proceeding for a different industry. Under its own announced criteria, EPA's proposed measures are arbitrary and capricious.

A. BTF Measures Must be "Achievable" After Taking into Consideration their "Cost . . . and Any Non-air Quality Health and Environmental Impacts and Energy Requirements"

The first phase of EPA's standard setting process under CAA Section 112 consists of two parts: the Agency first sets the MACT standards as a minimum control level or "floor" for emissions reduction, then considers control options that are more stringent than ("beyond") this floor:

> Step one requires EPA to establish what has come to be known as the MACT floor—the minimum level of reduction required by statute. . . . Once EPA has set the MACT floor, it may then impose stricter standards—so-called "beyond-the-floor" limits if the Administrator determines them to be achievable after "taking into consideration the cost . . . and any non-air quality health and environmental impacts and energy requirements."

Sierra Club v. EPA, 353 F.3d 976, 980 (D.C. Cir. 2004) (citing 42 U.S.C. § 7412(d)(2)). When considering whether to implement BTF measures, EPA "must" take into consideration the cost of achieving such emission reduction. *Id.* at 988 (citing 42 U.S.C. § 7412(d)(2)). Costs are clearly an important component of achievability. *U.S. Sugar Corp. v. EPA*, 830 F.3d 579, 640 (D.C. Cir.), *on reh'g en banc*, 671 F. App'x 822 (D.C. Cir. 2016), *and on reh'g en banc in part*, 671 F. App'x 824 (D.C. Cir. 2016) (upholding decision not to adopt BTF measures that would cost certain facilities $230,000 per ton of emissions where "[n]othing in section 7429(a)(2) requires the Agency to impose a cost so disproportionate to the expected emissions gains"); *Sierra Club v. EPA*, 167 F.3d 658, 666 (D.C. Cir. 1999) ("In the absence of any type of quantification of benefits or costs, the Administrator had no basis for finding that, 'taking into account the cost,' emissions reductions from pollution prevention programs were 'achievable' as the statute uses the word.").

EPA's discussion of this second step in the preamble for the Proposed Rule acknowledges that BTF standards are considered only if they "might be cost-effective," and proposed only if they are technically feasible and have "reasonable cost impacts":

> *If EPA determines that there are potential BTF standards that might be cost-effective*, the EPA typically develops and evaluates those BTF control options. After evaluating the BTF options, the EPA typically proposes such BTF options *if EPA determines those BTF options under consideration are technically feasible, costs impacts are reasonable*, and that the BTF standard would achieve meaningful reductions and not result in significant *non-air impacts* such as impacts to other media or excessive energy use.

88 Fed. Reg. 55858, 55862 (Aug. 16, 2023) (emphasis added). For this rulemaking, EPA has not demonstrated that the proposed BTF limits are achievable, nor did it accurately consider costs for achieving those limits.

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