

United States Senate

WASHINGTON, DC 20510

March 12, 2018

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency (EPA)
1200 Pennsylvania Ave., NW
Washington, DC 20004

Dear Administrator Pruitt:

We write to request information about EPA's November 16, 2017 proposal to repeal air emission standards for some of the dirtiest heavy-duty trucks on the road.¹ Glider trucks, also known as "zombie trucks,"² look like new trucks on the outside—and are advertised and sold as new—but are equipped with old, high-polluting diesel engines on the inside. According to internal agency research not released until *after* EPA published this proposal, a new 2017 glider truck can emit up to 450 times the particulate matter (PM) pollution, and up to 43 times the nitrous oxide (NO_x) pollution, of model year 2014 and 2015 trucks.³ Other EPA analyses concluded that, if left unregulated, glider vehicle emissions could prematurely kill thousands of people, and increase instances of lung cancer, chronic lung disease, heart disease, and severe asthma attacks.⁴ We are also deeply troubled that this proposal, which appears to largely benefit a single company, was influenced by an industry-funded "study" that is currently the subject of an official investigation into research misconduct for failing to adhere to basic scientific standards.⁵ We urge you to withdraw this dangerous, legally questionable proposal immediately.

EPA and the National Highway Traffic Safety Administration (NHTSA) have worked closely with states, vehicle manufactures, environmental groups, and other interested stakeholders to develop federal standards that reduce vehicle pollution and improve fuel-economy. An important focus of these regulations has been medium- and heavy-duty vehicles, which, despite constituting only 5% of the domestic vehicle fleet, produce 20% of all transportation-sector emissions. EPA and NHTSA finalized an initial round of greenhouse gas and fuel economy standards for these vehicles in 2011, avoiding 270 million tons of CO₂ emissions and saving consumers \$50 billion at the pump.⁶ In 2016, the agencies completed the second round of regulations ("Phase 2"), setting standards for these highly-polluting vehicles out to model year 2027. These carefully crafted rulemakings were the result of "more than 400 meetings with

¹ 82 Fed. Reg. 53,442 (Nov. 16, 2017).

² See Rachel Muncrief & Josh Miller, "Scott Pruitt's EPA wants to resurrect the dirty diesel," INTL. COUNCIL ON CLEAN TRANSP., Dec. 1, 2017, <https://www.theicct.org/blog/staff/glider-proposal-means-resurrecting-dirty-diesel>.

³ EPA NATL. VEHICLE & FUEL EMISSIONS LAB., "Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles" (Nov. 20, 2017) at 3 [hereinafter "OTAQ Study"], <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>.

⁴ Response to Comments at 1877, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P8IS.PDF?Dockey=P100P8IS.PDF>.

⁵ <https://www.washingtonpost.com/news/energy-environment/wp/2018/02/21/tennessee-tech-withdraws-industry-funded-study-used-to-back-controversial-epa-truck-rule/>.

⁶ 76 Fed. Reg. 57,106 (Sept. 15, 2011).

manufacturers, suppliers, trucking fleets, dealerships, state air quality agencies, non-governmental organizations . . . and other stakeholders,” as well as feedback received from over 200,000 public comments, including in two public hearings.⁷ In contrast, EPA’s proposal, which exempts some of the worst-polluting trucks from being subject to air pollution limits, was reportedly developed at the behest of politically well-connected representatives of glider manufacturers.⁸

Glider trucks used to be a niche industry, with less than a thousand vehicles produced each year—primarily for engine-salvage purposes when relatively new trucks got in collisions. By 2015, however, “significantly over 10,000” glider vehicles were being sold, and almost every engine used to complete a glider truck is a rebuilt diesel engine originally manufactured between 1998 and 2002.⁹ These engines are so dirty that, during EPA testing conducted in late 2017, the black soot belching from glider trucks clogged the filters of EPA’s testing equipment, triggering a “PM equipment alarm” that prevented your technical staff from proceeding under normal testing conditions.¹⁰

EPA soon realized that, if left unregulated, by 2025 glider vehicles would create one-third of all NO_x and PM emissions from heavy-duty trucks, even though they would only comprise 5% of the heavy-duty tractor fleet. In its 2016 “Phase 2” medium and heavy-duty rule, after taking two rounds of public comment on whether and how to address glider vehicles, EPA finalized regulations that ensured the emissions from glider trucks would be reduced while minimizing disruption to the few companies that manufacture glider kits and vehicles.¹¹

