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Location: 3216 WJC-South - Conference Number: **Personal Phone / Ex. 6**

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Attachments: All Hands Meeting eCommerce Presentation 9 25 2018.pptx; OCE All Hands NAA slides 9 25 18.pptx
Location: 3216 WJC-South - Conference Number: **Personal Phone / Ex. 6**

Start: 9/25/2018 3:00:00 PM
End: 9/25/2018 4:00:00 PM
Show Time As: Tentative

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Attachments: All Hands Meeting eCommerce Presentation 9 25 2018.pptx; OCE All Hands NAA slides 9 25 18.pptx
Location: 3216 WJC-South - Conference Number: **Personal Phone / Ex. 6**

Start: 9/25/2018 3:00:00 PM
End: 9/25/2018 4:00:00 PM
Show Time As: Tentative

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Attachments: All Hands Meeting eCommerce Presentation 9 25 2018.pptx; OCE All Hands NAA slides 9 25 18.pptx
Location: 3216 WJC-South - Conference Number: Personal Phone / Ex. 6

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End: 9/25/2018 4:00:00 PM
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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND, et al.,	
Petitioners,	No. 18-1190, consolidated with No. 18-1192
v.	
ENVIRONMENTAL PROTECTION AGENCY,	
Respondent.	

RESPONDENTS' MOTION TO DISMISS AND
OPPOSITION TO PETITIONERS' MOTIONS FOR STAY
OR SUMMARY DISPOSITION

Respondents United States Environmental Protection Agency and Andrew K. Wheeler, Acting Administrator (collectively "EPA") move for dismissal of these consolidated petitions for review on grounds of mootness. Because EPA's Acting Administrator has withdrawn the challenged agency action and has stated that EPA will not repeat the action, this case is moot.

This filing also constitutes EPA's Opposition to Environmental Petitioners' Motion for Stay or Summary Disposition in No. 18-1190 (ECF No. 1740848), and to State Petitioners' Motion for Summary Vacatur or in the Alternative for Stay Pending Judicial Review in No. 18-1192 (ECF No. 1741540). Undersigned

counsel for EPA conferred with Petitioners; Environmental Petitioners oppose this relief, and State Petitioners take no position at this time and reserve their right to oppose this motion.

BACKGROUND

These cases are petitions for review of an EPA memorandum exercising enforcement discretion regarding small manufacturers of glider vehicles and their suppliers. Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles ("No Action Assurance"). *See* Appendix to Environmental Petitioners' emergency motion ("Env't Pet. App.") at A2. Glider vehicles are heavy-duty diesel trucks that combine a new truck body (a glider kit) with a previously-owned engine and transmission (and usually the rear axle). In 2016, EPA stated that new glider vehicles are "new motor vehicles" and glider engines are "new motor vehicle engines" under the Clean Air Act, and thus must meet the same emission standards applicable to any new vehicle for the year of manufacture, except where interim or other provisions applied. 81 Fed. Reg. 73,478, 73,945-46 (Oct. 25, 2016) (Env't Pet. App. at A408-A409); *see also* 40 C.F.R. §§ 1037.150(t), 1037.635.

Interim provisions allow manufacturers to produce some glider vehicles that do not meet the new engine emission standards. For 2017, any glider manufacturer

could produce up to its highest annual production for any year from 2010 to 2014, without meeting emissions standards for 2017 engines. Beginning in 2018, the interim provisions allow only qualifying small manufacturers to produce gliders with engines meeting pre-2010 emissions standards, and limited them to a cap of either 300 glider vehicles or their highest annual production for any year from 2010 to 2014, whichever is fewer.[1] 81 Fed. Reg. at 73,946/2-3 (Env't Pet. App. at A409); *see also* 40 C.F.R. §§ 1037.150(t)(3) (limit for 2017 only); 1037.150(t)(1)(ii) (limit beginning in 2018).

In November 2017, EPA proposed to reconsider the part of the 2016 rule that applies to gliders. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (Env't Pet. App. at A49). EPA's reconsideration notice primarily proposed a new interpretation of the Clean Air Act, under which glider vehicles and glider engines do not meet the statutory definitions of "new motor vehicles" and "new motor vehicle engines." This would repeal the provisions of the 2016 rule that require glider vehicles, engines, and kits to meet applicable standards for new motor vehicles and engines. 82 Fed. Reg. at 53,446-47 (Env't Pet. App. at A53-A54). EPA has not taken final action regarding that proposal.

[1] Beginning in 2021, gliders vehicles will be subject to additional standards. S*ee* 40 C.F.R. § 1037.150(t)(1).

On July 6, 2018, the Assistant Administrator of EPA's Office of Air and Radiation requested EPA's Office of Enforcement and Compliance Assurance to exercise enforcement discretion through a no action assurance with respect to small manufacturers and suppliers of glider vehicles and kits, to preserve the status quo for those companies as it was at the time of the November 2017 proposed rule until such time as the EPA was able to take final action on regulatory revisions. Env't Pet. App. at A5.

On the same date, the Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance issued the No Action Assurance for small manufacturers of glider vehicles and their suppliers. Env't Pet. App. at A2. The No Action Assurance explained that EPA would exercise its enforcement discretion to provide relief to small manufacturers while EPA continued its reconsideration of the 2016 rule. EPA stated that it would take no action against small manufacturers that produced in either 2018 or 2019 no more than the number of glider vehicles those small manufacturers could have produced pursuant to section 1037.150(t)(3), the cap for 2017. EPA similarly stated it would take no action against suppliers of glider kits acting within the scope of the No Action Assurance. The No Action Assurance would remain in effect for one year, or until EPA completed its regulatory revision, whichever was earlier.

Environmental Petitioners wrote EPA on July 10, requesting administrative action to either immediately withdraw or administratively stay the No Action Assurance, Env't Pet. App. at A253, and on July 17 filed an emergency motion to stay or to summarily vacate the No Action Assurance. Several states wrote EPA on July 13, making the same requests, Env't Pet. App. at A259, and State Petitioners filed their emergency motion on July 19.[2]

On July 26, 2018, the Acting Administrator issued a memorandum withdrawing the No Action Assurance and responding to Petitioners' requests to withdraw or administratively stay the No Action Assurance. *See* "Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" ("Withdrawal Notice") (Attachment 1). At the same time, the Acting Administrator signed letters to each Petitioner stating that, after consideration of the requests and other information before him, he had decided to withdraw the No Action Assurance for the reasons detailed in that memorandum. Letters regarding Withdrawal and Administrative Stay Requests (Attachment 2). In the memorandum, EPA noted that long-standing EPA guidance limits the circumstances under which EPA will consider issuing no action assurances. Withdrawal Notice at 1. After further consideration, EPA "concluded that the

[2] On July 18, 2018, the Court issued an administrative stay of the No Action Assurance and set a briefing schedule.

application of current regulations to the glider industry do not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion." *Id.* EPA thus withdrew the No Action Assurance, and determined that:

> EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, [the Office of Air and Radiation] shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Id.

ARGUMENT

EPA'S WITHDRAWAL OF THE CHALLENGED MEMO HAS RENDERED THIS CASE MOOT AND IT SHOULD THEREFORE BE DISMISSED

Because the agency action that is the subject of the petitions for review has been withdrawn, there is no longer anything for the Court to review, and these cases are moot. As this Court has noted, "[t]he mootness doctrine, deriving from Article III, limits federal courts to deciding actual, ongoing controversies." *American Bar Ass'n v. FTC*, 636 F.3d 641, 645 (D.C. Cir. 2011), quoting *Clarke v. United States*, 915 F.2d 699, 700-01 (D.C. Cir. 1990) (en banc). Accordingly, if an event occurs during the pendency of a case that makes it impossible for the court to

grant any effectual relief, the case must be dismissed. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *Anderson v. Carter,* 802 F.3d 4, 10 (D.C. Cir. 2015), *cert. denied*, 137 S. Ct. 65 (2016); *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 575 (D.C. Cir. 1990).

Petitioners in this case seek to have the Court stay or vacate the No Action Assurance, but the Acting Administrator's withdrawal of the No Action Assurance has already done exactly that. EPA granted Petitioners' requests, and there is no additional remedy that the Court can grant. Thus, any decision by the Court would necessarily constitute an impermissible advisory opinion. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (federal court has no power to issue advisory opinions); *see also, e.g.*, *El Paso Natural Gas Co. v. United States,* 750 F.3d 863, 883 (D.C. Cir. 2014) (noting that mootness doctrine is constitutional and that "[b]ecause the exercise of judicial power under Article III depends upon the existence of a case or controversy, a federal court may not render advisory opinions or decide questions that do not affect the rights of parties properly before it.").

Although the "voluntary cessation" of an allegedly illegal action does not automatically moot a case, this Court has recognized that the withdrawal of a challenged agency action does moot a challenge to that action if "there is no reasonable expectation that the violation will recur, and interim relief or

intervening events have completely eradicated the effects of the alleged violation." *Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n*, 680 F.2d 810, 814 n.8 (D.C. Cir. 1982) (no reasonable expectation that the agency will issue a similar rule without notice and comment). *See also Cierco v. Mnuchin*, 857 F.3d 407, 414-15 (D.C. Cir. 2017) (agency's withdrawal "completely vitiated" disputed notices). Here, as described in the Withdrawal Notice, EPA "will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers." EPA has thus explicitly committed that it will not repeat the same agency action that Petitioners challenge. The Acting Administrator also directed EPA to "continue to move as expeditiously as possible on a regulatory revision" regarding glider vehicles, which further demonstrates that EPA's intent is to address glider vehicles through notice and comment rulemaking, not through the exercise of the agency's enforcement discretion. The Withdrawal Notice not only "completely vitiate[s]" the No Action Assurance, it also demonstrates that Petitioners are not "likely to suffer the same injury in the future." *Cierco*, 857 F.3d at 415.[3]

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[3] Nor is this case capable of repetition yet evading review. Even if the duration of the No Action Assurance were "too short to be fully litigated prior to [its] cessation or expiration," the "capable of repetition" exception to the mootness doctrine also

CONCLUSION

For all the foregoing reasons, the petitions for review should be dismissed, and Petitioners' motions should be denied as moot.

Dated: July 30, 2018

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General

JONATHAN D. BRIGHTBILL
Deputy Assistant Attorney General

/s/ Daniel R. Dertke
DANIEL R. DERTKE, Sr. Attorney
U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044--7611
(202) 514-0994

OF COUNSEL:

ANDREA CARRILLO
Office of General Counsel, U.S. EPA
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

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requires a "reasonable expectation that the same complaining party will be subject to the same action again," which is missing here. *Cierco*, 857 F.3d at 415.

CERTIFICATE OF SERVICE

I certify that on this 30th day of July, 2018, the foregoing RESPONDENTS' MOTION TO DISMISS AND OPPOSITION TO PETITIONERS' MOTION FOR STAY OR SUMMARY DISPOSITION was served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Daniel R. Dertke
DANIEL R. DERTKE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Andrew R. Wheeler
Acting Administrator

TO: Susan Parker Bodine
Assistant Administrator, Office of Enforcement and Compliance Assurance

William L. Wehrum
Assistant Administrator, Office of Air and Radiation

After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018 (attached), and upon further consideration as explained below, I am today withdrawing this No Action Assurance.

On July 6, 2018, the Office of Air and Radiation requested that the Office of Enforcement and Compliance Assurance exercise enforcement discretion through a no action assurance with respect to: 1) those small manufacturers to which 40 C.F.R. § 1037.150(1) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and 2) those companies to which 40 C.F.R. § 1037.150(t)(l)(vii) applies that sell glider kits to such small manufacturers (Suppliers). OAR explained in this request that in November 2017 the EPA had proposed reconsideration of provisions applicable to glider vehicles in the 2016 HD Phase 2 Rule[1] and was working toward a final action, but needed additional time to evaluate matters before taking final action. In the interim, industry compliance with the glider requirements of the HD Phase 2 Rule was resulting in the loss of jobs and threatening the viability of Small Manufacturers. Thus, OAR requested a No Action Assurance to preserve the status quo for Small Manufacturers and Suppliers as it was at the time of the November 2017 proposed rule reconsidering the HD Phase 2 Rule until such time as the EPA was able to take final action on, among other possible regulatory revisions, a rule extending the applicable compliance date for glider vehicles.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule).

On July 6, 2018, OECA issued a No Action Assurance pursuant to this request, stating that the EPA intends to exercise its enforcement discretion through July 6, 2019, or the effective date of a final rule extending the compliance date applicable to Small Manufacturers, whichever is earlier, with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(1)(3), and that the EPA also will exercise its enforcement discretion during the same period with respect to Suppliers that sell glider kits to those Small Manufacturers to which the No Action Assurance applied. The No Action Assurance explained that this use of enforcement discretion was in the public interest to avoid profound disruptions to small businesses while the EPA completes its reconsideration of the HD Phase 2 Rule. The No Action Assurance also explained that EPA reserves its right to revoke or modify this no action assurance.

Three environmental groups[2] and a coalition of states[3] filed several separate administrative requests for the EPA to either immediately withdraw or administratively stay the No Action Assurance. On July 17, 2018, the environmental groups petitioned for review of the No Action Assurance in the D.C. Circuit and filed an emergency motion for stay or summary vacatur in the D.C. Circuit, and a request for an administrative stay during the court's consideration of the emergency motion. On July 18, the court issued an administrative stay of the No Action Assurance for the duration of time the court considers the emergency motion. On July 19, 2018, the same coalition of states filed a similar petition and emergency motion for summary vacatur, or, in the alternative, for stay pending judicial review, in the same court.

OECA has a general guidance limiting the circumstances under which the agency will consider issuing no action assurances.[4] The 1995 restatement of that policy states that the principles against the issuance of a no action assurance are at "their most compelling in the context of rulemakings." OECA guidance is clear that a no action assurance should be issued only in an "extremely unusual" case when the no action assurance is necessary to serve the public interest and only when no other mechanism can adequately address that interest. Thus, historically OECA has issued no action assurances to address situations where the balance of the public interest supported the EPA temporarily and narrowly exercising its enforcement discretion.

After consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion. I am therefore withdrawing the July 6, 2018, No Action Assurance.

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[2] Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

[3] California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

[4] Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Policy Against "No Action" Assurance (Nov. 16, 1984); Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Processing Requests for Use of Enforcement Discretion (March 3, 1995).

Furthermore, the EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, OAR shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000165-00020

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000165-00024

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

RESPONDENTS' CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and *Amici*

All parties appearing in this Court are accurately identified in the Environmental Petitioners' Motion for Stay or Summary Disposition in No. 18-1190 (ECF No. 1740848), and in State Petitioners' Motion for Summary Vacatur or in the Alternative for Stay Pending Judicial Review in No. 18-1192 (ECF No. 1741540). The Chesapeake Bay Foundation, Inc., has moved to intervene but only if this case proceeds to the merits. *See* ECF No. 1742142.

B. Rulings Under Review

Petitioners seek review of an action taken by EPA on July 6, 2018, entitled "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles."

C. Related Cases

These consolidated cases were not previously before this Court or any other court.

Respectfully submitted,

/s/ Daniel R. Dertke
DANIEL R. DERTKE, Attorney
Environmental Defense Section
U.S. Department of Justice

July 30, 2018

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/30/2018 7:28:31 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
Subject: FYI Gliders No Action Assurance Motion to Dismiss filed
Attachments: ENV_DEFENSE-#849281-v1-GLIDERS_MOTION_TO_DISMISS.pdf

Please see attached for our as-filed motion to dismiss in the gliders no action assurance litigation. Environmental Petitioners opposed and State Petitioners took no position but reserved the right to file an opposition.

Thanks,

Andrea Carrillo

Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND, et al.,	
Petitioners,	No. 18-1190, consolidated with No. 18-1192
v.	
ENVIRONMENTAL PROTECTION AGENCY,	
Respondent.	

RESPONDENTS' MOTION TO DISMISS AND
OPPOSITION TO PETITIONERS' MOTIONS FOR STAY
OR SUMMARY DISPOSITION

Respondents United States Environmental Protection Agency and Andrew K. Wheeler, Acting Administrator (collectively "EPA") move for dismissal of these consolidated petitions for review on grounds of mootness. Because EPA's Acting Administrator has withdrawn the challenged agency action and has stated that EPA will not repeat the action, this case is moot.

This filing also constitutes EPA's Opposition to Environmental Petitioners' Motion for Stay or Summary Disposition in No. 18-1190 (ECF No. 1740848), and to State Petitioners' Motion for Summary Vacatur or in the Alternative for Stay Pending Judicial Review in No. 18-1192 (ECF No. 1741540). Undersigned

counsel for EPA conferred with Petitioners; Environmental Petitioners oppose this relief, and State Petitioners take no position at this time and reserve their right to oppose this motion.

BACKGROUND

These cases are petitions for review of an EPA memorandum exercising enforcement discretion regarding small manufacturers of glider vehicles and their suppliers. Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles ("No Action Assurance"). *See* Appendix to Environmental Petitioners' emergency motion ("Env't Pet. App.") at A2. Glider vehicles are heavy-duty diesel trucks that combine a new truck body (a glider kit) with a previously-owned engine and transmission (and usually the rear axle). In 2016, EPA stated that new glider vehicles are "new motor vehicles" and glider engines are "new motor vehicle engines" under the Clean Air Act, and thus must meet the same emission standards applicable to any new vehicle for the year of manufacture, except where interim or other provisions applied. 81 Fed. Reg. 73,478, 73,945-46 (Oct. 25, 2016) (Env't Pet. App. at A408-A409); *see also* 40 C.F.R. §§ 1037.150(t), 1037.635.

Interim provisions allow manufacturers to produce some glider vehicles that do not meet the new engine emission standards. For 2017, any glider manufacturer

could produce up to its highest annual production for any year from 2010 to 2014, without meeting emissions standards for 2017 engines. Beginning in 2018, the interim provisions allow only qualifying small manufacturers to produce gliders with engines meeting pre-2010 emissions standards, and limited them to a cap of either 300 glider vehicles or their highest annual production for any year from 2010 to 2014, whichever is fewer.[1] 81 Fed. Reg. at 73,946/2-3 (Env't Pet. App. at A409); *see also* 40 C.F.R. §§ 1037.150(t)(3) (limit for 2017 only); 1037.150(t)(1)(ii) (limit beginning in 2018).

In November 2017, EPA proposed to reconsider the part of the 2016 rule that applies to gliders. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (Env't Pet. App. at A49). EPA's reconsideration notice primarily proposed a new interpretation of the Clean Air Act, under which glider vehicles and glider engines do not meet the statutory definitions of "new motor vehicles" and "new motor vehicle engines." This would repeal the provisions of the 2016 rule that require glider vehicles, engines, and kits to meet applicable standards for new motor vehicles and engines. 82 Fed. Reg. at 53,446-47 (Env't Pet. App. at A53-A54). EPA has not taken final action regarding that proposal.

[1] Beginning in 2021, gliders vehicles will be subject to additional standards. S*ee* 40 C.F.R. § 1037.150(t)(1).

On July 6, 2018, the Assistant Administrator of EPA's Office of Air and Radiation requested EPA's Office of Enforcement and Compliance Assurance to exercise enforcement discretion through a no action assurance with respect to small manufacturers and suppliers of glider vehicles and kits, to preserve the status quo for those companies as it was at the time of the November 2017 proposed rule until such time as the EPA was able to take final action on regulatory revisions. Env't Pet. App. at A5.

On the same date, the Assistant Administrator of EPA's Office of Enforcement and Compliance Assurance issued the No Action Assurance for small manufacturers of glider vehicles and their suppliers. Env't Pet. App. at A2. The No Action Assurance explained that EPA would exercise its enforcement discretion to provide relief to small manufacturers while EPA continued its reconsideration of the 2016 rule. EPA stated that it would take no action against small manufacturers that produced in either 2018 or 2019 no more than the number of glider vehicles those small manufacturers could have produced pursuant to section 1037.150(t)(3), the cap for 2017. EPA similarly stated it would take no action against suppliers of glider kits acting within the scope of the No Action Assurance. The No Action Assurance would remain in effect for one year, or until EPA completed its regulatory revision, whichever was earlier.

Environmental Petitioners wrote EPA on July 10, requesting administrative action to either immediately withdraw or administratively stay the No Action Assurance, Env't Pet. App. at A253, and on July 17 filed an emergency motion to stay or to summarily vacate the No Action Assurance. Several states wrote EPA on July 13, making the same requests, Env't Pet. App. at A259, and State Petitioners filed their emergency motion on July 19.[2]

On July 26, 2018, the Acting Administrator issued a memorandum withdrawing the No Action Assurance and responding to Petitioners' requests to withdraw or administratively stay the No Action Assurance. *See* "Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" ("Withdrawal Notice") (Attachment 1). At the same time, the Acting Administrator signed letters to each Petitioner stating that, after consideration of the requests and other information before him, he had decided to withdraw the No Action Assurance for the reasons detailed in that memorandum. Letters regarding Withdrawal and Administrative Stay Requests (Attachment 2). In the memorandum, EPA noted that long-standing EPA guidance limits the circumstances under which EPA will consider issuing no action assurances. Withdrawal Notice at 1. After further consideration, EPA "concluded that the

[2] On July 18, 2018, the Court issued an administrative stay of the No Action Assurance and set a briefing schedule.

application of current regulations to the glider industry do not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion." *Id.* EPA thus withdrew the No Action Assurance, and determined that:

> EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, [the Office of Air and Radiation] shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Id.

ARGUMENT

EPA'S WITHDRAWAL OF THE CHALLENGED MEMO HAS RENDERED THIS CASE MOOT AND IT SHOULD THEREFORE BE DISMISSED

Because the agency action that is the subject of the petitions for review has been withdrawn, there is no longer anything for the Court to review, and these cases are moot. As this Court has noted, "[t]he mootness doctrine, deriving from Article III, limits federal courts to deciding actual, ongoing controversies." *American Bar Ass'n v. FTC*, 636 F.3d 641, 645 (D.C. Cir. 2011), quoting *Clarke v. United States*, 915 F.2d 699, 700-01 (D.C. Cir. 1990) (en banc). Accordingly, if an event occurs during the pendency of a case that makes it impossible for the court to

grant any effectual relief, the case must be dismissed. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *Anderson v. Carter,* 802 F.3d 4, 10 (D.C. Cir. 2015), *cert. denied*, 137 S. Ct. 65 (2016); *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 575 (D.C. Cir. 1990).

Petitioners in this case seek to have the Court stay or vacate the No Action Assurance, but the Acting Administrator's withdrawal of the No Action Assurance has already done exactly that. EPA granted Petitioners' requests, and there is no additional remedy that the Court can grant. Thus, any decision by the Court would necessarily constitute an impermissible advisory opinion. *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (federal court has no power to issue advisory opinions); *see also, e.g.*, *El Paso Natural Gas Co. v. United States,* 750 F.3d 863, 883 (D.C. Cir. 2014) (noting that mootness doctrine is constitutional and that "[b]ecause the exercise of judicial power under Article III depends upon the existence of a case or controversy, a federal court may not render advisory opinions or decide questions that do not affect the rights of parties properly before it.").

Although the "voluntary cessation" of an allegedly illegal action does not automatically moot a case, this Court has recognized that the withdrawal of a challenged agency action does moot a challenge to that action if "there is no reasonable expectation that the violation will recur, and interim relief or

intervening events have completely eradicated the effects of the alleged violation." *Natural Resources Defense Council, Inc. v. United States Nuclear Regulatory Comm'n*, 680 F.2d 810, 814 n.8 (D.C. Cir. 1982) (no reasonable expectation that the agency will issue a similar rule without notice and comment). *See also Cierco v. Mnuchin*, 857 F.3d 407, 414-15 (D.C. Cir. 2017) (agency's withdrawal "completely vitiated" disputed notices). Here, as described in the Withdrawal Notice, EPA "will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers." EPA has thus explicitly committed that it will not repeat the same agency action that Petitioners challenge. The Acting Administrator also directed EPA to "continue to move as expeditiously as possible on a regulatory revision" regarding glider vehicles, which further demonstrates that EPA's intent is to address glider vehicles through notice and comment rulemaking, not through the exercise of the agency's enforcement discretion. The Withdrawal Notice not only "completely vitiate[s]" the No Action Assurance, it also demonstrates that Petitioners are not "likely to suffer the same injury in the future." *Cierco*, 857 F.3d at 415.[3]

---

[3] Nor is this case capable of repetition yet evading review. Even if the duration of the No Action Assurance were "too short to be fully litigated prior to [its] cessation or expiration," the "capable of repetition" exception to the mootness doctrine also

CONCLUSION

For all the foregoing reasons, the petitions for review should be dismissed, and Petitioners' motions should be denied as moot.

Dated: July 30, 2018

Respectfully submitted,

JEFFREY H. WOOD
Acting Assistant Attorney General

JONATHAN D. BRIGHTBILL
Deputy Assistant Attorney General

/s/ Daniel R. Dertke
DANIEL R. DERTKE, Sr. Attorney
U.S. Department of Justice
Environment & Natural Resources Div.
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044--7611
(202) 514-0994

OF COUNSEL:

ANDREA CARRILLO
Office of General Counsel, U.S. EPA
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

---

requires a "reasonable expectation that the same complaining party will be subject to the same action again," which is missing here. *Cierco*, 857 F.3d at 415.

CERTIFICATE OF SERVICE

I certify that on this 30th day of July, 2018, the foregoing RESPONDENTS' MOTION TO DISMISS AND OPPOSITION TO PETITIONERS' MOTION FOR STAY OR SUMMARY DISPOSITION was served electronically via the Court's CM/ECF system upon counsel of record.

/s/ Daniel R. Dertke
DANIEL R. DERTKE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Andrew R. Wheeler
Acting Administrator

TO: Susan Parker Bodine
Assistant Administrator, Office of Enforcement and Compliance Assurance

William L. Wehrum
Assistant Administrator, Office of Air and Radiation

After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018 (attached), and upon further consideration as explained below, I am today withdrawing this No Action Assurance.

On July 6, 2018, the Office of Air and Radiation requested that the Office of Enforcement and Compliance Assurance exercise enforcement discretion through a no action assurance with respect to: 1) those small manufacturers to which 40 C.F.R. § 1037.150(1) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and 2) those companies to which 40 C.F.R. § 1037.150(t)(l)(vii) applies that sell glider kits to such small manufacturers (Suppliers). OAR explained in this request that in November 2017 the EPA had proposed reconsideration of provisions applicable to glider vehicles in the 2016 HD Phase 2 Rule[1] and was working toward a final action, but needed additional time to evaluate matters before taking final action. In the interim, industry compliance with the glider requirements of the HD Phase 2 Rule was resulting in the loss of jobs and threatening the viability of Small Manufacturers. Thus, OAR requested a No Action Assurance to preserve the status quo for Small Manufacturers and Suppliers as it was at the time of the November 2017 proposed rule reconsidering the HD Phase 2 Rule until such time as the EPA was able to take final action on, among other possible regulatory revisions, a rule extending the applicable compliance date for glider vehicles.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule).

On July 6, 2018, OECA issued a No Action Assurance pursuant to this request, stating that the EPA intends to exercise its enforcement discretion through July 6, 2019, or the effective date of a final rule extending the compliance date applicable to Small Manufacturers, whichever is earlier, with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(1)(3), and that the EPA also will exercise its enforcement discretion during the same period with respect to Suppliers that sell glider kits to those Small Manufacturers to which the No Action Assurance applied. The No Action Assurance explained that this use of enforcement discretion was in the public interest to avoid profound disruptions to small businesses while the EPA completes its reconsideration of the HD Phase 2 Rule. The No Action Assurance also explained that EPA reserves its right to revoke or modify this no action assurance.

Three environmental groups[2] and a coalition of states[3] filed several separate administrative requests for the EPA to either immediately withdraw or administratively stay the No Action Assurance. On July 17, 2018, the environmental groups petitioned for review of the No Action Assurance in the D.C. Circuit and filed an emergency motion for stay or summary vacatur in the D.C. Circuit, and a request for an administrative stay during the court's consideration of the emergency motion. On July 18, the court issued an administrative stay of the No Action Assurance for the duration of time the court considers the emergency motion. On July 19, 2018, the same coalition of states filed a similar petition and emergency motion for summary vacatur, or, in the alternative, for stay pending judicial review, in the same court.

OECA has a general guidance limiting the circumstances under which the agency will consider issuing no action assurances.[4] The 1995 restatement of that policy states that the principles against the issuance of a no action assurance are at "their most compelling in the context of rulemakings." OECA guidance is clear that a no action assurance should be issued only in an "extremely unusual" case when the no action assurance is necessary to serve the public interest and only when no other mechanism can adequately address that interest. Thus, historically OECA has issued no action assurances to address situations where the balance of the public interest supported the EPA temporarily and narrowly exercising its enforcement discretion.

After consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion. I am therefore withdrawing the July 6, 2018, No Action Assurance.

---

[2] Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

[3] California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

[4] Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Policy Against "No Action" Assurance (Nov. 16, 1984); Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Processing Requests for Use of Enforcement Discretion (March 3, 1995).

Furthermore, the EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, OAR shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000169-00020

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000169-00024

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

RESPONDENTS' CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and *Amici*

All parties appearing in this Court are accurately identified in the Environmental Petitioners' Motion for Stay or Summary Disposition in No. 18-1190 (ECF No. 1740848), and in State Petitioners' Motion for Summary Vacatur or in the Alternative for Stay Pending Judicial Review in No. 18-1192 (ECF No. 1741540). The Chesapeake Bay Foundation, Inc., has moved to intervene but only if this case proceeds to the merits. *See* ECF No. 1742142.

B. Rulings Under Review

Petitioners seek review of an action taken by EPA on July 6, 2018, entitled "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles."

C. Related Cases

These consolidated cases were not previously before this Court or any other court.

Respectfully submitted,

/s/ Daniel R. Dertke
DANIEL R. DERTKE, Attorney
Environmental Defense Section
U.S. Department of Justice

July 30, 2018

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 1/16/2019 6:32:39 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
Subject: FW: QFRS Pruitt and Wheeler
Attachments: Responses_to_QFRs as of 12_20_18.pdf; 2019.1.2 -FINAL Wheeler QFRs 08.01.2018.pdf; CMS_Review_January_2017--Dec_2018 v2.pdf

Back to the top of your inbox, plus AAW's confirmation hearing QFRs.

I'm also attaching what OAP sent me on December 20, 2018, on congressional correspondence and responses as they relate to enforcement. I'm not sure it's a perfectly-complete set.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
202.809.8796 (m)
202.564.5238 (o)

From: Traylor, Patrick
Sent: Thursday, December 20, 2018 3:52 PM
To: 'Susan Bodine (bodine.susan@epa.gov)' <bodine.susan@epa.gov>
Subject: FW: QFRS Pruitt and Wheeler

Here is a compilation of QFR responses that I asked OAP to assemble for us.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
202.809.8796 (m)
202.564.5238 (o)

From: Emmerson, Caroline
Sent: Thursday, December 20, 2018 3:49 PM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Badalamente, Mark <Badalamente.Mark@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>; Drazan, Dan <Drazan.Dan@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>
Subject: QFRS Pruitt and Wheeler

Patrick,

In response to your request for OECA responses to Congressional Questions for the Record (QFRs) for hearings with Administrator Pruitt (post-confirmation) and Acting Administrator Wheeler (confirmation and post-confirmation) from January 2017 to the present, attached are the following responses that OECA provided in pdf portfolio format to the hearings listed below.

- December 7, 2017 House Energy and Commerce - Hearing on "The Mission of the U.S. Environmental Protection Agency."

- January 30, 2018 Senate Environment and Public Works - "Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt."
- January 30, 2018 Senate Environment and Public Works - "Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt" (supplemental questions)
- April 26, 2018 House Appropriations – "FY 2019 Budget Hearing" (OECA and OCFO co-authored responses).
- April 26, 2018 House Appropriations – "FY 2019 Budget Hearing" (OSWER and OECA co-authored responses).
- April 26, 2018 House Energy and Commerce – Hearing on "The Fiscal Year 2019 Environmental Protection Agency Budget."
- August 1, 2018 Senate Environment and Public Works - "Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow." (Note: We are aware that some of the answers are currently being updated and we will revise this file when we have the final responses.)

Please let us know if you have any questions or need additional information.

Thanks,

Caroline

Senate Committee on Environment and Public Works
Hearing entitled, *"Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow."*
August 1, 2018
Questions for the Record for Andrew Wheeler

Chairman Barrasso:

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: "In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol." 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

   On October 9, 2018, President Trump directed EPA to undertake a Clean Air Act rulemaking to modify our regulations to allow E15 to take advantage of the 1-pound per square inch (psi) Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months. We are currently working on the proposed rulemaking, which will provide stakeholders and the public with relevant legal and technical information. The rulemaking will be subject to a notice-and-comment process and will therefore present an opportunity for all stakeholders to review the proposal and provide input.

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

   EPA has begun work on a Clean Air Act rulemaking to modify our regulations to allow E15 to take advantage of the 1-pound per square inch (psi) Reid Vapor Pressure (RVP) waiver that currently applies to E10 during the summer months. We are currently developing the proposed rule, which will provide stakeholders and the public with relevant legal and technical information. The rulemaking will be subject to a notice-and-comment process and will therefore present an opportunity for all stakeholders to review the proposal and provide input.

ED_002444_00000171-00001

3. EPA is currently taking public comment on its proposed renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020. EPA issued this proposal three days before issuing its second triennial report to Congress on biofuels and the environment.

   a. How does EPA plan to incorporate the findings of its second triennial report into the final renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020?

      The 2018 *Biofuels and Environment* report fulfills our obligation under section 204 of the Energy Independence and Security Act of 2007. The final renewable fuel obligation (RVO) rule will fulfill our obligations under section 211(o) of the Clean Air Act in keeping with the requirements and authorities provided by Congress in 211(o) for doing so.

      The final RVO rule will take into consideration the 2018 *Biofuels and Environment* report. For additional context see answer included in Part B below.

   b. Will EPA seek to mitigate the impacts to the environment, as documented in the second triennial report, in its final volume obligations for 2019 and 2020, respectively?

      The final renewable fuel obligation (RVO) rule will fulfill our obligations under section 211(o) of the Clean Air Act in keeping with the requirements and authorities provided by Congress in section 211(o) for doing so. Section 211(o) provides EPA the authority to "waive the requirements of paragraph (2) in whole or in part…based on a determination by the Administrator, after public notice and opportunity for public comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States." In our proposal for the 2019 RVO rule, we did not propose to exercise this waiver authority.

      The 2018 Biofuel and Environment report was based on a review of the literature related to biofuels up until April 2017. As the report noted, attributing environmental impacts to biofuels is complicated and uncertain. For example, crops such as corn and soy are produced for many other purposes besides biofuels and it remains unclear what portion and severity of the impacts can be attributed to biofuel production. In addition, the report did not include a comparative assessment of the impact of biofuels on the environment relative to the impacts of other transportation fuels or energy sources, including fossil fuels, for every environmental endpoint. Furthermore, the *Biofuels and Environment* report also notes that environmental impacts associated with large scale agriculture can be reduced if efficient technologies, best management practices, and conservation techniques are widely implemented. In this regard, EPA continues to work

closely with USDA and supports the efforts by USDA to promote and advance sustainable agricultural practices.

4. Historically, EPA and DOE have protected the confidential business information, including the identities, of small refineries, which petition for hardship relief under the Renewable Fuel Standard (RFS). Failure to protect this information would: (1) give entities that sell refined products in the same market as a small refinery a competitive advantage over that refinery; (2) give entities that sell renewable identification numbers (RINS) to a small refinery the opportunity to extract a higher price from that refinery; (3) move the secondary RINs market, which is measured in billions of dollars; and (4) increase the risk of insider trading and securities fraud with respect to publicly-traded companies that own small refineries. Will EPA continue to protect the confidential business information, including the identities, of small refineries petitioning for hardship relief?

   EPA is committed to protecting confidential business information (CBI). Both EPA and DOE staff understand the sensitivity of CBI and take very seriously the need to maintain confidentiality of such information, consistent with our regulations at 40 CFR part 2, subpart B, Confidentiality of Business Information (specifying the requirements for protecting information for which a claim of business confidentiality has been made and the procedures for resolving a claim and protecting or disclosing information).

5. The public, state governments, members of Congress, and others have shown a growing interest in and concern about per- and polyfluoroalkyl substances (PFAS). Among the issues that you are addressing as Acting Administrator, where do PFAS issues rank?

   Addressing per- and polyflouroalkyl substances (PFAS) remains among EPA's priorities.

6. Who within EPA has responsibility for managing EPA's efforts with respect to PFAS?

   a. Has EPA formed an intra-agency group to coordinate the agency's PFAS activities? If EPA has created such a group, which EPA offices are represented in that group?

      Yes. The EPA's Office of Water is leading a cross agency workgroup addressing per- and polyflouroalkyl substances (PFAS). The workgroup brings together expertise from across the EPA, including top scientists and senior officials from the Agency's air, chemicals, land, research, enforcement and water offices. In addition to a cross-program effort, the EPA is also working closely with the Agency's regional offices to enhance cooperation

with partners at the state and local levels, to provide on-the-ground knowledge about specific issues to address PFAS nationwide.

7. I understand that an inter-agency group exists to coordinate PFAS activities among federal agencies.

    a. Which agencies are represented in that group?
    b. How often does this group meet?
    c. Are there opportunities for public engagement with the group?

The EPA is coordinating each of the Agency's actions on per- and polyflouroalkyl substances (PFAS) with other federal agencies to ensure the Agency has input from experts with relevant expertise from across the federal government. For example, the EPA developed draft toxicity values for GenX chemicals and perfluorobutane sulfonate (PFBS) in cooperation with our federal partners, including agencies within the Department of Health and Human Services (such as Centers for Disease Control and Prevention, Agency for Toxic Substances and Disease Registry (ATSDR), and the National Institutes of Health), the Department of Defense (DoD), the National Aeronautics and Space Administration, the U.S. Geological Survey and the Office of Management and Budget.

In 2018, the EPA visited communities impacted by PFAS to hear directly from the public on how to best help states and communities facing this issue. To plan these events, the EPA coordinated closely with the states and local communities as well as with DoD and ATSDR. Each engagement included panelists and/or presentations from local governments, states, and federal partners. The EPA remains committed to continued collaboration with our federal partners and public engagement as the Agency works to protect public health.

8. In proposing actions to address ongoing PFAS concerns, will EPA seek public comment on its proposed actions?

The EPA is currently seeking public input on draft toxicity values for GenX chemicals and perfluorobutane sulfonate (PFBS) in cooperation with our federal partners. This action marks the first of the four actions the EPA announced at the May 2018 PFAS National Leadership Summit.

In 2018, the EPA visited communities impacted by PFAS to hear directly from the public on how to best help states and communities facing this issue. The EPA also collected public input through a docket which can be accessed at htts://www.regulations.gov (Docket No. OW-2018-0270). Information from the National Leadership Summit, community engagements, and public input provided in the docket will all help the EPA as the Agency considers potential actions to assist states, tribes, and local communities address PFAS contamination. Depending on

the nature of the action the EPA decides to undertake, the Agency will seek further public review and comment on the specific actions as appropriate. For example, the EPA will seek further public comment on any proposed regulatory actions the Agency determines are needed.

a. Will EPA seek peer review of those proposed actions through, for example, EPA's Science Advisory Board?

The EPA is committed to using robust scientific analysis to inform decisions by the Agency regarding PFAS. The Science Advisory Board (SAB) provides valuable independent expertise that informs and improves the EPA's actions. On June 1, 2018, the EPA briefed the SAB on the Agency's efforts to help states and communities address PFAS contamination. Depending upon the additional actions the Agency decides to undertake, the EPA may seek further input from the SAB.

9. Does EPA have any plans to seek technical or scientific input on any PFAS issue from the National Academies of Sciences, Engineering, and Medicine?

The EPA is committed to using robust scientific analysis to inform decisions by the Agency regarding PFAS. The National Academies of Sciences, Engineering, and Medicine (NAS) provides expert advice on some of the most pressing challenges facing the nation. Depending upon the additional actions the Agency decides to undertake, the EPA may seek input from the NAS.

<u>Ranking Member Carper:</u>

10. EPA's Science Advisory Board provides independent scientific and technical review, advice and recommendations to the Administrator on the science forming the basis for EPA's actions. In June, the Board wrote to former-Administrator Pruitt announcing that it would like to review the science forming the basis for six controversial rules before they are finalized. The request included the basis for the rule regulating greenhouse gas emissions from cars and SUVs, the rule exempting polluting glider trucks from emissions standards, the rule designed to curb greenhouse gas emissions from the oil and gas industry, the Clean Power Plan, the rule setting greenhouse gas emission standards for power plants, and EPA's proposed "secret science" rule to ignore some of the world's best scientific studies when writing regulations.

    a. Will you commit to making sure that the EPA Science Advisory Board gets access to any materials it needs to complete its reviews? If not, why not?
    b. Will you commit to wait to receive and review the advice the Board gives you ***before*** EPA finalizes any of these rules? If not, why not?

We are in the process of responding to 3 letters from the SAB (two dated June 21, 2018 and one dated June 28, 2018) and expect to send responses in the near future.

In our July 17, 2018 private meeting, I expressed my concerns about the manner in which EPA is implementing the Toxic Substances Control Act (TSCA). It is my belief that if EPA does not immediately reverse course, it risks having the majority of its TSCA implementation efforts overturned in litigation. I have several questions regarding some of my concerns. The attachments referenced in these questions consist of EPA technical assistance provided to Congress while the law was being negotiated, and are available at https://www.epw.senate.gov/public/_cache/files/f/0/f0729f1a-4385-453f-b7f8-442825a0721c/A681AA266D5CC024C98FCC85A944EB5E.senator-carper-questions-for-the-record-to-epa-nominees.pdf.

11. Section 26 of TSCA states that:

> "(4) CHEMICAL SUBSTANCES WITH COMPLETED RISK ASSESSMENTS.—With respect to a chemical substance listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which the Administrator has published a completed risk assessment prior to the date of enactment of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the Administrator may publish proposed and final rules under section 6(a) that are consistent with the scope of the completed risk assessment for the chemical substance and consistent with other applicable requirements of section 6."

Page 1 of Attachment 1 is an email sent by EPA on March 17, 2016, the substance of which was shared with the bipartisan and bicameral negotiators of the Toxic Substances Control Act. It states that EPA "just discovered a technical issue that will have significant policy implications for EPA's ongoing work under Section 6. As currently drafted, both Senate and House bills could frustrate EPA's ability to timely manage risks that have been (or may be) identified in our current Work Plan risk assessments." The email goes on to describe several risk assessments on chemical substances (TCE, NMP, MC and 1-BP) that had been completed or were near completion by EPA, and stated that "EPA is *not* looking at all the conditions of use for these chemicals. This approach, which might be characterized as a *partial* risk evaluation or *partial* safety determination, we see as simply not contemplated under the Senate and House bills. The section 6 structure in both bills would require EPA to assess a chemical in its entirety, based on <u>all</u> conditions of use – not just a subset of those uses." EPA then went on to state that if it were to move forward with rulemakings to restrict or ban some or all of these substances (which it has subsequently proposed to do), there would be some risk that the rules would be found to be inconsistent with the new statutory requirement to assess all conditions of use. EPA said that it would "welcome an opportunity to work with you on a drafting solution to this issue."

a. Do you agree with EPA's March 17, 2016 view that if it had moved forward with these partial risk evaluations and rulemakings absent explicit statutory authority to do so even though the risk evaluations had not considered all conditions of use, that EPA could have been sued for not complying with the law's requirements? If not, please provide specific reasons why not.

EPA agrees that proper implementation of the statutory requirements for evaluating existing chemicals is key to ensuring the safety of chemicals in the marketplace under amended TSCA. EPA is committed to implementing the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law.

b. Pages 2 and 3 of Attachment 1 consist of April 2, 2016 Technical Assistance from EPA that was provided to the Senate on a drafting solution to address the problem identified by EPA on March 17, 2016. Do you agree that this language, which is also drafted as an amendment to Section 26, bears a close resemblance to the language that was enacted into law, and, like the enacted text, provides EPA with statutory authority to complete rulemakings on the chemical substances on which it completed risk assessments prior to the enactment of the new law even though the risk assessments were not undertaken for all conditions of use? If not, please provide specific reasons why not.

EPA is not precluded from finalizing proposed regulations based on risk evaluations conducted prior to the enactment of amendments to TSCA. For TCE and NMP, EPA has concluded that the Agency's previous assessments of the potential risks will be more robust if the potential risks from these conditions of use are evaluated by applying standards and guidance that EPA has developed under amended TSCA. EPA is committed to using the best available science and information to implement the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law. For MC, the agency is currently considering information received during the public comment period for the proposed rules.

12. The newly enacted TSCA, for new chemicals, states that:

"(e) REGULATION PENDING DEVELOPMENT OF INFORMATION.—(1)(A) If the Administrator determines that—

(i) the information available to the Administrator is insufficient to permit a reasoned evaluation of the health and environmental effects of a chemical substance with respect to which notice is required by subsection (a); or

(ii)(I) in the absence of sufficient information to permit the Administrator to make such an evaluation, the manufacture, processing, distribution in commerce, use, or disposal of such substance, or any combination of such activities,

may present an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use; or (II) such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance, the Administrator shall issue an order, to take effect on the expiration of the applicable review period, to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, and the submitter of the notice may commence manufacture of the chemical substance, or manufacture or processing of the chemical substance for a significant new use, including while any required information is being developed, only in compliance with the order."

Attachment 2 consists of a portion of EPA's Technical Assistance on an April 7, 2016 draft of Section 5 of TSCA that EPA provided to the Senate. Comment A7 provides EPA's views on section 5(e). This comment noted a change from previous drafts, observing that the draft allowed manufacture of a new chemical to proceed even if EPA did not have enough information to determine whether it posed an unreasonable risk. This is because the draft as written allowed for manufacture to proceed if EPA *either* took steps to obtain sufficient information about the chemical substance (but before it received and evaluated that information) OR if it imposed a risk management order. EPA also suggested some edits to this draft to restore the "functionality of the prior draft," which ensured that manufacture could not proceed unless/until the information about the chemical substance was sufficient and EPA made the necessary risk determination, or in compliance with an EPA-issued order to protect against unreasonable risk under the conditions of use while the information was being developed.

a. Do you agree that the statute requires EPA to issue an order to protect against an unreasonable risk a new chemical substance may pose under the conditions of use, either while information EPA needs to assess the chemical substance is developed, or if EPA determines that the substance may present an unreasonable risk under the conditions of use, or if such substance is or will be produced in substantial quantities, and such substance either enters or may reasonably be anticipated to enter the environment in substantial quantities or there is or may be significant or substantial human exposure to the substance? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA appreciates the significant responsibility conferred under Section 5 of amended TSCA and is dedicated to fully utilizing all authorities under

section 5, including the use of consent orders, as applicable, to protect the public against any unreasonable risk a new chemical substance presents or may present. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress.

13. Section 5(f)(4) of TSCA states that:

"(4) TREATMENT OF NONCONFORMING USES.—Not later than 90 days after taking an action under paragraph (2) or (3) or issuing an order under subsection (e) relating to a chemical substance with respect to which the Administrator has made a determination under subsection (a)(3)(A) or (B), the Administrator shall consider whether to promulgate a rule pursuant to subsection (a)(2) that identifies as a significant new use any manufacturing, processing, use, distribution in commerce, or disposal of the chemical substance that does not conform to the restrictions imposed by the action or order, and, as applicable, initiate such a rulemaking or publish a statement describing the reasons of the Administrator for not initiating such a rulemaking."

Attachment 3 is an April 9, 2016 email from EPA providing responses to questions on the April 7 draft included in Attachment 2. The email asks whether the removal of provisions 5(e)(4) and 5(f)(1)(C) in that draft would also remove EPA's requirement to consider whether to issue a Significant New Use Rule (SNUR) when it issued orders to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chose not to do so). EPA responded in the affirmative.

a. Do you agree that the enacted law retained the April 7 draft's requirement to consider whether to issue a Significant New Use Rule (SNUR) when EPA has issued an order to a submitter of a pre-manufacturing notice (PMN) (and explain its decision if it chooses not to do so)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA appreciates the significant responsibility conferred under Section 5 of amended TSCA and is dedicated to fully utilizing all authorities under section 5, to protect the public against any unreasonable risk a new chemical substance presents or may present. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(4) of the statute does allow EPA to consider whether to issue a Significant New Use Rule when EPA has made a determination under subsection (a)(3)(A) or (B).

14. The newly enacted TSCA requires EPA, for existing chemicals that are designated a high-priority chemical substance or otherwise designated for a risk evaluation, to:

> "conduct risk evaluations pursuant to this paragraph to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use."

In the statute, 'conditions of use' is defined as:

"the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of.''

Attachment 4 is a December 12, 2016 (post-enactment) email conveying Technical Assistance from EPA that responded to several questions posed about how EPA was required to do risk evaluations for a chemical substance under the conditions of use.

a. Do you agree with EPA's responses to these questions as well as the narrative that precedes the specific responses to questions? If not, please provide specific reasons why not, indicating in your response how your views are consistent with the statutory text excerpted above (or, as applicable, how EPA's responses are inconsistent with the statutory text excepted above).

   EPA is committed to implementing the amended TSCA law as written by Congress, and taking actions consistent with the rules EPA has promulgated, via notice and comment rulemaking as required by TSCA, to implement the law. As EPA stated in the Risk Evaluation Process final rule (40 CFR 702) promulgated in 2017, regarding the conditions of use, as EPA interprets the statute, the Agency is to exercise that discretion consistent with the objective of conducting a technically sound, manageable evaluation to determine whether a chemical substance—not just individual uses or activities—presents an unreasonable risk. In that regard, EPA will be guided by its best understanding, informed by legislative text and history, of the circumstances of manufacture, processing, distribution in commerce, use and disposal Congress intended EPA to consider in risk evaluations.

15. Attachment 5 is a document that includes EPA's technical assistance and observations that compared an April 12 2016 Senate draft of section 5 to an April 18, 2016 House draft.

    a. On pages 2 and 15, EPA provides comments related to the 90-day period for review of a PMN. Do you agree that the enacted law includes text that reflects EPA's input in these comments? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
    b. On Page 14, EPA notes the deletion of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests. Do you agree that the enacted law retained this deletion in this subsection, but included the requirement in sections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

    EPA is committed to following all section 5 statutory requirements for the conduct and timing of PMN reviews. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(h) does not prohibit EPA from considering costs or other non-risk factors when considering exemption requests.

16. Attachment 6 consists of EPA's comments to a draft of Senate section 5 dated around April 12, 2016.

    a. EPA's comment A22 notes the absence of the requirement not to consider costs or other non-risk factors when considering section 5(h) exemption requests. Do you agree that the enacted law does not include the requirement in this subsection, but does include the requirement in subsections 5(a), 5(e) and 5(f)? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
    b. Do you agree that while this same EPA comment identifies one inconsistency between the above-described text that is absent from subsection 5(h) but appears throughout the rest of section 5, it does not identify another difference, namely the presence of the term "specific uses identified in the application" in subsection 5(h) versus the term "conditions of use" that appears throughout the rest of section 5? If not, why not?

    EPA is committed to following all section 5 statutory requirements, including those in section 5(h), for the conduct and timing of PMN reviews. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(h) does not prohibit EPA from considering costs or other non-risk factors when considering exemption requests.

17. Attachment 7 consists of EPA's comments to an April 3, 2016 Senate draft of section 5.

a. On page 1, EPA observes that "5(e) requires no action on the part of the Administrator whatsoever: it is wholly discretionary authority to impose requirements on the manufacture pending development of information." Do you agree that the enacted law requires EPA to either prohibit manufacture or issue an order to mitigate against potential risk while information is being developed by a manufacturer? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
b. On page 2, EPA responds to a question posed by Senate staff, stating "We think it is important not to limit review to the uses identified in the notice. If the identified uses seem fine, and EPA therefore does nothing, the submitter is free to submit an NOC and then manufacture in any way he or she wants. EPA often uses 5(e) orders to address uses beyond those specified in notices." Do you agree that the enacted statute requires EPA to review the conditions of use (as that term is defined in the statute) of a chemical substance when it reviews a PMN as EPA advised the Senate in this comment? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
c. On page 9, EPA says that "It seems like the best solution, per above comment, may be to drop the limitation above that the order pertain only to the conditions of use specified in the notice." Do you agree that the enacted statute incorporated EPA's proposed 'best solution' and did not limit orders only to the conditions of use specified in the notice? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
d. A second EPA comment on page 9 states that "A possible solution would be, in line with the Senate bill and offer, to drop (e) and require EPA to issue an order under what is now (f) any time EPA either makes a may present finding or lacks sufficient info, as necessary to make the unlikely to present finding." Do you agree that the enacted text retains section 5(e) and also requires EPA to issue an order any time EPA either makes a may present finding or lacks sufficient information before manufacturing can commence? If not, please provide specific reasons why not, using statutory text to explain your reasoning.
e. On page 16, EPA responds to a question from Senate staff about whether, in the 5(h) exemptions section, it makes sense to deviate from the rest of the section's references to 'conditions of use' and instead limit EPA's exemption determination to the uses of the chemical substance identified in the exemption request. EPA responds by stating "We agree that the reference to specific uses makes sense, but not because of anything having to do with a SNUR. It seems to us that, if a party is seeking a partial section 5 exemptions, we would consider only the uses for which they are seeking the exemption, since the exemption would limit them to those." Do you agree that the enacted statute follows EPA's advice to retain the authority for EPA to consider just the uses of a chemical substance included in an exemption request, but does not make the same limiting change anywhere else so as not to so limit its review of all conditions of use of a chemical substance subject to a PMN? If not, please provide specific reasons why not, using statutory text to explain your reasoning.

EPA is committed to following all section 5 statutory requirements for the conduct and timing of PMN reviews, including those related to the conditions of use. EPA is committed to implementing its new chemicals responsibilities consistent with TSCA section 5 as amended by Congress. Section 5(e) states that "the Administrator shall issue an order . . . to prohibit or limit the manufacture, processing, distribution in commerce, use, or disposal of such substance or to prohibit or limit any combination of such activities to the extent necessary to protect against an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use." EPA acknowledges that only Section 5(h)(1)(A) contains the phrase "including an unreasonable risk to a potentially exposed or susceptible subpopulation identified by the Administrator for the specific conditions of use identified in the application" in Section 5. For Section 5(a)(3) reviews, EPA reviews the conditions of use and does not limit its review to the intended uses identified in a PMN.

18. What actions is EPA currently taking and planning to take to enforce emissions requirements for glider trucks?

    a. Is EPA requiring Fitzgerald and other glider truck manufacturers to demonstrate compliance with these rules, for example, by regularly reporting to EPA on its sales of glider trucks? If not, why not, and how does EPA plan to ensure that the rules are being complied with?

    Manufacturers of glider vehicles are required by regulation (40 CFR 1037.250 and 1037.635) to annually report to EPA specific information on their manufacturing operations, including total U.S.-directed production volume in the prior year, and whether the vehicles complied with the standards or were exempt.

19. EPA's proposed revision to its Phase 2 Medium- and Heavy-Duty greenhouse gas rules proposes to repeal the emission standards and other requirements for glider vehicles, glider engines, and glider kits. This proposal, if finalized, would conclude that that glider vehicles are not "new motor vehicles" within the meaning of CAA section 216(3), glider engines are not "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits are not "incomplete" new motor vehicles. The result of these re-interpretations would be that EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). Many Clean Air Act experts do not agree with EPA's proposed re-interpretations, and have announced plans to litigate if the proposal is finalized.

a. If courts agree with these prospective petitioners and reject EPA's proposed re-interpretations, do you agree that glider vehicles, glider engines, and glider kits would remain subject to EPA's Phase 2 greenhouse gas rules in the way contemplated by that rule? If not, why not?

We continue to consider each of these factors as we revisit whether or not the Phase 2 requirements for glider vehicles are consistent with the Clean Air Act.

20. Section 209 of the Clean Air Act prohibits States or any subdivision thereof from adopting or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines (unless the State to adopt or enforce such a standard is California, it is granted a waiver by EPA to do so, and states that are subject to section 177 of the Clean Air Act subsequently adopt California's standard).

    a. In the event that EPA finalizes its proposed revision to its Phase 2 Medium- and Heavy-Duty greenhouse gas rules, and those reinterpretations are upheld in court, do you agree that section 209's preemption provision would no longer apply to any state requirements relating to control of emissions from glider vehicles or glider engines? If not, why not?
    b. Do you also agree that in this event, there could be 50 different state standards for gliders (in addition to the standards California has already set)? If not, why not?

We continue to evaluate EPA's authority to regulate glider vehicles under the Clean Air Act. The evaluation of EPA's authority under the Clean Air Act may or may not have an impact on preemption applicable to California and other states under sections 209 and 177 of the Clean Air Act.

21. During the development of the "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-26 Passenger Cars and Light Trucks", EPA officials met with OMB and NHTSA officials to convey their concerns about the proposal several times. They left numerous documents with OMB officials that are now part of the rulemaking docket[1].These documents indicate that there are significant problems with the model that was used by NHTSA to develop the proposal to freeze fuel economy and greenhouse gas tailpipe standards from 2020-26. One such example is a document titled "Email_5_-_Email_from_William_Charmley_to_Chandana_Achanta_-_June_18,_2018%20(1).pdf". This 122 page long document includes a number of PowerPoint presentations EPA made to OMB and NHTSA staff along with additional documentation and analysis.

[1] https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

a. The document notes that "EPA analysis to date shows significant and fundamental flaws in CAFE model (both the CAFE version and the "GHG version")…. These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards." Do you believe that each of these flaws were fully remedied before the rules were proposed? If so, please list the specific remedies that addressed each of EPA's concerns. If not, will you ensure that all necessary technical input from EPA's Office of Transportation and Air Quality is incorporated into the final rule in order to ensure that the rule cannot be successfully over-turned in court on grounds that the model on which it is based is significantly or fundamentally flawed?
b. One of the main contributors to the NHTSA conclusions that the augural standards would cause thousands of additional deaths is NHTSA's "consumer choice" module, which asserts that making the fleet more fuel efficient will cause people to keep their less safe, older vehicles for longer, and that this will mean there are more unsafe vehicles on the road (because newer vehicles have more safety technologies). The document states that EPA believed this NHTSA model was flawed, because it predicts an additional 26 million non-existent vehicles would be in the 2016 fleet and 46 million additional non-existent vehicles in the 2030 fleet. For context, this would represent a 15-20% increase in registered vehicles. The document also notes that this problem appeared to be un-remedied several months after EPA first raised it. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
c. The document also found that NHTSA's consumer choice model predicts an unexplained, and apparently fictitious 10-15% increase in vehicle miles traveled (VMT). Specifically, the model somehow predicts people will drive an extra 239 billion miles in 2016 and 302 billion more miles in 2030. The increased deaths associated with higher efficiency standards in the NHTSA model are highly correlated to VMT (more driving equals more accidents equals more deaths). It would thus seem that EPA believes that the NHTSA safety numbers are predicated on an entirely fictitious driving scenario. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?
d. The document also notes that NHTSA does not accurately model the manner in which automobile manufacturers trade credits as part of their compliance strategies, observing that NHTSA does not assume that compliance credits are traded between manufacturers' car and truck fleets (which is what manufacturers currently do), and that this has the effect of over-estimating compliance costs. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on

which it is based is significantly or fundamentally flawed?

e. The document observes that NHTSA's model overestimates the costs of particular technologies compared to their actual costs and use in the real world. The model also reportedly selects the most expensive technology packages to meet the standards, which overestimates the most cost-effective ways to do so by $1-2,000 per vehicle. Do you agree that manufacturers would be more likely to select the most cost-effective set of technologies with which to meet standards, rather than the least cost-effective set of technologies? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

f. The document stated that the NHTSA model omitted the benefits of some fuel-efficient technologies entirely, while others were erroneously inputted into the model. For example, 'start/stop' technology, a technology that causes engines to automatically shut off while vehicles are stopped in traffic (and thus use no fuel), is estimated to have a negative effect on fuel-efficiency, which is simply not plausible. Were these problems remedied in the proposed rule? If so, how? If not, will you ensure that they are remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

g. The document observed that NHTSA's model appears to add vehicle miles travelled in unexplained ways. For example, it observed that as many as 25 billion more miles of driving were predicted in a given year, even when the rebound effect (a measure of how much extra driving consumers are expected to do as a result of having more fuel-efficient vehicles) was set to 0 percent. The document observes that NHTSA's model actually predicts *less* driving when the rebound effect was set to 20 percent (meaning 20% more driving by consumers in more fuel-efficient vehicles would have been included in the model) than when it was kept to 0 percent. This suggests that NHTSA's model is incapable of predicting anything accurately, separate and apart from whether one agrees with its policy premise. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

h. The document states that NHTSA's "Proposed standards are detrimental to safety, rather than beneficial" once NHTSA's modeling errors were corrected. In fact, EPA found that the proposed standards result in "an average increase of 17 fatalities per year in VYs 2036-2045" relative to the current standards. Do you agree with this conclusion? If not, why not?

i. The document states that the NHTSA model projects that the current standards result in 8,000 fewer new automobiles sold annually in CYs 2021-2032, but that the used vehicle fleet would grow by 512,000 vehicles per year. That means that for every new fuel-efficient vehicle that consumers do not purchase (because NHTSA predicts their costs will be too high), somehow an additional 60 used vehicles will remain in the fleet. Do you agree that this scenario is simply

implausible in the real world, as the EPA document points out? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

j. In draft comments submitted to OMB on June 29, EPA commented that more than 90% of the net benefits for which the proposed rule to freeze fuel economy and greenhouse gas tailpipe standards takes credit are in fact benefits associated with vehicles manufactured prior to 2021. EPA attributed this to NHTSA's flawed consumer choice model, and questioned whether these could technically be attributable to the actual post-2021 rule. What would the net benefits of the preferred alternative— and for each of the other seven alternatives included in the NPRM — be if the agencies were to compare the costs to the benefits of cars manufactured within the MY 2021-29 cohort timeframe?

The documents you reference were made available by EPA in the rulemaking docket, because they are part of the documentation of interagency review of the draft proposed rule. Working through modeling methods and technical inputs and assumptions is a necessary and critical aspect of the agencies' joint rulemaking development efforts. EPA looks forward to reviewing the public comments on this proposal.

22. On March 14, 2018, I wrote with several of my colleagues to former EPA Administrator Scott Pruitt about our deep concern over the reversal of the EPA's longstanding policy under Section 112 of the Clean Air Act to continuously regulate hazardous air pollution from major industrial sources. We believe revoking the "once in, always in" policy will lead to greater levels of arsenic, lead, mercury, and almost two hundred other air toxic pollutants in communities around the United States. In the letter, we asked that the "once in, always in" policy be reinstated at least until EPA has performed, and received public comment on, a thorough analysis of the expected increases in air toxic pollution and its corresponding impacts on human health.

    a. When former EPA Administrator Scott Pruitt was before the EPW Committee on January 30, 2018, he acknowledged the agency failed to do any analysis before making its ill-advised decision. Please provide all EPA analysis and modeling of the impacts of this policy change, including cancer and other human health effects, environmental effects, effects on state air pollution emissions, cost-benefit analysis, and effects on interstate emissions. If none still exists today, I request that EPA complete such analysis and provide a timeline for completion.
    b. How many individual facilities in the country were considered a "major source" under Section 112 on January 24, 2018?
    c. Please identify, as of January 24, 2018, how many of the "major source" facilities identified in question 1(b) had complied with one or more MACT standards with the result being the source no longer emits more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of any combination of

hazardous air pollutants? Please group these facilities by source categories (for example, there were X number of chemical plants meeting a MACT standard that resulted in lower emissions than the major source threshold).

d. Please provide state-by-state data and a national total for facilities identified in 1(c)
e. Please provide the potential maximum amount of pollution increases for all 187 hazardous air pollutants as a result of EPA's decision to revoke the "once in, always in" policy.
f. How much additional particulate matter, ozone, lead and other criteria pollution will be added to the atmosphere as a result of revoking the "once in, always in" policy?
g. Under the new memorandum, have any major source facilities in the power plant source category requested to be re-designated as an area source? If so, please provide a list of all such facilities, also indicating whether EPA has approved the re-designation.
h. Under the new memorandum how many major sources facilities, other than facilities in the power plant source category, have asked to be re-designated as an area source? Please provide a list of all facilities, also indicating whether EPA has approved the re-designation.

The January 25, 2018 Wehrum guidance memo builds upon a 2007 proposed rule that addressed the same issue. In that proposal, EPA asserted that, "The environmental, economic, and energy impacts of the proposed amendments cannot be quantified without knowing which sources will avail themselves of the regulatory provisions proposed in this rule, and what methods of HAP emission reductions will be used. It is unknown how many sources would choose to take permit conditions that would limit their potential to emit (PTE) to below major source levels. Within this group, it is also not known how many sources may increase their emissions from the major source MACT level (assuming the level is below the major source thresholds). Similarly, we cannot identify or quantify the universe of sources that would decrease their HAP emissions to below the level required by the NESHAP to achieve area source status." (72 FR 77, January 3, 2007). In the 2007 proposed rule, EPA concluded that, "we believe it is unlikely that a source that currently emits at a level below the major source thresholds as the result of compliance with a MACT standard would increase its emissions in response to this rule. However, even if such increases occur, the increases will likely be offset by emission reductions at other sources that should occur as the result of this proposal. Specifically, this proposal provides an incentive for those sources that are currently emitting above major source thresholds and complying with MACT, to reduce their HAP emissions to below the major source thresholds." (72 FR 73-74, January 3, 2007).

As we noted in the 2018 Wehrum Memorandum, EPA anticipates that it will be publishing a Federal Register notice to take comment on adding regulatory text that will reflect EPA's plain language reading of the statute in early 2019. Further, as we proceed through the rulemaking process, we will prepare appropriate economic and other analyses with respect to the action and provide details about the length of the comment period and location of any public hearing.

23. On July 10, 2018, every major electrical utility trade organization representing coal-fired and other utilities joined with labor organizations on a letter to EPA confirming power plants have "reduced mercury emissions by nearly 90 percent over the past decade" and that "all covered plants have implemented the regulation [Mercury and Air Toxics Standards Rule, MATS] and that pollution controls—where needed—are installed and operating."[2] The letter goes on to say, "leave the underlying MATS rule in place and effective."[3] States, environmental and health groups have echoed industry's message – leave MATS alone. Is the EPA considering a rule making that will change the current status of MATS? If so, please provide why and detailed information on what the EPA is considering.

In an April 2017 court filing, the EPA requested that oral argument for MATS litigation be stayed to allow the current Administration adequate time to review the Supplemental Cost Finding, which was the Agency's response to the U.S. Supreme Court decision in Michigan v. EPA which held that the EPA erred by not considering cost in its determination that regulation of hazardous air pollutant (HAP) emissions from coal- and oil-fired electric utility steam generating units (EGUs) is appropriate and necessary under section 112 of the Clean Air Act (CAA). After reviewing the cost finding, the EPA plans to propose and solicit comment on the results of the review and any changes that result from that review.

24. I'm proud to have had the opportunity to work with your former bosses – Senators Voinovich and Inhofe – on establishing the Diesel Emissions Reduction Act, known as DERA. Cleaning up dirty diesel engines through DERA is a win-win for economic and health benefits. I'm concerned that all the gains we've made in the past decade through DERA will be negated if EPA moves forward with the glider kit proposal. The DERA Coalition, a broad coalition of environmental, science-based, public health, commercial and industry groups, shares my concerns. The DERA Coalition wrote to the agency on January 5, 2018, opposing EPA's glider kit proposal, stating, "EPA's decision to encourage the continued proliferation of older engines through the glider industry would increase emissions from medium and heavy-duty vehicles and undermines the work of the Coalition and cooperative federalism with the EPA and states."[4] It is clear that allowing some of the dirtiest heavy-duty diesel trucks, called glider trucks, to circumvent clean air cleanups is bad for the environment, bad for health and bad for the economy.

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[2] https://www.eenews.net/assets/2018/07/11/document_gw_04.pdf
[3] https://www.eenews.net/assets/2018/07/11/document_gw_04.pdf
[4] http://www.lung.org/assets/documents/advocacy-archive/dera-coalition-comments-re.pdf

Should the federal government continue to focus on replacing and retrofitting dirty diesel engines, rather than putting dirty diesel engines back on the road?

Thank you for your support for the DERA program. It aims to help address the pollution coming from older diesel engines, and its widespread support from many different stakeholders is indicative of the role it serves in addressing these legacy fleet emissions. EPA received many comments on the November 2017 glider proposal (82 FR 53442, November 16, 2017). We will consider each of these factors as we revisit whether or not the Phase 2 requirements for glider vehicles are consistent with the Clean Air Act.

25. During the August 1, 2018 EPW hearing, you fielded several questions from my colleagues on the Renewable Fuel Standard (RFS). Several times you mentioned that under your leadership, EPA would focus more on transparency when it comes to implementing the RFS program. This is welcome news since I've tried to get EPA to take this step for years. However, I am concerned that you may only be focused on transparency when it comes to the small refinery waiver process and not the entire program. I remain concerned about the volatility in the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market, and believe market transparency is a big part of the solution.

    a. In your answers, you talked about creating a dashboard –without disclosing proprietary information – on who is getting the small refinery waivers and why. Can you discuss further what this dashboard may look like and a timeline on when it may be released?

    EPA posts RIN transactional and compliance information on our RFS Data website. We recently implemented revisions to the website to incorporate additional data through a more interactive dashboard. Please visit the following link for additional information: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard.

    b. The State of California has created a dashboard to provide weekly, monthly, quarterly and annually trading data for its own renewable fuel program. After talking to many stakeholders involved in that process, it seems that California's renewable fuel trading dashboard has been able to provide valuable insight into trading and helped reduced market volatility. EPA could implement something similar for the RFS RIN trading market. Is EPA considering a RIN dashboard that provides the public weekly, quarterly and annual RIN trading data? If not, why not?

