

Agency inexplicably lumped the sources together in concluding that Fenceline Monitoring is appropriate. *See infra* Section XI.A. It is impossible to reconcile EPA's current proposal to require Fenceline Monitoring of ByP and HNR with EPA's long-standing recognition that the differences in fugitive emissions between the two are so materially different.

An agency's decision is arbitrary and capricious if "the agency has [] offered an explanation for its decision that runs counter to the evidence before the agency." EPA does not offer any meaningful basis for its decision to require HNR plants to conduct Fenceline Monitoring and its data makes clear that there is no credible basis for doing so. *Sierra Club v. Dep't of the Interior*, 899 F.3d 260, 293 (4th Cir. 2018) (quoting *State Farm*, 463 U.S. at 43). EPA's conclusion suggests that it would have required Fenceline Monitoring regardless of the outcome of its analysis.

2. EPA's Reasons for Proposing Fenceline Monitoring Appear to be Unrelated to its Technology Review

EPA is proposing that coke oven batteries "conduct fenceline monitoring for benzene and report these data electronically to the EPA so that it can be made public and provide fenceline communities with greater access to information about potential emissions impacts." 88 Fed. Reg. at 55903. In other words, EPA is using the Technology Review as a vehicle to implement Executive Order Number 12898, "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations." 59 Fed. Reg. 7629 (February 16, 1994). But EO 12,898 does not augment EPA's authority under the CAA. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 588 (1952) ("The Constitution did not subject this law-making power of Congress to presidential or military supervision or control."). Rather, the Order directs EPA to adopt EJ requirements when "permitted by law," which the Agency is not in this case for the reasons described above.

In addition to being unlawful, providing Fenceline Monitoring data to fenceline communities, as EPA has proposed, tells the public nothing useful about the potential emissions impacts from the facilities because the Proposed Rule "does not correlate to any particular metric related to risk," and because benzene is ubiquitous and the Proposed Rule does not ensure that emissions from offsite sources and non-source category emissions are excluded. 88 Fed. Reg. at 55886. The fugitive HAP emissions monitoring data collected at SunCoke's Haverhill facility is publicly available on EPA's web site and provides more useful information concerning risk to fenceline communities than the proposed fenceline monitoring, demonstrating there is no impact on ambient HAP levels and that emissions are below risk-based screening levels.⁴⁹

3. The Proposed Rule Exceeds EPA's Authority Under CAA Section 112 Because It Does Not Ensure That Emissions From Offsite Sources Are Excluded

Section 112 of the CAA does not authorize EPA to regulate ambient air. *See W. Virginia v. EPA*, 142 S. Ct. 2587, 2600 (2022) ("EPA, though, does not choose which sources must reduce

⁴⁹ *See* <https://www.epa.gov/outdoor-air-quality-data>; *see also* Attachment E (Letter from Ohio EPA to Haverhill Coke Company, July 14, 2014).