

Transport Topics

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EPA Urges Federal Court to Limit Navistar's Access to Documents

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Attorneys representing the U.S. Environmental Protection Agency in a lawsuit filed by Navistar Inc. have urged a federal appeals court to limit the engine and truck maker's access to the agency's internal documents.

In a new court filing that did not directly address Navistar's contention that the documents support its allegations of private dealings between EPA and an industry trade group, the agency said it wants to remove 36 e-mails and other documents from the court's administrative record.

EPA said the documents are "pre-decisional and deliberative, including predecisional communications between EPA staff, staff notes and drafts of the guidance."

"These kinds of documents are protected by the deliberative process privilege and thus are not required to be included in administrative records," EPA said.

EPA's court motion is one of the agency's few public responses to a lawsuit filed earlier this year by Navistar Inc. that asks a District of Columbia appeals court to decide if EPA violated federal rulemaking requirements in issuing a guidance

memorandum for 2010 selective catalytic reduction technologies.

Navistar's lawsuit alleges EPA skipped an important regulatory step in allowing SCR technology after expressing doubts in 2001 that it would work (6-8, p. 1).

Navistar, Warrenville, Ill., manufacturer of International trucks, is the only engine maker planning to use exhaust gas recirculation to meet the 2010 NOx emissions standard first spelled out in EPA's 2001 heavy-duty truck rule.

In the lawsuit, Navistar also alleges EPA worked closely with Engine Manufacturers Association officials to write the draft of EPA's SCR guidance document "outside of rulemaking and in secret collaboration with certain engine makers" (6-15, p. 1).

EMA has said it worked with EPA in the SCR requirements process, but that its interactions were appropriate.

EPA has yet to respond to Navistar's allegations in court documents or interviews.

An EPA spokesman last week declined comment on the lawsuit.

In a related development, on July 23 the appeals court issued a formal order allowing the SCR manufacturers to participate in the case as "friends of the court."

Those manufacturers include independent truck engine manufac-

turer Cummins Inc., Daimler Trucks North America and its engine subsidiary Detroit Diesel Corp., Volvo Group America and Volvo subsidiary Mack Trucks.

In June, the truck and engine manufacturers who plan to use SCR technology rejected Navistar's allegations and asked the court for legal standing in the Navistar lawsuit (6-22, p. 3).

The SCR manufacturers said they — not Navistar — are "in the best position to provide the court with a complete and accurate understanding of the SCR technology that will be necessary to demonstrate why Navistar's assertions regarding their technologies are simply incorrect," said the SCR makers' response.

In May, EPA listed a total of 66 e-mails and documents, but in June the agency asked the court if it could reduce the list of documents to 30.

Navistar objected, but in the July 23 EPA filing, the agency said the documents should be removed because many of them were "privileged" agency documents "inadvertently" included in the court record.

EPA said its Feb. 18 SCR guidance letter advising manufacturers of potentially acceptable measures for ensuring that SCR-equipped engines comply with certain elements of the regulations implementing NOx emission standard did not constitute a rulemaking procedure.

"EPA issued the 2009 SCR guidance as a guidance document precisely because EPA did not intend to establish new binding policy positions," EPA's motion said.