    EPA posts RIN transactional and compliance information on our RFS Data website. We are open to comments and suggestions for improving and expanding program and market insight. Currently, information is updated

the third Thursday of each month to reflect all transactions submitted through the end of the prior month.

c. What further transparency measures is the EPA considering regarding the RFS program?

As mentioned in our response to question "a" above, we recently implemented revisions to the website to incorporate additional data through a more interactive dashboard. Please visit the following link for additional information: https://www.epa.gov/fuels-registration-reporting-and-compliance-help/public-data-renewable-fuel-standard. Furthermore, On July 10, 2018, EPA published proposed volume requirements (83 FR 32024, July 10, 2018) under the Renewable Fuel Standard program for cellulosic biofuel, advanced biofuel, and total renewable fuel for calendar year 2019, and biomass-based diesel volume standards for calendar year 2020. In addition to seeking comment on the proposed volumes, EPA sought public comment on additional transparency measures for the Agency to implement. The Agency is still processing the large volume of comments received and will take all relevant comments into consideration when developing further RFS transparency measures.

26. Currently, the EPA has a Memorandum of Understanding with the Commodity Futures Trading Commission (CFTC) on RFS RIN market manipulation. In my questions for the record for the EPW January 30, 2018 hearing, I asked former Administrator Pruitt about the coordination between CFTC and EPA to assess potential RIN market manipulation – I wanted to know how often EPA staff communicated with the CFTC on RIN market manipulation and why EPA wasn't asking for more help from the CFTC. Former Administrator Pruitt did not provide clear answers to these questions and in part of his answer he stated,
"EPA is always looking for ways to improve implementation and transparency of the program, while balancing resource needs and our duty to protect confidential business information as required by our regulations. EPA will continue to work with CFTC and seek to utilize their market oversight expertise and authority."[5]
I've seen no action to date from EPA on the issue of RIN market manipulation and still do not have a clear answer on how EPA is coordinating with other agencies to address this issue.

a. What have you and your staff done with the CFTC to assess potential RIN market manipulation?

[5] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

Under the MOU, CFTC looked into a claim by the Renewable Fuels Association (RFA). RFA asserted that some participants in the RIN market may have deliberately driven up RIN prices during a certain period to disrupt the RIN market, in order to support political gains to repeal/reform the RFS program. The RFA letter, dated August 31, 2016, was sent to both CFTC and EPA. To assist CFTC, EPA provided RIN data from January 2010 to August 2016. CFTC reviewed this data and, as noted by the CFTC Chairman Chris Giancarlo in his testimony to the Senate Committee on Agriculture, Nutrition, and Forestry on February 15, 2018, CFTC did not find misbehavior in the market. Given EPA's market oversight limitations, we intend to pursue continued collaboration with CFTC under the MOU.

b. How often has EPA staff communicated with the CFTC on RIN market manipulation?

EPA and CFTC have engaged in dialogue since the MOU on RIN market manipulation was signed and EPA is committed to continuing these discussions.

c. Please provide dates, times and details of any communication, including any emails and phone calls, between CFTC and EPA since the MOU on RIN market manipulation was signed.

EPA and CFTC have engaged in dialogue since the MOU on RIN market manipulation was signed and EPA is committed to continuing these discussions.

d. Provide any suggestions from CFTC on what data EPA should be collecting to mitigate RIN market manipulation.

On October 9, 2018, President Trump directed EPA to undertake a Clean Air Act rulemaking that, among other things, would change certain elements of the RIN compliance system under the RFS program to improve both RIN market transparency and overall functioning of the RIN market. While details of the proposal have yet to be finalized, EPA is currently considering a number of regulatory reforms that could be included in the proposal, such as: prohibiting entities other than obligated parties from purchasing separated RINs; requiring public disclosure when RIN holdings held by an individual actor exceed specified limits; limiting the length of time a non-obligated party can hold RINs; and changing the timelines that apply to obligated parties regarding when RINs must be retired for compliance purposes. We are currently working with CFTC to evaluate some of these proposals, and as part of that process we will take into consideration any relevant suggestions CFTC makes related to data collection or how to improve market functioning as a whole.

e. The CFTC has successfully used position limits to protect against excessive speculation and market manipulation, which helped stabilize markets. Has EPA had any discussions with the CFTC about establishing position limits for the RFS RIN market? If not, why not? If so, please provide further details of those discussions.

EPA recognizes and values CFTC expertise with regard to ensuring market stability. We are currently developing a proposed rule intended to improve both RIN market transparency and overall functioning of the RIN market, and we are working with CFTC to evaluate some of the policy proposals before the agency.

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to "initiate dialogue on this matter."[6]

a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

As you noted, on February 8, 2018, EPA and FTC held a meeting to initiate dialogue on this matter, in which FTC discussed their authority and expertise, and we exchanged information to facilitate future discussions.

b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

During a February 8, 2018 call, FTC discussed their authority and expertise, which are largely focused on investigating fraudulent reporting of information to governmental agencies and other acts with intent to deceive or gain advantage in market. Given the nature of the call, FTC did not offer any specific suggestions on what data EPA should collect to mitigate RIN market manipulation.

c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

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[6] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

Based on our internal reviews, EPA has not seen evidence of manipulation in the RIN market. CFTC analysis, discussed above, also did not find evidence of manipulation. Even so, we understand concerns about potential manipulation, and we are open to the prospect of discussing possible steps that could be taken by CFTC or others in this area.

d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

As mentioned above, EPA is currently working on a Clean Air Act rulemaking that, among other things, would change certain elements of the RIN compliance system under the RFS program to improve both RIN market transparency and overall functioning of the RIN market. As part of the rule development process we are assessing a wide range of policy options that could be pursued. Our current goal is to issue a proposed rule in early 2019, and in that rule we will provide our assessment of the various approaches that could be taken to help deter market manipulation.

28. For Fiscal Years 2018 and 2019, the Administration's budget proposal included plans to dramatically reduce the size of EPA's workforce. When Congress enacted the FY'18 Omnibus in March of this year, it made clear that EPA was to not seek to reduce EPA's workforce through buyouts of other active measures.

a. As of August 1st, what is the number of full-time employees at EPA?

As of July 30, 2018, EPA had 13,780 full-time employees (this includes permanent and temporary employees).

b. How does this number compare to the number of FTEs on March 23, 2018, when the Omnibus was signed into law?

As of March 26, 2018, EPA had 13,981 full-time employees (this includes permanent and temporary employees).

c. If there are fewer EPA FTEs today than there were on March 23, please explain why this is the case.

Due to attrition and hiring lags the number of Agency full-time employees has gone down. In FY 2018, EPA has set an on-board target of 14,172, including temporary and part time employees.

29. Congress is currently working to finalize EPA's FY 2019 appropriations. Will you abide by all Congressional directives regarding staffing levels in FY 2019?

We appreciate the attention to our staffing levels under the current federal budget landscape. Our intent is to abide by all Congressional directives.

30. The 2018 Omnibus contained a provision related to reporting requirements under CERCLA for air emissions from animal waste, known as the FARM Act. On April 27th, EPA published guidance on its website entitled "How does the Fair Agricultural Reporting Method Act Impact reporting of air emissions from animal waste under CERCLA Section 103 and EPCRA Section 104?" On May 25, I along with other members of the EPW committee wrote to then-Administrator Pruitt that the information contained in the guidance document was contrary to the clear Congressional intent and legislative history behind the FARM Act. We requested that the guidance be rescinded, and the EPA website be updated accordingly. As of today, this guidance is still online. When do you intend to rescind this guidance?

    In November 2018, EPA published a proposed rule for public comment on the agency's interpretation that air emissions from farm animal waste do not need to be reported under EPCRA. The final rule would maintain consistency between the emergency release notification requirements of EPCRA and CERCLA. The agency is actively considering many of the substantive issues raised in your letter throughout the rulemaking process. The guidance is no longer available on EPA's website.

<u>Senator Duckworth:</u>

31. The Renewable Fuel Standard (RFS) includes a provision that requires the Administrator of the Environmental Protection Agency (EPA) to "reset" the renewable volume obligations (RVO) if certain conditions are met.

    a. With regard to this reset authority, can you please explain what would trigger this process and what the authority allows you to do?

        The statute specifies the conditions under which this "reset" authority is triggered, which include waivers of the renewable fuel volumes laid out in the statute by more than 50% in one year or more than 20% in two consecutive years. These criteria have been met in the past for both the cellulosic biofuel and advanced biofuel categories in the statute. The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category. The statute requires that EPA undertake a rulemaking to modify the volumes otherwise specified by Congress in the statute for the remaining years (2019-2022) and to complete such rulemaking within one year (e.g., by November 30, 2019).

b. Do you expect the final 2019 RVOs to trigger the reset process?

The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category.

c. Do you expect the final 2019 RVOs to trigger the reset process?

The proposed renewable fuel volume obligations for 2019, if finalized, would satisfy the reset criteria for the total renewable fuel volume category.

Senator Fischer:

32. Administrator Wheeler, during questioning, I discussed with you small refinery exemptions awarded to petitioners for the reason of disproportionate economic hardship. When EPA conducts its analysis to determine disproportionate economic hardship, please clarify if the EPA compares the high cost of compliance to only small refiners (those that produce 75,000 barrels of crude per day) **or** if the EPA compares the high cost of compliance to the entire refining industry.

EPA conducts its analysis of whether a petitioning refinery is experiencing disproportionate economic hardship by evaluating the specific economic and other conditions that may be in play at that refinery, on a case-by-case basis. Each case-by-case evaluation is performed in coordination with DOE. For additional information on the DOE studies that define "disproportionate economic hardship" and the process for evaluating each petitioning facility, please visit the following website: https://www.epa.gov/renewable-fuel-standard-program/small-refinery-exemption-studies-department-energy**.**

Senator Gillibrand:

33. Acting Administrator Wheeler, as you may know, a number of communities in my state of New York have been negatively impacted by the presence of PFOA and PFOS in their drinking water. The residents of Hoosick Falls and Petersburgh were consuming water tainted by PFOA from a plastic manufacturing plant in their community. The drinking water supplies in Newburgh and East Hampton are tainted with PFOS from firefighting foam used at Air National Guard bases nearby. I appreciate that the EPA has made addressing these chemicals a priority. I note that, to date, the EPA has conducted community engagement meetings in New Hampshire and Pennsylvania, and has scheduled meetings in Colorado and North Carolina later this month. When will EPA hold a PFAS community engagement meeting in New York State?

The EPA coordinated closely with states and local communities on a series of per- and polyflouroalkyl substances (PFAS) community engagement events. The locations were selected based on state and community interest as well as logistical considerations related to geographic distribution and timing. Additionally, the EPA worked to ensure the Agency was able to balance the need to take action with the EPA's desire to hear from as many communities as possible.

Community engagements have been held in Exeter, New Hampshire (June 25-26); Horsham, Pennsylvania (July 25); Colorado Springs, Colorado (August 7-8); Fayetteville, North Carolina (August 14); and Leavenworth, Kansas (September 5). The EPA also engaged with tribal representatives at the Tribal Lands and Environment Forum in Spokane, Washington, on August 15.

The EPA appreciates your interest and understands the importance of this issue to New Yorkers. We appreciated the participation of New York's Department of Environmental Conservation and Department of Health in our May 22-23 PFAS National Leadership Summit in Washington, D.C., and the EPA will continue to work with both agencies to address PFAS contamination in New York State.

Also, to ensure that everyone who wanted to provide input to the EPA had the opportunity to do so, the Agency opened a docket for input from the public. This docket is available at https://www.regulations.gov/docket?D=EPA-HQ-OW-2018-0270.

34. The EPA's regulations for implementing the recent TSCA reform bill passed by Congress limits the EPA from considering the "legacy uses" of a chemical when deciding whether to regulate it under the TSCA program. Drinking water contamination from a plant that is no longer manufacturing PFOA would be considered a legacy use. Despite Congress's very clear direction, those rules ignore the public's current exposure as a result of the past uses of chemicals. Legacy uses pose risks to public health because the past manufacturing and disposal of those chemicals can still contaminate groundwater, as is currently the case with PFOA in Hoosick Falls, NY. Will you review those implementation rules and direct your staff to revise them to ensure that EPA is considering all potential uses and potential pathways of exposure for these chemicals?

As a general matter, EPA will address in its risk evaluations those uses for which it is known, intended, or reasonably foreseen that the chemical is being manufactured, processed, or distributed (i.e., the use is prospective or on-going). However, as stated in the 2017 final rule *Procedures for Chemical Risk Evaluation Under the Amended Toxic Substances Control Act,* in a particular risk evaluation, EPA may consider background exposures from legacy use, associated disposal, and legacy disposal as part of an assessment of aggregate exposure or as a tool to evaluate the risk of exposures resulting from non-legacy uses. For example, EPA's Office of Water has developed health advisories for PFOA and PFOS based on the agency's assessment of peer-reviewed science to provide drinking water system operators, and state,

tribal and local officials who have the primary responsibility for overseeing these systems, with information on the health risks of these chemicals, so they can take the appropriate actions to protect their residents. EPA also has an agency-wide PFAS workgroup developing human health toxicity values for GenX and PFBS, evaluating the current universe of PFAS manufactured and in use, gathering scientific information and undertaking robust public outreach and engagement.

35. Last December, the US Court of Appeals for the 9th Circuit faulted EPA for taking too long to develop new rules updating the outdated lead-based paint and dust-lead hazard standards. The court compelled your agency to take action to propose and finalize a rule. This is critically important in New York, where a special report published by Reuters this past November found 69 New York City census tracts where at least 10 percent of small children had elevated lead levels. While lead paint and dust are not the only factors contributing to these high lead levels, it remains a serious concern for children under the age of 6 years and a major environmental justice concern, particularly for residents of public housing and older buildings.

    a. While the EPA proposed more stringent standards for lead dust in July, it did not propose to lower the standards for lead-based paint, citing lack of sufficient information to support a change. What specific action will you direct EPA staff to take to address that data gap identified in the proposed rule, so that you can make a more informed decision on the definition of lead based paint?

    Pursuant to TSCA section 401 (15 U.S.C. 2681(9)), EPA will work with the Department of Housing and Urban Development (HUD) to make any appropriate changes to the definition of lead-based paint. EPA, working with HUD, has identified a number of specific data and information needs to inform consideration of revising the definition of lead-based paint. EPA also solicited input from the public regarding data or information that could be useful in this effort. The public comment period for the proposed rule closed on August 16, 2018, and EPA is now carefully considering all comments and input received, including any data or information that may inform any change to the definition of lead-based paint.

    b. Is the EPA on track to finalize the lead dust rules in compliance with that court order?

    Yes, EPA published, in the Federal Register on July 2, 2018, the proposed rule, *Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint* in compliance with the court deadline and EPA is on track to take final action within the timeframe stipulated by the court.

36. Will you commit that, before issuing a certificate of completion for the PCB cleanup of the Hudson River, the EPA will continue to work in close coordination with New York State to fully review and consider sediment samples from the Upper Hudson River, and the supplemental studies of the Lower Hudson River?

    EPA is currently working with our state partner, the New York State Department of Environmental Conservation (NYSDEC), to review the results of some 1,800 sediment samples collected by NYSDEC. EPA is working towards developing joint findings on the results of the sampling. EPA will not make any final decisions with respect to whether General Electric has completed its work or about the protectiveness of the work so far until we have completed our review of input from the public and our government partners and completed analyses of data from the samples collected by NYSDEC. The supplemental studies of the Lower Hudson River are ongoing, although they are not tied to certifying completion of remedial action under the consent decree, which is limited to the area defined as the Upper Hudson.

Senator Inhofe:

37. When EPA promulgated the existing Section 111(b) "new source" rules for carbon dioxide, the agency did not adequately contemplate the emerging value of natural gas-fired "Quick Start" Simple Cycle Combustion Turbines (CTs) to maintain the reliability of our nation's electricity grid. Unlike traditional coal-fired and gas-fired electric generation units that take hours to come on line from a cold start, "Quick Start" CTs can achieve full operating capacity in as little as 9 minutes. Consequently, "Quick Start" CT units are uniquely valuable to the nation's power pools to address reliability challenges that commonly occur due to changes in the generation mix. However, the existing EPA 111(b) regulations limit the operation of "new" electric generation plants, including new "quick start" CTs, to less than 40% of their annual operating capacity. This mitigates the ability of power pool operators to call on CTs to respond quickly to unpredictable changes certain types of generation transmitted to the grid. It also restricts the flexibility that these generators and power pool operators need to respond to a variety of other market conditions, including weather-related events or transmission or generation outage events on the grid.

    Several industry comments were filed with EPA during the rulemaking that produced the existing 111(b) rule expressing concern about this artificial operating restriction, which was also believed to be overreaching under statute. Given that EPA is working on revising its "new source" regulations affecting utilities under Section 111(b), what regulatory changes could be included in the revision to insure that the existing 111(b) regulations do not needlessly restrict the use of "quick start" CT units to redress reliability challenges to the electric grid?

EPA staff is currently focused on reviewing requirements for new coal-fired EGUs. Those standards are legally contentious and the subject of multiple petitions for review. EPA conducted an extensive analysis of the role of "quick start" aeroderivative simple cycle combustion turbines as part of the Section 111(b) GHG NSPS for EGUs. The requirements for combustion turbines were a balance of providing sufficient flexibility to account for potential future changes to the electric grid, affordability, achievability, not artificially distorting the electricity market, or providing perverse incentives to increase GHG emissions. While no petitions were filed on the standards for combustion turbines, EPA staff continues to monitor the operation of EGUs to determine if the role of new high efficiency "quick start" aeroderivative simple cycle combustion turbines in the electricity market has changed sufficiently since 2015 to warrant revising the current standards.

38. From 2009 through 2015, the General Electric Company conducted one of the largest environmental cleanup projects in U.S. history, dredging about 40 miles of the Hudson River to remove PCBs. EPA developed an aggressive plan to remove most of those PCBs, deciding on the appropriate scope of the removal to realize the strongest environmental outcomes over time. GE spent almost $2 billion implementing that plan and removed almost twice the amount of PCBs originally estimated, and EPA lauded the efforts as an "historic accomplishment." On December 23, 2016, GE submitted a completion report outlining all of the steps the company took to complete the plan and asking EPA to certify that the project is complete, in accordance with a 2005 Consent Decree signed by GE and the EPA. In that Consent Decree, EPA agreed to grant a Certification of Completion within 1 year of GE's submission of the completion report. It is now seven months past the deadline, yet the agency has not issued a certification of completion.

    a. Will you decide GE's certification of completion based on the specific criteria set forth in the consent decree?
    b. When can we expect EPA will make the decision on the certification of completion?

EPA will comply with the Consent Decree for the Hudson River PCBs Site in deciding whether to provide the Certification of Completion of the Remedial Action to General Electric. The Consent Decree states:

> **If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for review and comment by the State and by the Federal Trustees for Natural Resources, that the Remedial Action has been performed in accordance with this Consent Decree, EPA will so certify in writing to [General Electric]. This certification shall constitute the Certification of Completion of the Remedial Action….**
> **(Consent Decree, paragraph. 57.d)**

The Consent Decree defines Remedial Action as "those activities, except for Remedial Design and Operation, Maintenance and Monitoring, to be undertaken to implement the [2002 Record of Decision], in accordance with the [Statement of Work], the final Remedial Design plans and reports, the Remedial Action Work Plans, and other plans approved by EPA." (Consent Decree, paragraph 4).

General Electric (GE) has informed EPA that it believes that it completed the Remedial Action portion of the cleanup as required by the Consent Decree and has requested EPA's Certification of Completion of the Remedial Action. EPA is reviewing input from the New York State Department of Environmental Conservation (NYSDEC), including results of some 1,800 sediment samples it collected, the National Oceanic and Atmospheric Administration, the U.S. Fish & Wildlife Service, and the New York State Attorney General's office as it considers GE's request. EPA will not make any final decisions with respect to whether GE has completed the Remedial Action or about the protectiveness of the work so far until we have completed our review of input received from the public and our government partners and completed analyses of data from the samples collected by NYSDEC.

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

    An action to address the treatment of biogenic CO2 emissions in the context of Clean Air Act permitting is currently under development. In the 2018 Fall Unified Agenda of Federal Regulatory and Deregulatory Actions, we noted that this was a long term action, with a date for a proposed rule to be determined.

40. It is my understanding that IRIS is not a statutorily mandated program and that IRIS assessments have no direct regulatory impact until they are combined with other information by EPA's program offices. Currently, EPA has regulations in place managing exposures to formaldehyde.

    a. Is there a need or added benefit, then to developing this assessment?

    The IRIS program is a mechanism to implement the risk assessment requirements contained in a variety of environmental statutes. Therefore, the authority for the IRIS Program's mission of developing of human health assessments that evaluate potential health effects that may result from exposure to environmental contaminants is contained in the relevant research and risk assessment requirements within statutes governing the Environmental Protection Agency. ORD is currently developing a new approach of soliciting program input on current and future IRIS

assessments, to ensure IRIS assessment activities are focused on the highest priority needs. The formaldehyde assessment will be included in this activity, which will inform our next steps.

b. If so, what higher priority assessments could be prioritized instead?

See answer to 40a.

c. Are there any program offices that have a regulatory need for a revised formaldehyde IRIS assessment to inform ongoing or pending Agency action? If so, please provide the specific program offices and the specific Agency action.

See answer to 40a.

41. The National Academies was highly critical of EPA's last public draft IRIS formaldehyde assessment. Based on recent leaks to the media, it appears that the conclusions in the current unreleased draft assessment have not changed even though published science supports that formaldehyde does not cause leukemia and that safe thresholds for exposure exist.

a. With new science and credible criticisms by the National Academies, will EPA not modify its assessment?

Any IRIS assessment would consider all relevant scientific information – for formaldehyde that would include considering all science which has been published since the release of the NAS report. In addition, any revised assessment for formaldehyde would address all the recommendations from the 2011 NAS report. More broadly, IRIS has been incorporating principles of systematic review into the assessment development process in response to the recommendations from the 2011 and 2014 NAS reports.

b. Will you review and integrate all science published since the release of the 2010 draft IRIS assessment has been reviewed and integrated into any revised draft?

Yes, any development of a draft formaldehyde assessment would carefully review and consider new, peer-reviewed science as it becomes available. A new draft IRIS assessment would consider and incorporate this information, as appropriate, to ensure that the assessment reflects the state-of-the-science on any chemical, including formaldehyde.

42. EPA's previous draft IRIS formaldehyde assessment suggested that human breath might pose an unacceptable risk of cancer. Given that the human body naturally produces formaldehyde, this does not seem reasonable or realistic. Will you ensure that IRIS values reflect real life human exposure scenarios and include a reality check as recommended by the National Academies?

    IRIS assessments address the first two steps of the risk assessment process, hazard identification and dose-response. EPA program and regional offices estimate the amount of human exposure under different exposure scenarios. The exposure information developed by the Agency is combined with the toxicity values developed by the IRIS program to characterize the potential public health risks of a chemical. Any updated assessment would reflect all comments received by the 2011 NAS report.

43. Given the recent media attention around the EPA's draft IRIS formaldehyde assessment and the appearance that the Agency is circumventing its own peer review process by releasing unvetted conclusions to the media, would you consider:

    a. Identifying a small panel of independent 3rd party scientists to review the revised draft IRIS assessment and provide you input on its scientific rigor before it is released for public review?

       EPA will follow the 7-step process established for IRIS assessments, which includes an independent peer review process.

    b. Identifying an independent 3rd party arbiter to confirm that all 2011 and 2014 NAS recommendations are fully and adequately resolved before the IRIS assessment is finalized?

       EPA has been moving forward to ensure that both programmatic and assessment-specific recommendations are being addressed by the IRIS Program. These advances were most recently presented to the NAS in February 2018, and the ensuing report by the National Academies, building on the recommendations in the 2014 report, concluded that EPA had made substantial progress. Any future IRIS assessments would consider and address all recommendations from the NAS 2011 report.

Senator Markey:

44. Formaldehyde is a toxic carcinogen widely used in everything from furniture to lotion. During the last administration, EPA scientists began an analysis of the human health impacts of formaldehyde that I understand has been completed for over a year. When Pruitt was here in January, I asked him about this scientific analysis, which he admitted was completed. However, despite the desire by EPA staff to make this critical analysis

available for public review, lobbying by special interest groups who have a stake in suppressing information about formaldehyde's dangerous impacts met a friendly and abiding audience with Mr. Pruitt. I, and several members of this committee, are significantly concerned about this attempt to silence scientists and scientific data under the last Administrator.

a. At this month's hearing, you refused to say when you would publicly release EPA's formaldehyde assessment for peer review. Will you now commit to publicly release this report, without any additional political interference, within the next thirty days?

ORD is currently developing a new approach of soliciting program input on current and future IRIS assessments, to ensure IRIS assessment activities are focused on the highest priority needs. The formaldehyde assessment would be included in this activity, which will inform our next steps.

45. The EPA is a pivotal player in our national fight against toxic substances and has historically worked to protect the public from the health risks posed by unsafe chemicals. Last year, on a bipartisan basis, Congress worked to enact reforms to the Toxic Substances Control Act (TSCA) intended to, among other things, significantly strengthen new chemical reviews. These changes made as a part of the Frank R. Lautenberg Chemical Safety for the 21st Century Act, have been significantly weakened by this administration.

For example, the EPA now appears to no longer release the results of its initial reviews of new chemicals or new uses of existing chemicals that identify risk concerns or data gaps.[7] Under previous administrations going back decades, the EPA would provide public notice of its initial recommendations that new chemicals be determined to be "not likely to present an unreasonable risk"; that they would or could present an "unreasonable risk of injury"; that they lacked sufficient information to conduct a reasoned evaluation; or that further review was needed. An EPA presentation dated December 6, 2017 noted that the agency was developing "revised terminology."[8] Now, rather than publish these interim statuses, the EPA is only informing the public that a "Focus Meeting Occurred,"[9] and is not communicating the recommendations of its professional staff made at that meeting. The EPA appears to have stopped providing this information to the public, despite the agency's continued interim and final decision-making on dozens of new chemicals each month. This information was invaluable to the public in ensuring the

[7] Hiar, Corbin. "At Trump's EPA, one-public chemical safety reviews go dark." E&E News, January 20, 2018. http://www.sciencemag.org/news/2018/01/trump-s-epa-once-public-chemical-safety-reviews-go-dark

[8] Environmental Protection Agency, "Other Advance Questions" Presentation by Tanya Hodge Mottle, Acting Deputy Director of Programs, U.S. EPA Office of Pollution Prevention and Toxics. December 6, 2017. As found on January 17, 2018 at https://www.eenews.net/assets/2018/01/10/document_gw_04.pdf

[9] Environmental Protection Agency, "Review New Chemicals under the Toxic Substances Control Act (TSCA): Premanufacture Notices (PMNs) and Significant New Use Notices (SMUNs) Table." As found on January 17, 2018 at https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/premanufacture-notices-pmns-and

accountability of EPA judgments as to whether new chemicals will be safe when they enter the market. While there may be legitimate reasons for the amelioration of initial concerns about a new chemical by the time the EPA makes a final decision on it, transparency and good governance warrant the EPA explaining to the public the steps it took to remove the concern—not to hide from the public any evidence of the EPA's initial concern.

a. Can you provide examples of the "confusion"[10] that the EPA alleges was produced by providing the public with the interim statuses? Please provide any documentation or communications between EPA staff and the public that evidence this confusion.

   Prior to amended TSCA, EPA posted the interim status, but not the final status for cases that had gone through the multidisciplinary Focus meeting. EPA continued this approach for a short time after the passage of the TSCA amendments. However, in certain cases, a submitter provided additional information for EPA to consider after the Focus meeting occurred and after the interim status was posted. Following EPA's review of the new information, the recommended determination listed in the interim status may have differed from the final determination. These changes were leading to confusion among our stakeholders.

b. Please provide an explanation as to how the new terminology was developed, including any meetings held (and related documentation) on the topic and how the new terminology will better protect public health?

   EPA temporarily stopped posting the interim status for PMN/SNUN/MCAN cases until language could be discussed with the Office of General Counsel and senior management. This was discussed at the December 6, 2017, new chemicals public meeting. In mid-December 2017, it was decided that the best approach would be to inform submitters that their case had made it to the Focus stage as the interim status and the final status should be the only determination listed in the table. Since early January, the interim status now simply notes that a case was considered at the Focus meeting and the date of the meeting. This change was made to be consistent with the fact that if the intended conditions of use in a PMN submission raise risk concerns, and the submitter makes a timely amendment to address those concerns, EPA will consider the conditions of use in those amended submissions. The tables are current for all cases that have been discussed at a Focus meeting and will continue to be updated on a weekly basis.

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[10] Environmental Protection Agency, "Other Advance Questions" Presentation by Tanya Hodge Mottle, Acting Deputy Director of Programs, U.S. EPA Office of Pollution Prevention and Toxics. December 6, 2017. As found on January 17, 2018 at https://www.eenews.net/assets/2018/01/10/document_gw_04.pdf

c. Can you commit to updating the public with more information on potentially hazardous chemicals or presumed safe chemicals, beyond simply stating that a focus meeting has occurred? Please include in your response the type of information the EPA could provide to improve transparency into this process and a date by when this change will take place.

EPA is committed to providing the public timely and accurate information on the status of its safety reviews of pre-manufacture notices (PMNs) for new chemicals submitted by industry under section 5 of the Toxic Substances Control Act (TSCA), as amended. For example, the Agency posts weekly statistics on the EPA web site to reflect the numbers and types of new chemicals cases under review, the number of completed reviews, and the determinations made to date. (See https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/statistics-new-chemicals-review).

In addition, the Agency has provided a case-specific table where submitters and others can look up individual new chemical submissions to see the current status of the review and, when complete, a final status. The table includes hyperlinks to the publicly available final determination documents. Cases are added to the table once they pass the multi-disciplinary team risk characterization meeting called the Focus meeting.

46. Under your leadership, the EPA has indefinitely delayed finalizing its proposed bans on high-risk uses of methylene chloride, N-methylpyrrolidone, and trichloroethylene.[11,12] The 2016 Lautenberg Act specifically authorized the EPA to pursue needed restrictions on these chemicals. The law allowed for prioritized action on high-risk uses of these chemicals—which the EPA has declared to present unreasonable risk. Dozens of deaths have been linked to methylene chloride-based paint strippers, and agency experts have noted connections between trichloroethylene and developmental damage. Trichloroethylene was one of the chemicals found in the water around Camp Lejeune, a Marine base in North Carolina. Potentially 900,000 service members were exposed to this dangerous chemical, which causes cancer and is linked to fetal cardiac defects.[13]

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[11] Kaplan, Sheila. "E.P.A. Delays Bans on Uses of Hazardous Chemicals." New York Times, December 19, 2017. https://www.nytimes.com/2017/12/19/health/epa-toxic-chemicals.html

[12] Environmental Protection Agency, "New Chemicals Decision-Making Framework: Working Approach to Making Determinations under Section 5 of TSCA." November 2017. As found on January 17, 2018 at https://www.epa.gov/sites/production/files/2017-11/documents/new_chemicals_decision_framework_7_november_2017.pdf

[13] Agency for Toxic Substances and Disease Registry. "Camp Lejeune, North Carolina: Health effects linked with trichloroethylene ((TCE), tetrachloroethylene (PCE), benzene, and vinyl chloride exposure." April 11, 2017. As found on January 17, 2018 at https://www.atsdr.cdc.gov/sites/lejeune/tce_pce.html

a. Can you provide a detailed justification for the indefinite delay of the proposed bans for high-risk uses of methylene chloride, N-methylyprrolidone, and trichloroethylene?

EPA is continuing to work expeditiously on this rule and on making sure that it is fully consistent with the new risk management provisions of the Frank R. Lautenberg Chemical Safety Act.
EPA is evaluating identified uses of MC, , trichloroethylene (TCE), and N-methylyprrolidone (NMP) as part of the first ten chemicals undergoing chemical risk evaluations under amended TSCA. These evaluations will be completed in accordance with statutory timelines.

While EPA is not precluded from finalizing proposed regulations based on risk evaluations conducted before enactment of amendments to TSCA, EPA has concluded that the Agency's previous assessments of the potential risks from TCE and NMP will be more robust if the potential risks from these conditions of use are evaluated by applying standards and guidance under amended TSCA.

b. Was Michael Dourson involved in any capacity on the evaluation of trichloroethylene while he was working as an EPA advisor? If so, please detail and provide any written documents of his work, including any memos, meeting notes, or other correspondence.

Dr. Dourson, along with other Senior Leaders new to the Agency, was briefed (provided a synopsis) on the content and conduct of the risk assessment for trichloroethylene that EPA completed in 2015. This meeting was informational and did not include solicitation or nor providing of advice or direction related to evaluation.

Also, under the previous administration, the EPA had proposed to ban the use of the chlorpyrifos, a neurotoxic pesticide used on a variety of fruits and vegetables.[14] Residential and indoor use of chlorpyrifos was banned in 2000.[15] However, you opted to reject the EPA's earlier findings and deny the petition to ban the use of chlorpyrifos,[16] despite the EPA analyses that found widespread risk from pesticide residues, drinking water contamination, and drift. Chlorpyrifos has been linked to neurological damage, with children particularly at risk for learning disabilities.

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[14] New York Times, "EPA's Decision Not to Ban Chlorpyrifos." October 21, 2017. https://www.nytimes.com/interactive/2017/10/21/us/document-EPA-Chlorpyrifos-FOIA-Emails-to-NYT.html
[15] Environmental Protection Agency, "Dursban Announcement" Archived Speech by Carol M. Browner, June 8, 2000. As found on January 17, 2018 at http://archive.is/ANPup#selection-803.0-819.477
[16] Environmental Protection Agency, "News Release: EPA Administrator Pruitt Denies Petition to Ban Widely Used Pesticide." March 29, 2017. As found on January 17, 2018 at http://archive.is/XAUYw

c. Can you provide a detailed explanation of why the EPA chose to refute earlier analyses performed by Science Advisory Panels, including those done in 2016,[17] 2012,[18] and 2008[19], which provided independent scientific review and reaffirmed the health risks connected with chlorpyrifos exposure? Please include any and all new studies, or analyses, performed since the November 2016 Human Health Risk Assessment that provide the basis for this decision.

Over the course of several years, the FIFRA Scientific Advisory Panel provided numerous recommendations for additional study, and sometimes conflicting advice, for how EPA should consider (or not consider) the epidemiology data in conducting EPA's human health risk assessment for chlorpyrifos. Comments received in response to EPA's proposed rule demonstrate that the science on this question is not completely resolved. EPA is conducting a full and appropriate review of all of the neurodevelopmental data.

d. Can you provide a detailed timeline for the "ongoing registration review"[20] that the agency is performing to continue its evaluation of the risks of chlorpyrifos, despite the body of evidence previously collected by EPA researchers?

EPA must complete registration review by October 1, 2022, for all pesticides registered as of October 1, 2007. EPA continues to work to obtain access to original datasets that should allow the EPA to sufficiently address concerns around the use of certain studies in risk assessment, and move forward with its decision for the registration review of chlorpyrifos.

e. Can you provide the times and dates of every meeting and any relevant communication that you or your senior administration officials had regarding chlorpyrifos or toxic chemical standards, including with employees of or lobbyists working on behalf of Dow Chemical, the American Chemistry Council, the American Farm Bureau, or CropLife America?

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[17] Environmental Protection Agency, "Memorandum on Meeting Minutes of the April 19-21 2016 FIFRA SAP Meeting Held to Consider and Review Scientific Issues Associated with "Chlorpyrifos: Analysis of Biomonitoring Data." July 20, 2016. As found at https://www.epa.gov/sites/production/files/2016-07/documents/chlorpyrifos_sap_april_2016_final_minutes.pdf

[18] Environmental Protection Agency, "Memorandum on Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held April 10-12, 2012 on "Chlorpyrifos Health Effects." As found on January 17, 2018 at https://www.epa.gov/sites/production/files/2015-06/documents/041012minutes.pdf

[19] Environmental Protection Agency, "Memorandum: Transmittal of Meeting Minutes of the FIFRA Scientific Advisory Panel Meeting held September 16-18, 2008 on the Agency's Evaluation of the Toxicity Profile of Chlorpyrifos." December 17, 2008. As found on Regulations.gov on January 17, 2018 at https://www.regulations.gov/document?D=EPA-HQ-OPP-2008-0274-0064

[20] Environmental Protection Agency, "Revised Human Health Risks Assessment on Chlorpyrifos." As found on January 17, 2018 at https://www.epa.gov/ingredients-used-pesticide-products/revised-human-health-risk-assessment-chlorpyrifos

Making a final decision on whether chlorpyrifos meets the safety standards under the Federal Insecticide, Fungicide, and Rodenticide Act and the Federal Food Drug and Cosmetic Act is an important priority for the EPA. We would like to work with your staff to better understand the scope of this information request so that the agency can provide the information you are seeking.

47. Environmental protection requires the use of sound science. The EPA's own mission states that "national efforts to reduce environmental risks are based on the best available scientific information." Science is the beating heart of the EPA's work. You can imagine my concern in April when former Administrator Scott Pruitt proposed a "secret science" rule –or more properly named "censoring science." Because this proposal would prevent the EPA from using scientific studies that include data that aren't publicly available.

    If the EPA can't use public health studies that include confidential participant data, it will not be able to properly implement numerous environmental laws under EPA's jurisdiction, like the Clean Air Act which requires the use of the best available science for implementation. Under the Administrative Procedure Act, the EPA cannot refuse to consider any comment submitted to the agency—including scientific findings based on confidential data. This proposed "censored science" rule allows for such refusal, and it wouldn't hold up in court.

    a. Will you commit to withdrawing then-Secretary Pruitt's proposed "censored science" rule, which is a violation of numerous laws?

    EPA has started reviewing the more than 500,000 comments received on the proposed Strengthening Transparency in EPA Science rule. EPA will be reviewing these comments through the fall. EPA will determine a timeline for a decision after it has more fully assessed the comments.

    It appears that EPA staff have been dissuaded from communicating to the public and to other scientists about climate risks. In October 2017, an EPA scientist, research fellow, and consultant withdrew from planned speeches at a workshop about the health of the Narragansett Bay and Watershed. Though former Administrator Pruitt responded to the October 31, 2017 letter sent by New England members of Congress expressing our concern, that reply was vague.[21] In this response letter, it was indicated that "[p]rocedures have been put in place to prevent such an occurrence in the future." When another set of follow-up questions was asked to clarify that statement, the answers provided on May 10, 2018 were incomplete.

[21] "Response Letter from the Environmental Protection Agency on the Narragansett Bay Estuary Program," December 4, 2017. https://www.whitehouse.senate.gov/imo/media/doc/2017-12-04%20EPA%20Response%20to%20NBEP%20Letter.pdf

b. What are the exact procedures put in place to ensure that EPA scientists continue to be able to speak at public events about climate science?
c. How have you evaluated whether these new procedures are successful and staff are not discouraged from participating in similar scientific forums? If no evaluation has been made, why not?

EPA has one of the strongest Scientific Integrity policies and one of the most robust Scientific Integrity training programs in the federal government. EPA's Scientific Integrity Policy doesn't just apply to EPA scientists; it applies to all EPA employees, including scientists, managers, political appointees, and other staff. EPA regularly makes improvements to its Scientific Integrity program to make it even stronger. You can read more about this policy at epa.gov/osa/basic-information-about-scientific-integrity.

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

48. The EPA Strategic Plan for FY 2018 through 2022, finalized in February 2018, does not contain a single mention of climate change, despite the major threats that it poses to public health and the economy—threats that will only continue to increase during the next five years.[22]

    a. Why was climate change not included in the EPA's draft strategic plan for 2018-2022?
    b. Were EPA political appointees involved in writing the draft strategic plan? If so, what role did political appointees play in creating this document, and did any political appointee remove any reference to climate change?

Strategic plans are drafted every five years to reflect new initiatives and projects of the Agency. Naturally the plan will be reflective of the current administration's priorities of refocusing the Agency on its core mission, and leading the Agency through improved processes and adherence to the rule of law.

49. The EPA's staff of dedicated researchers and scientists have worked hard to present the most accurate climate change data and information to the American public. This information is critical to illustrate what climate change is, why it matters, and what the EPA is doing to confront its effects. It is also a central component of the EPA's mission

[22] Environmental Protection Agency, *Strategic Plan for FY 2018-2022.* https://www.epa.gov/planandbudget/fy-2018-2022-epa-strategic-plan

statement, which declares that the EPA should work to ensure that "all parts of society – communities, individuals, businesses, and state, local and tribal governments – have access to accurate information sufficient to effectively participate in managing human health and environmental risks."[23]

Unfortunately, outside groups and news organizations have documented a complete overhaul of the EPA's website that resulted in relevant climate change data and information being hidden from the general public or removed entirely. The Environmental Data and Governance Initiative issued a report on January 10, 2018 that documented the removal of more than 200 climate-related pages from the EPA website.[24] On April 28, 2017, the EPA removed the content of its main informational webpage[25] on climate change, which had existed in some form since at least 1997, and replaced it with a page that states, "We are currently updating our website to reflect EPA's priorities under the leadership of President Trump and Administrator Pruitt."[26] The American public is entitled to have easily accessible and factual information regarding climate change—something the EPA is uniquely positioned to provide.

a. Can you please provide a list of the specific changes to the climate change webpage, and justification for how each will "reflect EPA's priorities under President Trump and Administrator Pruitt," what they will entail?
b. On what date will the climate change webpage will be reposted on EPA's website?
c. Please explain how, under the current EPA since Administrator Pruitt's departure, the removal of climate change science fits under the Administration's set of priorities?
d. Were any EPA political appointees involved in discussions and/or development of recommendations to remove EPA webpages on climate change? Who was responsible for authorizing the removal of EPA webpages on climate change?
e. Were any EPA career scientists or authors of the reports on climate change involved in discussions regarding the decision to remove EPA webpages on climate change or the decision itself? If not, why not?
f. How does the EPA and its communications team handle discussion and mention of climate change in the EPA's social media and other public-facing communications? Have EPA staff or other personnel been instructed to not use the term "climate change" in social media posts? If so, was this decision made by EPA political staff? When was this decision finalized and announced to staff?

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[23] Environmental Protection Agency, "Our Mission and What We Do" as visited on January 17, 2018. https://www.epa.gov/aboutepa/our-mission-and-what-we-do
[24] Environmental Governance and Data Initiative. "Changing the Digital Climate: How Climate Change Web Content is Being Censored under the Trump Administration." January 2018. https://envirodatagov.org/wp-content/uploads/2018/01/Part-3-Changing-the-Digital-Climate.pdf
[25] Environmental Protection Agency. "Climate Change" Main Webpage, Historical Material and Snapshot of January 19, 2017. https://19january2017snapshot.epa.gov/climatechange_.html
[26] Environmental Protection Agency. "This page is being updated." As visited on January 17, 2018. https://www.epa.gov/sites/production/files/signpost/cc.html

EPA is continually making changes to its website and other digital information resources to reflect and support the agency's current priorities and work. When we move information from our main portal, www.epa.gov, the majority of the time we make sure it is still available to the public via our archive website, https://archive.epa.gov/. In addition, because of the public concern about access to information on our website last year, as well as the receipt of a number of FOIA requests for access to information, we created a snapshot website that contains the content that was on our main portal on January 12, 2017. The snapshot website can be searched here: https://19january2017snapshot.epa.gov/.

50. Each year, over 100 million tons of coal ash, laden with numerous toxic chemicals like arsenic, cobalt, and lithium, are produced when coal is burned. This past March, coal plants were required for the first time to publicly post groundwater monitoring data. A preliminary analysis of that data has found that ninety-two percent of sampled groundwater sites had unsafe levels of at least one toxic contaminant.

    a. Mr. Wheeler, can you commit that the EPA will review all of the significant and concerning data at hundreds of existing coal ash sites as reported earlier this year before moving forward to weaken the 2015 rule that protects the health of Americans?

    Over the past few months, EPA has been actively reviewing the posted groundwater monitoring data and the agency remains committed to reviewing the available data in the coming months. Furthermore, EPA will consider the facility-reported groundwater monitoring data as it considers any additional amendments to the 2015 CCR rule.

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the "reconsideration process," the EPA would place a 90-day stay on oil and gas companies' compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA's suspension of the rule, the EPA's rationale for pursuing this issue still raises significant questions.

    a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

The 2016 New Source Performance Standards (NSPS) built on requirements of a 2012 NSPS to reduce emissions of volatile organic compounds. The 2016 rule added requirements that the oil and natural gas industry reduce emissions of greenhouse gases. It did this through an emissions limit for methane. The updated rule also covered additional sources in the sector that were not covered in the 2012 rule. After the final rule was issued, EPA received administrative petitions seeking reconsideration of various aspects of the 2016 NSPS, as well as several petitions for judicial review of the rule. As you are aware, EPA granted reconsideration of the rule in 2017. As part of the reconsideration process, EPA has been considering comments we received on stays to the NSPS that we proposed last summer, along with comments on notices of data availability. In March of this year, we made narrow final changes to the rule based on those comments, to address two aspects of the rule that posed significant and immediate compliance concerns. For the remainder of the reconsideration of the rule, we have been focused on two broad areas:

- **One covers technical issues identified in petitions for reconsideration on the 2016 NSPS. On October 15, 2018, we proposed this technical package. The comment period closed on December 17, 2018. We held a public hearing for the proposed rule in Denver on November 14, 2018.**
- **The other area is more policy focused, including the issue of regulating greenhouse gases for the oil and gas sector. We anticipate releasing a proposed rule in the coming months.**

52. On August 15, you said that the EPA will prioritize communication with vulnerable communities about environmental contamination and exposure to hazardous substances. However, on April 27, 2018, the EPA issued guidance that stated animal waste emissions do not need to be reported under the Emergency Planning and Community Right-to-Know Act (EPCRA), as they were exempted from being reported under the Comprehensive Environmental Response, Compensation, and Liability Act through the Consolidated Appropriations Act of 2018.

    a. How does EPA's move to exempt extremely hazardous substances released by animal agriculture operations from being reported under EPCRA further your stated priority of ensuring that communities know when they are being exposed to hazardous substances?

    The April 27, 2018, Q&A explains EPA's interpretation of the relationship between the CERCLA and EPCRA statutory release reporting requirements and is consistent with the agency's prior statements interpreting EPCRA section 304(a)(2), as well as the agency's prior regulatory actions. *See, e.g.*, 52 Fed. Reg. 13,378 (Apr. 22, 1987).

b. Can you commit to responding within the next two weeks to the letter sent by all the Democrats of the Committee on Environment and Public Works concerning this guidance on May 25, 2018?

See attached letter.

53. On May 22, 2017, former Administrator Scott Pruitt created a Superfund Task Force, which was made up of 107 EPA employees[27] and headed by Albert Kelly, [28] a senior advisor and former bank executive with no experience in pollution cleanup, who was recently banned from participating in banking activity by the Federal Deposit Insurance Corporation for unspecified violations.[29] The Task Force's recommendations[30] include no mention of considerations that should be made to Superfund sites in areas prone to flooding or sea-level rise. According to an Associated Press analysis, 327 Superfund sites are vulnerable to flooding or climate-change-related sea-level rise, and 2 million people live within a mile of these sites.[31] The damage done during the most recent hurricane season emphasizes the need for the EPA to seriously consider how to address both the threat of flooding and how flooding will get worse as sea levels continue to rise.

Although the 2014 Climate Change Adaptation Implementation Plan[32] instructed cleanup managers of toxic sites to prepare for extreme rain, higher floods, and more intense hurricanes, and recommended that the EPA work to protect people from an increased risk of toxic chemical releases, this report was removed from the EPA website following President Trump's election.[33] It is therefore unclear what guidance is being provided to the public and stakeholders at Superfund sites regarding the threats posed by climate change and how these threats may change prioritization, assessments, cleanup, and other actions at these sites.

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[27] Public Employees for Environmental Responsibility. "Pruitt Superfund Plan Leaves No Fingerprints." Posted on December 20, 2017. https://www.peer.org/news/news-releases/pruitt-superfund-plans-leave-no-paper-trail.html

[28] Environmental Protection Agency. "EPA Announces Superfund Task Force Recommendations: Recommendations to Streamline and Improve the Superfund Program." As visited on January 17, 2018. https://www.epa.gov/newsreleases/epa-announces-superfund-task-force-recommendations

[29] Federal Deposit Insurance Corporation. "Order of Prohibition from Further Participation" delivered to Albert Kelly. July 27, 2017. https://www.eenews.net/assets/2017/08/28/document_gw_10.pdf

[30] Environmental Protection Agency, "Superfund Task Force Recommendations." July 25, 2017. https://www.epa.gov/sites/production/files/2017-07/documents/superfund_task_force_report.pdf

[31] Dearen, Jason, Michael Biesecker and Angeliki Kastanis. "AP finds climate change risk for 327 toxic Superfund sites." Associated Press, December 22, 2017. http://www.chicagotribune.com/lifestyles/pets/sns-bc-bc-us--flood-prone-toxic-sites-20171222-story.html

[32] Environmental Protection Agency, Office of Solid Waste and Emergency Response, "Climate Change Adaptation Implementation Plan." June 2014. As found on January 17, 2018 at https://www.documentcloud.org/documents/4059995-EPA-Superfund-Climate-Adaptation-Report.html

[33] Hersher, Rebecca. "An Absent EPA Climate Report, and a Tale of Two Flooded Superfund Sites." National Public Radio, September 29, 2017. https://www.npr.org/sections/thetwo-way/2017/09/29/553696314/an-absent-epa-climate-report-and-a-tale-of-two-flooded-superfund-sites

On December 4, 2017, a group of ten Senators requested an investigation from the Government Accountability Office (GAO) into the risks posed by natural disasters to Superfund sites and how the federal government can mitigate those risks.[34] However, the EPA should be working to address this concern immediately. At least two Superfund sites were severely flooded during Hurricane Harvey, neither of which had finalized cleanup agreements in place, and one of which resulted in the release of high levels of hazardous dioxins.[35]

a. Please provide us with the EPA's specific plan to prioritize and respond to the 327 Superfund sites that are threatened by rising seas from a warming climate. If the EPA does not currently have a plan, please provide a timeline by when one can be expected.

Since the inception of the program, Superfund remedy selection has considered durability and resilience of remedial designs to extreme weather events and site conditions. In 2014, EPA identified specific key actions to implement over the next several years to address climate change at National Priorities List sites. The plan includes technical guidance, information tools, and training to raise stakeholder awareness of considerations for ensuring remedy resilience. These guidance documents remain in effect. A key stakeholder group is EPA's remedial project managers. The Superfund program's climate change adaptation efforts are summarized and posted on EPA's website: https://www.epa.gov/superfund/superfund-climate-change-adaptation.

The 2014 actions that EPA identified were informed, in part, by the agency's Superfund remedy vulnerability analysis undertaken in 2011-2012, which resulted in an internal 2012 report, *Adaptation of Superfund Remediation to Climate Change* (EPA, 2012). This analysis (shared with AP under a FOIA request in August 2017) considered to what degree Superfund National Priorities List and Superfund Alternative Approach sites were vulnerable to flooding and sea-level rise. In the analysis, EPA identified case study candidate sites to use for assessing how project managers evaluated and responded to climate change's effects on Superfund remedial actions.

b. How is the EPA's Superfund program working to reduce risks from flooding and managing an increase in future risks from sea-level rise?

[34] Letter to the Comptroller General of the United States, Government Accountability Office, December 4, 2017. https://www.harris.senate.gov/imo/media/doc/GAO_Superfund_CC_Letter_Final.pdf

[35] Environmental Protection Agency, "EPA Statement – San Jacinto River Waste Pits Superfund Site Data." September 28, 2017. As found on January 17, 2018 at https://www.epa.gov/newsreleases/epa-statement-san-jacinto-river-waste-pits-superfund-site-data

The Superfund remedial program's climate change adaptation efforts include: training remedial project managers; providing adaptation tools; capturing and sharing best practices to ensure vulnerability assessments are conducted as needed; and ensuring that conceptual site models, remedy system designs and operations, and National Priorities List site remedies all reflect consideration of resiliency measures.

c. What lessons were learned from the flooding at two Superfund sites in Texas during Hurricane Harvey and the release of dioxins from the San Jacinto Waste Pits Superfund site?

Hurricane Harvey presented a number of challenges for protecting Superfund sites along the Gulf coast. The hurricane, which produced record rainfall and flooding in Harris County, Texas, required both pre-event planning and post-event response work. EPA employed many past practices in response to Hurricane Harvey; however, our experience underscored the need for several important actions:

- **Undertake advance site preparation; it is key for large-scale tropical events. Generally, advance warnings are available for tropical storms and hurricanes allowing for site security measures to be conducted in advance. EPA project managers contact the site's responsible entity (e.g., EPA contractor, private responsible party, state or tribal agency) and request implementation of appropriate actions to secure the site.**
- **Conduct post-storm site assessments as soon as safely possible. Using the available site information, a site-specific site assessment needs to be performed immediately upon safe site access. Depending on the site conditions, additional investigations, including soil or water sampling, may be necessary.**
- **Maintain clear communication with the surrounding communities. It is important to quickly share information regarding the status of a Superfund site with the community to effectively alleviate public health concerns.**

Hurricane Harvey's flood waters heavily affected the San Jacinto Superfund site; and several days passed before the water had receded enough to allow a full site inspection. Due to this site's location in the San Jacinto River, EPA implemented a response plan, which was in place prior to Hurricane Harvey, that detailed site inspection and response actions. The plan includes:

- **Inspection and repair contractors on standby;**
- **Coordination with nearby business on storm preparation/notification;**

- **Site monitoring using Texas Department of Transportation & site cameras;**
- **River flow monitoring using an online upstream river gauge and dam release data;**
- **Access site when safe to do so;**
- **Stock pile rock near the site for cover system repairs;**

In October 2017, following Hurricane Harvey, EPA decided to permanently remove the dioxin waste from the San Jacinto site in a Record of Decision issued by the EPA Administrator. The severity of tropical events and the frequency of repairs following storm events were key reasons for the dioxin wastes' full removal requirement.

d. What guidance is the EPA providing to responsible parties and other stakeholders about the risk of climate change and how this should impact assessment or cleanup activities at a Superfund site?

EPA's Superfund Climate Change Adaptation website (https://www.epa.gov/superfund/superfund-climate-change-adaptation) contains resources to help guide responsible parties and other stakeholders in assessing and addressing climate change's effect on Superfund cleanups. These resources include technical fact sheets designed to help project managers and other cleanup stakeholders identify, prioritize, and implement site-specific measures for increasing remedy resilience to account for climate change effects. The web content is part of EPA's ongoing efforts to raise awareness among external stakeholders of the need to ensure remedy protectiveness, including remedy resilience to extreme weather events.

In addition to the guidance found on the Superfund Climate Change Adaptation website, the agency uses other communication approaches to convey remedy resilience information to stakeholders, including webinars and engaging target audiences with technical conference presentations. For internal EPA audiences such as project managers, the agency's Intranet site, EPA's Adaptation Resource Center, provides a "One-Stop" solution to finding and using Climate Change Adaptation resources. It contains training specifically geared toward land cleanup programs, including Superfund.

e. How do flooding risks and other climate-related impacts factor into the EPA's prioritization and decision processes for Superfund sites?

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) are key parts of the basis for consideration of potential extreme weather impacts at Superfund sites.

As part of the Superfund removal process, extreme weather events are included as one of the eight factors that should be considered in determining whether a threat to public health or welfare or environment exists and that an action should be taken to mitigate that threat, which is outlined in 40 CFR 300.415(b)(2) with the following language, "Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released." This factor is usually cited with several of the other factors, but requires analyzing future weather conditions and determining how those weather conditions can affect contaminant migration.

The Superfund remedial process for planning and implementing contaminated site cleanups provides structure to consider both potential extreme weather effects and, as warranted, to take actions that increase remedy resilience. Extreme weather vulnerability analyses and adaptation planning are integrated throughout the Superfund process. For example:

- **The Hazard Ranking System, which provides the framework for EPA to determine which sites should be included on the National Priorities List, considers flooding risks.**
- **Remedial investigations characterize the extent of a site's contamination and associated risk, while the feasibility study evaluates cleanup alternatives, including the nine evaluation criteria of which the following are most relevant. (See: Remedial investigation/feasibility study and selection of remedy; 40 CFR 300.430(e)(9)(iii)):**
    - **Protective of human health and the environment;**
    - **Long-term effectiveness and permanence;**
    - **Reduction of toxicity, mobility or volume through treatment;**
    - **Short-term effectiveness;**
    - **Implementability.**

- **The record of decision (ROD) explains which cleanup alternative will be used and how it addresses these evaluation criteria. Leading up to a ROD's issuance, the EPA releases, for public comment, a proposed plan containing a preferred cleanup remedy. Following the public comment period and state and tribal review, the EPA issues the final ROD.**

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- **Remedial designs provide an opportunity to consider site vulnerabilities and adaptation measures to help maximize the remedy resilience.**
- **Five-year reviews evaluate existing remedies' protectiveness by considering whether "any other information has come to light that could call into question the protectiveness of the remedy." The EPA's 2001 five-year review guidance includes consideration of changing floodplain boundaries. Supplementary guidance issued in 2016 recommends consideration of "site changes or vulnerabilities" that may not have been apparent during remedy selection, such as "sea level rise, changes in precipitation, increasing risk of floods, changes in temperature, increasing intensity of hurricanes and increasing wildfires, melting of permafrost in northern regions, etc." See p. 4-9 of the 2001 Comprehensive Five-Year Review Guidance: http://semspub.epa.gov/src/document/11/128607 and p. 10 of 2016 Five-Year Review Recommended Template: https://semspub.epa.gov/src/document/11/100000001.pdf**

Information provided in response to a FOIA lawsuit filed by Public Employees for Environmental Responsibility indicate that the "Superfund Task Force" that you commissioned on May 22, 2017 generated no record of its deliberations beyond the final recommendations that were published on June 21.[36] This means that there was no agenda, no meeting minutes, no written drafts, and no attendance records for a task force that was working on one of your stated top priorities as EPA Administrator. The use of task forces to guide the decision-making process can lead to decisions being made in secret, away from the public eye, and outside the established public rulemaking process—something that raises serious alarms to those of us in the Senate concerned with transparent governance.

f. Please describe in detail the drafting of the Superfund Task Force Recommendations report, including EPA political and career staff involvement, and provide all draft interim reports with dates and redlines.

The Superfund Task Force was established on May 22, 2017, to provide recommendations on an expedited timeframe on how the agency can restructure the Superfund cleanup process, realign incentives of all involved parties to promote expeditious remediation, reduce the burden on cooperating parties, incentivize parties to remediate sites, encourage private investment in cleanups and sites and promote the revitalization of properties across the country. Specifically, the Administrator asked the Task Force to provide recommendations on promoting site reuse, improving the timeliness of EPA activities and promoting stakeholder

[36] "Pruitt Superfund Plan Leaves No Fingerprints." Public Employees for Environmental Responsibility. December 20, 2017. Accessed January 18, 2018. https://www.peer.org/news/news-releases/pruitt-superfund-plans-leave-no-paper-trail.html

involvement. The Task Force report containing 42 recommendations was released on July 25, 2017. More than 100 EPA career staff from Headquarters and the ten Regions volunteered and were engaged in the Task Force in developing these recommendations. Furthermore, the instructions to the Task Force were to refrain from any recommendation that involved or required a statutory change.

54. News media[37] and advocacy groups[38] have uncovered a major shift in EPA enforcement activities since January 2017. As the EPA is tasked with protecting public health and the environment, a rapid decrease in activities meant to prevent and penalize pollution is cause for significant concern.

    a. Can you provide a justification for the memo[39] that directs EPA investigators to seek special authorization from the EPA Office of Enforcement and Compliance Assurance (OECA) headquarters for requests for information in circumstances where state authorities object to the request or the interpretation of the law, the media or politicians may be interested in the request, or requests will require sampling or testing beyond that already required by law and not completed by the entity?

    The memorandum entitled *Interim Procedures for Issuing Information Requests Pursuant to the Clean Air Act § 114, Clean Water Act § 308, and RCRA § 3007* (May 31, 2017) was issued prior to the confirmation of the current OECA Assistant Administrator. OECA has not disapproved any information requests pursuant to the review process established by this memorandum. The reviews, however, gave OECA an awareness of a lack of consistency with respect to how the Agency handles information requests. OECA staff issued a memorandum entitled *Best Practices for Compliance and Enforcement-Related Information Requests* on November 21, 2018, to the Regions recommending best practices for information requests. Having established these best practices, the November 21, 2018, memorandum also withdrew the May 31, 2017, memorandum.

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[37] Lipton, Eric, and Danielle Ivory. "Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers." The New York Times. December 10, 2018. https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html

[38] Environmental Integrity Project. "Civil Penalties Against Polluters Drop 60 Percent So Far Under Trump." August 10, 2017. As visited on January 18, 2018. https://www.environmentalintegrity.org/news/penalties-drop-under-trump/

[39] Shinkman, Susan. "Interim Procedures for Issuing Information Requests Pursuant to Clean Air Act § 114, Clean Water Act § 308, and RCRA §3007." Environmental Protection Agency. May 31, 2017. Accessed January 18, 2018. https://www.documentcloud.org/documents/4324892-EPA-Clean-Air-Act-and-Its-Power-to-Request.html#document/p60/a392202

b. What is the longest and what is the average time that it takes for requests for information submitted to OECA headquarters to be approved or denied and returned to regional EPA offices?

EPA did not track the time for review of information requests under the interim procedures.

c. Did your predecessor, you or other political appointees at the EPA tell state officials or industry representatives that the EPA will cease to investigate or enforce some pollution cases? If so, please provide the dates of those conversations and how this decision was reached, as well as transcripts, if possible.

In January 2018, the OECA Assistant Administrator issued a memorandum entitled "Interim OECA Guidance on Enhancing Regional-State Planning on Compliance Assurance Work in Authorized States." That memo sets forth an expectation of joint work planning between the Region and an authorized state, to divide up enforcement work and to maintain a collaborative relationship with "no surprises." The memo contemplates situations where EPA has identified violations but the state requests to take the lead on enforcement. According to the memo, such a request must come from the state, not an industry representative. Such a request may take the form of a letter from the state commissioner to the Regional Administrator or may result from conversations among senior managers from the state and the Region. The memo sets forth the expectation that if the state takes the lead, the Region should periodically assess the state's progress. As these conversations pertain to ongoing enforcement actions, the details are confidential.

d. Have your predecessor, you or your political appointees restricted the ability of EPA enforcement officers to order pollution tests under Clean Water Act, Clean Air Act, or Resource Conservation and Recovery Act authority in any way beyond requiring them to proactively submit requests for information to OECA headquarters for approval? If so, please describe exactly how this ability has been changed since January 2017, detailing what additional steps EPA staff must take to order requests for information.

See response to Part A above.

e. Please provide a detailed list of the companies and plants that have received notices of violation under the Clean Water Act, Clean Air Act, or the Resource Conservation and Recovery Act during the final nine months of Obama Administration, but that have not yet had any EPA penalties levied upon them.

In some enforcement circumstances, the EPA issues a NOV to a facility owner/operator that the agency has identified as having one or more violations. However, not all statutes include provisions for issuance of an NOV or require issuance of an NOV. *Compare* Clean Air Act § 205(c)(1), 42 U.S.C. § 7523(c)(1) ("[T]he Administrator shall give written notice to the person to be assessed" a penalty) *with* Clean Water Act § 309, 33 U.S.C. § 1319 (no provision for written notice).

Since not all statutes include these provisions, the agency does not centrally track all NOVs in the agency's Integrated Compliance Information System (ICIS) enforcement and compliance database. Some information on NOVs is available in ICIS, but NOVs are not required to be entered. Additionally, because NOVs do not always result in the need for follow-up enforcement actions, *e.g.,* where the facility promptly returns to compliance, we do not have the ability to link NOVs to later enforcement actions.

f. Please provide a detailed list of the times and occasions where, since January 2017, the EPA has asked to delay a consent decree that was proposed during the final nine months of the Obama Administration.

EPA has not asked for a delay of any consent decree.

g. A subsidiary of Koch Industries has challenged the EPA's authority to issue requests for air pollution testing. Please provide a list of all meetings your predecessor, you or other political appointees took with Koch Industries or its subsidiaries or any entity representing these organizations, as well as with the North Dakota Petroleum Council, which has also criticized the EPA's use of requests for information.[40]

The EPA has a centralized search currently underway that we expect to yield documents relevant to your request. We anticipate delivering documents to you on a rolling basis as they become available.

[40] Ness, Ron. North Dakota Petroleum Council. March 31, 2017. Accessed January 19, 2018. https://www.documentcloud.org/documents/4324892-EPA-Clean-Air-Act-and-Its-Power-to-Request.html#document/p52/a392199

h. Please provide a detailed list of occasions where, since January 2017, the EPA withdrew or accepted lower civil monetary penalties than were recommended under the previous administration and the rationale for these decisions.

EPA's civil penalty policies provide the bases upon which EPA compromises claims and settles cases for less than the statutory maximum penalty. These policies can be found here https://www.epa.gov/enforcement/enforcement-policy-guidance-publications. The Agency negotiates penalties based on these policies. The specifics of each case are confidential enforcement information. When an enforcement action is withdrawn or not pursued, regions report that information in ICIS. However, regions are not required to certify that this information is complete and accurate and they may not always enter it in a timely manner. We have provided below the total number of enforcement actions in ICIS reported as withdrawn or not pursued. Because the decision to withdraw a case may involve an enforcement-confidential determination, we have not provided a list of cases.

Actions Reported	CY08	CY09	CY10	CY11	CY12	CY13	CY14	CY15	CY 16	CY17	CY 18
Total**	70	130	64	110	97	58	64	34	40	37	29

**** In an effort to provide complete and accurate data, we conduct continuous data quality assessments of federal compliance and enforcement data. As a result, the total number of enforcement actions reported as withdrawn or not pursued in this table updates what EPA provided in prior responses. The data is current as of December 20, 2018.**

55. On December 1, the EPA announced that it would be reversing a rule[41] proposed under the last administration that would have required that companies mining non-coal minerals (like gold, silver, copper or lead) demonstrate to the EPA that they can afford cleanup costs once the mine is closed, through mechanisms like bonds, insurance, or self-insurance.[42]
    a. Please provide the EPA's views as to who would be responsible for any necessary cleanup costs once these mines are closed, including any estimated costs to the U.S. Treasury over the next 10 fiscal years in the absence of this rule.

[41] Environmental Protection Agency. "Financial Responsibility Requirements Under CERCLA § 108(b) for Classes of Facilities in the Hardrock Mining Industry." Federal Register. January 11, 2017. Accessed January 18, 2018. https://www.federalregister.gov/documents/2017/01/11/2016-30047/financial-responsibility-requirements-under-cercla-108b-for-classes-of-facilities-in-the-hardrock.

[42] Cama, Timothy. "EPA seeks to ensure mining companies can pay cleanup costs." The Hill. December 02, 2016. Accessed January 18, 2018.http://thehill.com/policy/energy-environment/308474-epa-seeks-to-ensure-mining-companies-can-pay-cleanup-costs

In developing its final action, EPA analyzed the need for financial responsibility based on risk of taxpayer funded cleanups at hardrock mining facilities operating under modern management practices and modern environmental regulation, i.e., the type of facilities to which financial responsibility regulations would apply. That risk is identified by examining the management of hazardous substances at such facilities, as well as by examining federal and state regulatory controls on that management and federal and state financial responsibility requirements. With that focus, the record demonstrates that, in the context of CERCLA section 108(b), the degree and duration of risk associated with the modern production, transportation, treatment, storage, or disposal of hazardous substances by the hardrock mining industry does not present a level of risk of taxpayer funded response actions that warrant imposition of financial responsibility requirements for this sector.

The Regulatory Impact Analysis (RIA) for the proposed rule estimated that the projected level of taxpayer liability that would have been avoided by the proposed rule was relatively small, and that the costs of meeting the proposed financial responsibility requirements were an order of magnitude greater than the costs avoided by the federal government as a result of such requirements. EPA did not require evidence of financial responsibility under section 108(b) at hardrock mining facilities in its final action. EPA therefore did not conduct an RIA for it.

b. In a statement, former Administrator Scott Pruitt said that he was "confident that modern industry practices, along with existing state and federal requirements address risks from operating hardrock mining facilities."[43] Please detail the federal requirements that address those risks and what industry practices are in place that would prevent cleanup costs from being passed along to the American taxpayer.

With respect to federal regulatory requirements, EPA discusses these in the Federal Register preamble to its final action (see 83 FR 7565 et seq.). With respect to industry practices, EPA evaluated information received in comments on the proposed rule that argued that new facilities are specifically designed, constructed, operated and closed in a manner to prevent environmental degradation and to avoid the types of problems that were caused by past practices. Further specifics can be found at 83 FR 7577-80.

[43] "EPA Determines Risks from Hardrock Mining Industry Minimal and No Need for Additional Federal Requirements." Environmental Protection Agency. December 1, 2017. Accessed January 19, 2019. https://www.epa.gov/newsreleases/epa-determines-risks-hardrock-mining-industry-minimal-and-no-need-additional-federal

c. Please provide my office with any memos, meeting notes, emails, or other documentation on this proposed rule reversal during the year of 2017 between the Office of the Administrator or political appointees, including your predecessor, you, and any one or combination of the following groups: the Western Governors' Association, the National Mining Association, the state of Utah, the state of Arizona, or the state of Idaho.

The agency is currently working on responding to a FOIA request from Earth Justice regarding the same information. EPA expects that it will take several months to compile the information to respond to the FOIA and the Congressional requests. We will update the Committee when we have this information.

