

PRINCIPAL REGULATORY ISSUES FACING THE U.S. COKE INDUSTRY

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PRESENTATION OVERVIEW

- **Overview of ACCCI/ACCCI Membership**
- **Current Status of the U.S. Coke Industry**
- **Background on the ACCCI-Managed Coke Oven Environmental Task Force (COETF)**
- **Principal Sector-Specific Environmental Rules/Rulemakings of Concern to the U.S. Coke Industry**
- **Principal “General Industry” Environmental Rules/Rulemakings of Concern to the U.S. Coke Industry**
- **Principal Environmental Rules/Rulemakings of Concern to the Coal Chemicals Industry**
- **Other Important Regulatory Affairs Issues**

AMERICAN COKE AND COAL CHEMICALS INSTITUTE (ACCCI)

- **ACCCI was formed in 1944 by companies interested in establishing a forum to discuss and act upon issues of common concern to the metallurgical coke and coal chemicals industry.**
- **Today, ACCCI members represent over 95% of the metallurgical coke produced in the U.S. and Canada, including both merchant coke producers and integrated steel companies with coke production capacity, and 100% of companies producing coal chemicals in the U.S. and Canada.**
- **ACCCI's function is to advance the interests of the metallurgical coke and coal chemicals industry by communicating industry positions to members of Congress and Federal regulatory officials; cooperating with governmental agencies having jurisdiction over the industry; providing a forum for the exchange of information and discussion of issues; collecting statistics related to the industry; and, promoting the use of coke and its byproducts in the marketplace.**

ACCCI MEMBERSHIP

- **“Merchant” Producers of Metallurgical Coke**
 - Produce furnace/foundry coke for sale on the open market
- **Steel Manufacturers that Produce Coke (both US and Canadian)**
 - Produce furnace coke for use internally in their production of steel
- **Producers/processors of chemicals derived from distillation of coal and coal tar**
- **Coke Sales Agents/Transportation Companies/Builders-Suppliers**

OVERVIEW OF THE U.S. COKE INDUSTRY

- **14 coke plants (47 batteries), one of which (3 batteries) is not a member of ACCI**
 - **6 integrated steel “by-product recovery” plants (20 batteries)**
 - **3 “merchant” “by-product recovery” plants (7 batteries)**
 - **5 “merchant” “heat-recovery” plants (20 batteries)**

THE INDUSTRY IS ORGANIZED TO ENGAGE REGULATORY AGENCIES AS THE NEED ARISES

- “General Industry” agency actions are typically handled by ACCCL, which focuses primarily on EPA “general industry” rules/rulemakings.
- Coke industry-specific agency actions are typically handled by the Coke Oven Environmental Task Force (COETF), which focuses primarily on EPA rules/rulemakings specific to the coke industry (i.e., “sector-specific” rules/rulemakings).

BACKGROUND ON THE COETF

- The COETF was formed by the American Iron and Steel Institute (AISI) and ACCCI in 1996 to address major environmental issues collaboratively.
 - The COETF operates as a semiautonomous, self-funded entity.
- The COETF represents 8 of the 9 U.S. “by-product recovery” plants (27 “by-product recovery” batteries).
 - 6 integrated steel “by-product recovery” plants (20 batteries)
 - 2 “merchant” “by-product recovery” plants (4 batteries)
 - Five “heat recovery”/“nonrecovery” coke plants (20 batteries) are not represented by/participating in the COETF.
- Katie Kistler (Cleveland-Cliffs) is the chair of the COETF.

PRINCIPAL SECTOR-SPECIFIC ENVIRONMENTAL RULES/RULEMAKINGS OF CONCERN TO THE U.S. COKE INDUSTRY

- *EPA's Risk and Technology Review (RTR) of 2003 MACT Standards for Coke PQBS*
- CAA 112(c)(6) Litigation
- 112(d)(6) RTR Deadline Litigation

EPA'S RISK AND TECHNOLOGY REVIEW (RTR) OF 2003 MACT STANDARDS FOR COKE PQBS

- On April 14, 2003, EPA promulgated “maximum achievable control technology” (MACT) standards for coke pushing, quenching and battery stacks (PQBS). Standards are to limit “hazardous air pollutants” (HAPs) from PQBS (e.g., benzene, toluene, “coke oven emissions”).
- Clean Air Act (CAA) requires EPA to determine within eight years of promulgation (i.e., by 2011 for PQBS) whether tighter standards should be issued, based on:
 - risks to public health associated with MACT-level emissions (risk review); and,
 - whether any improvements in control technology have occurred since the MACT standards were issued (technology review).
- EPA is behind schedule on the RTR for coke PQBS, having only kicked off the multi-year (typically, three-to-four year) RTR Review/Rulemaking in early 2015.