Although no one from the glider industry challenged the final glider provisions in court, on May 8, 2017, you personally met with representatives of Fitzgerald Glider Kits, LLC (Fitzgerald),¹² the self-proclaimed, “largest glider kit dealer in the country”¹³ and a political supporter of President Trump.¹⁴ Two months after meeting with you, on July 10, 2017, Fitzgerald and two other glider kit dealers sent you a petition seeking reconsideration of the glider requirements.¹⁵ You also spoke later that month with Congresswoman Diane Black, who has vocally supported the Fitzgerald Petition.¹⁶

⁷ 81 Fed. Reg. 73,478, 73,481 (Oct. 25, 2016).

⁸ See, e.g., 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>.

⁹ See EPA memorandum from Charles Moulis to William Charmley, “Summary of Glider Production Data” (Nov. 15, 2017) at 1–3, https://www.eenews.net/assets/2017/11/21/document_gw_05.pdf.

¹⁰ OTAQ Study, *supra* note 3, at 14–15.

¹¹ See 81 Fed. Reg. at 73,941–46.

¹² “EPA Administrator Scott Pruitt’s schedule, from April 3, 2017 to Sept. 8, 2017,” WASH. POST, Sept. 22, 2017, <https://www.washingtonpost.com/apps/g/page/politics/epa-administrator-scott-pruitts-schedule-from-april-3-2017-to-sept-8-2017/2241/>.

¹³ See “About Fitzgerald,” FITZGERALD GLIDER KITS, <https://www.fitzgeraldgliderkits.com/about-fitzgerald/>.

¹⁴ See, e.g., 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>.

¹⁵ Fitzgerald Glider Kits, LLC, et al., “Petition for Reconsideration” July 10, 2017 [hereinafter “Fitzgerald Petition”], <https://www.epa.gov/sites/production/files/2017-07/documents/hd-ghg-fi-fitzgerald-recons-petition-2017-07-10.pdf>.

¹⁶ <https://black.house.gov/media/press-releases/epa-intends-roll-back-job-killing-regulation-hurting-small-business-owners>.

The Fitzgerald Petition lists three reasons why the glider truck industry should be exempt from modern pollution controls, most significantly that (1) EPA lacks statutory authority to regulate them; and that (2) a “recent study by Tennessee Technological University,” as well as other factors, demonstrate that EPA based its conclusions about glider vehicle emissions on “unsupported assumptions,” because glider vehicles actually performed as well or better from an emissions perspective than trucks with newer engines.¹⁷

On August 17, 2017, you sent letters to Fitzgerald and the other petitioners, saying that the petition raised “significant questions” about EPA’s legal authority “as well as the soundness of the EPA’s technical analysis” regarding glider emissions. You told the petitioners that EPA had, for both legal and technical reasons, “decided to revisit” the glider rules.¹⁸

On November 9, 2017, you signed the proposal to repeal emission standards for glider vehicles, glider engines, and glider kits, and it was published on November 16, 2017. The EPA proposal states that the basis for repeal would be a legal reinterpretation of Clean Air Act (CAA) definitions, even though you appeared to acknowledge that your reinterpretation would be contrary to the CAA’s plain language.¹⁹ As support for this strained interpretation of the law (which conflicts with Supreme Court precedent²⁰), EPA cites no legislative history or judicial precedent discussing congressional intent under the Clean Air Act. Instead, EPA’s legal case rests entirely on the Automobile Information Disclosure Act of 1958, a sixty-year-old law regulating the placement of stickers on automobile windows, which has nothing to do with either air pollution or heavy-duty trucks.²¹

Moreover, since EPA issued the proposal, serious questions have been raised about the Tennessee Tech study that had caused you to question “the soundness of the EPA’s technical analysis” and thus decide to revisit the glider rules.²² Whereas the technical information underlying the 2016 rule that EPA proposes to partially repeal was “based on a vast body of existing peer-reviewed work,” the only “science” cited by EPA’s proposal is the Tennessee Tech study, which claims that glider vehicles perform just as well—if not *better* than—vehicles with newer engines.

