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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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NAVISTAR, INC.,)	
)	
Petitioner,)	
)	
v.)	No. 09-1113
)	(Consolidated with
U.S. ENVIRONMENTAL PROTECTION)	No. 09-1114)
AGENCY, and LISA JACKSON, Administrator,)	
)	
Respondents.)	
)	

**CUMMINS INC., DETROIT DIESEL CORP., DAIMLER TRUCKS
NORTH AMERICA LLC, VOLVO GROUP NORTH AMERICA, INC.
AND MACK TRUCKS, INC.’S
REPLY TO NAVISTAR, INC.’S OPPOSITION TO MOTION FOR
LEAVE TO PARTICIPATE AS AMICI CURIAE**

Cummins Inc. (“Cummins”), Detroit Diesel Corporation (“DDC”), Daimler Trucks North America LLC (“DTNA”), Volvo Group North America, Inc. (“Volvo”), and Mack Trucks, Inc. (“Mack”) (collectively, “Amici Curiae”) hereby file this reply to Navistar, Inc.’s (“Navistar”) opposition to the motion for leave to participate as amici curiae.

As a preliminary matter, Navistar has devoted the better part of its nine-page opposition to arguing the merits of its case. See Navistar Opp. at ¶¶ 2-8; 10-14. Those arguments are of no relevance at this early stage; Navistar will have opportunity enough to argue its case at the appropriate time.

What Navistar does offer in the way of opposition to Amici’s motion—as opposed to its litany of complaints about the merits—is limited to the unadorned suggestion that Amici Curiae will not meaningfully contribute to the case. That is quite wrong. Amici fully satisfy the requirements of Circuit Rule 29(a), as this Court has recognized in many other cases involving challenges to EPA regulations in which industry participants have been permitted to offer their views as amici curiae.

It is precisely because industry participants affected by EPA rules are in a unique position to offer their perspective on a challenge to those rules that this Court regularly permits industry and business interests to participate as amici in cases involving petitions for review of EPA actions under the Clean Air Act. See, e.g., Am. Farm Bureau Fed’n v. EPA, 559 F.3d 512, 514-15 (D.C. Cir. 2009) (allowing home builders trade association to participate as amicus curiae in support of EPA in challenge to EPA’s revision of the National Ambient Air Quality Standards for particulate matter); Nat’l Assoc. of Clean Air Agencies v. EPA, 489 F.3d 1221, 1223 (D.C. Cir. 2007) (allowing air transport and aerospace industries associations to participate as amici curiae in support of EPA in challenge to EPA rule on nitrogen oxide emission standards); South Coast Air QualityMgmt. Dist. v. EPA, 472 F.3d 882, 886 (D.C. Cir. 2006) (allowing chamber of commerce groups to participate as amici curiae in challenge to eight

hour ozone national ambient air quality standard); Nat'l Lime Assoc. v. EPA, 233 F.3d 625, 628 (D.C. Cir. 2000) (allowing cement alliance to participate as amicus curiae in challenge to EPA emission regulations for cement manufacturing).

These amici offer an important industry perspective. As manufacturers of diesel engines and diesel powered heavy-duty trucks and commercial vehicles, Amici Curiae are directly affected in their day-to-day design, certification, and manufacturing operations by EPA's 2001 Standard and the 2009 SCR Guidance at issue in this case. Navistar is not intending to use SCR technology. Amici, in contrast, have invested enormous resources to comply with EPA rules through the use of SCR technology. Thus, it is only Amici that are in a position to assist the Court in understanding and elaborating upon the technology and arguments made by EPA in response to Navistar's challenges to the 2001 Standard and 2009 SCR Guidance.

Navistar nonetheless makes the conclusory assertion that "any brief filed by [Amici Curiae] will only repeat the arguments made in EPA's principal brief." Navistar Opp. at ¶ 9. But Amici, like Navistar itself (see id. at ¶ 14), are well familiar with Circuit Rule 29(a), which generally requires amici to focus on points not made or adequately elaborated upon in the brief of the party supported. For instance, Amici, and not EPA or Navistar, have developed, tested, and used

SCR technology. Accordingly, Amici 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. In addition, Amici, and not EPA, are in the best position to elaborate on the potentially significant impact that Navistar's position, if adopted, would have on efforts by the remainder of the industry to comply with EPA's standards. Denying Amici the opportunity to address these and other fundamental issues would deprive the Court of information that is central to its consideration of this matter.

Finally, a word on Navistar's assertion that EPA's and Amici Curiae's positions are "one and the same." Navistar Opp. at ¶¶ 9, 14. EPA as a federal regulatory agency does not and cannot speak for or represent the interests of private industry. Even if it wanted to represent those interests, not being a part of the industry prevents it from having the background, knowledge, or understanding to do so. These Amici Curiae, as manufacturers of diesel engines and diesel powered heavy-duty trucks and commercial vehicles, have important manufacturing and business interests at stake in these proceedings, separate and apart from EPA's interests as a federal regulatory agency. Thus, Amici Curiae will meaningfully contribute to this Court's understanding of relevant and critical industry issues that EPA is not likely to elaborate upon in its briefing.

Accordingly, Amici Curiae respectfully request that this Court grant leave for them to participate in these proceedings as amici in support of Respondent EPA.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on this 12th day of June, 2009, a true and correct copy of the foregoing Reply to Navistar's Opposition to Motion for Leave to Participate as Amici Curiae, was served by First Class Mail, postage pre-paid, to the following:

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