EPA and NHTSA Blocked From Regulating Trailer Manufacturing

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In 1963 and 1970, Congress passed two statutes which have come to be called the “Clean Air Act” (“the CAA” or “the Act”). Together, they make up 42 U.S.C. Ch. 8. In the half-century since the 1970 act was passed, the CAA has undergone many changes, and the authority of agencies to regulate under the Act has expanded greatly.[1] Amendments to the CAA have allowed the EPA to set acceptable levels of air pollutants in the ambient air, to set health and technology-based standards for emissions from industrial facilities, and to regulate the use and production of chemicals harmful to the ozone layer.[2] In 2011, Section 202 of the Act went into effect, allowing the Administrator of the EPA to:

by regulation prescribe…in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare.[3]

In the same year, the EPA identified emissions in the trucking industry as one of those causes or contributors, and along with the National Highway Traffic Safety Administration (NHTSA) created the “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 1.”[4] That rule set out standards for medium and heavy-duty trucks manufactured between 2014 and 2018.[5] These included combination tractors, heavy-duty pickup trucks and vans, and vocational vehicles, as well as the engines that power each.[6]

In 2016, Phase 2 of the rule was created, for the first time setting greenhouse gas emission and fuel efficiency standards for heavy-duty *trailers*.[7] The response has been split. While some original equipment manufacturers and suppliers support the rule, others warn that demands on engine and truck manufacturers under the rule are extreme, especially since the standards from Phase 1 have yet to be fully implemented.[8] Still others believe that parts of the Phase 2 rule exceed the EPA's authority under the CAA. In 2016, the Truck Manufacturers Association, Inc. objected to the rule and petitioned for review.[9] The US Court of Appeals for the DC Circuit stayed the portion of the rule which regulated trailers, and in November of 2021, struck it down.[10]

The Court noted that section 202 of the CAA gives the EPA authority to regulate “new motor vehicles or new motor vehicle engines” which are believed to cause pollution and endanger public health.[11] The CAA also defines “motor vehicle” as “any *self-propelled* vehicle designed for transporting persons or property on a street or highway” [emphasis added].[12] Because trailers are not self-propelled, they are not motor vehicles under the CAA, and fall outside the authority granted to the EPA under section 202.[13]

The NHTSA also argued that it could regulate trailers, relying on the Ten-in-Ten Fuel Economy Act, which allows the NHTSA to establish fuel efficiency standards for certain types of vehicles.[14] The Act applies to “commercial medium-duty or heavy-duty on highway vehicles,” which the NHTSA argued covered trailers, since the Ten-in-Ten Fuel Economy Act does not define “vehicle” as the CAA does.[15] [16] The court rejected this as well. In that Act, Congress used the word “vehicle” in the context of regulating fuel economy. The Court held that this limited “vehicles” covered by the Act to machines that use fuel, which excludes trailers.[17]

Under this ruling, the EPA and the NHTSA will be unable to regulate anything other than self-propelled vehicles and their components, barring an expansion of their power by Congress. This limitation provides the trucking industry more of an opportunity to integrate the new technologies required by law, without being overwhelmed by regulatory

overreach.

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[1] *Evolution of the Clean Air Act*, Envtl. Protection Agency.
[2] *Id.*
[3] *42 USCA § 7521(a)(1).*
[4] *Regulations for Greenhouse Gas Emissions from Commercial Trucks & Buses*, Envtl. Protection Agency.
[5] *Id.*
[6] *Id.*
[7] *Truck Trailer Manufacturers Ass'n, Inc. v. Envtl. Protection Agency, 2021 WL 5263958, at *1 (D.C. Cir. 2021).*
[8] *Sean Kilcarr, EPA Finalizes GHG Phase 2, Fleet Owner (Aug. 16, 2016).*
[9] *Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles, Congressional Research Service (July 18, 2021).*
[10] *Truck Trailer Manufacturers, 2021 WL 5263958.*
[11] *Id. at *2.*
[12] *Id.*
[13] *Id. at *4.*
[14] *49 U.S.C. § 32902(b)(1)*
[15] *Id. § 32902(b)(1)(C).*
[16] *Truck Trailer Manufacturers, 2021 WL 5263958 at *5.*
[17] *Id. at *5-6.*

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