¹⁷ Fitzgerald Petition, *supra* note 15, at 3–4.

¹⁸ <https://www.epa.gov/sites/production/files/2017-08/documents/hd-ghg-phase2-fitzgerald-glidens-ltr-2017-08-17.pdf>.

¹⁹ 82 Fed. Reg. at 53,444–45 (citing CAA section 216(3)) (“Focusing solely on that portion of the statutory definition that provides that a motor vehicle is considered ‘new’ prior to the time its ‘equitable or legal title’ has been ‘transferred to an ultimate purchaser,’ a glider vehicle would appear to qualify as ‘new.’”).

²⁰ *See, e.g., Massachusetts v. EPA*, 549 U.S. 497, 532 (2007) (rejecting EPA’s narrow interpretation of “pollutant,” because Congress used broad definitional language in an “intentional effort to confer the flexibility necessary to forestall [] obsolescence,” so that EPA could apply overarching congressional intent to “changing circumstances and scientific developments,” including those Congress “might not have appreciated” specifically at the time).

²¹ 82 Fed. Reg. at 53,445–46.

²² <https://www.epa.gov/sites/production/files/2017-08/documents/hd-ghg-phase2-fitzgerald-glidens-ltr-2017-08-17.pdf>.

On February 16, 2018, the interim dean of the College of Engineering at Tennessee Tech lambasted the study's conclusions as "farfetched" and "scientifically implausible,"²³ and faculty called for an investigation into research misconduct.²⁴ It has since come to light that the study was not subject to peer review and was paid for by Fitzgerald Glider Kits.²⁵ Tennessee Tech has suspended its relationship with Fitzgerald, has launched an official investigation into research misconduct, and has asked you to disregard the study pending the outcome of that investigation.

There are ample reasons why EPA should suspect that the Tennessee Tech research was not conducted appropriately. The study was advertised as a product of Tennessee Tech's "Department of Civil and Environmental Engineering,"²⁶ despite the fact that it was apparently not overseen, written, reviewed, or verified by any "qualified, credentialed engineering faculty member."²⁷ And although the university president wrote a letter saying that all glider trucks "met the standard" for particulate matter,²⁸ study participants spoke by phone with EPA technical staff on November 7, 2017 and admitted they had taken no numerical measurements of PM emissions—in fact, *they had not collected PM samples at all.*²⁹

The College of Engineering's interim dean also highlighted a "devastating" critique of the study by the Environmental Defense Fund,³⁰ which noted among other things that the research was conducted at a Fitzgerald-owned facility that does not appear to even have emissions-testing equipment that meets standard EPA testing procedures.³¹

Absent from EPA's proposal is any mention of the agency estimates that every 10,000 glider trucks can lead to the premature deaths of 1,600 people.³² Absent is the fact that a *single year* of glider vehicle sales produces more than 10 times the NO_x emissions of Volkswagen's entire criminal defeat-device scheme.³³ Absent is a November 2017 study by EPA technical staff, which found that glider trucks with Fitzgerald-rebuilt engines emitted up to 450 times the PM

²³ Memorandum from Darrel Hoy, Interim Dean, College of Engineering (Feb. 16, 2018) at 2 [hereinafter "Hoy Memorandum"], *available at* <https://www.documentcloud.org/documents/4378485-Combatting-Pollution-in-Diesel-Trucks-and-the.html#document/p217/a405776>.

²⁴ TENN. TECH. FACULTY SENATE, "Faculty Senate Resolution on Fitzgerald Research Study" (Jan. 30, 2018), https://www.tntech.edu/assets/usermedia/facultysenate/resolutions/Resolution_on_Fitzgerald_Study_1-30-2018.pdf.

²⁵ Kate Cook, "TTU investigating Fitzgerald study," HERALD-CITIZEN, Feb. 11, 2018, <http://herald-citizen.com/stories/ttu-investigating-fitzgerald-study,25943>.

²⁶ Letter from Phillip B. Oldham, President, Tenn. Tech. Univ., to Scott Pruitt, EPA Admin'r (Feb. 19, 2018) at 1.

²⁷ Hoy Memorandum, *supra* note 23, at 1–2.

²⁸ Letter from Phillip B. Oldham, *supra* note 26, at 1.

