



February 14, 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: 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”). Emerging information regarding possible research misconduct related to a study cited in the Proposed Rule raise further concerns regarding this deeply harmful rulemaking. We accordingly 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.

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

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 https://www.tntech.edu/assets/userfiles/resourcefiles/9512/1481215150_Grants%20Awarded%20Sept%202016.pdf;

study—conducted by Associate Vice 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 numerous times that of 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

The Herald-Citizen, a Tennessee newspaper covering the region where Tennessee Technological University and Fitzgerald Glider Kits are located, reported on February 11, 2018, that TTU has begun an official investigation into its glider vehicles study.⁷ As noted in the article, a January 30, 2018 resolution adopted by TTU’s Faculty Senate recommends that the university withdraw its support of the study and “[s]uspend all present research activities and other associations with Fitzgerald.”⁸ TTU President Philip Oldham has responded by letter, stating that he has initiated an investigation under TTU’s “Misconduct in Research” policies and an “external peer review of the research,” and that activities related to the Fitzgerald-sponsored research had already been suspended.⁹

TTU’s decision to investigate possible research misconduct related to the glider vehicle study and to seek peer review of the study is significant.¹⁰ The decision indicates that the University’s

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-ghg-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 (Nov. 16, 2017).

⁶ *See id.*

⁷ Kate Cook, *TTU investigating Fitzgerald study*, HERALD-CITIZEN (Feb. 11, 2018), <http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study.25943>.

⁸ Tennessee Tech University Faculty Senate, Resolution on Fitzgerald Research Study (Jan. 30, 2018), available at https://www.tntech.edu/assets/usermedia/facultysenate/minutes-and-notes-2017-2018/Resolution_on_Fitzgerald_Study_1-30-2018.pdf.

⁹ Letter, TTU President Philip B. Oldham to Dr. Christy Killman, TTU Faculty Senate President (Feb. 1, 2018).

¹⁰ *See id.*

President and Faculty Senate have concerns regarding the integrity of the research.¹¹ EDF raised related concerns about the TTU glider vehicles study in a comment on EPA's Proposed Rule submitted jointly with the Environmental Law and Policy Center and WE ACT for Environmental Justice.¹²

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.

Sincerely,

Alice Henderson
Erin Murphy
Martha Roberts

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¹¹ Tennessee Tech University Faculty Senate, Resolution on Fitzgerald Research Study (Jan. 30, 2018), available at https://www.tntech.edu/assets/usermedia/facultysenate/minutes-and-notes-2017-2018/Resolution_on_Fitzgerald_Study_1-30-2018.pdf; Letter, TTU President Philip B. Oldham to Dr. Christy Killman, TTU Faculty Senate President (Feb. 1, 2018); see also Kate Cook, *TTU investigating Fitzgerald study*, HERALD-CITIZEN (Feb. 11, 2018), <http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943> (stating that TTU has “suspended ties” with Fitzgerald due to the investigation).

¹² Comment of EDF, ELPC, & WE ACT for Environmental Justice 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), available at <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-4861>.

APPENDIX

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1. Letter, TTU President Philip B. Oldham to Dr. Christy Killman, TTU Faculty Senate President (Feb. 1, 2018)
2. Tennessee Tech University Faculty Senate, Resolution on Fitzgerald Research Study (Jan. 30, 2018)
3. Article: Kate Cook, *TTU investigating Fitzgerald study*, HERALD-CITIZEN (Feb. 11, 2018)



Office of the President

TENNESSEE TECH

February 1, 2018

Dr. Christy Killman
President, TTU Faculty Senate
Campus Box 5043
Cookeville, TN 38505

Dear Dr. Killman:

Thank you for documenting the Faculty Senate's concerns about the Fitzgerald Glider Kit research in your email on January 30. I certainly share your desire to ensure the academic research integrity of the university along with our reputation as an honest broker of knowledge. To that end, it is important that we strictly follow established university policy and provide everyone with fair and appropriate due process.

Therefore, in response to your resolution I am sharing the actions currently being taken regarding the issue.

An allegation has been received, and I have initiated the processes called for in Tennessee Tech Policy 780, Misconduct in Research. Dr. Sharon Huo has accepted the appointment as the Research Integrity Officer. She will assist the inquiry and investigation committees and institutional personnel in order to assure compliance with policy procedures.

In addition to the inquiry and investigation described in the research misconduct policy, I have asked that an external peer review of the research itself be conducted concurrently. I do not anticipate any university statements being made during the inquiry, investigation, and peer review processes.