56. Since 2010, the EPA had argued that construction undertaken by the DTE Energy Company at DTE's Monroe Power Plant in Michigan, one of the largest coal-powered plants in the country, required a preconstruction permit under the new source review (NSR) program. The EPA filed an enforcement action as a result of projected emissions increases of sulfur dioxide and nitrogen that would have resulted from this facility overhaul.[44] On Dec. 7, 2017, former Administrator Pruitt issued a memo reversing the position the EPA had taken since 2010 on pollution management for DTE Energy.[45] The memorandum states that the EPA will no longer "initiate enforcement in such future situations unless actual post-project emissions data indicate that a significant emissions increase or significant net emissions increase did in fact occur." The memo also details how the EPA will now apply the NSR regulations in a way that defers to the "intent of an owner or operator to manage emissions," rather than basing decisions solely on quantifiable information like the projections of future emissions.

a. Please provide a justification for this regulatory change from December 2017, which could be read as preventing the EPA from conducting any enforcement activities until after companies release dangerous pollutants into American communities.

The December 7, 2017 Memorandum from Administrator Pruitt that you identified was not a regulatory change. The memorandum explains, among other things, that it "is not a rule or regulation" and that it does not "change or substitute for any law, regulation, or other legally binding requirement and is not legally enforceable" (p. 2). Rather, the

[44]Evans, Carlos. "U.S. v. DTE Energy Co. (DTE II)." American Bar Association. Accessed January 18, 2018. https://www.americanbar.org/groups/environment_energy_resources/committees/dch/aq/20170613_us_v_dte_energy_co.html

[45] Pruitt, E. Scott. "New Source Review Preconstruction Permitting Requirements: Enforceability and Use of the Actual-to-Projected-Actual Applicability Test in Determining Major Modification Applicability." Environmental Protection Agency. December 7, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-12/documents/nsr_policy_memo.12.7.17.pdf

memorandum sought to resolve uncertainty related to the application of certain existing requirements in the NSR regulations at issue in two appellate court decisions from 2013 and 2017, respectively, identified in the memorandum. In particular, the memorandum communicated the EPA's intended approach, for future matters, to the application of the procedures in the NSR regulations that apply to sources using "projected actual emissions" in determining NSR applicability and the associated pre- and post-project source obligations. Administrator Pruitt explained in the memorandum that he believed the memorandum was necessary to provide greater clarity for sources and states implementing the NSR regulations.

b. Will you continue to pursue changes to new source review regulations?

Yes. Consistent with presidential priorities, the EPA continues to review the NSR permitting program regulations and associated policies for opportunities to clarify and streamline requirements while maintaining environmental protections.

c. How does the EPA plan to assess the intent of an owner or operator to manage future emissions from the project on an ongoing basis to prevent a significant net emissions increase from occurring?

The NSR regulations contain recordkeeping, monitoring and reporting requirements that are designed to ensure the integrity and validity of pre-project applicability analyses. The regulations require owners or operators to perform a pre-construction applicability analysis to determine whether a proposed project would result in a significant emissions increase and a significant net emissions increase, thus triggering the requirement to obtain an NSR permit. The regulations also specify that all relevant information be used in determining the projected actual emissions for use in that analysis. As explained in the December 7, 2017 Memorandum, EPA intends to apply the NSR regulations such that this could include information related to the intent of an owner or operator to manage future emissions from an affected unit after the project that could be considered along with other relevant information in making an emissions project. The NSR regulations further provide that, when certain criteria are met, certain information shall be documented, maintained, and in certain cases submitted to the reviewing authority prior to beginning actual construction. The NSR regulations also contain post-project monitoring, recordkeeping and reporting obligations that can apply for a period of 5 or 10 years following a project, depending on the type of source involved. These post-project monitoring, recordkeeping

and reporting provisions can provide a means to evaluate whether a project actually did result in a significant emissions increase as well as the validity of the source's pre-project determination that there would be no such increase.

d. As the memo states that "decisions about how to proceed in ongoing enforcement matters will be made on a case-by-case basis," please provide a list of any other NSR enforcement cases that will no longer be pursued under this new standard and the status of the decision-making process on any case that has not yet been resolved.

It is not our practice to comment on individual enforcement matters.

e. Does the EPA now intend to no longer pursue enforcement of its projection regulation in any cases where source owners or operators are determined to have failed to perform a required pre-project applicability analysis or failed to follow the calculation requirements of the regulations, or only in the DTE Energy case? If so, what is the EPA's justification for this decision, and how will the agency continue to ensure that air quality is protected?

Decisions about how to proceed in ongoing enforcement matters will be made on a case-by-case basis in accordance with the December 2017 Memorandum. This includes taking enforcement action on a case-by-case basis when a source owner or operator fails performs a pre-project NSR applicability analysis or fails to follow the calculation procedures in the regulations.

f. Do you intend to notify and consult the public on this important issue through open comment and public meetings advertised in the Federal Register, as required by the Administrative Procedures Act?

The December 2017 Memorandum communicated how the EPA intends to apply certain aspects of the applicability provisions of the NSR regulations. As explained above, the guidance contained in that memorandum is an interpretive rule that does not constitute a legislative rule, regulation, or other legally binding requirement under the Administrative Procedure Act. Nor does the guidance change or substitute for any law, rule or regulation, or other legally binding requirement. For these reasons, the Administrative Procedure Act does not require the EPA to provide for either open comment or public meetings on this issue, as the question wrongly assumes. The EPA does not currently plan to pursue rulemaking or other action requiring public notice and comment on the specific issues addressed in the memorandum.

57. Former EPA Administrator Scott Pruitt issued a memo preventing anyone receiving an EPA grant from serving on scientific advisory panels.[46] As a result, many expert researchers can no longer provide advice on technical questions and scientific best practices to the EPA. In answers provided to me by Administrator Pruitt on May 10, 2018, he indicated that he relied on the use of "Administrator's discretion" to enact this directive. However, no guidance was issued on how to prevent improper conflicts of interest for panel appointees who have worked for companies or trade groups (either directly or as a contracted lobbyist) that could be subject to EPA regulations.[47]

    a. Will you reverse this directive?

    There are no plans to reverse the directive.

    b. Please provide a list of Advisory Panel members who have worked in or lobbied for industries regulated by the EPA over the five years preceding their nomination to the panel, noting in which industries and what capacity the member worked.

    Information about current members of EPA's federal advisory committees can be found here: https://www.epa.gov/faca/all-federal-advisory-committees-epa. To the extent you seek a more extensive inquiry, please reach out to EPA's Office of Congressional and Intergovernmental Relations.

    c. Please provide a rationale for discerning between this financial conflict of interest and the alleged conflict of interest possessed by scientists who have received EPA grant money.

    Every candidate for a federal advisory committee position must disclose to EPA potential conflicts of interest. The directive builds on that requirement by further ensuring that any person serving on an EPA federal advisory committee be as fully independent as possible from the agency. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given.

    d. Please describe the ethics review process for Advisory Panel members with financial ties to industries regulated by the EPA.

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[46]Pruitt, E. Scott. "Strengthening and Improving Membership on EPA Federal Advisory Committees." Environmental Protection Agency. October 31, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-10/documents/final_draft_fac_directive-10.31.2017.pdf

[47] Dennis, Brady, and Juliet Eilperin. "Scott Pruitt blocks scientists with EPA funding from serving as agency advisers." The Washington Post. October 31, 2017. Accessed January 18, 2018. https://www.washingtonpost.com/national/health-science/scott-pruitt-blocks-scientists-with-epa-funding-from-serving-as-agency-advisers/2017/10/31/959d91ac-be5a-11e7-959c-fe2b598d8c00_story.html?tid=a_inl&utm_term=.908e2b75273c

Information responsive to this question can be found in EPA guidelines and public documents, including:

- **https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees**
- **https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf**
- **https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument**

e. Please provide an explanation on how existing conflict of interest policies for EPA advisory boards were insufficient to prevent scientific researchers receiving EPA grants from being unethically partial or biased.

The directive builds on preexisting policies by further ensuring that any person serving on an EPA federal advisory committee be as fully independent as possible from the agency. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given.

58. Since January 2017, more than 700 EPA employees have left the agency or been forced to leave or retire, and more buyouts are expected. This number includes about 200 scientists, nearly 100 environmental protection specialists, and nine department directors.[48] The EPA, which is responsible for protecting the health and environment of the American people, is now at its smallest size since the last year of the Reagan Administration—despite the fact that the U.S. population has grown by 80 million people since that time.[49]

    Scientists are not being replaced, accounting for only 5 percent of the new hires this year. At the same time that the EPA is hemorrhaging technical expertise, the number of political appointees and administrator is disproportionately increasing. The Office of Chemical Safety and Pollution Prevention hired seven people and lost 54, and the Office of Water hired one person and lost 26, but the Administrator's office has grown by 20 people.

    a. Please provide data on the number of political appointees hired at the EPA since January 2017, and on political appointees hired under the three preceding EPA administrators.

[48] Friedman, Lisa, Marina Affo, and Derek Kravitz. "E.P.A. Officials, Disheartened by Agency's Direction, Are Leaving in Droves." The New York Times. December 22, 2017. Accessed January 18, 2018. https://www.nytimes.com/2017/12/22/climate/epa-buyouts-pruitt.html

[49] Cama, Timothy. "EPA staffing falls to Reagan-era levels." The Hill. January 09, 2018. Accessed January 18, 2018. http://thehill.com/policy/energy-environment/368090-epa-staffing-hits-reagan-levels

The number of political appointees hired at the EPA since January 21, 2017 is 96.

The chart below contains the number of political appointees with an accession/ start date during the specified time periods and does not account for political appointees that may already be on-board during those timeframes.

Political Appointees Hired

Date Range	Administrator	Count
01/26/2009 - 02/14/2013	Jackson	99
02/15/2013 - 07/18/2013	Perciasepe	10
07/19/2013 - 01/20/2017	McCarthy	65

b. Please provide data on the number of career EPA staff since January 2017 and the number of career staff under the three preceding EPA administrators. What is the current number of Full-Time Equivalent (FTE) staff at the EPA?

Please see the response to question 28 for the current number of Full-Time Equivalent staff at EPA.

Below is the number of career EPA staff (all employees except experts, consultants, and political appointees) hired 01/21/2017 – 08/21/2018 and the number of career EPA staff (all employees except experts, consultants, and political appointees) hired under the three preceding EPA administrators.

Career Employees Hired

Date Range	Administrator	Count
01/26/2009 - 02/14/2013	Jackson	1624
02/15/2013 - 07/18/2013	Perciasepe	28
07/19/2013 - 01/20/2017	McCarthy	2275
01/21/2017 – 08/21/2018	01/21/2017 – 08/21/2018	293

c. Former Administrator Pruitt provided data to the press indicating that the EPA could cut its staff by 47 percent by 2021[50] -- can you commit to reversing this trend, or alternatively cutting the number of political appointees by an equal amount by the same time? If not, why not?

[50] Bedard, Paul. "Success: EPA set to reduce staff 50% in Trump's first term." Washington Examiner. January 09, 2018. Accessed January 18, 2018. http://www.washingtonexaminer.com/success-epa-set-to-cut-nearly-50-of-staff-in-trumps-first-term/article/2645362

The Agency is working to carefully manage its workforce to support progress toward the goals and objectives of the EPA's FY 2018-2022 Strategic Plan.

59. News reports indicate that the EPA is now using a business efficiency system known as "lean" in agency activities.[51] The "lean" management philosophy was developed to minimize waste within a manufacturing system, and originated within the Toyota Production System in the 1990s. I am deeply concerned that the integration of "lean" philosophy into environmental protection has resulted in the prioritization of industry over public safety. A former EPA employee said that the use of "lean" principles required her to curb requests for further information regarding pollution on Superfund sites.[52]

    a. Does the EPA agree with the conclusion drawn in the Arizona "lean" method instructional video[53] that the "customer" of environmental protection work is not the American taxpayer, but actually the company being regulated? If so, how does that correspond to the EPA's mission to protect public health and the environment?

    EPA's utilization of Lean is not new. EPA has used Lean to improve its processes for over 10 years. A list of Lean projects at EPA through fiscal year 2017 is attached to this response. In fiscal year 2018, EPA has focused on developing a management system that supports lean process improvement efforts and promotes continuous problem identification and the use of a range of approaches to solving problems. The Lean method is just one type of problem solving approach. Delivering EPA's important mission in a more effective and efficient manner for American taxpayers is the explicit goal of the EPA Lean Management System.

    b. Has the "lean" method been implemented at any EPA projects, including at Superfund sites? If so, please provide a list of which projects and at what time the implementation directive occurred.

    As a result of EPA's continued utilization of Lean, several projects have been undertaken in fiscal year 2018 for the following processes: acquisitions, Freedom of Information Act responses, environmental permitting, Toxic Substances Control Act Premanufacture Notice Final Determinations, Superfund Sitewide Ready for Anticipated Use

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[51] Stern, Marcus. "EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites." The Weather Channel. Accessed January 18, 2018. https://weather.com/science/environment/news/2017-12-19-epa-scott-pruitt-lean-superfund-sites

[52] Ibid.

[53] Arizona Management System. "Knowing your Customer." Office of the Arizona Governor Doug Ducey. Accessed January 18, 2018. https://ams.az.gov/knowing-your-customer

(SWRAU) process, and the brownfields Ready for Anticipated Use process.

With regard to the Sitewide Ready for Anticipated Use (SWRAU) effort:

- **SWRAU is an agency performance measure that was developed to comply with EPA's responsibility to report long-term, outcome-based accomplishments under the Government Performance and Results Act. The SWRAU measure reflects the importance of considering future land use as part of the cleanup process by tracking the number of sites meeting certain criteria.**
- **In March 2018, EPA held a Lean event to focus on increasing the number of Superfund sites that meet the SWRAU performance measure each year. In addition to EPA HQ participation, the lean event was attended by representatives from EPA Regions 1-9, and from the states of Delaware, Maryland, Oklahoma, and Virginia. Outcomes from the event include: updating the current SWRAU Best Practices document to include ideas discussed during the Lean event; forming the National SWRAU Workgroup; creating a visual management tool to track SWRAU sites; developing a form to track performance improvements; and reviewing legacy sites that have reached construction completion but not SWRAU.**

In addition, EPA has used Lean approaches at the following Superfund sites:

- **In August 2017, EPA Region 9 began talks with Atlantic Richfield Co. to discuss holding a Lean event at the Leviathan Mine Site, an abandoned open-pit sulfur mine on the eastern slope of the Sierra Nevada in Alpine County, California. The purpose of the application of Lean at this site was to examine the Remedial Investigation/Feasibility Study (RI/FS) schedule along with the Administrative Order on Consent (AOC) deadlines and form the most efficient process to meet the expectations of the stakeholders and RI/FS/AOC requirements.**
- **In November 2017, EPA met with the Washoe Tribe to discuss the potential Lean event. EPA Region 9's Leviathan Lean team met with other Leviathan Lean team members. After subsequent check-ins with the Washoe Tribe, the Tribe decided that they did not have time to commit to the Leviathan Lean process, as the Leviathan Site Characterization Report had recently been submitted.**

c. Please detail employment information, including title, for Veronica Garcia, who has been reportedly teaching "lean" management to EPA staff.[54]

Veronica Garcia Darwin is a Senior Advisor to EPA's Office of Land and Emergency Management. Ms. Darwin is responsible for implementing the recommendations of the EPA Superfund Task Force (https://www.epa.gov/superfund/superfund-task-force). The 2018 update on EPA's progress on the Superfund Task Force's recommendations was published on July 23, 2018 (https://semspub.epa.gov/work/HQ/197209.pdf). Prior to joining EPA, Ms. Darwin spent more than 18 years working extensively on environmental waste issues, including roles as a compliance officer in EPA Region 9 and as deputy division director of the Arizona Department of Environmental Quality's Waste Divisions Program.

d. Please provide any documents related to how the "lean" principles are being integrated into Superfund site management.

In October 2015, EPA held a Lean kaizen event for the Applicable or Relevant and Appropriate Requirements (ARARs) identification and selection process. An outcome of the Lean event was to pilot a best practice process for two years and then evaluate its implementation. In October 2017, EPA issued a memo outlining the pilot process. The memo is attached to this response. The agency expects to start evaluating the pilot in October 2019.

60. In February 2017, President Trump directed agencies to establish task forces that would develop a list of regulations that should be targeted for elimination, edit, or replacement. While former Administrator Pruitt issued an agency-wide memorandum of implementation that included the names of EPA staff who would lead and work on the Regulatory Reform Task Force on March 24, 2017,[55] no further details about the task force or its process have been made public. The president's Executive Order required that this task force submit a progress report to the Administrator by mid-May 2017.[56]

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[54] Stern. "EPA Using Controversial Process to Push Cleanup of America's Most Toxic Sites."
[55] Pruitt, E. Scott. "Executive Order 13777: Enforcing the Regulatory Reform Agenda." Environmental Protection Agency. March 24, 2017. Accessed January 18, 2018. https://www.epa.gov/sites/production/files/2017-04/documents/regulatory_reform_agenda.pdf
[56] Executive Office of the President. "Enforcing the Regulatory Reform Agenda." Federal Register. February 24, 2017. Accessed January 18, 2018. https://www.federalregister.gov/documents/2017/03/01/2017-04107/enforcing-the-regulatory-reform-agenda

a. Please provide the May progress report for the Regulatory Reform Task Force, any subsequent progress reports, and the schedule by which further progress reports will be requested.

The May 2017 progress report was an internal, deliberative agency document that was not produced publicly. Nonetheless, the work of the Regulatory Reform Task Force, including agendas for public meetings and teleconferences, can be found at https://www.epa.gov/laws-regulations/regulatory-reform. For other document requests, please reach out to EPA's Office of Congressional and Intergovernmental Relations.

b. Please provide the calendar and schedule for the Regulatory Reform Task Force members, dating back to March 24, 2017.

Per E.O. 13777, EPA hosted a series of public meetings and teleconferences to inform the Regulatory Reform Task Force. Information on these public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

c. Please provide any documents relating to or criteria being used by the Regulatory Reform Task Force to determine which regulations it will focus on.

The Regulatory Reform Task Force has drawn from the thousands of comments in response to a *Federal Register* notice seeking input on regulations that may be appropriate for repeal replacement or modification. The Task force has also been informed by public meetings and teleconferences discussing regulatory reform. EPA's regulatory reform efforts, including the work of the Regulatory Reform Task Force, and information on the meetings and teleconferences, including agendas, is publicly available at https://www.epa.gov/laws-regulations/regulatory-reform.

Can you commit to a more transparent process for task forces going forward, including publishing of planning documents, meeting minutes and attendees, reports, and timelines for decision-making?

Some discussions among the Regulatory Reform Task Force may be internal or pre-decisional agency actions protected from disclosure. Nonetheless, information involving the Regulatory Reform Task Force such as public meetings and teleconferences, including agendas, is accessible through EPA's Regulatory Reform webpage: https://www.epa.gov/laws-regulations/regulatory-reform.

Senator Sanders

65. In response to my questions for the record from your nomination hearing to become the EPA's Deputy Administrator, you committed to "relying on independent scientists with relevant expertise to evaluate and review the data that EPA uses when making decisions related to the implementation of environmental regulations."

    This commitment stands in opposition to then-Administrator Pruitt's October 31, 2017 directive to prohibit scientists who receive EPA grants from serving on EPA Federal Advisory Committees (FAC). As we know from administrative records released on May 23, 2018 in response to a federal court order, the EPA did not solicit or receive input from scientific or technical organizations while formulating this rule. Instead, the EPA relied mostly on input from political and industry groups. Given that the EPA did not rely on independent scientists with relevant expertise when formulating this October 31 directive, and that the directive has and will continue to block independent scientists with relevant expertise from evaluating and reviewing the data used to make regulatory decisions, please describe your plan, including a timeline, for reversing then-Administrator Pruitt's directive regarding membership on EPA FACs.

    There is no plan to reverse the directive. The directive's beneficial purpose is to strengthen existing membership on EPA Federal Advisory Committees by improving member independence, diversity, and breadth of participation on these committees. The directive builds on measures already in place to address potential conflicts of interest.

66. Your commitment to rely on independent scientists also contradicts then-Administrator Pruitt's appointment of many representatives from the regulated fossil fuel and chemical industries to these commissions.

    Given that these industry representatives are not independent, and their scientific conclusions are not always peer-reviewed, please describe your plan, including a timeline, for replacing them with truly independent scientists who will ensure the EPA's use of peer-reviewed scientific studies to support the EPA's mission to protect human health and the environment.

    The Agency is committed to selecting qualified, independent, and knowledgeable individuals to serve on advisory committees. All EPA employees, including Special Government Employees, must abide by federal ethics laws and regulations, including the Standards of Ethical Conduct for Employees in the Executive Branch, 5 C.F.R. Part 2635, and the conflict of interest statutes codified in Title 18 of the United States Code. Agency policies, including ethics-related and conflict of interest guidelines, can be found at:

    - https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees

- https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf
- https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument

67. On April 24, 2018, then-Administrator Pruitt proposed the "Strengthening Transparency in Regulatory Science" (STRS) rule to bar the EPA from considering important peer-reviewed public health studies in making decisions about vital protections for human health and the environment. Emails obtained by the Union of Concerned Scientists show that EPA officials significantly altered this rule prior to its release in order to avoid imposing "enormous burdens on industry."

    As you know, the proposed rule gives the EPA Administrator unilateral authority to determine what constitutes "pivotal regulatory science." You are not a scientist, so any use of this unilateral authority would constitute a violation of your pledge to rely on independent scientists when making decisions related to the implementation of environmental regulations.

    Were you aware that EPA officials adjusted this proposed rule to avoid imposing "enormous burdens on industry"? If so, please provide a timeline for withdrawing the STRS rule. If not, do you commit to investigate the regulatory capture inherent in the STRS rule?

    The proposed rule *Strengthening Transparency in Regulatory Science* seeks to ensure that the regulatory science underlying EPA's actions is publicly available in a manner sufficient for independent validation. Where available and appropriate, EPA will use peer-reviewed information, standardized test methods, consistent data evaluation procedures, and good laboratory practices to ensure transparent, understandable, and reproducible scientific assessments. The public comment period for this rule was open from April 30 to August 16, 2018. EPA also held a public hearing in July to get feedback on the proposed rule. EPA is now reviewing public comments and will follow the agency's regulatory process.

68. In response to my questions for the record from your nomination hearing to be the EPA's Deputy Administrator, you stated that you were unfamiliar with the EPA's December 2016 report on hydraulic fracturing's (fracking) impacts on drinking water. In this report, the EPA found "hydraulic fracturing activities can impact drinking water resources under some circumstances." You committed to working with career EPA employees on the issue. You also stated that you believe that "all of the environmental laws function better with the information in the hands of the communities most-impacted."

    a. Now that you have had ample time to work with career EPA employees on the issue, do you concur with the conclusions of the EPA's final report on fracking and drinking water?

EPA's study of the potential impacts of hydraulic fracturing on drinking water in the United States was conducted with active engagement with states, tribes, industry, and multiple non-governmental organizations. The study produced over 25 peer-reviewed reports and journal publications that advanced understanding of hydraulic fracturing activities. The study culminated with the publication of EPA's December 2016 assessment entitled "Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing water cycle on drinking water resources in the United States." That assessment was based upon the latest science available at the time and cites over 1,200 sources of data and information. Those conclusions are being used by federal, tribal, state, and local officials; industry; and the public to better understand and address vulnerabilities of drinking water resources to hydraulic fracturing activities.

b. What further actions are you taking with career employees to regulate fracking's impacts on water quality?

The EPA is working with states, the oil and gas industry, and stakeholders such as the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission to ensure that oil and gas development occurs safely and responsibly to protect drinking water resources. Consistent with the EPA's Memorandum to the EPA Regions and State and Tribal Underground Injection Control (UIC) Program Directors in February 2014 and an associated technical "Permitting Guidance (UIC Program Guidance #84) for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels," the EPA continues to issue Safe Drinking Water Act UIC permits, where EPA directly implements the UIC Program, for the injection of diesel fuels for hydraulic fracturing related to oil and gas operations. Additionally, in May 2018, the EPA initiated a study to evaluate approaches to managing both conventional and unconventional oil and gas extraction wastewaters generated at onshore facilities. Currently, the majority of this wastewater is managed through underground injection, where that water can no longer be accessed or used. A key component of the study is to engage with states, tribes, and stakeholders, including industry and non-governmental organizations, to facilitate discussion and solicit information on topics surrounding produced water management.

c. What actions have you taken to ensure that impacted communities have information about the ways in which fracking may be impacting their water quality?

EPA actively engages with a very wide range of stakeholders to better understand hydraulic fracturing activities. Throughout the conduct of the hydraulic fracturing drinking water study, EPA has engaged with states, tribes, industry, and others to both collect information and to discuss the results of our findings. For example, the EPA recently launched a new study to look at how the EPA, states, tribes, and stakeholders regulate and manage wastewater from the oil and gas industry. This fall, the EPA will conduct a public meeting to report on what the Agency has learned to date and provide stakeholders with

an additional opportunity to provide input. Additionally, where the EPA directly implements the Safe Drinking Water Act Underground Injection Control Program, permitting decisions are subject to public notice and comment, affording communities with the opportunity to learn more about a proposed project within their community and submit comments to EPA for consideration. The EPA is also currently working to stand up a web-based compliance assistance center for stakeholders, including the public, to better understand the oil and natural gas sector and the regulations that ensure protection of water quality. Other EPA activities are highlighted on the Agency's web site for unconventional oil and gas activities (https://www.epa.gov/uog).

69. In response to my questions for the record from your nomination hearing to be the EPA's Deputy Administrator, you stated that you had not been briefed on the EPA's Environmental Justice 2020 plan but looked forward to working with career agency employees on its implementation.

    Have you been briefed on the plan? If you have been briefed, please describe how you are working to ensure that the EPA's Environmental Justice 2020 plan is fully implemented. If you have not been briefed, please include a timeline for when you will receive this important information. Please also include a timeline for then fully implementing the Environmental Justice 2020 plan.

EPA continues to further environmental justice through implementation of important strategic priorities within the Agency, through the leadership of the Interagency Working Group on Environmental Justice and through continued direct support of and engagement with community-based organizations throughout the United States. EPA has taken meaningful steps towards implementing the Environmental Justice 2020 plan. For example, earlier this year the Office of Policy issued an Agency-wide memorandum containing numerous environmental justice strategic priorities. These priorities were purposefully aligned with key elements of the EJ 2020 Action Agenda. Examples of this alignment are a continued focus on engaging with states, tribes and other governmental partners to support their interest in integration of environmental justice into their programs; developing metrics to track the meaningful implementation of environmental justice considerations and tools into program activities throughout EPA; advancing our ability to engage directly with vulnerable and overburdened communities to provide tangible improvements that meet their needs; and making progress on key national measures of EPA's impact on issues critical to furthering environmental justice.

Moreover, this past year EPA also released our annual EJ report, which contains numerous examples of how EPA has continued to make significant progress on environmental justice strategic priorities from across our regional and national program offices. We have also recently formed an agency-wide senior decision-making body for environmental justice and community revitalization efforts called

the Environmental Justice and Community Revitalization Council. As we continue to implement these important steps, we are in the process of evaluating the EJ 2020 Action Agenda in whole in preparation for an update to the multi-year strategic plan. We estimate this process to conclude during the winter of 2018/19.

70. As you know, many of former Administrator Pruitt's proposed rulemakings have generated lawsuits from outside groups due to their questionable legality. You recognized the questionable legality of at least one of these rules in reversing former Administrator Pruitt's decision to lift the sales limits on so called "glider trucks." Given that many of former Administrator Pruitt's rules and proposed rulemakings were based on the same questionable legal ground as the glider trucks rule, please describe your plan, including a timeline, for withdrawing all other proposed rulemakings signed by former Administrator Pruitt.

    EPA does not have a comprehensive plan to rescind "all other proposed rulemakings signed by former Administrator Pruitt."

    The decision to withdraw the conditional no action assurance regarding small manufacturers of glider vehicles was a decision specific to the facts and law relevant to that matter. As explained in the July 26, 2018 memo, "[a]fter consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion." EPA will similarly continue to consider all relevant factors, including legal authority, as we take regulatory action.

71. As you know, the EPA Office of Investigator General (IG) has opened nine investigations into former Administrator Pruitt's ethical conduct. Given that several of these investigations are related to potential conflicts of interest that could have influenced Mr. Pruitt's conduct and decisions as EPA Administrator, will you commit to suspending all proposed rulemakings he signed until the EPA IG concludes all its investigations?

    EPA is committed to cooperating with the IG. EPA takes very seriously the findings or recommendations made by the IG with regard to EPA's agency actions, including rulemakings.

72. During this hearing, Chairman Barrasso asked you the following question:

    The state of Washington is abusing section 401 of the Clean Water Act in order to block the development of coal export terminal in that state. The terminal would

ship coal from Wyoming, Montana, Utah, and Colorado to markets in Asia. The state of Washington has cited reasons for objecting to the terminal that have nothing to do with water quality, yet they're using section 401 of the Clean Water Act. I introduced a bill this week to address this problem, we can't allow states to block the export of American energy, so will you commit to working with me to identify both legislative and regulatory solutions to stop these abuses?

You responded by committing to helping to stop these "abuses."

The state of Washington found that construction of this terminal would permanently destroy more than 30 acres or wetlands, and that operation of this terminal would deposit coal dust to nearby surviving wetlands. As you may know, coal dust has a significant and negative impact on the ecological functions of wetlands.

Do you consider the state of Washington's decision to prevent the permanent destruction and environmental contamination of its wetlands to be an "abuse" of its authority under the Clean Water Act to ensure permitted activity will comply with applicable water quality standards? If not, do you commit to informing Chairman Barrasso that you will not help him reverse the decision made by the state of Washington?

Section 401 of the Clean Water Act (CWA) provides states with an opportunity to evaluate and address aquatic resource impacts of federally-issued licenses and permits. It is a direct grant of authority from Congress to the states. The statute does not provide the EPA with the authority to review, approve, or deny state section 401 certification programs or individual state certification decisions. The EPA supports the appropriate use by the states of their section 401 authority consistent with the goals of the CWA and promotes timely coordination, planning, and review.

Senator Whitehouse:

73. I appreciate the steps you've already taken to right the ship at EPA. While I expect many of the ethical lapses during Scott Pruitt's tenure will not continue after his departure, his behavior exposed systemic failures within EPA that need to be addressed. Specifically, I still wait for complete answers about:

    a. Who was responsible for prohibiting EPA scientists from presenting their work at a Narragansett Bay Estuaries Project conference in October last year;

As explained in our December 4, 2017 letter to you, the EPA understands your concerns about the cancellation of planned presentations at the October 23, 2017 State of Narragansett Bay Estuary Program workshop. We have since put in place procedures to prevent such an occurrence in the future. Senior agency leadership – both political and career – have been assured that they have the authority to make decisions about event participation.

b. Why, after multiple requests, I have never received a copy of Assistant Administrator William Wehrum's recusal statement, a statement which under ethics rules should have been completed many months ago;

Please find attached a copy of Mr. Wehrum's recusal statement.

c. Who was responsible for the no-bid contract EPA gave to Definers, a Republican opposition research firm associated with dark money efforts behind Scott Pruitt's confirmation;

As explained in our April 27, 2018 letter to you, in July 2017 the EPA began acquisition planning to procure real-time coverage of media stories for specific topics, event, and announcements relevant to the agency. After determining that Definers would be able to provide that real-time coverage, and that such coverage for specific events was not provided by other companies, the EPA awarded a purchase order to Definers for those services on December 7, 2017. At Definers' request, the EPA terminated the awarded purchase order on December 19, 2017, before any work was initiated. The EPA incurred no costs from the date of award to the date of termination.

As explained in our April 27, 2018 letter and discussed with your staff, the EPA has a centralized search for records related to Definers currently underway. We have delivered records to your staff on April 27, 2018, May 10, 2018, July 23, 2018, and August 23, 2018, and we will continue to deliver responsive documents on a rolling basis as they become available.

d. Why EPA has never disclosed copies of Bob Murray's action plan, either through FOIA or in response to my requests, when a copy of that plan addressed to Scott Pruitt was disclosed under FOIA by the Department of Energy;

As explained in our November 28, 2017 and February 1, 2018 letters to you, the agency has conducted centralized Outlook searches of EPA officials that would have been engaged on this topic. These searches did not capture any instances of "action plan." We are conducting additional searches and continuing to locate and review documents relating to the Clean Power Plan, including those that may yield documents responsive to your request. We will be in touch if and when responsive documents are available for release.

e. Why the formaldehyde assessment has been blocked from moving through the normal review process.

As explained in our July 5, 2018, response to your May 17 letter, the EPA's Integrated Risk Information System (IRIS) program informs decisions under a number of statutes, including the Comprehensive Environmental Recovery, Compensation, and Liability Act, the Safe Drinking Water Act, the Clean Water Act, the Clean Air Act, and the Toxic Substances Control Act. The EPA is committed to ensuring that the IRIS Program provides high-quality, health-based assessments that adhere to the highest standards of scientific review. Prior to releasing any assessment, the EPA conducts a rigorous and robust review process to ensure agency decisions to protect human health and the environment are based on high quality science. The agency continues to discuss the formaldehyde assessment internally and has no further updates to provide at this time.

If you can't commit to providing full answers to these inquiries within two weeks of your response to this question, please explain the continued delay.

74. The hearing at which you testified was entitled "Examining EPA's Agenda: Protecting the Environment and Allowing America's Economy to Grow." You and I had a chance to discuss two climate change-related issues that touch on both of these subjects. The first of these subjects is the carbon bubble, which refers to the risk that too much investment in the fossil fuel industry will lead to a situation in which many fossil fuel assets wind up stranded, setting up a chain reaction economic crash in which total losses may equal or exceed those of the 2008 financial crisis. The economic literature we discussed all suggests that the best way to avoid such a crash is to begin decarbonizing our economy now rather than later. The Bank of England happens to agree with this view as well. In light of this, please explain how:

a. EPA's plan to repeal the Clean Power Plan and replace it with something far weaker is consistent with sending the sort of clear signal economists and policy makers recommend that we will begin decarbonizing our economy now in order to reduce the future risk of stranded fossil fuel assets provoking an economic crash;

The EPA proposed to repeal the CPP on October 16, 2017 (82 FR 48035). In that proposed repeal, EPA asserted that the best system of emission reduction (BSER) in the CPP exceeded EPA's authority under CAA section 111 because it established the BSER using measures that applied to the power sector as whole, rather than measures that apply at and to, and can be carried out at the level of, individual facilities. On August 21, 2018, the administrator issued a proposed replacement rule (the Affordable Clean Energy Rule) that he believes is more consistent both with the authorities under 111(d) and the types of technologies currently available to reduce CO_2 emissions at existing coal-fired power plants.

b. EPA's plan to roll back fuel economy standards for cars is consistent with sending the sort of clear signal economists and policy makers recommend that we will begin decarbonizing our economy now in order to reduce the future risk of stranded fossil fuel assets provoking an economic crash.

The EPA and the Department of Transportation's Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule, issued on August 1, 2018, projects economic benefits, including a reduction in regulatory costs, of more than $252 billion (present value estimate, 3% discount rate) through model year 2029, and societal net benefits of $176 billion (present value estimate, 3% discount rate). The corresponding estimates using 7% discount rates are $192 billion and $131 billion. The agencies' proposal reflects a balance of a number of factors, including safety, costs, benefits, technology, fuel conservation, and pollution reduction, and we also seek comment on a wide range of alternatives.

75. The other economic risk that we discussed involves the prospect of a coastal real estate crash. Numerous highly regarded sources are warning that this country faces the prospect of seeing hundreds of billions of dollars if not trillions of dollars in coastal residential and commercial real estate value wiped out over the coming decades as sea levels rise due to climate change. Freddie Mac, the Union of Concerned Scientists, and the insurance industry trade publication *Risk & Insurance* are all warning of this prospect. One new study indicates that $7.4 billion in real estate values have already been wiped out due to sea level rise along the southeast coast since 2005. In light of this, please explain how:

a. EPA's plan to repeal the Clean Power Plan and replace it with something far weaker is consistent with the kind of serious decarbonization we need if we are to avoid the most catastrophic consequences of sea level rise;

The EPA proposed to repeal the CPP on October 16, 2017 (82 FR 48035). In that proposed repeal, EPA asserted that the best system of emission reduction (BSER) in the CPP exceeded EPA's authority under CAA section 111 because it established the BSER using measures that applied to the power sector as whole, rather than measures that apply at and to, and can be carried out at the level of, individual facilities. On August 21, 2018, the administrator issued a proposed replacement rule (the Affordable Clean Energy Rule) that he believes is more consistent both with the authorities under 111(d) and the types of technologies currently available to reduce CO_2 emissions at coal-fired power plants.

b. EPA's plan to roll back fuel economy standards for cars is consistent with the kind of serious decarbonization we need if we are to avoid the most catastrophic consequences of sea level rise.

Under the EPA/DOT SAFE Vehicles Rule proposal, EPA relied on the estimates of climate impacts presented in the NHTSA Draft Environmental Impacts Statement. The NHTSA analysis indicates that by 2100, the proposed

alternative would result in an increase of 7,400 million metric tons of CO2, an increase in global temperature of 3/1000th of one degree Celsius, and a projected sea level rise ranging from 76.28 centimeters (30.03 inches) under the No Action Alternative (i.e., the existing EPA GHG standards) to 70.34 centimeters (30.06 inches) under the proposed alternative, for a maximum sea level increase of 0.06 centimeters (0.02 inches) by 2100. Although GHG emissions would be higher under this proposal compared to EPA's existing standards, in light of the assessment presented in the proposal indicating higher vehicle costs and associated impacts on consumers, safety, and other factors including the increase in GHG emissions, EPA believes the proposal is an appropriate balancing of the factors EPA must consider when setting these standards.

76. Your predecessor instituted a policy that prohibited scientists who receive EPA grant money from serving on EPA's science advisory boards under the pretext that this constituted a conflict of interest. However, he appointed many individuals from regulated industries to EPA's science advisory boards.

    a. Please explain how serving on an EPA science advisory board while receiving EPA grant money constitutes a conflict of interest but serving on an EPA science advisory board while working for or receiving funding from a regulated industry does not.

    The directive supports that any person serving on an EPA science advisory committee must be fully independent from the EPA. Any potential lack of independence or potential conflict with EPA, including financially, could affect the advice that is given. Past and current members of federal advisory committees come from a wide range of backgrounds, including academia, state/local/tribal governments and from the regulated community. Furthermore, the process for serving on a federal advisory committee requires disclosure of financial conflicts of interest. Agency policies, including ethics-related and conflict of interest guidelines, can be found at:

    - **https://www.epa.gov/faca/strengthening-and-improving-membership-epa-federal-advisory-committees**
    - **https://www.epa.gov/sites/production/files/2015-02/documents/ethicsadvisory.pdf**
    - **https://yosemite.epa.gov/sab/sabproduct.nsf/Web/ethics?OpenDocument**

    b. Will you commit to reversing your predecessor's policy prohibiting scientists who receive EPA grant money from serving on EPA's science advisory boards?

    There is no plan to reverse the directive.

77. There have been reports that EPA political appointees are refusing to put new policies in writing and are instead insisting that career staff follow verbal instructions. Will you commit to requiring that all policies, guidance, and other similar complex instructions be put in writing before career staff are instructed to follow them?

I do not have any specific knowledge of these practices and always seek to provide my directions clearly in writing.

78. During Administrator Pruitt's tenure, scientists associated with the Narragansett Bay National Estuary Program were stopped from presenting their work. What steps have you taken since becoming acting administrator to ensure scientists are not silenced, including those working and presenting on climate change and its consequences?

It is the EPA Office of Research and Development's (ORD) decision about scientists participating in events. ORD will continue to conduct research outlined in our STRAPs reflecting Congressional appropriations.

EPA has one of the strongest Scientific Integrity policies and one of the most robust Scientific Integrity training programs in the federal government. EPA's Scientific Integrity Policy doesn't just apply to EPA scientists; it applies to all EPA employees, including scientists, managers, political appointees, and other staff. EPA regularly makes improvements to its Scientific Integrity program to make it even stronger. You can read more about this policy at epa.gov/osa/basic-information-about-scientific-integrity.

I am committed to upholding EPA's Scientific Integrity Policy, which ensures that the Agency's scientific work is of the highest quality, is presented openly and with integrity, and is free from political interference. The policy recognizes the distinction between scientific information, analyses, and results from policy decisions based on that scientific information. Policy makers within the Agency weigh the best available science, along with additional factors such as practicality, economics, and societal impact, when making policy decisions.

I have met with the EPA Scientific Integrity Official, Francesca Grifo, and supported the scheduling of the EPA Scientific Integrity Program's Annual Employee Conversation with the Scientific Integrity Official on Tuesday, June 12, 2018.

79. What is the EPA's role in helping states and coastal communities mitigate or adapt to the challenges projected for the shellfish industries or the thousands of individuals that make their living off of this billion-dollar resource?

The EPA has a number of regulatory and non-regulatory efforts in place to help states and coastal communities address current and projected challenges for the shellfish industry.

The EPA uses the Agency's grant and regulatory authorities under the Clean Water Act (CWA) to protect and improve water quality, with an emphasis on ensuring that shellfish resources can thrive and continue to be safe for human consumption. This includes providing training and monitoring support to states and tribes in developing and refining water quality standards, listing impaired waters, developing Total Maximum Daily Loads (TMDLs), and addressing both nonpoint and point sources of pollution. The EPA also provides guidance to states, territories, and tribes about issuing fish and shellfish consumption advisories, and determining safe human consumption rates of fish and shellfish, and has jointly issued EPA/FDA safe eating guidelines.

In addition, the EPA serves as the co-chair of the Hypoxia Task Force, a coalition of states, federal agencies, and tribes working to better manage the pollution sources that threaten the fish and shellfish industries in targeted areas. The EPA also works directly with coastal communities through a number of federal and local partnerships, including the National Estuary Program, to improve local resilience by helping coastal communities to develop adaptation strategies for future impacts to infrastructure, fish and shellfish industries, and natural resources. This type of work includes conducting vulnerability assessments in order to identify, analyze, prioritize, and reduce risk at the community level and water quality monitoring to better understand and reduce the impacts of changing water chemistry. The EPA is also conducting research to examine the effect of nutrients in coastal systems and an economic analysis of the impacts of ocean and coastal acidification on the shellfish industry.

80. The Save Our Seas Act, which passed the Senate last August and the House last week, urges the administration to pursue a number of activities aimed at reducing the influx of plastic waste into the oceans, including investing in research into ocean biodegradable plastic alternatives, pursuing new international agreements focused on land-based plastic pollution, providing technical assistance to improve waste management in developing countries, and considering marine debris in future trade agreements.

    a. What role can or does EPA play in achieving these goals?
    b. Where does addressing marine debris rank in your priorities at EPA?

The EPA recognizes the severity of the global problem of trash pollution in the ocean, and in freshwater systems as well, and is contributing to the Administration's activities to address marine litter. The EPA, in coordination with NOAA and other federal partners, is taking proactive steps to address this problem, primarily through the work of our multi-faceted Trash Free Waters (TFW) program. The EPA's TFW program assists states, municipalities, and

businesses to work together to define more effective ways to reduce litter, prevent trash entry into water, and minimize packaging waste through stakeholder consultation, strategic planning, pilot initiatives, and public/private collaboration.

In addition to the EPA's efforts under the TFW program, the Agency is engaging in a variety of international marine trash forums, exploring new opportunities to reduce plastic trash loadings into the ocean from China and other high-contributing nations. The EPA has also identified microplastics as a research priority, focusing on quantifying the extent of plastic pollution in all aquatic systems and assessing the possibility of human health impacts from microplastics in the environment. In addition, the EPA's recycling and sustainable materials management programs are working to reduce the volume of plastic trash in the waste management system and consider how the Agency's waste system expertise could benefit countries that lack effective waste management infrastructure.

Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA's denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

    EPA continues to review next steps in light of the court's ruling. We are not in a position to share a timeline at this point, but understand the need to move quickly.

Message

From: Molina, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D19C1D68DA1A4587866E1850F22A6AE5-MOLINA, MIC]
Sent: 7/21/2018 8:23:30 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
Subject: Fwd: MECA-AESI letter to Admn Wheeler on gliders
Attachments: MECA-AESI letter on EPA Glider non-enforcement memo - 180718.docx; ATT00001.htm

Sir.

See the email below.

CC'ing Susan.

MIchael.

Sent from my iPhone

Begin forwarded message:

> **From:** Chris Miller <cmiller@ajw-inc.com>
> **Date:** July 21, 2018 at 8:12:23 AM EDT
> **To:** Michael Molina <Molina.michael@Epa.gov>
> **Cc:** Bill Wehrum <wehrum.william@epa.gov>, Christopher Grundler <grundler.christopher@epa.gov>, Bill Charmley <charmley.william@epa.gov>
> **Subject: MECA-AESI letter to Admn Wheeler on gliders**
>
> Hello - I was told that you may be acting as Administrator Wheeler's chief of staff. I'd be much obliged if you could forward the attached to him for consideration, and also pass along my personal regards/greetings.
>
> Thanks, Chris
>
> **Christopher J Miller**
> Executive Director
> Advanced Engine Systems Institute
> www.advancedengines.org
> 2200 Wilson Blvd., Suite 310
> Arlington, VA 22201-3352
> 202-296-8086 x 112 desk
> 202-257-8691 cell

Manufacturers of Emission Controls Association
2200 Wilson Blvd., Suite 310
Arlington, VA 22201
(202) 296-4797 FAX: (877) 303-4532

Advanced Engine Systems Institute
2200 Wilson Boulevard, Suite 310
Arlington, VA 22201-3352
(202) 296-8086

July 18, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
Office of the Administrator 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler,

We write to request that you formally stay the decision dated July 6, 2018, from Susan Bodine, Assistant Administrator of OECA, to Bill Wehrum, Assistant Administrator of OAR, and entitled "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles." It undermines regulatory certainty, harms air quality and public health, and is a clear violation of the Administrative Procedures Act. Not to mention the adverse impact it will have on tens of thousands of jobs in the supplier industry.

As you may be aware, both of our organizations joined a group of stakeholders including; American truck and engine manufacturers, automotive suppliers and related businesses, many states, and numerous public health and environmental organizations, in opposing the loophole that your predecessor sought to enlarge against the clear directives of the Clean Air Act. We testified against further expansion of the production cap in the final heavy duty Phase 2 rule (300 glider kits per year per manufacturer) because it would directly and negatively affect our members' and their customers' bottom-line, and significantly increase air pollution. The 300 unit sales cap was set in-part based on input from the glider industry that suggested that such a limit is economically sustainable (see Fitzgerald Glider Kits quote prior to finalization of the heavy-duty Phase 2 Rule [HYPERLINK "http://www.truckinginfo.com/channel/equipment/article/story/2013/04/the-return-of-the-glider.aspx"]).

MECA and AESI members have over 40 years of experience and a proven track record in developing and manufacturing emission control and efficiency technology for a wide variety of on-road and off-road gasoline and diesel fueled vehicles and equipment in all world markets. Our members represent 70,000 of the nearly 300,000 North American jobs building the technologies that improve the fuel economy and lower emissions of today's vehicles. These jobs are located in nearly every state in the United States – the top 10 states in the U.S. are Michigan, Texas, Illinois, Virginia, New York, Indiana, North Carolina, Ohio, Pennsylvania, and South Carolina.

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The mobile source emissions control industry has generated hundreds of billions of dollars in U.S. economic activity since 1975 and continues to grow and add more jobs in response to environmental regulations. In 2017, emission control manufactures have invested over $3 billion in developing the technologies that reduce emissions from mobile sources.

The Bodine-Wehrum memo is harmful to regulatory certainty and the improved transparency which you are attempting to implement at the Agency. Like the proposed loophole, the memo creates an uneven playing field that undermines the billions of dollars of investments that our companies have made to deliver the latest clean vehicle technologies, and that would, in turn, threaten tens of thousands of U.S. jobs for our companies. The "new motor vehicle" designation for glider vehicles under the Clean Air Act gives EPA the authority to regulate glider vehicles. The glider kit and glider vehicle provision in the Phase 2 heavy-duty rule took an important step in closing the loophole that previously existed. Component suppliers rely on regulatory certainty when they make long term investments, and we request that the Agency support the mobile emission control supplier industry and maintain the heavy-duty Phase 2 regulation in the current finalized form, as supported by OEMs, trucking associations, suppliers and states.

Our industry has played an important role in the emissions success story associated with light and heavy-duty vehicles in the United States, and has continually supported EPA's efforts to manage air quality problems. MECA and AESI urge you to issue a stay of this enforcement discretion decision and we welcome the opportunity to meet with you and your staff in the near future to answer any questions you might have on this important issue.

Sincerely,

Rasto Brezny
Executive Director
Manufacturers of Emission Controls Association
[HYPERLINK "mailto:rbrezny@meca.org"]

Christopher Miller
Executive Director
Advanced Engine Systems Institute
cmiller@ajw-inc.com

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Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 8/10/2018 11:37:09 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]
CC: Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: FYI Gliders No Action Assurance Reply filed
Attachments: EPA Gliders NAA MTD Reply 8 9 16.pdf; ATT00001.htm

Please see attached for our as-filed reply in support of our motion to dismiss in the gliders no action assurance litigation. Environmental and State Petitioners had each filed responses in opposition.

Thanks,

Andrea Carrillo

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND, et al.,	
Petitioners,	No. 18-1190, consolidated with No. 18-1192
v.	
ENVIRONMENTAL PROTECTION AGENCY,	
Respondent.	

REPLY IN SUPPORT OF
RESPONDENTS' MOTION TO DISMISS

Although EPA's Acting Administrator has withdrawn the July 6 No Action Assurance regarding gliders and has stated that EPA "will not offer any other" such assurance, Environmental Petitioners and State Petitioners claim that its effects have not been completely eradicated. Petitioners' arguments rely on speculation, and the cases they cite are not on point. EPA's Withdrawal Notice meets the test for mootness based on an agency's voluntary cessation of an action, and the Court should dismiss the petitions for lack of jurisdiction.

ARGUMENT

State Petitioners and Environmental Petitioners both argue that this case is not moot because the Court (or EPA itself) could reinstate the No Action Assurance in response to some future lawsuit. State Pet. Resp. at 3, Envt'l Pet. Resp. at 3. These hypotheticals are nothing more than speculation, and are not a basis to litigate the merits of an action that is moot. EPA has expressly disclaimed any intention of re-issuing the No Action Assurance. Environmental Petitioners suggest that if the Withdrawal Notice were challenged in court, EPA might deem that challenge "new information" sufficient to reverse course. Envt'l Pet. Resp. at 3. But EPA based the Withdrawal Notice on long-standing agency guidance, among other things, and future litigation over the Withdrawal Notice would not change that. No party has intervened in this case in support of the No Action Assurance, and there is no indication that anyone will seek judicial review of the Withdrawal Notice.

Similarly, State Petitioners raise the "possibility" that the Court could invalidate the Withdrawal Notice and reinstate the No Action Assurance. State Pet. Resp. at 1. Even if such a challenge were brought, Petitioners would have the right to seek to intervene and present their arguments on the merits of either the No Action Assurance or the Withdrawal Notice. Petitioners could also address the

appropriate remedy if the Court in a future action were to find a flaw in the Withdrawal Notice. For example, State Petitioners could argue that the Withdrawal Notice should not immediately be vacated, which would prevent the No Action Assurance from coming back into force. Because the Court can readily address Petitioners' interests in any future litigation over the Withdrawal Notice, the mere possibility of such litigation is no basis to reach the merits in this case.

Environmental Petitioners make two additional arguments, neither of which has merit. Environmental Petitioners argue that the Withdrawal Notice does not completely eradicate the effects of the No Action Assurance because EPA has not made a binding commitment to take enforcement action in the future. Envt'l Pet. Resp. at 3-5. But the decision whether or not to prosecute on a case-by-case basis is the quintessential example of a discretionary function. *Heckler v. Chaney*, 470 U.S. 821, 831 (1985) ("an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion").

Not surprisingly, none of the cases cited by Environmental Petitioners supports their argument that EPA must affirmatively commit to file enforcement actions. In *Kifafi v. Hilton Hotels Retirement Plan*, 701 F.3d 178 (D.C. Cir. 2012), plaintiff claimed that his employer violated ERISA by "backloading," *i.e.*,

improperly calculating retirement benefits. *Id.* at 722. The employer amended its retirement plan and argued that backloading would not recur because it would be illogical, irrational, and absurd to "further violate the anti-backloading provision because doing so would subject [the employer] to further litigation" and possible tax consequences. *Id.* at 735. That promise, based on the employer's self-interest, is what the court found "is insufficient." *Id.* Similarly, the court in *United States v. Concentrated Phosphate Export Ass'n*, 393 U.S. 199 (1968), found that a party's "own statement that it would be uneconomical" to continue the challenged activity, "standing alone, cannot suffice." 393 U.S. at 203. In other words, in both these cases the courts simply found insufficient informal statements and promises offered by the parties in question, but the courts did not require the parties to take the type of affirmative action advocated by Environmental Petitioners here.

Environmental Petitioners also cite *Los Angeles Cnty. v. Davis*, 440 U.S. 625 (1979), but that case actually supports dismissal. In *Davis*, the Supreme Court *dismissed* as moot a challenge to an unused, "unvalidated" written hiring exam. The Court found there was no reason to believe the agency would alter its hiring practices in order to use the unvalidated exam, and that the agency's proposal to use the unvalidated exam had neither excluded any minority from employment nor deterred any minority from applying. 440 U.S. at 362-63. No "affirmative

commitment" was required, much less an affirmative commitment "to enforce the law." Envt'l Pet. Resp. at 5.[1]

None of Environmental Petitioners' cited cases stand for the proposition that EPA must commit to take enforcement actions, or establish a new general policy on when EPA would take enforcement actions. At most, they hold that a promise not to violate the law, by itself, is not a voluntary cessation. This is nothing more than a reiteration of the well-established test for when voluntary cessation moots a case: there must be no reasonable expectation that the alleged violation will recur, and there must be interim relief or events that completely eradicate the effects of the violation. *Kifafi*, 701 F.3d at 725. Both are present here. As we explained in our opening brief, the Withdrawal Notice completely nullifies and eradicates the effects of the No Action Assurance, and precludes its reissuance beyond any reasonable expectation.

Environmental Petitioners insist on more. According to them, EPA must make an affirmative commitment to take future enforcement actions against any future glider vehicle production that violates the Clean Air Act. Envt'l Pet. Resp.

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[1] Environmental Petitioners' citation to *True the Vote, Inc. v. IRS*, 831 F.3d 551 (D.C. Cir. 2016), fares no better. Envt'l Pet. Resp. at 4. In that case, the Court found that the agency had not even stopped the challenged conduct. 831 F.3d at 563 (two applications remain pending, and the agency had only "suspended" the challenged policy "until further notice"). Here, EPA has unequivocally withdrawn and affirmatively stated it will not re-issue the No Action Assurance, instead of merely suspending it.

at 5. Requiring such a commitment would go well beyond the Court's well-established test for mootness and would undermine *Heckler*'s recognition of enforcement discretion.

Environmental Petitioners' requirement would also be impractical to frame and impossible to enforce. Environmental Petitioners do not explain what type of "affirmative commitment" would satisfy them. Envt'l Pet. Resp. at 5. Would EPA have to initiate an enforcement proceeding before the Court could dismiss these petitions as moot? Environmental Petitioners acknowledge the problem by seeking a commitment to file prosecutions only "where appropriate." *Id.* But they cannot and do not explain how to evaluate where a prosecution is "appropriate." This tacit acknowledgement of prosecutorial discretion further undermines their insistence that the Withdrawal Notice is insufficient. The Withdrawal Notice completely removes any question that current requirements are enforceable and enforcement actions will be undertaken on a case-by-case basis in the Agency's discretion.

Environmental Petitioners also argue that adjudicating the merits of the No Action Assurance would be "meaningful" because the Court could find the No Action Assurance was void *ab initio*. Envt'l Pet. Resp. at 6. This argument relies on a chain of speculation that ultimately leads nowhere. According to Environmental Petitioners, if an enforcement action were filed for violations that

occurred after EPA issued the No Action Assurance but before EPA withdrew it, a glider manufacturer "could" theoretically plead for a lower civil penalty by claiming it relied on the No Action Assurance. *Id.* Environmental Petitioners' argument depends on three speculative events: that a glider manufacturer actually produced gliders in excess of the amount allowed under the interim provisions during the 20-day lifespan of the No Action Assurance; that the glider manufacturer will be sued for that production; and that the manufacturer will make this equitable argument to reduce a penalty.

But even if such a situation comes to pass, a decision from this Court, issued *after* the manufacturer relied on the No Action Assurance, would not be relevant. A court weighing the appropriate penalty to impose on a glider manufacturer would consider whether that manufacturer reasonably relied on the No Action Assurance at the time it produced the hypothetical additional gliders, between July 6 and July 26, 2018. Later developments, such as a decision vacating the No Action Assurance, would have no bearing on whether it was reasonable to rely on that document while it was in effect. It will make no difference in a penalty proceeding whether EPA withdraws the No Action Assurance prospectively, or whether the Court voids it retroactively.

Finally, Petitioners mischaracterize the nature of EPA's argument. State Petitioners assert that EPA's motion to dismiss is a concession of error, and Environmental Petitioners frame EPA's motion as a default on the merits. State Pet. Resp. at 2, Envt'l Pet. Resp. at 2. Neither characterization is correct. EPA promptly informed the Court of the Withdrawal Notice and explained why that action moots these petitions. Because the Court lacks subject matter jurisdiction to adjudicate a mooted controversy, the underlying merits are simply no longer at issue. If the Court disagrees, EPA requests an opportunity to brief the merits in full.

CONCLUSION

For all the foregoing reasons, the petitions for review should be dismissed, and Petitioners' motions should be denied.

Dated: August 9, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

I hereby certify that the forgoing Reply in Support of Respondents' Motion to Dismiss complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains **1680 words**, according to the count of Microsoft Word. I further certify that this document complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in a proportionally spaced font using Microsoft Word 2013, in 14-point Times New Roman.

s/ Daniel R. Dertke
ATTORNEY FOR RESPONDENTS
AUGUST 9, 2018

CERTIFICATE OF SERVICE

I certify that on this 9th day of August, 2018, the foregoing REPLY IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS was served electronically via the Court's CM/ECF system upon counsel of record.

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Message

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Subject: NEW CAA LITIGATION: State challenges to no action assurance for gliders (State of California, et al. v. EPA, DC Cir. 18-1192)
Attachments: States Emergency Motion.pdf

We have received an emergency motion filed in the DC Circuit by 16 states and the District of Columbia seeking summary vacatur, or in the alternative a stay pending judicial review, of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," signed on July 6, 2018. The petition was filed on July 19 by the states of California, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia.

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

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Case No. 18-1192

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF CALIFORNIA, by and through XAVIER BECERRA, ATTORNEY GENERAL and CALIFORNIA AIR RESOURCES BOARD, STATE OF DELAWARE, STATE OF ILLINOIS, STATE OF MAINE, STATE OF MARYLAND, by and through BRIAN FROSH, ATTORNEY GENERAL, and the MARYLAND DEPARTMENT OF THE ENVIRONMENT, COMMONWEALTH OF MASSACHUSETTS, STATE OF MINNESOTA, by and through the MINNESOTA POLLUTION CONTROL AGENCY, STATE OF NEW JERSEY, STATE OF NEW MEXICO, STATE OF NEW YORK, STATE OF NORTH CAROLINA, STATE OF OREGON, COMMONWEALTH OF PENNSYLVANIA, by and through JOSH SHAPIRO, ATTORNEY GENERAL and PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, STATE OF RHODE ISLAND, STATE OF VERMONT, STATE OF WASHINGTON, and DISTRICT OF COLUMBIA

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and ANDREW K. WHEELER, Acting Administrator, United States Environmental Protection Agency,

Respondents.

EMERGENCY MOTION FOR SUMMARY VACATUR, OR IN THE ALTERNATIVE, FOR STAY PENDING JUDICIAL REVIEW

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), Petitioners hereby certify as follows:

(A) Parties and Amici

Petitioners: The states of California, by and through its Attorney General and the California Air Resources Board, Delaware, Illinois, Maine, Maryland, by and through its Attorney General and Department of the Environment, Massachusetts, Minnesota, by and through the Minnesota Air Pollution Control Agency, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, by and through its Attorney General and the Pennsylvania Department of Environmental Protection, Vermont, and Washington, and the District of Columbia.

Respondents: The United States Environmental Protection Agency ("EPA"), and Andrew K. Wheeler, in his official capacity as Acting Administrator of EPA.

(B) Rulings Under Review

Petitioners seek review of the final action taken by EPA on July 6, 2018, entitled "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," and reproduced in an Addendum to this motion.

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(C) Related Cases

Petitioners are aware of a related Petition for Review filed by the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club, that has been assigned Case Number 18-1190.

DATED: July 19, 2018

/s/ David A. Zonana
David A. Zonana

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GLOSSARY OF ABBREVIATIONS

EPA	United States Environmental Protection Agency
NGO-A	Appendix submitted by Movants in Case No. 18-1190
ST-A	Appendix submitted by Movants in this case

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INTRODUCTION AND SUMMARY OF ARGUMENT

State Petitioners[1] respectfully move for summary vacatur of the United States Environmental Protection Agency's (EPA's) July 6, 2018 "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" ("EPA's Action" or "the EPA Memo"). EPA's Action concerns regulatory restrictions on the production and sale of "gliders" — new heavy-duty trucks manufactured with highly polluting, refurbished engines that do not comply with modern emissions standards (the "2016 Rule"). The EPA Memo effectively suspends the 2016 Rule's annual 300-unit-per-manufacturer limit on glider production for 2018 and 2019, while EPA considers whether to modify or repeal the Rule. The effect of EPA's *ultra vires* action is to enable glider manufacturers to put many thousands more of these highly polluting trucks on the road than would be allowed under the 2016 Rule, starting immediately, before any formal process to modify or repeal the 2016 Rule has been completed. In both substance and process, EPA's Action is unlawful.

---

[1] State Petitioners include the States of California (by and through its Attorney General and California Air Resources Board) Delaware, Illinois, Maine, Maryland (by and through its Attorney General and the Maryland Department of the Environment), the Commonwealth of Massachusetts, Minnesota (by and through the Minnesota Pollution Control Agency), New Jersey, New Mexico, New York, North Carolina, Oregon, the Commonwealth of Pennsylvania (by and through its Attorney General and Department of Environmental Protection), Vermont and Washington, and the District of Columbia.

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EPA's Action circumvents Congress's established limits on the Agency's authority to suspend or stay a rule (limits that this Court has recently made clear to EPA), as well as limits on its authority to exempt new motor vehicles or engines from regulation. It also constitutes a complete reversal of EPA's position, reflected in the 2016 Rule, that it is mandated to regulate glider emissions — a reversal made without adequate explanation or good reason. Had EPA engaged in the public notice and comment process required to stay or amend a regulation, these faults would have been exposed prior to consummation, but EPA's Action provided no opportunity for public input.

EPA's Action should be vacated because EPA lacks authority to take the action, failed to supply good reasons for its change in policy, and failed to engage in the notice and comment procedure required to amend or stay the 2016 Rule. EPA's framing of its Action as an exercise of enforcement discretion rather than an amendment to or stay of the 2016 Rule does not allow it to escape review. EPA stated that it is taking this Action precisely because it has not been able to finalize a repeal of the 2016 Rule, and because it does not have a proposal that it can act on to "extend the compliance date" of these regulations. Because the EPA Memo sets out a generally applicable policy that contravenes a validly promulgated regulation, this Court is well within its jurisdiction to hear the matter, and it should vacate the action as unlawful.

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In the alternative, State Petitioners request that this Court stay EPA's Action. Fed R. App. P. 18 & 27. Allowing EPA's Action to remain in effect while this litigation remains pending would result in serious health and economic impacts. According to EPA's own estimates, *each* additional glider sold will cause, on average, between 300,000 and 1,100,000 dollars in monetized public health impacts resulting from increased particulate matter pollution—impacts that will fall on State Petitioners and their residents. The additional production of gliders in 2018 and 2019 will cause hundreds of premature deaths and heart attacks and thousands of asthma exacerbations and lost workdays. And air pollution caused by the gliders that manufacturers will produce if EPA's Action remains in force in 2018 and 2019 will impede State Petitioners' efforts to improve air quality and meet EPA-mandated emissions reduction targets. A stay would prevent these significant and irreparable harms to State Petitioners and to the public interest by maintaining the full effectiveness of the 2016 Rule until this case is resolved.

BACKGROUND

A. Glider Vehicles

A "glider vehicle" is a new heavy-duty truck that is manufactured by installing a previously owned powertrain — consisting of the engine, transmission, and usually the rear axle — into a "glider kit," which typically includes a truck's

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body, front axle, cab, and brakes. NGO-A331.[2] Glider kits historically were used to salvage powertrains from relatively new trucks that had been in crashes, but in recent years, as emissions-control standards have become more stringent, manufacturers have increasingly used them to circumvent these standards. ST-A, Tab III [80 Fed. Reg. 40,528-29]; NGO-A337, 688.

According to EPA's own conservative estimates, the model year 1998-2001 engines that typically are used in glider vehicles emit 20 to 40 times more particulate matter (PM) and oxides of nitrogen (NOx) than engines that conform to current emissions standards. NGO-A318, 406. Testing of glider vehicles conducted by EPA in 2017 showed even greater emissions impacts: NOx emissions were as much as 43 times higher than emissions from compliant vehicles, and PM emissions as much as 450 times higher. NGO-A21-47. NOx and PM are linked to serious adverse health effects, including increased incidence of respiratory and cardiovascular disease and premature death. NGO-A605-613.

---

[2] For efficiency, State Petitioners requested and received permission to cite to the appendix provided to the Court by NGO Petitioners in Case No. 18-1190, *Environmental Defense Fund et al. v. United States Environmental Protection Agency*. Citations to the NGOs' appendix are identified herein as "NGO-A". Citations to additional documents in the State Petitioners separate appendix are identified herein as "ST-A."

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According to EPA's own modeling, the average monetized health impacts from just one additional glider are between 300,000 and 1,100,000 dollars.[3]

B. EPA's Regulation of Glider Manufacturers

The Clean Air Act (CAA) requires EPA to set and enforce emissions standards applicable to entities that manufacture or assemble "new motor vehicles." Section 202 of the CAA directs EPA to establish and revise emissions standards for any air pollutant from any class of "new motor vehicles or new motor vehicle engines" that "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521(a)(1). Section 202 also requires that the standards specifically governing heavy-duty vehicles and engines "reflect the greatest degree of emission reduction achievable." 42 U.S.C. § 7521(a)(3)(A)(i).

In 2011, EPA, together with the National Highway Traffic Safety Administration (NHTSA), issued Phase 1 of a comprehensive two-phase regulatory package of emissions control and fuel efficiency standards for new medium- and heavy-duty engines and vehicles. An interim provision of the Phase 1

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[3] EPA's assessment is low because it considered only *some* PM effects, and no impacts related to other pollutants. NGO-A595, 613; ST-A, Tab IX [New Jersey Decl., ¶ 34.]. For example, EPA did not quantify cancer, mutagenicity, or genotoxicity effects; increased incidence of chronic and subchronic bronchitis cases, strokes and cerebrovascular disease, low birth weight, and loss of pulmonary function; or non-asthma respiratory emergency room visits. NGO-A611.

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regulation, designed to allow the traditional salvage of a few hundred powertrains a year from relatively new trucks that had been damaged in accidents, exempted vehicles with pre-2014 engines from the generally applicable requirement that all new vehicles be certified as conforming to the new standards. 40 C.F.R. § 1037.150(j).

Between 2011 and 2015, the market for glider vehicles grew exponentially, and EPA became concerned that the exemption was being used for a wholly different purpose — to circumvent emission-control requirements. ST-A, Tab III [80 Fed. Reg. 40,528-29]. To curtail this abuse, EPA proposed the 2016 Rule as part of Phase 2 of the medium and heavy-duty program, which took effect in December 2016. *Id.* The 2016 Rule phased in limits on sales of glider vehicles that do not comply with Phase 2 emissions standards, while permitting the continued use of glider vehicles for the traditional purpose of salvaging relatively new powertrains. NGO-A336, 404-409; *see also* 40 C.F.R. § 1037.150 (t). In 2017, a glider manufacturer could produce gliders that did not meet current emissions standards in numbers up to the highest number that manufacturer produced in any year from 2010 to 2014, inclusive. NGO-A336. In 2018 and beyond, a glider manufacturer could produce fewer non-compliant gliders—the *lower* of 300 or the most gliders that manufacture sold between 2010 and 2014. *Id.* EPA estimated that the production of gliders with non-compliant engines would be limited to

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approximately 1,000 new vehicles per year in 2018 and beyond. NGO-A606.

In promulgating the Phase 2 standards, EPA found that restricting sales of new glider vehicles that do not meet otherwise-applicable emissions standards would produce significant health and economic benefits. EPA conservatively estimated that without the 2016 Rule, 10,000 gliders would be sold in the United States each year. NGO-A605, 609. According to EPA's modeling, the excess lifetime PM emissions from these 10,000 gliders — the PM emissions that exceed those of new vehicles with compliant engines — would cause 700 to 1,600 premature deaths, and avoiding those emissions would result in $3 to $11 billion in monetized human health benefits.[4]

C. EPA's Reconsideration of the 2016 Rule and Proposed Repeal

EPA's 2016 Rule went into effect without any party challenging it in court. It was only many months later, after one of the largest glider manufacturers met with former EPA Administrator Scott Pruitt, that the three largest glider manufacturers filed a petition for reconsideration. NGO-A60-66, 75. That petition cited to a glider-industry-funded study that has since been withdrawn due to questions about its methodology and accuracy as evidence that emissions of harmful pollutants from rebuilt glider engines were similar those that of newly built engines. NGO-

[4] NGO-A599, 610-611. EPA's modeling accounts for only *some* of the benefits attributable to reduction in a single pollutant (PM2.5). NGO-A610-613.

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A15, 64, 68-71, 284, 300.

