The subject of statutory cross-references may seem incredibly arcane, but EPA's proposed carbon rule for existing plants may stand or fall depending on the relationship between section 111(d) and section 112 of the Clean Air Act. The House and Senate versions of section 111(d) both accidentally got into the final bill. EPA has regulated the same sources (but different pollutants) under section 112 that it now proposes to regulate under section 111(d). That's no problem under the Senate version, but it arguably might not be allowed under the House version. Industry argues that EPA lacks authority to issue 111(d) carbon regulations for power plants for this reason, while EPA is taking the opposite position. This is an issue that's already gotten some play among lawyers and scholars, but there's an aspect that seems to have been overlooked: the possible implications of yet a third provision, section 129. Section 129 strengthens the argument that at the very least, the Clean Air Act is ambiguous, entitling EPA's view to deference under the *Chevron* doctrine.

Section 129 deals with municipal waste incinerators. (I have to admit this is a section that I'd never looked at before until a friend mentioned it.) Section 109(a)(2) calls for standards for incinerators based on maximum available control technology (MACT), akin to the standard that section 112(d)(2) requires for toxic emissions from other sources. But 129(b) also requires incinerator standards for existing plants under section 111(d). Thus, section 129 ties into both of the sections that are at issue currently. Section 129 seems to imply that Congress didn't see any conflict between section 111(d) and MACT requirements like section 112, since it mandated both types of standards for incinerators for incinerators.

Moreover, section 129 has two significant references to section 112. First, section 129(h)(2) exempts municipal incinerators from the MACT standards of section 112. But remember that incinerators are already covered by section 111(d). If industry is right that section 111(d) coverage can't coexist with section 112 coverage, it would have been unnecessary for Congress to explicitly rule out section 112 MACT standards. Apparently, Congress didn't think that section 111(d) regulation was incompatible with jurisdiction under section 112 — otherwise, why add this specific regulation eliminating such jurisdiction? Second, under section 129(h)(3), EPA can still issue non-MACT regulations (which are even stricter) under section 112.This provision shows again that Congress did not see any inherent inconsistency between regulation of a category of sources under sections 112 and 111(d).

This is all very complicated and not necessarily decisive. It does, however, provide one more argument against reading the statute to create an absolute incompatibility between section 111(d) and section 112. One more piece of the puzzle, in other words.