

MACT floor limits, also referred to as floor-based emission limits, for the 17 HAP and processes EPA identified in the Proposed Rule.³⁷

SunCoke commented that *LEAN* does not require EPA to set MACT floor limits for every HAP, particularly those that are already controlled to an adequate margin of safety. It only requires that EPA “address” all HAP known to be emitted by a source category.³⁸ As SunCoke explained, the court in *LEAN* provides that “because the [CAA] necessitates section 112-compliant emission standards for each source category, and section 112(d)(6) requires EPA at least every eight years to review and revise emission standards ‘as necessary,’ EPA’s section 112(d)(6) review of a source category’s emission standard must *address* all listed air toxics the source category emits.”³⁹ Put simply, it is not necessary to establish MACT floor-based standards where 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”⁴⁰ as it did here.

In the Final Rule, EPA rejected SunCoke’s comments and adopted MACT floor limits for all 17 HAP and processes identified in the Proposed Rule, again citing the *LEAN* decision as requiring it.⁴¹ However, EPA treated other HAP differently in the Final Rule. In the Final Rule, EPA identified eight HAP that it failed to include in the Proposed Rule – perhaps because EPA was rushing to meet the May 23, 2024 court deadline.⁴² For the omitted HAP, EPA established a MACT floor work practice standard of “good combustion for three unregulated HAP (the organic HAP emissions of D/F, PAH, and VOHAP from battery stacks) and surrogacy determinations for the other five.”⁴³ EPA determined that it could use work practice standards and surrogacy determinations, *instead of numeric MACT floor limits*, because “many of the test runs were BDL and seven of the eight had a majority of test runs BDL.”⁴⁴

But many of the tests for the other 17 HAP were also “below the detection limit.” EPA does not explain why it read *LEAN* in the Proposed Rule to require MACT floor limits for all HAP, but not in the Final Rule. For the eight HAP it left out of the Proposed Rule, EPA determined that *LEAN* allowed it to use surrogates and work practices instead of the MACT floor limits it insisted were required for the 17 HAP, which also present minimal risk.

The APA does not allow EPA to insist that *LEAN* requires it to establish MACT floor limits for 17 HAP, but does not require the same for eight other HAP, when the risk profile is the same.⁴⁵ “[D]eciding a case one way today and a substantially similar case another way tomorrow,”⁴⁶

³⁷ 88 Fed. Reg. at 55707, 55876 n.25.

³⁸ SunCoke comment letter, pp. 26–27.

³⁹ *Id.*; *LEAN*, 955 F.3d at 1091 (emphasis added).

⁴⁰ 88 Fed. Reg. at 55858.

⁴¹ 89 Fed. Reg. at 55711 (“*LEAN* thus requires that the EPA promulgate ‘as many limits as needed’ so that all pollutants from a source category are regulated.”).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 89 Fed. Reg. at 55707.

⁴⁵ *Doubleday Broad. Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981).

⁴⁶ *Id.*