

## Appeals court overreaches in tossing federal fuel rules

by *The Detroit News*

It may be appropriate for a federal court to decide who in government has the authority to set fuel efficiency standards for automobiles, but it is well beyond the role of the court to take on the job of setting those standards itself. But that's what the Ninth Circuit Court in San Francisco is trying to do in ruling that federally approved fuel efficiency standards for light trucks are not stringent enough; wrongly excluded sport utility vehicles and minivans from car categories; didn't include all heavy-duty and commercial trucks; and didn't put a monetary value on carbon emissions, which would have forced higher standards. The court is crossing the line into setting federal policy, a role reserved for Congress by the Constitution.

The court said the National Highway Traffic Safety Administration sided too heavily with the auto industry in weighing the costs of compliance for new Corporate Average Fuel Economy (CAFE) standards, but largely ignored the economic value of reducing carbon emissions. Carbon dioxide is not classified as a pollutant by the Environmental Protection Agency.

The court ordered NHTSA to write new rules for light trucks built through 2011. This is problematic for a number of reasons, not the least of which is that based on the federally approved rule changes in 2006, the automakers already are planning through 2011. Changing the mandates in mid-stream is an unreasonable burden.

"Announced more than 19 months ago light truck fuel economy rules represented the largest fuel economy increase in the history of the CAFE program," says Dave McCurdy, chief executive of the Alliance of Automobile Manufacturers, which represents the Big Three, Toyota and other foreign automakers. "Any further changes to the program would only delay the progress that manufacturers have made towards increasing fleet wide fuel economy."

Light truck standards were increased to 24 miles per gallon by 2011, up from 22.2 mpg in 2008. And for the first time, NHTSA agreed to regulate trucks and SUVs that weigh between 8,500 and 10,000 pounds, though the court says that too must be reconsidered.

Heavier trucks and those used for commercial purposes have historically been excluded because they're used for hauling or towing loads for work.

In ruling that the standards must now be revisited, the appeals court largely sided with activists' claims that most people drive light trucks, SUVs or minivans as they do small cars and not to haul stuff or large families.

Therefore, they should not be considered trucks or be classified for fuel efficiency in any other separate standard.

Once again, the court allowed itself to dive way too deep into policy considerations.

What this ruling, and the claims of activists, fails to recognize is that fuel efficiency can't be wedged into a one-size-fits-all standard. Consumers demand variety and larger vehicles than what environmentalists want people to drive. Auto company executives have committed to working with regulators and environmentalists to increase fuel efficiency and safety standards and they should be allowed to do so without the constant threat of legal action or wrongheaded decisions by activist judges.

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