without a reasonable explanation, is arbitrary and capricious.[47] EPA's varying interpretations of *LEAN* and different treatment of HAP is of central relevance, because it has led the agency to establish MACT floor limits for SunCoke's HNR facilities that are not only unnecessary, but also unachievable, as discussed in Sections I.B.2 through I.B.7 below.

Further, EPA's failure to include eight newly added HAP, and an explanation of its different approach to regulating them, in the Proposed Rule was in error. In doing so, SunCoke did not have an opportunity to address the new HAP surrogacy determinations and work practice standard that were inserted into the Final Rule or argue why EPA's disparate treatment of the newly regulated HAP was impermissible.

The MACT floor limits, work practices, and surrogacy determinations are clearly central to the Final Rule, particularly where SunCoke may not be able to meet them even if it invested many millions of dollars. For these reasons, EPA should reconsider the Final Rule under section 307(d)(7)(B) of the CAA and, during its reconsideration, allow SunCoke and other facilities to provide additional data refuting the achievability of the MACT floor limits. EPA must allow notice and comment on the eight HAP it omitted from the Proposed Rule and the different regulatory approaches it adopted.

2. *EPA should consider the cost, health and environmental, and energy considerations under CAA section 112(d)(2) when setting MACT floor emission limits.*

EPA takes the position that the CAA prevents it from taking costs into consideration when determining MACT floors.[48] At the same time, the agency claims that "all facilities should be able to meet the MACT floor limits developed for the previously unregulated HAP and unregulated sources of HAP without the installation of additional controls."[49] SunCoke will submit detailed declarations supporting its motion for a judicial stay describing the many millions of dollars it will spend on the design, and engineering, of new technology to meet the requirements of the Final Rule. EPA should have taken these costs into consideration when setting the new MACT floor limits.

EPA's practice of setting MACT floor-level controls based solely on emissions data from best performing sources is not the best reading of the statute. EPA should instead "tak[e] into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements," as Congress required in CAA section 112(d)(2). The notion advanced by EPA that section 112(d) actually prohibits the agency from considering costs and benefits when establishing MACT floors turns the plain statutory text on its head. EPA's current position is also contrary to the line of cases that touch on this issue, starting with *National Lime Association v. EPA*, 233 F.3d 625 (D.C. Cir. 2000), and is not based on a reasoned analysis of the plain language of the statute.

EPA should revisit its interpretation of section 112(d) and consider *all* of the relevant factors as required by Congress, including "the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements" when establishing "gap

[47] *Doubleday Broad.*, 655 F.2d at 423.
[48] 89 Fed. Reg. at 55710.
[49] *Id.*; *see also* 89 Fed. Reg. at 55717.