



February 27, 2018

VIA ELECTRONIC SUBMISSION

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Attn: EPA-HQ-OAR-2014-0827

RE: Second Supplemental Comment of Environmental Defense Fund on the Environmental Protection Agency’s Proposed Rule, Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53,442 (November 16, 2017)

The Environmental Defense Fund (“EDF”) respectfully submits this supplemental comment on the Environmental Protection Agency’s (“EPA”) Proposed Rule, *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53,442 (November 16, 2017) (“Proposed Rule”), addressing provisions contained in the agency’s 2016 final rule, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73,478 (October 25, 2016) (“Phase 2 Standards”). In a further development from the information raised in our supplemental comment of February 14, 2018, an academic institution has now explicitly asked that EPA not rely on its research, which the agency cites in the Proposed Rule. We once more call upon EPA to withdraw its flawed proposal, or, at minimum, the agency should not take any further action on the proposal until it has thoroughly investigated the circumstances explained herein.

As stated in our supplemental comment of February 14, 2018, EPA’s Proposed Rule cites to a study¹ performed by Tennessee Technological University (“TTU”) and funded by Fitzgerald Glider Kits.² According to a summary document, the TTU study—overseen by Associate Vice

¹ U.S. EPA, Proposed Rule: *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53,442, 53,444 (Nov. 16, 2017).

² Tenn. Tech. University Office of Research, Tennessee Technological University Annual Report 2015-16 (Volume 2) 42 (2016), available at https://www.tntech.edu/assets/userfiles/resourcefiles/13847/1476976572_2015-16%20Annual%20Report_FINAL.pdf; Tenn. Tech. University, Grants Rewarded Report (09/01/2016 – 09/30/2016), available at

President of Research Tom Brewer at a Fitzgerald facility—purported to conclude that remanufactured glider engines performed equally as well or outperformed modern engines with regard to pollutant emissions.³ These results are at odds with both recent EPA testing of glider vehicles and emission factors for the model year diesel engines that glider vehicles use, which show that uncontrolled glider vehicles have nitrogen oxide and particulate matter pollution emissions many multiples greater than other new freight trucks.⁴

EPA explicitly discussed the TTU study and summarized the study’s conclusions, without critical assessment, in its Proposed Rule to repeal emission requirements for glider vehicles.⁵ The Proposed Rule did not cite to any other analyses purporting to address the proposal’s health or environmental impacts.⁶

On February 19, 2018, TTU President Philip Oldham sent a letter to EPA Administrator Scott Pruitt, attached herein, requesting that the agency “withhold any use or reference to said study pending the conclusion of our internal investigations.” The letter explains that TTU is pursuing a peer review of the study “to assure its validity,” because “knowledgeable experts within the University have questioned the methodology and accuracy of the report.” President Oldham sent letters with similar requests to its research sponsor, Fitzgerald Glider Kits, and to Congresswoman Diane Black. News reports have further documented the emerging concerns with the TTU study, and EPA’s treatment of it.⁷

In EDF’s initial comment on the Proposed Rule, filed jointly with the Environmental Law and Policy Center and WE ACT for Environmental Justice, we explained that EPA’s action was

https://www.tntech.edu/assets/userfiles/resourcefiles/9512/1481215150_Grants%20Awarded%20Sept%202016.pdf; Tenn. Tech. University, Academic Affairs Highlights 25 (2017), available at https://www.tntech.edu/assets/usermedia/provost/12546/2017_End_of_the_Year_Statement.pdf.

³ July 10, 2017 Petition for Reconsideration of Application of the Final Rule Entitled “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule” to Gliders, from Fitzgerald Glider Kits, LLC; Harrison Truck Centers, Inc.; and Indiana Phoenix, Inc. (July 10, 2017), EPA–HQ–OAR–2014–0827, Exhibit 1, available at <https://www.epa.gov/sites/production/files/2017-07/documents/hd-g-hg-fr-fitzgerald-recons-petition-2017-07-10.pdf>.

⁴ U.S. EPA, Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles (Nov. 20, 2017), Docket No. EPA-HQ-OAR-2014-0827-2417, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>; EPA Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles - Phase 2, Response to Comments for Joint Rulemaking, at 1960-68, 1965, Appendix A (Aug. 2016), available at <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P8IS.PDF?Dockey=P100P8IS.PDF>.

⁵ 82 Fed. Reg. at 53,444.

⁶ See *id.*

⁷ Eric Lipton, *How \$225,000 Can Help Secure a Pollution Loophole at Trump’s E.P.A.*, N.Y. TIMES, (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/politics/epa-pollution-loophole-glider-trucks.html>; Eric Lipton, *University Pulls Back on Pollution Study That Supported Its Benefactor*, N.Y. TIMES (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/admin/trucking-pollution-study.html>; Eric Miller, *Tennessee University Investigating Possible Research Misconduct in Glider Vehicle Testing*, TRANSPORT TOPICS (Feb. 16, 2018), <http://www.ttnews.com/articles/tennessee-university-investigating-possible-research-misconduct-glider-vehicle-testing>; Jason Gonzales, *Tennessee Tech president asks EPA to withhold use of controversial emissions research*, THE TENNESSEAN (Feb. 22, 2018), <https://www.tennessean.com/story/news/education/2018/02/22/tennessee-tech-president-asks-epa-withhold-use-controversial-emissions-research/363326002/>.

arbitrary and capricious for failing to properly consider the troubling emissions consequences of the proposal, with the only reference to such emissions being a citation to the TTU study.⁸ The emergence of additional concerns about the integrity of that study further underscores the arbitrary and capricious nature of EPA's proposal.

These developments provide further reason why, as our earlier comments urged, EPA must withdraw its flawed repeal proposal. At a minimum, in light of these developments and EPA's inclusion of the TTU study in its proposal, it would be inappropriate for the agency to take any action on the Proposed Rule until the facts and circumstances surrounding the study are fully understood and disclosed to the public.

Sincerely,

Alice Henderson
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⁸ Comment of EDF, ELPC, & WE ACT on EPA's Proposed Rule, *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53,442 (Jan. 10, 2018), at Part I(f), VII, available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-4861>; see also *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that an agency may not offer a justification, as a basis for reversing course, "that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").



Office of the President

TENNESSEE TECH

February 19, 2018

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Reference: Tennessee Tech University – Summary of Heavy Duty Truck Study and Evaluation of the Phase II Heavy Duty Truck Rule

Mr. Pruitt:

Please be advised that regarding the “Environmental & Economic Study of Glider Kit Assemblers” report, knowledgeable experts within the University have questioned the methodology and accuracy of the report. Therefore, Tennessee Tech University is actively pursuing a peer review of the report and supporting data to assure its validity. The University also is investigating an allegation of research misconduct related to the study. We request that you withhold any use or reference to said study pending the conclusion of our internal investigations.

We sincerely regret any inconvenience this imposes, but our aim is to ensure the absolute integrity and objectivity of any scholarly product of Tennessee Tech. We anticipate a timely and thorough review following which we will inform you of the outcome. Thank you for your assistance and patience as we work through the concerns raised.

Sincerely,

Philip B. Oldham

PBO/ds