

test data available, but only data that is from analogous, non-defunct facilities, using scientifically and statistically reliable collection methods.

C. EPA Should Not Impose MACT Floor Limits on HNR Pushing Operations

1. HNR Pushing Emissions are Too Minuscule to Necessitate A Limit

SunCoke's emissions from its pushing operations are *de minimis* and do not warrant any additional regulation or testing. In fact, additional testing would yield unreliable and potentially false results because the proposed limit and potential emission amounts are so low. For this reason, EPA should not require additional emissions standards associated with pushing.

Pushing is an intermittent emissions source. Emissions occur only during production, and only intermittently during production when the coke bed is pushed and travels to the quench tower. As such, pushing typically results in less than three (3) hours of actual emissions activity each day. Data presented in EPA's memo on HAP emissions from Coke Oven Facilities shows that estimated Total HAPs from Pushing at HNR facilities are typically less than 1 tpy.³⁰ Estimated emissions of individual HAPs, as presented in the same memo, are less than the reporting thresholds (for health risk analysis) established by many state agencies.³¹ Thus, pushing HAPs are insignificant and any potential HAP emissions are already minimized by maintaining compliance with the existing PM limits on pushing.

Considering the intermittent nature of pushing emissions and the insignificant levels of HAP emissions, any new emission limits and testing requirements for pushing are unnecessary and burdensome. As noted by the D.C. Circuit, the *de minimis* doctrine serves "to alleviate 'severe' administrative and economic burdens by lifting requirements on 'minuscule' emission increases." *New York v. EPA*, 443 F.3d 880, 888 (D.C. Cir. 2006). Further, "the literal meaning of a statute need not be followed where the precise terms lead to absurd or futile results, or where failure to allow a *de minimis* exception is contrary to the primary legislative goal." *State of Ohio v. EPA*, 997 F.2d 1520, 1535 (D.C. Cir. 1993). It is within EPA's authority to set aside trivial applications of a regulation, particularly in this instance, where testing would do nothing more than yield unreliable results and frustrate the purposes of the regulation. *Alabama Power Co. v. Costle*, 636 F.2d 323, 361 (D.C. Cir. 1979) ("The 'de minimis' doctrine that was developed to prevent trivial items from draining the time of the courts has room for sound application to administration by the Government of its regulatory programs . . .") (citing *District of Columbia v. Orleans*, 406 F.2d 957, 959 (1968)). Because the proposed limit and potential emission amounts are so low, EPA should not impose additional emission standards on the HNR facilities' pushing operations.

2. Mercury Emissions from Pushing Are Too Low for Establishing A Practical Emission Limit

Mercury emissions from SunCoke's pushing operations are also too low to permit scientific measurement of whether they comply with the proposed limits. A review of the individual sample

³⁰ EPA-HQ-OAR-2003-0051-0763, EPA, Memorandum, *HAP Emissions from Coke Oven Facilities*, May 1, 2023.

³¹ <https://www.phila.gov/media/20220218095051/AMR-VI-Risk-Assessment-Technical-Support-Document-09-14-2021.pdf>; <https://nj.gov/depa/airtoxics/Technical/Support/Document.pdf>.