

category. 88 Fed. Reg. 55858, 55858 (Aug. 16, 2023). Yet EPA nonetheless proposes new MACT limits under CAA Sections 112(d)(2) and 112(d)(3) for the stated purpose of complying with its interpretation of *LEAN v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020). 88 Fed. Reg. at 55863 (“The EPA is required to address regulatory gaps, such as missing MACT standards for listed air toxics known to be emitted from the source category. *Louisiana Environmental Action Network (LEAN) v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020).”); *id.* at 55876 n.25 (citing to *LEAN* as support for its proposal of MACT standards).

EPA’s approach for evaluating and including the data it reviewed, and translating that data into proposed emission limits, is flawed for the following reasons described herein. These data issues result in MACT limits that do not approximate the limits “achieved” by the best-performing five sources, and therefore do not comply with the CAA. EPA should reevaluate and revise these proposed MACT limits, including addressing the issues described in this section.

A. The CAA Does Not Require EPA to Impose the Proposed MACT Limits on SunCoke’s HNR Facilities

The CAA requires each source category’s emission standard to address the recognized hazardous pollutants that the source category is known to emit. *See LEAN v. EPA*, 955 F.3d 1088 (D.C. Cir. 2020); *Nat’l Lime Ass’n v. EPA*, 233 F.3d 625, 634 (D.C. Cir. 2000). EPA’s overly expansive interpretation of this requirement leads the Agency to impose unnecessary and ill-informed MACT floor limits on an industry (heat/non-recovery cokemaking) that EPA recognizes adequately controls HAP emissions.

CAA Section 112(f) directs EPA to evaluate whether the risk remaining after application of MACT standards is “acceptable” and, if it is not acceptable, directs EPA to take additional steps to address that risk as necessary “to provide an ample margin of safety to protect public health.” 42 USC § 7412(f)(2). “[A]s a general matter, EPA has stated that where we determine that existing standards are adequate to protect public health with an ample margin of safety and prevent adverse effects, it is unlikely that EPA would revise MACT standards merely to reflect advances in air pollution control technology.” 72 Fed. Reg. 5510, 5532–33 (Feb. 6, 2007).

CAA Section 112(d)(6) directs EPA to periodically “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); *see also infra* Section XI. “Necessary” is modified and must be interpreted by the parenthetical that follows it, i.e., “taking into account developments in practices, processes and control technologies.” *See, e.g., Nat’l Assoc. for Surface Finishing v. EPA*, 795 F.3d 1, 5 (D.C. Cir. 2015) (stating that EPA must conduct a “technology review” to determine “whether standards [for an industry] should be tightened in view of developments in technologies and practices since the standard’s promulgation or last revision”).

EPA found through its RTR that risks due to the HAP emissions from coke ovens’ PQBS are “acceptable”; that the existing PQBS rule “provides an ample margin of safety to protect public health”; and that there “are no developments in practices, processes or control technologies that necessitate revision of standards for this source category.” 88 Fed. Reg. 55858, 55858 (Aug. 16, 2023).