

Tractor-Trailer/Heavy-Duty Trailers: Federal Appellate Court Addresses Challenge to Greenhouse Gas Emissions/Fuel Efficiency Standards Rule



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

11/16/2021

The United States Court of Appeals for the D.C. Circuit (“Court”) in a November 12th Opinion addressed a challenge to the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2 (“Phase 2 Rule”).

The Phase 2 Rule was promulgated on October 25, 2016. See 81 Fed. Reg. 73,478.

The United States Environmental Protection Agency (“EPA”) had taken the position that it could regulate:

1. Trailers as motor vehicles
2. Trailer manufacturers as motor-vehicle manufacturers

The authority cited was 42 U.S.C. § 7521(a)(1) and § 75501(1), respectively.

The Court in describing the object of the EPA rule notes that a trailer is the:

... back portion attached to a motorized tractor in the front.

Trailers are noted to include tanks, car carriers, logging trailers, and platforms.

The Phase 2 rule represented the first time that EPA and NHTSA set greenhouse gas and a fuel efficiency standard for heavy-duty trailers. Trailer manufacturers were required to adopt some combination of fuel-saving technologies which might include:

- Side skirts
- Automatic tire pressure systems

The Truck Trailer Manufacturers Association, Inc. filed a Petition for Review with the Court.

The Court analyzes EPA’s use of the Section 202 (i.e., “Title II”) Clean Air Act regulations. It concludes that the objects of the Clean Air Act Title II regulations must be self-propelled. Since trailers are not self-propelled, EPA is held to be unable to use § 202(a)(1) to set emission standards for trailers and require trailer manufacturers to comply with them.

Similarly, the Court analyzes the NHTSA's use of the Ten-in-Ten Fuel Economy Act ("Act"). This Act was enacted as part of the Energy Independence and Security Act of 2007. See 81 Fed. Reg. at 73,519.

The Act requires NHTSA in coordination with EPA to establish "fuel economy standards for" certain vehicles. See 49 U.S.C. § 32902(b)(1).

The Court concludes since a trailer utilizes no fuel it does not have fuel economy. It states that in the statutory context of § 32902 that:

. . . nothing is a vehicle unless it has fuel economy — a measure of miles traveled per gallon of fuel used.

As a result, as with EPA, the Court holds that NHTSA lacks the authority to regulate trailers.

A copy of the Opinion can be downloaded [here](#).