EPA expeditiously granted the industry petition and proposed to repeal the 2016 Rule. NGO-A49. EPA did not consider the emissions impacts of the repeal, nor did it repudiate the findings about the health impacts of glider vehicle emissions it had made in support of adopting the 2016 Rule. *See* NGO-A50-53. Rather, the proposed repeal was based primarily on an argument that EPA lacked authority to regulate gliders because gliders are not "new motor vehicles" subject to regulation under Section 202. NGO-A50-53. EPA had rejected this argument when adopting the 2016 Rule, concluding that the CAA provides "no basis" for the glider manufacturers' proposed interpretation of "new motor vehicle" to exclude glider vehicles, and that such an interpretation "would impede meaningful control" of emissions from such vehicles, contrary to the CAA's "purpose of controlling emissions of air pollutants from motor vehicle engines, with special concern for pollutant emissions from heavy-duty engines." NGO-A332, 336.

Many states, non-governmental organizations, trucking industry representatives, and members of the public submitted comments opposing EPA's proposed repeal, and the proposal appears to have stalled. *See* ST-A, Tab IV. As noted above, after the close of comments, new questions emerged about the University study submitted in support of reconsideration and mentioned in the proposed repeal. NGO-A15, 284, 300. In May, EPA's Science Advisory Board

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decided to review the proposed repeal, citing "'uncertainty about what scientific work, if any, would support' this action." NGO-A10.

D. EPA's July 6, 2018 Memo

After many months of seeming inaction from EPA, on July 6, 2018, former Administrator's Pruitt's last day in office, EPA quietly produced a "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles." NGO-A2-3. Earlier that day, Bill Wehrum, Assistant Administrator, Office of Air and Radiation, penned a memorandum requesting the "no action assurance." NGO-A5-6. Mr. Wehrum stated that glider manufacturers who had reached the 2016 Rule's 300-gliders-per-year cap "must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers." NGO-A6. He noted that EPA had published a notice of proposed rulemaking to repeal the 2016 Rule, but that, "additional evaluation of a number of matters" regarding the proposed repeal would be required before the repeal could move further. NGO-A6. He then requested that a "no action assurance" be issued "as a bridge to a rulemaking in which [EPA] will consider extending the deadline for Small Manufacturers to comply with" the 2016 Rule's 300 vehicle limit for model years 2018 and 2019. NGO-A5.

That same day, Assistant Administrator Susan P. Bodine wrote in response that "[c]onsistent with the intent and purpose of [the Office of Air and Radiation's]

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planned course of action," EPA will issue a "no action assurance" that it will not enforce the 300-vehicle limit against manufacturers who produce up to their prior limits (several thousand vehicles) in 2018 and 2019. NGO-A3. The Memo adopted much of Mr. Wehrum's description and reasoning. EPA noted the stalled process of the notice of proposed rulemaking, and the absence of any existing proposed rule to extend the 2016 Rule's compliance dates. NGO-A3. As its sole justification for the action, the EPA Memo cited Mr. Wehrum's warning that absent the ability to produce more noncompliant vehicles, glider manufacturers will cease production. NGO-A3.

Absent from the EPA Memo and Mr. Wehrum's request is any discussion of the environmental or public health consequences that flow from the decision. No mention is made of EPA's own calculations of the additional emissions by gliders as compared to compliant trucks nor of EPA's own economic estimates of the toll those emissions take on the public's health and welfare.

JURISDICTION

This Court has jurisdiction under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), which specifies that a petition for review of any "nationally applicable…final action taken" by EPA under the CAA. The decision represents EPA's "'last word on the matter' in question" — namely, its decision to continue to apply the national limitations on glider vehicle production in effect in 2017 and

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effectively to suspend the more stringent provisions that took effect on January 1 of this year — and is thus final and reviewable.[5] *Whitman v. Am. Trucking Associations*, 531 U.S. 457, 478 (2001); NGOA-2 (stating that EPA "will" apply the 2017 production caps until either "11:59 p.m. EDT on July 6, 2019 or "the effective date of a final rule extending the compliance date").

ARGUMENT

I. EPA'S ACTION IS UNLAWFUL AND SHOULD BE VACATED

A. EPA's Action is, in Effect, an Unlawful Stay or Suspension of the 2016 Rule

EPA intends the Memo to allow those manufacturers that would be subject to the 300-glider-vehicle production cap under 40 C.F.R. § 1037.150(t)(1)(ii) to ignore that cap and continue producing glider vehicles up to the higher limits that expired on December 31, 2017. NGO-A3. To this end, EPA's Memo commits the agency to set aside the current 300-glider cap, and instead apply the less stringent, transitional regulatory limitations that were in effect in 2017 to manufacturers' 2018 and 2019 production. *Compare* 40 C.F.R. § 1037.150(t)(3) ("[f]or calendar year 2017," exempting glider vehicles up to a limit equal to a manufacturer's

[5] That EPA is engaged or may engage in further proceedings concerning the 2016 Rule does not make its current action any less final. See *Clean Air Council v. Pruitt*, 862 F3d 1, 7 (D.C. Cir. 2017).

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"highest annual production of glider kits and glider vehicles for any year from 2010 to 2014") *with* 40 C.F.R. § 1037.150(t)(1)(ii) (capping exempt vehicles at 300 per manufacturer). In effect, then, EPA's Memo rewrites the transitional provision for the year 2017 (40 C.F.R. § 1037.150(t)(3)) to include the years 2018 and 2019. *See* NGO-A3 ("EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 [limiting production of glider vehicles with non-compliant engines] to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their interim allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3).").

Such a revision, which "effectively suspends the implementation of important and duly promulgated standards, …constitutes rulemaking subject to notice and comment…." *Environmental Defense Fund, Inc. v. Gorsuch*, 713 F.2d 802 (D.C. Cir. 1983); *see also Natural Res. Def. Council v. Nat'l Highway Traffic Safety Admin.*, 894 F.3d 95 (2d Cir. 2018) ("*Natural Res. Def. Council v. NHTSA*") (notice and comment requirements apply "when an agency seeks to delay or repeal a previously promulgated final rule"). It cannot be accomplished by memorandum. Nor is EPA free to simply ignore the 2016 Rule: "an agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked." *Nat'l Family Planning & Reproductive Health Ass'n v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir.

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1992). Accordingly, "delayed implementation of a final regulation normally constitutes substantive rulemaking," subject to notice and comment. *Envtl. Def. Fund, Inc.* v. E.P.A., 716 F.2d 915, 920 (D.C. Cir. 1983).

B. EPA's Action Is Reviewable, despite EPA's Characterization of It as an Exercise of Enforcement Discretion

In an apparent attempt to circumvent review, as well as the requirements to stay or revise a validly promulgated regulation, EPA styled its action as a decision to "exercise its enforcement discretion." NGO-A3. But even accepting at face value EPA's characterization of its blanket suspension of the 2016 Rule's 300-vehicle production limit as an exercise of enforcement discretion, EPA's Action is still reviewable and subject to vacatur.

While an agency's *ad hoc* decision not to take enforcement action in a particular case is presumptively unreviewable, "an agency's adoption of a general enforcement policy is subject to review." *OSG Bulk Ships, Inc. v. United States*, 132 F.3d 808, 812 (D.C. Cir. 1998); *see also Heckler v. Chaney*, 470 U.S. 821, 833 n. 4 (1985) (agency action in the form of a "general policy" may be reviewable to determine whether the policy amounted to "an abdication of [the agency's] statutory responsibilities" or instead represented a decision "committed to agency discretion"); *Crowley Caribbean Transp., Inc. v. Pena*, 37 F.3d 671, 676 (D.C. Cir. 1994) (presumption of unreviewability applicable to a "single shot nonenforcement decision" does not apply to "an agency's statement of a general enforcement

policy" articulated in the "form of [a] universal policy statement"). This is true whether the general enforcement policy is contained in a "formal regulation after the full rulemaking process" or in "informal contexts such as letters." *Crowley*, 37 F.3d at 676-77.

EPA's decision to effectively suspend the regulation that took effect on January 1, 2018 and instead continue to apply the 2017 limitations on glider production to gliders produced in 2018 and 2019 is not the sort of individualized, *ad hoc* enforcement decision that is presumptively entrusted to agency discretion. *See Crowley*, 37 F.3d at 677. Rather, the EPA's Memo clearly sets out its reasons for suspending the more restrictive production limits in a manner that is "easily reviewable." *Ibid.* And, as described below, the decision represents the sort of "'abdication of statutory responsibilities'" — both to involve the public in the rendering of significant decisions and to carry out the purposes of the Clean Air Act—that renders the application of a presumption of non-reviewability inappropriate. *Ibid.*

Further, there is "law to apply" to EPA's Action. *Nat'l Wildlife Federation v. EPA*, 980 F2d 765, 773 (D.C. Cir. 1992), citing *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971). First, section 203(b) of the Clean Air Act limits the Administrator's discretion to exempt manufacturers from vehicle emissions standards to specific purposes (e.g., research, investigations, studies,

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demonstrations or training) which do not apply here. 42 U.S.C. § 7522(b)(1). Second, section 307(b) of the Clean Air Act limits the bases on which the Administrator may stay the effective date of a rule, and limits to duration of a stay to three months. EPA's Action does not accord with either of those limits.

C. EPA Has No Inherent or Statutory Authority to Stay or Suspend the 2016 Rule By Fiat

It is well established that the suspension of a rule, even if for a limited duration, is effectively a revocation of a final rule that is subject to review as an exercise of substantive agency rulemaking, and thus must be predicated on authority conferred by Congress. See *Public Citizen v. Steed*, 733 F.2d 93, 98 (D.C. Cir. 1984) ("an 'indefinite suspension' does not differ from a revocation simply because an agency choses to label it as a suspension.") If agencies had free rein to suspend the effective dates of final rules, "it would mean that an agency could guide a future rule through the rulemaking process, promulgate a final rule, and then effectively repeal it, simply by indefinitely postponing its operative date." *Natural Res. Def. Council v. EPA*, 683 F.2d 752, 762 (3d Cir. 1982). EPA's current Action is merely a variant on the theme, employing the cloak of a "no action assurance" to achieve what EPA has not been able to accomplish through any rulemaking process.

As this Court recently held, EPA has no "'inherent authority' …not to enforce a lawfully issued final rule" while it reconsiders it, and the CAA does not provide

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it any such authority. *Clean Air Council v. Pruitt*, 862 F.3d at 9. As a general rule, the CAA prohibits EPA from suspending or staying the effectiveness of a regulatory provision on the basis that EPA is reconsidering it. 42 U.S.C. § 7607(b)(1) (the filing of an administrative petition for reconsideration "shall not postpone the effectiveness" of a final rule or action) & (d)(7)(B) (agency "reconsideration shall not postpone the effectiveness of a rule). And EPA has, with good reason, failed to invoke the sole exception to this rule, which is applicable only to stays "for a period not to exceed three months" issued in connection with a petition for reconsideration that raises an issue that had not been raised and could not practically have been raised during the comment period and is "of central relevance to the outcome of the rule." 42 U.S.C. § 7607(d)(7)(B).[6]

D. EPA's Action Is Arbitrary and Capricious Because EPA Failed to Consider the Clean Air Act's Statutory Mandates and Provide a Reasoned Explanation for its Reversal

EPA's Action also constitutes an arbitrary and capricious reversal of its prior position.[7] An agency action is arbitrary and capricious where the agency "entirely fail[s] to consider an important aspect of the problem," or when it "offer[s] an

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[6] Similarly, EPA's authority to exempt manufacturers from vehicle emissions standards is inapplicable. 42 U.S.C. § 7522(b)(1).

[7] Agency actions are subject to judicial reversal where they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" "in excess of statutory jurisdiction, authority, or limitations;" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C), (D); *see also*, Clean Air Act, § 307(b)(1), (d)(9), 42 U.S.C. § 7607(b)(1), (d)(9).

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explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*"). When reversing course by changing a prior policy, an agency is required to provide a "reasoned explanation" for the change, and show that the new policy is "permissible under the statute" and that "there are good reasons for it." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("*Fox*"); *see also Action for Children's Television v. F.C.C.*, 821 F.2d 741, 745 (D.C. Cir. 1987) ("It is axiomatic that an agency choosing to alter its regulatory course must supply a reasoned analysis indicating its prior policies and standards are being deliberately changed, not casually ignored.").

EPA's Memo fails on all counts. First, it entirely fails to consider the central aspect of the problem that Congress mandated that EPA address, namely emissions of oxides of nitrogen and particulate matter from classes or categories of heavy-duty vehicles. *See* CAA, § 202(a)(3)(A)(i), 42 U.S.C. § 7521(a)(3)(A)(i). Rulemaking "ordinarily requires paying attention to the advantages and disadvantages of agency decisions". *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015). EPA's Memo does not mention, much less attempt to quantify, the additional NOx and PM emissions that will flow from the decision to allow manufacturers of gliders to multiply their production and sales "in 2018 and 2019" at levels many times the 300-vehicle-per-manufacturer limit. Indeed, EPA's

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Memo ignores the endangerment to the public health and welfare. That danger, as described below in the discussion of irreparable harm, is immediate and severe, and will result in a significant number of lives lost and additional hospitalizations, particularly among vulnerable and sensitive populations. See *infra* Part II.A.

Second, the agency's proffered explanation for its action is inadequate: It lacks any support, is contradicted by EPA's Memo itself, and runs counter to the evidence that is before the agency. EPA asserts that its action is taken to preserve the viability of businesses and jobs, but at the same time EPA acknowledges that the 2016 Rule does not restrict the manufacture or sale of gliders that "use engines that comply with the emissions standards applicable to the model year in which the glider vehicle is manufactured." NGO-A2, 5. Nor does EPA consider the impact of its action on other manufacturers and their employees, who are producing emissions compliant heavy-duty trucks. EPA also fails to consider comments submitted by a leading glider manufacturer that it is "set up to make a profit at 300 [non-emissions compliant glider vehicles] a year." NGO-A600.

Third, EPA's Memo, to the extent it purports to be based on economics, looks solely at one side of the equation. That is, the Memo only considers speculative cost impacts on glider manufacturers, but gives no consideration to EPA's own quantification of the economic consequences of the health impacts of increased

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glider sales, which EPA estimated to be, on average, from 300,00 to 1,100,000 dollars for each non-emissions compliant additional glider sold. NGO-A610.

Thus, EPA has wholly failed to "show that there are good reasons for the new policy," and provide a "reasoned explanation" for why the agency is "disregarding facts and circumstances that underlay or were engendered by the prior policy." *Fox*, 556 U.S. at 515.

E. EPA's Failure to Take Notice and Comment Before Implementing Its De Facto Suspension Violates the APA

The APA generally requires agencies to publish a notice of proposed rulemaking and solicit public comment on all rulemakings. *Id.* § 553. A proposed rule must be published in the Federal Register not less than thirty days before its effective date. *Id.* § 553(d). These requirements apply both when an agency promulgates a rule and when it amends or appeals a rule. *See id.* § 551(5); *Perez v. Mortgage Bankers Ass'n*, 135 S. Ct. 1199, 1206 (2015).

It is well established that the APA's notice-and-comment requirements also apply when an agency suspends the effectiveness of a rule. *Natural Res. Def. Council v. NHTSA*, 894 F.3d 95, 2018 WL 3189321 at *12 (notice and comment "requirements apply with the same force when an agency seeks to delay or repeal a previously promulgated final rule"); *Environmental Def. Fund, Inc. v. EPA*, 716 F.2d 915, 920 (D.C. Cir. 1983) (same); *Natural Res. Def. Council v. EPA*, 683 F.2d 752, 761-62 (2d Cir. 1982) (effective date is "an essential part of any rule" and

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"material alterations" are subject to APA's rulemaking provisions). Failure to comply with these procedural requirements requires invalidation of an agency's actions. *Natural Res. Def. Council v. Abraham*, 355 F.3d 179, 206 (2d Cir. 2004).

Here, the facts are clear and undisputed. EPA did not engage in any notice and comment process in connection with its Action. Add. 1 and 2. Nor can EPA's promise to "move as expeditiously as possible to undertake a rulemaking in which it will consider extending the compliance date" cure its failure to take notice and comment before the EPA Memo effectively suspending the 2016 Rule. *Natural Res. Def. Council v. NHTSA*, 894 F.3d 95, 2018 WL 3189321 at * 14.

II. IN THE ALTERNATIVE, EPA'S ACTION SHOULD BE STAYED

To obtain a judicial stay, State Petitioners must demonstrate that: (a) they are likely to succeed on the merits; (b) they are likely to suffer irreparable harm in the absence of a stay; (c) the balance of equities favors a stay; and (d) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The final two factors "merge when," as here, "the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).[8] State Petitioners have established above that they are likely to succeed on the merits because EPA's Action constitutes an unlawful suspension or modification of the 2016 Rule, which

[8] State Petitioners complied with Rule 18(a) by, prior to filing this Petition and Motion, requesting EPA to immediately withdraw or administratively stay the EPA Action. NGO-A259-276, ST-A, Tabs V-VIII. *See also*, Fed. R. App. P. 18(a).

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EPA has attempted to accomplish without undertaking the required notice and comment process, and without the consideration of the Action's significant impacts on air quality and public health that would be necessary to any reasoned decision-making process. Below, State Petitioners demonstrate that a stay is necessary to prevent significant, irreparable harm to State Petitioners, and that it would be in the public interest to allow the 2016 Rule to remain in full effect for as long as this challenge to EPA's Memo remains pending.[9]

A. Without a Stay, Air Pollution from Additional Gliders Sold in 2018 and 2019 Will Contribute to Hundreds of Premature Deaths and Thousands of Serious Health Incidents

If EPA's Action is not vacated or stayed, thousands of additional gliders will be sold as a result, and these gliders will travel the roads for many years to come, emitting huge quantities of dangerous air pollutants.[10] By any reasonable estimate, these emissions will cause hundreds of premature deaths and heart attacks, and tens of thousands of asthma exacerbations and lost work days around the country. An immediate stay is necessary to prevent these serious, irreparable harms.

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[9] EPA's no-action letter has a one-year duration. By the time this case is briefed, argued, and decided on the merits, much or all of the one-year period likely will have elapsed. Thus, in the absence of a stay (or summary vacatur), glider manufacturers will effectively receive much or all of the benefit of EPA's Action, even if the Memo is ultimately deemed unlawful on the merits.

[10] ST-A, Tab IX [CARB Decl. ¶ 6].

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The Court should issue a stay to maintain in effect a duly promulgated federal vehicle regulation, such as the 2016 Rule, if irreparable harm would result from unsafe vehicles that, without a stay, would make their way onto the roads. *See Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1306-09 (1976) (Rehnquist, C.J., in chambers) (citing potential for long-term, irreparable harm if noncomplying vehicles manufactured during litigation over final safety regulations "find their ways to the highways"). Early deaths and widespread morbidity caused by air pollution unquestionably qualify as irreparable harm. *E.g.*, *Nat'l Ass'n of Farmworkers Organizations v. Marshall*, 628 F.2d 604, 613-614 (D.C. Cir. 1980) (holding that risk of exposure to pesticides constitutes irreparable harm); *Sierra Club v. U.S. Dep't of Ag.*, 841 F.Supp.2d 349, 358-59 (D.D.C. 2012) (finding "risk of severe health problems (including premature death)" from exposure to particulate matter air pollution constitutes irreparable harm).

Petitioners have demonstrated that such harms will result from EPA's Action. By a conservative estimate, EPA's Action will result in an additional 6,400 gliders being sold. The EPA Memo exempts 2018 and 2019 glider sales from EPA enforcement until a manufacturer's sales reach its 2017 "Interim Allowance," defined as "the greatest number [of gliders] produced in any one year during the period of 2010-2014." NGO-A2-3. According to EPA's own projections in its response to comments on the Phase 2 rulemaking, the greatest number of gliders

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produced in those years was approximately 4,200. NGO-A605-606. That figure, which is based on a September 2013 study, is almost certainly lower than the actual 2014 production.[11] But assuming conservatively that EPA's projections were correct, it would be reasonable to estimate that, with EPA's Memo in place, manufacturers could produce and sell at least 4,200 non-compliant glider vehicles per year without fear EPA enforcement in both 2018 and 2019. EPA estimated that, beginning January 1, 2018, when the 300-vehicle cap took effect, "fewer than 1,000 glider[s]" would be sold "in most years."[12] Thus, conservatively estimated, EPA's Memo sanctions the sale of 3,200 *additional* gliders in both 2018 and 2019, for a total of 6,400 additional gliders over and above what the 2016 Rule would allow.

These 6,400 gliders would emit an *extra* 265,600 tons of NOx and 4,352 tons of PM, and would have the same emissions impact as roughly 121,000 to 151,000 new emissions-compliant trucks.[13] EPA estimates a glider sold in 2017 emits, on average, 41.5 more tons of NOx and 0.68 more tons of PM over the trucks'

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[11] NGO-A605. EPA projected in September 2016 that glider sales would likely grow to 10,000 or more per year by 2016. *Id.* And, as documented in a declaration in a consolidated case, actual sales figures in 2017 totaled over 6,500. NGO-A122. So NGO Petitioners' estimate that, unless vacated or stayed, EPA's Action will lead to 11,190 additional glider sales is reasonable, and likely more accurate than EPA's estimate. ST-A, Tab IX [CARB Decl. ¶ 18].

[13] ST-A, Tab IX [CARB Decl. ¶ 40].

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lifetimes, as compared to a vehicle with modern emission-control technology. NGO-A609.

PM and NOx are both very harmful pollutants. PM from diesel exhaust is easily inhaled in the bronchial and alveolar regions of the lung.[14] Exposure is associated with cardiovascular and respiratory hospitalizations, cancer, and early deaths.[15] NOx recombines to form ground-level ozone, a gas that irritates and damages respiratory organs.[16] Ozone exposure is associated with increases in respiratory-related hospital admissions, respiratory symptoms and medication use in asthma sufferers, and emergency department visits for chronic obstructive pulmonary disease and asthma.[17] NOx is also very harmful: Exposure to one of its primary components, NO_2, is linked to increased hospital admissions and emergency department visits for asthma, respiratory symptoms and airway inflammation in people with asthma, and decreased lung function in children with asthma.[18]

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[14] ST-A, Tab IX [CARB Decl. ¶ 10; NY Decl. ¶ 18].

[15] *Id.*; ST-A, Tab IX [NJ Decl. ¶ 14]; *see* NGO-A372-373.

[16] ST-A, Tab IX [CARB Decl. ¶ 11; NJ Decl. ¶ 16; NY Decl. ¶ 18].

[17] ST-A, Tab IX [CARB Decl. ¶ 11]; *see* NGO-A373-374.

[18] ST-A, Tab IX [CARB Decl. ¶ 11]; *see* NGO-A374-375.

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Given this, EPA unsurprisingly found, "even a small number of additional glider vehicles would have severe impacts" on public health.[19] EPA's analysis of glider emissions found that, for every 1,000 noncompliant gliders sold, between 70 and 160 people will die early, and that that emissions from *each* additional glider would generate (on average) 300,000 to 1,100,000 dollars in costs related to adverse health impacts.[20] Scaled for 6,400 additional gliders, the EPA's Action risks between 448 and 1,024 early deaths and $1.9 to $7 billion in avoidable serious health effects.[21]

These staggering harms, clearly proved using EPA's own analysis of glider emissions impacts, compel a stay of EPA's Action.

B. State Petitioners Will Be Irreparably Harmed by Dangerous Air Pollution Unless EPA's Action is Stayed

Many of these hundreds of deaths and thousands of illnesses—likely more than half of them—would occur within Petitioner States.[22] The extra air pollution and related health impacts will irreparably injure the States' quasi-sovereign interests

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[19] NGO-A1881; NGO-A406. EPA's estimates of the NOx and PM impacts from new gliders were not contested by any of the commenters on the draft rule. NGO-A593.

[20] NGO-A611; ST-A, Tab IX [CARB Decl. ¶32].

[21] ST-A, Tab IX [CARB Decl. ¶ 6].

[22] ST-A, Tab IX [*See* CARB Decl., Exh. A (using each State's proportions of nationwide population living near major roadways to estimate state-specific impacts)].

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in the quality of the "air within [their] domains" and in "protect[ing] [their] citizens from air pollution." *Massachusetts v. EPA*, 549 U.S. 497, 518-19 (2007) (internal quotation marks omitted).[23]

Petitioners include densely populated Northeastern, Great Lakes, and coastal states with extensive highway networks, and are home to many of the largest trade freight gateways in the country, including air- and seaports in Los Angeles, New York/New Jersey, Long Beach, Tacoma, Chicago, Washington, D.C., Boston, and Baltimore. Although State Petitioners represent 33% of the national population, over half of the early deaths and other health effects attributable to glider emissions will likely occur in these States.[24] This disproportionate effect is attributable to the fact that an above-average percentage of State Petitioners' populations live near major roadways, since pollution from gliders (and other diesel trucks) is more likely to affect people living near major roadways frequented by heavy-duty trucks.[25] It is well-documented that people who live and work near high-traffic roadways "experience higher rates of numerous adverse health effects," especially respiratory and cardiovascular effects, from diesel exhaust than people who live far from major roads. NGO-A381-382, 391; *see also* NGO-A380 (hundreds of peer-

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[23] State Petitioners' evidence of these harms also satisfies Article III standing. *Sierra Club v. EPA*, 292 F.3d 895, 899-900 (D.C. Cir. 2002).

[24] *Id.*

[25] ST-A, Tab IX [CARB Decl., ¶ 23; NJ Decl., ¶ 30].

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reviewed studies have found correlation between ambient levels of diesel exhaust pollution and proximity to major roadways).

The States' analysis of EPA's health impact assessment prepared for the 2016 Rule, apportioned using reasonable assumptions about the geographic distribution of excess emissions from 6,400 extra gliders, finds that state-by-state impacts are significant and alarming.[26] For example, an estimated 47 to 109 Californians would die prematurely and more than 50 Californians would have non-fatal heart attacks if these gliders reach the nation's highways.[27] Californians with asthma will experience thousands of exacerbated attacks, and Californians will miss thousands of days of work.[28] In each of the Petitioner States, glider emissions threaten early deaths and enormous public health costs.[29]

The Court should stay EPA's Action to protect the State Petitioners from these grave and irreparable harms.

C. The Sale and Operation of 6,400 Additional Gliders Will Undermine and Impede State Petitioners' Efforts to Improve Air Quality

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[26] *See generally* ST-A, Tab IX [CARB Decl., Exh. A].

[27] ST-A, Tab IX [CARB Decl. ¶ 27].

[28] *Id.*

[29] *See generally* ST-A, Tab IX [CARB Decl., Exh. A].

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Excess glider emissions of NOx and PM2.5 will also cause irreparable harm to State Petitioners by impeding their attainment and maintenance of the EPA-mandated National Ambient Air Quality Standards (NAAQS)[30] for ozone and PM, and by cancelling out other, costly efforts the States have made to reduce these harmful pollutants. ST-A, Tab IX [CARB Decl. at ¶¶ 34-45; NJ Decl. ¶ 51; WA Dec. ¶¶ 5-8; Mass. Decl ¶¶ 6-17; NC Decl. ¶¶ 5-30; NY Decl. ¶¶ 32-42; OR Decl. ¶ 18]. For example, over the past decade California and New Jersey, and their residents and businesses, have spent billions of dollars to reduce NOx and PM emissions from heavy-duty diesel vehicles, and have required many stationary sources of emissions to implement stringent and costly emissions controls as part of their efforts to attain and maintain the ozone and PM NAAQS. ST-A, Tab IX [CARB Decl. ¶¶ 32-33; NJ Decl. ¶¶ 36-44]. EPA's Action, and the increase in PM and NOx emissions it will generate, will undermine and may, in fact, cancel out some of these efforts, causing additional irreparable injury to the States. ST-A, Tab IX [CARB Decl. ¶¶ 41-45]. In California, the excess NOx emissions resulting from EPA's Action would more than cancel out the NOx reductions achieved by the Commercial Harbor Craft regulation, a program with compliance costs of 15 to 46 million dollars. ST-A, Tab IX [CARB Decl. ¶ 42]. And in Oregon, the PM

[30] The NAAQS are standards setting limits on the concentration of harmful pollutants in the air, including PM and NOx, at a level necessary to protect public health. 42 U.S. Code § 7412(c)(9)(B).

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emissions from additional glider trucks would offset 5 years of emission-reduction benefits from the multi-million dollar Oregon Clean Diesel Initiative. ST-A, Tab IX [OR Decl. ¶ 18].

States also rely on EPA's heavy-duty vehicle emissions standards as part of the State Implementation Plan submissions they make to EPA in connection with ozone and PM NAAQS. *See* 42 U.S.C. § 7410(a). By unexpectedly suspending emissions standards for highly polluting gliders, EPA is undermining the regulatory baseline that States rely on to demonstrate compliance with the CAA. ST-A, Tab IX [NJ Decl. ¶ 36]. If 6,400 additional, highly polluting gliders can now be sold, without fear of EPA enforcement, air pollution from heavy-duty vehicles will significantly worsen year-to-year, even as EPA is requiring states to meet the more stringent ozone NAAQS adopted in 2015. ST-A, Tab IX [NJ Decl. ¶ 44]. Emissions from additional glider vehicles could jeopardize Charlotte, North Carolina's attainment status for the NAAQS for PM2.5 and ozone. ST-A, Tab IX [NC Decl. ¶¶ 17, 30; *see also,* Mass Decl. ¶ 15 (EPA's Action will make it harder to maintain attainment with ozone NAAQS)]. In New Jersey, the expected PM emissions resulting from EPA's Action would offset nearly a year of PM reductions by the State's mandatory diesel retrofit program, which is part of New Jersey's effort to maintain compliance with the NAAQS for PM. ST-A, Tab IX [NJ Decl. ¶ 51].

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Put simply, EPA's Action makes States' compliance with the federal NAAQS "more difficult and onerous" than it would otherwise be, a cognizable injury. *See West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004). At least some State Petitioners will have to analyze the consequences of EPA's Action and make decisions as to whether to adopt or revise regulations or other offsetting emissions-reducing measures. *See* ST-A, Tab IX [NJ Decl. ¶ 44; Mass Decl. ¶ 14]. And those activities impose costs and occupy limited resources that would otherwise be available for other actions that would benefit the States and their people. ST-A, Tab IX [Mass Decl. ¶ 14]. State Petitioners will suffer these harms unless EPA's Action is neither vacated nor stayed during litigation over its legality.

D. No Party to this Litigation will be Harmed if the Court Grants a Stay, and the Public Interest Strongly Favors a Stay

In contrast to the irreparable harm that Petitioners and their residents face under EPA's Action, EPA will not be harmed by a stay during this litigation. The issuance of a stay would simply mean that EPA could (and should) enforce its duly promulgated limitation on glider sales—limitations that had already gone into effect more than six months before EPA issued the Memo. It is not an irreparable injury to an agency to leave its duly promulgated and already-in-effect regulations in place.

Any harm to the public through loss of jobs in the glider industry would be minimal. EPA found that the industry "will not be significantly impacted by the

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new requirements" in the Phase 2 Rule and that existing glider manufacturers would "remain profitable." NGO-A600-601. A stay would simply mean that EPA could compel the 2-3 largest glider manufacturers — those whose 2017 allowances exceeded 300 gliders with non-compliant engines — to limit their production to 300, and after that produce gliders with engines meeting the emissions standards that all other new trucks are required to meet.[31] While it is conceivable that these few manufacturers — manufacturers who have in recent years increased production of non-compliant glider vehicles in order to circumvent emissions standards — might lose some of this business, their competitors that manufacture gliders and other trucks with emissions-standard compliant engines will benefit from the newly re-leveled playing field.

Moreover, any harm to these few companies is overwhelmingly outweighed by the public interest in protecting lives and health from dangerous and avoidable air pollution. The EPA Action risks the lives of hundreds of people nationwide, and the health of thousands more. The "real potential for hundreds of premature deaths" from exposure to excess air pollution outweighs any "speculative harm" from disruption of a regulated industry by emissions regulations. *Nat'l Ass'n of Farmworkers Organizations v. Marshall*, 628 F.2d 604, 617 (D.C. Cir. 1980); *see*

[31] 40 C.F.R. § 1037.150(t)(1)(ii).

also id. ("Plainly, any possible reduction in the price of produce that might result from denying preliminary relief would be only short-term, and would never approach the value of the children's health to the nation"); *Fed. Mar. Comm'n v. City of Los Angeles*, 607 F.Supp.2d 192, 193,196, 203-04 (D.D.C. 2009) (refusing to enjoin California clean truck programs intended to reduce diesel exhaust air pollution by phasing out old, polluting trucks, despite potential of air pollution rules to increase transportation costs and decrease competition for transportation services); *see United States v. NCR Corp.*, 688 F.3d 833, 842-43 (7th Cir. 2012) (finding that public interest in preventing injuries from exposure to toxic chemicals outweighs harm that specific company may have to pay more than its share of cleanup costs).

Even in purely economic terms, the $1.9 to $7 billion dollars of health-related impacts from PM 2.5 emissions that a stay would avoid is likely orders of magnitude greater than the economic benefits of the EPA Action to the handful of companies making non-compliant gliders. Notably, after describing the "severity" of the public health impacts of gliders for every year the Phase 2 Rule is not in effect, EPA previously refused to further delay phase-in of the Rule "merely" to avoid "the potential for inconvenience to the industry." NGO-A599.

EPA has already taken significant steps to mitigate any economic harm to glider manufacturers. EPA went to great lengths to cushion the impacts of the

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Phase 2 Rule, phasing in the production caps for gliders and allowing continued sales to serve the original purpose of gliders — to salvage relatively new engines from truck bodies destroyed in crashes. NGO-A405. EPA estimated that approximately 1,000 non-compliant gliders per year (up to 300 per manufacturer) can still be sold using pre-2002 engines NGO-A606. Perhaps more importantly, glider manufacturers can "continue *unlimited* production using low-polluting engines," which are "readily available." NGO-A600 (emphasis added).

EPA's Memo grants a couple of manufacturers an unfair means to evade emissions standards "at the expense of domestic manufacturers producing engines complying with the latest" emissions standards. NGO-A599. Many retailers and manufacturers commented *in favor* of the Phase 2 Rule's glider limitations because they level the playing field for all truck companies. NGO-A595, 599, 602-603. Those interests in a level playing field are part of the interests that should be weighed here, and they tip the scale in favor of a stay.

For all these reasons, the balance of equities and the public interest clearly support a stay of EPA's Action.

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CONCLUSION

The Court should vacate EPA's Action, or if it does not do so, stay implementation of that action while this litigation remains pending.

Dated July 19, 2018 Respectfully submitted,

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Attorney for Petitioner State of Rhode Island

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Motion for Summary Vacatur or, in the Alternative, for Stay Pending Judicial Review was prepared in a proportionally spaced, 14-point font and that, according to the word-count program in Microsoft Word, it contains 7,762 words. *See* D.C. Cir. R. 18(b) (7,800-word limit).

DATED: July 19, 2018

/s/ David A. Zonana
David A. Zonana

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CERTIFICATE OF SERVICE

I certify that on July 19, 2018, this Motion for Summary Vacatur or, in the Alternative, for Stay Pending Judicial Review was electronically served on Respondent United States Environmental Protection Agency through the appellate electronic case filing system.

DATED: July 19, 2018

/s/ David A. Zonana
David A. Zonana

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CERTIFICATE OF COMPLIANCE WITH RULE 18(a)(1)

I hereby certify that this Motion for Summary Vacatur or, in the Alternative, for Stay Pending Judicial Review complies with D.C. Circuit Rule 18(a)(1).

Relief was previously requested from Respondents. On July 13, 2018, Movants sent a letter via Federal Express for next business day delivery and via electronic mail to the Acting Administrator, with a copy sent via electronic mail to Assistant Administrators Susan Bodine and Bill Wehrum. See Appendix 2 to this Motion. Because Federal Express was unable to deliver the letter, on July 17, 2018, Movants sent a second copy of the letter to Acting Administrator Wheeler via certified mail and electronic mail. Movants letter objected to the Respondents' action and requested that it be immediately withdrawn or administratively stayed. As of the date of filing their Petition for Review and this Motion on July 19, 2018, Petitioners have not received a response from EPA or Acting Administrator.

On July 17, 2018, the undersigned provided notice of this filing by telephone to Eric Hostetler, Assistant Attorney General, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice. In addition, on July 18, the undersigned provided notice of this filing by telephone

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to Daniel Dertke, who has entered an appearance for EPA in related Case No. 18-1190.

DATED: July 19, 2018

/s/ David A. Zonana
David A. Zonana

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Message

From: Tess, Rachel [Rachel.Tess@ag.state.mn.us]
Sent: 7/18/2018 8:10:27 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Kieley, Max [Max.Kieley@ag.state.mn.us]
Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles
Attachments: Gliders Correspondence to Wheeler.pdf

Please see attached correspondence. This is also being sent by FedEx Priority Overnight mail.

Thank you,

Rachel Tess on behalf of Assistant Attorney General Max Kieley
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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

July 18, 2018

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VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
Mail Code 1101A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufactures of Glider Vehicles"*

Dear Acting Administrator Wheeler:

In a letter dated July 13, 2018 ("Multistate Letter"), thirteen state attorneys general and two state agencies requested that the United States Environmental Protection Agency ("EPA") administratively stay or withdraw its recent final action regarding the Glider Rule. *See* Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018). For the reasons stated in the enclosed Multistate Letter, the State of Minnesota, by and through the Minnesota Pollution Control Agency, likewise respectfully requests that EPA immediately withdraw or administratively stay its recent final action regarding the Glider Rule. *See also* Fed. R. Civ. App. P. 18(a)(1).

Sincerely,

MAX KIELEY
Manager, Environmental & Natural
Resources Division
Assistant Attorney General

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Attorney for the State of Minnesota, by and through the Minnesota Pollution Control Agency

Enclosure

ec: Susan P. Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

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[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: ...on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion...." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

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ED_002444_00000254-00005

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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00000254-00007

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

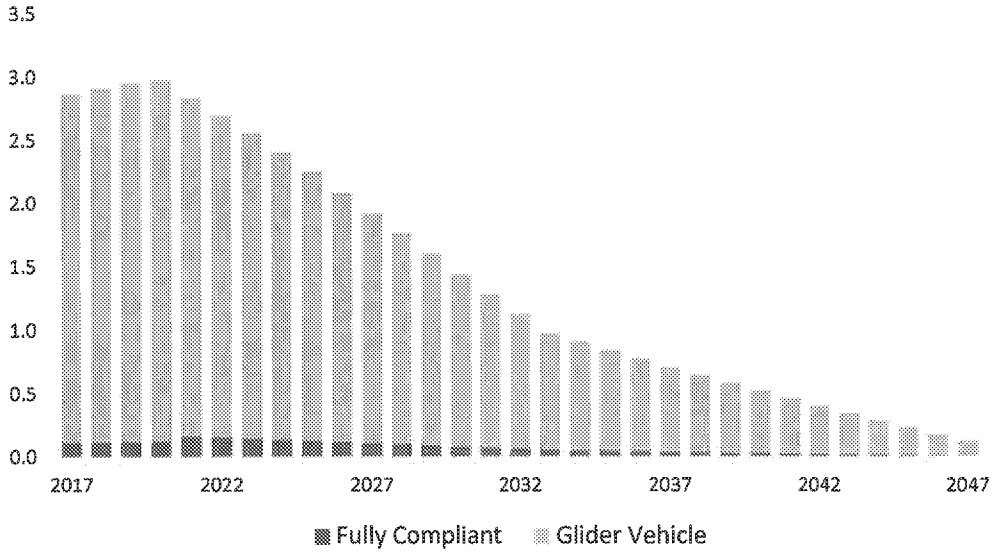
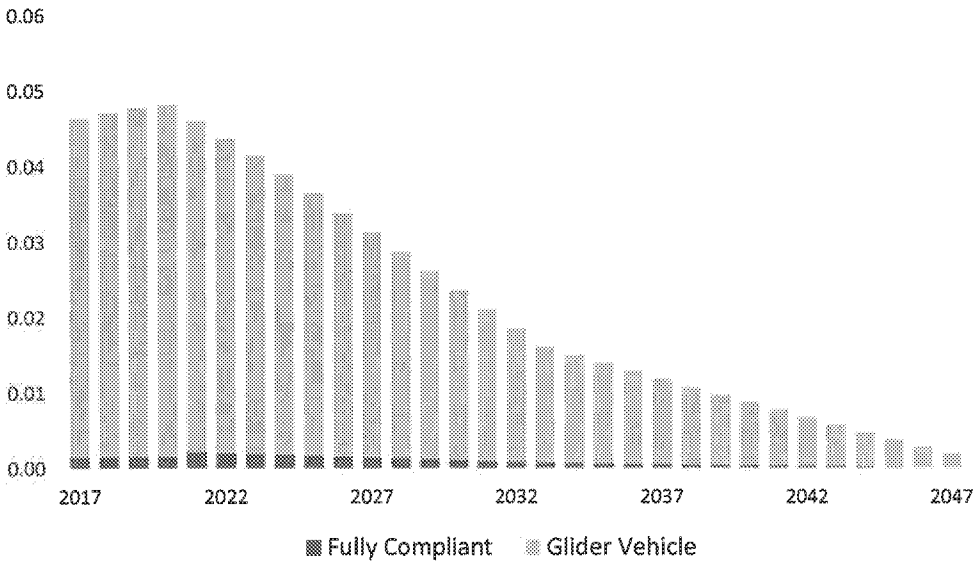


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

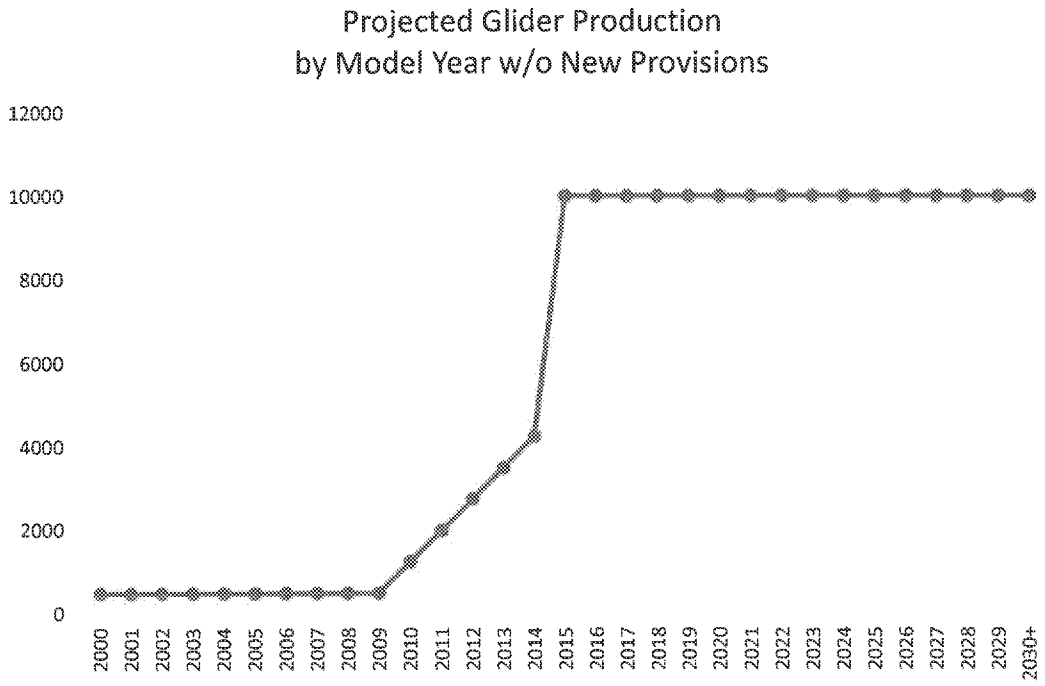


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

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ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

* on the basis that revisions to the underlying legal requirement are being considered;

* on the basis that the Agency has determined that the party is not liable or has a valid defense;

* on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or

* on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

* where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)

* in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which (State) is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

---

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 8/22/2018 8:48:23 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
Subject: EPA's Motion to Dismiss Granted- Gliders No Action Assurance litigation
Attachments: ENV_DEFENSE-#850972-v1-Gliders_order.pdf

D.C. Circuit grants EPA's motion to dismiss (attached), finding that challenges to, and summary motions for vacatur of, the glider's no action assurance are moot. The administrative stay of the no action assurance was also dissolved. Judges Henderson, Srinivasan, and Katsas issued the order.

Andrea Carrillo
Attorney-Advisor

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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1190 **September Term, 2017**

EPA-07/06/18 Letter

Filed On: August 22, 2018

Environmental Defense Fund, et al.,

Petitioners

v.

Environmental Protection Agency,

Respondent

Consolidated with 18-1192

BEFORE: Henderson, Srinivasan, and Katsas, Circuit Judges

ORDER

Upon consideration of the emergency motions for stay or summary disposition, the response thereto, and the replies; and the motion to dismiss, the responses thereto, and the reply, it is

ORDERED that the administrative stay entered July 18, 2018 be dissolved. Petitioners have withdrawn their requests for a stay. It is

FURTHER ORDERED that the motion to dismiss be granted. Petitioners' challenges to the July 6, 2018 "No Action Assurance" memorandum are moot in light of EPA's withdrawal of the No Action Assurance on July 26, 2018. See McBryde v. Comm. to Review, 264 F.3d 52, 55 (D.C. Cir. 2001) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot.").

Although, as a general matter, "voluntary cessation of challenged activity does not moot a case," Nat'l Black Police Ass'n v. Dist. of Columbia, 108 F.3d 346, 349 (D.C. Cir. 1997), a defendant may show that its voluntary conduct has mooted a case by demonstrating that (1) "there is no reasonable expectation . . . that the alleged violation will recur," and (2) "interim relief or events have completely and irrevocably eradicated

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1190 **September Term, 2017**

the effects of the alleged violation," Coal. of Airline Pilots Ass'ns v. FAA, 370 F.3d 1184, 1189 (D.C. Cir. 2004) (quoting County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)). Here, the July 26, 2018 withdrawal memorandum states that EPA "will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers." 7/26/18 Mem. at 3. Moreover, because the No Action Assurance did not purport to change the law, this court cannot provide "meaningful relief" with respect to penalties that could be imposed in future enforcement proceedings or citizen suits concerning glider vehicle production that may have occurred while the No Action Assurance remained in effect. In any future proceedings, the courts may consider any such factors "as justice may require." 42 U.S.C. § 7413(e)(1). Therefore, a decision from this court would constitute an impermissible advisory opinion as to the legality of the No Action Assurance. See Chamber of Commerce of U.S. v. EPA, 642 F.3d 192, 199 (D.C. Cir. 2011) ("[F]ederal courts are without authority to render advisory opinions or to decide questions that cannot affect the rights of litigants in the case before them.") (internal quotation marks and citation omitted). It is

FURTHER ORDERED that the motions for summary disposition be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk

Message

From: Wheeler, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=17A1669EF5B54FBA8CB457845308787E-WHEELER, AN]
Sent: 7/18/2018 7:46:59 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
Subject: Fwd: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles
Attachments: gliderletter.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Edge, Valerie (DOJ)" <Valerie.Edge@state.de.us>
Date: July 18, 2018 at 2:44:39 PM EDT
To: "wheeler.andrew@Epa.gov" <wheeler.andrew@Epa.gov>
Subject: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

Dear Acting Administrator Wheeler,

Attached is a letter in which the Delaware Attorney General joins the request by several states last Friday to withdraw or issue an administrative stay regarding the above. The letter is also being submitted by certified mail.

Thank you for your consideration.

Valerie Edge

Valerie Edge
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904
Email: valerie.edge@state.de.us
Phone: 302-739-4636
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MATTHEW P. DENN
ATTORNEY GENERAL

DEPARTMENT OF JUSTICE
KENT COUNTY
102 WEST WATER STREET
DOVER, DELAWARE 19904

CIVIL DIVISION (302) 739-7641
FAX: (302) 739-7652
CRIMINAL DIVISION (302) 739-4211

July 18, 2018

VIA EMAIL AND CERTIFIED MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
William Jefferson Clinton Building
1200 Pennsylvania Ave, N.W.
Washington, DC 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

In a letter dated July 13, 2018, the Attorney Generals of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board requested that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule"). The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2. 81 Fed. Reg. 73478 (Oct. 25, 2016). The unlawful de facto suspension refers to a "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" issued by Susan P. Bodine, Assistant Administrator on July 6, 2018.

The Attorney General of Delaware joins that request for the reasons set out in the July 13th letter.

Sincerely,

FOR THE STATE OF DELAWARE

MATTHEW P. DENN
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By: _____

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Subject: FW: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)
Attachments: Gliders_EmergencyMotion_AsFiled_07.17.18.pdf

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Subject: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Thanks,

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No. 18-1190

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ENVIRONMENTAL DEFENSE FUND, CENTER FOR BIOLOGICAL DIVERSITY, and SIERRA CLUB,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

EMERGENCY MOTION FOR STAY OR SUMMARY DISPOSITION AND REQUEST FOR ADMINISTRATIVE STAY

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CERTIFICATE AS TO PARTIES, RULING, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), petitioners certify as follows:

A. Parties and Amici

Petitioners are the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club. Respondent is the United States Environmental Protection Agency (EPA). No parties have moved for leave to intervene at present. There are no *amici curiae* at present.

B. Ruling Under Review

Petitioners seek review of a final action taken by EPA on July 6, 2018, styled as a "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," and reproduced in an Addendum to this motion.

C. Related Cases

Petitioners are not aware of any related cases within the meaning of Circuit Rule 28(a)(1)(C).

/s/ Matthew Littleton
Matthew Littleton

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Petitioners Environmental Defense Fund, Center for Biological Diversity, and Sierra Club make the following disclosures:

Environmental Defense Fund

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Environmental Defense Fund, a corporation organized and existing under the laws of the State of New York, is a national non-profit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to society's most urgent environmental problems.

Center for Biological Diversity

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: The Center for Biological Diversity is a non-profit corporation organized and existing under the laws of the State of California that works through science, law, and advocacy to secure a future for all species, great and small, hovering on the brink of extinction, with a focus on protecting the lands, waters, and climate that species need to survive.

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Sierra Club

Parent Corporations: None.

Publicly Held Company that Owns 10% or More of Party's Stock: None.

Party's General Nature and Purpose: Sierra Club, a corporation organized and existing under the laws of the State of California, is a national non-profit organization dedicated to the protection and enjoyment of the environment.

/s/ Matthew Littleton
Matthew Littleton

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 18(a)(1)

The undersigned certifies that this Emergency Motion for Stay or Summary Disposition and Request for Administrative Stay complies with Circuit Rule 18(a).

Movants previously requested relief from respondent U.S. Environmental Protection Agency (EPA). The final action under review is dated July 6, 2018, but EPA did not release it until July 9, 2018. Movants sent a certified letter and e-mail to the Acting Administrator and other agency officials on July 10, 2018. *See* Appendix 253–57. Movants' letter objected to the challenged action and requested that it be immediately withdrawn or stayed. After receiving no response from EPA or its Acting Administrator, movants filed this petition for review and motion for emergency relief on July 17, 2018.

On July 16, 2018, the undersigned provided notice of this filing by e-mail to Eric Hostetler, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

/s/ *Matthew Littleton*
Matthew Littleton

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GLOSSARY

EPA	United States Environmental Protection Agency
NO_x	Nitrogen oxides
$PM_{2.5}$	Fine particulate matter

INTRODUCTION

Petitioners challenge a final decision by the Environmental Protection Agency (EPA) that encourages the production and sale of thousands of super-polluting, heavy-duty diesel freight trucks in violation of the agency's own Clean Air Act regulations. EPA's decision not to enforce those regulations nationwide paves the way for immediate production and sale of these "gliders," which will operate for decades and emit orders of magnitude more pollutants than trucks compliant with current pollution-control standards. The agency's refusal to implement its own regulations will result in premature mortality on a massive scale, and it threatens to undermine decades of progress in combating diesel-exhaust pollution. Hastily requested and finalized on the last night of then-Administrator E. Scott Pruitt's tenure without any input from the public, this extraordinary decision rewards a handful of manufacturers that lobbied him for a Clean Air Act loophole at the expense of the health and welfare of the American people, not to mention competing firms who follow the law.

EPA anticipates that, each day that this decision remains in effect, glider manufacturers will produce and sell more noncompliant freight trucks in contravention of existing law and in derogation of human health. Because the Clean Air Act regulates vehicles principally at the point of manufacture, it will be virtually impossible to claw them back once they are sold. These super-polluters thus are poised to spend their lifetimes emitting many times more smog-forming nitrogen oxides (NO_x),

lung-damaging particulate matter ($PM_{2.5}$), and cancer-causing toxics than lawfully built heavy-duty trucks. Relief is urgently needed from EPA's unlawful action in order to avert substantial and irreparable public-health consequences.

The goal and anticipated effect of EPA's decision is that glider companies will illegally manufacture and sell noncompliant vehicles without the agency needing to meet Congress's detailed requirements for staying or revising the Clean Air Act regulations meant to keep those vehicles off the road. Although EPA labeled its action a "decision not to enforce" the Act and its implementing regulations, this nationwide action is nothing like the sort of case-by-case enforcement decisions for which agencies are granted considerable discretion. Instead, EPA's decision sets up a shadow regulatory regime that prescribes standards and timelines for what every manufacturer nationwide may do without fear of federal enforcement, separate and apart from what the law requires. This is a transparent effort by EPA to evade clear statutory restraints on its authority to suspend or revise regulations.

EPA's action is also arbitrary and capricious on its own terms. The agency failed even to acknowledge its earlier factual finding—memorialized in a final regulation—that allowing these vast numbers of super-polluting trucks to be produced and sold will endanger human health and welfare. Nor could EPA justify its action based on any finding that those harms are now outweighed by its desire to grant favors to glider companies. A decision by this Court permitting this gambit to stand

would open the door for every federal agency simply to ignore whichever laws do not conform to its current policy preferences.

This Court should either summarily declare EPA's decision unlawful and vacate it, or else stay its effect pending review on the merits. Furthermore, because the harm is so severe and the timing so urgent, and because EPA's open and notorious abdication of its enforcement responsibility is so corrosive to the rule of law, petitioners respectfully request that this Court administratively stay the decision while it considers this motion.

BACKGROUND

A "glider" is a heavy-duty diesel freight truck that combines a brand-new truck body (a "glider kit") with a previously used engine and transmission. Gliders "are typically marketed and sold as 'brand new' trucks, Appendix (A) at 332, and for good reason. Before assembling a glider, the manufacturer rebuilds the engine to "significantly increase [its] service life," 40 C.F.R. 1068.120(b); A205–06, so that the glider may compete in the marketplace with other heavy-duty diesel freight trucks assembled solely from brand-new parts. *See* A147–49. But there is a significant difference between gliders and the other new trucks with which they compete: Glider trucks emit far more diesel pollution thanks to their failure to incorporate pollution controls.

Air pollution from gliders garnered little attention before the twenty-first century, for two reasons. First, gliders historically were manufactured only in very small numbers as a means to salvage usable engines from wrecked trucks. Second, differences in emissions between late-model engines and the earlier models installed in gliders tended to be modest. *See* A208–09.

That changed in recent decades, when air-pollution concerns and major advances in emissions-control technology prompted EPA to tighten standards and require that new heavy-duty diesel engines reduce NO_x and $PM_{2.5}$ emissions by 95 percent and 90 percent, respectively, over earlier models. A209–12, 226. Glider manufacturing went from being an isolated way to salvage usable engines from wrecked trucks to (for some) a business model predicated on circumventing the new emissions standards. Glider sales increased by at least an order of magnitude beginning in 2004. A119, 607. While still accounting for a relatively small portion (roughly 5 percent) of the overall freight-truck market in terms of sales volume, gliders accounted for half of NO_x and $PM_{2.5}$ emissions from *new* heavy-duty freight trucks, and if trends continued, were expected to account for one-third of such emissions from *all* heavy-duty freight trucks by 2025. A406. Untreated diesel exhaust from gliders had become a major public-health problem, especially in the Nation's "truck bottlenecks" where traffic congestion is worst. *See* A198.

EPA responded to that problem in 2016 with a rule clarifying that new glider vehicles are subject to the same emission standards as comparable "new motor vehicles" that are entering the domestic consumer market for the first time. 42 U.S.C. 7521(a)(1). *See* 40 C.F.R. 1037.635(a) (2017). The agency explained in the 2016 Rule that "it is both consistent with the plain language of the [Clean Air Act] and reasonable and equitable for the engines in 'new trucks' to meet the emission standards for all other engines installed in new trucks." A336.

At the same time, EPA acknowledged the historical role of gliders as a means to recover usable engines from a small number of wrecked trucks. The 2016 Rule granted transitional exemptions for manufacturers with fewer than 1,500 employees who "sold one or more glider vehicles in 2014." 40 C.F.R. 1037.150(t)(1)(i). *See also* 13 C.F.R. 121.201. For calendar year 2017, the 2016 Rule allowed those manufacturers to produce noncompliant glider vehicles up to their "highest annual production of glider kits and glider vehicles for any year from 2010 to 2014." 40 C.F.R. 1037.150(t)(3). For calendar years 2018–21, the same restriction applies for manufacturers that did not produce more than 300 glider kits or vehicles in any year from 2010 to 2014; but, for manufacturers that produced more than 300 glider kits or vehicles during one of those years, the 2016 Rule caps production of noncompliant gliders at 300 per year. 40 C.F.R. 1037.150(t)(1)(ii). Both during and after this

transition period, glider manufacturers may produce an unlimited number of vehicles that are compliant with current emission standards.

Glider manufacturers did not challenge the 2016 Rule in court. But the Nation's largest glider manufacturer and dealer, Fitzgerald Glider Kits (Fitzgerald), met directly with Administrator Pruitt in May 2017. A75. Two months later, Fitzgerald and two other glider companies petitioned him to repeal the provisions of the 2016 Rule that apply to glider vehicles and kits. A60–66. The petition relied heavily on a finding of a "study recently conducted by Tennessee Tech[nological University]" that emissions of NO_x and $PM_{2.5}$ from rebuilt glider engines were no higher than comparable emissions from newly built engines. A64. *See also* A68–71. Administrator Pruitt promptly granted the petition and began a rulemaking to examine "the EPA's authority under the Clean Air Act to regulate gliders" and "the soundness of the EPA's [2016] technical analysis" that had unambiguously identified much higher NO_x and $PM_{2.5}$ emissions from old glider engines. A58.

In November 2017, Administrator Pruitt published in the Federal Register a proposed repeal of "emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits." A49. The basis for the proposed repeal was his "proposed [re]interpretation" of the Clean Air Act to exclude all newly assembled gliders from regulation as new motor vehicles. A50. *See* 42 U.S.C. 7521(a)(1). Administrator Pruitt admitted that a glider meets the literal terms of the statutory

definition of a "new motor vehicle": one whose "equitable or legal title … has never been transferred to an ultimate purchaser." 42 U.S.C. 7550(3). *See* A51. But he nonetheless proposed special treatment for gliders because, in his view, Congress did not have the "specific intent to include within the statutory definition such a thing as a glider vehicle." A52. The proposed rule relied primarily on the Automobile Information Disclosure Act, 15 U.S.C. 1231 *et seq.*, an "otherwise unrelated" statute not mentioned in the Clean Air Act or its legislative history. A52. EPA speculated that Congress must have been thinking about a possible reading of the Automobile Information Disclosure Act when it defined the term "new motor vehicle" in the Clean Air Act. A52–53

The proposed rule also referenced the emissions study cited in the glider companies' petition. A54. The proposal did not disclose, however, that EPA had already unearthed methodological concerns with that study. A299–302. After the comment period closed, it also came to light that Fitzgerald had funded the Tennessee Tech study, hosted the study at one of its facilities, and then bankrolled a new research institute for the university. A284, 300. Concerns about the lack of integrity of the study led Tennessee Tech's President to ask the Administrator not to "use or reference" it for any purpose until the study had been peer reviewed and the university had conducted an investigation of "research misconduct." A15. That investigation remains ongoing.

Administrator Pruitt initially appeared in a rush to finalize his proposed rule, denying multiple requests for extensions of the comment period. A17, 19. But, after the comment period closed in January 2018, EPA did not finalize the rule or update the public on its status for six months. Meanwhile, in May 2018, the agency's Science Advisory Board voted to review the proposed rule based on "'uncertainty about what scientific work, if any, would support' this action." A10.

In the face of these serious concerns, EPA did not finalize its proposed rule or any variant of it. Instead, without advance notice to the public, and on the final day of Administrator Pruitt's tenure at the agency (July 6, 2018), an urgent memorandum issued from the Assistant Administrator of the Office of Air and Radiation, William J. Wehrum, to his counterpart in the Office of Enforcement and Compliance Assurance, Susan Parker Bodine. A5–6.

Mr. Wehrum's memorandum requested that, "as a bridge to a rulemaking" that "will require more time than [EPA] previously anticipated," and "in order to preserve the status quo as it was" before the 2018 cap on glider production took effect, the Enforcement Office issue a "No Action Assurance" committing EPA not to "take enforcement action" against any manufacturer or supplier that "in 2018 or 2019" produces noncompliant gliders and kits "up to the level of their" more lenient 2017 cap. A5–6. Mr. Wehrum indicated that glider manufacturers that had "reli[ed] on" EPA's proposed rule—rather than existing law—had "reached their calendar

year 2018" limit of 300 noncompliant gliders and now would have to "cease production for the remainder of 2018" absent EPA intervention. A6. Because the agency had been unable "to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making," Mr. Wehrum requested that EPA refrain entirely from enforcing the current limits on production of noncompliant gliders "for one year … or until such time as EPA takes final action to extend the compliance date" for such limits. A6.

Ms. Bodine responded that same day—again, Administrator Pruitt's last at the agency—by "providing a 'no action assurance'" (Glider Decision) to all glider manufacturers and their suppliers across the country, effective immediately. A2. Ms. Bodine committed EPA to refrain from enforcing the calendar year 2018 and 2019 cap of 300 noncompliant glider vehicles per manufacturer, "[c]onsistent with the intent and purpose of [Mr. Wehrum's] planned course of action" to extend the date for compliance with the cap via rulemaking. A3. Ms. Bodine anticipated that this blanket no-action assurance would "avoid profound disruption" to glider manufacturers and suppliers by permitting them to violate existing law without fear of triggering EPA enforcement action. A3. Ms. Bodine stated summarily that her action was "in the public interest," A3, without mentioning the quantities of dangerous pollution that thousands more noncompliant gliders would produce, and without

addressing any interest other than that of glider manufacturers and suppliers that are barred by current law from producing more than 300 noncompliant gliders per year.

Although the memos of Mr. Wehrum and Ms. Bodine were both signed on July 6, 2018, they were not released until July 9, 2018. On July 10, 2018, petitioners asked Acting Administrator Andrew Wheeler to rescind the memos or stay their effect to allow for orderly judicial review. A253–57. Mr. Wheeler did not respond to that request or a like request filed by thirteen States on July 13, 2018. A259–64. This petition followed.

JURISDICTION AND REVIEWABILITY

This Court has exclusive jurisdiction to review a "nationally applicable … final action taken" by EPA pursuant to the Clean Air Act. 42 U.S.C. 7607(b)(1). The Glider Decision is subject to review under that provision because it is nationally applicable; it is final action; and it is not committed to agency discretion by law.

First, the Glider Decision is nationally applicable. It unambiguously governs every small manufacturer of glider freight trucks and their suppliers.[1] *See* A2.

Second, the Glider Decision is final action. It both "consummat[es]" EPA's decisionmaking process and "determine[s]" "rights or obligations." *Bennett v. Spear*, 520 U.S. 154, 178 (1997). *See also Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S.

[1] "[A] clear majority of the companies assembling glider vehicles" qualify as "small manufacturers." A685.

457, 478 (2001). The decision plainly states that, effective immediately, EPA "will" not enforce the regulation prohibiting production of more than 300 noncompliant glider vehicles per manufacturer per year. A3. *See* 40 C.F.R. 1037.150(t)(1)(ii); *Cmty. Nutrition Inst. v. Young*, 818 F.2d 943, 946 (D.C. Cir. 1987) ("[U]se of 'will' indicates [a] statement is in fact a binding norm."). The Glider Decision *obligates* EPA to withhold its authority to enforce the law—and, conversely, it grants glider manufacturers and their suppliers the *right* to violate existing law without triggering EPA "[a]ctions to restrain such violations." 42 U.S.C. 7523(b).

EPA's boilerplate about "reserv[ing] its right to revoke or modify" the Glider Decision does not render the decision nonfinal. A3. *See Sackett v. EPA*, 566 U.S. 120, 127 (2012) ("The mere possibility that an agency might reconsider … does not suffice to make an otherwise final agency action nonfinal."). Nor is the decision made nonfinal by EPA's ongoing and elongated reconsideration of the regulation that it refuses to enforce. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 7 (D.C. Cir. 2017) ("[T]he applicable test [for finality] is not whether there are further administrative proceedings available, but rather whether the impact of the order is sufficiently final to warrant review in the context of the particular case.").

Third, the Glider Decision is not "immune from judicial review" simply because EPA styled it a "decision not to take enforcement action." *Heckler v. Chaney*, 470 U.S. 821, 832 (1985). The Glider Decision is not "a '*single-shot* nonenforcement

decision.'" *OSG Bulk Ships, Inc. v. United States*, 132 F.3d 808, 812 (D.C. Cir. 1998) (citation omitted). EPA here "'consciously and expressly adopted a general policy' that is so extreme as to amount to an abdication of its statutory responsibilit[y]" to uphold and implement a validly issued regulation. *Heckler*, 470 U.S. at 833 n.4. *See id.* at 839 (Brennan, J., concurring) (noting the importance of judicial review of an agency's "refus[al] to enforce a regulation lawfully promulgated and still in effect"). The Glider Decision expressly "delineat[es] the boundary between enforcement and non-enforcement and purport[s] to speak to a broad class of parties." *Crowley Caribbean Transp., Inc. v. Peña*, 37 F.3d 671, 677 (D.C. Cir. 1994). *See also OSG Bulk Ships*, 132 F.3d at 812 ("[A]n agency's adoption of a general enforcement policy is subject to review."). And the document announcing the decision "present[s] a clear[] (and … easily reviewable) statement of [EPA's] reasons" for its action. *Crowley*, 37 F.3d at 677. Those reasons are plainly invalid, as we now explain.

ARGUMENT

The Glider Decision is an unlawful attempt by EPA to circumvent the Clean Air Act's requirements and institute a shadow regulatory regime under the guise of exercising "enforcement discretion." A stay of the decision pending review is warranted because it is patently illegal; the irreparable harm to petitioners' members is certain and great; and the decision rewards only manufacturers that violate the law, at the expense of both public health and competitors that follow the law. Indeed, this

Court should summarily vacate the decision because its flaws are "so clear as to justify expedited action." *Walker v. Washington*, 627 F.2d 541, 545 (D.C. Cir. 1980).

I. The Glider Decision should be declared unlawful and vacated.

Petitioners should prevail on the merits of their claims that the Glider Decision is unlawful. First, the decision circumvents Congress's procedural and substantive directions in the Clean Air Act. Second, the decision is arbitrary and capricious on its own terms because it entirely ignores the rationale for the regulation it is designed to undercut.

A. The Glider Decision is an illegal effort to subvert the Clean Air Act.

"EPA is a federal agency—a creature of statute." *Michigan v. EPA*, 268 F.3d 1075, 1081 (D.C. Cir. 2001). And "Congress does not intend administrative agencies, agents of [its] own creation, to ignore clear … regulatory, [or] statutory … commands." *Heckler*, 470 U.S. at 839 (Brennan, J., concurring). "So long as [a] regulation remains in force the Executive Branch is bound by it, and indeed the United States as the sovereign composed of the three branches is bound to respect and enforce it." *United States v. Nixon*, 418 U.S. 683, 696 (1974). *See also Nat'l Family Planning & Reproductive Health Ass'n v. Sullivan*, 979 F.2d 227, 234 (D.C. Cir. 1992) ("[A]n agency issuing a legislative rule is itself bound by the rule until that rule is amended or revoked."). The grant of enforcement discretion in the Clean Air Act, *see* 42 U.S.C. 7523 and 7524(b), does not "set [EPA] free to disregard

legislative direction in the statutory scheme that the agency administers." *Heckler*, 470 U.S. at 833. EPA's Glider Decision is unlawful because it ignores Congress's straightforward directives in the Clean Air Act.

The Glider Decision disregards the instruction that EPA "enforce a lawfully issued final rule … while it reconsiders [that rule]," *Clean Air Council*, 862 F.3d at 9, except in "carefully defined" circumstances not present here. *Nat. Res. Def. Council, Inc. v. Reilly*, 976 F.2d 36, 40 (D.C. Cir. 1992). Congress understood that EPA, like any agency, "must consider … the wisdom of its policy on a continuing basis, for example, in response to changed factual circumstances, or a change in administrations." *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (citation omitted). The Clean Air Act thus authorizes EPA to "revis[e]" its "regulations under section 7521" of Title 42 that set air-pollutant-emission standards for motor vehicles. 42 U.S.C. 7607(d)(1)(K). At the same time, however, Congress determined that "the effectiveness of" the existing regulation "shall not [be] postpone[d]" while the process of regulatory revision unfolds. 42 U.S.C. 7607(b)(1). *Accord* 42 U.S.C. 7607(d)(7)(B) (providing that a pending "proceeding for reconsideration of the rule … shall not postpone [its] effectiveness").

The purpose and intended effect of the Glider Decision is to blunt the effectiveness of the mandatory production limit of 300 noncompliant glider vehicles per manufacturer per year by inviting manufacturers to disregard it while EPA takes

"more time" to finalize a relaxation or elimination of that limit. A3. Or, as Mr. Wehrum artfully put it, the Glider Decision aims to "preserve the status quo *as it was*" in 2017, before manufacturers had to adhere to the *current* production limit, "until such time as [EPA finds itself] able to complete final action" delaying that limit. A6 (emphasis added). EPA candidly admits that it issued the Glider Decision for one reason only: To upend the status quo *as it is* by allowing glider manufacturers and suppliers to violate an existing regulation while EPA spends another year developing a new one. The decision anticipates that its own existence will mean that manufacturers that "have reached their calendar year 2018" production limit will not "cease production," as existing law requires, but instead will produce vehicles in violation of that limit "while EPA completes its reconsideration." A3. This gross abuse of enforcement discretion frustrates Congress's clear intent that Clean Air Act regulations remain "effective[]" pending their reconsideration by EPA. 42 U.S.C. 7607(b)(1).

