describing EPA’s finding of no “significant developments in practices, processes and control technologies,” as “the *core requirement* of subsection 112(d)(6)”) (emphasis added).⁴⁴

EPA’s RTR “did *not* identify any developments in practices, processes or control technologies” relevant to coke oven doors or benzene fenceline monitoring. 88 Fed. Reg. 55858, 55883 (Aug. 16, 2023) (emphasis added). Despite finding no facts that would support the statute’s

⁴⁴ The D.C. Circuit held in *Louisiana Envt’l Action Network v. EPA* that, at least for previously unregulated toxic substances, the three listed factors are not exhaustive. 955 F.3d 1088. But requirements proposed as part of the technology review must nonetheless be “necessary” to achieve an existing emissions standard or other requirement of the CAA.