

EPA's Science Advisory Board Decides Not to Review GHG NSPS Rule

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In a complete turnaround, EPA's Science Advisory Board (SAB) has decided not to review the scientific and technical basis for EPA's proposed greenhouse gas (GHG) new source performance standards (NSPS) rule. The [proposal](#) was issued in September 2013 and published in the *Federal Register* on January 8, 2014. Prior to the rule's publication in the *Federal Register*, the SAB had raised concerns over the adequacy of the science EPA relied upon in the proposed rule, specifically, its determination that carbon capture and sequestration (CCS) is the best system of emissions reduction (BSER) for new coal-fired power plants.

In a [November 12, 2013 memorandum](#), SAB Work Group Chair James Mihelcic stated: "The scientific and technical basis for carbon storage provisions is new science and the rulemaking would benefit from additional review." Mr. Mihelcic also stated that the peer review of certain National Energy Technology Laboratory studies relied upon by EPA appeared "inadequate" and that EPA did not conduct additional peer review.

After meeting with EPA, the SAB was persuaded not to review the scientific and technical basis for the proposed rule. In a [January 7, 2014 memorandum](#), Mr. Mihelcic recommended that the SAB not review the science supporting the proposed rule, based in large part on EPA's "policy decision" that the proposed rule only requires the capture of carbon emissions and does not directly address carbon sequestration. However, he encouraged EPA "to carefully monitor the post rule reality ... to ensure that the technologies are feasible and available to newly constructed electricity generating units to meet the new standards."

EPA seems to have avoided SAB review primarily on the basis of its highly technical position that the rule does not impose requirements upon carbon sequestration, despite the fact that the rule clearly requires carbon sequestration to be implemented. For this reason, as reported by *Inside EPA*, SAB Chair David Allen indicated on a January 21 teleconference that the SAB plans to send Administrator McCarthy a letter expressing its "strong view" that sequestration may merit scientific review by the SAB or other entities in the future, an explanation that the complexity of the technology could generate unexpected outcomes. While EPA has, for now, avoided what would have been an embarrassing stumbling block to its GHG NSPS rule, the concerns raised by the SAB will eventually be addressed by the courts in legal challenges to the rule.

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