LATEST DEVELOPMENTS ON THE PQBS RTR

- *EPA is close to proposing a PQBS RTR Rule.*
 - *Under court order, EPA must take final action on Coke Oven Batteries (technology review only) and PQBS (risk and technology reviews) by December 26, 2022*
- *The COETF has been engaging with EPA since 2015 in the leadup to the proposal.*

CAA 112(C)(6) LITIGATION

- CAA 112(c)(6) requires source categories responsible for at least 90% of the aggregate emissions of seven “Persistent Bioaccumulative” (PBA) Hazardous Air Pollutants (HAPs) to be subject to standards under CAA 112(d)(2) [MACT] or 112(d)(4) [risk-based for specified HAP].
- One of the seven HAPs is associated with coke oven emissions (COE) - polycyclic organic matter (POM).

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CAA 112(C)(6) LITIGATION (*continued*)

- In June 2015, EPA issued a rule stating that it had satisfied 112(c)(6) by promulgating standards for numerous specified source categories, including the NESHAPs for coke oven charging/topside/doors, by-product recovery plants, and PQBS.
 - ENGOs filed comments on the proposed rule that EPA had not satisfied its 112(c)(6) obligations with respect to POM from coke ovens because COE is not an appropriate surrogate for POM.
 - ENGOs argued that EPA must promulgate new MACT standards for coke ovens specifically regulating POM.

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CAA 112(C)(6) LITIGATION (*continued*)

- In July 2015, ENGOs challenged the 112(c)(6) determination (*Sierra Club v. EPA*).
 - Sierra Club challenged EPA's June 2015 determination that it had met all 112(c)(6) requirements arguing, among other things, that COE is not an appropriate surrogate for POM.
 - Sierra Club wants EPA to promulgate new MACT standards regulating POM for coke oven charging/topside/doors, by-product recovery plants, and PQBS.
- In June 2016, an industry coalition comprised of seven associations (ACCCI, ACA, ACC, AF&PA, AFPM, AISI and NACWA) filed an amicus brief in support of EPA, arguing:
 - ENGO claims are time barred;
 - ENGO claims were raised previously and not pursued; and,
 - EPA developed an adequate factual basis for use of surrogates.

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CAA 112(C)(6) LITIGATION (*Concluded*)

- On July 18, 2017, the U.S. Court of Appeals for the D.C. Circuit remanded – but did not vacate – the completeness determination on procedural grounds, holding that EPA failed to respond to Sierra Club’s rulemaking comments regarding the reasonableness of EPA’s pollutant surrogacy claims.
 - As a result of the court’s decision, EPA must respond to the comments on the pollutant surrogate issue for each of the 17 source categories challenged in the case, including subparts L and CCCCC.
 - Implications:
 - It is unlikely that EPA will set new MACT standards for POM.
 - EPA has flexibility to address the surrogate issue comments in upcoming RTR rulemakings (for PQBS and several of the other source categories) or in a consolidated response to comments for all 17 source categories.
 - *POM-COE surrogacy issue may come up in the PQBS RTR rulemaking.*

CAA 112(D)(6) RTR DEADLINE LITIGATION

- CAA 112(d)(6) – EPA must review and revise existing NESHAPs “as necessary (taking into account developments in practices, processes, and control technologies)” no less often than every 8 years.
 - April 3, 2015 – ENGOs filed lawsuit in D.D.C. (*CCAT v. EPA*) to set court-ordered deadlines to complete RTRs for 20 source categories – PQBS not included
 - February 24, 2016 – ENGOs filed a second lawsuit in D.D.C. (*Blue Ridge Env. Def. Fund v. McCarthy*) for 13 more source categories – PQBS RTR not included
 - February 13, 2019 – ENGOs submitted to EPA a Notice of Intent (NOI) to file a deadline suit for the PQBS RTR and that for coke oven doors, lids, offtakes and charging (Subpart L).
 - April 15, 2019 - ENGOs filed a Clean Air Act citizen suit seeking to require EPA to revise emission standards, or determine they are not required, for the PQBS RTR and that for coke oven doors, lids, offtakes and charging (Subpart L).

