

The Proposed Rule must make clear that any emissions from outside the facility, or from non-source category emissions from within the facility, must be excluded from the quarterly reports. Otherwise, root cause investigations and corrective action obligations will be triggered based on benzene concentrations in the ambient air and on emissions the Agency lacks authority to regulate. While the Proposed Rule contains narrow exceptions allowing the owner or operator to collect one or more samples if the owner or operator believes that an offsite upwind source has influenced the sampler measurements, provided the regulated entity secures from EPA a site-specific monitoring plan, this exception does not go far enough. 88 Fed. Reg. at 55887. The exclusion must include all offsite sources, not just those that are “upwind,” and all non-source category emissions, because EPA has no legal authority to regulate either.

Although EPA claims to “allow the subtraction of off-site interfering sources (because they are not within the control of the owner or operators of coke ovens facilities) through site-specific monitoring plans,” the Proposed Rule language does not go this far, i.e., it is limited to offsite, “upwind” sources. 88 Fed. Reg. at 55887. More fundamentally, EPA admits that it is “not providing this option for on-site, non-source category emissions,” *id.* at 55887, meaning that EPA intends to violate the law. The action levels are based on facility-wide emissions, which includes non-source category emissions, which EPA may not legally regulate through its Technology Review for COB. Nothing in CAA Section 112 allows EPA to compel monitoring and to trigger work practices requirements based on sources and HAP emissions that EPA may not legally regulate. Yet, 99% of EPA’s modeling data was from non-category sources.

If EPA nevertheless adopts a Fenceline Monitoring program, even though it has no legal authority to do so, it must ensure that its flawed implementation of the Refinery MACT, which also is evident in the Proposed Rule, is not repeated:

- Regulated entities should only be required to report source category emissions that originate from source category emissions from their facilities, and there must be clear mechanisms in the regulations to exclude emissions “that do not originate from the facility.” *Id.* at 55885.
- Regulated entities should not be required to perform either a root cause or corrective action analysis for emissions that “do not originate from the facility.” *Id.* EPA must amend the definition of root cause to make clear that the analysis is limited to source category emissions that originate from the facility. The root cause analysis is an assessment conducted through a process of investigation to determine the primary underlying cause and all other contributing causes to an exceedance of an action level set forth in this rule.
- Coke manufacturers must be eligible for exemptions from reporting or reduced monitoring based on low emissions compared to the action level based on emissions that originate *from the facility*, not offsite sources. Regulatory obligations under a benzene fenceline monitoring program that are triggered by ambient air concentrations, emissions from offsite sources, and emissions from non-source categories violate Section 112 of the CAA.

As written, the Proposed Rule regulates ambient air and is illegal.