

pollutants is technically infeasible because the hot ear is mobile, subject to significant vibration, and has very limited space or weight capacity for additional equipment. Despite the differences between these sources, EPA developed the proposed pushing limits using data from both byproduct and HNR sources. *See* 88 Fed. Reg. 55858, 55861 (Aug. 16, 2023). For these reasons, it is inappropriate, arbitrary, and capricious to use data from byproduct coke plants to establish limits for the HNR facilities. The HNRs' limits must be based solely on HNR facilities' data. *See* Section IX.C.3.

V. THE PROPOSED RULE VIOLATES THE APA BECAUSE EPA PROVIDED INADEQUATE TIME FOR REVIEW

Due to the highly technical nature of this rulemaking and the large volume of information in the docket, EPA is violating the CAA and the Administrative Procedure Act (“APA”) by limiting the notice and comment period to 45 days. EPA’s failure to provide a reasonable period for responding to the proposed amendments violates the CAA. Section 107(h) of the CAA requires EPA to provide a “reasonable period” for public participation in responding to a proposed rule: “It is the intent of Congress that . . . the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a *reasonable period* for public participation of at least 30 days . . .” 42 USC § 7607(h) (emphasis added). This comment process is a “crucial” rulemaking requirement to “ensure that agency regulations are tested via exposure to diverse public comment . . . to ensure fairness to affected parties, and . . . to give affected parties an opportunity to develop evidence in the record to support their objections to the rule and thereby enhance the quality of judicial review.” *Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 100 (D.C. Cir. 2013); *see also Miami-Dade Cty. v. EPA*, 529 F.3d 1049, 1058 (11th Cir. 2008). Moreover, the fact that EPA has a court ordered deadline of May 23, 2024 to complete this rulemaking does not excuse the agency from complying with Section 107(h). The CAA is clear that EPA is required to provide a “reasonable period” for public participation even when a rulemaking is “subject to a deadline.” 42 USC § 7607(h).

Further, EPA’s failure to provide a meaningful opportunity for SunCoke and other affected sources to review and comment on the proposed amendments violates the APA. The APA requires agencies to “give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.” 5 U.S.C. § 553(e). Agencies must provide the public with a “meaningful opportunity” to comment on a proposed rule. *Rural Cellular Ass’n v. FCC*, 588 F.3d 1095, 1101 (D.C. Cir. 2009). The length of a comment period is an important factor used to determine whether an agency provided a “meaningful” opportunity to comment. *See, e.g., N.C. Growers’ Ass’n v. UFW*, 702 F.3d 755, 770 (4th Cir. 2012) (“Our conclusion that the Department did not provide a meaningful opportunity for comment further is supported by the exceedingly short duration of the comment period.”); *see also Est. of Smith v. Bowen*, 656 F. Supp. 1093, 1099 (D. Colo. 1987) (“The comment period of 60 days was inadequate. The Secretary’s failure to extend that period pursuant to the numerous requests to do so was arbitrary and capricious”).

As further described in SunCoke’s request for an extension, attached as Attachment A, EPA is proposing *major* changes to *two* different standards, 40 CFR Part 63, Subparts I. and CCCCC, in a single rulemaking. The amendments are highly technical, and over 450 supporting documents including substantial volumes of technical memoranda, analyses, and important