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CAA 112(D)(6) RTR DEADLINE LITIGATION (Concluded)

- On March 13 and 22, 2017, the District Court set the following schedules:
 - December 31, 2018 – Deadline to promulgate RTR for 7 source categories
 - March 13, 2020 – Deadline to promulgate RTR for 20 source categories
 - June 30, 2020 – Deadline to promulgate RTR for 6 source categories
 - EPA will likely focus resources on these 33 RTRs, which may delay those not subject to court-ordered deadlines.
 - Because PQBS RTR was not included in any of the two original deadline suits, the June 30, 2020, court-ordered deadline does not apply to the PQBS RTR.

- On June 26, 2020, a judge with the US District Court for the Northern District of California ruled in an ENGO Clean Air Act (CAA) 112 (D)(6) lawsuit concerning EPA's missed CAA deadlines for issuing the RTRs for PQBS.
 - *The judge ordered EPA to take final action on Coke Oven Batteries (technology review only) and PQBS (risk and technology reviews) within 30 months of June 26 – i.e., by December 26, 2022.*
 - *It's not known what the timing and status are for the 112(f)(2) Risk Review for LAER Track Batteries that EPA must conduct under Subpart L for coke oven doors, lids, offtakes and charging. That Review was to be completed by 2020.*

PRINCIPAL “GENERAL INDUSTRY” ENVIRONMENTAL RULES/RULEMAKINGS OF CONCERN TO THE COKE INDUSTRY

■ Rules/Rulemakings of immediate concern:

- Biden Administration’s Greenhouse Gas Policies (e.g., a March 21, 2022, the Securities and Exchange Commission (SEC) *proposed rule* that would require corporations to reveal detailed information about their greenhouse gas pollution (via NAM of which ACCCI is a member)
- EPA’s SSM Policies (via an SSM Coalition)
- EPA’s Residual Risk Policies
- EPA’s Periodic PM/Ozone NAAQS Reviews/Rulemakings and Implementation of Same (via a NAAQS Regulatory Review & Rulemaking Coalition (NR3C))
- Federal and State Water Quality Rulemakings (via a Federal Water Quality Coalition (FWQC))
- EPA’s Implementation of TSCA Reform Legislation Enacted in June 2016
- Federal and State PFAS Rulemakings (via a PFAS Regulatory Coalition)

- *ACCCI has engaged EPA on such rulemakings/issues for decades, primarily via its involvement in “ad hoc” multi-association coalitions/advocacy groups whose sole focus is these rulemakings/issues.*

PRINCIPAL ENVIRONMENTAL RULES/RULEMAKINGS OF CONCERN TO THE COAL CHEMICALS INDUSTRY

- **State/local legislation that would ban coal tar-based sealants**

STATE/LOCAL LEGISLATION THAT WOULD BAN USE OF COAL TAR-BASED SEALANTS

- Legislation that would ban use of coal tar-based sealants has been enacted or is being considered in various states/localities (e.g., MD, NY, MI, MN, IL, ME, Chicago).
 - Legislation is being driven by USGS scientists and handful of environmental activists and media.
- The Pavement Coatings Technology Council (PCTC) of which ACCCI is a member is pushing back aggressively on proposed bans, adverse publicity.

OTHER IMPORTANT REGULATORY AFFAIRS ISSUES

■ EPA Rulemakings/Issues

- EPA's Boiler MACT and CISWI Final Rules, and Related Litigation
- Definition of Solid Waste (DSW) Litigation

■ OSHA Rulemakings/Issues

- OSHA's Recent COVID-19 Emergency Temporary Standard (ETS)
- OSHA's New Rulemaking Towards Enhanced, Expanded Measures to Protect Workers from Hazards of Extreme Heat, Indoors and Out

■ Other Issues

- Chemical Security Legislation
- Federal Government's Regulation of Drones

QUESTIONS?