In regards to employee suspensions and in accordance with TTU policy 650, Tennessee Tech follows an investigative due process prior to any corrective action. Tennessee Tech does not take disciplinary action lightly and has set a precedent to utilize disciplinary

Dr. Christy Killman
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administrative absences (i.e. suspensions) in situations that involve tangible safety or security concerns.

Prior to receiving your resolution, activities related to the sponsored research project referenced in the allegation already had been suspended pending completion of the process described in the policy.

Dr. Huo will be in contact with you soon regarding your role within Policy 780.

Sincerely,



Philip B. Oldham
President

PBO/ds

cc: Dr. Tom Brewer
Dr. Darrell Hoy
Mr. Tom Jones
Dr. Ben Mohr
Dr. Bharat Soni

Faculty Senate Resolution on Fitzgerald Study

Whereas our reputation and integrity as an institution and, by extension, the faculty, staff and students, are two of the most valuable assets of the University;

Whereas our reputation has recently been damaged because of a study funded by Fitzgerald Glider Kits and used to influence Federal Policy; therefore, be it

Resolved, that the University President should immediately intervene to protect the solid and excellent research reputation of the University by the following recommended and responsible actions:

1. Suspend Tom Brewer, Associate Vice President of Research from all University activities pending the results of an independent investigation headed by an external investigator according to University Policy 780;
2. Issue a letter, signed by the President, withdrawing all Tennessee Tech support from the study, pending the results of the aforementioned investigation;
3. Suspend all present research activities and other associations with Fitzgerald, pending the results of the investigation;
4. Confirm within 5 working days of the passing of this resolution the successful formation of the impartial investigatory committee under University Policy 780, led by an independent external investigator, to the Tennessee Tech Faculty Senate President and Board of Trustees;
5. Include a review by the investigatory committee of the actions, responsibilities and involvement of the Vice President of Research and Economic Development and the Associate Vice President for Research.

Mover: Senator Holly Stretz

Secunder: Senator Ahmed ElSawy

Approved by Faculty Senate vote on January 30, 2018.

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TTU investigating Fitzgerald study

Posted Sunday, February 11, 2018

BY KATE COOK

Tennessee Tech has begun an official investigation and suspended ties with a local company after a scientific study came under fire.

The study was conducted by Tom Brewer, TTU's Associate Vice President of Research, and an unnamed graduate student from September to November 2016.

Basically, Brewer and the graduate student determined that trucks outfitted with glider kits, like those made by Fitzgerald Glider Kits, are as clean as new truck engines and may be cleaner.

Brewer and TTU President Phil Oldham announced the results in a letter to Rep. Diane Black in June 2017.

Fitzgerald Glider Kits paid for the study. Last August, Fitzgerald, TTU and TCAT Livingston announced it had created a partnership called the "Center for Intelligent Mobility" to be located at Fitzgerald's technology complex in White County.

Since that time, a host of groups have examined the study. Letters from retired professors and groups like the Environmental Defense Fund (EDF) state the EPA used the study as evidence to suspend a key emissions rule. Those same documents state the study wasn't carried out properly and is incorrect.

A letter from the EDF to EPA Administrator Scott Pruitt stated "any reliance on this study would constitute legal error."

On Jan. 30, Faculty Senate President Dr. Christy Killman sent Oldham a resolution asking him to immediately suspend Brewer and all present research activities and associations with Fitzgerald, pending the outcome of an investigation.

Two days later, Oldham responded in a letter, stating he has "initiated the processes called for in Tennessee Tech Policy 780, Misconduct in Research." The Research Integrity Officer will be Dr. Sharon Huo.

Oldham said he's also asked for a peer review of the Fitzgerald Glider Kit study. The letter states Tech policy requires the investigation to proceed then "corrective action" be taken. Oldham also said Tech had suspended activities with Fitzgerald.

TTU Chief Communication Officer Karen Lykins sent the following statement for this story:

"Tennessee Tech's integrity and ability to conduct research is critical to our mission and service to the state.

We take any and all allegations of research misconduct seriously and have a policy in place that guides any inquiry or investigation. The policy affords all complainants, respondents, and witnesses the broadest opportunity for confidentiality consistent with federal and state laws.

The federal government requires a policy and procedures for such matters as a part of the process to apply for federal assistance to conduct research projects. Tennessee Tech has chosen to go beyond this requirement and to adopt a broader policy that applies to all university research, not just those receiving federal funding. Tech's policy outlines the procedures and faculty's involvement in the process."