²⁹ Memorandum from George Mitchell, Mechanical Eng'r, Assessments & Standards Div., EPA Office of Transp. & Air Quality, "EPA Teleconference with Tennessee Tech University Regarding Glider Test Report Summarized in June 2017 Letter; Tennessee Tech University – Summary of Heavy Duty Truck Study and Evaluation of the Phase II Heavy Duty Truck Rule," Nov. 13, 2017 at 2–3, *available at* <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2416>.

³⁰ Hoy Memorandum, *supra* note 23, at 2.

³¹ *See generally* Comments of EDF, ELPC, and WE ACT (Jan. 5, 2018) at 17–24, <https://www.edf.org/sites/default/files/content/EDF%20ELPC%20WE%20ACT%20Comments%20on%20Glidere%20Proposed%20Repeal%20final.pdf> [hereinafter "EDF Comment"].

³² Response to Comments at 1877, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100P8IS.PDF?Dockey=P100P8IS.PDF>.

³³ Muncrief & Miller, *supra* note 2.

pollution and 43 times the NO_x pollution of modern trucks.³⁴ Absent is the fact that, by 2025, EPA's proposal would undo—four times over—the interstate NO_x reductions achieved by power plants under the Cross-State Air Pollution Rule.³⁵ Absent are the economic costs that unrestricted glider vehicles impose on society, which EPA estimates at \$6 to \$14 billion *every year*.³⁶

In light of the severe adverse health effects of this rule, as well as the fact that EPA's decision-making relied on a study that was withdrawn pending the outcome of an official investigation into research misconduct, we ask that you immediately announce plans to withdraw this proposal. We additionally request that you please provide us with responses to the following questions and requests for information:

1. Please provide us with non-redacted copies of all documents (including but not limited to emails, memos, meeting notes and correspondence) regarding the November 16, 2017 proposed repeal of emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits. This request includes, *but is not limited to*:
 - a. all documents concerning any and all EPA scientific analysis conducted in relation to the proposed repeal;
 - b. all documents concerning any and all EPA legal analysis conducted in relation to the proposed repeal; and
 - c. any documents submitted by EPA to OMB in 2017 that describe the costs and benefits associated with the proposed repeal.
2. Please provide us with non-redacted copies of all documents (including but not limited to emails, memos, meeting notes and correspondence) between EPA representatives and representatives of Fitzgerald Glider Kits, LLC, Harrison Truck Centers, Inc., and/or Indiana Phoenix, Inc. since January 20, 2017. For the May 8, 2017 meeting with Administrator Pruitt and representatives of Fitzgerald Glider Kits, please provide me with a list of all people who attended that meeting (including by telephone) and with copies of any materials sent in advance or left behind with EPA personnel.
3. Please provide us with non-redacted copies of all documents written or received by EPA (including but not limited to emails, memos, meeting notes and correspondence) that relate to the Tennessee Tech's study on glider vehicle emissions, including, *but not limited to*, documents received from persons outside of EPA; any underlying data from the study;³⁷ and any concerns about the study raised by EPA technical staff.

³⁴ OTAQ Study, *supra* note 3, at 14–15.

³⁵ EDF Comment, *supra* note 31, at 11 & n.41.

³⁶ 81 Fed. Reg. at 73,943.

³⁷ *See, e.g.*, Email from William Charmley to Tom Brewer, "Re: TTU Follow-Up 11-28-2017," Dec. 1, 2017 (indicating EPA's possession of "more detailed emissions data" from Tennessee Tech, and ongoing EPA analyses), *available at* <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-4272>.

