

filling” MACT floors. The Supreme Court in *Loper Bright* recently instructed that “courts use every tool at their disposal to determine the best reading of the statute.”⁵⁰ In light of *Loper Bright*, the agency should reconsider its decision not to consider the cost of achieving the emission reductions and any non-air quality health and environmental impacts and energy requirements in EPA’s gap-filling review of the existing standards.⁵¹

3. *EPA failed to consider data relevant to the MACT floor limits.*

In response to the 2017 ICR, SunCoke submitted additional stack test data—including at least five stack tests completed in April 2012, June 2012, August 2014, April 2015, and June 2015 for its Middletown facility—to EPA.⁵² EPA had not considered these data in its determination of the proposed emission limits. SunCoke also submitted an analyses of the errors and omissions in the dataset used by EPA for the proposed emission limits.⁵³ In the Final Rule, EPA explained that, after issuing the Proposed Rule, the agency incorporated certain additional data into revised MACT floor calculations, including the June 2012 test data for the HRSG Bypass Stack and April 2015 test data for the main baghouse stack at SunCoke’s Middletown facility.⁵⁴ EPA explains that it “reviewed the previous test reports submitted that were within five years prior to 2016 and that matched the requirements for testing in the CAA section 114 requests to add to the MACT data pool.”⁵⁵ That explanation does not clarify why some of the data submitted by SunCoke were not incorporated into the final MACT floor calculations. For example, EPA did not incorporate at least some of the data provided by SunCoke.⁵⁶ EPA must consider the relevant data provided by SunCoke in its establishment of the MACT floor limits. Agencies “must examine the *relevant data* and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’”⁵⁷ Here, it has failed to do so.

4. *New MACT floor limits for pushing from existing sources are arbitrary and capricious for several reasons. (40 C.F.R. § 63.7290).*

EPA’s new MACT floor limits for mercury (Hg), acid gases (AG), hydrogen cyanide (HCN), and polycyclic aromatic hydrocarbons (PAH) from pushing at existing HNR facilities are unnecessary,

⁵⁰ *Id.* (“*Chevron* cannot be reconciled with the APA by presuming that statutory ambiguities are implicit delegations to agencies. That presumption does not approximate reality. A statutory ambiguity does not necessarily reflect a congressional intent that an agency, as opposed to a court, resolve the resulting interpretive question.”).

⁵¹ *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2247 (2024).

⁵² See Docket IDs EPA-IIQ-OAR-2002-0085-1551; EPA-IIQ-OAR-2002-0085-1552; EPA-IIQ-OAR-2002-0085-1553; EPA-IIQ-OAR-2002-0085-1554; EPA-IIQ-OAR-2002-0085-1555.

⁵³ See Email and attachments from K. Batten, SunCoke, to D. Jones and C. French, EPA (Jan. 18, 2024), Docket ID EPA-IIQ-OAR-2002-0085-1566.

⁵⁴ 89 Fed. Reg. at 55715.

⁵⁵ *Id.*

⁵⁶ See Docket IDs EPA-IIQ-OAR-2002-0085-1552; EPA-IIQ-OAR-2002-0085-1554; EPA-IIQ-OAR-2002-0085-1555.

⁵⁷ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)); see also EPA, Guidelines for MACT Determinations under Section 112(j) Requirements at 2-8 (Feb. 2002) (“It is not necessary for the MACT floor to be determined based on emissions information from every existing source in the source category or subcategory if such information is not available. The permitting authority, however, should check with EPA Regional Offices and EPA Headquarters for any available information that could be used in determining the MACT floor.”), <https://www3.epa.gov/ttn/atw/112j/guidance.pdf>.