



10/30/09

EPA to decide if SCR guidance is binding

By Avery Vise

With the potential for a disruptive court ruling looming, the U.S. Environmental Protection Agency has told a federal appeals court that it will reconsider its Feb. 18, 2009, guidance letter to truck and engine makers regarding selective catalytic reduction (SCR).

In an Oct. 23 motion for a 60-day stay of Navistar's lawsuit, EPA said its reconsideration of the guidance "may resolve or otherwise moot some or all of the issues that are the subject of Navistar's petitions for review." Any party dissatisfied with EPA's final action then could seek judicial review, so a stay would not prejudice Navistar's case, the agency argued.

"EPA believes it is appropriate to review and reconsider its 2009 guidance to determine whether it should take action to revise the guidance, e.g., to clarify that the guidance was not intended to change existing regulations or be binding or regulatory in nature," the agency said in its motion. That statement leaves open the possibility that the guidance, which is intended to ensure that truck and engine makers adopt specific vehicle design measures to guard against operation of SCR vehicles without diesel exhaust fluid (DEF), would not be enforceable.

Navistar [sued EPA in March](#), charging that the agency had inappropriately issued the Feb. 18 guidance without allowing an opportunity for public comment. The truck maker contended that the document in effect imposes regulatory requirements and, therefore, must follow procedures outlined in the Clean Air Act.

In the ensuing weeks, Navistar and EPA [squabbled over the record in the case](#) after EPA sought to withdraw certain documents that Navistar argued helped prove its own case. Meanwhile, [Navistar's competitors joined the case](#) in support of EPA's guidance.

Under the schedule outlined by the U.S. Court of Appeals for the District of Columbia, briefing in the case was to continue into March 2010 with the possibility for a hearing and decision to follow. If EPA ultimately were to lose, truck and engine makers could be many months into selling SCR-equipped trucks based on guidance that might have to change.

Because DEF is a cost for truck owners, EPA is concerned they would have an incentive to tamper with components or substitute other liquids to keep the truck moving without

the expense. The 2009 guidance letter advised manufacturers of potentially acceptable measures for ensuring compliance, including warnings, limitation of vehicle speed to 5 mph or down rating torque and prevention of vehicle operation.