The Glider Decision does not resemble in the least an exercise of case-by-case enforcement discretion. First, it was initiated by the office of EPA charged with promulgating legislative rules, not the enforcement office. Second, case-by-case enforcement decisions implicate questions like "whether a violation has occurred, … whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action …

best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all." *Heckler*, 470 U.S. at 831. None of those factors are mentioned in the Glider Decision, which was issued by the enforcement office on the same day the request was made, hardly enough time for a careful exercise of prosecutorial discretion. The decision has more of the hallmarks of an interim final rule—or, as EPA actually described it, "a bridge to a rulemaking," A5—instituted without requisite procedure or reasoned decisionmaking.

The Clean Air Act includes detailed prescriptions of the procedures EPA must follow in order to amend an agency rule. 42 U.S.C. 7607(d)(2)-(6). Any rulemaking to revise the existing production limit would, as the agency concedes, have to "conform[] with the Clean Air Act and [be] based on reasoned decision making." A6. The Glider Decision is EPA's attempt to blow past these requirements and promote the favored regime of a new Administration before conforming with the Clean Air Act and articulating a reasoned basis for decision. *Cf.* A270–71 (reciting longstanding EPA "policy against definitive no action promises" made "on the basis that revisions to the underlying legal requirement are being considered").

The Glider Decision lays out an alternative regulatory structure in detail: "[M]anufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or have manufactured glider vehicles in calendar year 2018" and "those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to" those

manufacturers may now "in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3)." A2–3. And it covers a specific time period, "remain[ing] in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date." A3. But EPA means to "extend the compliance date" immediately, without following the procedures that Congress commanded it to follow. *See* A2 (stating that the Glider Decision is "consistent with the intent and purpose of [the Air Office's] planned course of action"). *Cf. Clean Air Council*, 862 F.3d at 6 (explaining that "an order delaying the rule's effective date" is "tantamount to amending or revoking a rule").

The Glider Decision also violates Congress's substantive instructions to EPA. The Clean Air Act commands that EPA "shall by regulation prescribe … standards applicable to" pollution from "new motor vehicles or new motor vehicle engines" that "may reasonably be anticipated to endanger public health or welfare," 42 U.S.C. 7521(a)(1), and the statute also requires manufacturers and suppliers to comply with those standards, 42 U.S.C. 7522(a)(1). The 2016 Rule reflects a considered "judgment" by EPA, *ibid.*, that current controls on emissions from glider vehicles are necessary to avoid endangering public health and welfare. *See* A405–06; A595. The Glider Decision does not question that judgment or the factual findings upon which it is based; it ignores it. And yet, at the same time, EPA reverses course and invites

manufacturers and suppliers to put thousands more gliders on the roads, spewing enormous quantities of pollution into the air the public breathes. This is not just a dereliction of the specific statutory duty at issue in this case; it is a dereliction of EPA's overriding duty under the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare." 42 U.S.C. 7401(b)(1).

This Court should not permit an agency to so easily circumvent the clear procedural and substantive requirements of its governing statute merely by issuing blanket "nonenforcement decisions" in an effort to impose a new Administration's favored policy on a nationwide basis, without regard to whether that new policy is lawful or based upon reasoned decisionmaking and public engagement.

B. The Glider Decision is arbitrary and capricious.

The only rationale given for the Glider Decision is that "it is in the public interest to avoid profound disruptions to small businesses." A3. But it is the epitome of arbitrary and capricious action to elevate one factor and ignore all others, particularly where the agency completely disregards the factors expressly made relevant by the statute. *See Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015) ("[R]easonable regulation ordinarily requires paying attention to the advantages *and* the disadvantages of agency decisions.").

When EPA promulgated the 2016 Rule, it recognized that glider vehicles generally have nitrogen oxide and particulate matter emissions *20-40 times* higher than other new vehicles. A405–06. Each glider vehicle using an old engine thus "results in significantly higher in-use emissions of air pollutants associated with a host of adverse human health effects, including premature mortality." A406. EPA evaluated the environmental impact of continued glider sales at the then-current rate of 10,000 gliders per year: In 2025, gliders "would emit nearly 300,000 tons of NO_x and nearly 8,000 tons of PM annually," representing "about one third of all NOx and PM emissions from heavy-duty tractors." A406 (emphasis omitted). EPA found that "[b]y restricting the number of glider vehicles with high polluting engines on the road, these excess PM and NOx emissions will decrease dramatically, leading to substantial public health-related benefits." A406.

The Glider Decision nowhere acknowledges, much less considers, those factual findings or the profound effects the decision will have on public health and welfare as EPA encourages these super-polluting trucks to be manufactured and put on the public roads. When changing course, an agency cannot "disregard[] facts and circumstances that underlay … the prior policy," as EPA has done here. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

For the reasons stated above, this Court should declare the Glider Decision unlawful and order EPA to rescind it. At a minimum, this Court should order the

agency to put the decision on hold pending further review in order to avert irreparable harm to petitioners and the general public.

II. Petitioners will suffer irreparable injury absent a stay.

EPA issued the Glider Decision to immediately and substantially affect the primary conduct of glider manufacturers and suppliers by encouraging them to produce more super-polluting trucks in violation of existing law. EPA explained that manufacturers that "have reached" their 2018 production cap for super-polluting trucks were limited to producing emission-compliant trucks for the remainder of this calendar year. A3. The agency determined that this "disruption[]" in those manufacturers' operations was not "in the public interest," and it broadcast to those manufacturers and their suppliers that they may flout the law this year and next without threat of agency enforcement. A3. EPA's reason for doing all this now, as opposed to waiting for an actual rulemaking, was its understanding that manufacturers are *right now* able, willing, and ready to produce noncompliant gliders in excess of the legal limit but are precluded from doing so by existing law.

But the flip side of the Glider Decision's immediate effect on glider producers is immediate and substantial harm to petitioners and their members from greater—much greater—production of super-polluting diesel freight trucks in 2018 and 2019, all to occur before this Court ordinarily could be expected to decide the merits of this case. A114 (consultant's estimate of "at least 11,190 additional non-compliant

glider vehicles being produced and sold in 2018–19" due to Glider Decision). *Compare* A3 (Glider Decision stating that it expires no later than 12 months after issuance), *with* Administrative Office of the U.S. Courts, Federal Court Management Statistics of the Courts of Appeals (Mar. 2018) (reflecting median duration of 12.2 months for cases filed in this Court). A stay of the Glider Decision pending review thus is necessary both in aid of this Court's jurisdiction and to prevent irreparable harm to petitioners. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (explaining that movant for interlocutory relief must show likelihood of "suffer[ing] irreparable harm *before a decision on the merits can be rendered*" (emphasis added and citation omitted)).

The harm to petitioners will be "both certain and great, actual and not theoretical, beyond remediation, and of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015). An analysis based on EPA's own numbers and modeling methods, combined with 2017 glider registration data, reveals that "for the remainder of 2018, on average, [the Glider Decision] will likely result in 30 additional [noncompliant] glider sales per day." A123. The additional super-polluting trucks expected to be produced as a result of the glider decision will emit "more than 430,000 tons of excess NO_x and more than 7,300 tons of excess $PM_{2.5}$" over their lifetimes, causing "an estimated additional 760–1,746 premature

deaths" compared to an equivalent number of trucks compliant with current air-pollution standards. A114.

Many of these effects will be felt immediately, before this Court could be expected to resolve the merits—or even this motion—on a normal schedule. *See* A114 (estimate of additional emissions through 2019). Those emissions alone will cause petitioners irreparable harm, as stated below. But the proper metric to use in evaluating irreparable harm in this case is the *lifetime* emissions of glider trucks that will be produced and sold before the Court resolves this case. In considering irreparable injury from air pollution, the relevant question is not what emissions will actually occur in the period before the Court may be expected to provide relief on the merits, but what emissions will be "beyond remediation" by the time that relief arrives. *Mexichem*, 787 F.3d at 555. The Clean Air Act regulates emissions from new motor vehicles almost exclusively at the point of manufacture, *see* 42 U.S.C. 7522, and once a vehicle is produced and sold, "there is no ready means for [EPA]" or this Court "to 'claw back' the vehicle from the private purchaser." A231–32. *See* A117 ("In 2025 over 95 percent of these gliders will likely still be on the road and will still be emitting over 24,000 tons excess NO_X and over 400 tons excess PM per year."). Thus, a showing of irreparable harm in this context turns on the actual harm that

additional glider trucks will cause during their lifetime of service, not the harm the trucks will cause before the merits are resolved.[2]

"Diesel exhaust is one of the most dangerous and pervasive forms of air pollution." A171. Decades of epidemiological and toxicological studies "report associations between short-term and long-term diesel exhaust exposures and a range of chronic and acute adverse health impacts." A172. In particular, emissions of $PM_{2.5}$ from diesel exhaust will "aggravate[] respiratory illness" and "can lead to premature mortality," A175, 700; and emissions of NO_x from diesel exhaust will "contribut[e] to respiratory illness, cardiovascular disease, and premature death." A177. *See also* A697–99.

Diesel exhaust from super-polluting glider freight trucks affects certain populations and individuals especially, including petitioners' members. For example, the 5-year-old son of Shana Reidy has a rare genetic disorder that "makes him acutely sensitive to … respiratory infections" that are "potentially life-threatening." A161, 163. Both short-term and long-term exposure to diesel exhaust from heavy-

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[2] Even if the merits could be resolved on an expedited basis, a substantial part of the harm from the Glider Decision in 2018 will occur in the very near future given the "risk of massive pre-buys" while this Court reviews the policy. A463. Experience shows that sales of noncompliant gliders spike during periods of regulatory transition, *see, e.g.,* A148 (dealer citing spike in glider sales in January 2018), and given the legal vulnerability of the Glider Decision, manufacturers will rush to produce and sell a high volume of gliders as quickly as possible.

duty freight trucks "exacerbate his underlying health condition," and that exposure is unfortunately plentiful given the Reidy family's proximity to and frequent use of the congested I-5 corridor in Seattle, Washington. A163–65. *See also* A175–77, 198–99, 700–01. The family also spends several hours per month traveling on "a two-lane highway that is heavily trafficked by heavy-duty logging trucks." A165. *See also* A294 (comment of dealer that gliders "are making a strong foothold in the logging sector"). During those trips especially, Reidy's son can find himself "trapped behind a heavy-duty truck with particularly high diesel exhaust emissions"—*e.g.*, a noncompliant glider—that can trigger an acute and potentially life-threatening respiratory infection. A165. *See also* A173.

The more than 11,000 additional glider trucks to be produced as a direct result of the Glider Decision will enter a national market and inevitably "travel across the lower 48 [States]" in the ordinary course of business. A153. And heavy-duty freight traffic tends to congregate in certain corridors, *see* A137, 198–99, making it "likely," *Winter*, 555 U.S. at 20, that some of the thousands of additional super-polluting glider trucks prompted by the Glider Decision will worsen ground-level ozone and fine-particle pollution in Reidy's ambient environment and in particular on the roadways where she travels frequently with her son.

The Reidys are far from alone. *See* A175 ("[A]bout 19% of the U.S. population lives within 500 meters of high [traffic] volume roads."). Elizabeth Brandt and

her family live nearby the East-West Highway in Montgomery County, Maryland, "a major thoroughfare with significant freight truck traffic," A86; *see* A198, and her daughters (ages 2 and 5) frequently "swim[] in [an] outdoor pool" that is less than 50 meters from the I-495 Beltway. A86; *see* A198. Janet DietzKamei, who "suffer[s] from severe asthma," A91, lives near and travels on several major California freeways where she is "sometimes … stuck immediately behind heavy duty trucks," A94, whose diesel exhaust can precipitate a life-threatening asthma attack. *See* A698–99. DietzKamei "cannot leave the house without wearing a mask" when local $PM_{2.5}$ or ozone levels are elevated. A92. Peggy Evans lives "approximately 3 blocks from" I-40 in central Tennessee, the "only highway near" a glider-manufacturing facility a mere thirty minutes away. A99–101. *See also* A137. The short- and long-term health effects of diesel freight-truck pollution are most severe in these areas, which are in very close proximity to heavily trafficked roadways. A174, 178, 703.

In summary, if left unchecked, the Glider Decision will have its intended result of drastically increasing the number of super-polluting heavy duty freight trucks on American roadways, thus leading to severe and irreparable health harms to petitioners' members and the public at large.[3] A123 (consultant's estimate that "each *day's* worth of [additional noncompliant] glider sales" triggered by the Glider

[3] These same injuries, caused by the Glider Decision and redressable by its rescission, suffice to establish petitioners' standing to challenge EPA's action.

Decision will "result in between 2.0 and 4.7 premature mortalities" (emphasis added)). *See also Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 545 (1987) ("Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable."); *Beame v. Friends of the Earth*, 434 U.S. 1310, 1313-14 (1977) (Marshall, J., in chambers) (same for adverse impacts of "air pollution" on "those with respiratory ailments"). A stay pending review is therefore warranted.

III. The balance of equities tips sharply in favor of a stay.

The equities on the other side are virtually nonexistent. Neither EPA nor its favored group of manufacturers and suppliers has a valid interest in violating existing law. It is a bedrock principle of our legal system that no person has a legitimate interest in engaging in illegal activity. *See, e.g.*, *United States v. Williams*, 553 U.S. 285, 297 (2008) ("Offers to engage in illegal transactions are categorically excluded from First Amendment protection."); *Illinois v. Caballes*, 543 U.S. 405, 408-09 (2005) (explaining that the Fourth Amendment's privacy protections do not extend to an interest in possessing contraband). Yet unlawful activity is the only thing that the Glider Decision was designed to protect. *See* A3.

Even setting aside its illegality, the interest of glider manufacturers and their suppliers in producing and selling more noncompliant vehicles is more than offset by the *legitimate* interests of the manufacturers and suppliers of heavy-duty diesel

freight trucks that will compete directly with glider companies for the same market share.[4] *See* A145–50, 155–59. EPA's concern for "loss of jobs" and "the viability of" glider companies, A3, apparently does not extend to other trucking jobs and companies that are harmed by the unlevel playing field that the Glider Decision creates. *See* A144, 148–50, 153, 158–59. As between the two, the equities lie with those businesses that justifiably relied on *existing law* to make "important investments … in modern technology and safety features," A158; *see also* A213–15, rather than businesses that unjustifiably relied on a *proposed rule* to defer those investments.

IV. The public interest favors a stay.

"In exercising their sound discretion, courts of equity should pay particular regard for the public consequences" when deciding whether to issue an injunction. *Winter*, 555 U.S. at 24. The public consequences of condoning EPA's course of action in this case would be far-reaching and detrimental to the rule of law. The question for this Court is whether to permit an agency to bypass lawful procedures for amending a regulation with which it disagrees on policy grounds and simply announce to the world that the rule will not be enforced until such time as the agency

[4] It is worth noting that Fitzgerald, the country's leading glider manufacturer, has indicated that it could "make a profit at 300 [noncompliant-glider vehicles produced] a year," as permitted by existing law. A600. There is thus good reason to question EPA's supposition that "the viability of" glider manufacturers is "threaten[ed]" by the application of existing law. A3.

divines a rationale for repealing it. This Court has rejected similar gambits by the same agency in the recent past, *see Clean Air Council*, 862 F.3d 1, and the public interest demands that the Court put the Glider Decision on hold rather than permit it to accomplish its destructive purpose before judicial review is had.

Moreover, "a court sitting in equity cannot 'ignore the judgment of Congress, deliberately expressed in legislation.'" *United States v. Oakland Cannabis Buyers' Co-Op.*, 532 U.S. 483, 497 (2001) (citation omitted). Congress has deliberately expressed a preference for "the greatest degree of [NO_x and $PM_{2.5}$] emission reduction achievable" by "heavy-duty vehicles and engines" "through the application of [available] technology," 42 U.S.C. 7521(a)(3)(A)(i), in order to avoid "endanger[ing] public health or welfare." 42 U.S.C. 7521(a)(1). The Glider Decision stands in direct opposition to that mandate, and a stay of its operation is in the public interest.

CONCLUSION AND REQUEST FOR IMMEDIATE RELIEF

For the foregoing reasons, this Court should either summarily vacate the Glider Decision or stay its effect pending judicial review.

In light of the ongoing, substantial, and irreparable harm caused by the EPA action under review—serious health harms that can be expected to worsen even in the days or weeks it takes this Court to decide this motion—and the lawless character of that action, petitioners respectfully request that this Court immediately enter an administrative stay of EPA's "No Action Assurance" until such time as it rules upon

this motion. *See, e.g.*, *In re Kellogg Brown & Root, Inc.*, 796 F.3d 137, 143 (D.C. Cir. 2015). If this Court declines to enter an administrative stay, petitioners respectfully request a decision on this motion before August 8, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion is printed in Times New Roman, a proportionally spaced 14-point font, and that, according to the word-count function in Microsoft Word 365, the motion contains 6,846 words, in compliance with Circuit Rule 8(b).

/s/ *Matthew Littleton*
Matthew Littleton

ADDENDUM

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of July, 2018, I served a copy of the foregoing document on respondent United States Environmental Protection Agency through this Court's CM/ECF System.

/s/ *Matthew Littleton*
Matthew Littleton

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/16/2018 6:21:08 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
Subject: Gliders: State AG Letter
Attachments: State Letter Requesting Withdrawal of NAA (July 13, 2018).pdf

In case this hasn't yet cleared your email inbox from the states.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

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[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

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[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: …on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

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[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion…." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

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ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

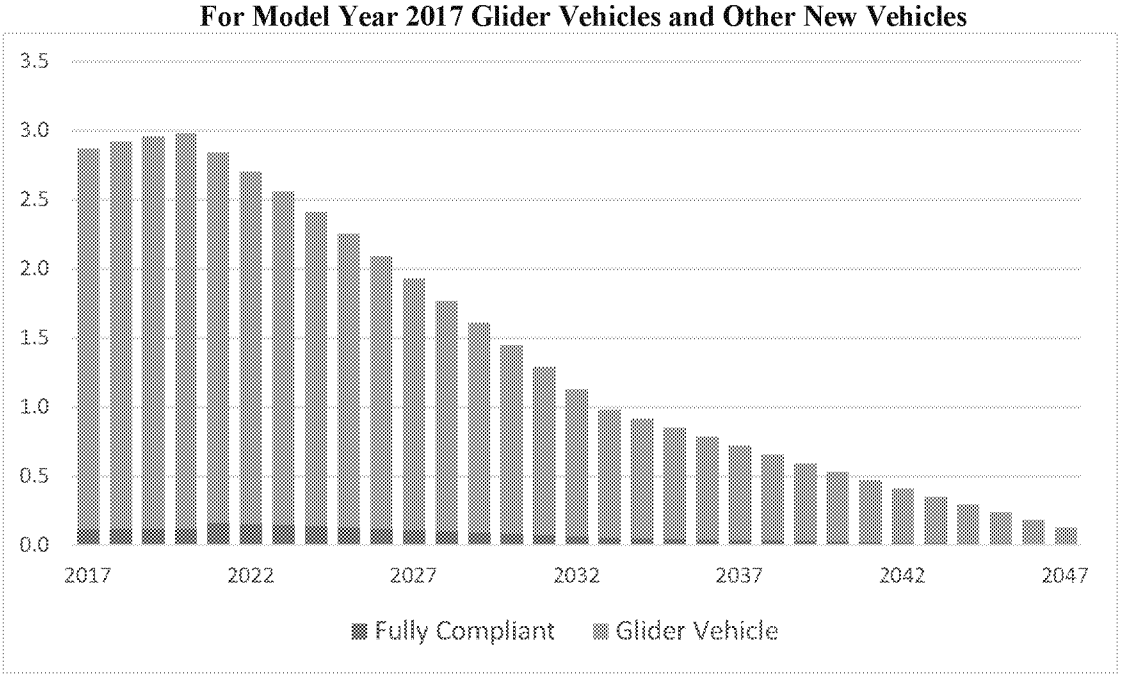
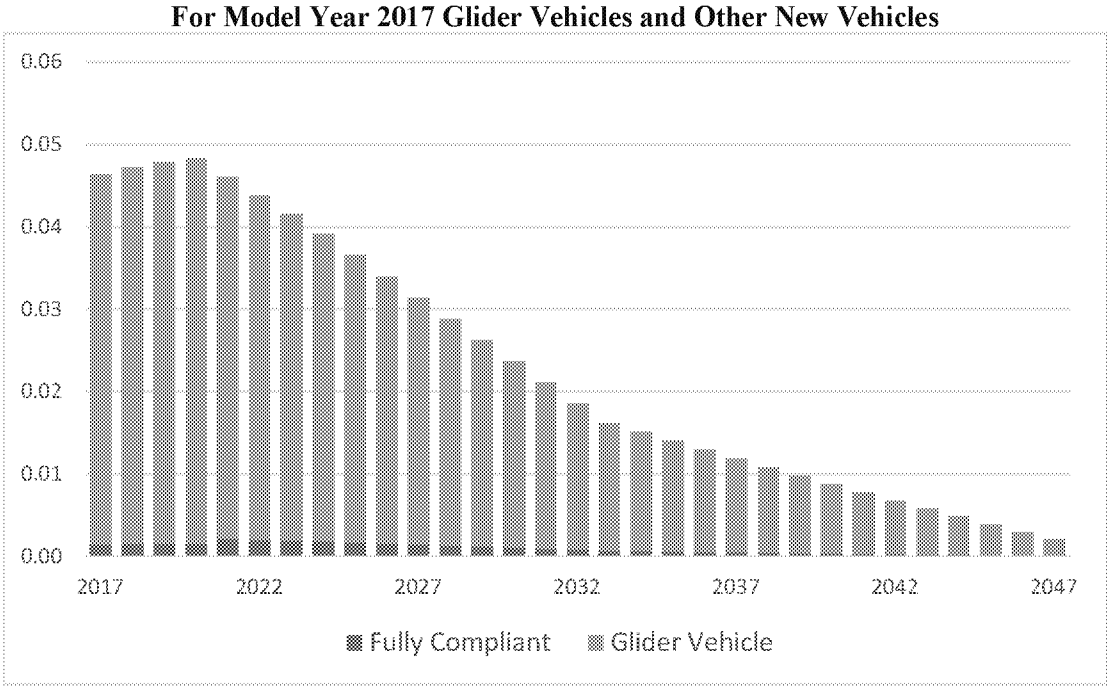


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

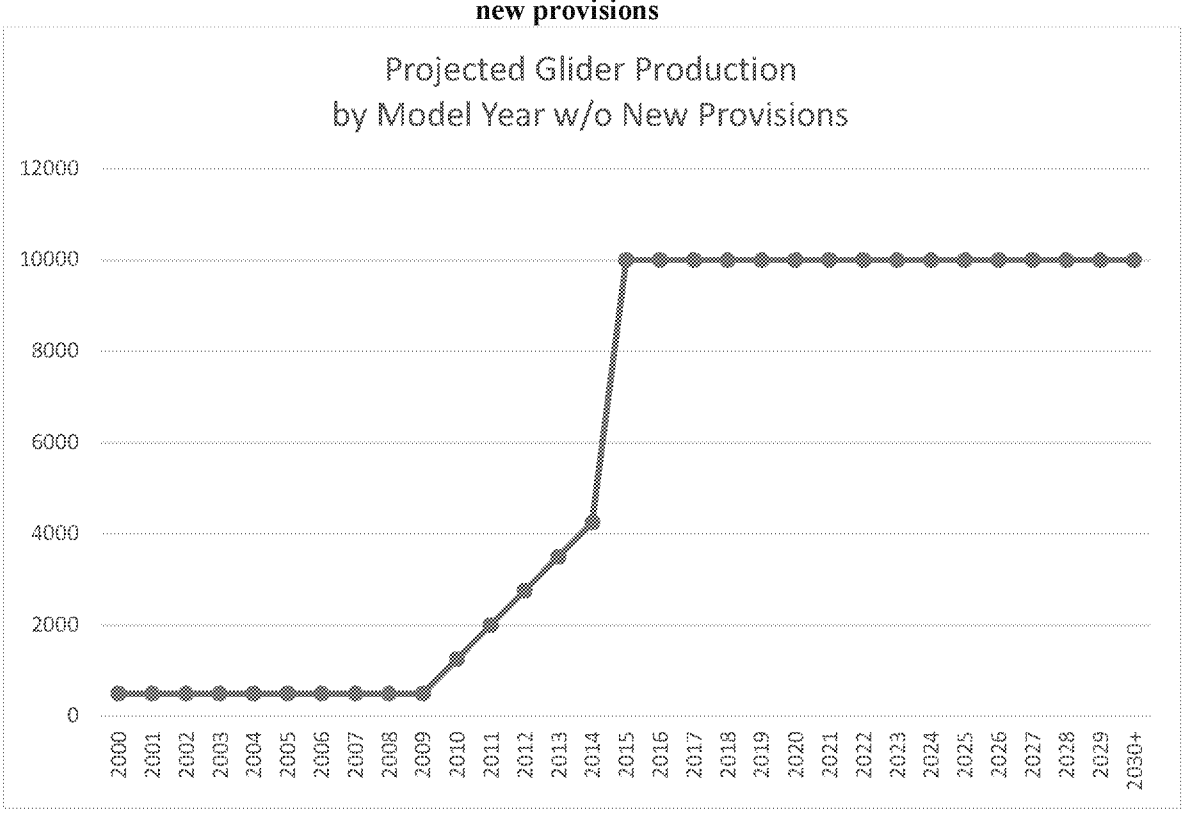


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: David Zonana [David.Zonana@doj.ca.gov]
Sent: 7/13/2018 6:33:40 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Elaine Meckenstock [Elaine.Meckenstock@doj.ca.gov]; Melinda Pilling [Melinda.Pilling@doj.ca.gov]; Megan Hey [Megan.Hey@doj.ca.gov]
Subject: States' Letter Requesting Withdrawal or Admin. Stay of No Action Assurance for Gliders
Attachments: Final Glider Ltr w Attach.pdf

Dear Acting Administrator Wheeler:

Attached please find a letter sent on behalf of the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board, which respectfully requests that EPA withdraw or issue an administrative stay of U.S. EPA's July 6, 2018, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles."

Thank you in advance for your time and consideration of this matter.

Sincerely,
David Zonana

David A. Zonana
Supervising Deputy Attorney General
Environment Section
California Department of Justice
1515 Clay Street, 20th Floor, Oakland, CA 94612
Tel.: (510) 879-1248
Email: David.Zonana@doj.ca.gov

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Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

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[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

---

[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: …on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion…." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

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Attorney General

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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

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ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

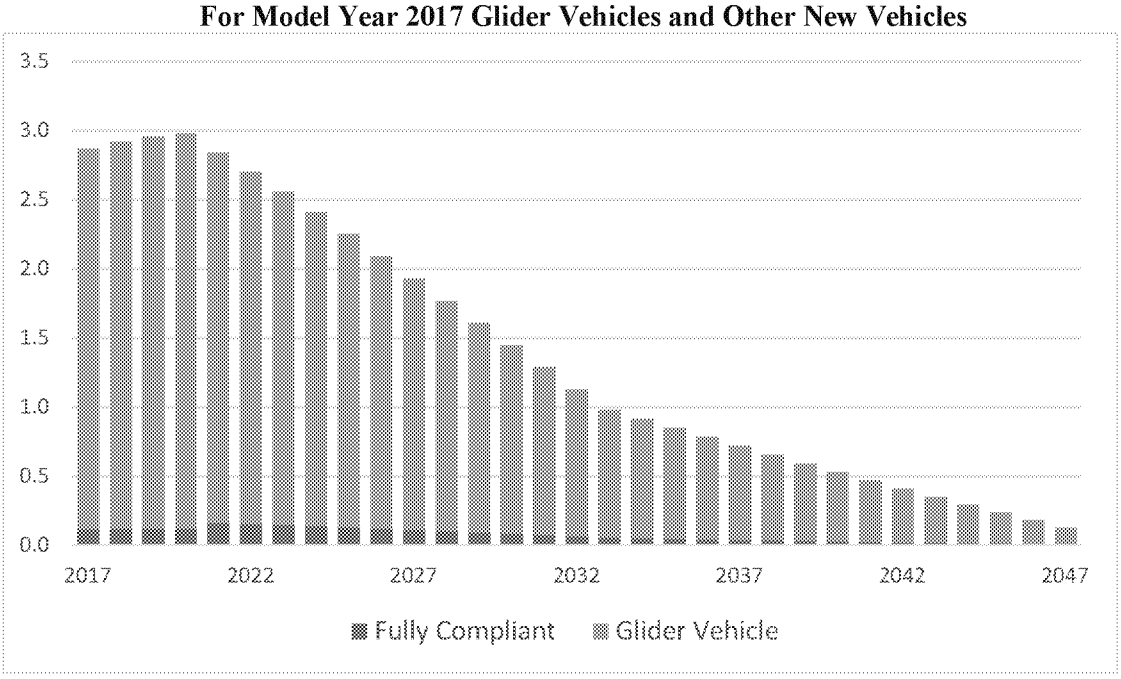
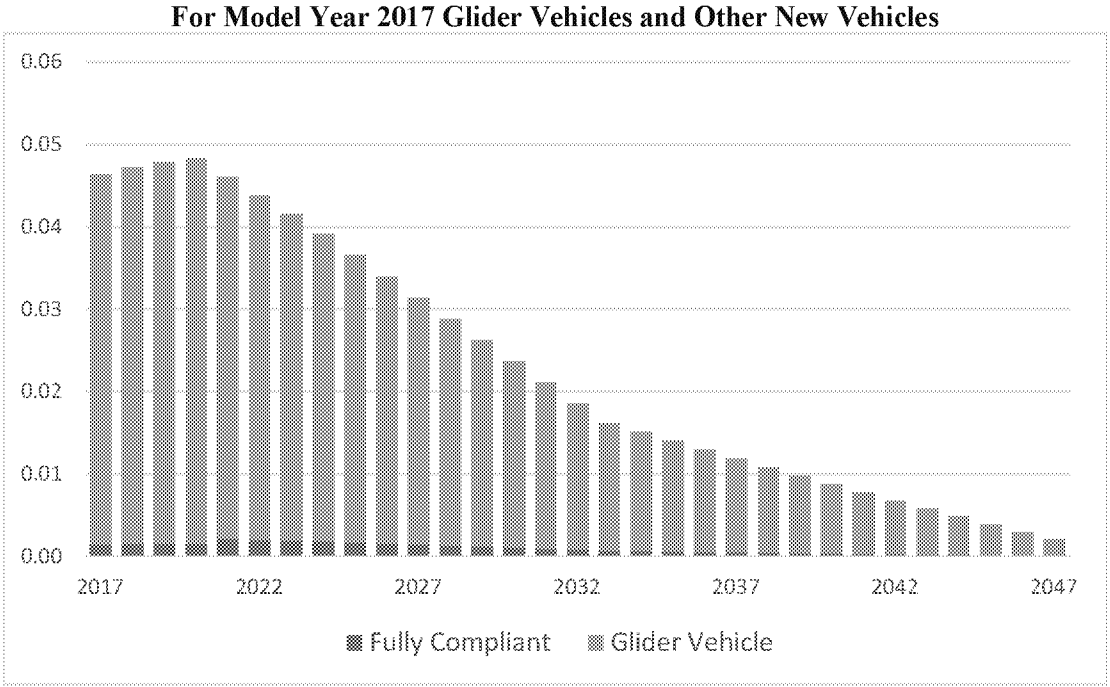


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

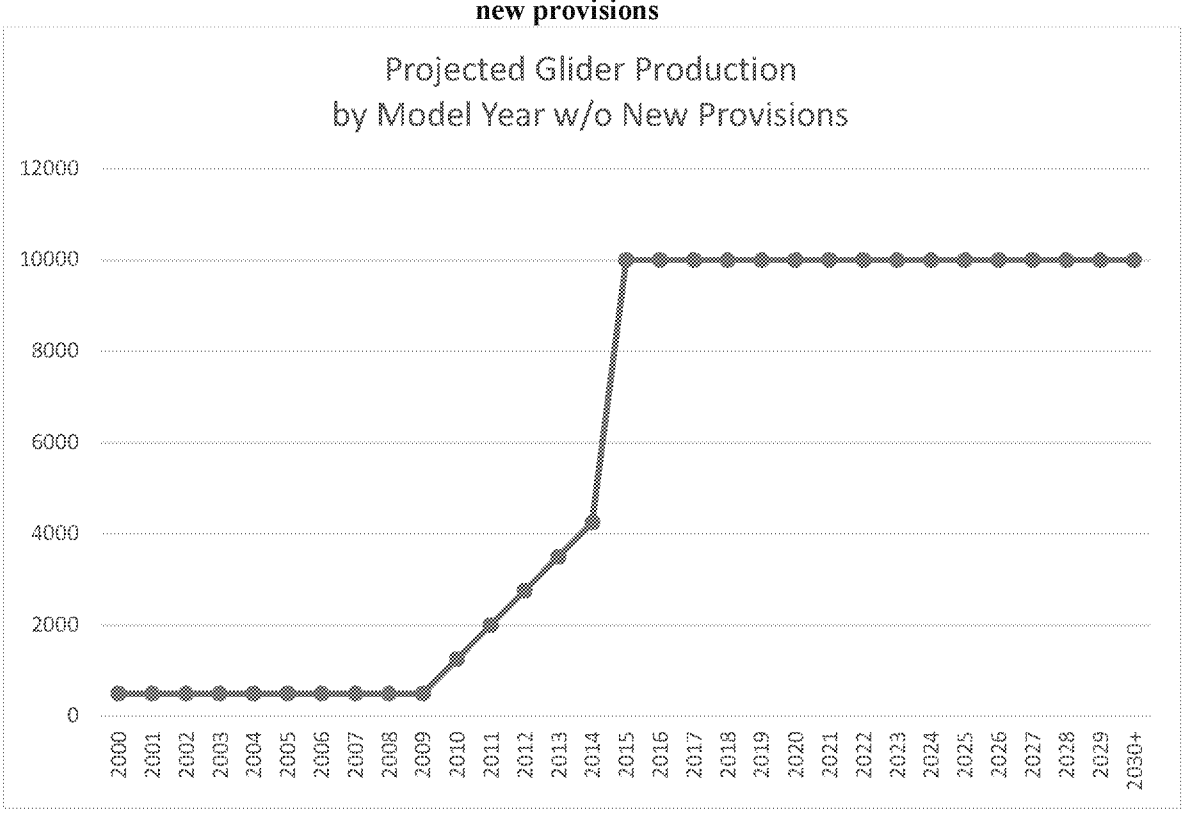


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: Shiffman, Cari [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]
Sent: 7/27/2018 1:40:50 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]
CC: egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Branning, Hannah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a568a722d33649dfa02f3dc95cd7a3fd-Branning, Hannah]
Subject: FW: FYI - WaPo article on glider NAA withdrawal (also includes a link to the memo)

FYI

Thanks,

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Office of Enforcement and Compliance Assurance
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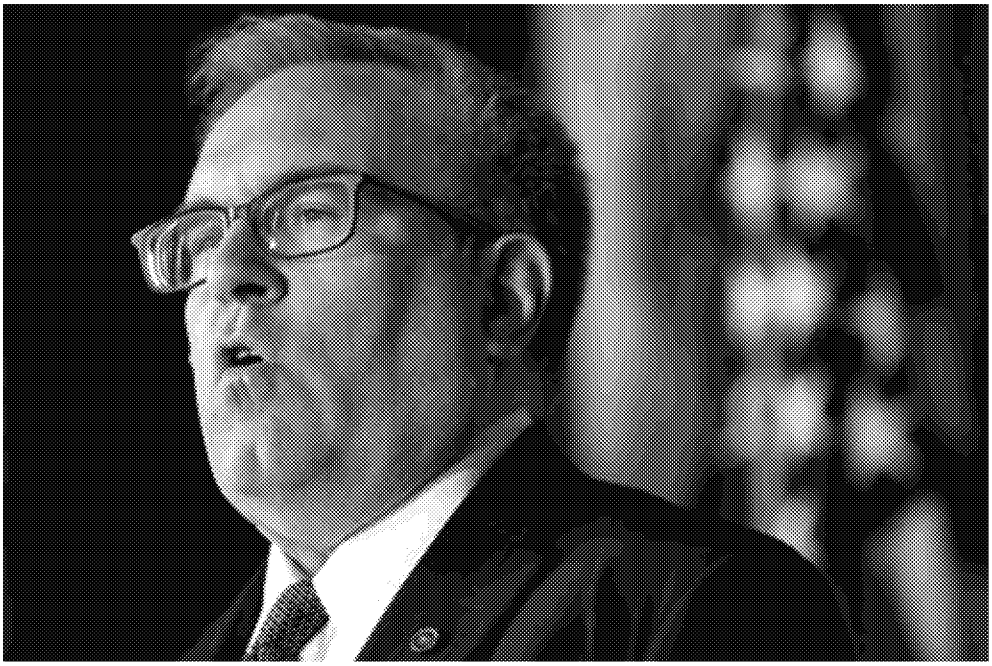
Subject: FYI - WaPo article on glider NAA withdrawal (also includes a link to the memo)

https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-stricter-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5_story.html?utm_term=.3bbef35ffbfb

EPA reverses course, says it will enforce stricter pollution limits for glider trucks



Environmental Protection Agency acting administrator Andrew Wheeler speaks to agency staff at the EPA headquarters in Washington on July 11, 2018. On Thursday, Wheeler announced that the EPA would enforce stricter pollution controls on freight trucks known as "gliders." (Jacquelyn Martin/AP)

by Juliet Eilperin and Brady Dennis July 26 at 11:39 PM

The Environmental Protection Agency reversed course late Thursday and announced it would enforce stricter pollution controls on freight trucks known as "gliders," which emit dozens of times more soot and contaminants compared to those with new diesel engines.

In a three-page memo to his deputies, acting administrator Andrew Wheeler said he would withdraw the "no action assurance" the agency had given the manufacturers of glider trucks on the last day that his predecessor, Scott Pruitt, headed the EPA. That letter assured firms that they would not have to limit their annual production to 300 vehicles through the end of 2019.

The EPA initially proposed a rule last November to repeal tighter emissions standards for glider trucks, which had been set to take effect in January. An Obama-era regulation aimed at controlling soot and other pollutants, as well as greenhouse gas emissions linked to climate change, the rule had the support of public-health advocates and some major trucking groups and engine manufacturers.

But it faced fervent opposition from a handful of companies that manufacture truck components called gliders and trailers. A glider, or body, is the front of a truck, including the cab, which fits over the engine. Trailers are the storage components that make up most of the length of a truck. Leading the charge against the new regulation was Fitzgerald Truck Sales, the Tennessee-based manufacturer that stood to benefit most from the rule's repeal. Fitzgerald, whose executives had met with Pruitt last May, had argued that the rule would disproportionately affect an industry that in 2015 produced about 10,000 gliders a year.

Environmental groups challenged the EPA's "no action assurance" letter on July 17 in the U.S. Court of Appeals for the D.C. Circuit, asking for an administrative stay as the court considered their emergency motion. A day later, the court granted the stay.

In his memo Wheeler noted that the agency suspends enforcement only in rare circumstances and that after consulting with EPA lawyers and policy experts, "I have concluded that the application of the current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's use of enforcement discretion."

Legal experts said that the risk of losing in court played a key role in Wheeler's decision.

"This had all the hallmarks of a major loss," Justin A. Savage, a partner at Sidley Austin specializing in environmental law, said in an interview Thursday. "This was so broadly cast this would have potentially circumscribed the agency's ability to issues these kinds of letters in the future."

Political considerations also influenced the move: Sen. Thomas R. Carper (Del.), the top Democrat on the Senate Environment and Public Works Committee, had personally appealed to Wheeler in a letter just after he took over the agency to "abandon legally-questionable policies and proposals" such as the one on gliders.

Carper, who also brought up the issue in a conversation with Wheeler this month, said in a statement Thursday that he was "glad to see EPA will reverse one of the most egregious — and likely illegal — environmental proposals of [Pruitt's] tenure."

"His senseless proposal ignored the science put out by his own EPA and created a Clean Air Act loophole for an industry friend, all while putting the health of Americans and our environment at risk," Carper added.

Fred Krupp, president of the Environmental Defense Fund, an advocacy group, called Wheeler's decision "a huge win for all Americans who care about clean air and human health."

"EPA's effort to create a loophole allowing more of them onto our roads was irresponsible and dangerous," Krupp said in a statement late Thursday. "We hope their decision tonight to withdraw that loophole puts a firm and final end to this serious threat to our families' health."

In proposing to repeal the regulation, Pruitt and his deputies had relied in part on findings out of Tennessee Tech University that concluded gliders "performed equally as well and in some instances out-performed" vehicles with newer engines. The school said one of its engineering professors had gone with graduate students "to a Fitzgerald facility to conduct independent research" on the EPA rule.

Despite the fact that the EPA's own modeling found that gliders emit anywhere from 20 to 40 times as much nitrogen oxide and soot as trucks with new engines, the EPA quickly decided Fitzgerald's arguments questioning the rule had merit. The president of Tennessee Tech later disavowed the study, saying that experts now question "the methodology and accuracy" of the industry-funded test.

Fitzgerald could not be immediately reached for comment Thursday.

Although Wheeler has reversed the move to suspend enforcement of stricter emissions limits through 2019, it remains unclear whether the agency will abandon its effort to repeal the Obama-era standards altogether.

Carper noted that proposed rule is still "on the table. I'll keep pushing to see that this misguided proposal is one that never gets finalized."

Message

From: Orquina, Jessica [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=35F8DBB8836E42CC8FFF027B4BC54C86-ORQUINA, JESSICA]
Sent: 7/27/2018 1:24:02 AM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Johnson, Laura-S [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dea46edadaa04f2c847d3245f8f5847c-LJohns06]; Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; White, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8af641a6306479c9026142ef3b02bd7-White, Eliz]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Wooden-Aguilar, Helena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=991ab84f64be4b6b9dd10a68c81887b0-HAWodd]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Badalamente, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=4ed0b573c0f1410ca3b836dfdcdf189d-MBadalam]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]; egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]

Subject: RE: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Susan, I posted the withdrawal on the same page as the NAA: https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn. That way people see them together in context.

Jess

Jessica Ann Orquina, Director
Office of Web Communications
U.S. Environmental Protection Agency
Email: orquina.jessica@epa.gov
Office: 202-564-0446
Mobile: 202-322-8369

From: Bodine, Susan
Sent: Thursday, July 26, 2018 9:21 PM
To: Orquina, Jessica <Orquina.Jessica@epa.gov>; Johnson, Laura-S <Johnson.Laura-S@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; egan, patrick <egan.patrick@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>
Subject: RE: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

I think we would post it in the same location as the NAA that is withdrawn, but need to confer with OECA folks in the morning.

Susan

From: Orquina, Jessica
Sent: Thursday, July 26, 2018 9:02 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: RE: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Can someone please confirm this is the document that needs to be posted?

Jess

Jessica Ann Orquina, Director
Office of Web Communications
U.S. Environmental Protection Agency
Email: orquina.jessica@epa.gov
Office: 202-564-0446
Mobile: 202-322-8369

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:23 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Vickie Patton [vpatton@edf.org]
Sent: 7/10/2018 9:08:22 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; A-AND-R-DOCKET [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1690becd79334c75b66c4d7a9b14da66-A-AND-R-DOC]
CC: Martha Roberts [mroberts@edf.org]; Peter Zalzal [pzalzal@edf.org]; Alice Henderson [ahenderson@edf.org]; matt@donahuegoldberg.com; 'Sean Donahue' [sean@donahuegoldberg.com]; Susannah Weaver (susannah@donahuegoldberg.com) [susannah@donahuegoldberg.com]; 'Vera Pardee' [VPardee@biologicaldiversity.org]; 'Joanne Spalding' [joanne.spalding@sierraclub.org]; Vickie Patton [vpatton@edf.org]
Subject: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827
Attachments: Gliders_Withdrawal_Stay_Letter_07.10.18_FINAL SUBMISSION - FINAL.pdf; Super Polluting Diesel Freight Trucks - No Action Assurance - July 6 -2018.pdf

RE: Docket ID No. EPA–HQ–OAR–2014–0827

Dear Acting Administrator Wheeler,

As set forth in the attached correspondence, the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you immediately withdraw or stay the U.S. Environmental Protection Agency's attached decision to cease enforcing vital air pollution limits that the Clean Air Act and EPA's own duly promulgated regulations impose on super polluting "glider" diesel freight trucks. This extreme action is unlawful and is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers who must comply with the pollution limitations that the Agency is unlawfully not enforcing for their competitors.

Thank you for your immediate attention to this urgent matter.

Sincerely yours,
Vickie Patton
General Counsel
Environmental Defense Fund
(720) 837-6239

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

July 10, 2018

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

RE: Request For Immediate Withdrawal Or Administrative Stay Of Unlawful Decision To Cease Enforcement Of Regulatory Limits On Pollution From Super-Polluting "Glider" Diesel Freight Trucks

Dear Acting Administrator Wheeler:

The Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you immediately withdraw or stay EPA's attached decision to **cease enforcing** certain air-pollutant-emission limits that the Clean Air Act and EPA's own duly promulgated regulations impose on heavy-duty "glider" diesel freight trucks.[1] This blatant and "extreme … abdication of [your agency's] statutory responsibilities" is not only illegal,[2] it is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers, who must comply with the emission limitations that the agency is unlawfully not enforcing for their competitors.

As you know, a "glider" is a heavy-duty diesel truck assembled by installing a used engine and powertrain in a new truck body, known as a "glider kit." But even the "used" engine is a freshly-remanufactured part. Prior to assembly, a glider engine is wholly rebuilt to "significantly increase [its] service life."[3] Unsurprisingly, then, gliders are "marketed and sold as 'brand new' trucks" and compete in the same market as heavy-duty trucks with brand-new parts.[4] Finally, and most importantly for present purposes, gliders are "new motor vehicles," as that term is defined in the Clean Air Act.[5] This means that a newly manufactured glider is properly subject to the same air-pollution regulations as any other heavy-duty truck that enters the American marketplace.

Gliders must meet modern emission standards for new heavy-duty trucks in order to safeguard public health. Left unregulated, a glider engine emits orders of magnitude more harmful pollution than a heavy-duty truck engine designed to comply with those standards.[6] EPA's own estimates from 2016 indicate that, as compared to a world where all new heavy-duty trucks meet the standards that apply to other new heavy-duty trucks, every model year of glider production at

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[1] *See* 5 U.S.C. § 705.
[2] *Heckler v. Chaney*, 470 U.S. 821, 833 n.4 (1985).
[3] 40 C.F.R. § 1068.120(b). *See also* EPA, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73478, 73518 n.93 (Oct. 25, 2016) (Phase 2 Rule) ("[A]ll of the donor engines installed in glider vehicles are rebuilt.").
[4] Phase 2 Rule, 81 Fed. Reg. at 73514.
[5] 42 U.S.C. § 7550(3).
[6] Phase 2 Rule, 81 Fed. Reg. at 73943.

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then-current production rates would increase pollution of nitrogen oxides (NO_x) and fine particulate matter ($PM_{2.5}$) by 415,000 tons and 6,800 tons, respectively.[7] Those are *huge* numbers, and EPA concluded that if production continued on pace, glider vehicles would account for about one third of total NOx and PM emissions from the heavy duty truck sector by 2025, even though gliders would constitute only 5% of heavy-duty trucks on the road.[8] And those pollution estimates are almost certainly too low, as indicated by more recent tests of glider vehicles conducted by EPA in 2017.[9] Even using the agency's conservative 2016 estimates, every year of unregulated glider production can be expected to cause 700 to1600 premature deaths from $PM_{2.5}$ pollution alone, not to mention cancers, respiratory ailments, and other serious health problems, through the life of those vehicles.[10] It is virtually impossible to avoid those consequences once heavy-duty glider trucks are sold because the Act regulates vehicles almost exclusively at the point of manufacture. Even a brief period of unregulated glider production, then, will have substantial and irreparable consequences. To put it bluntly but accurately: EPA's avowed decision to stop enforcing these critical air-pollution protections will kill and sicken Americans on a large scale.

Importantly, EPA's *existing* regulations already allow each small manufacturer to produce 300 heavy-duty glider vehicles per year that are exempt from current pollution control requirements applicable to all other newly sold heavy-duty trucks (in addition to allowing unlimited production of glider vehicles that *do* satisfy those requirements), in order to accommodate the historical but extremely limited role of gliders as a means to salvage engines from wrecked vehicles.[11] These regulations were validly promulgated and never challenged in court by any glider manufacturer.

This state of affairs was apparently unsatisfactory to ex-Administrator E. Scott Pruitt, who proposed last November to reinterpret the statutory term "new motor vehicle" to exclude gliders completely—ignoring the plain language of the Clean Air Act, and conceding that its legislative history lacks evidence to support the proposal, but basing his proposal on a *possible* construction of an entirely different law enacted for an entirely different purpose.[12] The agency appears to have realized that its proposal was irredeemably flawed after receiving comments of the undersigned organizations and a host of other entities, including States, NGOs, modern engine manufacturers, and trucking-industry stakeholders, who saw the proposed rule for what it was: an illegal effort to codify a competitive advantage for a small cadre of favored manufacturers to the detriment of literally everyone else. The agency's ill-advised proposal did not hold up for other reasons as well, most notably a public renunciation of the sole "study" on which EPA had rested its tentative but still indefensible suggestion that heavy-duty glider trucks might not

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[7] *See ibid.*; EPA & NHTSA, *Response to Comments for Joint Rulemaking, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles – Phase 2*, at 1965 (Aug. 2016) ("Response to Comments").
[8] *See* Phase 2 Rule, *supra* n.6.
[9] 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.
[10] Response to Comments at 1881; *see also* Phase 2 Rule at 73836, 73943.
[11] 40 C.F.R. § 1037.105(t)(1)(ii). This exemption expires in 2021, *ibid.*, but EPA also created permanent exemptions for gliders with engines that are less traveled or more modern. *See id.* §§ 1037.150(t)(2)(vii)(2) and 1037.635(c)(1).
[12] EPA, *Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits*, 82 Fed. Reg. 53442, 53444–46 (Nov. 16, 2017) ("Proposed Repeal").

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actually pollute more than heavy-duty trucks powered by modern engines with the latest emission-control technologies.[13] If that were so, of course, there would be no need for the agency to revisit its glider-specific regulations because heavy-duty glider trucks could simply comply with the standards applicable to all other heavy-duty trucks.

EPA initially seemed in a rush to finalize the proposed rule, denying requests for an extension of the comment period that were filed by EDF and other interested parties concerned about the lack of information disclosed by the agency and its untenable legal, scientific and factual conclusions. But once the comment period closed, the proposal sat for six months with no action by EPA.

Until last Friday, the effective date of Mr. Pruitt's resignation as Administrator. Late that night, without meeting even the barest standard of transparency, EPA announced that it was "exercising its enforcement discretion in 2018 and 2019,"[14] and inviting companies to violate the annual cap of 300 exempted gliders per year per manufacturer during that period while the agency attempts to develop a defensible rationale for lifting that cap.

The following Monday, on the first day of your tenure as Acting Administrator, EPA published to its website a letter memorializing the blanket nonenforcement decision previously announced. That letter, attached here for your reference, is styled a "Conditional No Action Assurance," but there is nothing "conditional" about it. Assistant Administrator Susan Parker Bodine states in no uncertain terms that "I am today providing a 'no action assurance'" to all "Small Manufacturers" of heavy-duty glider trucks and all "Suppliers" of heavy-duty glider kits.[15] The letter provides that its "no action assurance will remain in effect" for a full calendar year (and apply to two full years of unlawful glider production), unless EPA finalizes a "rule extending the compliance date applicable to small manufacturers of glider vehicles."[16]

By way of explanation, EPA states only that it has "determined that additional evaluation of several [unnamed] matters is required before it can take final action on the" rule it proposed eight months ago. The letter also alludes to unnamed glider manufacturers who allegedly "reli[ed] on" the agency's proposed rule—instead of relying on EPA's actual standards on the books—that "have reached the[]" 2018 annual limit of 300 super-polluting glider trucks and now wish to violate existing law by producing more. The letter states that EPA is "exercis[ing] its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635" for all affected manufacturers and suppliers, inviting them to engage in the illegal production of glider vehicles up to the "highest annual production of glider kits and glider vehicles for any year from 2010 to

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[13] *See* Letter of Philip B. Oldham, President, Tennessee Tech University, to E. Scott Pruitt (Feb. 19, 2018), at https://www.edf.org/sites/default/files/content/EDF%20Second%20Supplemental%20Comment%20re%20TTU%20Study%202.27.18%20Final2.pdf (explaining that "knowledgeable experts within the University have questioned the methodology and accuracy of the report," and that TTU is "investigating an allegation of research misconduct related to the study"); Proposed Repeal, 82 Fed. Reg. at 53444.

[14] *See* Eric Lipton, *On Last Day for its Chief, E.P.A. Grants a Loophole*, New York Times, July 7, 2018, page A12 (quoting EPA Press Secretary Molly Block).

[15] Environmental Protection Agency, *Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles* (July 6, 2018), *available at* https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles. (emphasis added).

[16] *Id.* (emphasis added).

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2014." The result of this action will be an enormous increase in harmful pollution from what is permitted under the current regulations.[17]

One struggles to imagine a more blatant flouting of the rule of law. Finding itself unable to justify a change to a validly promulgated regulation, EPA has announced that it will not enforce that regulation for at least a year (and with respect to two full vehicle model years), by which time EPA hopes to have divined a reason to make the change. In effect, EPA has substituted a sweeping, general non-enforcement decision for what otherwise would have been a deeply flawed final rule. The agency's decision not to enforce an entire regulation, full stop, "represents [its] final … position on this issue, has the status of law, and has an immediate and direct effect" on glider manufacturers and suppliers, their industry competitors, and (most importantly) the public at large.[18] The agency has offered essentially no explanation, let alone a "reasoned" one, for its decision to ignore existing law.[19]

It is telling that this indefensible decision to stop enforcing this vital regulation took place under cloak of administrative darkness, during the final night of Mr. Pruitt's tenure. This decision mocks basic norms of transparency and accountability, as well as the rule of law, and it severely and needlessly harms the public that EPA is entrusted to serve.[20]

The agency's definitive refusal to enforce vital health protections is flagrantly unlawful and must be reversed. At a minimum, to prevent irreparable harm to our members and to the public at large, and pursuant to Federal Rule of Appellate Procedure 18(a)(1), the undersigned request that you issue a stay of this unlawful and injurious decision immediately.

Respectfully submitted,

/s/ Vickie Patton

Vickie Patton
Martha Roberts
Peter Zalzal
Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue N.W.
Suite 600
Washington, DC 20009
(202) 572-3610
Counsel for Environmental Defense Fund

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[17] 40 C.F.R. § 1037.150(t)(3).
[18] *Clean Air Council v. Pruitt*, 862 F.3d 1, 6 (D.C. Cir. 2017) (quoting *Int'l Union, United Mine Workers of America v. Mine Safety & Health Admin.*, 823 F.2d 608, 615 (D.C. Cir. 1987)).
[19] *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016).
[20] *See, e.g.*, 42 U.S.C. § 7401(b)(1).

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Counsel for Sierra Club

Sent Via E-Mail and Certified Mail to:

Andrew K. Wheeler
Susan Parker Bodine
William L. Wehrum
Matthew Z. Leopold

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00000281-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

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Message

From: Johnson, Laura-S [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=DEA46EDADAA04F2C847D3245F8F5847C-LJOHNS06]
Sent: 7/27/2018 12:23:05 AM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; White, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8af641a6306479c9026142ef3b02bd7-White, Eliz]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Wooden-Aguilar, Helena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=991ab84f64be4b6b9dd10a68c81887b0-HAWodd]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Badalamente, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ed0b573c0f1410ca3b836dfdcdf189d-MBadalam]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Orquina, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=35f8dbb8836e42cc8fff027b4bc54c86-Orquina, Jessica]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]

Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Andrew R. Wheeler
Acting Administrator

TO: Susan Parker Bodine
Assistant Administrator, Office of Enforcement and Compliance Assurance

William L. Wehrum
Assistant Administrator, Office of Air and Radiation

After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018 (attached), and upon further consideration as explained below, I am today withdrawing this No Action Assurance.

On July 6, 2018, the Office of Air and Radiation requested that the Office of Enforcement and Compliance Assurance exercise enforcement discretion through a no action assurance with respect to: 1) those small manufacturers to which 40 C.F.R. § 1037.150(1) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and 2) those companies to which 40 C.F.R. § 1037.150(t)(l)(vii) applies that sell glider kits to such small manufacturers (Suppliers). OAR explained in this request that in November 2017 the EPA had proposed reconsideration of provisions applicable to glider vehicles in the 2016 HD Phase 2 Rule[1] and was working toward a final action, but needed additional time to evaluate matters before taking final action. In the interim, industry compliance with the glider requirements of the HD Phase 2 Rule was resulting in the loss of jobs and threatening the viability of Small Manufacturers. Thus, OAR requested a No Action Assurance to preserve the status quo for Small Manufacturers and Suppliers as it was at the time of the November 2017 proposed rule reconsidering the HD Phase 2 Rule until such time as the EPA was able to take final action on, among other possible regulatory revisions, a rule extending the applicable compliance date for glider vehicles.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule).

On July 6, 2018, OECA issued a No Action Assurance pursuant to this request, stating that the EPA intends to exercise its enforcement discretion through July 6, 2019, or the effective date of a final rule extending the compliance date applicable to Small Manufacturers, whichever is earlier, with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(1)(3), and that the EPA also will exercise its enforcement discretion during the same period with respect to Suppliers that sell glider kits to those Small Manufacturers to which the No Action Assurance applied. The No Action Assurance explained that this use of enforcement discretion was in the public interest to avoid profound disruptions to small businesses while the EPA completes its reconsideration of the HD Phase 2 Rule. The No Action Assurance also explained that EPA reserves its right to revoke or modify this no action assurance.

Three environmental groups[2] and a coalition of states[3] filed several separate administrative requests for the EPA to either immediately withdraw or administratively stay the No Action Assurance. On July 17, 2018, the environmental groups petitioned for review of the No Action Assurance in the D.C. Circuit and filed an emergency motion for stay or summary vacatur in the D.C. Circuit, and a request for an administrative stay during the court's consideration of the emergency motion. On July 18, the court issued an administrative stay of the No Action Assurance for the duration of time the court considers the emergency motion. On July 19, 2018, the same coalition of states filed a similar petition and emergency motion for summary vacatur, or, in the alternative, for stay pending judicial review, in the same court.

OECA has a general guidance limiting the circumstances under which the agency will consider issuing no action assurances.[4] The 1995 restatement of that policy states that the principles against the issuance of a no action assurance are at "their most compelling in the context of rulemakings." OECA guidance is clear that a no action assurance should be issued only in an "extremely unusual" case when the no action assurance is necessary to serve the public interest and only when no other mechanism can adequately address that interest. Thus, historically OECA has issued no action assurances to address situations where the balance of the public interest supported the EPA temporarily and narrowly exercising its enforcement discretion.

After consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion. I am therefore withdrawing the July 6, 2018, No Action Assurance.

---

[2] Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

[3] California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

[4] Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Policy Against "No Action" Assurance (Nov. 16, 1984); Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Processing Requests for Use of Enforcement Discretion (March 3, 1995).

Furthermore, the EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, OAR shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00000283-00005

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00002

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00013

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000284-00019

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 7/10/2018 6:45:34 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: FW: Question about non enforcement approach re Gliders
Attachments: Giles addendum to no action assurance policy 9-11-14.pdf; EPA policy on enforcement discretion 1995.pdf; 2018_7_6 glidernoactionassurance070618.pdf

Susan and Mandy: Can you all take a look at this below? Thank you.

From: Eric Lipton [mailto:lipton@nytimes.com]
Sent: Tuesday, July 10, 2018 2:39 PM
To: Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Question about non enforcement approach re Gliders

Someone has suggested to me that the memos sent out on Friday violate long-standing EPA policy related to when it is appropriate to issue a non enforcement statement.

The policy on enforcement discretion from 1995 and reiterated in 2014 states that the enforcement discretion is allowed in cases of emergencies where public safety could be impact and also extremely unusual circumstances where clearly in public interest and no other way to address it.

But it is clearly not intended stop or circumvent a regulation, it expressly says that.

How do you explain of this use of the enforcement discretion provisions?
Is the EPA planning, under Mr. Wheeler, to revoke this memo from July 6th?
How do you explain the use of enforcement discretion in this case given the policy guidance documents that I am attaching here?
Why can't the issues being addressed through normal rule making procedures?

I have no immediate deadline for you on this one. I wanted to consider your responses before I figure out what we will do.

Thanks in advance

Eric

Eric Lipton
The New York Times
Washington Bureau
202 862 0448 office
202 370 7951 mobile
lipton@nytimes.com

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00000287-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00000287-00004

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

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[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;

- on the basis that the Agency has determined that the party is not liable or has a valid defense;

- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or

- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)

- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which _____(State)_____ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 1 1 2014

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances: Addendum

FROM: Cynthia Giles

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

The 1984 *Policy Against "No Action" Assurances* and the 1995 memorandum on *Processing Requests for Use of Enforcement Discretion* (attached) firmly and forcefully articulate the Agency's long-standing policy against providing a definitive assurance that the government will not proceed with an enforcement response for a violation of an environmental requirement outside the context of an enforcement action (a "no action assurance").[1] The dangers of such assurances and the rationale that underlie this bedrock policy are well stated in those documents, and they apply with as much force today as when they were first drafted.

Those memoranda also allow for a narrowly-circumscribed and limited exception to this prohibition in "extremely unusual cases" where a no action assurance is "clearly necessary to serve the public interest" *and* there is "no other mechanism" available to adequately address the situation. The 1984 *Policy* cited two examples to illustrate such "extremely unusual" circumstances: (1) to "allow action to avoid extreme risks to public health or safety" and (2) to "obtain important information for research purposes." This memorandum addresses the latter example, and formally terminates the use of a no action assurance for such purposes.

The use of a no action assurance to gather information for research has long been disfavored and has rarely been used, as there is a wide range of other readily-available mechanisms for legally gathering such information. This experience indicates both that a no action assurance for research is not generally necessary nor does it serve a critical role in support of the Agency's research function. In addition, following an internal analysis and discussion with the Office of Research and Development and the Office of the Inspector General, we have concluded that a no action assurance is an ill-suited mechanism under which to conduct research

[1] Within the context of an enforcement action, of course, a commitment not to enforce for a particular violation(s) can only be made if included in the "Effect of Resolution," "Covenant Not to Sue," or equivalent section of an administrative or civil judicial settlement document.

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studies because, *inter alia.* it tends to inappropriately place the enforcement office in the role of overseeing research conducted by another part of the Agency to which the research role, function and expertise is committed.

Accordingly, the reference in the 1984 *Policy* to the use of a no action assurance to obtain information for research purposes is rescinded. No other part of either the 1984 or the 1995 memoranda is modified or otherwise affected by this memorandum.

Attachments

cc: OECA Office Directors
Regional Counsels
Regional Enforcement Directors

Message

From: Hull, George [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F6DD2FAB273845218756495C7A2D94AD-GHULL]
Sent: 7/9/2018 8:04:21 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Branning, Hannah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a568a722d33649dfa02f3dc95cd7a3fd-Branning, Hannah]
Subject: Glider NAA

FYI - We have posted the Glider NAA document here, under "Mobile Sources." I've informed OAR, who want to be able to link to it from one of their webpages. I've also informed OPA, so they know where it is. – George

https://www.epa.gov/enforcement/air-enforcement-policy-guidance-and-publications

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/6/2018 10:08:13 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00000294-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

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In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00000294-00004

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/6/2018 9:56:12 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: NAA Request
Attachments: NAA Request Clean (003).docx

Susan – Attached is our final NAA request for small manufacturers of gliders.

_____

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

ED_002444_00000296-00001

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

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I appreciate your prompt consideration of this request.

ED_002444_00000296-00002

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/6/2018 9:15:00 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: RE: Final NAA Request
Attachments: NAA Request Clean (003).docx

Susan – Here's a revised final version that corrects typos and Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Wehrum, Bill
Sent: Friday, July 6, 2018 4:49 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Harlow, David <harlow.david@epa.gov>
Subject: Final NAA Request

Susan – Attached is a final version of our NAA request.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/6/2018 9:04:50 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: OAR NAA Request
Attachments: NAA Request Clean.docx

Bill,

Susan had picked up a few typos in the version we'd sent her last. She was good enough to flag them for us, and I've implemented the fixes. The fixed version is attached.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/18/2018 8:12:45 PM
To: Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: Fwd: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles
Attachments: Gliders Correspondence to Wheeler.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Tess, Rachel" <Rachel.Tess@ag.state.mn.us>
Date: July 18, 2018 at 4:10:27 PM EDT
To: "'Wheeler.andrew@Epa.gov'" <Wheeler.andrew@Epa.gov>, "'Wehrum.Bill@EPA.gov'" <Wehrum.Bill@EPA.gov>, "'Bodine.susan@Epa.gov'" <Bodine.susan@Epa.gov>
Cc: "Kieley, Max" <Max.Kieley@ag.state.mn.us>
Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

Please see attached correspondence. This is also being sent by FedEx Priority Overnight mail.

Thank you,

Rachel Tess on behalf of Assistant Attorney General Max Kieley
Legal Secretary
Minnesota Attorney General's Office
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2131
Phone: (651) 757-1359

Rachel.Tess@ag.state.mn.us

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STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

July 18, 2018

SUITE 900
445 MINNESOTA STREET
ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
Mail Code 1101A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufactures of Glider Vehicles"*

Dear Acting Administrator Wheeler:

In a letter dated July 13, 2018 ("Multistate Letter"), thirteen state attorneys general and two state agencies requested that the United States Environmental Protection Agency ("EPA") administratively stay or withdraw its recent final action regarding the Glider Rule. *See* Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018). For the reasons stated in the enclosed Multistate Letter, the State of Minnesota, by and through the Minnesota Pollution Control Agency, likewise respectfully requests that EPA immediately withdraw or administratively stay its recent final action regarding the Glider Rule. *See also* Fed. R. Civ. App. P. 18(a)(1).

