M. SunCoke will suffer irreparable harm absent a stay or amendment of the Final Rule.

An agency may grant a stay under section 705 to "maintain the status quo" and "allow judicial review of the underlying regulation to proceed in a just manner."[112] EPA can also amend a Final Rule pursuant to section 553(e) of the APA. Absent a stay to preserve the status quo or amendment, judicial review of the Final Rule cannot proceed in a just manner.

The Final Rule will cause SunCoke irreparable harm because EPA incorrectly assumed that the Final Rule will not require SunCoke to install new controls in order to comply. EPA relied on that assumption to analyze the cost impacts, calculate the compliance deadlines, and make other decisions in the Final Rule. But EPA's assumption is wrong. SunCoke will have to expend approximately *a half a billion dollars* in new technologies, which will require at least three years to design, engineer, and install. SunCoke cannot meet EPA's deadline, which will put it out of compliance as of December 5, 2025.[113]

The Supreme Court recently validated the principle that non-recoverable expenditures constitute irreparable harm in *Ohio v. EPA*.[114] There, a number of states challenged EPA's implementation of a federal implementation plan (FIP) for 23 states, in lieu of their proposed state implementation plans. The States involved stressed that "complying with the FIP during the pendency of this litigation would require them to incur "hundreds of millions[,] if not billions of dollars" in costs that are "nonrecoverable."[115] Other courts, including the D.C. Circuit, have also "recognized that financial injury can be irreparable where no adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation."[116] "[C]omplying with a regulation later held invalid almost always produces the irreparable harm of nonrecoverable compliance cost."[117]

SunCoke easily meets the standard for irreparable harm. For the reasons explained below, EPA should stay the effect of the compliance deadlines or amend the Final Rule.

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112 *Bauer v. DeVos*, 325 F. Supp. 3d 74, 106 07 (D.D.C. 2018) (internal quotation marks omitted).

113 SunCoke will provide detailed declarations with its motion for judicial stay demonstrating that the Final Rule will cause it to spend many millions of dollars to comply with the Final Rule, if SunCoke is able to at all.

114 144 S. Ct. 2040 (2024) (finding that injuries to the States' sovereign interests and the extraordinary costs of complying with EPA's regulations were sufficient to balance the government's interests).

115 *Ohio*, 144 S. Ct. at 2053 (citing *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220 221 (1994) (Scalia, J., concurring in part and concurring in judgment) ("Because each side has strong arguments about the harms they face and equities involved, our resolution of these stay requests ultimately turns on the merits and the question who is likely to prevail at the end of this litigation."); *Rest. L. Ctr. v. U.S. Dep't of Lab.*, 66 F.4th 593, 597 (5th Cir. 2023) ("[T]he nonrecoverable costs of complying with a putatively invalid regulation typically constitute irreparable harm.").

116 *In re NTE Conn., LLC*, 26 F.4th 980, 990–91 (D.C. Cir. 2022) (cleaned up); *see also Alabama Ass'n of Realtors v. Dep't of Health & Hum. Servs.*, 594 U.S. 758, 765 (2021) (explaining that the loss of rent payments with no guarantee of eventual recovery would subject landlords to irreparable harm).

117 *See Louisiana v. Biden*, 55 F.4th 1017, 1034 (5th Cir. 2022) (citing *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)).