

prerequisite for regulating, EPA proposed a benzene fence line monitoring requirement, a benzene action level (as a COE surrogate), and a root cause analysis and corrective action requirement if the action level is exceeded (collectively, “Fence line Monitoring Requirements”), ostensibly “[t]o further address fugitive emissions at the Coke Oven Batteries facilities.”⁴⁵

The statute clearly requires EPA to “tak[e] into account developments in practices, processes, and control technologies” and to determine whether it is “necessary” to revise the standards. EPA “must give effect to the unambiguously expressed intent of Congress.” *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 842-43 (1984). Because there was no necessity with respect to these changes proposed by EPA, the Proposed Rule ignored this mandate and EPA may not legally adopt its proposed Fence line Monitoring Requirements.

A. Fence line Monitoring is Unnecessary and May Not Legally Be Adopted

Having concluded that there have been no developments in practice, processes, and control technologies necessitating additional controls, EPA may not legally adopt new control requirements.⁴⁶ With respect to SunCoke’s HNR facilities, in particular, the Agency offers no basis for requiring Fence line Monitoring, having concluded that there are no fugitive emissions because the ovens operate under negative pressure. As set forth in greater detail below, because HNR facilities use this unique technology, they must be excluded from any requirements for Fence line Monitoring that may be adopted.

1. Even If It Were “Necessary” for EPA to Require Fence line Monitoring at ByP Facilities, The Requirement Should Not Apply to HNR Facilities

⁴⁵ By contrast, in the Refinery MACT, EPA “determined that there *are* developments in practices, processes and control technologies that warrant revisions to the MACT standards for this [Refinery MACT 1] source category” and finalized a “fence line monitoring work practice standard to improve the management of fugitive emissions.” 80 Fed. Reg. 75,182-83 (Dec. 1, 2015).

⁴⁶ The proposed Fence line Monitoring Requirements are not appropriate work practice standards for HNR facilities. EPA reached that conclusion earlier this year in the Lead Acid Battery RTR and should have similarly done so here. See Lead Acid Battery RTR, 88 Fed. Reg. 11,556, 11,566 (Feb. 23, 2023). It explained:

We received three comments regarding the proposed fugitive dust minimization work practice standard. Environmental groups generally supported the proposal, but they commented that the EPA must require the use of fence line monitoring and corrective action tied to that monitoring as well as full enclosure negative pressure requirements. We disagree that the use of fence line monitoring and corrective action tied to that monitoring is an appropriate work practice standard for this source category.

In that rulemaking, EPA stated that it “did not find that fence line monitoring in the lead acid battery manufacturing source category is a new trend in facility procedures or is generally in use at these facilities.” EPA, New Source Performance Standards for Lead Acid Battery Manufacturing Plants And National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources, Summary of Public Comments and Responses on Proposed Rules, 87 Fed. Reg. 10134 (Feb. 23, 2022) (Response 4.7). Coupled with the significant economic impacts, EPA made clear that “it was not identified as a development or advancement in emissions reduction control technology or control methods.” *Id.* The same is true here: fence line monitoring is not a new trend in facility procedures or generally in use at HNR facilities.