Sincerely,

MAX KIELEY
Manager, Environmental & Natural
Resources Division
Assistant Attorney General

(651) 757-1244 (Voice)
(651) 297-4139 (Fax)

Attorney for the State of Minnesota, by and through the Minnesota Pollution Control Agency

Enclosure

ec: Susan P. Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

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[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: ...on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion...." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By: _____
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Supervising Deputy Attorney General
MEGAN K. HEY
M. ELAINE MECKENSTOCK
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California Department of Justice
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(510) 879-1248

FOR THE CALIFORNIA AIR RESOURCES BOARD

By: _____
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Executive Officer
California Air Resources Board
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FOR THE STATE OF CONNECTICUT

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FOR THE STATE OF MAINE

JANET T. MILLS
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200 St. Paul Place, 20th Floor
Baltimore, MD 21202
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FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
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FOR THE STATE OF NEW YORK

BARBARA D. UNDERWOOD
Attorney General
DANIELLE C. FIDLER
Assistant Attorney General
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ED_002444_00000800-00006

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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00000800-00007

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

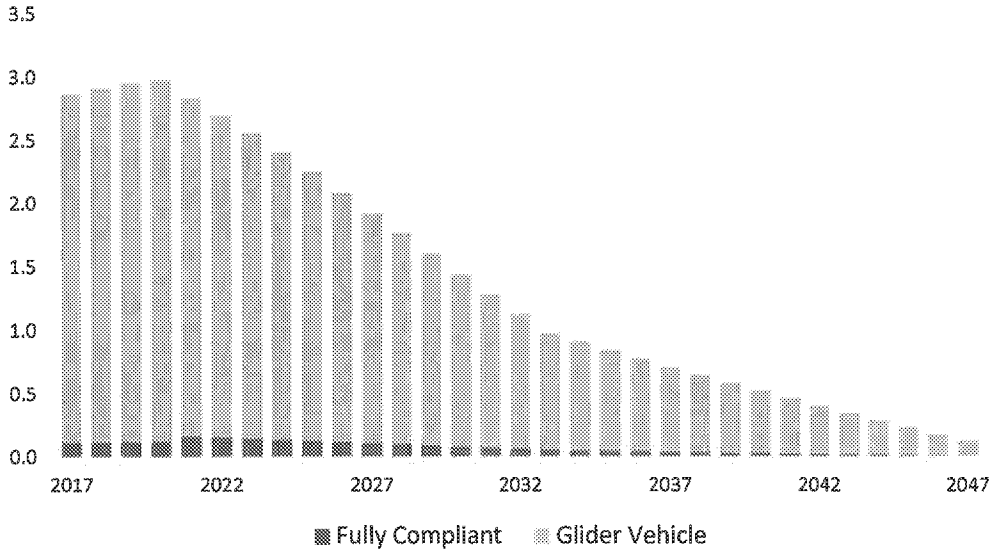
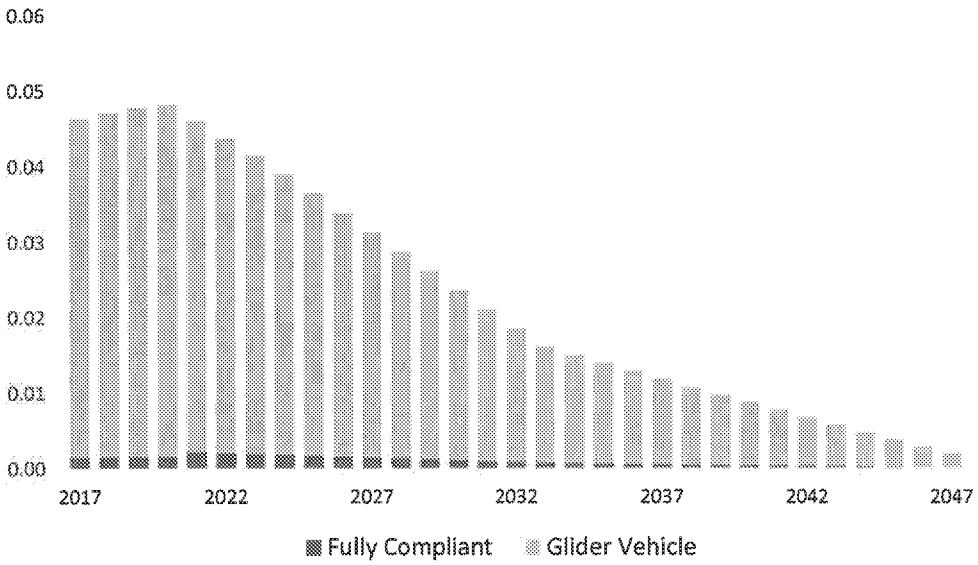


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

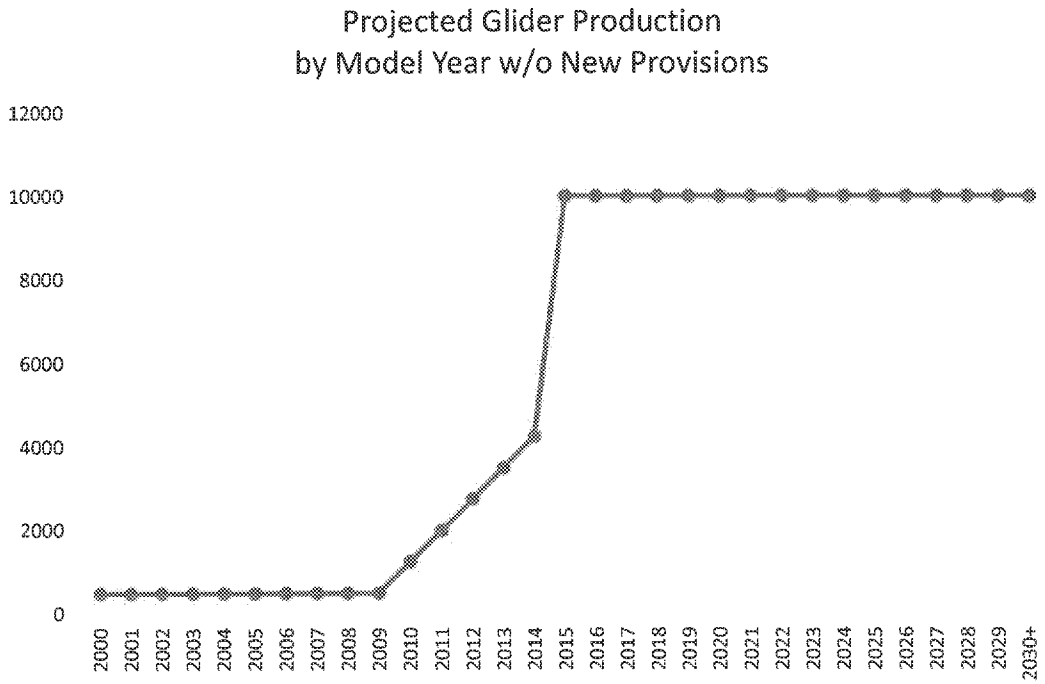


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

ED_002444_00000800-00011

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

* on the basis that revisions to the underlying legal requirement are being considered;

* on the basis that the Agency has determined that the party is not liable or has a valid defense;

* on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or

* on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

* where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)

* in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

MEMORANDUM

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

FEB 25 1998
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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/27/2018 1:24:59 AM
To: Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]
CC: Orquina, Jessica [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=35f8dbb8836e42cc8fff027b4bc54c86-Orquina, Jessica]; Johnson, Laura-S [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=dea46edadaa04f2c847d3245f8f5847c-LJohns06]; Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; White, Elizabeth [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f8af641a6306479c9026142ef3b02bd7-White, Eliz]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Shaw, Betsy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31ca1476a7674825a131cb2c0d6c88c8-BShaw03]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Wooden-Aguilar, Helena [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=991ab84f64be4b6b9dd10a68c81887b0-HAWodd]; Grantham, Nancy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=12a3c2ed7158417fb0bb1b1b72a8cfb0-Grantham, Nancy]; Richardson, RobinH [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2fa5c9eb65dc497c81a8dc9ccdb1ffa7-Richardson, RobinH]; Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]; Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Hope, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c27b55619fb248cc8776fc46cd3f8b0d-BHope]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group

(FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Badalamente, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4ed0b573c0f1410ca3b836dfdcdf189d-MBadalam]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]; Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Birgfeld, Erin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]; egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]

Subject: Re: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Thanks

Sent from my iPhone

On Jul 26, 2018, at 9:22 PM, Fogarty, Johnpc <Fogarty.Johnpc@epa.gov> wrote:

> It's there. https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn
>
> Sent from my iPhone
>
> On Jul 26, 2018, at 9:21 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:
>
>> I think we would post it in the same location as the NAA that is withdrawn, but need to confer with OECA folks in the morning.
>>
>> Susan
>>
>> **From:** Orquina, Jessica
>> **Sent:** Thursday, July 26, 2018 9:02 PM
>> **To:** Johnson, Laura-S <Johnson.Laura-S@epa.gov>; Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
>> **Cc:** Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick

<traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: RE: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Can someone please confirm this is the document that needs to be posted?

Jess

Jessica Ann Orquina, Director
Office of Web Communications
U.S. Environmental Protection Agency
Email: orquina.jessica@epa.gov
Office: 202-564-0446
Mobile: 202-322-8369

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:23 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John

<konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/27/2018 12:36:33 AM
To: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: Fwd: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)
Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; ATT00001.htm; Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Badalamente, Mark" <Badalamente.Mark@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>;

White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/27/2018 12:33:46 AM
To: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]
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Attachments: memo re withdrawal of NAA glider vehicles 07-26-2018.pdf; ATT00001.htm; response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Badalamente, Mark" <Badalamente.Mark@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

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Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Folkemer, Nathaniel [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8BED2AC6D40D481287802DAAB9A47B07-FOLKEMER, NATHANIEL]
Sent: 7/13/2018 1:09:02 PM
To: Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
CC: Emmerson, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aafd8051883c48cdadd97e4c3f3c6307-Ahearn, Carolyne]; Tozzi, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98acf7f50923404d9491d4f885d34c27-Tozzi, Lauren]; Ingram, Amir [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=19183a7127f7485db4653fee2a696bed-AINGRA02]
Subject: House Science Committee Letter Re Glider Truck Testing
Attachments: House_Science_Committee_Letter_to_EPA_Re_Truck_Gliders_7.12.2018.pdf

FYI,
E&E has an article today regarding a new letter from the House Science Committee asking about EPA's testing of glider vehicles. I suspect this will formally come through CMS and be assigned to OAR but wanted to share for your awareness.
Nate
https://www.eenews.net/eedaily/2018/07/13/stories/1060088985

From: Belser, Evan
Sent: Thursday, July 12, 2018 10:08 AM
To: Brooks, Phillip <Brooks.Phillip@epa.gov>
Cc: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: RE: FYI: Amendment submitted yesterday on EPA's budget bill

So under one rider, we will be prohibited from certifying new marine engines until we certify better marine engines, and under this other rider we cannot enforce our commitment not to enforce. We are now truly in an MS Escher painting.

From: Brooks, Phillip
Sent: Thursday, July 12, 2018 10:06 AM
To: Belser, Evan <Belser.Evan@epa.gov>
Cc: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: Re: FYI: Amendment submitted yesterday on EPA's budget bill

It is just that we cannot do anything in furtherance of doing nothing.

Sent from my iPhone

On Jul 12, 2018, at 9:57 AM, Belser, Evan <Belser.Evan@epa.gov> wrote:

> So we would be prohibited from doing nothing? Is this congress forcing us to enforce the glider cap?
>
> ---
>
> **From:** Emmerson, Caroline
> **Sent:** Thursday, July 12, 2018 9:55 AM
> **To:** Belser, Evan <Belser.Evan@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Folkemer, Nathaniel

<Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
Subject: FYI: Amendment submitted yesterday on EPA's budget bill

https://www.eenews.net/eedaily/2018/07/12/stories/1060088859

#109 -- Version 1	DeGette (CO), Dingell (MI)	Democrat	Prohibits funding being used to implement, administer, or enforce EPA's Memorandum relating to Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles.	Submitted

Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/ 202-564-1716 (office), emmerson.caroline@epa.gov

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LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6301
(202) 225–6371
www.science.house.gov

July 12, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Acting Administrator Wheeler,

The Committee on Science, Space, and Technology is conducting oversight of the Environmental Protection Agency (EPA) and its scientific programs. Specifically, the Committee has concerns regarding the scientific integrity and validity of a recent study conducted by the National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor, Michigan.

On October 25, 2016, the Obama Administration EPA and the National Highway Traffic Safety Administration issued a final rule ("2016 rule") that, among other things, required engines in "glider vehicles" ("gliders") to meet the emissions standards of the year in which the vehicle was assembled, rather than the year the vehicle's engine was manufactured.[1] EPA describes a "glider vehicle" as a truck assembly consisting of a new chassis and cab with a used engine, transmission, and/or rear axle.[2] On November 16, 2017, the EPA proposed to repeal the 2016 rule.[3]

Subsequently, on November 20, 2017, the NVFEL quietly released a study that examined emissions from glider trucks as compared to non-refurbished or unmodified, conventionally

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium-and-Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73, 478 (Oct. 25, 2016).
[2] *See* Repeal of Emissions Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53, 443 (Nov. 16, 2017).
[3] *Id.* at 442.

manufactured trucks[4] without notifying EPA leadership. Documents obtained by the Committee show an apparent concerted effort between EPA staff at the NVFEL and representatives from the Volvo Group, a subsidiary of AB Vovlo, and the Truck and Engine Manufacturers Association (EMA) to target and test gliders assembled by Fitzgerald Glider Kits, the largest glider assembler in the U.S. Volvo, a member of EMA and competitor of Fitzgerald, supported the 2016 rule that increased the regulation of gliders.[5]

Email communications indicate that Volvo had a keen interest in how Fitzgerald responded to the 2016 rule, specifically sharing with NVFEL staff Fitzgerald's "larger than normal presence" at a trade show in March of 2017.[6] Then, in September of 2017, three weeks after Administrator Pruitt indicated an intention to revisit the 2016 rule, a representative from Volvo initiated contact with EPA employees in the NVFEL office in Ann Arbor, Michigan, asking the lab to conduct a test program in which Volvo "would provide the test articles."[7]

The ensuing exchange appears to show an overt attempt by a regulated entity to shape a scientific study at EPA to achieve a specific, pre-determined outcome. In one email, the representative from Volvo lays out the "ideal" test program for the NVFEL, listing specifically the test articles to use and the schedule by which the test program should be conducted.[8] Volvo's recommendations were specific to the point where it suggested to the NVFEL multiple times to use "Fitzgerald rebuilds" and to "stay away from Cummins,"[9] another EMA member.

Further targeting Fitzgerald, an EPA employee at the NVFEL emailed a Volvo representative to ask whether the NVFEL should request a test article from the glider manufacturers themselves, adding that "if they say no, that's a story in itself!"[10] There is no indication that the NVFEL ever reached out to Fitzgerald or any other glider manufacturer before, during, or after this study was performed.

These documents raise serious questions as to the objectivity and legitimacy of the NVFEL study. To better assist the Committee in understanding how EPA intends to uphold scientific integrity and how it undertakes decisions to perform scientific studies underlying regulation, we request a briefing for Committee staff by the appropriate EPA officials who are

---

[4] National Vehicle and Fuel Emissions Laboratory, Envtl. Prot. Agency, Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles (Nov. 20, 2017) (EPA-HQ-OAR-2014-0827-2417).
[5] Comments of the Volvo Group, Greenhouse Gas Emission and Fuel Efficiency Standards for Medium-Duty and Heavy-Duty Engines and Vehicles—Phase 2; Proposed Rules, Docket No. EPA-HQ-OAR-2014-0132 (Oct. 1, 2015).
[6] Email from Volvo Employee to Envtl. Prot. Agency Employee and Truck & Engine Mfrs. Ass'n Employee (March 28, 2017, 11:56 a.m.).
[7] Email from Envtl. Prot. Agency Employee to Volvo Employee (Sept. 5, 2017, 4:47 p.m.).
[8] Email from Volvo Employee to Envt. Prot. Agency Employee (Sept. 8, 2017, 3:07 p.m.).
[9] *Id.*; Email from Volvo Employee to Envt. Prot. Agency Employee (Sept. 9, 2017, 11:08 a.m.).
[10] Email from Envtl. Prot. Agency Employee to Volvo Employee (Oct. 28, 2017, 6:19 p.m.).

familiar with this matter. We ask that you schedule this staff briefing no later than Thursday, July 26, 2018.

Further, we request all documents and communications between or among EPA officials referring or relating to the NVFEL glider study and all documents and communications between or among EPA officials and relevant article manufacturers referring or relating to the NVFEL study.

We request that you provide these documents and information as soon as possible, but no later than 5:00 p.m. on July 26, 2018. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,

Lamar Smith
Chairman
House Committee on Science, Space, and Technology

Bill Posey
Member of Congress

Ralph Abraham, M.D.
Chairman
Subcommittee on Oversight

Clay Higgins
Vice Chair
Subcommittee on Oversight

Andy Biggs
Chairman
Subcommittee on Environment

Brian Babin
Chairman
Subcommittee on Space

Gary Palmer
Member of Congress

Encl.

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Honorable Donald Beyer, Jr., Ranking Member, Oversight Subcommittee
The Honorable Suzanne Bonamici, Ranking Member, Environment Subcommittee

Message

From: Emmerson, Caroline [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AAFD8051883C48CDADD97E4C3F3C6307-AHEARN, CAROLYNE]
Sent: 7/12/2018 2:26:47 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
CC: Tozzi, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98acf7f50923404d9491d4f885d34c27-Tozzi, Lauren]; Folkemer, Nathaniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bed2ac6d40d481287802daab9a47b07-Folkemer, Nathaniel]; Ingram, Amir [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=19183a7127f7485db4653fee2a696bed-AINGRA02]
Subject: RE: FYI: Amendment submitted yesterday on EPA's budget bill

Deliberative Process / Ex. 5

From: Brooks, Phillip
Sent: Thursday, July 12, 2018 10:06 AM
To: Belser, Evan <Belser.Evan@epa.gov>
Cc: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
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Deliberative Process / Ex. 5

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#109 -- Version 1	DeGette (CO), Dingell (MI)	Democrat	Prohibits funding being used to implement, administer, or enforce EPA's Memorandum relating to Conditional No Action Assurance Regarding Small	Submitted

Manufacturers of
Glider Vehicles.

Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/ 202-564-1716 (office), emmerson.caroline@epa.gov

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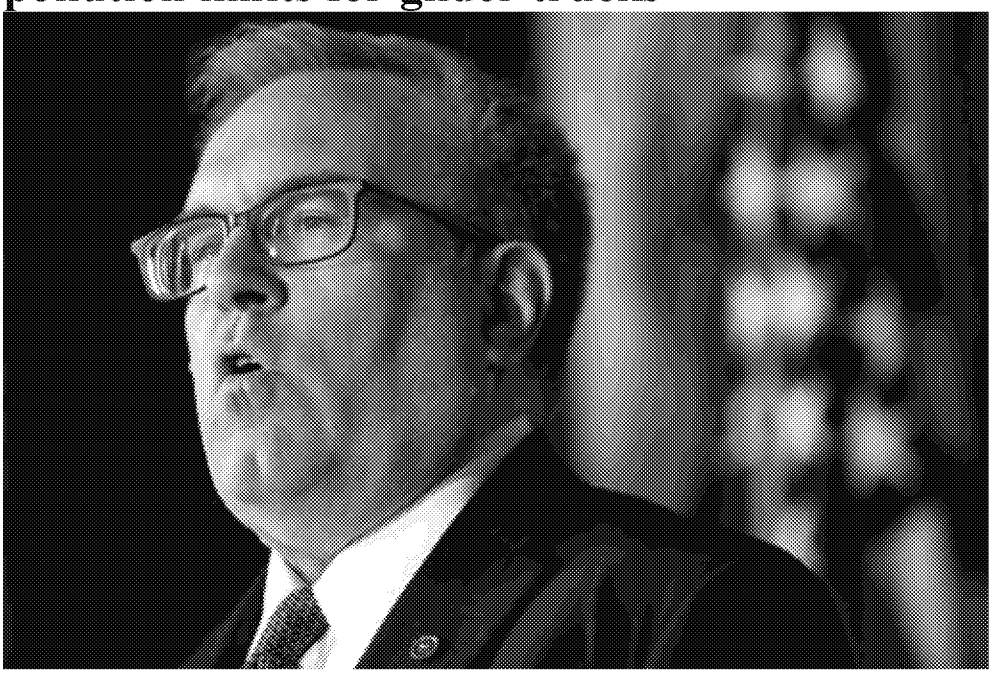
Message

From: Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]
Sent: 7/27/2018 1:18:11 PM
To: Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Hull, George [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f6dd2fab273845218756495c7a2d94ad-ghull]; egan, patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a8af6e75e84a463a935e3a70ba72d043-Pegan]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]
Subject: FYI - WaPo article on glider NAA withdrawal (also includes a link to the memo)

https://www.washingtonpost.com/national/health-science/epa-reverses-course-says-it-will-enforce-stricter-pollution-limits-for-glider-trucks/2018/07/26/705ff4ee-9144-11e8-8322-b5482bf5e0f5_story.html?utm_term=.3bbef35ffbfb

EPA reverses course, says it will enforce stricter pollution limits for glider trucks



Environmental Protection Agency acting administrator Andrew Wheeler speaks to agency staff at the EPA headquarters in Washington on July 11, 2018. On Thursday, Wheeler announced that the EPA would enforce stricter pollution controls on freight trucks known as "gliders." (Jacquelyn Martin/AP)

by Juliet Eilperin and Brady Dennis July 26 at 11:39 PM

The Environmental Protection Agency reversed course late Thursday and announced it would enforce stricter pollution controls on freight trucks known as "gliders," which emit dozens of times more soot and contaminants compared to those with new diesel engines.

In a three-page memo to his deputies, acting administrator Andrew Wheeler said he would withdraw the "no action assurance" the agency had given the manufacturers of glider trucks on the last day that his predecessor, Scott Pruitt, headed the EPA. That letter assured firms that they would not have to limit their annual production to 300 vehicles through the end of 2019.

The EPA initially proposed a rule last November to repeal tighter emissions standards for glider trucks, which had been set to take effect in January. An Obama-era regulation aimed at controlling soot and other pollutants, as well as greenhouse gas emissions linked to climate change, the rule had the support of public-health advocates and some major trucking groups and engine manufacturers.

But it faced fervent opposition from a handful of companies that manufacture truck components called gliders and trailers. A glider, or body, is the front of a truck, including the cab, which fits over the engine. Trailers are the storage components that make up most of the length of a truck. Leading the charge against the new regulation was Fitzgerald Truck Sales, the Tennessee-based manufacturer that stood to benefit most from the rule's repeal. Fitzgerald, whose executives had met with Pruitt last May, had argued that the rule would disproportionately affect an industry that in 2015 produced about 10,000 gliders a year.

Environmental groups challenged the EPA's "no action assurance" letter on July 17 in the U.S. Court of Appeals for the D.C. Circuit, asking for an administrative stay as the court considered their emergency motion. A day later, the court granted the stay.

In his memo Wheeler noted that the agency suspends enforcement only in rare circumstances and that after consulting with EPA lawyers and policy experts, "I have concluded that the application of the current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's use of enforcement discretion."

Legal experts said that the risk of losing in court played a key role in Wheeler's decision.

"This had all the hallmarks of a major loss," Justin A. Savage, a partner at Sidley Austin specializing in environmental law, said in an interview Thursday. "This was so broadly cast this would have potentially circumscribed the agency's ability to issues these kinds of letters in the future."

Political considerations also influenced the move: Sen. Thomas R. Carper (Del.), the top Democrat on the Senate Environment and Public Works Committee, had personally appealed to Wheeler in a letter just after he took over the agency to "abandon legally-questionable policies and proposals" such as the one on gliders.

Carper, who also brought up the issue in a conversation with Wheeler this month, said in a statement Thursday that he was "glad to see EPA will reverse one of the most egregious — and likely illegal — environmental proposals of [Pruitt's] tenure."

"His senseless proposal ignored the science put out by his own EPA and created a Clean Air Act loophole for an industry friend, all while putting the health of Americans and our environment at risk," Carper added.

Fred Krupp, president of the Environmental Defense Fund, an advocacy group, called Wheeler's decision "a huge win for all Americans who care about clean air and human health."

"EPA's effort to create a loophole allowing more of them onto our roads was irresponsible and dangerous," Krupp said in a statement late Thursday. "We hope their decision tonight to withdraw that loophole puts a firm and final end to this serious threat to our families' health."

In proposing to repeal the regulation, Pruitt and his deputies had relied in part on findings out of Tennessee Tech University that concluded gliders "performed equally as well and in some instances out-performed" vehicles with newer engines. The school said one of its engineering professors had gone with graduate students "to a Fitzgerald facility to conduct independent research" on the EPA rule.

Despite the fact that the EPA's own modeling found that gliders emit anywhere from 20 to 40 times as much nitrogen oxide and soot as trucks with new engines, the EPA quickly decided Fitzgerald's arguments questioning the rule had merit. The president of Tennessee Tech later disavowed the study, saying that experts now question "the methodology and accuracy" of the industry-funded test.

Fitzgerald could not be immediately reached for comment Thursday.

Although Wheeler has reversed the move to suspend enforcement of stricter emissions limits through 2019, it remains unclear whether the agency will abandon its effort to repeal the Obama-era standards altogether.

Carper noted that proposed rule is still "on the table. I'll keep pushing to see that this misguided proposal is one that never gets finalized."

Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 8/22/2018 9:57:22 PM
To: Adair, Jocelyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70fc1a8b456c448a941c563d316b38fe-Jadair]; Alexander, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3b193e5fdb2b4582a257d6732f5a8a94-Dalexa02]; Aguilar, Victor [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=Aguilar, Victor]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]; Orehowsky, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=48a0e3aeda42426280f28b57447bdbf6-GOREHOWS]; Kulschinsky, Edward [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=deae35c464c74233baaa489c61f8c949-Kulschinsky, Edward]; Palermo, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25332a7d72634e2eb7f912e147e07c8f-MPalermo]; Tozzi, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98acf7f50923404d9491d4f885d34c27-Tozzi, Lauren]; Iddings, Brianna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=48c5b955f34c4a198228f8ac90f78642-Iddings, Br]; Kaul, Meetu [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=948b1c8370e84f93a986979199dcb50d-Kaul, Meetu]; Meisenbach, Caitlin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=049c73e9e1454fc282ffba31316261d9-CMeisenb]; Caballero, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e3c28123c2f148419cb920b5a88b01e8-Kcaballe]; Felix, Elfego [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=57ea8958f2ee48b19f7d94b5cf9b95c0-EFELIX]; Gumbs, Jason [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=267a3ad40b884a68b27d7c82c0dafc92-JGUMBS]; Ortega, Kellie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ee05d693ec644d3b8c7c7693d7283046-Ortega, Kellie]
CC: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Werner, Jacqueline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5cf3574b4b7c40039be34fb752ddc667-Jrwerner]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]
Subject: RE: Glider No Action Assurance
Attachments: ENV_DEFENSE-#850972-v1-Gliders_order.pdf

In what may be the final update on the glider NAA, the DC Circuit just granted our motion to dismiss as moot the challenges from the states and NGOs.

Thanks,
Evan

From: Belser, Evan
Sent: Thursday, July 26, 2018 10:09 PM

To: []
Subject: Re: Glider No Action Assurance

Writing with an update. We have just withdrawn the glider NAA. Thought you'd like to know.

https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn

Evan

On Jul 7, 2018, at 9:13 AM, Belser, Evan <Belser.Evan@epa.gov> wrote:

> Hey team,
>
> I wanted to ensure you were aware of an NAA Susan signed yesterday for the glider industry. It is attached, along with the request for it from OAR. This is now widely reported in the media. As always, please direct any media or outside inquiries to me and George Hull.
>
> Let's discuss next week. For now, suffice it to say that this is bad for breathing Americans, and creates dangerous precedent for using NAAs.
>
> V&E enforcement is strong, and getting stronger. We are at the ports, pulling in a majority of Regions, running an unprecedented initiative against aftermarket defeat devices, and securing record-setting remedies in our cases agains OEMs. Let's focus on that.
>
> Thanks,
> Evan
>
> Evan Belser
> *Chief*, Vehicle and Engine Enforcement Branch
> United States Environmental Protection Agency
> 202-564-6850
>
> *Do not release this email. This is confidential attorney-client communication and privileged attorney work product created for law enforcement purposes.*
>
> Begin forwarded message:
>
>> **From:** "Traylor, Patrick" <traylor.patrick@epa.gov>
>> **To:** "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Belser, Evan" <Belser.Evan@epa.gov>
>> **Cc:** "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Bailey, Ethel" <Bailey.Ethel@epa.gov>
>> **Subject: Glider No Action Assurance**
>>
>> It's done.
>>
>> We'll post it Monday.
>>
>> **Patrick Traylor**
>> Deputy Assistant Administrator
>> Office of Enforcement and Compliance Assurance
>> U.S. Environmental Protection Agency
>> (202) 564-5238 (office)

(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1190 **September Term, 2017**

EPA-07/06/18 Letter

Filed On: August 22, 2018

Environmental Defense Fund, et al.,

Petitioners

v.

Environmental Protection Agency,

Respondent

Consolidated with 18-1192

BEFORE: Henderson, Srinivasan, and Katsas, Circuit Judges

ORDER

Upon consideration of the emergency motions for stay or summary disposition, the response thereto, and the replies; and the motion to dismiss, the responses thereto, and the reply, it is

ORDERED that the administrative stay entered July 18, 2018 be dissolved. Petitioners have withdrawn their requests for a stay. It is

FURTHER ORDERED that the motion to dismiss be granted. Petitioners' challenges to the July 6, 2018 "No Action Assurance" memorandum are moot in light of EPA's withdrawal of the No Action Assurance on July 26, 2018. See McBryde v. Comm. to Review, 264 F.3d 52, 55 (D.C. Cir. 2001) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot.").

Although, as a general matter, "voluntary cessation of challenged activity does not moot a case," Nat'l Black Police Ass'n v. Dist. of Columbia, 108 F.3d 346, 349 (D.C. Cir. 1997), a defendant may show that its voluntary conduct has mooted a case by demonstrating that (1) "there is no reasonable expectation . . . that the alleged violation will recur," and (2) "interim relief or events have completely and irrevocably eradicated

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1190 **September Term, 2017**

the effects of the alleged violation," Coal. of Airline Pilots Ass'ns v. FAA, 370 F.3d 1184, 1189 (D.C. Cir. 2004) (quoting County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979)). Here, the July 26, 2018 withdrawal memorandum states that EPA "will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers." 7/26/18 Mem. at 3. Moreover, because the No Action Assurance did not purport to change the law, this court cannot provide "meaningful relief" with respect to penalties that could be imposed in future enforcement proceedings or citizen suits concerning glider vehicle production that may have occurred while the No Action Assurance remained in effect. In any future proceedings, the courts may consider any such factors "as justice may require." 42 U.S.C. § 7413(e)(1). Therefore, a decision from this court would constitute an impermissible advisory opinion as to the legality of the No Action Assurance. See Chamber of Commerce of U.S. v. EPA, 642 F.3d 192, 199 (D.C. Cir. 2011) ("[F]ederal courts are without authority to render advisory opinions or to decide questions that cannot affect the rights of litigants in the case before them.") (internal quotation marks and citation omitted). It is

FURTHER ORDERED that the motions for summary disposition be dismissed as moot.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Robert J. Cavello
Deputy Clerk

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 8/22/2018 9:48:42 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
Subject: Re: EPA's Motion to Dismiss Granted- Gliders No Action Assurance litigation

Andrea & the rest of the OGC team,

Excellent news! Well done and many thanks!

Sent from my iPhone

On Aug 22, 2018, at 4:48 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

D.C. Circuit grants EPA's motion to dismiss (attached), finding that challenges to, and summary motions for vacatur of, the glider's no action assurance are moot. The administrative stay of the no action assurance was also dissolved. Judges Henderson, Srinivasan, and Katsas issued the order.

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

<ENV_DEFENSE-#850972-v1-Gliders_order.pdf>

Message

From: Leopold, Matt (OGC) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5CDF09A3924DADA6D322C6794CC4FA-LEOPOLD, MA]
Sent: 8/22/2018 9:42:46 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Jorquera, Mario [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d2adddec93b341e1bbc087df7d70650c-Mjorquer]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
Subject: Re: EPA's Motion to Dismiss Granted- Gliders No Action Assurance litigation

Thank you very much.

Sent from my iPhone

On Aug 22, 2018, at 5:04 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

> Good news. Thanks to you, Andrea, and to the cross-office (and cross-agency team).
>
> Sent from my iPhone

On Aug 22, 2018, at 4:48 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

D.C. Circuit grants EPA's motion to dismiss (attached), finding that challenges to, and summary motions for vacatur of, the glider's no action assurance are moot. The administrative stay of the no action assurance was also dissolved. Judges Henderson, Srinivasan, and Katsas issued the order.

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

<ENV_DEFENSE-#850972-v1-Gliders_order.pdf>

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 8/22/2018 12:57:07 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: FW: Glider Oversight response letter
Attachments: Signed Glider Letters -- AL-18-000-9267.pdf; Rep Smith et al letter to Acting Adminisrator, gliders, 7.12.2018.pdf

FYI

From: Sutton, Tia
Sent: Wednesday, August 22, 2018 8:56 AM
To: Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Cc: Parsons, Christy <Parsons.Christy@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: Glider Oversight response letter

I think I got everyone who was involved in the Oversight exercise here, but please of course pass on to others who may be interested.
Chuck – we can pull from this letter (and the NAA withdrawal) for QFRs and such.

From: Lewis, Josh
Sent: Tuesday, August 21, 2018 4:30 PM
To: Harlow, David <harlow.david@epa.gov>; Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Gliders letter updates

Letter was delayed a bit getting out. Attached is the version that's going to the Hill today

LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY
2321 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6301
(202) 225–6371
www.science.house.gov

July 12, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Acting Administrator Wheeler,

The Committee on Science, Space, and Technology is conducting oversight of the Environmental Protection Agency (EPA) and its scientific programs. Specifically, the Committee has concerns regarding the scientific integrity and validity of a recent study conducted by the National Vehicle and Fuel Emissions Laboratory (NVFEL) in Ann Arbor, Michigan.

On October 25, 2016, the Obama Administration EPA and the National Highway Traffic Safety Administration issued a final rule ("2016 rule") that, among other things, required engines in "glider vehicles" ("gliders") to meet the emissions standards of the year in which the vehicle was assembled, rather than the year the vehicle's engine was manufactured.[1] EPA describes a "glider vehicle" as a truck assembly consisting of a new chassis and cab with a used engine, transmission, and/or rear axle.[2] On November 16, 2017, the EPA proposed to repeal the 2016 rule.[3]

Subsequently, on November 20, 2017, the NVFEL quietly released a study that examined emissions from glider trucks as compared to non-refurbished or unmodified, conventionally

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium-and-Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73, 478 (Oct. 25, 2016).
[2] *See* Repeal of Emissions Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53, 443 (Nov. 16, 2017).
[3] *Id.* at 442.

manufactured trucks[4] without notifying EPA leadership. Documents obtained by the Committee show an apparent concerted effort between EPA staff at the NVFEL and representatives from the Volvo Group, a subsidiary of AB Vovlo, and the Truck and Engine Manufacturers Association (EMA) to target and test gliders assembled by Fitzgerald Glider Kits, the largest glider assembler in the U.S. Volvo, a member of EMA and competitor of Fitzgerald, supported the 2016 rule that increased the regulation of gliders.[5]

Email communications indicate that Volvo had a keen interest in how Fitzgerald responded to the 2016 rule, specifically sharing with NVFEL staff Fitzgerald's "larger than normal presence" at a trade show in March of 2017.[6] Then, in September of 2017, three weeks after Administrator Pruitt indicated an intention to revisit the 2016 rule, a representative from Volvo initiated contact with EPA employees in the NVFEL office in Ann Arbor, Michigan, asking the lab to conduct a test program in which Volvo "would provide the test articles."[7]

The ensuing exchange appears to show an overt attempt by a regulated entity to shape a scientific study at EPA to achieve a specific, pre-determined outcome. In one email, the representative from Volvo lays out the "ideal" test program for the NVFEL, listing specifically the test articles to use and the schedule by which the test program should be conducted.[8] Volvo's recommendations were specific to the point where it suggested to the NVFEL multiple times to use "Fitzgerald rebuilds" and to "stay away from Cummins,"[9] another EMA member.

Further targeting Fitzgerald, an EPA employee at the NVFEL emailed a Volvo representative to ask whether the NVFEL should request a test article from the glider manufacturers themselves, adding that "if they say no, that's a story in itself!"[10] There is no indication that the NVFEL ever reached out to Fitzgerald or any other glider manufacturer before, during, or after this study was performed.

These documents raise serious questions as to the objectivity and legitimacy of the NVFEL study. To better assist the Committee in understanding how EPA intends to uphold scientific integrity and how it undertakes decisions to perform scientific studies underlying regulation, we request a briefing for Committee staff by the appropriate EPA officials who are

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[4] National Vehicle and Fuel Emissions Laboratory, Envtl. Prot. Agency, Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles (Nov. 20, 2017) (EPA-HQ-OAR-2014-0827-2417).
[5] Comments of the Volvo Group, Greenhouse Gas Emission and Fuel Efficiency Standards for Medium-Duty and Heavy-Duty Engines and Vehicles—Phase 2; Proposed Rules, Docket No. EPA-HQ-OAR-2014-0132 (Oct. 1, 2015).
[6] Email from Volvo Employee to Envtl. Prot. Agency Employee and Truck & Engine Mfrs. Ass'n Employee (March 28, 2017, 11:56 a.m.).
[7] Email from Envtl. Prot. Agency Employee to Volvo Employee (Sept. 5, 2017, 4:47 p.m.).
[8] Email from Volvo Employee to Envt. Prot. Agency Employee (Sept. 8, 2017, 3:07 p.m.).
[9] *Id.*; Email from Volvo Employee to Envt. Prot. Agency Employee (Sept. 9, 2017, 11:08 a.m.).
[10] Email from Envtl. Prot. Agency Employee to Volvo Employee (Oct. 28, 2017, 6:19 p.m.).

familiar with this matter. We ask that you schedule this staff briefing no later than Thursday, July 26, 2018.

Further, we request all documents and communications between or among EPA officials referring or relating to the NVFEL glider study and all documents and communications between or among EPA officials and relevant article manufacturers referring or relating to the NVFEL study.

We request that you provide these documents and information as soon as possible, but no later than 5:00 p.m. on July 26, 2018. When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 394 of the Ford House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Science, Space, and Technology has jurisdiction over environmental and scientific programs and "shall review and study on a continuing basis laws, programs, and Government activities" as set forth in House Rule X.

If you have any questions about this request, please contact Committee staff at 202-225-6371. Thank you for your attention to this matter.

Sincerely,

Lamar Smith
Chairman
House Committee on Science, Space, and Technology

Bill Posey
Member of Congress

Ralph Abraham, M.D.
Chairman
Subcommittee on Oversight

Clay Higgins
Vice Chair
Subcommittee on Oversight

Andy Biggs
Chairman
Subcommittee on Environment

Brian Babin
Chairman
Subcommittee on Space

Gary Palmer
Member of Congress

Encl.

cc: The Honorable Eddie Bernice Johnson, Ranking Member, Committee on Science, Space, and Technology
The Honorable Donald Beyer, Jr., Ranking Member, Oversight Subcommittee
The Honorable Suzanne Bonamici, Ranking Member, Environment Subcommittee

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Lamar Smith
Chairman
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 12, 2018 to the U.S. Environmental Protection Agency regarding the National Vehicle and Fuel Emissions Laboratory (NVFEL) testing on glider truck emission rates. Acting Administrator Wheeler has asked me to respond on his behalf.

On July 10, 2017, EPA received a Petition for Reconsideration of certain regulatory requirements specific to glider kits, glider engines and glider vehicles.[1] Among the issues raised, the Petitioners stated, "... EPA did not perform any actual testing to analyze the environmental impact of remanufactured engines and gliders compared to new Original Equipment Manufacturer ("OEM") vehicles." In response to the Petition for Reconsideration, on August 17, 2017, EPA notified the Petitioners that the Agency would initiate a rulemaking process to consider the issues they had raised. At that time, EPA noted that the Petition "... raises concerns that the EPA relied upon 'unsupported assumptions rather than data' with regard to the emission impacts of gliders."[2] Relatedly on July 27, 2017, the House Appropriations Committee issued the Committee Report on the Interior, Environment and Related Agencies Appropriation Bill for 2018. The Committee Report discussed the topic of heavy-duty glider vehicles, and the Committee made this request of EPA: "The Committee urges EPA to study the emissions impact of remanufactured engines used in glider kits, compared to new engines, and issue a report to the Committee when available."[3]

In response to the decision to initiate a rulemaking to revisit the EPA glider vehicle regulations and, as well, the House Appropriations Committee request that EPA study glider vehicle emissions, in August 2017, EPA's NVFEL initiated a program to perform emissions testing of heavy-duty glider vehicles. To acquire one or more in-use glider vehicles for the emissions test program, EPA staff contacted several heavy-duty vehicle and engine manufacturers with

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dealerships or distribution centers in Michigan, where the NVFEL is located. Volvo Group North America, which includes the Mack Truck and Volvo Truck brands, expressed a willingness to assist with EPA's acquisition of a glider vehicle for testing through its dealership network. Volvo Group North America was able to arrange for EPA to test two used glider vehicles at the NVFEL, one in October and one in November of 2017.

EPA released the emissions test report on November 20, 2017, by placing the report into the public docket for EPA's glider vehicle proposal, which was published in the *Federal Register* on November 16, 2017, and opened a public comment period. Although EPA was not able to complete the report prior to publication of the NPRM, the glider vehicle test report was docketed in time to allow the public more than 40 days to review it before the close of the comment period. EPA provided no draft of the report to any outside stakeholder, and made the report available to all members of the public at the same time, via the EPA public docket.[4] EPA's test results, as presented in the report, were largely consistent with the expected emissions performance of highway diesel engines that were produced in the 1998-2002 timeframe. That is, the emission results of engines produced in that timeframe would be expected to be higher for oxides of nitrogen and particulate matter, because such engines do not include modern emission control technology that has been widely used on heavy-duty engines in the past decade.

Please note that the Agency conducted this testing at the NVFEL. The NVFEL is a national laboratory used by EPA for compliance and confirmatory testing of a wide range of on-highway and off-highway mobile sources, including passenger cars, commercial trucks, and engines. The NVFEL is an ISO/IEC 17025 accredited laboratory. Such accreditation is intended to ensure that measurements made and data produced are reliably accurate, consistently precise, and conform to regulatory requirements.[5] The NVFEL follows rigorous procedures to ensure only high-quality data is utilized by EPA. As documented in the EPA glider vehicle test report, EPA utilized the same test equipment and followed the same testing protocols specified in the Code of Federal Regulations for the emissions testing of highway motor vehicles, which includes the equipment utilized in the glider vehicle test program for the assessment of both gaseous and particulate matter emissions.[6]

I consulted with relevant staff in preparing this response. They have assured me that they designed the test program, performed the testing, and wrote the test report – all independent of any outside stakeholder input. In particular, they report that, while Volvo did provide unsolicited views on the EPA test program, EPA staff directed and carried out the test program independent from Volvo.

Enclosed is the first set of responsive documents. As discussed with your staff, we will be delivering responsive documents on a rolling basis as they are located and reviewed. We will then work with your staff to schedule a briefing on the NVFEL glider vehicle testing.

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[4] Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles. Available in the public rulemaking docket, EPA-HQ-OAR-2014-0827-2417.

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Please note that portions of the responsive documents contain internal deliberations and may contain attorney-client communications or attorney work product of an Executive Branch agency, EPA, and, as such, raise a confidentiality interest. To identify specific documents in which EPA has a confidentiality interest, we have added a watermark to these documents that reads "Deliberative or Privileged Document of the U.S. EPA; Disclosure Authorized Only to Congress for Oversight Purposes." Each document contains a footnote stating that privilege in this context may include, but is not limited to, attorney-client privileged or work-product protected information. You should appreciate that, through this accommodation, EPA does not waive any confidentiality interests in these documents or similar documents in other circumstances. EPA respectfully requests therefore that the Committee and staff take all necessary measures to protect the documents and the information contained in them from further dissemination. Should the Committee determine that its legislative mandate requires further distribution of this confidential information outside the Committee, we request that such need first be discussed with EPA to help ensure the Executive Branch's confidentiality interests are protected to the fullest extent possible.

You will also notice that some documents may contain redactions of nonresponsive, confidential business, or personal privacy information.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kyle Aarons in the Office of Congressional and Intergovernmental Relations at (202) 564-7351 or Aarons.Kyle@epa.gov.

Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

cc: The Honorable Eddie Bernice Johnson
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Bill Posey
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Posey:

Thank you for your letter of July 12, 2018 to the U.S. Environmental Protection Agency regarding the National Vehicle and Fuel Emissions Laboratory (NVFEL) testing on glider truck emission rates. Acting Administrator Wheeler has asked me to respond on his behalf.

On July 10, 2017, EPA received a Petition for Reconsideration of certain regulatory requirements specific to glider kits, glider engines and glider vehicles.[1] Among the issues raised, the Petitioners stated, "... EPA did not perform any actual testing to analyze the environmental impact of remanufactured engines and gliders compared to new Original Equipment Manufacturer ("OEM") vehicles." In response to the Petition for Reconsideration, on August 17, 2017, EPA notified the Petitioners that the Agency would initiate a rulemaking process to consider the issues they had raised. At that time, EPA noted that the Petition "... raises concerns that the EPA relied upon 'unsupported assumptions rather than data' with regard to the emission impacts of gliders."[2] Relatedly on July 27, 2017, the House Appropriations Committee issued the Committee Report on the Interior, Environment and Related Agencies Appropriation Bill for 2018. The Committee Report discussed the topic of heavy-duty glider vehicles, and the Committee made this request of EPA: "The Committee urges EPA to study the emissions impact of remanufactured engines used in glider kits, compared to new engines, and issue a report to the Committee when available."[3]

In response to the decision to initiate a rulemaking to revisit the EPA glider vehicle regulations and, as well, the House Appropriations Committee request that EPA study glider vehicle emissions, in August 2017, EPA's NVFEL initiated a program to perform emissions testing of heavy-duty glider vehicles. To acquire one or more in-use glider vehicles for the emissions test program, EPA staff contacted several heavy-duty vehicle and engine manufacturers with

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Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Ralph Abraham
Chairman
Subcommittee on Oversight
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 12, 2018 to the U.S. Environmental Protection Agency regarding the National Vehicle and Fuel Emissions Laboratory (NVFEL) testing on glider truck emission rates. Acting Administrator Wheeler has asked me to respond on his behalf.

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Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

cc: The Honorable Don Beyer
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Clay Higgins
Vice Chairman
Subcommittee on Oversight
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Vice Chairman:

Thank you for your letter of July 12, 2018 to the U.S. Environmental Protection Agency regarding the National Vehicle and Fuel Emissions Laboratory (NVFEL) testing on glider truck emission rates. Acting Administrator Wheeler has asked me to respond on his behalf.

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Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Kyle Aarons in the Office of Congressional and Intergovernmental Relations at (202) 564-7351 or Aarons.Kyle@epa.gov.

Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Andy Biggs
Chairman
Subcommittee on Environment
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 12, 2018 to the U.S. Environmental Protection Agency regarding the National Vehicle and Fuel Emissions Laboratory (NVFEL) testing on glider truck emission rates. Acting Administrator Wheeler has asked me to respond on his behalf.

On July 10, 2017, EPA received a Petition for Reconsideration of certain regulatory requirements specific to glider kits, glider engines and glider vehicles.[21] Among the issues raised, the Petitioners stated, "... EPA did not perform any actual testing to analyze the environmental impact of remanufactured engines and gliders compared to new Original Equipment Manufacturer ("OEM") vehicles." In response to the Petition for Reconsideration, on August 17, 2017, EPA notified the Petitioners that the Agency would initiate a rulemaking process to consider the issues they had raised. At that time, EPA noted that the Petition "... raises concerns that the EPA relied upon 'unsupported assumptions rather than data' with regard to the emission impacts of gliders."[22] Relatedly on July 27, 2017, the House Appropriations Committee issued the Committee Report on the Interior, Environment and Related Agencies Appropriation Bill for 2018. The Committee Report discussed the topic of heavy-duty glider vehicles, and the Committee made this request of EPA: "The Committee urges EPA to study the emissions impact of remanufactured engines used in glider kits, compared to new engines, and issue a report to the Committee when available."[23]

In response to the decision to initiate a rulemaking to revisit the EPA glider vehicle regulations and, as well, the House Appropriations Committee request that EPA study glider vehicle emissions, in August 2017, EPA's NVFEL initiated a program to perform emissions testing of heavy-duty glider vehicles. To acquire one or more in-use glider vehicles for the emissions test program, EPA staff contacted several heavy-duty vehicle and engine manufacturers with

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ED_002444_00003180-00013

dealerships or distribution centers in Michigan, where the NVFEL is located. Volvo Group North America, which includes the Mack Truck and Volvo Truck brands, expressed a willingness to assist with EPA's acquisition of a glider vehicle for testing through its dealership network. Volvo Group North America was able to arrange for EPA to test two used glider vehicles at the NVFEL, one in October and one in November of 2017.

EPA released the emissions test report on November 20, 2017, by placing the report into the public docket for EPA's glider vehicle proposal, which was published in the *Federal Register* on November 16, 2017, and opened a public comment period. Although EPA was not able to complete the report prior to publication of the NPRM, the glider vehicle test report was docketed in time to allow the public more than 40 days to review it before the close of the comment period. EPA provided no draft of the report to any outside stakeholder, and made the report available to all members of the public at the same time, via the EPA public docket.[4] EPA's test results, as presented in the report, were largely consistent with the expected emissions performance of highway diesel engines that were produced in the 1998-2002 timeframe. That is, the emission results of engines produced in that timeframe would be expected to be higher for oxides of nitrogen and particulate matter, because such engines do not include modern emission control technology that has been widely used on heavy-duty engines in the past decade.

Please note that the Agency conducted this testing at the NVFEL. The NVFEL is a national laboratory used by EPA for compliance and confirmatory testing of a wide range of on-highway and off-highway mobile sources, including passenger cars, commercial trucks, and engines. The NVFEL is an ISO/IEC 17025 accredited laboratory. Such accreditation is intended to ensure that measurements made and data produced are reliably accurate, consistently precise, and conform to regulatory requirements.[5] The NVFEL follows rigorous procedures to ensure only high-quality data is utilized by EPA. As documented in the EPA glider vehicle test report, EPA utilized the same test equipment and followed the same testing protocols specified in the Code of Federal Regulations for the emissions testing of highway motor vehicles, which includes the equipment utilized in the glider vehicle test program for the assessment of both gaseous and particulate matter emissions.[6]

I consulted with relevant staff in preparing this response. They have assured me that they designed the test program, performed the testing, and wrote the test report – all independent of any outside stakeholder input. In particular, they report that, while Volvo did provide unsolicited views on the EPA test program, EPA staff directed and carried out the test program independent from Volvo.

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William L. Wehrum
Assistant Administrator

Enclosure

cc: The Honorable Suzanne Bonamici
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Brian Babin
Chairman
Subcommittee on Space
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

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Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

cc: The Honorable Ami Bera
Ranking Member

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR AND RADIATION

The Honorable Greg Palmer
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Palmer:

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Sincerely,

William L. Wehrum
Assistant Administrator

Enclosure

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/10/2018 3:18:38 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: FW: Press Coverage of NAA on Gliders

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Hull, George
Sent: Tuesday, July 10, 2018 11:06 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Shiffman, Cari <Shiffman.Cari@epa.gov>; Branning, Hannah <Branning.Hannah@epa.gov>
Subject: Press Coverage of NAA on Gliders

Susan and Patrick,
Here are some Trade press clips on the Gliders NAA. - George

Inside EPA: https://insideepa.com/daily-news/epa-faces-tough-scrutiny-over-enforcement-waiver-glider-truck-makers

Daily News
EPA Faces Tough Scrutiny Over Enforcement Waiver For Glider Truck Makers

July 09, 2018

Trump EPA plans to delay enforcement of Obama-era production limits on high-emitting glider trucks are being seen as an effort to buy a reprieve for glider makers in the face of roadblocks the agency has faced to repealing the limits while also giving officials more time to advance a potential new plan to delay or scale back the limits, sources say.

The enforcement deferment strategy, however, appears likely to face administrative or legal challenges that could include criticisms of the action as an improper substitute for rulemaking, with some observers already arguing it also conflicts with prior EPA policies limiting the use of such "no action" assurances.

And sources indicate the policy likely does little to shield glider truck manufacturers from suits that could come from states, environmentalists or even industry competitors. "This does not insulate these companies from citizen lawsuits," says a former EPA official.

According to a July 6 memo from EPA enforcement chief Susan Bodine to air chief William Wehrum, the agency is exercising its "enforcement discretion" to effectively free makers of glider trucks from current production caps that apply to the vehicles if they do not meet modern emissions limits.

The exercise of such discretion, first reported by the *New York Times,* is one of two "interim steps" the agency is taking to reduce adverse impacts on the industry from the glider production caps. The agency is also planning to formally extend the regulatory compliance date to Dec. 31, 2019, Bodine said.

Bodine's memo outlines a "conditional no action assurance" approach that defers enforcement action on glider makers until either July 6, 2019 or "the effective date, of a final rule that would extend the compliance date" for the production limits, whichever is earlier.

Bodine's memo formally responds to an attached July 6 request from Wehrum for EPA's enforcement office to exercise its discretion with respect to glider vehicle makers and their suppliers.

Wehrum said he is seeking a "bridge to a rulemaking in which we will consider extending the deadline" for compliance with the production caps.

EPA is also said to be sending letters to glider makers notifying them of its plans, though the agency has not made the letters public.

EPA took the action on former Administrator Scott Pruitt's final day in office after the agency had been unable to finalize its pending proposal to scrap the production limits entirely. The proposal stalled in the face of opposition from the White House Office of Management and Budget, which insisted that the agency prepare a regulatory impact analysis that many believed would have revealed the significant pollution impacts of the proposal.

Glider trucks combine used engines with a new chassis. The Obama administration moved to regulate the trucks and limit their production, rejecting claims from the manufacturers that they were not "new" vehicles subject to emissions and other control requirements.

But the Trump administration has sought to reverse the regulation, prompting significant criticism from states, environmentalists, many lawmakers and other trucking industry officials who fear that increasing production of the vehicles will result in significant increases in nitrogen oxide (NOx) and other emissions.

However, some glider manufacturers, like Fitzgerald Glider Kits, have already warned that EPA's failure to scrap the Obama-era production limits is forcing the company to begin laying off employees.

Repeal 'Is Probably Dead'

Several sources tracking the ongoing controversy over EPA's plan to repeal the glider limits entirely see the enforcement move as a further sign that EPA's current plan to repeal the caps completely remains mired in limbo or may not happen at all.

In this vein, one knowledgeable source suggests "the glider rule repeal package that was contemplated is probably dead."

EPA does not go quite that far, but acknowledges that its repeal effort has been stalled and references alternative approaches to the repeal plan.

"After taking into consideration the public comments received as well as engagement with stakeholders, EPA has determined that additional evaluation is required before it can take final action on one or more aspects of the proposal," the agency said in a statement.

Wehrum's request to Bodine similarly says EPA's air office has determined that "additional evaluation of a number of matters is required before it can take final action" on EPA's glider repeal plan.

He adds that finalizing EPA's proposal will take "more time than we had previously anticipated" and pledges to complete its rulemaking "consistent with the agency's responsibility to to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making."

Wehrum adds EPA's air office "intends to move as expeditiously as possible" to consider extending the compliance date for production limits until Dec. 31, 2019. "Concurrently we intend to continue to work toward expeditiously completing a final rule."

And Wehrum also references the fact that EPA in its repeal plan sought comment on an alternative that would raise the allowable production caps for gliders that lack state-of-the-art emissions controls, without eliminating them entirely.

One trucking industry source sees the enforcement deferral policy, at minimum, as a "timeout" that could allow the agency to punt the glider issue for "a year or more."

Other sources say the policy could effectively open the way for the agency to revisit alternatives to EPA's pending proposal to repeal the glider production caps entirely, such as raising the allowable production limit for the gliders, as proposed, for example, by PACCAR, Inc., a truck and glider manufacturer, during the public comment process.

Another trucking sector source goes further, suggesting that the enforcement flexibility could wind up being the "compromise"on the glider issue in that it provides a *de facto* compliance extension.

But several sources suggest that the enforcement policy is only a partial shield for companies, amid divergent opinions on whether the policy itself is even legal.

The former EPA official, for example, says the policy provides no protection for glider manufacturers from citizen lawsuits, which could be filed by environmental groups, states or even industry groups disadvantaged by the enforcement relief.

The source adds that EPA's enforcement office appears to have been in a "tough spot" given the air office request and argues that an alternative approach might have simply deemed the enforcement of the requirements as a low priority.

The source also braces for administrative or legal challenges to the policy itself from groups, which could involve disputes such as whether the move is final agency action and how much discretion EPA has to avoid doing such enforcement. The Department of Justice (DOJ), for example, might argue that enforcing the glider requirement is a discretionary duty, but critics could argue that such a stance amounts to abandoning mandatory pollution protections under the act.

Legally DOA

A former DOJ official offers a starker appraisal of the enforcement relief as"an illegal rule making" without proper notice-and-comment and calls the approach legally "dead on arrival."

The source also questions the no action assurances being offered to an entire industry, rather than individual companies.

And the source argues that the move also conflicts with existing EPA policies, including a 1995 enforcement memo stating in part that "Good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice and comment rulemaking process."

In addition, the source references a 1984 policy that frowns on EPA giving assurances, outside of a formal enforcement proceeding, "that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement."

The source adds that the enforcement relief could "undercut the rationale" of EPA's pending rulemaking, to the extent that critics could argue the agency is being "arbitrary and capricious because the agency has predetermined the outcome" of the rule. -- *Doug Obey* (dobey@iwpnews.com

BNA: https://news.bloombergenvironment.com/environment-and-energy/epa-puts-brakes-on-enforcement-of-truck-pollution-limits?context=landing-heroes

News

EPA Puts Brakes on Enforcement of Truck Pollution Limits

Posted July 9, 2018, 6:56 PM

By Abby Smith

- EPA won't enforce 300-vehicle limit on glider kit makers, enforcement chief says
- Glider makers could be vulnerable to citizen suits, environmentalists weigh legal options

The EPA is giving trucks with rebuilt engines a break from meeting Obama-era air pollution limits that the agency has sought for months to kill—but officials aren't giving up on the repeal efforts just yet.

The Environmental Protection Agency won't enforce a 2016 regulation placing a cap on the production and sale of glider kits—new truck chassis and cab assemblies built for used engines and transmissions—for a year, until July 6, 2019, agency enforcement chief Susan Bodine wrote in a July 6 memo posted on the agency's website July 9.

The move, requested by EPA air chief Bill Wehrum, comes as the agency's attempt to repeal the glider kit limits has met several obstacles—including a request from the White House for analysis of the regulatory impacts and fervent opposition from major trucking companies, state regulators, and environmental groups.

Truck manufacturers are critical of the new enforcement action, which they say will undermine their investments in cleaner technology and efforts to meet the emissions limits.

"This is creating an imbalance on the introduction of new trucks into the marketplace with the aim of cleaning up emissions," Glen Kedzie, vice president and energy and environment counsel for the American Trucking Associations, told Bloomberg Environment. "And this is going to hurt those cities currently in nonattainment [with federal air quality standards] from achieving their goals."

'Ridiculous' Memo

Glider trucks generally emitted four to 40 times more nitrogen oxides and 50 to 450 times more particulate matter than new model year 2014 and 2015 trucks, EPA vehicles staff found in a Nov. 20, 2017, report.

But the EPA proposed Nov. 16, 2017, to undo the Obama administration's limits, which had placed an annual limit of up to 300 glider vehicles for small manufacturers.

"The language in the [enforcement] memo is kind of ridiculous. It basically says, 'Well, who knew undoing public health protections was so hard?'" Dave Cooke, senior vehicles analyst at the Union of Concerned Scientists, told Bloomberg Environment.

The July 6 enforcement memo allows glider kit manufacturers and suppliers to return to an annual production in 2018 and 2019 equivalent to their highest annual production level during the period of 2010-2014. For larger manufacturers—such as Tennessee-based Fitzgerald Glider Kits, which has been a strong advocate for the repeal—that could be thousands of trucks.

Fitzgerald Glider Kits did not immediately respond to Bloomberg Environment's request for comment. The New York Times first reported on the EPA enforcement action.

Longer Than Anticipated

Wehrum, in his July 6 request for enforcement discretion, said the EPA intends to work quickly to propose a delay of the 300-vehicle cap until the end of 2019. The agency also intends to quickly complete the repeal, he added, though he acknowledged it will require more time than originally anticipated.

The enforcement pause is "in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration" of the Obama-era regulation, Bodine wrote in her memo.

Cooke said the enforcement action signals the EPA may be having second thoughts about its repeal approach, which has already faced criticisms from environmentalists and trucking groups that it isn't legally sound.

But the enforcement action may ultimately mean glider kit manufacturers and suppliers could face potential citizen lawsuits, aiming to force the EPA's hand to implement the law on the books. Environmental groups are already weighing legal options.

"This is something that could be challenged legally for not upholding the Clean Air Act," Cooke said. "As it stands right now, it doesn't matter what was proposed; the cap exists. At this point, it is on the agency to enforce that."

To contact the reporter on this story: Abby Smith in Washington at asmith@bloombergenvironment.com

To contact the editor responsible for this story: Rachael Daigle at rdaigle@bloombergenvironment.com

Greenwire: https://www.eenews.net/greenwire/2018/07/09/stories/1060088551

AIR POLLUTION

'Health hazards on wheels' got loophole on Pruitt's last day

Maxine Joselow, E&E News reporter

Published: Monday, July 9, 2018

On former EPA Administrator Scott Pruitt's last day at EPA, the agency moved to expand loopholes for super-polluting glider kits. Fitzgerald Glider Kits

On Scott Pruitt's last day as EPA administrator, the agency moved to expand a loophole for high-emission trucks.

An EPA spokeswoman confirmed the agency is considering steps to reduce regulatory burdens on manufacturers of glider kits — new truck cabs with refurbished diesel engines. *The New York Times* was first to report on the development.

"The Agency is considering interim steps to reduce severe impacts on the industry," spokeswoman Molly Block said in an email.

One step would lift a cap of 300 gliders per manufacturer for 2018 and 2019, Block said. The agency could formally delay the cap until Dec. 31, 2019, when it could repeal it.

Companies could now be free to manufacture thousands of gliders, which emit as much as 55 times the air pollution of trucks with modern emissions controls. In particular, gliders emit more nitrogen oxide and particulates, which are blamed for asthma, lung cancer and premature deaths.

Block didn't respond to a question about whether Andrew Wheeler, who starts today as EPA acting administrator, was involved in the decision.

The glider rule has a long and fraught history.

Under the Obama administration, some truck manufacturers began selling large numbers of gliders in an effort to skirt tailpipe standards, since gliders come with a refurbished engine required to meet the emission standards from when it was originally built.

In 2015, the Obama administration's EPA moved to crack down on the glider loophole. It mandated that gliders meet emission standards for new trucks, except for an annual cap of 300.

On Nov. 20, 2017, EPA produced a report that found the emissions of gliders were 43 to 55 times higher than those of trucks with modern pollution controls.

But citing a study bankrolled by Crossville, Tenn.-based Fitzgerald Glider Kits LLC and contradicting his own staff, Pruitt declared glider kits more efficient and cleaner than new rigs (*Greenwire*, Nov. 27, 2017).

Pruitt's proposal to reverse the Obama-era restrictions didn't include a regulatory impact analysis, which is not standard practice. The proposal is now stuck in regulatory limbo after the White House Office of Management and Budget requested such an analysis.

The study that Pruitt cited is now the subject of an academic inquiry and has been disavowed by Tennessee Tech University, which produced it (*Greenwire*, Feb. 23).

Environmentalists blasted EPA's decision on gliders.

"True to form, Pruitt put polluters' agenda before public health to the end," said Luke Tonachel, director of the Clean Vehicles and Fuels Project at the Natural Resources Defense Council, in a statement.

"These health hazards on wheels could cause thousands of premature deaths," Tonachel said. "EPA's job is to protect public health, not make it worse. With Pruitt gone, EPA must change course."

Paul Billings, senior vice president for advocacy at the American Lung Association, said the move could lead to 3,200 premature deaths, citing EPA's own analyses in 2016 and 2017.

"I think reporters should be asking acting Administrator Wheeler questions about what his views are on this," Billings said. "What role did he play? Was this a decision that he was involved in?"

Billings added that the move may require a rulemaking with a formal notice-and-comment period.

Fitzgerald Glider Kits didn't respond to a request for comment. But the company told EPA last year the 300-unit cap "would effectively destroy the glider industry."

Message

From: Holmes, Carol [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A63F745584114AE9B119547A4DC845FD-HOLMES, CAROL]
Sent: 7/10/2018 1:38:07 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]
Subject: RE: Glider No Action Assurance

It's on our webpage

https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles

And Inside EPA article below

EPA Faces Tough Scrutiny Over Enforcement Waiver For Glider Truck Makers

July 09, 2018

Trump EPA plans to delay enforcement of Obama-era production limits on high-emitting glider trucks are being seen as an effort to buy a reprieve for glider makers in the face of roadblocks the agency has faced to repealing the limits while also giving officials more time to advance a potential new plan to delay or scale back the limits, sources say.

The enforcement deferment strategy, however, appears likely to face administrative or legal challenges that could include criticisms of the action as an improper substitute for rulemaking, with some observers already arguing it also conflicts with prior EPA policies limiting the use of such "no action" assurances.

And sources indicate the policy likely does little to shield glider truck manufacturers from suits that could come from states, environmentalists or even industry competitors. "This does not insulate these companies from citizen lawsuits," says a former EPA official.

According to a July 6 memo from EPA enforcement chief Susan Bodine to air chief William Wehrum, the agency is exercising its "enforcement discretion" to effectively free makers of glider trucks from current production caps that apply to the vehicles if they do not meet modern emissions limits.

The exercise of such discretion, first reported by the *New York Times,* is one of two "interim steps" the agency is taking to reduce adverse impacts on the industry from the glider production caps. The agency is also planning to formally extend the regulatory compliance date to Dec. 31, 2019, Bodine said.

Bodine's memo outlines a "conditional no action assurance" approach that defers enforcement action on glider makers until either July 6, 2019 or "the effective date, of a final rule that would extend the compliance date" for the production limits, whichever is earlier.

Bodine's memo formally responds to an attached July 6 request from Wehrum for EPA's enforcement office to exercise its discretion with respect to glider vehicle makers and their suppliers.

Wehrum said he is seeking a “bridge to a rulemaking in which we will consider extending the deadline” for compliance with the production caps.

EPA is also said to be sending letters to glider makers notifying them of its plans, though the agency has not made the letters public.

EPA took the action on former Administrator Scott Pruitt's final day in office after the agency had been unable to finalize its pending proposal to scrap the production limits entirely. The proposal stalled in the face of opposition from the White House Office of Management and Budget, which insisted that the agency prepare a regulatory impact analysis that many believed would have revealed the significant pollution impacts of the proposal.

Glider trucks combine used engines with a new chassis. The Obama administration moved to regulate the trucks and limit their production, rejecting claims from the manufacturers that they were not “new” vehicles subject to emissions and other control requirements.

But the Trump administration has sought to reverse the regulation, prompting significant criticism from states, environmentalists, many lawmakers and other trucking industry officials who fear that increasing production of the vehicles will result in significant increases in nitrogen oxide (NOx) and other emissions.

However, some glider manufacturers, like Fitzgerald Glider Kits, have already warned that EPA's failure to scrap the Obama-era production limits is forcing the company to begin laying off employees.

Repeal 'Is Probably Dead'

Several sources tracking the ongoing controversy over EPA's plan to repeal the glider limits entirely see the enforcement move as a further sign that EPA's current plan to repeal the caps completely remains mired in limbo or may not happen at all.

In this vein, one knowledgeable source suggests “the glider rule repeal package that was contemplated is probably dead.”

EPA does not go quite that far, but acknowledges that its repeal effort has been stalled and references alternative approaches to the repeal plan.

“After taking into consideration the public comments received as well as engagement with stakeholders, EPA has determined that additional evaluation is required before it can take final action on one or more aspects of the proposal,” the agency said in a statement.

Wehrum's request to Bodine similarly says EPA's air office has determined that “additional evaluation of a number of matters is required before it can take final action” on EPA's glider repeal plan.

He adds that finalizing EPA's proposal will take “more time than we had previously anticipated” and pledges to complete its rulemaking “consistent with the agency's responsibility to to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making.”

Wehrum adds EPA's air office “intends to move as expeditiously as possible” to consider extending the compliance date for production limits until Dec. 31, 2019. “Concurrently we intend to continue to work toward expeditiously completing a final rule.”

And Wehrum also references the fact that EPA in its repeal plan sought comment on an alternative that would raise the allowable production caps for gliders that lack state-of-the-art emissions controls, without eliminating them entirely.

One trucking industry source sees the enforcement deferral policy, at minimum, as a “timeout” that could allow the agency to punt the glider issue for “a year or more.”

Other sources say the policy could effectively open the way for the agency to revisit alternatives to EPA's pending proposal to repeal the glider production caps entirely, such as raising the allowable production limit for the gliders, as proposed, for example, by PACCAR, Inc., a truck and glider manufacturer, during the public comment process.

Another trucking sector source goes further, suggesting that the enforcement flexibility could wind up being the "compromise"on the glider issue in that it provides a *de facto* compliance extension.

But several sources suggest that the enforcement policy is only a partial shield for companies, amid divergent opinions on whether the policy itself is even legal.

The former EPA official, for example, says the policy provides no protection for glider manufacturers from citizen lawsuits, which could be filed by environmental groups, states or even industry groups disadvantaged by the enforcement relief.

The source adds that EPA's enforcement office appears to have been in a "tough spot" given the air office request and argues that an alternative approach might have simply deemed the enforcement of the requirements as a low priority.

The source also braces for administrative or legal challenges to the policy itself from groups, which could involve disputes such as whether the move is final agency action and how much discretion EPA has to avoid doing such enforcement. The Department of Justice (DOJ), for example, might argue that enforcing the glider requirement is a discretionary duty, but critics could argue that such a stance amounts to abandoning mandatory pollution protections under the act.

Legally DOA

A former DOJ official offers a starker appraisal of the enforcement relief as"an illegal rule making" without proper notice-and-comment and calls the approach legally "dead on arrival."

The source also questions the no action assurances being offered to an entire industry, rather than individual companies.

And the source argues that the move also conflicts with existing EPA policies, including a 1995 enforcement memo stating in part that "Good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice and comment rulemaking process."

In addition, the source references a 1984 policy that frowns on EPA giving assurances, outside of a formal enforcement proceeding, "that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement."

The source adds that the enforcement relief could "undercut the rationale" of EPA's pending rulemaking, to the extent that critics could argue the agency is being "arbitrary and capricious because the agency has predetermined the outcome" of the rule. -- *Doug Obey* (dobey@iwpnews.com)

May contain sensitive communication for internal deliberations only, attorney-client communication, attorney work product, and/or enforcement sensitive information. Do not distribute outside the U.S. Government.

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW

Washington, DC 20460
Phone (202) 564-8709

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 7/9/2018 8:18:23 PM
To: Dewey, Amy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fc3a7e01b12f4aeba5d34b813df8112a-Dewey, Amy]
CC: Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]; Hull, George [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f6dd2fab273845218756495c7a2d94ad-ghull]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
Subject: RE: Announcing New Agency Senior Leaders

Hi Amy,

Just closing the loop on this one. OECA posted the no action assurance memo that NADA was requesting here:

https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles

Thanks,
Erin

From: Birgfeld, Erin
Sent: Monday, July 09, 2018 3:36 PM
To: Dewey, Amy <Dewey.Amy@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Hull, George <Hull.George@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: Announcing New Agency Senior Leaders

Hi Amy,

OECA has the lead for posting this no action assurance. I have copied George Hull who is managing the posting the OECA comms shop, and Phil Brooks the lead on this issue as well.

Thanks,
Erin

From: Dewey, Amy
Sent: Monday, July 09, 2018 3:29 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: FW: Announcing New Agency Senior Leaders

Erin or Chris,

NADA is looking for the supporting documentation for this action, " Super Polluting' Trucks Receive Loophole on Pruitt's last day" ? Can someone in OTAG help Doug! Thanks, Amy

---

From: Greenhaus, Doug [mailto:DGREENHAUS@NADA.org]
Sent: Monday, July 9, 2018 12:53 PM
To: Dewey, Amy <Dewey.Amy@epa.gov>
Subject: RE: Announcing New Agency Senior Leaders
glider
https://www.nytimes.com/2018/07/06/us/ -trucks-loophole-pruitt.html

Douglas Greenhaus
Chief Regulatory Counsel,
Environment, Health, and Safety
National Automobile Dealers Association

dgreenhaus@nada.org
o 703.821.7040
f 703.448.5824
8400 Westpark Drive
Tysons, VA 22102
nada.org

From: Dewey, Amy [mailto:Dewey.Amy@epa.gov]
Sent: Monday, July 09, 2018 12:50 PM
To: Greenhaus, Doug <DGREENHAUS@NADA.org>
Subject: RE: Announcing New Agency Senior Leaders

Doug,
Can you please send me the NYT article? Thanks, Amy

From: Greenhaus, Doug [mailto:DGREENHAUS@NADA.org]
Sent: Monday, July 9, 2018 12:42 PM
To: Dewey, Amy <Dewey.Amy@epa.gov>
Subject: RE: Announcing New Agency Senior Leaders

Amy:

Can you find determine what was actually said that led to the NYT story on the glider kit vehicle issue?

