

enhance the quality of judicial review.”²¹ How much time that requires necessarily depends on the nature and complexity of the issues involved.

EPA announced that it was proposing to amend two rules at once: the NESHAP for Coke Ovens: Pushing, Quenching, and Battery Stacks (PQBS) (40 C.F.R. Part 63, Subpart CCCCC) and the NESHAP for Coke Oven Batteries (COB) (40 C.F.R. Part 63, Subpart L) and described the two Subparts being amended as “among the most complex of the nearly 200 source categories.”²² Despite the complexity, EPA went from Proposed Rule to Final Rule in less than one year. It did so solely because it had to meet the court-ordered deadline, but a court-imposed deadline does not excuse an agency from providing stakeholders sufficient time to develop data and analyze the effects of its proposed amendments—particularly where those amendments are likely to cost many millions of dollars.²³

SunCoke and other stakeholders requested that EPA either correct and reissue the Proposed Rule or extend the comment period by 45 days.²⁴ They explained that extra time was needed for several reasons, including that: EPA sought comments on two rules at once; both rules were technically complex; and EPA had added to the dockets hundreds of new documents filled with technical information totaling nearly 35,000 pages, including a 114-page MACT Standard Calculations, Cost Impacts, and Beyond-the-Floor Cost Impacts for Coke Ovens Facilities memorandum and multiple supporting appendices.²⁵ EPA issued a denial of SunCoke’s and all other petitioners’ extension requests, stating only that it was “not planning to extend the public comment period,” though we presume the denial was the result of the court order requiring EPA to publish a Final Rule by May 23, 2024.²⁶

The technical complexity of the Final Rule is well-illustrated by the time EPA spent preparing the Proposed Rule. EPA began collecting and analyzing relevant data in 2016.²⁷ EPA issued CAA section 114 information collection requests (ICRs) to SunCoke and other affected sources over a period of six years. The ICRs included lengthy questionnaires and source test requests, which were time-consuming and costly for SunCoke and other affected sources to address. SunCoke alone spent around \$1.5–1.6 million to respond to the ICRs.

While EPA spent seven years collecting information and developing the Proposed Rule, SunCoke and other interested stakeholders only had 45 days to consider and respond to its work. That includes EPA’s list of proposed HAP and MACT floor limits, which EPA only uploaded to the docket when it published the Proposed Rule. The short lead time prevented SunCoke from fully evaluating the proposed emission limits and other aspects of the Proposed Rule before the close of

²¹ *Daimler Trucks N. Am. LLC v. EPA*, 737 F.3d 95, 100 (D.C. Cir. 2013) (internal quotation and citation omitted).

²² *Citizens for Pennsylvania’s Future*, 469 F. Supp. 3d at 933; 88 Fed. Reg. 55858 (“Comments must be received on or before October 2, 2023.”).

²³ 42 U.S.C. § 7607(h).

²⁴ *Id.*; see also Notice, *Citizens for Pennsylvania’s Future*, No. 3:19-cv-02004 (May 24, 2024), Dkt. No. 82.

²⁵ *Id.*, Notice at 3; SunCoke comment letter, Att. A.

²⁶ SunCoke comment letter, Att. B (Letter from P. Lassiter, EPA, to K. Batten, SunCoke (Sept. 19, 2023), Docket ID EPA-HQ-OAR-2002-0085-1576).

²⁷ 88 Fed. Reg. at 55866.