4. Please provide us with non-redacted records of all meetings that EPA political appointees have taken with all individuals and corporations regarding the glider provisions of the Phase 2 Rule since January 20, 2017.
5. In October and November of 2017, EPA technical staff in the Office of Transportation and Air Quality (OTAQ) were conducting emissions testing on heavy-duty glider vehicles containing engines rebuilt by Fitzgerald.³⁸ The ultimate results of that research showed extraordinary levels of PM and NO_x pollution from those vehicles—directly contradicting the purported results of the Tennessee Tech study. Your proposal mentions the Tennessee Tech study, but makes no mention of the EPA technical study contradicting it. Your proposal was also published on November 16, 2017—four days before the OTAQ study was purportedly finalized (November 20), and six days before it was released to the public (November 22). Did you or any other political appointees know that OTAQ was conducting this study before it was finalized? If so, when were those political appointees aware of any final or preliminary results of the study?
6. Your August 17, 2017 letter to Fitzgerald Glider Kits states that Fitzgerald’s petition “raises concerns that the EPA relied upon ‘unsupported assumptions rather than data’ with regard to the emission impacts of glider vehicles” and that, “In light of these issues, the EPA has decided to revisit the provisions in the Phase 2 Rule that relate to gliders.” On what date on or before August 17, 2017, had EPA “decided to revisit” those provisions, and on what specific bases were those decisions made?
7. EPA concluded in 2016 that, if left unrestricted, emissions from heavy-duty glider tractors would represent “about one third of all NO_x and PM emissions from heavy-duty tractors in 2025.” Those excess emissions impose \$6 to \$14 billion in annual costs to society, and “removing even a fraction of these glider vehicles with high polluting engines from the road will yield substantial health benefits.”³⁹ Do you have any reason to doubt the veracity of these figures? If you do, please explain the reason(s) why, and provide supporting documentation.
8. Clean Air Act section 216(3) defines “new motor vehicle” as “a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.”
 - a. As an initial matter, are glider vehicles motor vehicles? If no, please explain your answer and cite any provisions of the CAA upon which your answer relies.
 - b. If a glider vehicle has not been sold to any ultimate purchaser, has the equitable or legal title of that unsold glider vehicle been transferred to an ultimate purchaser?⁴⁰ If yes, please explain your answer and cite any provisions of the CAA upon which your answer relies.

³⁸ See OTAQ Study, *supra* note 3, at 4.

³⁹ 81 Fed. Reg. at 73,493.

⁴⁰ By “ultimate purchaser,” we refer to the definition in CAA section 216(5), 42 U.S.C. § 7550(5).

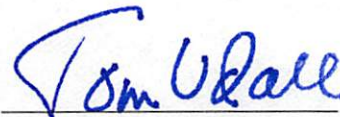
9. Hypothetically, imagine that a new Volvo dealer sells a brand new Volvo VNL heavy-duty truck⁴¹ to the vehicle's first ultimate purchaser. The Volvo VNL is straight off the assembly line, including with a brand new powertrain.
 - a. Would that Volvo VNL be a "new motor vehicle" under CAA section 216(3)? If your answer is anything other than "yes," please explain your answer and cite any provisions of the CAA upon which your answer relies.
 - b. Would the same Volvo VNL be a "new motor vehicle" under CAA section 216(3) if all characteristics from the hypothetical vehicle were the same, except that at the time of the sale the truck had i) pre-owned, refurbished tires salvaged from an older truck, or ii) a pre-owned, refurbished windshield installed?
10. Does the Automobile Information Disclosure Act of 1958, Pub. L. 85-506, contain any requirements applicable in any way to either air pollution or to heavy-duty commercial trucks? If yes, please provide a citation to those provisions.
11. Are the degree of emissions from glider trucks relevant in determining whether Congress intended to allow EPA to regulate emissions from new glider vehicles, glider kits, or rebuilt glider engines under the Clean Air Act? If yes, explain how emissions data influenced the proposal.
12. Are the human health consequences of glider truck emissions at all relevant in determining whether Congress intended to allow EPA to regulate emissions from new glider vehicles, glider kits, or rebuilt glider engines under the Clean Air Act? If yes, explain how human health considerations influenced the proposal.

Thank you very much for your attention to this important matter. Please provide your response no later than April 2, 2018. If you or members of your staff have further questions, please feel free to ask them to contact Michal Freedhoff at the Committee on Environment and Public Works at (202) 224-8832, or Jonathan Black with Senator Udall's office at (202) 224-6621.

Sincerely,



Senator Tom Carper
Ranking Member
U.S. Senate Committee on
Environment and Public Works



Senator Tom Udall
Ranking Member
U.S. Senate Subcommittee on the
Department of the Interior,
Environment, and Related Agencies

⁴¹ See "New VNL | Volvo Trucks USA," VOLVO, <https://www.volvotrucks.us/trucks/vnl/>.