Thanks!

Doug

Douglas Greenhaus
Chief Regulatory Counsel,
Environment, Health, and Safety

National Automobile Dealers Association

dgreenhaus@nada.org
o 703.821.7040
f 703.448.5824
8400 Westpark Drive
Tysons, VA 22102
nada.org

NADA

From: Dewey, Amy [mailto:Dewey.Amy@epa.gov]
Sent: Monday, July 09, 2018 12:40 PM
Subject: Announcing New Agency Senior Leaders

I am pleased to report that we have new senior leaders joining the agency. Please join me in welcoming Peter Wright and Chad McIntosh to EPA.

Peter Wright, Special Counsel to the Administrator: Peter Wright, who has also been nominated to be the Assistant Administrator for the Office of Land and Emergency Management, will join the agency on July 9. Peter brings exceptional experience to EPA's cleanup programs and has the expertise necessary to implement EPA's ambitious goals for cleaning up the nation's contaminated lands quickly and thoroughly. Throughout his career, he has provided legal support for Superfund and other remediation sites, including work at Monsanto and with environmental practices at two law firms. Since 1999, he has worked at Dow Chemical Company where he served as Managing Counsel for Environmental Health and Safety, leading the company's strategies regarding Superfund sites and other federal and state-led remediation matters. In addition, Peter has been a leader of the American Bar Association's Environment, Energy and Resources Section and volunteered his time, alongside many from EPA, on the RCRA Corrective Action Project.

W. Charles "Chad" McIntosh, Special Counsel to the Administrator: Chad McIntosh, who has also been nominated to be the Assistant Administrator for International and Tribal Affairs, will join the agency on July 9. Chad's unique background as an engineer and attorney in global environmental compliance makes him a valuable asset and well-suited to advise the Acting Administrator on international and tribal matters. Since 1998, he has worked at Ford Motor Company, most recently serving as Manager of Global Environmental Policy, where he led efforts to improve environmental permitting, compliance, and environmental metrics at the company's manufacturing facilities in the United States, Canada, and Europe. Prior to joining Ford, Chad served as Deputy Director at the Michigan Department of Environmental Quality, where he was responsible for environmental permitting and compliance activities. He also worked closely with state and tribal leaders on comprehensive environmental and regulatory reform in Michigan, including codifying the environmental and natural resources statutes, and improving the state's wastewater infrastructure.

Ryan Jackson
Chief of Staff

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 6/14/2018 10:58:25 PM
To: Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]
Subject: Re: No Action Letter Request-Fitzgerald Glider Kits

Apparently OAR is not going final on the proposed rule. Stay tuned.

Sent from my iPhone

On Jun 14, 2018, at 6:11 PM, Chapman, Apple <Chapman.Apple@epa.gov> wrote:

> Hilarious
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Folkemer, Nathaniel" <Folkemer.Nathaniel@epa.gov>
> > **Date:** June 14, 2018 at 5:51:30 PM EDT
> > **To:** "Spina, Providence" <Spina.Providence@epa.gov>
> > **Cc:** "Belser, Evan" <Belser.Evan@epa.gov>, "Chapman, Apple" <Chapman.Apple@epa.gov>, "Emmerson, Caroline" <Emmerson.Caroline@epa.gov>
> > **Subject: FW: No Action Letter Request-Fitzgerald Glider Kits**
> >
> > Providence,
> > Please see the attached NAA request re: glider kits that OCIR asked we forward to you.
> > Nate
> >
> > ---
> >
> > **From:** Levine, Carolyn
> > **Sent:** Thursday, June 14, 2018 5:39 PM
> > **To:** Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>
> > **Subject:** No Action Letter Request-Fitzgerald Glider Kits
> >
> > Hi Caroline and Nate,
> >
> > Senator Corker's office forwarded the attached NAA request re: glider kits. Can you please share with AED folks?
> >
> > Thanks,
> > Carolyn
> >
> > ---
> >
> > *Carolyn Levine*
> > *Office of Congressional and Intergovernmental Relations*
> > *U.S. EPA*
> > *(202) 564-1859*
> > levine.carolyn@epa.gov

Begin forwarded message:

From: Jon Toomey
<jtoomey@fitzgeraldtrucksales.com>
Date: June 14, 2018 at 2:53:50 PM EDT
To: "Haley, John (Corker)"
<John_Haley@corker.senate.gov>
Subject: FW: No Action Letter Request

Hi John,

Any chance you could forward this letter on to EPA. We are trying to get a no action assurance letter issued to hold us over while the final rule is implemented.

Thanks again for all the support!

Jon

<No Action Request_FGK_1.pdf>

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 6/14/2018 10:15:59 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: FW: No Action Letter Request-Fitzgerald Glider Kits
Attachments: No Action Request_FGK_1.pdf; ATT00001.htm

Words fail me.

June 14, 2018

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20004
Dear Administrator Pruitt,

As you know, on November 16, 2017, the Environmental Protection Agency (the "EPA") proposed a rule to repeal those provisions of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016), which relate to glider vehicles, glider engines, and glider kits. The comment period for the proposed rule closed on January 5, 2018, and we understand that the EPA has every intention of adopting a final rule on this matter.

We are writing to request that the EPA issue a no action assurance letter related to the applicability of the provisions of 40 C.F.R. § 1037.635, which include, among other things, an annual production "cap" on the number of glider vehicles, glider engines, and glider kits that can be manufactured or assembled.

Specifically, we ask that the EPA issue a no action assurance letter clarifying that no action will be taken against any company meeting the following requirements:

(1) The company produced or is now producing glider vehicles in 2018;

(2) The company either has already reached, or will reach in 2018, the applicable production "cap" specified in the interim provisions of 40 C.F.R. § 1037.150(t); and

(3) The company introduces into U.S. commerce in 2018 glider vehicles in an amount that exceeds the "cap" applicable to it under 40 C.F.R. § 1037.150(t).

A no action assurance is appropriate where it is clearly necessary to serve the public interest. This standard is easily met here. The glider kit and truck industry is facing financial ruin due to the annual production cap under 40 C.F.R. § 1037.150(t). The strain on the industry grows worse with every day that passes without a final rule repealing the Phase 2 Rule's provisions on glider vehicles, glider engines and glider kits. In the last three weeks alone, hundreds of American workers in the industry have been laid off. The glider kit and truck industry will cease to exist in short order without meaningful relief.

The current public health losses are significant here, as hundreds of employees have been laid off and thousands more layoffs are expected. The elimination of the glider industry will impoverish

the tens of thousands of American workers, consumers and families who depend on this industry. The public health and welfare are in jeopardy and, short of the publication of a final rule repealing the Phase 2 Rule's glider provisions, a no action of assurance letter is the only remedy currently available.

In addition to serving the public interest, a no action assurance letter is appropriate because the EPA's recent response to a FOIA request concerning the agency's testing of two glider vehicles in October 2017 have raised a serious question of impropriety. Documents produced by the EPA show not only that senior career EPA officials conducted the tests at the behest of Volvo Trucks, the most vocal critic of the glider industry, but also that Volvo Trucks supplied the glider vehicles that were tested. These documents are evidence that Volvo Trucks, and perhaps even certain senior career EPA officials, were targeting the glider industry at the same time that the agency was working on a proposed rule to repeal the Phase 2 Rule's glider provisions. These efforts have caused substantial financial harm to glider assemblers. Furthermore, Volvo Trucks' close involvement in the EPA's glider emissions testing calls into question the integrity of certain career EPA officials who were involved in the rulemaking process.

Given the current harm to public health and welfare, we respectfully ask that a no action of assurance be issued immediately to provide much needed relief to the glider industry.

Sincerely,

Tommy C. Fitzgerald
Founder and CEO
Fitzgerald Glider Kits, LLC.

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/9/2018 5:01:02 PM
To: Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]
Subject: Fwd: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Belser, Evan" <Belser.Evan@epa.gov>
Cc: "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Bailey, Ethel" <Bailey.Ethel@epa.gov>
Subject: Glider No Action Assurance

It's done.

We'll post it Monday.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00003272-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00003272-00004

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/9/2018 2:05:02 PM
To: Fisher, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f933b62c37c74db09ddc98c550dce4ca-MFishe02]
Subject: Fwd: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Belser, Evan" <Belser.Evan@epa.gov>
Cc: "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Bailey, Ethel" <Bailey.Ethel@epa.gov>
Subject: Glider No Action Assurance

It's done.

We'll post it Monday.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00003319-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

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In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00003319-00004

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/8/2018 12:53:59 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: No Action Request_FGK_1.pdf
Attachments: No Action Request_FGK_1.pdf; ATT00001.txt

June 14, 2018

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20004
Dear Administrator Pruitt,

As you know, on November 16, 2017, the Environmental Protection Agency (the "EPA") proposed a rule to repeal those provisions of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016), which relate to glider vehicles, glider engines, and glider kits. The comment period for the proposed rule closed on January 5, 2018, and we understand that the EPA has every intention of adopting a final rule on this matter.

We are writing to request that the EPA issue a no action assurance letter related to the applicability of the provisions of 40 C.F.R. § 1037.635, which include, among other things, an annual production "cap" on the number of glider vehicles, glider engines, and glider kits that can be manufactured or assembled.

Specifically, we ask that the EPA issue a no action assurance letter clarifying that no action will be taken against any company meeting the following requirements:

(1) The company produced or is now producing glider vehicles in 2018;

(2) The company either has already reached, or will reach in 2018, the applicable production "cap" specified in the interim provisions of 40 C.F.R. § 1037.150(t); and

(3) The company introduces into U.S. commerce in 2018 glider vehicles in an amount that exceeds the "cap" applicable to it under 40 C.F.R. § 1037.150(t).

A no action assurance is appropriate where it is clearly necessary to serve the public interest. This standard is easily met here. The glider kit and truck industry is facing financial ruin due to the annual production cap under 40 C.F.R. § 1037.150(t). The strain on the industry grows worse with every day that passes without a final rule repealing the Phase 2 Rule's provisions on glider vehicles, glider engines and glider kits. In the last three weeks alone, hundreds of American workers in the industry have been laid off. The glider kit and truck industry will cease to exist in short order without meaningful relief.

The current public health losses are significant here, as hundreds of employees have been laid off and thousands more layoffs are expected. The elimination of the glider industry will impoverish

the tens of thousands of American workers, consumers and families who depend on this industry. The public health and welfare are in jeopardy and, short of the publication of a final rule repealing the Phase 2 Rule's glider provisions, a no action of assurance letter is the only remedy currently available.

In addition to serving the public interest, a no action assurance letter is appropriate because the EPA's recent response to a FOIA request concerning the agency's testing of two glider vehicles in October 2017 have raised a serious question of impropriety. Documents produced by the EPA show not only that senior career EPA officials conducted the tests at the behest of Volvo Trucks, the most vocal critic of the glider industry, but also that Volvo Trucks supplied the glider vehicles that were tested. These documents are evidence that Volvo Trucks, and perhaps even certain senior career EPA officials, were targeting the glider industry at the same time that the agency was working on a proposed rule to repeal the Phase 2 Rule's glider provisions. These efforts have caused substantial financial harm to glider assemblers. Furthermore, Volvo Trucks' close involvement in the EPA's glider emissions testing calls into question the integrity of certain career EPA officials who were involved in the rulemaking process.

Given the current harm to public health and welfare, we respectfully ask that a no action of assurance be issued immediately to provide much needed relief to the glider industry.

Sincerely,

Tommy C. Fitzgerald
Founder and CEO
Fitzgerald Glider Kits, LLC.

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/7/2018 3:46:14 PM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]
Subject: Re: HD announcement

If I had to guess, this is just the beginning.

Sent from my iPhone

On Jul 7, 2018, at 11:39 AM, Sutton, Tia <sutton.tia@epa.gov> wrote:

> Damn- that was quick.
>
> Sent from my iPhone
>
> On Jul 7, 2018, at 10:04 AM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:
>
> > Or, we could just refer people to media reports . . .
> >
> > > https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html
> >
> > Sent from my iPhone
> >
> > On Jul 6, 2018, at 6:01 PM, Sutton, Tia <sutton.tia@epa.gov> wrote:
> >
> > > Perfect – thanks, Karl. I'll let Isabel know. And when we have the final docs in hand, I can just ship over to the web team so it's in their inboxes when they all get in early Monday and they can start formatting so we can be ready to go as soon as possible.
> > >
> > > **From:** Simon, Karl
> > > **Sent:** Friday, July 06, 2018 5:56 PM
> > > **To:** Brooks, Phillip <Brooks.Phillip@epa.gov>
> > > **Cc:** Sutton, Tia <sutton.tia@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
> > > **Subject:** Re: HD announcement

Talked to Bill. He would like a comms plan Monday as it is his expectation that we need to let people know of the action. So pretty sure it will be posted or otherwise made public early next week.

Sent from my iPhone

On Jul 6, 2018, at 4:58 PM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:

> Ok, not my call. I would just point out that there is no chance that this will not be fully public by Tuesday at the latest (Fitzgerald and Harrison will be sending announcements today or tomorrow to their employees, customers and suppliers that they are open for business).
>
> ---
>
> **From:** Sutton, Tia
> **Sent:** Friday, July 06, 2018 4:53 PM
> **To:** Simon, Karl <Simon.Karl@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>
> **Cc:** Mylan, Christopher <Mylan.Christopher@epa.gov>
> **Subject:** RE: HD announcement
>
> All logical points/questions that we raised earlier. Maybe this will be posted sometime next week, but for now it's apparently only going to the petitioner.
>
> ---
>
> **From:** Simon, Karl
> **Sent:** Friday, July 06, 2018 4:49 PM
> **To:** Brooks, Phillip <Brooks.Phillip@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>
> **Cc:** Mylan, Christopher <Mylan.Christopher@epa.gov>
> **Subject:** RE: HD announcement
>
> Would seem relevant that EPA post something so that all industry participants and other stakeholders are aware of the current status. Would think Fitzgerald will be telling their potential customers as well
>
> ---
>
> **From:** Brooks, Phillip
> **Sent:** Friday, July 06, 2018 4:46 PM
> **To:** Sutton, Tia <sutton.tia@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>

Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: RE: HD announcement

Seriously, this is not a public action? I am not aware of any NO Action Assurance that we have not posted on the web.

From: Sutton, Tia
Sent: Friday, July 06, 2018 4:28 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: HD announcement

Hey all – Chris M and I talked to OAR comms about the plan for today. As of right now, there won't be an actual announcement – the NAA will simply be sent to the petitioners later today whenever it's ready to go. They will update the desk statement first thing Monday just in case it's needed, but nothing for us to post or send out from our end.

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/7/2018 2:28:58 PM
To: Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]
Subject: Re: NYT article re glider NAA

I saw that.

Sent from my iPhone

On Jul 7, 2018, at 10:27 AM, Holmes, Carol <Holmes.Carol@epa.gov> wrote:

> https://www.google.com/amp/s/mobile.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.amp.html

Carol S. Holmes
Senior Counsel
Crosscutting Policy Staff
Office of Civil Enforcement (MC 2241A)
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, DC 20460
Phone (202) 564-8709

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/7/2018 1:59:56 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Re: Glider No Action Assurance

https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html

Sent from my iPhone

On Jul 6, 2018, at 11:52 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq<http://www.epa.gov/otaq>

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov<mailto:Wehrum.Bill@epa.gov>>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Woods, Clint" <woods.clint@epa.gov<mailto:woods.clint@epa.gov>>, "Harlow, David" <harlow.david@epa.gov<mailto:harlow.david@epa.gov>>, "Grundler, Christopher" <grundler.christopher@epa.gov<mailto:grundler.christopher@epa.gov>>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov<mailto:bodine.susan@epa.gov>>; Wehrum, Bill <Wehrum.Bill@epa.gov<mailto:Wehrum.Bill@epa.gov>>

Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

Message

From: Brooks, Phillip [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E89130D467DF414390F076286D938815-BROOKS, PHILLIP]
Sent: 7/7/2018 1:57:41 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: Re: Glider No Action Assurance

This didn't take long. Looks like it came out last night.

https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html

Sent from my iPhone

On Jul 6, 2018, at 6:15 PM, Traylor, Patrick <traylor.patrick@epa.gov> wrote:

It's done.

We'll post it Monday.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

Message

From: Akram, Assem [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1588B3A906FB4723B9F262FC02D00F53-ASSEM, AKRAM]
Sent: 7/11/2018 5:50:30 PM
To: Parsons, Christy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf0dabe0c058478294128cb3f842573d-Powers, Christina]
CC: Lieske, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c836c7dea7054dd8807120a1d401cac8-Lieske, Christopher]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]
Subject: RE: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Hi, Christy –
Many thanks. We'll add it to the docket.
Also, should I add you as the POC for the Glider docket?
Thanks.
Assem

ASSEM AKRAM
Docket Manager
EPA Docket Center
Operated by AS Mission Services
202-566-0226
Akram.Assem@Epa.gov

From: Parsons, Christy
Sent: Wednesday, July 11, 2018 1:26 PM
To: Akram, Assem <Akram.Assem@epa.gov>
Cc: Lieske, Christopher <lieske.christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Charmley, William <charmley.william@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Parsons, Christy <Parsons.Christy@epa.gov>
Subject: RE: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Hi Assem,

Thank you for checking in on how to handle the attached request from EDF, CBD, and Sierra Club re. the no action assurance letter for glider vehicles.

Ex. 5 Deliberative Process (DP)

Thanks,
Christy

Christy Parsons
Physical Scientist
Assessment and Standards Division
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
Ann Arbor, MI

Tel: 734.214.4243
E-mail: parsons.christy@epa.gov

Notice (If This Communication Regards a Contract): Nothing in this message shall be construed as a change to the price, schedule, or terms and conditions of the contract. If the receiver does construe it otherwise, please notify me immediately so that proper contract action can be initiated.

From: Lieske, Christopher
Sent: Wednesday, July 11, 2018 9:06 AM
To: Akram, Assem <Akram.Assem@epa.gov>; Li, Chi <Li.Chi@epa.gov>
Cc: Parsons, Christy <Parsons.Christy@epa.gov>
Subject: RE: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Hi Assem –

The contact for the glider rule is Christy Parsons. Christy, could you please respond to Assem? Thanks.

From: Akram, Assem
Sent: Wednesday, July 11, 2018 9:00 AM
To: Brunner, Christine <brunner.christine@epa.gov>; Lieske, Christopher <lieske.christopher@epa.gov>; Li, Chi <Li.Chi@epa.gov>
Subject: FW: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Good morning –

Ex. 5 Deliberative Process (DP)

Many thanks!
Assem

ASSEM AKRAM
Docket Manager
EPA Docket Center
Operated by AS Mission Services
202-566-0226
Akram.Assem@Epa.gov

From: Perez, JuanB
Sent: Wednesday, July 11, 2018 8:17 AM
To: Akram, Assem <Akram.Assem@epa.gov>

Subject: FW: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Assem,

Ex. 5 Deliberative Process (DP)

From: Vickie Patton [mailto:vpatton@edf.org]
Sent: Tuesday, July 10, 2018 5:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; A-AND-R-DOCKET <A-AND-R-DOCKET@epa.gov>
Cc: Martha Roberts <mroberts@edf.org>; Peter Zalzal <pzalzal@edf.org>; Alice Henderson <ahenderson@edf.org>; matt@donahuegoldberg.com; 'Sean Donahue' <sean@donahuegoldberg.com>; Susannah Weaver (susannah@donahuegoldberg.com) <susannah@donahuegoldberg.com>; 'Vera Pardee' <VPardee@biologicaldiversity.org>; 'Joanne Spalding' <joanne.spalding@sierraclub.org>; Vickie Patton <vpatton@edf.org>
Subject: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

RE: Docket ID No. EPA–HQ–OAR–2014–0827

Dear Acting Administrator Wheeler,

As set forth in the attached correspondence, the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you immediately withdraw or stay the U.S. Environmental Protection Agency's attached decision to cease enforcing vital air pollution limits that the Clean Air Act and EPA's own duly promulgated regulations impose on super polluting "glider" diesel freight trucks. This extreme action is unlawful and is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers who must comply with the pollution limitations that the Agency is unlawfully not enforcing for their competitors.

Thank you for your immediate attention to this urgent matter.

Sincerely yours,
Vickie Patton
General Counsel
Environmental Defense Fund
(720) 837-6239

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

Message

From: Sargeant, Kathryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D883D76F4F5401EA938362B26B582C9-SARGEANT, KATHRYN]
Sent: 7/16/2018 11:50:45 AM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Choi, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=34cf5403fea34096996a3d12ddcff934-Choi, Jongwoo D.]; Cullen, Angela [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ff1b7c0675434915bade463ad4619509-Cullen, Angela]; Hoyer, Marion [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8dcdb076983049369a80f430a9f1d067-Hoyer, Marion]; Machiele, Paul [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b71a67c326714ebbaa72eda552e55282-Machiele, Paul]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Olechiw, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9f564b92ff96459ab606eb66e5892e2d-Olechiw, Michael]; Samulski, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ecf1af23a134d2995fd354d03632d6c-Samulski, Michael]; Revelt, Jean-Marie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e9a49fd1df8e4ea59fad579c16cc1fe0-Revelt, Jean-Marie]; Storhok, Ines [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2adfcd6cfa10433eb6f2618e4b21bbdc-Storhok, Ines]
Subject: FYI only: House Appropriations bill amendments and Report

FYI, see below.

From: Sutton, Tia
Sent: Monday, July 16, 2018 6:44 AM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Haley, Mike <Haley.Mike@epa.gov>; Simon, Karl <Simon.Karl@epa.gov>; Moltzen, Michael <Moltzen.Michael@epa.gov>; Charmley, William <charmley.william@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Manners, Mary <manners.mary@epa.gov>; Haugen, David <haugen.david@epa.gov>; Brusstar, Matt <brusstar.matt@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; McCubbin, Courtney <McCubbin.Courtney@epa.gov>; Keller, Jennifer <Keller.Jennifer@epa.gov>; Lie, Sharyn <Lie.Sharyn@epa.gov>; Dickinson, David <Dickinson.David@epa.gov>; Machiele, Paul <machiele.paul@epa.gov>; Burkholder, Dallas <burkholder.dallas@epa.gov>; Korotney, David <korotney.david@epa.gov>; Michaels, Lauren <Michaels.Lauren@epa.gov>; Borgert, Kyle <borgert.kyle@epa.gov>; Cohen, Janet <cohen.janet@epa.gov>; Le, Madison <Le.Madison@epa.gov>; Master, Barbora <Master.Barbora@epa.gov>; Boylan, Thomas <boylan.thomas@epa.gov>; Olechiw, Michael <olechiw.michael@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Moran, Robin <moran.robin@epa.gov>; Helfand, Gloria <helfand.gloria@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Li, Ryland (Shengzhi) <Li.Ryland@epa.gov>; Dubois, Roland <Dubois.Roland@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Buchsbaum, Seth <buchsbaum.seth@epa.gov>
Subject: House Appropriations bill amendments and Report

All,
Please see below for information on the House Appropriations Committee Interior & Environment bill amendments and the Committee Report.

House Approps Bill Amendments:

Here is the link to the bill itself: https://docs.house.gov/billsthisweek/20180716/BILLS-115HR6147HR6258-RCP115-81.pdf. The list of amendments below were those that seem most relevant to OTAQ, but please feel free to peruse the full list of amendments if you'd like to see the other amendments (https://rules.house.gov/bill/115/hr-6147). This could of course all change as things move to the Senate and on to Conference, but we will continue to track the bill and keep you updated on everything.

The table below includes many items of interest, including: trailers, gliders, LD, EJ, FACA, DERA, "Secret Science" rule, and lots of RFS (RVP, 204 report, ESA)—

Rep	Amendment	Link
Loudermilk (R-GA)	Prohibits funds from being used to regulate trailers under the Clean Air Act	https://amendments-rules.house.gov/amendments/LOUDER_049_xml713181025282528.pdf
Beyer (D-VA)	Strip all ESA riders.	https://amendments-rules.house.gov/amendments/InterApprops_001_xml710181835293529.
Connolly (D-VA)	Prohibit funds to finalize EPA rulemakings initiated by former Administrator Pruitt until the Inspector General's investigations into the former Administrator's activities are complete.	https://amendments-rules.house.gov/amendments/CONNOL_089_xml711180748144814.pdf
Tonko (D-NY)	Prohibits funding to be used to finalize, implement, administer, or enforce EPA's Strengthening Transparency in Regulatory Science proposed rule.	https://amendments-rules.house.gov/amendments/TONKO_023_xml7111809063363 3.pdf
Jayapal (D-WA)	Prohibits funds from being used to contravene Executive Order 12898 relating to Federal actions to address environmental justice in	https://amendments-rules.house.gov/amendments/JAYAPA_103_xml711180913301330.pdf

	minority populations and low-income populations.	
Carter (R-GA)	**NOTE: This amendment was withdrawn, including here in case it resurfaces later:** Prevents funds from being use to implement a rule requiring Tier 4 marine engines on commercial vessels until those Tier 4 marine engines are available for vessels with various restrictions, such as pilot boats.	https://amendments-rules.house.gov/amendments/CARTGA_065711180926342634.pdf
Palmer (R-AL)	Ensures that none of the funds made available by this Act may be used for the Environmental Protection Agency's Criminal Enforcement Division	https://amendments-rules.house.gov/amendments/PALMAL_040_xml71118090314314.pdf
Palmer (R-AL)	Eliminates funding for Diesel Emission Reduction Grants and sends the savings to the spending reduction account.	https://amendments-rules.house.gov/amendments/PALMAL_041_xml71118090148148.pdf
Beyer (D-VA)	Strikes section which legislates that biomass be treated as carbon neutral.	https://amendments-rules.house.gov/amendments/BEYER_087_xml710181849514951.pdf

Peters (D-CA)	Prohibits funds from being used to hinder, suppress, or block any report required by statue related to climate change and would prohibit funds from being used to suppress communications to the public, or any Congressional entity, regarding science related to climate change.	https://amendments-rules.house.gov/amendments/PETECA_047711181129182918.pdf
Matsui (D-CA)	Prohibits the EPA from using funds to propose a rule to end the One National Program for greenhouse gas emissions and fuel economy standards for light-duty vehicles.	https://amendments-rules.house.gov/amendments/MATSUI_0287131813040242.pdf
DeGette (D-CO)	Prohibits funding being used to implement, administer, or enforce EPA's Memorandum relating to Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles.	https://amendments-rules.house.gov/amendments/RCP115-81-FLRAMD_03_xml711180954515451.pdf
Welch (D-VT)	Prohibits the EPA from issuing	https://amendments-rules.house.gov/amendments/WELCH10371218160131131.pdf

	Renewable Volume Obligations under the Renewable Fuel Standard that will worsen environmental outcomes as reported in the Second Triennial Report to Congress (U.S. EPA. Biofuels and the Environment: The Second Triennial Report to Congress. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-18/195, 2018.)"	
Welch (D-VT)	Prohibits the EPA from developing, implementing, or enforcing new regulations altering the RVP limitations of section 211(h) of the Clean Air Act (42 U.S.C. 7545(h))."	https://amendments-rules.house.gov/amendments/WELCH10471218160245245.pdf
Perry (R-PA)	Prohibits the use of funds for any federal advisory committee of the EPA that is not in compliance with the directive entitled "Strengthening and Improving Membership on EPA Federal Advisory	https://amendments-rules.house.gov/amendments/PERRY_117_FACs_Directive711181441184118.pdf

	Committees" published by the EPA on October 31, 2017.	
Perry (R-PA)	Prohibits the use of funds to implement or enforce section 211(o) of the Clean Air Act (relating to the renewable fuel program).	https://amendments-rules.house.gov/amendments/PERRY_119_RFS712181456335633.pdf
Hice (R-GA)	States that no funds should be made available for the execution of any program conducted by the Office of Environmental Justice.	https://amendments-rules.house.gov/amendments/Hice_Amendment71218173201321.pdf
Blackburn (R-TN)	Reduces discretionary budget authority by one percent for Fiscal Year 2019 Appropriations for Department of Interior, Environmental Protection Agency, and related agencies.	https://amendments-rules.house.gov/amendments/BLACKB_052__Interior%20and%20Environment7131814310831

House Approps Committee Report: https://www.gpo.gov/fdsys/pkg/CRPT-115hrpt765/pdf/CRPT-115hrpt765.pdf**:** Below are House Report requests/requirements for reports to Congress that may be of interest; we will continue to track whether or not these become actual requirements when an FY19 package is enacted—

- **p. 59:** *Administrator Priorities.*—EPA is directed to submit a report within 90 days of enactment of this Act that identifies how any fiscal year 2017 and 2018 funding was used, by account, program area, and program project. Each activity funded should include a justification for the effort and any anticipated results.
- **p. 59:** *E–15 Outreach.*—The Committee is aware of the potential for consumers to misfuel with E15 and higher ethanol grades of gasoline in engines not designed, approved, or warranted to use blends above 10 percent ethanol content (E10). Misfueling can damage engines, void product warranties, and result in undue economic loss to consumers. The Committee has previously encouraged EPA to utilize general funds to establish and implement public educational outreach for proper and EPA-approved usage of 15 percent by volume ethanol blended gasoline in accordance with the Misfueling Mitigation Program. The Committee notes that no action

has been taken to date on a consumer education campaign, and continues to encourage the EPA to establish new outreach methods to educate consumers on misfueling.

- **p. 59:** *Electric Pathway Applications.*—The Committee notes the backlog of applications under the Renewable Fuels Pathway II rule finalized in 2014. No applications for the electric pathway which could help support rural agricultural communities have been approved since the rule went into effect. The Committee strongly encourages the Agency to take action on the existing applications within 90 days of the enactment of this Act.
- **p. 60:** *Marine Engines.*—The Committee is concerned that for certain smaller commercial marine vessels, such as pilot boats, marine engines certified to the EPA Tier 4 marine engine standards may not be available that meet the engine needs of these marine vessels. Thus, the Committee urges the Agency to swiftly move forward with assessing the need for revisions to the Agency's Tier 4 marine engine requirements for those impacted marine vessels to ensure that the industries dependent on them are not negatively impacted. The Agency should also identify any immediate steps the Agency can take to provide relief.
- **p.60:** *Science Advisory Board.*—The Agency is directed to develop updated policy statements in order to fulfill previous Congressional directives.
- **p. 66:** *Diesel Emissions Reductions Grants (DERA).*—The bill provides $100,000,000 for DERA grants. More than 10 million older, heavily polluting diesel engines remain in use that have yet to be retrofitted, repowered, or replaced, and over one million are expected to remain in use in 2030. For fiscal year 2019, the Committee directs EPA to continue to make at least 70 percent of DERA grants available to improve air quality in non-attainment areas.

Please forward to anyone I may have missed!
-Tia

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/30/2018 2:56:04 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Quick review needed of one last technical edit
Attachments: ENV_DEFENSE-#849219-v1-GLIDERS_MOTION_TO_DISMISS_v3+ac7.30.18.DOC

Importance: High

Please check for accuracy the sentences copy/pasted below (full version attached). Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Ex. 5 Deliberative Process (DP)

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/11/2018 5:12:11 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Rakosnik, Delaney [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=274573739a9f446883072599086ededd-Rakosnik, D]; Atkinson, Emily [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bb2155adef6a44aea9410741f0c01d27-Atkinson, Emily]
Subject: RE: gliders

Ex. 5 Deliberative Process (DP)

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Lewis, Josh
Sent: Wednesday, July 11, 2018 1:11 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: Re: gliders

Ex. 5 Deliberative Process (DP)

On Jul 11, 2018, at 12:53 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Ex. 5 Deliberative Process (DP)

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Lewis, Josh
Sent: Wednesday, July 11, 2018 12:50 PM

To: Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Rakosnik, Delaney <rakosnik.delaney@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: gliders

Ex. 5 Deliberative Process (DP)

From: Grundler, Christopher
Sent: Tuesday, July 10, 2018 9:50 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Charmley, William <charmley.william@epa.gov>
Subject: RE: LD GHG Update

Roger.

Also:

Ex. 5 Deliberative Process (DP)

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Wehrum, Bill
Sent: Tuesday, July 10, 2018 8:46 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: LD GHG Update

Chris – Let's go ahead with the meeting.

Three other things:

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Grundler, Christopher
Sent: Monday, July 9, 2018 11:34 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Lewis, Josh <Lewis.Josh@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: LD GHG Update

Bill,

We're on your calendar for 2pm Tomorrow for an LD GHG update. The status is fairly straightforward and summarized below, so unless you have anything new to share, we would understand if you'd like to free up the hour by canceling the meeting.

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thanks,

Chrid

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Sargeant, Kathryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D883D76F4F5401EA938362B26B582C9-SARGEANT, KATHRYN]
Sent: 7/13/2018 7:33:48 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Burch, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=27b0cd43b0404bab89aef0c8d08c165f-Burch, Julia]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Marks, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=66cf58c470d84403af7d7dfd7efc8016-Marks, Matthew]; Hoffman, Howard [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b294b6d14284e0d86d25bc366efe259-HHOFFMAN]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: FW: By COB Fri. - Draft Response to SAB Letter
Attachments: EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments ks.docx

Attorney Client; Deliberative Process / Ex. 5

From: Charmley, William
Sent: Thursday, July 12, 2018 5:44 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Subject: Fwd: By COB Fri. - Draft Response to SAB Letter

Sent from my iPhone

Begin forwarded message:

> **From:** "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>
> **Date:** July 12, 2018 at 5:42:45 PM EDT
> **To:** "Shoaff, John" <Shoaff.John@epa.gov>, "Tsirigotis, Peter" <Tsirigotis.Peter@epa.gov>, "Koerber, Mike" <Koerber.Mike@epa.gov>, "Culligan, Kevin" <Culligan.Kevin@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Cook, Leila" <cook.leila@epa.gov>, "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Burch, Julia" <Burch.Julia@epa.gov>, "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Marks, Matthew" <Marks.Matthew@epa.gov>, "Hoffman, Howard" <hoffman.howard@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
> **Cc:** "Schwab, Justin" <Schwab.Justin@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Hockstad, Leif" <Hockstad.Leif@epa.gov>
> **Subject: RE: By COB Fri. - Draft Response to SAB Letter**

Thanks, John.

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William

<charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

ATTORNEY CLIENT COMMUNICATIONS
PRIVILEGED AND CONFIDENTIAL
DO NOT RELEASE UNDER FOIA

All,

Attached please find a draft response to the SAB Chair's letters to the Administrator requesting an interest in reviewing several OAR actions from the 2017 reg agenda.

Attorney Client; Deliberative Process / Ex. 5

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA

Shoaff.john@epa.gov | 1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/13/2018 5:39:16 PM
To: Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]
Subject: Re: By COB Fri. - Draft Response to SAB Letter

Sounds good to me

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 13, 2018, at 1:17 PM, Sargeant, Kathryn <sargeant.kathryn@epa.gov> wrote:

<image001.gif>

Attorney Client; Deliberative Process / Ex. 5

From: Hengst, Benjamin
Sent: Friday, July 13, 2018 12:51 PM
To: Charmley, William <charmley.william@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>
Subject: FW: By COB Fri. - Draft Response to SAB Letter

Bill, Kathryn—

Attorney Client; Deliberative Process / Ex. 5

From: Carrillo, Andrea
Sent: Thursday, July 12, 2018 5:43 PM
To: Shoaff, John <Shoaff.John@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike

<Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: RE: By COB Fri. - Draft Response to SAB Letter

Thanks, John.

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

ATTORNEY CLIENT COMMUNICATIONS
PRIVILEGED AND CONFIDENTIAL
DO NOT RELEASE UNDER FOIA

All,

Attached please find a draft response to the SAB Chair's letters to the Administrator requesting an interest in reviewing several OAR actions from the 2017 reg agenda.

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

Message

From: Nelson, Brian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FEE03A4337C543D8AA60277DA00C63AE-NELSON, BRIAN]
Sent: 7/10/2018 2:29:42 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
CC: Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Parsons, Christy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bf0dabe0c058478294128cb3f842573d-Powers, Christina]
Subject: Link to OECA's No Action Assurance

https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles

- -
Brian J. Nelson
Center Director, Testing Services Center
U.S. Environmental Protection Agency
National Vehicle & Fuel Emissions Laboratory
2565 Plymouth Road
Ann Arbor, MI 48105
(734) 214-4278
nelson.brian@epa.gov
- -

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/9/2018 8:15:27 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: HD posting

OECA just went live, we're linking now. **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

Begin forwarded message:

From: "Mylan, Christopher" <Mylan.Christopher@epa.gov>
Date: July 9, 2018 at 3:59:10 PM EDT
To: "Sutton, Tia" <sutton.tia@epa.gov>, "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
Cc: "Millett, John" <Millett.John@epa.gov>, "Hull, George" <Hull.George@epa.gov>
Subject: RE: Revised glider statement

Hi All,

OECA had an edit to the statement. Gorge Hull, cc'd here, is their comms lead.

Here is a requested edit from Patrick Traylor, our DAA. – George

Ex. 5 Deliberative Process (DP)

Thanks,

Christopher Mylan

Communications Specialist
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
Phone: (202) 564-7411

From: Sutton, Tia
Sent: Monday, July 09, 2018 12:07 PM
To: Mylan, Christopher <Mylan.Christopher@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: RE: Revised glider statement

Ex. 5 Deliberative Process (DP)

From: Mylan, Christopher
Sent: Monday, July 09, 2018 11:58 AM
To: Sutton, Tia <sutton.tia@epa.gov>; DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: RE: Revised glider statement

Ex. 5 Deliberative Process (DP)

Thanks,
Chris

From: Sutton, Tia
Sent: Monday, July 09, 2018 11:12 AM
To: DeLuca, Isabel <DeLuca.Isabel@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: RE: Revised glider statement

Got it- thanks! **Ex. 5 Deliberative Process (DP)**

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

From: DeLuca, Isabel
Sent: Monday, July 09, 2018 10:37 AM
To: Sutton, Tia <sutton.tia@epa.gov>
Cc: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett,

John <Millett.John@epa.gov>
Subject: Re: Revised glider statement

Hi Tia,

Ex. 5 Deliberative Process (DP)

Thanks,
Isabel

On Jul 9, 2018, at 9:40 AM, Sutton, Tia <sutton.tia@epa.gov> wrote:

Thanks, Isabel! Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Sent from my iPhone

On Jul 9, 2018, at 9:38 AM, DeLuca, Isabel <DeLuca.Isabel@epa.gov> wrote:

See statement below.

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: July 9, 2018 at 9:36:23 AM EDT
To: "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Subject: Fwd: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

FYI - Updated desk statement from late Friday

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: July 6, 2018 at 6:43:16 PM EDT
To: "Block, Molly" <block.molly@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>
Cc: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>
Subject: RE: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Draft desk statement below from Justin, Clint, and David – Feel free to use in 10 minutes if no one sees red flags:

Attorney Client; Deliberative Process / Ex. 5

From: Block, Molly
Sent: Friday, July 6, 2018 6:28 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Subject: Re: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Thanks!

Sent from my iPhone

On Jul 6, 2018, at 6:27 PM, Woods, Clint <woods.clint@epa.gov> wrote:

> Updating a desk statement

On Jul 6, 2018, at 6:18 PM, Block, Molly <block.molly@epa.gov> wrote:

Do you know anything on this?

Sent from my iPhone

Begin forwarded message:

From: Eric Lipton <lipton@nytimes.com>
Date: July 6, 2018 at 6:10:06 PM EDT
To: "Block, Molly" <block.molly@epa.gov>
Subject: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Can you ring me to clarify
As far as I understand this, companies like Fitzgerald will be allowed to ramp up production again

Thanks in advance

Eric

202 862 0448

Eric Lipton
The New York Times
Washington Bureau
202 862 0448 office
202 370 7951 mobile
lipton@nytimes.com

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/9/2018 4:27:43 PM
To: Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]
Subject: FW: Heavy-Duty Web Update

Ex. 5 Deliberative Process (DP)

From: Mylan, Christopher
Sent: Monday, July 09, 2018 12:08 PM
To: Sun, Lisa <Sun.Lisa@epa.gov>; Suarez, Patricia <suarez.patricia@epa.gov>
Cc: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: Heavy-Duty Web Update

Hi Lisa,

As I mentioned last week, we would like to add a short statement and hyperlink to one of OECA's web pages regarding the Heavy-Duty program/ web area. Could you please make the following edits on staging? When we receive OECA's URL, I'll send it to you so that the bolded title can be a hyperlink to that page.

All edits in Red -

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Thank you,

Christopher Mylan
Communications Specialist
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
Phone: (202) 564-7411

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/23/2018 1:51:40 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Glider one-pgr for editing/review on Monday
Attachments: OAR-8_Gliders+ac.docx

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Orlin, David
Sent: Monday, July 23, 2018 9:49 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Glider one-pgr for editing/review on Monday

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Sutton, Tia
Sent: Sunday, July 22, 2018 8:53 PM
To: Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Glider one-pgr for editing/review on Monday

Hi all,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Thanks!
-Tia

Message

From: Chris Miller [cmiller@ajw-inc.com]
Sent: 7/21/2018 12:12:23 PM
To: Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: MECA-AESI letter to Admn Wheeler on gliders
Attachments: MECA-AESI letter on EPA Glider non-enforcement memo - 180718.docx; ATT00001.htm

Hello - I was told that you may be acting as Administrator Wheeler's chief of staff. I'd be much obliged if you could forward the attached to him for consideration, and also pass along my personal regards/greetings.

Thanks, Chris

Christopher J Miller
Executive Director
Advanced Engine Systems Institute
www.advancedengines.org
2200 Wilson Blvd., Suite 310
Arlington, VA 22201-3352
202-296-8086 x 112 desk
202-257-8691 cell

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 10/23/2018 8:33:41 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: RE: Background document for this morning's 10am glider briefing for AA Wehrum

Thank you

From: Hengst, Benjamin
Sent: Tuesday, October 23, 2018 4:13 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>
Subject: FW: Background document for this morning's 10am glider briefing for AA Wehrum

Josh—

Ex. 5 Deliberative Process (DP)

Please let us know if you need anything further. Ben

From: Hengst, Benjamin
Sent: Friday, March 16, 2018 9:09 AM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Burch, Julia <Burch.Julia@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: Fwd: Background document for this morning's 10am glider briefing for AA Wehrum

Hi folks — one additional item for Bill Wehrum's 10am on gliders. Please forward to him as appropriate. Thanks. Ben

Begin forwarded message:

> **From:** "Charmley, William" <charmley.william@epa.gov>
>
> AA Wehrum has the 2-page document we will walk through this morning at 10am.
>
> Given that the AA may be participating by phone, we also want to ensure he has a copy of the February 2 briefing we gave on this topic, in the event a question comes up regarding the details of any of the public comments.
>
> Please send this material up to OAR and to AA Wehrum.

Thanks
Bill

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/6/2018 9:27:40 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
CC: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Re: Gliders again

Andrea— **Attorney Client; Deliberative Process / Ex. 5**

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 6, 2018, at 3:00 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

> Please see attached. I am available at (202) 603-4003 if you would like to discuss.
>
> Andrea Carrillo
> Attorney-Advisor
> Office of General Counsel
> U.S. Environmental Protection Agency
> (202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK
>
> ---
>
> **From:** Harlow, David
> **Sent:** Friday, July 06, 2018 2:39 PM
> **To:** Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>
> **Cc:** Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
> **Subject:** RE: Gliders again
>
> Thanks, Andrea. I'll be on the lookout for them.
>
> **David S. Harlow**
> **Senior Counsel**
> **Immediate Office of the Assistant Administrator**
> **Office of Air and Radiation, USEPA**
> **WJC-N Room 5409K**

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Carrillo, Andrea
Sent: Friday, July 6, 2018 2:33 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: RE: Gliders again

I am adding some edits to Justin's and will send shortly.

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Schwab, Justin
Sent: Friday, July 06, 2018 2:20 PM
To: Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: RE: Gliders again

(Copying Matt for his situational awareness.)

Please find my editorial suggestions attached.

Attorney Client; Deliberative Process / Ex. 5

From: Harlow, David
Sent: Friday, July 6, 2018 2:02 PM

To: Grundler, Christopher <grundler.christopher@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Gliders again

All,

Attorney Client; Deliberative Process / Ex. 5

I thank you for the assistance.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

<EDIT revnaamem+ac.docx>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/20/2018 4:02:25 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]
Subject: revised to include State Motion FW: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed
Attachments: DRAFT Gliders litigation summary 7.20.18.docx

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Carrillo, Andrea
Sent: Friday, July 20, 2018 12:02 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Thanks, Chris. Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Friday, July 20, 2018 11:57 AM
To: Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Thanks for sharing. Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Orlin, David
Sent: Thursday, July 19, 2018 1:16 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

I always appreciate your emails but do we really need more people talking like lawyers?

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Grundler, Christopher
Sent: Thursday, July 19, 2018 1:11 PM
To: Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Thanks. **Attorney Client; Deliberative Process / Ex. 5**

Attorney Client; Deliberative Process / Ex. 5

(do you like how I am trying to write like a lawyer?)

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Orlin, David
Sent: Thursday, July 19, 2018 12:55 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Thanks Andrea. Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Carrillo, Andrea
Sent: Thursday, July 19, 2018 10:36 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>
Subject: Re: DC Cir Admin stay of Gliders NAA FW: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 18, 2018, at 10:14 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Andrea-

Attorney Client; Deliberative Process / Ex. 5

Chrus

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 18, 2018, at 2:14 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Dertke, Daniel (ENRD) [mailto:Daniel.Dertke@usdoj.gov]
Sent: Wednesday, July 18, 2018 1:55 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Hostetler, Eric (ENRD) <Eric.Hostetler@usdoj.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Lipshultz, Jon (ENRD) <Jon.Lipshultz@usdoj.gov>
Subject: RE: EDF v. EPA (D.C. Cir. No. 18-1190) -- glider trucks -- emergency motion filed

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

<Gliders Judicial Stay.pdf>

Message

From: Fowlkes, Sarah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FOWLKES, SARAH]
Sent: 7/19/2018 9:08:40 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]
CC: Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Hi Bill,

Sounds good. Thank you for your input, and I will let ASD know if there are any questions that come out of the call.

Thanks!
-Sarah

Sarah Fowlkes
Management and Program Analyst
Immediate Office – Ann Arbor
EPA Office of Transportation and Air Quality
Office: (734) 214-4417

From: Charmley, William
Sent: Thursday, July 19, 2018 5:06 PM
To: Fowlkes, Sarah <fowlkes.sarah@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Cc: Nelson, Brian <nelson.brian@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Dear Sarah and Lee –

Deliberative Process / Ex. 5

Thanks
Bill

From: Fowlkes, Sarah
Sent: Thursday, July 19, 2018 3:57 PM
To: Cook, Leila <cook.leila@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Nelson, Brian <nelson.brian@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Hi all,

Deliberative Process / Ex. 5

Thank you all for your time and consideration on this!
-Sarah

Sarah Fowlkes
Management and Program Analyst
Immediate Office – Ann Arbor
EPA Office of Transportation and Air Quality
Office: (734) 214-4417

From: Cook, Leila
Sent: Tuesday, July 17, 2018 4:49 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Nelson, Brian <nelson.brian@epa.gov>; Fowlkes, Sarah <fowlkes.sarah@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Thanks Kathryn,

Deliberative Process / Ex. 5

Lee

From: Sargeant, Kathryn
Sent: Tuesday, July 17, 2018 4:40 PM
To: Charmley, William <charmley.william@epa.gov>
Cc: Nelson, Brian <nelson.brian@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Fowlkes, Sarah <fowlkes.sarah@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: FW: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Bill—see Lee's question below. Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

From: Cook, Leila
Sent: Tuesday, July 17, 2018 4:36 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Fowlkes, Sarah <fowlkes.sarah@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Hi Kathryn,

Deliberative Process / Ex. 5

Lee

From: Sargeant, Kathryn
Sent: Tuesday, July 17, 2018 4:11 PM
To: Fowlkes, Sarah <fowlkes.sarah@epa.gov>
Cc: Cook, Leila <cook.leila@epa.gov>
Subject: RE: Request for Brief Glider Rule Presentation on NTAA Call July 26th

I touched base with Bill on this. He says the following:

Deliberative Process / Ex. 5

From: Fowlkes, Sarah
Sent: Tuesday, July 17, 2018 1:34 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Cc: Cook, Leila <cook.leila@epa.gov>
Subject: Request for Brief Glider Rule Presentation on NTAA Call July 26th

Hi Kathryn,

The tribal organizations and government have expressed significant interest in the recent updates to the Glider Rule that

Deliberative Process / Ex. 5

Please let me know if you need any additional information.

Thanks!
-Sarah

Sarah Fowlkes
Management and Program Analyst

Immediate Office – Ann Arbor
EPA Office of Transportation and Air Quality
Office: (734) 214-4417

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/27/2018 3:11:02 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: For your review ASAP today: draft gliders motion to dismiss
Attachments: ENV_DEFENSE-#849072-v1-GLIDERS_MOTION_TO_DISMISS+ac 7.27.18+do.DOC

Attorney Work Product; Attorney Client / Ex. 5

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Message

From: Group AALibrary [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A6AC1759FCA448EE8802627C50F0A131-GROUP AALIB]
Sent: 7/17/2018 5:21:16 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: FW: The Morning Headlines from InsideEPA/climate -- July 17, 2018

Chet France is quoted in the highlighted news item below.

Please send your requests to AALibrary@epa.gov!
USEPA NVFEL Library (Internet)
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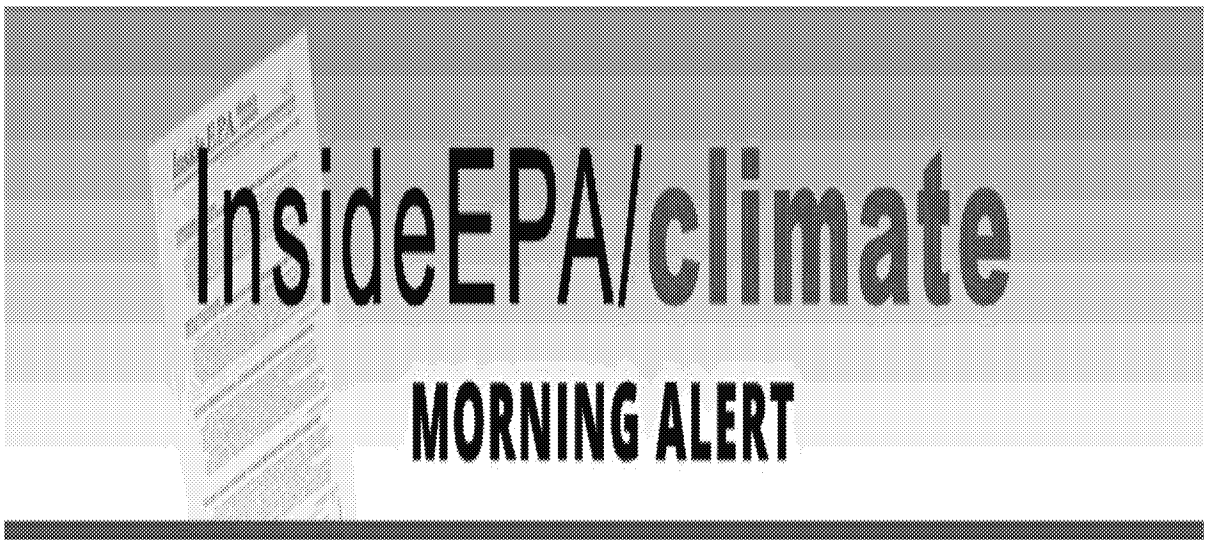
Staffed by: Artic Slope Mission Services, LLC
Contractor Librarian: Kirk Nims
734-214-4311 - Phone
734-214-4525 - Fax
8:00 AM - 4:00 PM (Monday through Friday, excluding federal holidays.)

Please tell us how we're doing - rate our customer service!

From: InsideEPA/climate [mailto:insideepa-alerts@iwpnews.com]
Sent: Tuesday, July 17, 2018 7:41 AM
To: Nims, Kirk <Nims.Kirk@epa.gov>
Subject: The Morning Headlines from InsideEPA/climate -- July 17, 2018



July 17, 2018

Latest News

Vehicle GHG Rule Backers Brace For 'Rebound,' Safety Claims In Rollback

Environmentalists and other supporters of Obama-era vehicle greenhouse gas and fuel economy standards are bracing for the Trump administration's upcoming rollback of the rules to significantly rely on minimizing the rules' benefits, including by assuming a large "rebound effect" from fuel economy gains and asserting the rules harm safety.

EPA Defends FOIA Approach After Cummings Claims Political Interference

EPA's top ethics official Kevin Minoli is defending the agency's approach to responding to Freedom of Information Act (FOIA) requests after the top Democrat on the House oversight committee sought to subpoena agency documents regarding potential political interference in the process.

Groups See California Natural Gas Storage Rules As Possible National Model

California's first-time safety rules for natural gas storage facilities could provide a model for other states to help prevent accidents and protect workers and surrounding communities from methane leaks, according to both industry and environmental groups.

Climate Beat

Congress: House GOP tees up anti-carbon tax resolution

The potential vote comes amid a renewed push by energy companies and a bipartisan group of former officials to advance a carbon tax that would return revenues to Americans in the form of dividends.

Congress: House Republicans seek information on EPA grant reviews

EPA previously gave a political appointee in the public affairs office a central role in signing off on the grants, but it now has shifted such reviews to program offices and regional administrators.

Regulation: States join call for EPA to stay glider non-enforcement policy

Arguing the move is a "*de facto* suspension" of current production limits on glider trucks, 13 states say EPA cannot elevate "form over substance and seeking to paint its action is an unreviewable exercise of enforcement discretion."

Loose Change: Wheeler pledges to be 'stabilizing force' at EPA

In today's news roundup: The new acting EPA chief could be "more formidable to environmentalists and Democrats" in terms of durable rule rollbacks, one industry lawyer says.

EDITORIAL CONTACT

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Telephone: 703-416-8500 or 1-800-424-9068

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Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/17/2018 3:00:31 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: FW: Reflections

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Grundler, Christopher
Sent: Saturday, July 14, 2018 10:35 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Reflections

Bill-

Deliberative Process / Ex. 5

I'm off to change the oil and a few other domestic tasks. I hope you have similar tasks or activities to "unclutter the mind" and relax this weekend.

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)

734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/24/2018 4:16:03 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
Subject: RE: help with letter on gliders?

Attorney Client; Deliberative Process / Ex. 5

From: Sutton, Tia
Sent: Tuesday, July 24, 2018 12:11 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: help with letter on gliders?
Importance: High

Attorney Client; Deliberative Process / Ex. 5

From: Orlin, David
Sent: Tuesday, July 24, 2018 9:27 AM
To: Sutton, Tia <sutton.tia@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: help with letter on gliders?

Tia—

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Thanks (!?)

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Message

From: Sargeant, Kathryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D883D76F4F5401EA938362B26B582C9-SARGEANT, KATHRYN]
Sent: 7/12/2018 8:08:03 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: RE: By COB Fri. - Draft Response to SAB Letter

Attorney Client; Deliberative Process / Ex. 5

Why don't you give me a call tomorrow AM.

From: Charmley, William
Sent: Thursday, July 12, 2018 3:36 PM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Subject: FW: By COB Fri. - Draft Response to SAB Letter

From: Grundler, Christopher
Sent: Thursday, July 12, 2018 2:54 PM
To: Charmley, William <charmley.william@epa.gov>
Subject: FW: By COB Fri. - Draft Response to SAB Letter

Pls take lead for us on this

_____
Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>;

Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

ATTORNEY CLIENT COMMUNICATIONS
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All,

Attached please find a draft response to the SAB Chair's letters to the Administrator requesting an interest in reviewing several OAR actions from the 2017 reg agenda.

Attorney Client; Deliberative Process / Ex. 5

John

JOHN SHOAFF | DIRECTOR
OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
Shoaff.john@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/23/2018 10:02:57 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Final Glider one-pager for OAR review
Attachments: OAR-8_Gliders.docx

Hi all,
Attached is the final version of the Glider one-pager that we'll be shipping to OAR for review later this evening (and thanks much to Andrea for the heavy lifting on this one!).
If anyone has any additional edits, please speak up.

Thanks!
-Tia

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/3/2018 3:59:41 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]
Subject: RE: New draft of gliders statement
Attachments: dshRev3RLSOGliders Programmatic Update_Draft+OTAQ and OGC edits.docx

Attorney Client; Deliberative Process / Ex. 5 Please see attached.

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Tuesday, July 03, 2018 9:39 AM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: New draft of gliders statement

Attorney Client; Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Harlow, David
Sent: Tuesday, July 03, 2018 9:30 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Fwd: New draft of gliders statement

As we've been discussing.

Sent from my iPhone

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** July 3, 2018 at 9:19:21 AM EDT
> **To:** "Woods, Clint" <woods.clint@epa.gov>, "Millett, John" <Millett.John@epa.gov>
> **Subject: Fwd: New draft of gliders statement**
>
> Attached is the latest.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Harlow, David" <harlow.david@epa.gov>
> > **Date:** July 2, 2018 at 1:06:20 PM EDT
> > **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> > **Subject: New draft of gliders statement**

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/3/2018 1:59:29 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Re: New draft of gliders statement

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 3, 2018, at 9:39 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Harlow, David
Sent: Tuesday, July 03, 2018 9:30 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Fwd: New draft of gliders statement

As we've been discussing.

Sent from my iPhone

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: July 3, 2018 at 9:19:21 AM EDT

To: "Woods, Clint" <woods.clint@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Subject: Fwd: New draft of gliders statement

Attached is the latest.

Sent from my iPhone

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** July 2, 2018 at 1:06:20 PM EDT
> **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> **Subject: New draft of gliders statement**

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

<dshRev3RLSOGliders Programmatic Update_Draft.docx>
<dshRev3RLSOGliders Programmatic Update_Draft.pdf>

Message

From: Birgfeld, Erin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3383BC15DD5542E5BFF5C3DE13BA9BF2-EBIRGFEL]
Sent: 7/27/2018 2:46:25 AM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Mylan, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=70798537ae234bdeb55b66364fb8f220-Mylan, Christopher]; Burch, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=27b0cd43b0404bab89aef0c8d08c165f-Burch, Julia]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Haman, Patricia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0ebb27cd881d41b19a30a491dc3f3f57-phaman]; Thundiyil, Karen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25cfc85adc76406db1ddf8a5232eb5e8-KTHUNDIY]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
CC: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]
Subject: FW: ACTION: Reuters re glider

FYI – Here is the statement on gliders.

From: Jones, Enesta
Sent: Thursday, July 26, 2018 10:43 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Millett, John <Millett.John@epa.gov>
Subject: Re: ACTION: Reuters re glider

Erin, here's the statement. I just gave it to Reuters.

EPA is withdrawing the no action assurance for glider manufacturers and their suppliers. After consulting within EPA and in light of the pending administrative and judicial petitions and motions, as well as the application of Agency guidance regarding no action assurances to these particular facts, Acting Administrator Andrew Wheeler found that the application of current regulations to the glider industry do not represent the kind of extremely unusual circumstances that support EPA's exercise of enforcement discretion. EPA will continue to work expeditiously to finalize a solution that provides regulatory relief and prevents any inadvertent economic harm to the glider industry while maintaining important air quality protections.

On Jul 26, 2018, at 10:17 PM, Birgfeld, Erin <Birgfeld.Erin@epa.gov> wrote:

Deliberative Process / Ex. 5

Here it is for reference. It was posted this evening: https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn

---

From: Jones, Enesta
Sent: Thursday, July 26, 2018 10:08 PM

To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: ACTION: Reuters re glider

Hi Erin, should this come from the third floor? Or do you have a statement?

Glider no action withdrawl?

David Shepardson
Correspondent
Reuters

Phone: +1 202 898 8324
Mobile: +1 202 579-6093
david.shepardson@thomsonreuters.com
www.reuters.com
twitter.com/davidshepardson

1333 H Street NW
Suite 700 Washington, DC 20005

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 6/29/2018 3:31:04 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Stahle, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b25318c6014d4fb985288e15143c8596-SSTAHLE]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: Draft proposed "no action assurance" documents

Andrea,

I very much appreciate your quick attention to this and the rapid turnaround.

Attorney Client; Deliberative Process / Ex. 5

Again, my thanks to all for your consideration and assistance.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Carrillo, Andrea
Sent: Friday, June 29, 2018 11:23 AM
To: Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>

Cc: Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Draft proposed "no action assurance" documents

Attorney Client; Deliberative Process / Ex. 5

If you have any questions, I am happy to discuss and reachable at (202) 603-4003 today.

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Harlow, David
Sent: Monday, June 25, 2018 6:27 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>
Subject: RE: Draft proposed "no action assurance" documents

Chris,

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Grundler, Christopher
Sent: Monday, June 25, 2018 6:19 PM
To: Harlow, David <harlow.david@epa.gov>; Charmley, William <charmley.william@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>; Stahle, Susan <Stahle.Susan@epa.gov>
Subject: RE: Draft proposed "no action assurance" documents

Thanks David.

Attorney Client; Deliberative Process / Ex. 5

Thanks,

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Harlow, David
Sent: Monday, June 25, 2018 2:45 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Draft proposed "no action assurance" documents

Gentlemen,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/26/2018 10:19:57 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
CC: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: the plan on the memo and response on Gliders

Attorney Client; Deliberative Process / Ex. 5

From: Orlin, David
Sent: Thursday, July 26, 2018 6:18 PM
To: Sutton, Tia <sutton.tia@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Re: the plan on the memo and response on Gliders

Attorney Client; Deliberative Process / Ex. 5

David Orlin
(202) 564-1222

On Jul 26, 2018, at 6:16 PM, Sutton, Tia <sutton.tia@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

From: Sutton, Tia
Sent: Thursday, July 26, 2018 5:59 PM
To: Shiffman, Cari <Shiffman.Cari@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Prince, Christopher <Prince.Christopher@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Attorney Client; Deliberative Process / Ex. 5

From: Sutton, Tia
Sent: Thursday, July 26, 2018 5:55 PM
To: Shiffman, Cari <Shiffman.Cari@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Prince, Christopher <Prince.Christopher@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Hi Cari,

Attorney Client; Deliberative Process / Ex. 5

I'm heading out shortly, but will be on email, and can be reached by cell at either: (202) 306-4003 (work) or (734) 717-8597 (personal)

-Tia

From: Shiffman, Cari
Sent: Thursday, July 26, 2018 5:19 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Prince, Christopher <prince.christopher@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Tia,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

From: Shiffman, Cari
Sent: Thursday, July 26, 2018 3:44 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Prince, Christopher <prince.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Tia,

Attorney Client; Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance

Office: (202) 564-2898 | Mobile: (202) 823-3277

From: Sutton, Tia
Sent: Thursday, July 26, 2018 3:40 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Prince, Christopher <prince.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

You beat me to it – thanks Erin!

Attorney Client; Deliberative Process / Ex. 5

From: Birgfeld, Erin
Sent: Thursday, July 26, 2018 3:37 PM
To: Shiffman, Cari <Shiffman.Cari@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Prince, Christopher <prince.christopher@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Thank you Cari!

Attorney Client; Deliberative Process / Ex. 5

-Erin

From: Shiffman, Cari
Sent: Thursday, July 26, 2018 3:32 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>; Prince, Christopher <prince.christopher@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Erin,

Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

From: Shiffman, Cari
Sent: Thursday, July 26, 2018 3:27 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Norris, Munsel <Norris.Munsel@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Hull, George <Hull.George@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Erin,

Deliberative Process / Ex. 5

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

From: Birgfeld, Erin
Sent: Thursday, July 26, 2018 3:09 PM
To: Hull, George <Hull.George@epa.gov>; egan, patrick <egan.patrick@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Cc: Mylan, Christopher <Mylan.Christopher@epa.gov>; Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: URGENT: memo and response on Gliders

Dear Patrick and Cari,

Deliberative Process / Ex. 5

Thank you!

-Erin

From: Birgfeld, Erin
Sent: Thursday, July 26, 2018 2:46 PM
To: Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Cc: Suarez, Patricia <suarez.patricia@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Hi John,

Deliberative Process / Ex. 5

Here is the page: https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles

-Erin

From: Birgfeld, Erin
Sent: Thursday, July 26, 2018 2:43 PM
To: Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Cc: Suarez, Patricia <suarez.patricia@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: RE: URGENT: memo and response on Gliders

Ok… we are standing by. Looping chris M. and Trish S. for awareness.

From: Millett, John
Sent: Thursday, July 26, 2018 2:37 PM
To: Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: URGENT: memo and response on Gliders
Importance: High

Deliberative Process / Ex. 5

From: Lewis, Josh
Sent: Thursday, July 26, 2018 1:43 PM
To: Millett, John <Millett.John@epa.gov>
Subject: FW: URGENT: memo and response on Gliders
Importance: High

John,

Deliberative Process / Ex. 5

Josh

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 1:15 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: URGENT: memo and response on Gliders
Importance: High

Hey Josh,

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 1:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Subject: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 12:50 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Ryan –

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Best,

Justin

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/26/2018 7:49:59 PM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Re: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Thx. Keep me updated

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 26, 2018, at 3:43 PM, Sutton, Tia <sutton.tia@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Orlin, David
Sent: Thursday, July 26, 2018 3:19 PM
To: Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Suarez, Patricia <suarez.patricia@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Millett, John
Sent: Thursday, July 26, 2018 3:15 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Suarez, Patricia

<suarez.patricia@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

From: Sutton, Tia
Sent: Thursday, July 26, 2018 3:11 PM
To: Orlin, David <Orlin.David@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>; Suarez, Patricia <suarez.patricia@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Adding Mylan and Trish to this, since there are a couple e-chains going right now

From: Orlin, David
Sent: Thursday, July 26, 2018 3:09 PM
To: Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: FW: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Hi John and Erin—

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Carrillo, Andrea
Sent: Thursday, July 26, 2018 3:06 PM
To: Orlin, David <Orlin.David@epa.gov>
Subject: Re: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 26, 2018, at 3:02 PM, Orlin, David <Orlin.David@epa.gov> wrote:

> Thanks Laura.

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 1:58 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

From: Orlin, David
Sent: Thursday, July 26, 2018 1:43 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Thursday, July 26, 2018 1:35 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: FW: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Laura—

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 1:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Subject: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 12:50 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Ryan –

Attorney Client; Deliberative Process / Ex. 5

Best,

Justin

<DRAFT Memo to Withdraw Gliders for 3rd floor review.docx>

<Draft NAA response template for 3rd floor review.docx>

Message

From: Sargeant, Kathryn [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=2D883D76F4F5401EA938362B26B582C9-SARGEANT, KATHRYN]
Sent: 7/3/2018 8:33:56 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: FYI only: Policy Statement Related to Gliders
Attachments: DRAFTgliders desk statement7-3.docx

I'm just sending this in case you're looking at email and want to know what's going on before Friday, when I'm next in the office.
Otherwise, just ignore…it will continue to evolve and we can fill you in on the latest when you're back.
If you don't want to read the attachment, the bottom line is that we're announcing a no-action assurance.

From: Millett, John
Sent: Tuesday, July 03, 2018 3:20 PM
To: Parsons, Christy <Parsons.Christy@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Attorney Client; Deliberative Process / Ex. 5 Thanks all.

From: Parsons, Christy
Sent: Tuesday, July 03, 2018 2:57 PM
To: Millett, John <Millett.John@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Attorney Client; Deliberative Process / Ex. 5
Thanks,
Christy

From: Millett, John
Sent: Tuesday, July 03, 2018 2:51 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Parsons, Christy <Parsons.Christy@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Thanks for looping me in, **Attorney Client; Deliberative Process / Ex. 5** - John

~~~~~~~~~~~~~~~~~~
~~~~~~~~~~~~~~~~~~

John Millett
Director, OAR Communications
Desk: 202-564-2903
Cell: 202-510-1822

From: Sutton, Tia
Sent: Tuesday, July 03, 2018 2:47 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Parsons, Christy <Parsons.Christy@epa.gov>; Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Thanks, Andrea! There are a couple different email chains going, so I'm looping John M & Chris M here as well (and resending the docs you sent) so we're all on the same page.

From: Carrillo, Andrea
Sent: Tuesday, July 03, 2018 2:25 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Parsons, Christy <Parsons.Christy@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Tuesday, July 03, 2018 1:20 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Parsons, Christy <Parsons.Christy@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: FW: OTAQ and ARLO edits on Policy Statement Related to Gliders

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Harlow, David
Sent: Tuesday, July 03, 2018 12:54 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>

Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: OTAQ and ARLO edits on Policy Statement Related to Gliders

Chris,

Thanks. Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Grundler, Christopher
Sent: Tuesday, July 3, 2018 12:13 PM
To: Harlow, David <harlow.david@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: OTAQ and ARLO edits on Policy Statement Related to Gliders

David—

Pls see attached edits with explanatory comment bubbles. Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 9/7/2018 6:49:34 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: FYI Comment/response regarding Gliders in RTC for upcoming CAA section 126 action

Attorney Client; Deliberative Process / Ex. 5

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/25/2018 11:40:50 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
CC: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Re: FYI latest versions of draft gliders memo and cover letter template

Thx for keeping us updated Andrea

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 25, 2018, at 6:30 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 25, 2018, at 2:15 PM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

<DRAFT Memo to Withdraw Gliders NAA 7.25.18 1146am.docx>

<Draft NAA response template 7-25.docx>

Message

From: Cook, Leila [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D4536AD140A1461781D78CA67921B02F-COOK, LEILA]
Sent: 6/19/2018 9:51:03 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Re: Response to claims made by Fitzgerald Glider Kits regarding the EPA career staff testing of glider vehicles in the Fall of 2017

This was very well done Bill.

