

comment period so that SunCoke and others could not address critical issues in the Proposed Rule. Due to the short comment period, SunCoke was forced to submit additional comments and data after the close of the comment period, including data that EPA refused to address.

## 2. *The decision violated the CAA and the APA.*

EPA's decision to establish 17 numerical MACT floor emission limits, despite its acknowledgment that those limits are not required to address any residual risk associated with HAP emissions from the PQBS source category, is arbitrary and capricious.

EPA found through its Risk and Technology Review (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."<sup>101</sup> Yet EPA nonetheless proposed new MACT floor limits under CAA sections 112(d)(2) and 112(d)(3) for the stated purpose of complying with its interpretation of *LEAN*, 955 F.3d 1088—despite the fact that these new limits will have crippling effects on companies like SunCoke, forcing the installation of many millions of dollars in new technology.<sup>102</sup>

In its comments on the Proposed Rule, SunCoke objected to EPA's proposed MACT floor emission limits on the basis that they were inconsistent with EPA's RTR findings for the PQBS source category.<sup>103</sup> SunCoke explained that, contrary to EPA's interpretation of *LEAN*, the agency is not required to set numeric MACT floor emission limits when it has already determined that risks are acceptable pursuant to CAA section 112(f)(2).

EPA rejected SunCoke's comment, explaining that "[t]he Court in *LEAN* did not consider the relationship of risk review under CAA section 112(f)(2) and technology review under CAA section 112(d)(6). . . ." In EPA's view, *LEAN* requires that the EPA promulgate 'as many limits as needed' so that all pollutants from a source category are regulated."<sup>104</sup> The agency further argued that:

EPA has an independent statutory authority and obligation to conduct the technology review separate from the EPA's authority to conduct a residual risk review. The EPA's finding that there is an ample margin of safety under the residual risk review in no way obviates the EPA's obligation to require more stringent standards under the technology review where developments warrant such standards.<sup>105</sup>

EPA had other options. It could have considered surrogate emission limits or work practice standards for the 17 previously unregulated HAP. In fact, EPA implicitly recognized its authority to do that in the Final Rule, when EPA set a MACT work practice standard for three HAP (the organic

<sup>101</sup> 88 Fed. Reg. 55858.

<sup>102</sup> 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).

<sup>103</sup> SunCoke comment letter, p. 25.

<sup>104</sup> 89 Fed. Reg. at 55711.

<sup>105</sup> 89 Fed. Reg. at 55710.