

HAP emissions of D/F, PAH, and VOHAP from battery stacks) and surrogate standards and process combinations for five other HAP. EPA did this after realizing that it failed to propose standards for those eight previously unregulated HAP in the Proposed Rule. That EPA set numerical MACT floor limits (which SunCoke will not be able to meet) for some HAP and process combinations while establishing surrogates and work practice standards for others without sufficient explanation is arbitrary and capricious.

EPA's interpretation of *LEAN* is not entitled to deference. Nor is EPA's interpretation of law, as the Court's decision in *Loper Bright* makes clear.¹⁰⁶ When EPA's overly expansive interpretation of *LEAN* leads it to impose unnecessary and ill-informed MACT floor limits on an industry (heat/non-recovery cokemaking) that EPA recognizes adequately control HAP emissions, its decision is arbitrary and capricious. "[A]s a general matter, EPA has stated that where we determine that existing standards are adequate to protect public health with an ample margin of safety and prevent adverse effects, it is unlikely that EPA would revise MACT standards merely to reflect advances in air pollution control technology."¹⁰⁷ The same should be true for a rule where EPA found that "[t]here are *no measurable air quality impacts* from this rule that can be guaranteed," and it cannot "quantif[y] any benefits associated with this final rule, because all covered facilities are expected to already have HAP emissions levels that are below the final limits."¹⁰⁸

SunCoke is likely to prevail on the merits for several other reasons. EPA's inconsistent designation of MACTs, coupled with its failure to consider SunCoke's analyses of the errors and omissions in the dataset used by EPA for the proposed emission limits was arbitrary and capricious.¹⁰⁹ EPA's disparate treatment of the 17 HAP included in the Proposed Rule versus the eight new HAP in the Final Rule is arbitrary and capricious. "[D]eciding a case one way today and a substantially similar case another way tomorrow," without a reasonable explanation, is arbitrary and capricious.¹¹⁰ In fact, EPA's decision to add eight new HAP in the Final Rule also violates basic APA requirements. EPA's failure to consider the cost of achieving emissions reductions, as well as any non-air quality health and environmental impacts and energy requirements when setting MACT floor-level controls based solely on emissions data from best performing sources violates CAA section 112(d)(2).

For these reasons and the others set forth in this Petition, SunCoke's petition is likely to succeed on the merits.¹¹¹

¹⁰⁶ 144 S. Ct. 2244.

¹⁰⁷ 72 Fed. Reg. 5510, 5532-33 (Feb. 6, 2007).

¹⁰⁸ 89 Fed. Reg. at 55723 (emphasis added).

¹⁰⁹ See Email and attachments from K. Batten, SunCoke, to D. Jones and C. French, EPA (Jan. 18, 2024), Docket ID EPA-HQ-OAR-2002-0085-1566.

¹¹⁰ *Doubleday Broad. Co. v. FCC*, 655 F.2d 417, 423 (D.C. Cir. 1981).

¹¹¹ 42 U.S.C. § 7607(d)(1) states that the "provisions of section 553 through 557 and section 706 of title 5 [the APA] shall not, except as expressly provided in this subsection, apply to actions to which this subsection [307(d)] applies." See *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 23-26 (D.D.C. 2012). Notwithstanding the Petition for Reconsideration, SunCoke reserves the right to bring any argument in a judicial proceeding that it raised with reasonable specificity during the period for public comment.