

Biggest Hidden Cost Is to Democracy

The biggest hidden cost of the Obama administration's fuel economy agenda, as a prime example of its environmental rule-making, is the damage it does to the separation of powers and democratic accountability.

In the press release announcing their proposed model year 2017-25 fuel economy standards, EPA Administrator Lisa Jackson and Transportation Secretary Ray LaHood boast that they are bypassing Congress: "Today's announcement is the latest in a series of executive actions the Obama administration is taking to strengthen the economy and move the country forward because we can't wait for congressional Republicans to act."

A legislative proposal boosting average fuel economy to 54.5 miles per gallon would not pass in the 112th Congress. Note also that the National Highway Traffic Safety Administration need not propose fuel economy standards for MY 2017 until 2014. "We can't wait" really means, "We won't let the people's representatives decide, either now or after the 2012 elections."

Circumventing Congress is the administration's core M.O. Under the statutory scheme Congress created, one agency, NHTSA, regulates fuel efficiency through one set of standards, Corporate Average Fuel Economy, under one statute, the Energy Policy Conservation Act. Yet today, three agencies — EPA, NHTSA, and the California Air Resources Board — regulate fuel efficiency via three sets of standards under three statutes — EPCA, the Clean Air Act, and California Assembly Bill 1493.

EPA and CARB claim they are regulating greenhouse gas emissions, not fuel economy. But greenhouse gas emission standards implicitly

regulate fuel economy. As EPA and NHTSA's May 2010 Tailpipe Rule explains (pp. 25424, 25327), carbon dioxide constitutes 94.9 percent of vehicular greenhouse gas emissions, and the only feasible way to decrease CO₂ emissions per mile is to decrease fuel consumption per mile — that is, increase fuel economy.

The CAA provides no authority to regulate fuel economy, and EPCA preempts state laws or regulations "related to" fuel economy standards. California's standards are highly "related to" fuel economy.

Automakers support this "triplification" of fuel economy regulation, but only as the price they must pay to avoid outright regulatory chaos — a peril of EPA's own making.

In February 2009, EPA Administrator Jackson reconsidered California's request for a waiver to implement AB 1493. Because the waiver would allow other states to adopt California's standards, because states would implicitly regulate fuel economy,

and because automakers would have to reshuffle the mix of vehicles delivered for sale in each "California" state to achieve the same average fuel economy, Jackson threatened to balkanize the U.S. auto market.

Under the so-called "historic agreement" of May 2009, negotiated by Obama environment czar Carol Browner, California and other states agreed to deem compliance with EPA's greenhouse gas standards as compliance with their own — but only if automakers pledged to support EPA's standards and the California waiver. The administration may also have tied its offer of bailout money to automakers' acceptance of those terms, making the historic agreement an offer GM and Chrysler could not refuse.

We may never know the details because, in apparent violation of the Presidential Records and Federal Advisory Committee acts, Browner imposed a vow of silence, instructing participants to "put nothing in writing, ever."

The payoffs for EPA were huge. In 2010, Alaska Senator Lisa Murkowski introduced a resolution to overturn EPA's Endangerment Rule, the prerequisite for all of the agency's greenhouse gas regulations. The auto industry lobbied against it, warning that the resolution would undo the historic agreement and expose auto makers to a regulatory patchwork.

Also in 2010, EPA parlayed the Tailpipe Rule into a mandate to regulate stationary sources of greenhouse gases under CAA permitting programs. Having taken that step, EPA predictably consented to establish greenhouse gas performance standards for coal power plants and oil refineries, with more such standards sure to follow. EPA is now effectively legislating climate policy for the nation.

EPA claims its greenhouse gas regulations derive from the CAA as interpreted by the Supreme Court in *Massachusetts v. EPA*. But only last year, after almost two decades of global warming advocacy, Congress declined to give EPA explicit authority to regulate greenhouse gases when Senate leaders mothballed cap-and-trade legislation. A bill authorizing EPA to do exactly what it is doing now — regulate greenhouse gases under the CAA as it sees fit — would have been dead on arrival.

The notion that Congress gave EPA such authority when the Clean Air Act was passed in 1970, years before global warming emerged as a public concern, defies common sense.



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