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## **Court Rules for Navistar Competitors in Clean Air Case**

By TruckingInfo Staff

In a victory for Navistar's competitors, a federal court said that the Environmental Protection Agency should not have allowed Navistar to pay penalties on engines that don't meet clean air standards.

Yesterday's ruling by the U.S. Court of Appeals for the District of Columbia Circuit means that Navistar can no longer use nonconformance penalties as a way to keep selling engines.

The immediate impact of the ruling is not clear.

Neither EPA nor the Justice Department, which argued the case, would comment, but a source close to the matter said it is up to EPA to decide how to handle the court's decision. EPA is working on a rule that could clarify the issue, but the agency has said that the process can take months and Navistar may not have that much time.

Navistar has said it was likely to run out of emissions credits in the first quarter of this year, but it may still have some credits it can use in lieu of the penalties.

The company said in a statement that it disagrees with the court and will ask for a rehearing.

Working on certification

This is the latest twist in Navistar's ongoing attempt to meet EPA's emission standards using only cooled exhaust-gas recirculation, rather than the combination of EGR and selective catalytic reduction technology used by other engine makers.

The company has not yet received EPA certification for its heavy-duty engines using EGR only, and has stayed in the market by trading emissions credits from earlier engines and paying the nonconformance penalties.

Last October, Navistar told EPA that if the agency did not allow it to pay a nonconformance penalty for each engine, it would be forced to stop production of its domestic Class 8 engines and trucks.

The agency responded in January with an interim rule that allowed Navistar to pay up to \$1,900 per engine while it considered a final rule.

Normally a decision to allow such penalties requires a formal notice and public comment, but EPA said that time was too short for that. It takes up to nine months to complete that process, and Navistar didn't have the credits to go that long.

The agency invoked a "good cause" exception that allowed it to grant the penalties without going through the comment period.

No 'Imminent Threat'

The competition sued. Mack Trucks, Volvo Group North America, Daimler Trucks North America, Detroit Diesel Corp. and Cummins Inc. told the court that EPA erred when it allowed Navistar to pay the penalties without having a public comment process, and that the EPA didn't have "good cause."

The court agreed.

"The rule does not stave off any imminent threat to the environment or safety or national security," Judge Janice Rogers Brown wrote.

"It does not remedy any real emergency at all, save the 'emergency' facing Navistar's bottom line. Simply put, (Navistar) bet on finding a way to make exhaust gas recirculation a feasible and compliant technology before its finite supply of credits ran out."

"Navistar's day of reckoning is fast approaching," the Judge said.

Navistar said in its submission to the court that if it were to lose the engine certifications it gets by paying the penalty, it would quickly expend its remaining credits and be driven from the heavy-duty engine and truck market. This would threaten the company and its shareholders, employees, dealers, suppliers, retirees and customers, Navistar said.

What's next?

In its statement yesterday, Navistar said it will work with EPA to understand the ruling and its impact on the penalties.

"At the same time, we will continue to cooperate with the EPA on the final NCP rule and will continue to work with the EPA on our 0.20g NOx certification," the company said. "Navistar continues to make and ship engines and our customers will continue to receive the products they ordered with EPA certified engines."

EPA has the option of seeking expedited processing of its rule on this matter, but it still must address the issue of public comment on the penalty question.

Reuters reported yesterday that Navistar shares closed 5.5% lower (\$27.15) on the New York Stock Exchange.