

their pollution and by how much to meet the ambient pollution target”). CAA Section 112 only authorizes EPA to regulate emissions “sources.” 42 U.S.C. § 7412(d)(1). Yet in print and in practice, EPA is proposing to regulate ambient air with this rulemaking. EPA proposes that benzene be measured at the fence line of each coke oven facility using EPA Methods 325A/B. 88 Fed. Reg. at 55885. According to EPA, the facility would then determine a “delta c” in order to subtract out the estimated contribution from background emissions that do not originate from the facility. *Id.* The rolling annual average “delta c” would be compared against the benzene action level and owners and operators would be required to conduct root cause analysis and corrective action upon exceeding the action level. *Id.*

As EPA acknowledges, fence line monitors measure ambient air concentrations, not facility-specific emissions. *See, e.g., id.* at 55887. While the Proposed Rule contemplates excluding sample results attributable to offsite sources as outliers, *id.* at 55887, in practice, EPA does not allow it. For example, EPA’s Petroleum Refinery Sector Rule (“Refinery MACT”), the Agency claimed that the benzene fence line monitoring program is not an ambient air standard. 80 Fed. Reg. 75178, 75192 (Dec. 1, 2015). The Agency explained that the benzene fence line monitors must be placed “on the facility fence line to measure emissions from the facility, i.e., on the property of the refiner.” *Id.* The placement, according to EPA, is necessary to establish that the monitors are not monitoring ambient air. *Id.* In addition, the Agency explained that Method 325A sets out procedures to exclude outliers. *Id.*

Despite these assurances in the Refinery MACT, EPA has rejected quarterly reports in which regulated entities have done just that—used Method 325A to exclude benzene fence line concentrations from offsite sources as “outliers.” As a result, refineries are required to report benzene emissions from offsite sources in their quarterly reports, conduct root cause analyses and perform corrective action based on ambient air emissions, including offsite sources, and are not eligible for reduced monitoring if emissions from offsite sources cause the refinery’s emissions to be above the benzene action level, all of which violate CAA Section 112.

The Proposed Rule contains the same flaws. The proposed amendments to Subpart L’s reporting and recordkeeping requirements refers to Section 9.2 of Method 325A with respect to outliers.⁵⁰ In Method 325A, Section 9.2, a potential outlier is defined as “a result for which one or more PS tubes does not agree with the trend in results shown by neighboring PS tubes particularly when data from those locations have been more consistent during previous sampling periods.” Method 325A, Section 9.2 also states that “if the anomalous result is not repeated for that monitoring location, the episode can be ascribed to transient contamination and the data in question must be flagged for potential elimination from the dataset.” Yet, in practice, EPA has taken the position that “Method 325A does not account for off-site sample contamination” and that the data impacted by an off-site emissions event should not be discarded/eliminated from the delta c calculation as an outlier. This determination is based on precedence established in the Agency’s review of similar cases brought to it by refineries when off-site emissions events impacted their benzene fence line monitors. For these reasons, the Proposed Rule must be revised to clarify that “outliers” necessarily include sample contamination from off-site sources.

⁵⁰ EPA-HQ-OAR-2003-0051-0753, EPA, Memorandum, *Coke NESHAAP Redline Version of Proposed Rule Changes for 40 CFR Part 63, Subpart L*, at 45 (Jul 1, 2023) (40 C.F.R. § 63.311(j)(7)).