

Commercial Waste Zones and Other Creative Solutions to Vehicle Emissions

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States and cities are striving to improve air quality and reduce greenhouse gas (GHG) emissions in an era when the federal government is moving in the opposite direction. They can take some comfort in the fact that many sources of emissions—electricity generators, heating and cooling systems in buildings, and other stationary sources—remain within state and local control. Not so with vehicles, which account for 23 percent of GHG emissions in New York City. Federal law pre-empts direct state and local regulation of mobile source or “tailpipe” emissions and now the EPA has proposed a substantial rollback of fuel efficiency and emission standards for passenger vehicles. While it remains to be seen whether that rollback (if enacted) will withstand legal challenge, state and local governments have found creative ways to reduce emissions from passenger and commercial vehicles without crossing constitutional lines. A prime example is New York City’s current effort to reform the commercial waste hauling industry by bidding out the right to operate trucks in specific geographic zones. Preliminary studies suggest that rationalizing collection routes would substantially reduce vehicle miles traveled and, in turn, emissions of air pollutants and GHGs.

Commercial Waste Hauling in NYC

As is the case in many large cities, New York’s public sanitation trucks do not service most commercial buildings. The NYC Department of Sanitation only services residences, government buildings and some institutions. This results in dozens of private carting companies competing for commercial customers in all five boroughs. Many carters have long, indirect and scattered pickup routes throughout the city that are often duplicative of the routes of competitors. Garbage trucks running on diesel fuel thus contribute significantly to air quality problems.

Legal and Other Requirements on Emissions

The federal government primarily regulates air pollution through the Clean Air Act (CAA), which empowers the EPA to promulgate National Ambient Air Quality Standards (NAAQS), setting outdoor concentration levels for various air pollutants. In the 2007 decision *Massachusetts v. EPA*, the Supreme Court ruled that the CAA also covers GHGs and requires the EPA to regulate GHG emissions if they are found to endanger human health or the environment. The EPA subsequently made that finding.

The federal government regulates tailpipe emissions using a bifurcated system. First, the U.S. DOT’s National Highway Traffic Safety Administration (NHTSA) sets Corporate Average Fuel Economy (CAFE) Standards (i.e., miles per gallon) under the Energy Policy and Conservation Act (EPCA). Additionally, under the CAA, the EPA (and in some cases California) sets standards limiting the amounts of specific pollutants that may be released by vehicles. The CAA and CAFE rules work in tandem but the federal government currently seeks to loosen both, an initiative that environmental advocates have condemned.

Air Quality and Emissions

Despite the federal regulatory protections, air quality remains a pervasive issue in New York City. Studies have shown that elevated levels of particulate matter, NOx, SO2, and other pollutants contribute to asthma and other respiratory problems. While pollutant levels have been gradually reducing since 2009, they still remain high near boilers, areas of high building density, industry and traffic congestion. Since emissions

from private vehicles and trucks account for 23 percent of the city's total GHG emissions (it varies from year to year) and are a major contributor to poor air quality, the city has identified vehicle emissions as an integral part of reaching its twin goals of reducing dangerous air pollutants and reducing GHG emissions by 80 percent by 2050.

Why Can't NYC Require Private Vehicles to Pollute Less?

Although many federal environmental laws set a "floor" for environmental regulation above which local and state governments can set stricter controls, federal tailpipe statutes strictly pre-empt state and local laws governing fuel economy or vehicle emissions. Both the EPCA and the CAA contain provisions that expressly preempt state and local laws that are "related to" fuel economy and emission standards, respectively.

New York City experienced firsthand the broad scope of these "related to" pre-emption provisions when it changed the taxi lease caps—the maximum dollar amount per shift for which taxis can be leased. It raised the cap for fuel efficient vehicles and lowered it for less efficient vehicles. These changes effectively shifted fuel costs from cab drivers to fleet/car owners and incentivized those owners to buy fuel-efficient taxis. In the 2010 decision *Metropolitan Taxicab Board of Trade v. City of New York*, the U.S. Court of Appeals for the Second Circuit struck down the new lease cap rules, finding that "imposing reduced lease caps solely on the basis of whether or not a vehicle has a hybrid engine has no relation to an end other than an improvement in fuel economy across the taxi fleets operating in New York City." The lease cap rules therefore "related to" fuel economy standards and the EPCA pre-empted them. Other attempts to regulate vehicle emissions have met a similar fate under the CAA, see *Engine Manufacturers Association v. South Coast Air Quality Management District*, 541 U.S. 246 (2004).

Creative Solutions for Achieving NAAQS and GHG Goals

Given the importance of reducing air pollution and the perceived inadequacy of federal regulations, New York City has developed policies that are not pre-empted. These include controlling emissions from its own vehicles and those of its vendees, including the city's public buses, residential garbage collection vehicles and contracted school buses. For example, the city has passed local laws that require ultra-low sulfur diesel fuel for certain vehicles like school buses. (New York City Administrative Code Section 24-163.)

The city has also sought to reduce vehicle miles traveled (VMTs), by setting policies that encourage or force vehicles to drive less, which has no impact on either fuel economy standards or tailpipe emissions per mile driven and thus are not pre-empted. The most recent attempt to limit VMTs (and achieve other policy goals) involves commercial waste carters. The New York City Department of Sanitation (DSNY), in conjunction with the Business Integrity Commission (BIC), has proposed a plan to divide the city into geographic zones in which carting companies will operate. These zones would increase private carting route efficiency and reduce VMT's by an estimated 49 to 68 percent, according to the Private Carting Study by DSNY and BIC. BIC expects a corresponding reduction of GHGs by 42-64 percent from baseline of 56,000 tons and a reduction in criteria pollutants of 34-62 percent.

This is not the first time the city focused on waste collection to reduce traffic and pollution: the 2006 Solid Waste Management Plan did exactly that. The cornerstone of the 2006 plan was the creation of state-of-the-art marine transfer stations that would, in part, help reduce truck traffic by millions of VMTs by putting garbage on barges for shipment out of the city and placing transfer stations closer to collection routes.

The current carting proposal, the details of which are still in flux, is facing stiff opposition, mostly from commercial customers and trade groups that believe it will increase prices or disadvantage small carting companies. It is unclear whether these business concerns will derail New York City's proposal. The proposal, however, remains a unique environmental solution in the face of the federal government's combination of both pre-emption and inaction on laws to improve air quality and reduce GHG emissions.

—Anthony Prinziwalli, an associate at the firm, helped draft this article.

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