



The 111(h) Work Practice Standard Alternative

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Section 111 Performance Standards Must Be “Adequately Demonstrated”

- **Under section 111(a)(1), a performance standard must be:**
 - Source-based
 - Achievable
 - Based on the “best system of emission reduction” (“BSER”) that has been “adequately demonstrated.”
- **Typically takes the form of numeric limits.**
- **Two important issues with CO₂ at existing power plants:**
 - BSER must be within the fence-line.
 - No traditional CO₂ BSER exists.

BSER Must Be Within Fence-Line

- **BSER based on “outside the fence-line” technology is inconsistent with section 111.**
- **Section 111 fundamentally concerns the regulation of emissions from individual sources:**
 - Requires EPA to establish a procedure for state regulation of an “existing **source**.”
 - Courts have invalidated similar “bubble concept” approaches to section 111 standards.
- **BSER must be source-based and cannot encompass technology outside the fence-line of a power plant.**

No Traditional CO₂ BSER Exists

- **There is no CO₂ “scrubber” for existing power plants that meets BSER requirements.**
 - Even EPA says CCS is not ready for existing power plants.
- **Increasing efficiency can reduce CO₂ per kW/hr, but there are significant issues with numeric limits:**
 - Many power plants already highly efficient.
 - Efficiency improvements degrade over time.
 - Effectiveness of efficiency improvements vary with load.

Section 111(h) Provides An Alternative When Performance Standards Are Not Feasible

- **Section 111(h) allows for practice standards when performance standards are “not feasible,” or when:**
 - “a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant . . . or
 - the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.”
- **CO₂ performance standards are not feasible:**
 - No traditional CO₂ BSER for existing power plants.
 - Not practical to measure CO₂ reductions from efficiency improvements at existing power plants.

Section 111(h) Work Practice Standards

- **Work practice standards have similar requirements to performance standards:**
 - Practice standards reflect the “best technological system of continuous emission reduction” (“BTSCER”).
 - Also based on “adequately demonstrated” technology.
- **Work practice standards can include any combination of:**
 - Design;
 - Equipment;
 - Work practice;
 - Operational standards.

- **2012: Refinery NSPS (Subpart Ja)**
 - Includes flaring work practice standards.
- **2012: Oil and Gas NSPS (Subpart OOOO)**
 - Allows use of combustion controls (flaring) at new wells to allow time for emissions reductions technology to become available.
- **2011: Boiler MACT (Issued under section 112, which also has a subsection (h) providing work practice standards)**
 - Requires “energy assessment” to identify areas where boilers can increase efficiency.

Work Practice Standards Replace Performance Standards Under 111(d)

- **Section 111(d) establishes a co-regulatory framework.**
 - EPA issues emission guidelines.
 - States submit implementation plans to EPA.
- **Under 111(h) approach, EPA guidelines would identify procedures for work practice standards that would be implemented through state plans.**
 - Section 111(h) work practice standards **replace** the performance standards EPA uses for section 111(d) emissions guidelines.
 - 111(h)(5): Work practice standards “shall be treated as a standard of performance.”

Work Practice Standards Could Be Better Suited To Power Plant Efficiency

- **Numeric limit-based performance standards under section 111(a)(1) are ill-suited to efficiency.**
- **Work practice standards could more directly achieve optimal efficiency at an existing power plant's boiler.**
 - States could require existing power plants to study and identify projects and practices that increase efficiency.
 - Work practice standards could be a better tool to address the individualized nature of efficiency projects at existing power plants.

Flexibility For State Implementation Remains Under A Section 111(h) Approach

- States and EPA both seek flexible implementation to meet section 111(d) emission guidelines.
- That flexibility remains under a work practice standards approach.
- Emission budgets could be calculated from the application of work practice standards
- States could choose to use flexible approaches to meet the emission budgets.
 - State-based trading programs.
 - State renewable portfolio standards.

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