

If local governments have maintained control over one policy area, it is land use. Despite tinkering around the edges, states have mostly stayed out, and for good political reasons: land use is the most visible policy that affects people at the local level.

But if the Obama Administration moves forward to regulate greenhouse gases, that could all change — whether or not EPA institutes cap-and-trade or any other new sort of climate policy.

How? The key lies in one of the wonkiest of all policy areas: “transportation conformity.” The Clean Air Act says that the regional bodies that spend federal transportation dollars must write plans that “conform” to a state’s clean air implementation plan (known by the cognoscenti as a “SIP”). So when these regional bodies dole out federal dollars, they must certify that these plans will ensure that the plans won’t harm air quality (DOT must sign off after consulting with EPA). Building transportation projects means pollutants, but usually the transportation plans can adopt Transportation Control Measures (“TCM”s) to reduce these pollutants.

So what does that have to do with land use? So far, nothing. But that is only because the pollutants that federal law cares about are so-called “criteria” pollutants: particulates, ozone, carbon monoxide, sulfur dioxide, etc.

If, however, EPA decides that carbon dioxide is also a criteria pollutant — which it probably will — then that means transportation plans must also fit in under state limits on carbon dioxide emissions. And that might transform federal transportation policy, because reducing carbon dioxide, far more than any other pollutant, means reducing Vehicle Miles Traveled. And reducing Vehicle Miles Traveled means changing land use patterns.

This is all complex and contingent, and the reason why lawyers (some, at least) get paid the big bucks. But to go through the motions again:

1. If EPA regulates carbon dioxide, then state implementation plans will have to show how they will reduce carbon emissions.
2. If state plans aim to reduce carbon emissions, then transportation plans will have to “conform” to them.
3. If transportation plans must conform to them, then these plans will have to show how they will reduce vehicle miles traveled.
4. In order to reduce vehicle miles traveled, land use patterns are going to have to change:

they will have to be more compact, and rely more on transit.

What about those local governments that control land use? Why should they care? Because if they don't, then they won't get federal money for their transportation projects. And that will mean a lot to them.

In one sense, this description is really no more than what SB 375, the California smart growth bill, already says. But there are two differences here. First, if EPA regulates carbon dioxide, then this becomes nationalized. And second, this can all be done by administrative fiat (subject to the inevitable lawsuits that come whenever EPA does anything). No hearings, no filibusters from Ben Nelson, nothing. (This could also explain why California builders might have signed off on SB 375 to begin with: they knew it was coming from the national level and figured that they could get some goodies from the state legislature as a price).

There is, as the saying goes, many a slip between the cup and the lip. And nowhere is that more true than in the nexus between climate change, federal policy, energy, and land use. But it's coming. In fits and starts, and probably in a variety of very dumb ways, but it is coming. It's better to start thinking seriously about it now.

Cross-posted at the Reality-Based Community: www.samefacts.com