Sent from my iPhone

On Jun 19, 2018, at 5:22 PM, Charmley, William <charmley.william@epa.gov> wrote:

Dear Chris,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any questions on any aspects of this information or this topic.

Bill

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/14/2018 11:11:52 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Haugen, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5f7076c89c214ff5af375a2d788aba0c-Haugen, David]
Subject: Fwd: You need to read the attached document
Attachments: No Action Request_FGK_1.pdf; ATT00001.htm

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

> **From:** "Brooks, Phillip" <Brooks.Phillip@epa.gov>
> **Date:** June 14, 2018 at 6:27:32 PM EDT
> **To:** "Grundler, Christopher" <grundler.christopher@epa.gov>, "Bunker, Byron" <bunker.byron@epa.gov>
> **Subject: You need to read the attached document**

Message

From: Charmley, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: 7/23/2018 2:03:13 PM
To: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: Fwd: Heavy-duty Glider Briefing for Monday meeting with Chris Grundler
Attachments: Draft Glider Options - July 23, 2018 - v2 for OD Grundler.pptx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Charmley, William" <charmley.william@epa.gov>
> **Date:** July 20, 2018 at 8:24:10 AM EDT
> **To:** OTAQ Materials <OTAQMaterials@epa.gov>
> **Cc:** "Orlin, David" <Orlin.David@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Nelson, Brian" <nelson.brian@epa.gov>, "Kathryn Sargeant (sargeant.kathryn@epa.gov)" <sargeant.kathryn@epa.gov>, "Moulis, Charles" <moulis.charles@epa.gov>
> **Subject: Heavy-duty Glider Briefing for Monday meeting with Chris Grundler**
>
> Attached is the briefing we will give Chris on Monday.
>
> This is a pre-brief for a meeting we have on Tuesday with AA Wehrum at 10am.

Message

From: Charmley, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: 7/19/2018 7:52:37 PM
To: Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Sargeant, Kathryn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2d883d76f4f5401ea938362b26b582c9-Sargeant, Kathryn]
Subject: RE: New Glider Briefing

Chuck –

Thanks for this new update. I just went in and made a few minor updates, Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Can you please send a copy of the briefing to OTAQ materials today for Chris Grundler so he can review before our Monday briefing.

Everyone – it was decided at today's SLT meeting that we will brief AA Wehrum on gliders at 10am on Tuesday of next week when he is in Ann Arbor.

Thanks
Bill

From: Moulis, Charles
Sent: Thursday, July 19, 2018 3:04 PM
To: Nelson, Brian <nelson.brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Charmley, William <charmley.william@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>
Subject: New Glider Briefing

File path

Message

From: Charmley, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: 7/18/2018 8:49:06 PM
To: Kathryn Sargeant (sargeant.kathryn@epa.gov) [sargeant.kathryn@epa.gov]
Subject: FW: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

From: Sutton, Tia
Sent: Wednesday, July 18, 2018 4:18 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: FW: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

Sorry for the duplicate if you've all already heard about this – but it was news to me, so I'm passing along just in case.

E&E NEWS PM
AN E&E NEWS PUBLICATION

AIR POLLUTION

In rebuke to Wheeler, court swiftly sides with greens

Maxine Joselow, E&E News reporter
Published: Wednesday, July 18, 2018

A federal court has granted a stay on EPA's order on glider kits. Fitzgerald Glider Kits

Newly minted acting EPA Administrator Andrew Wheeler got his first legal slap on the wrist today.

In a win for environmental groups, the U.S. Court of Appeals for the District of Columbia Circuit **granted** an emergency stay this afternoon of a July 6 EPA order meant to delay enforcement of a regulation on high-emission trucks. It was the first court loss for EPA under Wheeler's watch.

The court's action was swift. Three environmental groups — the Center for Biological Diversity, Sierra Club and Environmental Defense Fund — had filed a motion requesting the stay only yesterday (***Greenwire***, July 17).

The court ruled 2-1 to temporarily suspend implementation of the order. It will now consider the green groups' request for a longer stay.

The EPA order in question, which was issued on former Administrator Scott Pruitt's last day in office, would have lifted a cap on the manufacturing of high-emission trucks known as glider kits (***Greenwire***, July 9).

Under the order, companies would have been allowed to manufacture thousands of gliders, which emit as much as 55 times the air pollution of trucks with modern emission controls.

While the directive came under Pruitt, the groups had faulted Wheeler for failing to reverse it.

"The D.C. Circuit's swift action highlights the extreme nature of this lawless attempt to put more ultra-dirty trucks on our roads," said Vera Pardee, senior counsel at the Center for Biological Diversity, in a statement. "Andrew Wheeler didn't block Pruitt's putrid final shot at harming the American public, but the court did."

EDF President Fred Krupp said in a statement: "The court's decision today is an important step towards protecting the health of all Americans from super-polluting diesel freight trucks. ... We're pleased the court has suspended this dangerous loophole and we look forward to presenting a strong case to the court about the need to reverse EPA's flawed decision."

EPA didn't immediately respond to a request for comment, though the agency doesn't typically comment on litigation.

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E&E News
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www.eenews.net

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Message

From: Charmley, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: 7/27/2018 11:14:53 AM
To: Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]; Kathryn Sargeant (sargeant.kathryn@epa.gov) [sargeant.kathryn@epa.gov]; Bunker, Byron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ddf7bcf023d241a9a477a2dc75d5901c-Bunker, Byron]; Duncan, Allen [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5f4a476a56c342e7a2eeed96115208ac-Duncan, All]
Subject: FW: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)
Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf

Dear all –

Yesterday Acting Administrator Wheeler signed a letter withdrawing the NAA for small manufacturers for glider vehicles. The Acting Administrator's Memo is posted on OECA's web site at the following link;

https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn

---

From: Sutton, Tia
Sent: Thursday, July 26, 2018 9:02 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>
Subject: Fwd: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

FYI- to be posted shortly

Sent from my iPhone

Begin forwarded message:

> **From:** "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
> **To:** "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
> **Cc:** "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Traylor, Patrick"

<traylor.patrick@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Badalamente, Mark" <Badalamente.Mark@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Charmley, William [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FB1828FB00AF42FFB68B9E0A71626D95-CHARMLEY, WILLIAM]
Sent: 8/24/2018 10:07:04 AM
To: Samulski, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7ecf1af23a134d2995fd354d03632d6c-Samulski, Michael]
Subject: RE: Draft Tier 4 Marine Relief Briefing for your review

Mike –

I will get you comments (via actual changes to the briefing) by about noon today. The briefing looks good, but I do want to make a number of word edits.

Thanks
Bill

From: Samulski, Michael
Sent: Wednesday, August 22, 2018 3:56 PM
To: Charmley, William <charmley.william@epa.gov>; Bunker, Byron <bunker.byron@epa.gov>
Cc: Revelt, Jean-Marie <revelt.jean-marie@epa.gov>; Stout, Alan <stout.alan@epa.gov>; Aranda, Amber <aranda.amber@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Duncan, Allen <duncan.allen@epa.gov>; Steele, Lauren <steele.lauren@epa.gov>
Subject: Draft Tier 4 Marine Relief Briefing for your review

Attached is a draft pre-brief that we can use with Chris on Monday. I will need to send it up to OTAQ_Materials by 4:00 Friday.

Attorney Client; Deliberative Process / Ex. 5

Mike

****

Michael Samulski
U.S. Environmental Protection Agency
Office of Transportation and Air Quality
Director, Large Marine and Aviation Center
1 (734) 214-4532
samulski.michael@epa.gov

****

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/21/2018 9:19:19 PM
To: Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]
Subject: Fwd: Gliders letter updates
Attachments: Signed Glider Letters -- AL-18-000-9267.pdf; ATT00001.htm

Bill-pls let me know if this is much different from last version

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Lewis, Josh" <Lewis.Josh@epa.gov>
To: "Harlow, David" <harlow.david@epa.gov>, "Charmley, William" <charmley.william@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Cc: "Hengst, Benjamin" <Hengst.Benjamin@epa.gov>, "Lubetsky, Jonathan" <Lubetsky.Jonathan@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
Subject: RE: Gliders letter updates

Letter was delayed a bit getting out. Attached is the version that's going to the Hill today

---

From: Harlow, David
Sent: Friday, August 17, 2018 9:41 AM
To: Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Gliders letter updates

Bill,

Thank you! At our morning roundtable just completed, I confirmed with Jonathan that getting the production out the door today was indeed the goal, and then brought to Bill W.'s attention that, accordingly, we needed him to review and sign off on the cover letter (ideally, sometime this morning) so that we could get things moving along. So, I'll print this out now and take it to him directly.

As for OCIR, my working assumption is that we can defer to Jonathan to liaison with them, since I figure his operation is still in control of the documents themselves.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Charmley, William
Sent: Friday, August 17, 2018 9:12 AM
To: Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Gliders letter updates

Dear all –

Here is a clean version for AA Wehrum's review. I accepted all edits and deleted all comment fields from the version that David Harlow sent yesterday, and then I made the one change David suggested below

Deliberative Process / Ex. 5

Jonathan and/or Ben and/or David H. – will someone let OCIR know they OAR is in final stage of review (AA Wehrum's review) – or is that not needed?

Thanks
Bill

From: Harlow, David
Sent: Friday, August 17, 2018 8:57 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Re: Gliders letter updates

I'll be on the lookout for it.

Sent from my iPhone

On Aug 17, 2018, at 8:47 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

David:

Thanks for the offer—That would be great. We do have the pen and we will get you a clean draft this morning as soon as we can.

Bill—pls make the final changes Deliberative Process / Ex. 5 Deliberative Process / Ex. 5 and send final draft to David. Happy to discuss but call my cell as I am teleworking this morning

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Aug 17, 2018, at 8:41 AM, Harlow, David <harlow.david@epa.gov> wrote:

Chris/All,

Does OTAQ still "hold the pen" on the draft? Again, as I noted earlier, somewhat out of the blue yesterday, I got an RLSO of the draft from Aaron Ringel (who wasn't even sure himself who within OAR had initially drafted it; OCIR had just commented upon it and then passed it along to me). If you guys do still hold the pen, if somebody there would like to turn the letter around and shoot me a "clean" final draft, I'm happy to take steps to get it in front of Bill W. this morning/today, and urge him to review it and sign off, if the goal is to get the production out today.

Of course, if you've already been talking with Bill W. about the letter and, in more regular order, prefer to proceed directly with him, I'm good with that too. I just wanted to extend the offer, with the thought of furthering this along (and maybe out the door).

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Grundler, Christopher
Sent: Friday, August 17, 2018 8:23 AM
To: Harlow, David <harlow.david@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: Re: Gliders letter updates

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Aug 17, 2018, at 7:51 AM, Harlow, David <harlow.david@epa.gov> wrote:

> Bill,
>
> Thanks for this additional information/correction. I confess I hadn't recalled that the Tennessee Tech letter to then-Rep. Black had included that "Appendix A" with the CO and PM emissions data (and the footnote at the bottom with the less favorable NOx data), and, yesterday, when I pulled up the copy of the July 10 petition that I still had in my files, to refresh my memory as I was reviewing the draft letter, I didn't

scroll all the way down to the end of the document to see it!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Charmley, William
Sent: Friday, August 17, 2018 6:15 AM
To: Harlow, David <harlow.david@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Gliders letter updates

Dear all –

Many thanks to David Harlow for his careful review of the draft letter. Both David and OCIR's edits look good to me – though I did want to flag one topic below.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks

Bill

From: Harlow, David
Sent: Thursday, August 16, 2018 5:40 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: Gliders letter updates

Ben/All,

My immediate and short answer to your inquiry, Ben, is that, as far as I'm aware, Bill has *not* reviewed the letter as revised by OCIR and subsequently reviewed (and commented upon) by me. Josh may possibly know more, but I have no reason myself to think that he's reviewed OCIR's version. I can't

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Hengst, Benjamin
Sent: Thursday, August 16, 2018 4:55 PM
To: Harlow, David <harlow.david@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>; Charmley, William <charmley.william@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: Gliders letter updates

Hi David, Josh:

Do you have any sense whether Bill W has had a chance to review the gliders response letter (ideally he would have reviewed the version the OCIR, and then David Harlow, edited).

I'm copying a group of folks who have been tracking or working on this letter.

Thanks—Ben

From: Lubetsky, Jonathan
Sent: Thursday, August 16, 2018 4:25 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: Gliders letter updates

Ben,
See the note below from Kyle regarding the draft letter for the gliders oversight request. David Harlow reviewed because OCIR sent it to him. I didn't hear back from Tia in regards to Bill's thoughts on the letter. It was my understanding bill was going to look at it during a meeting yesterday. Do you know what happened? Also, I am not sure David Harlow's edits are what Bill saw. Let me know the status, and I can help loop people together. The goal is to send the letter tomorrow with a small set of documents.

Thanks,
Jonathan

From: Aarons, Kyle
Sent: Thursday, August 16, 2018 2:37 PM
To: Lubetsky, Jonathan <Lubetsky.Jonathan@epa.gov>
Cc: Knapp, Kristien <Knapp.Kristien@epa.gov>
Subject: Gliders letter updates

Hi Jonathan – Kristien, Aaron, and I made some edits to the gliders letter ("Smith Gliders Study"). Aaron sent that version to David Harlow, who accepted our changes and made his own ("dshRLSOSmith Gliders Study"). I'm not sure if he's separately routing his version through you and the usual OAR process.

In response to David's questions about the reasoning for the testing, we pulled the attached email chain, which includes a timeline. It looks like this confirms David's edits to the letter.

We'll leave it to you how you'd like to handle from here…

Thanks,
Kyle

Kyle Aarons
Congressional Affairs
U.S. Environmental Protection Agency
202-564-7351

Message

From: Carrillo, Andrea [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=242465ABB76C4AEF81C2AFBF6E2CCBA7-CARRILLO, ANDREA]
Sent: 7/20/2018 9:56:39 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: Re: GLider litigation

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 20, 2018, at 5:52 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/6/2018 10:12:45 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Message

From: Orlin, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AA64DAD518D64C5F9801EB9BB15B7EC3-DORLIN]
Sent: 7/17/2018 8:34:50 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Attorney Work Product; Attorney Client / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Wednesday, July 11, 2018 7:15 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Re: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

Attorney Work Product; Attorney Client / Ex. 5

David Orlin
(202) 564-1222

On Jul 11, 2018, at 7:11 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Attorney Client / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 11, 2018, at 6:04 PM, Orlin, David <Orlin.David@epa.gov> wrote:

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Vickie Patton [mailto:vpatton@edf.org]
Sent: Tuesday, July 10, 2018 5:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; A-AND-R-DOCKET <A-AND-R-DOCKET@epa.gov>
Cc: Martha Roberts <mroberts@edf.org>; Peter Zalzal <pzalzal@edf.org>; Alice Henderson <ahenderson@edf.org>; matt@donahuegoldberg.com; 'Sean Donahue' <sean@donahuegoldberg.com>; Susannah Weaver (susannah@donahuegoldberg.com) <susannah@donahuegoldberg.com>; 'Vera Pardee' <VPardee@biologicaldiversity.org>; 'Joanne Spalding' <joanne.spalding@sierraclub.org>; Vickie Patton <vpatton@edf.org>
Subject: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

RE: Docket ID No. EPA–HQ–OAR–2014–0827

Dear Acting Administrator Wheeler,

As set forth in the attached correspondence, the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you immediately withdraw or stay the U.S. Environmental Protection Agency's attached decision to cease enforcing vital air pollution limits that the Clean Air Act and EPA's own duly promulgated regulations impose on super polluting "glider" diesel freight trucks. This extreme action is unlawful and is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers who must comply with the pollution limitations that the Agency is unlawfully not enforcing for their competitors.

Thank you for your immediate attention to this urgent matter.

Sincerely yours,
Vickie Patton
General Counsel
Environmental Defense Fund
(720) 837-6239

This e-mail and any attachments may contain confidential and privileged information. If you are not the intended recipient, please

notify the sender immediately by return e-mail, delete this e-mail and destroy any copies. Any dissemination or use of this information by a person other than the intended recipient is unauthorized and may be illegal.

<Gliders_Withdrawal_Stay_Letter_07.10.18_FINAL SUBMISSION - FINAL.PDF>

Message

From: Hengst, Benjamin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=C414E2BF04A246BB987D88498EEFFF06-HENGST, BENJAMIN]
Sent: 7/16/2018 6:48:49 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: FW: Glider trucks -- incoming emergency motion

From: Orlin, David
Sent: Monday, July 16, 2018 2:47 PM
To: Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: FW: Glider trucks -- incoming emergency motion

FYI

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Monday, July 16, 2018 2:44 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>
Cc: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Kataoka, Mark <Kataoka.Mark@epa.gov>
Subject: FW: Glider trucks -- incoming emergency motion

Attorney Work Product; Attorney Client / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Hostetler, Eric (ENRD) [mailto:Eric.Hostetler@usdoj.gov]
Sent: Monday, July 16, 2018 2:31 PM
To: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Lipshultz, Jon (ENRD) <Jon.Lipshultz@usdoj.gov>
Subject: Fwd: Glider trucks -- incoming emergency motion

Attorney Work Product; Attorney Client / Ex. 5

Eric

Sent from my iPhone

Begin forwarded message:

From: Matt Littleton <matt@donahuegoldberg.com>
Date: July 16, 2018 at 2:21:45 PM EDT
To: <jon.lipshultz@usdoj.gov>, <eric.hostetler@usdoj.gov>, <jessica.o'donnell@usdoj.gov>
Subject: Glider trucks -- incoming emergency motion

Jack, Eric, and Jessica,

Hope this message finds you well. I wasn't able to reach you by phone and thought e-mail would be more efficient than serial voicemails. EDF, CBD, and Sierra Club are going to be filing tomorrow morning in the D.C. Circuit a petition for review and emergency motion for stay or summary vacatur of EPA's decision last week to not enforce the existing regulatory cap on glider vehicles for 2018 or 2019. Petitioners will seek an administrative stay pending disposition of the emergency motion and request a decision on the motion by August 8th in the event an administrative stay is denied.

--
Matthew Littleton
Donahue, Goldberg & Weaver, LLP
1111 14th St NW, Suite 510A
Washington, DC 20005
Tel: (202) 683-6895
Fax: (202) 315-3582

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/3/2018 4:34:32 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: New draft of gliders statement

Deliberative Process / Ex. 5

From: Grundler, Christopher
Sent: Tuesday, July 3, 2018 12:28 PM
To: Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: New draft of gliders statement

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Tuesday, July 03, 2018 12:22 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: FW: New draft of gliders statement

FYI

From: Millett, John
Sent: Tuesday, July 3, 2018 12:20 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: RE: New draft of gliders statement

Cool – thanks – this desk statement/one-pager is with clint and david for review

From: Sutton, Tia
Sent: Tuesday, July 03, 2018 12:17 PM
To: Millett, John <Millett.John@epa.gov>; Mylan, Christopher <Mylan.Christopher@epa.gov>
Subject: FW: New draft of gliders statement

FYI- **Attorney Client; Deliberative Process / Ex. 5** Stay tuned!

From: Grundler, Christopher
Sent: Tuesday, July 3, 2018 12:16 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles

<moulis.charles@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: New draft of gliders statement

Thanks everyone. **Attorney Client; Deliberative Process / Ex. 5**

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Carrillo, Andrea
Sent: Tuesday, July 03, 2018 12:00 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Subject: RE: New draft of gliders statement

Attorney Client; Deliberative Process / Ex. 5 Please see attached.

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Tuesday, July 03, 2018 9:39 AM
To: Sargeant, Kathryn <sargeant.kathryn@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: New draft of gliders statement

Attorney Client; Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Harlow, David
Sent: Tuesday, July 03, 2018 9:30 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Fwd: New draft of gliders statement

As we've been discussing.

Sent from my iPhone

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** July 3, 2018 at 9:19:21 AM EDT
> **To:** "Woods, Clint" <woods.clint@epa.gov>, "Millett, John" <Millett.John@epa.gov>
> **Subject: Fwd: New draft of gliders statement**
>
> Attached is the latest.
>
> Sent from my iPhone
>
> Begin forwarded message:
>
> > **From:** "Harlow, David" <harlow.david@epa.gov>
> > **Date:** July 2, 2018 at 1:06:20 PM EDT
> > **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Schwab, Justin" <schwab.justin@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
> > **Subject: New draft of gliders statement**

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/9/2018 1:23:11 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: Glider No Action Assurance

I know- so are Hill people. This is rather messy.

From: Grundler, Christopher
Sent: Monday, July 09, 2018 9:04 AM
To: Sutton, Tia <sutton.tia@epa.gov>
Subject: RE: Glider No Action Assurance

Reporters are already calling

_____
Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Monday, July 09, 2018 8:09 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: Re: Glider No Action Assurance

At least until we hear back from Millett. I believe they're talking with Bill at either 8:30 or 9.

Sent from my iPhone

On Jul 9, 2018, at 7:53 AM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

> So posting on hold?
>
> ---
> Christopher Grundler, Director
> Office of Transportation and Air Quality
> U.S. Environmental Protection Agency
> 202.564.1682 (Washington DC)
> 734.214.4207 (Ann Arbor MI)
> 734.645.5221 (mobile)
> www.epa.gov/otaq
>
> On Jul 9, 2018, at 7:47 AM, Sutton, Tia <sutton.tia@epa.gov> wrote:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 We'll check in with Millett and the OAR comms team to see how they'd like to handle posting & coordination with OECA comms after they meet with Bill W this morning.

Sent from my iPhone

On Jul 7, 2018, at 8:26 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5 A.

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 7, 2018, at 8:11 PM, Charmley, William <charmley.william@epa.gov> wrote:

Deliberative Process / Ex. 5

Thanks
Bill

Sent from my iPhone

On Jul 6, 2018, at 8:52 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)

734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant
Administrator
Office of Enforcement and
Compliance Assurance
U.S. Environmental
Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

Message

From: Paul Billings [Paul.Billings@lung.org]
Sent: 7/30/2018 3:32:59 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: Letter on Gliders
Attachments: Letter to Acting Administrator Wheeler - Gliders NRPM.pdf

Dear Acting Administrator Wheeler
Attached is a letter from the American Lung Association National President & CEO Harold Wimmer on your recent actions on glider trucks and a request for withdrawal of the notice of proposed rulemaking.
Thank you for your consideration of this request.

Sincerely,
Paul Billings
National Senior Vice President, Public Policy
American Lung Association
Direct 202-785-3988

AMERICAN LUNG ASSOCIATION.

Harold P. Wimmer
National President and
CEO

July 30, 2018

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Please Withdraw the Proposed Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits

Dear Acting Administrator Wheeler:

The American Lung Association is pleased to learn that the U.S. Environmental Protection Agency will withdraw the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles." Reversing the effort to waive enforcement of the glider truck rules is the correct decision.

Glider trucks are a significant source of air pollution that threatens public health and the environment. To protect public health, we now call on you to immediately withdraw the Proposed Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits.

The American Lung Association calls on you to take this action to protect the lives and health of the people we serve. We work on behalf of the 33 million Americans living with lung diseases, including asthma, lung cancer and COPD, and we fight to protect all Americans from breathing unhealthy air.

During the limited public comment period on the proposed repeal, the Lung Association submitted comments showing that glider trucks are new trucks, and that Congress intended the Clean Air Act to ensure that emissions controls are deployed on new vehicles as quickly as possible.

These controls are particularly urgent given the fact that glider trucks create much more pollution than other trucks. In a November 20, 2017

Advocacy Office:
1331 Pennsylvania Avenue NW, Suite 1425 North
Washington, DC 20004-1710
Ph: 202-785-3355 F: 202-452-1805

Corporate Office:
55 West Wacker Drive, Suite 1150 | Chicago, IL 60601
Ph: 312-801-7630 F: 202-452-1805 info@Lung.org

report, EPA showed that under highway cruise conditions, particulate matter (PM) emissions were 55 times higher than comparable model year 2014 and 2015 vehicles.

The 2017 EPA testing also showed that nitrogen oxides (NOx) emissions from the glider test vehicles were 43 times higher than the comparable truck under highway cruise conditions and 4-5 times higher under transient operations. Under transient testing conditions, PM emissions from a dirty diesel truck were 450 times higher than a comparable truck.

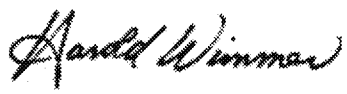
If EPA finalizes its proposal to repeal the requirements, the potential sale of tens of thousands of new glider trucks with emissions at these levels would pose an immediate threat to public health and the environment. In its 2016 rulemaking, EPA estimated that closing the loophole would avoid up to 1,600 premature deaths over the lifetime of the trucks sold in 2017 alone.

The proposal was based on flawed legal theory and does not include any technical analysis to support it. EPA relied on a study conducted by Tennessee Technological University that is under investigation for research misconduct, and the president of the university has requested that EPA not use the study. EPA also did not conduct a Regulatory Impact Assessment for this proposal. The EPA Science Advisory Board has asked to conduct a review regarding the adequacy of the supporting science. In sum, the proposal is flawed.

PM and NOx can impact anyone's health, but children, the elderly, and people with chronic diseases are particularly vulnerable. In addition to premature death, PM triggers asthma attacks, heart attacks and strokes and causes lung cancer. NOx is dangerous on its own and can also react to form ozone pollution, which also causes asthma attacks and other lung and heart problems.

On behalf of the millions of Americans with lung disease we serve, and all whose health is at risk from increased emissions from future glider trucks, I urge you to withdraw EPA's Proposal to Repeal Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits. Doing so is essential to fulfilling EPA's mission and the promise of the Clean Air Act of healthy air for all to breathe.

Sincerely,



Harold P. Wimmer
National President and CEO

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/26/2018 3:42:46 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: FW: gliders - draft withdrawal; draft cover letter
Attachments: Draft NAA response template 7-25.docx; DRAFT Memo to Withdraw Gliders NAA 7.25.18 1146am.docx

FYI

From: Orlin, David
Sent: Thursday, July 26, 2018 11:42 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: gliders - draft withdrawal; draft cover letter

Hi Mandy and David,

Attorney Client; Deliberative Process / Ex. 5

Thanks,

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Schwab, Justin
Sent: Wednesday, July 25, 2018 6:14 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: FW: gliders - draft withdrawal; draft cover letter

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, July 25, 2018 1:01 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: gliders - draft withdrawal; draft cover letter

Please find attached 2 items for your review.

Attorney Client; Deliberative Process / Ex. 5

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/19/2018 9:12:07 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
Subject: RE: NEW CAA LITIGATION: State challenges to no action assurance for gliders (State of California, et al. v. EPA, DC Cir. 18-1192)

Thanks for sharing. **Attorney Client / Ex. 5**

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Carrillo, Andrea
Sent: Thursday, July 19, 2018 4:48 PM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Belser, Evan <Belser.Evan@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: NEW CAA LITIGATION: State challenges to no action assurance for gliders (State of California, et al. v. EPA, DC Cir. 18-1192)

We have received an emergency motion filed in the DC Circuit by 16 states and the District of Columbia seeking summary vacatur, or in the alternative a stay pending judicial review, of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," signed on July 6, 2018. The petition was filed on July 19 by the states of California, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia.

Attorney Work Product; Attorney Client / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/18/2018 8:32:58 PM
To: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]
Subject: FW: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Brooks, Phillip
Sent: Wednesday, July 18, 2018 4:24 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

Not to my knowledge.

From: Grundler, Christopher
Sent: Wednesday, July 18, 2018 4:22 PM
To: Brooks, Phillip <Brooks.Phillip@epa.gov>
Subject: FW: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

Has a court stayed an NAA before?

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Wednesday, July 18, 2018 4:18 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Nelson, Brian <nelson.brian@epa.gov>; Moulis, Charles <moulis.charles@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: FW: From E&E News PM -- AIR POLLUTION: In rebuke to Wheeler, court swiftly sides with greens

Sorry for the duplicate if you've all already heard about this – but it was news to me, so I'm passing along just in case.

E&E NEWS PM
AN E&E NEWS PUBLICATION

AIR POLLUTION

In rebuke to Wheeler, court swiftly sides with greens

Maxine Joselow, E&E News reporter

Published: Wednesday, July 18, 2018

A federal court has granted a stay on EPA's order on glider kits. Fitzgerald Glider Kits

Newly minted acting EPA Administrator Andrew Wheeler got his first legal slap on the wrist today.

In a win for environmental groups, the U.S. Court of Appeals for the District of Columbia Circuit **granted** an emergency stay this afternoon of a July 6 EPA order meant to delay enforcement of a regulation on high-emission trucks. It was the first court loss for EPA under Wheeler's watch.

The court's action was swift. Three environmental groups — the Center for Biological Diversity, Sierra Club and Environmental Defense Fund — had filed a motion requesting the stay only yesterday (***Greenwire***, July 17).

The court ruled 2-1 to temporarily suspend implementation of the order. It will now consider the green groups' request for a longer stay.

The EPA order in question, which was issued on former Administrator Scott Pruitt's last day in office, would have lifted a cap on the manufacturing of high-emission trucks known as glider kits (***Greenwire***, July 9).

Under the order, companies would have been allowed to manufacture thousands of gliders, which emit as much as 55 times the air pollution of trucks with modern emission controls.

While the directive came under Pruitt, the groups had faulted Wheeler for failing to reverse it.

"The D.C. Circuit's swift action highlights the extreme nature of this lawless attempt to put more ultra-dirty trucks on our roads," said Vera Pardee, senior counsel at the Center for Biological Diversity, in a statement. "Andrew Wheeler didn't block Pruitt's putrid final shot at harming the American public, but the court did."

EDF President Fred Krupp said in a statement: "The court's decision today is an important step towards protecting the health of all Americans from super-polluting diesel freight trucks. ... We're pleased the court has suspended this dangerous loophole and we look forward to presenting a strong case to the court about the need to reverse EPA's flawed decision."

EPA didn't immediately respond to a request for comment, though the agency doesn't typically comment on litigation.

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E&E NEWS

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www.eenews.net

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Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/17/2018 7:20:01 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
Subject: Re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

K

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 17, 2018, at 10:12 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Work Product; Attorney Client / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Tuesday, July 17, 2018 9:56 AM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: Re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

Thx Andrea.

Attorney Client / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)

734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 17, 2018, at 9:42 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

> We have received the docketed petition filed by three NGOs seeking an emergency stay or summary vacatur, and an administrative stay while the court considers that motion, in the DC Circuit of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," signed on July 6, 2018. The petition was filed on July 17 by the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

Attorney Client / Ex. 5

> Thanks,
>
> Andrea Carrillo
> Attorney-Advisor
> Office of General Counsel
> U.S. Environmental Protection Agency
> (202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK
>
> <Gliders_EmergencyMotion_AsFiled_07.17.18.pdf>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 8/10/2018 1:49:28 PM
To: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]
Subject: Re: FYI Gliders No Action Assurance Reply filed

Got it

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Aug 10, 2018, at 8:30 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Work Product; Attorney Client / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Grundler, Christopher
Sent: Friday, August 10, 2018 9:27 AM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>
Subject: Re: FYI Gliders No Action Assurance Reply filed

Thanks Andrea.

Attorney Client / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Aug 10, 2018, at 6:37 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Please see attached for our as-filed reply in support of our motion to dismiss in the gliders no action assurance litigation. Environmental and State Petitioners had each filed

responses in opposition.

Thanks,

Andrea Carrillo

<EPA Gliders NAA MTD Reply 8 9 16.pdf>

Sent from my iPhone

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/9/2018 3:34:40 PM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Revised glider statement

roger

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Monday, July 09, 2018 11:17 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Revised glider statement

Aha- that makes sense. And the word from Isabel is that we'll go with the regular way we normally do NAA postings – OECA will handle all posting (statement and NAA), and we'll just link to it. They will let us know when they're live so we can link and go live on HD page.

From: Grundler, Christopher
Sent: Monday, July 09, 2018 9:59 AM
To: Sutton, Tia <sutton.tia@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: RE: Revised glider statement

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Monday, July 09, 2018 9:42 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Fwd: Revised glider statement

See below. Still on hold.

Sent from my iPhone

Begin forwarded message:

> **From:** "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>
> **Date:** July 9, 2018 at 9:41:36 AM EDT
> **To:** "Sutton, Tia" <sutton.tia@epa.gov>
> **Cc:** "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>, "Mylan, Christopher" <Mylan.Christopher@epa.gov>, "Millett, John" <Millett.John@epa.gov>
> **Subject: Re: Revised glider statement**
>
> Still waiting to hear on that point. Will let you know as soon as I hear.
>
> On Jul 9, 2018, at 9:40 AM, Sutton, Tia <sutton.tia@epa.gov> wrote:
>
> Thanks, Isabel! So are we (OTAQ & OECA) posting this statement? And what's the plan with posting the NAA? We're starting to get a lot of calls now.
>
> Sent from my iPhone
>
> On Jul 9, 2018, at 9:38 AM, DeLuca, Isabel <DeLuca.Isabel@epa.gov> wrote:
>
> > See statement below.
> >
> > Begin forwarded message:
> >
> > **From:** "Woods, Clint" <woods.clint@epa.gov>
> > **Date:** July 9, 2018 at 9:36:23 AM EDT
> > **To:** "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Millett, John" <Millett.John@epa.gov>
> > **Subject: Fwd: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers**
> >
> > FYI - Updated desk statement from late Friday
> >
> > Begin forwarded message:
> >
> > > **From:** "Harlow, David" <harlow.david@epa.gov>
> > > **Date:** July 6, 2018 at 6:43:16 PM EDT
> > > **To:** "Block, Molly" <block.molly@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>
> > > **Cc:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>

Subject: RE: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Draft desk statement below from Justin, Clint, and David – Feel free to use in 10 minutes if no one sees red flags:

Attorney Client; Deliberative Process / Ex. 5

From: Block, Molly
Sent: Friday, July 6, 2018 6:28 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Subject: Re: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Thanks!

Sent from my iPhone

On Jul 6, 2018, at 6:27 PM, Woods, Clint <woods.clint@epa.gov> wrote:

> Updating a desk statement
>
> On Jul 6, 2018, at 6:18 PM, Block, Molly <block.molly@epa.gov> wrote:
>
> > Do you know anything on this?
> >
> > Sent from my iPhone
> >
> > Begin forwarded message:
> >
> > **From:** Eric Lipton <lipton@nytimes.com>
> > **Date:** July 6, 2018 at 6:10:06 PM EDT
> > **To:** "Block, Molly" <block.molly@epa.gov>
> > **Subject: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers**
> >
> > Can you ring me to clarify
> > As far as I understand this, companies like Fitzgerald will be allowed to ramp up production again
> >
> > Thanks in advance
> >
> > Eric
> >
> > 202 862 0448
> >
> > Eric Lipton
> > The New York Times
> > Washington Bureau
> > 202 862 0448 office
> > 202 370 7951 mobile
> > lipton@nytimes.com

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/9/2018 1:51:02 PM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
CC: Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Revised glider statement

Deliberative Process / Ex. 5

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Sutton, Tia
Sent: Monday, July 09, 2018 9:42 AM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Fwd: Revised glider statement

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Sent from my iPhone

Begin forwarded message:

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> **Date:** July 9, 2018 at 9:41:36 AM EDT
> **To:** "Sutton, Tia" <sutton.tia@epa.gov>
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> **Subject: Re: Revised glider statement**
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> Sent from my iPhone
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See statement below.

Begin forwarded message:

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Date: July 9, 2018 at 9:36:23 AM EDT
To: "DeLuca, Isabel" <DeLuca.Isabel@epa.gov>, "Millett, John" <Millett.John@epa.gov>
Subject: Fwd: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

FYI - Updated desk statement from late Friday

Begin forwarded message:

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> **Date:** July 6, 2018 at 6:43:16 PM EDT
> **To:** "Block, Molly" <block.molly@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>
> **Cc:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Wilcox, Jahan" <wilcox.jahan@epa.gov>, "Beach, Christopher" <beach.christopher@epa.gov>
> **Subject: RE: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers**
>
> Draft desk statement below from Justin, Clint, and David – Feel free to use in 10 minutes if no one sees red flags:

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

From: Block, Molly
Sent: Friday, July 6, 2018 6:28 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Konkus, John <konkus.john@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Wilcox, Jahan <wilcox.jahan@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>
Subject: Re: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers

Thanks!

Sent from my iPhone

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> Updating a desk statement
>
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> > **From:** Eric Lipton <lipton@nytimes.com>
> > **Date:** July 6, 2018 at 6:10:06 PM EDT
> > **To:** "Block, Molly" <block.molly@epa.gov>
> > **Subject: I was just told that EPA is issuing non enforcement letter to glider truck manufacturers**

Can you ring me to clarify
As far as I understand this, companies like Fitzgerald will be allowed to ramp up production again

Thanks in advance

Eric

202 862 0448

Eric Lipton
The New York Times
Washington Bureau
202 862 0448 office
202 370 7951 mobile
lipton@nytimes.com

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 6/19/2018 9:44:05 PM
To: Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Birgfeld, Erin (Birgfeld.Erin@epa.gov) (Birgfeld.Erin@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3383bc15dd5542e5bff5c3de13ba9bf2-EBIRGFEL]
Subject: FW: Pls Read:: Response to claims made by Fitzgerald Glider Kits regarding the EPA career staff testing of glider vehicles in the Fall of 2017

fyi

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Grundler, Christopher
Sent: Tuesday, June 19, 2018 5:43 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Charmley, William <charmley.william@epa.gov>
Subject: Pls Read:: Response to claims made by Fitzgerald Glider Kits regarding the EPA career staff testing of glider vehicles in the Fall of 2017

Bill—It is very unfortunate that the press office did not share the facts we gave them last week to rebut the charges impugning the integrity of EPA career staff made by junkscience.org, and subsequently repeated by the publication Daily Caller and in a June 14 letter to the Administrator by Fitzgerald, in which they request a 'no action assurance' letter. Bill Charmley lays out the facts and the detailed chronology in the email below.

I would greatly appreciate it if you will take the opportunity on Friday with the Fitzgerald reps to set the record straight, and put this to rest.

Chris

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington, DC)
734.214.4207 (Ann Arbor, MI)

From: Charmley, William
Sent: Tuesday, June 19, 2018 5:23 PM
To: Grundler, Christopher <grundler.christopher@epa.gov>
Cc: Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Response to claims made by Fitzgerald Glider Kits regarding the EPA career staff testing of glider vehicles in the Fall of 2017

Dear Chris,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Please let me know if you have any questions on any aspects of this information or this topic.

Bill

Message

From: Frye, Tony (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=58C08ABDFC1B4129A10456B78E6FC2E1-FRYE, ROBER]
Sent: 1/3/2019 4:22:20 PM
To: Greaves, Holly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=abcb6428b3df40a9a78b059a8ba59707-Greaves, Ho]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
CC: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]
Subject: OAR Hearing Prep 1.4.19
Attachments: OAR-1 CLEAN Affordable Clean Energy Rule.docx; OAR-2 CLEAN NSR.DOCX; OAR-3 CLEAN Quick-Start Turbines.docx; OAR-4 CLEAN MATS.docx; OAR-5 CLEAN MM2A OIAI.docx; OAR-6 CLEAN EtO in Illinois.docx; OAR-7 CLEAN NAAQS - Setting Status and Designations.docx; OAR-8 CLEAN NAAQS Attainment.docx; OAR-9 CLEAN Exceptional Events.docx; OAR-10 CLEAN CAA 126.docx; OAR-11 CLEAN Methane.docx; OAR-12 CLEAN Regional Haze.docx; OAR-13 CLEAN Wildfires.docx; OAR-14 CLEAN Wood Heaters.docx; OAR-15 CLEAN AK-Diesel Generators.docx; OAR-16 CLEAN Radiation Protection Radiological Emergency Response.docx; OAR-17 CLEAN Kigali and HFCs.docx; OAR-18 CLEAN NCA4.docx; OAR-19 CLEAN CSAPR and Good Neighbor SIPs.docx; OAR-20 CLEAN SAFE-CAFE.DOCX; OAR-21 CLEAN Parity for Natural Gas Vehicles with Electric Vehicles.docx; OAR-22 CLEAN Cleaner Trucks Initiative.docx; OAR-23 CLEAN Glider Kits.docx; OAR-24 CLEAN RFS-General.docx; OAR-25 CLEAN RFS-RIN Costs.docx; OAR-26 CLEAN RFS-E15 and RIN Mkt Reform.docx; OAR-27 CLEAN RFS-Small Refinery Exemptions.docx; OAR-28 CLEAN RFS-Reallocation of RINs Opposing Reallocation.docx; OAR-29 CLEAN RFS-Reset Rule.docx; OAR-30 CLEAN Aircraft GHG.DOCX

Hello Team – In advance of the OAR hearing prep in tomorrow, here are the fact sheets for you to print in advance. Let us know if you have any questions.
Thanks,
Tony

Tony Frye
Special Advisor
Office of Congressional Affairs
Environmental Protection Agency
Cell: Personal Privacy / Ex 6

Message

From: Palich, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=330AD62E158D43AF93FCBBECE930D21A-PALICH, CHR]
Sent: 12/28/2018 2:51:23 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]
Subject: Fwd: AW SEPW QFR Updates - OAR
Attachments: 2018.10.04 - EPA MANAGEMENT REVIEW - FINAL OMB REVIEW - ALL Wheeler QFRs 08.01.2018.docx; ATT00001.htm

Hi Team OAR,

Have you all had a chance to look at the QFRs below to update? We need to get these done ASAP for EPW to ensure the Administrators hearing stays on schedule.

Thank you and have a terrific evening!

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: Personal Matters / Ex. 6

Sent from my iPhone

Begin forwarded message:

> **From:** "Ringel, Aaron" <ringel.aaron@epa.gov>
> **Date:** December 20, 2018 at 10:49:48 AM EST
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
> **Cc:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
> **Subject: AW SEPW QFR Updates - OAR**
>
> Team OAR,
>
> AA Wheeler went through the QFRs and had updates he needs made before we can get them submitted. I've pasted the relevant questions for your program office below that need edits and attached the doc for reference.

We need to get these turned in by next Friday so we can move forward with his confirmation hearing. Considering there aren't many substantive changes required, if you can turn these around in next couple days so we can do a final review and get sign off it would be greatly appreciated. Please let myself, Christian, or Tony know if you have any questions.

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Chairman Barrasso:

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: "In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol." 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

Deliberative Process / Ex. 5

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

Deliberative Process / Ex. 5

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator

Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to "initiate dialogue on this matter."[1]

a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

Deliberative Process / Ex. 5

b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

Deliberative Process / Ex. 5

c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

Deliberative Process / Ex. 5

d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

Deliberative Process / Ex. 5

Senator Inhofe:

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from

[1] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

Deliberative Process / Ex. 5

Senator Markey:

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the "reconsideration process," the EPA would place a 90-day stay on oil and gas companies' compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA's suspension of the rule, the EPA's rationale for pursuing this issue still raises significant questions.

    a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

Deliberative Process / Ex. 5

Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA's denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

Deliberative Process / Ex. 5

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 7/11/2018 1:35:45 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: Question about non enforcement approach re Gliders

Thank you!

From: Bodine, Susan
Sent: Wednesday, July 11, 2018 9:31 AM
To: Konkus, John <konkus.john@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

I sent them last night.
Resending

From: Konkus, John
Sent: Wednesday, July 11, 2018 9:10 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

Thank you Mandy. Susan please send me the files once you have them. Thanks again.

From: Gunasekara, Mandy
Sent: Tuesday, July 10, 2018 3:30 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Konkus, John <konkus.john@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

I think this is good. Thanks, Susan.

From: Bodine, Susan
Sent: Tuesday, July 10, 2018 3:28 PM
To: Konkus, John <konkus.john@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Wehrum, Bill

<Wehrum.Bill@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

Deliberative Process / Ex. 5

Any edits, Bill or Mandy?

From: Konkus, John
Sent: Tuesday, July 10, 2018 3:11 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Tuesday, July 10, 2018 3:03 PM
To: Konkus, John <konkus.john@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: Question about non enforcement approach re Gliders

Deliberative Process / Ex. 5

From: Konkus, John
Sent: Tuesday, July 10, 2018 2:46 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>
Subject: FW: Question about non enforcement approach re Gliders

Susan and Mandy: Can you all take a look at this below? Thank you.

From: Eric Lipton [mailto:lipton@nytimes.com]
Sent: Tuesday, July 10, 2018 2:39 PM
To: Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: Question about non enforcement approach re Gliders

Someone has suggested to me that the memos sent out on Friday violate long-standing EPA policy related to when it is appropriate to issue a non enforcement statement.

The policy on enforcement discretion from 1995 and reiterated in 2014 states that the enforcement discretion is allowed in cases of emergencies where public safety could be impact and also extremely unusual circumstances where clearly in public interest and no other way to address it.

But it is clearly not intended stop or circumvent a regulation, it expressly says that.

How do you explain of this use of the enforcement discretion provisions?
Is the EPA planning, under Mr. Wheeler, to revoke this memo from July 6th?
How do you explain the use of enforcement discretion in this case given the policy guidance documents that I am attaching here?
Why can't the issues being addressed through normal rule making procedures?

I have no immediate deadline for you on this one. I wanted to consider your responses before I figure out what we will do.

Thanks in advance

Eric

Eric Lipton
The New York Times
Washington Bureau
202 862 0448 office
202 370 7951 mobile
lipton@nytimes.com

Message

From: Molina, Michael [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D19C1D68DA1A4587866E1850F22A6AE5-MOLINA, MIC]
Sent: 7/17/2018 6:25:31 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
Subject: Re: TP on gliders

We are good with this.

MM

Sent from my iPhone

> On Jul 17, 2018, at 1:20 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Attorney Client / Ex. 5

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/17/2018 3:28:23 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

FYI.

Sent from my iPhone

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** July 17, 2018 at 11:28:01 AM EDT
> **To:** "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>
> **Cc:** "Schwab, Justin" <Schwab.Justin@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>
> **Subject: Re: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)**

Attorney Client; Deliberative Process / Ex. 5

> Thank you.
>
> Sent from my iPhone
>
> On Jul 17, 2018, at 11:22 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

> Andrea Carrillo
> Attorney-Advisor
> Office of General Counsel
> U.S. Environmental Protection Agency
> (202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK
>
> ---
>
> **From:** Harlow, David
> **Sent:** Tuesday, July 17, 2018 11:17 AM
> **To:** Carrillo, Andrea <Carrillo.Andrea@epa.gov>
> **Cc:** Schwab, Justin <Schwab.Justin@epa.gov>
> **Subject:** Re: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)
>
> Andrea,

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 17, 2018, at 11:03 AM, Carrillo, Andrea <Carrillo.Andrea@epa.gov> wrote:

Attorney Work Product; Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Carrillo, Andrea
Sent: Tuesday, July 17, 2018 9:42 AM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>
Cc: Orlin David (Orlin.David@epa.gov) <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

We have received the docketed petition filed by three NGOs seeking an emergency stay or summary vacatur, and an administrative stay while the court considers that motion, in the DC Circuit of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," signed on July 6, 2018. The petition was filed on July 17 by the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

Attorney Work Product; Attorney Client / Ex. 5

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/6/2018 8:48:58 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: Final NAA Request
Attachments: NAA Request Clean.docx

Susan – Attached is a final version of our NAA request.

_____

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.F. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a final rulemaking that will extend the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glide vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicle have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

ED_002444_00008306-00001

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM. until such time we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00008306-00002

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/5/2018 1:57:04 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]
Subject: RE: Revised draft of OAR programmatic statement
Attachments: Programmatic Statement Gliders Rev 0 CLEAN redlined.docx

Attorney Client; Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Thursday, July 5, 2018 9:49 AM
To: Harlow, David <harlow.david@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: RE: Revised draft of OAR programmatic statement

Attorney Client; Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Tuesday, July 3, 2018 5:57 PM
To: Harlow, David <harlow.david@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Patrick Traylor (traylor.patrick@epa.gov) <traylor.patrick@epa.gov>; Schwab, Justin

<schwab.justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: RE: Revised draft of OAR programmatic statement

Attorney Client; Deliberative Process / Ex. 5

From: Harlow, David
Sent: Tuesday, July 3, 2018 4:34 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Revised draft of OAR programmatic statement

Susan,

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel

Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/26/2018 7:59:42 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: gliders - draft withdrawal; draft cover letter

We concur.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Jul 25, 2018, at 4:18 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 25, 2018, at 2:19 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Looks good to us

Sent from my iPhone

On Jul 25, 2018, at 11:01 AM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Please find attached 2 items for your review.

Attorney Client; Deliberative Process / Ex. 5

<Draft NAA response template 7-25.docx>

<DRAFT Memo to Withdraw Gliders NAA 7.25.18 1146am.docx>

Message

From: Frye, Tony (Robert) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=58C08ABDFC1B4129A10456B78E6FC2E1-FRYE, ROBER]
Sent: 7/26/2018 6:28:02 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]
Subject: OAR Binder Docs
Attachments: OAR-1 CAFE GHG Joint NPRM.docx; OAR-2 California Waiver.docx; OAR-3 CPP.docx; OAR-4 MATS.docx; OAR-5 Gliders.docx; OAR-6 NSR.docx; OAR-7 Once in Always In.DOCX; OAR-8 HFCs.docx; OAR-9 RFS.DOCX; OAR-10 RFS SRE.docx; OAR-11 Uranium ISR Part 192.docx; OAR-12 DERA.docx; OAR-13 Trailers.docx; OAR-14 Diesel Generators in Alaska.docx; OAR-15 Oil-Gas NSPS cw.docx; OAR-16 NAAQS General SETTING and DESIGNATING cw.docx; OAR-17 NAAQS General ATTAINMENT cw.docx; OAR-18 Cross State Air Pollution Rule (CSAPR) cw.docx; OAR-19 BRICK MACT.docx

Here is the universe of docs I have for you all. Thanks

Tony Frye
Special Advisor
Office of Congressional & Intergovernmental Affairs
Environmental Protection Agency
Cell: Personal Matters / Ex. 6

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/26/2018 4:03:05 PM
To: Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]
Subject: RE: gliders - draft withdrawal; draft cover letter

David,

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K

1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Orlin, David
Sent: Thursday, July 26, 2018 11:42 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: FW: gliders - draft withdrawal; draft cover letter

Hi Mandy and David,

Attorney Client; Deliberative Process / Ex. 5

Thanks,

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Schwab, Justin
Sent: Wednesday, July 25, 2018 6:14 PM
To: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: FW: gliders - draft withdrawal; draft cover letter

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Wednesday, July 25, 2018 1:01 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: gliders - draft withdrawal; draft cover letter

Please find attached 2 items for your review.

Attorney Client; Deliberative Process / Ex. 5

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/2/2018 3:50:06 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Further revised draft of "programmatic update" on gliders

Justin,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Again, thanks for your rapid (and, as always, cogent) review.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Schwab, Justin
Sent: Monday, July 2, 2018 11:18 AM
To: Harlow, David <harlow.david@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Further revised draft of "programmatic update" on gliders

Please find redline attached.

From: Harlow, David
Sent: Monday, July 2, 2018 10:38 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Further revised draft of "programmatic update" on gliders

All,

Attorney Client; Deliberative Process / Ex. 5

Thanks.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/2/2018 3:17:38 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Further revised draft of "programmatic update" on gliders
Attachments: EDIT dshREV2Gliders Programmatic Update_Draft (V1).docx

Please find redline attached.

From: Harlow, David
Sent: Monday, July 2, 2018 10:38 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Further revised draft of "programmatic update" on gliders

All,

Attorney Client; Deliberative Process / Ex. 5

Thanks.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/16/2018 6:45:25 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: Glider trucks -- incoming emergency motion

Sent from my iPhone

Begin forwarded message:

From: "Orlin, David" <Orlin.David@epa.gov>
Date: July 16, 2018 at 2:44:26 PM EDT
To: "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>
Cc: "Srinivasan, Gautam" <Srinivasan.Gautam@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>, "Kataoka, Mark" <Kataoka.Mark@epa.gov>
Subject: FW: Glider trucks -- incoming emergency motion

Attorney Work Product; Attorney Client / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Hostetler, Eric (ENRD) [mailto:Eric.Hostetler@usdoj.gov]
Sent: Monday, July 16, 2018 2:31 PM
To: Orlin, David <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Lipshultz, Jon (ENRD) <Jon.Lipshultz@usdoj.gov>
Subject: Fwd: Glider trucks -- incoming emergency motion

Attorney Work Product; Attorney Client / Ex. 5

Eric

Sent from my iPhone

Begin forwarded message:

From: Matt Littleton <matt@donahuegoldberg.com>
Date: July 16, 2018 at 2:21:45 PM EDT

To: <jon.lipshultz@usdoj.gov>, <eric.hostetler@usdoj.gov>, <jessica.o'donnell@usdoj.gov>
Subject: Glider trucks -- incoming emergency motion

Jack, Eric, and Jessica,

Hope this message finds you well. I wasn't able to reach you by phone and thought e-mail would be more efficient than serial voicemails. EDF, CBD, and Sierra Club are going to be filing tomorrow morning in the D.C. Circuit a petition for review and emergency motion for stay or summary vacatur of EPA's decision last week to not enforce the existing regulatory cap on glider vehicles for 2018 or 2019. Petitioners will seek an administrative stay pending disposition of the emergency motion and request a decision on the motion by August 8th in the event an administrative stay is denied.

--
Matthew Littleton
Donahue, Goldberg & Weaver, LLP
1111 14th St NW, Suite 510A
Washington, DC 20005
Tel: (202) 683-6895
Fax: (202) 315-3582

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/26/2018 12:27:18 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: gliders - draft withdrawal; draft cover letter
Attachments: Draft NAA response template 7-25.docx; DRAFT Memo to Withdraw Gliders NAA 7.25.18 1146am.docx

David – This looks pretty straightforward to me. Will you please do a reality check for me? Thanks.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Schwab, Justin
Sent: Wednesday, July 25, 2018 1:01 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Subject: gliders - draft withdrawal; draft cover letter

Please find attached 2 items for your review.

Attorney Client; Deliberative Process / Ex. 5

Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 7/27/2018 12:50:48 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]
Subject: Fwd: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)
Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; ATT00001.htm; Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf; ATT00002.htm

Has this b en sent to the petitioners/can we share w the hill?

Sent from my iPhone

Begin forwarded message:

> **From:** "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
> **To:** "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
> **Cc:** "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Badalamente, Mark" <Badalamente.Mark@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
> **Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)**
>
> Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.
>
> ---
>
> **From:** Johnson, Laura-S
> **Sent:** Thursday, July 26, 2018 8:08 PM
> **To:** Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David

<Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell: Personal Matters / Ex. 6
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Ringel, Aaron [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=1654BDC951284A6D899A418A89FB0ABF-RINGEL, AAR]
Sent: 6/14/2018 9:01:26 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Fwd: No Action Letter
Attachments: No Action Request_FGK.pdf; ATT00001.htm

Got the same letter from Rep. Posey's office.

Sent from my iPhone

Begin forwarded message:

> **From:** "Podliska, Rick" <Rick.Podliska@mail.house.gov>
> **Date:** June 14, 2018 at 3:16:00 PM EDT
> **To:** "ringel.aaron@epa.gov" <ringel.aaron@epa.gov>
> **Subject: No Action Letter**
>
> Mr. Ringel,
>
> Please find attached a 'No Action' request from Fitzgerald Glider Kits. Could you please pass it along to Administrator Pruitt?
>
> Thanks,
>
> Rick Podliska
> Senior Policy Advisor
> Congressman Bill Posey (FL-08)
> 2150 Rayburn House Office Building
> Tel. 202-225-3671

June 14, 2018

The Honorable Scott Pruitt
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20004
Dear Administrator Pruitt,

As you know, on November 16, 2017, the Environmental Protection Agency (the "EPA") proposed a rule to repeal those provisions of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016), which relate to glider vehicles, glider engines, and glider kits. The comment period for the proposed rule closed on January 5, 2018, and we understand that the EPA has every intention of adopting a final rule on this matter.

We are writing to request that the EPA issue a no action assurance letter related to the applicability of the provisions of 40 C.F.R. § 1037.635, which include, among other things, an annual production "cap" on the number of glider vehicles, glider engines, and glider kits that can be manufactured or assembled.

Specifically, we ask that the EPA issue a no action assurance letter clarifying that no action will be taken against any company meeting the following requirements:

(1) The company produced or is now producing glider vehicles in 2018;

(2) The company either has already reached, or will reach in 2018, the applicable production "cap" specified in the interim provisions of 40 C.F.R. § 1037.150(t); and

(3) The company introduces into U.S. commerce in 2018 glider vehicles in an amount that exceeds the "cap" applicable to it under 40 C.F.R. § 1037.150(t).

A no action assurance is appropriate where it is clearly necessary to serve the public interest. This standard is easily met here. The glider kit and truck industry is facing financial ruin due to the annual production cap under 40 C.F.R. § 1037.150(t). The strain on the industry grows worse with every day that passes without a final rule repealing the Phase 2 Rule's provisions on glider vehicles, glider engines and glider kits. In the last three weeks alone, hundreds of American workers in the industry have been laid off. The glider kit and truck industry will cease to exist in short order without meaningful relief.

The current public health losses are significant here, as hundreds of employees have been laid off and thousands more layoffs are expected. The elimination of the glider industry will impoverish

the tens of thousands of American workers, consumers and families who depend on this industry. The public health and welfare are in jeopardy and, short of the publication of a final rule repealing the Phase 2 Rule's glider provisions, a no action of assurance letter is the only remedy currently available.

In addition to serving the public interest, a no action assurance letter is appropriate because the EPA's recent response to a FOIA request concerning the agency's testing of two glider vehicles in October 2017 have raised a serious question of impropriety. Documents produced by the EPA show not only that senior career EPA officials conducted the tests at the behest of Volvo Trucks, the most vocal critic of the glider industry, but also that Volvo Trucks supplied the glider vehicles that were tested. These documents are evidence that Volvo Trucks, and perhaps even certain senior career EPA officials, were targeting the glider industry at the same time that the agency was working on a proposed rule to repeal the Phase 2 Rule's glider provisions. These efforts have caused substantial financial harm to glider assemblers. Furthermore, Volvo Trucks' close involvement in the EPA's glider emissions testing calls into question the integrity of certain career EPA officials who were involved in the rulemaking process.

Given the current harm to public health and welfare, we respectfully ask that a no action of assurance be issued immediately to provide much needed relief to the glider industry.

Sincerely,

Tommy C. Fitzgerald
Founder and CEO
Fitzgerald Glider Kits, LLC.

Message

From: Lyons, Troy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=15E4881C95044AB49C6C35A0F5EEF67E-LYONS, TROY]
Sent: 7/16/2018 2:15:40 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Carper Briefing
Attachments: AW Meeting w Carper .docx

Here is the briefing for Carper which you all helped put together. There is a blurb in there about gliders.

Troy M. Lyons
Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency
Personal Matters / Ex. 6 cell)

Message

From: Palich, Christian [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=330AD62E158D43AF93FCBBECE930D21A-PALICH, CHR]
Sent: 6/14/2018 8:53:29 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: Fwd: No Action Letter Request
Attachments: No Action Request_FGK_1.pdf; ATT00001.htm

FYI from Corker on Gliders.

Christian R. Palich
Deputy Associate Administrator
Office of Congressional Affairs
C: Personal Matters / Ex. 6

Sent from my iPhone

Begin forwarded message:

> **From:** "Haley, John (Corker)" <John_Haley@corker.senate.gov>
> **Date:** June 14, 2018 at 4:44:20 PM EDT
> **To:** "Christian R. Palich" <Palich.Christian@epa.gov>
> **Subject: Fwd: No Action Letter Request**
>
> Hi Christian,
>
> I wanted to pass along this letter from a constituent company to the Administrator. Thanks!
>
> Best,
> John
>
>
> Begin forwarded message:
>
>> **From:** Jon Toomey <jtoomey@fitzgeraldtrucksales.com>
>> **Date:** June 14, 2018 at 2:53:50 PM EDT
>> **To:** "Haley, John (Corker)" <John_Haley@corker.senate.gov>
>> **Subject: FW: No Action Letter Request**
>>
>> Hi John,
>>
>> Any chance you could forward this letter on to EPA. We are trying to get a no action assurance letter issued to hold us over while the final rule is implemented.
>>
>> Thanks again for all the support!

Jon

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 7/16/2018 1:44:51 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Cory, Preston (Katherine) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bfd80b15f6d04a3ba11fc8ca3c85bc50-Cory, Kathe]; Frye, Tony (Robert) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=58c08abdfc1b4129a10456b78e6fc2e1-Frye, Rober]; Lyons, Troy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=15e4881c95044ab49c6c35a0f5eef67e-Lyons, Troy]; Morgan, Ashley [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4acef44653d440e3baab09958ffc24ea-Morgan, Ash]; Palich, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=330ad62e158d43af93fcbbece930d21a-Palich, Chr]; Ringel, Aaron [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1654bdc951284a6d899a418a89fb0abf-Ringel, Aar]; Rodrick, Christian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6515dbe46dae466da53c8a3aa3be8cc2-Rodrick, Ch]; Shimmin, Kaitlyn [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=becb3f33f9a14acd8112d898cc7853c6-Shimmin, Ka]
CC: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]; Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]
Subject: FW: Glider letter
Attachments: California Leads Coalition Request to EPA.pdf

Suggested Response: "We will respond through the proper channels." – EPA Spokesperson

Let me know if you have a different suggested response. Thanks!

Molly

From: Maxine Joselow [mailto:mjoselow@eenews.net]
Sent: Monday, July 16, 2018 9:41 AM
To: Press <Press@epa.gov>
Subject: Glider letter

Hello,

I'm writing a quick story this morning about a letter from California Attorney General Xavier Becerra (D) and others regarding the glider rule. I have attached the letter. Would someone in EPA's press office be able to provide a quick

comment about whether the agency has received the letter and whether the agency plans to respond/take any action? My deadline is noon today.

Thanks much,
Maxine
--
Maxine Joselow
E&E News reporter
202-737-4369
@maxinejoselow

E&E NEWS
122 C Street NW 7th Floor Washington, DC 20001
www.eenews.net | @EENewsUpdates
Energywire, Climatewire, Greenwire, E&E Daily, E&E News PM

Message

From: Wehrum, Bill [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=33D96AE800CF43A3911D94A7130B6C41-WEHRUM, WIL]
Sent: 7/26/2018 10:06:29 PM
To: DeLuca, Isabel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=0b021c30cbee4637a7c7ca683e5e044a-IDELUCA]
CC: Millett, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c067caa6c93544f78c26ab08cc567d27-Millett, John]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: Re: Gliders Holding Statement

Thanks Isabel.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Jul 26, 2018, at 6:04 PM, DeLuca, Isabel <DeLuca.Isabel@epa.gov> wrote:

Deliberative Process / Ex. 5

On Jul 26, 2018, at 5:59 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Deliberative Process / Ex. 5

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Begin forwarded message:

From: "Jackson, Ryan" <jackson.ryan@epa.gov>
Date: July 26, 2018 at 5:54:54 PM EDT
To: "Beach, Christopher" <beach.christopher@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Abboud, Michael" <abboud.michael@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Block, Molly" <block.molly@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>
Subject: RE: Gliders Holding Statement

Deliberative Process / Ex. 5

From: Beach, Christopher
Sent: Thursday, July 26, 2018 4:17 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Konkus, John <konkus.john@epa.gov>; Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>
Subject: RE: Gliders Holding Statement

Deliberative Process / Ex. 5

Thanks!
Chris

From: Abboud, Michael
Sent: Thursday, July 26, 2018 2:48 PM
To: Beach, Christopher <beach.christopher@epa.gov>
Cc: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Konkus, John <konkus.john@epa.gov>; Block, Molly <block.molly@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: Re: Gliders Holding Statement

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 26, 2018, at 2:07 PM, Beach, Christopher <beach.christopher@epa.gov> wrote:

Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 1:04 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Beach, Christopher <beach.christopher@epa.gov>

Cc: Traylor, Patrick <traylor.patrick@epa.gov>
Subject: RE: Gliders Holding Statement

Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Thursday, July 26, 2018 12:55 PM
To: Beach, Christopher <beach.christopher@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Subject: Re: Gliders Holding Statement

Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 26, 2018, at 10:42 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: July 26, 2018 at 10:33:33 AM MDT
To: "Bodine, Susan" <bodine.susan@epa.gov>
Cc: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>
Subject: Re: Gliders Holding Statement

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Sent from my iPhone

Begin forwarded message:

From: "Beach, Christopher" <beach.christopher@epa.gov>
Date: July 26, 2018 at 8:53:45 AM MDT
To: "Bodine, Susan" <bodine.susan@epa.gov>
Cc: "Konkus, John" <konkus.john@epa.gov>,

"Block, Molly" <block.molly@epa.gov>, "Abboud, Michael" <abboud.michael@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>

Subject: Gliders Holding Statement

Hi Susan,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks!

Chris

<Draft NAA response template for 3rd floor review.docx>

<DRAFT Memo to Withdraw Gliders for 3rd floor review.docx>

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 7/31/2018 3:22:20 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
Subject: MEDIA INQUIRY: Glider engines, upcoming policy action

Deliberative Process / Ex. 5

From: Jennifer A. Dlouhy (BLOOMBERG/ NEWSROOM:) [mailto:jdlouhy1@bloomberg.net]
Sent: Tuesday, July 31, 2018 11:18 AM
To: Block, Molly <block.molly@epa.gov>
Subject: Glider engines, upcoming policy action

Molly,

I'm resurfacing from a week-long vacation. Can I ask how the memo on the no-action assurance re glider engines was disseminated -- just so I won't miss future policy-related memos?

Also, I'm sure tomorrow's EPW hearing is the main action this week, but are you aware of anything else I should be planning for or expecting this week or next -- **for planning purposes only**? Mike had indicated you were the expert on all policy action!

I recognize the CAFE/GHG emission standards proposal s a moving target, and I recognize that if it's still at OIRA tomorrow, a release this week seems unlikely.

Any update on when we might see the quad O rule revision NPRM? I hear rumblings it's close to being done at OIRA.

Happy to chat by phone if it's easier/better.
Thanks,
Jen.

Jennifer A. Dlouhy
jdlouhy1@bloomberg.net / jendlouhyenergy@gmail.com
reporterjen@protonmail.com
Desk: 202.807.2159

Cell/Text/Signal: 202.905.3257
Twitter: @jendlouhyhc
Stories: http://bloom.bg/23Crpvk

Message

From: Block, Molly [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=60D0C681A16441A0B4FA16AA2DD4B9C5-BLOCK, MOLL]
Sent: 7/9/2018 3:38:46 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

Thank you! This is really helpful!

From: Harlow, David
Sent: Monday, July 9, 2018 11:35 AM
To: Block, Molly <block.molly@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

Molly,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Block, Molly
Sent: Monday, July 9, 2018 11:08 AM
To: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

One last question from the reporter: How does EPA define "small" manufacturers?

From: Block, Molly
Sent: Monday, July 9, 2018 10:27 AM
To: Woods, Clint <woods.Clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

Thanks all!

From: Woods, Clint
Sent: Monday, July 9, 2018 10:27 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: Re: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

You're right

On Jul 9, 2018, at 10:18 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Deliberative Process / Ex. 5

David/Alex/Clint – please correct if this is wrong as I was out last week and may have missed something.

From: Block, Molly
Sent: Monday, July 9, 2018 10:07 AM
To: Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

Please see highlighted question below. Thanks!

From: David Cullen [mailto:DCullen@TruckingInfo.com]
Sent: Monday, July 9, 2018 10:05 AM
To: Block, Molly <block.molly@epa.gov>
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

Thanks very much, Molly.
Just so I am clear, was the 'interim cap provided in 2017' the reported figure of 300?

David Cullen
Executive Editor
Heavy Duty Trucking & *Truckinginfo.com*
Bobit Business Media
P.O. Box 1524
Fairfield CT 06825
203-371-0040
dcullen@truckinginfo.com
Twitter: @David_L_Cullen
LinkedIn: David Lee Cullen

From: Block, Molly [mailto:block.molly@epa.gov]
Sent: Monday, July 9, 2018 10:03 AM
To: David Cullen <DCullen@TruckingInfo.com>
Cc: Press <Press@epa.gov>
Subject: RE: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....

In November 2017, the U.S. Environmental Protection Agency (EPA) proposed to repeal certain emission requirements for gliders. This proposal also contemplated as alternatives or additional measures an extension of compliance deadlines, and raising the cap on the number of gliders allowed to be built by small manufacturers.

The requirements in question first took effect in January 2017, and limit the number of new glider vehicles that small manufacturers can produce and sell without being subject to additional requirements. The limit took effect in two stages. In 2017, small manufacturers were limited to the number of gliders they built in their biggest production year between 2010 and 2014. In 2018, small manufacturers are limited to no more than 300 gliders.

After taking into consideration the public comments received as well as engagement with stakeholders, EPA has determined that additional evaluation of a number of matters is required before it can take final action on one or more aspects of the proposal. Until a final rule can be completed to bring regulatory certainty to glider manufacturers, the Agency is considering interim steps to reduce severe impacts on the industry. First, EPA is considering an extension of the compliance date, which would set a new effective date of December 31, 2019. And, second, the Agency is exercising its enforcement discretion in 2018 and 2019 for small manufacturers who limit production to the interim cap provided in 2017.

This is an action developed through coordination of both the EPA Office of Air and Radiation and EPA Office of Enforcement and Compliance Assurance.

From: David Cullen [mailto:DCullen@TruckingInfo.com]
Sent: Monday, July 9, 2018 10:02 AM
To: Block, Molly <block.molly@epa.gov>
Subject: Urgent request: Confirmation sought on EPA not enforcing 'glider kit' restrictions....
Importance: High

Hi Molly,

The New York Times has reported that you have stated that the EPA will be "exercising its enforcement discretion" this year and in 2019 to not restrict glider kit manufacturers to the existing 300 unit per-year limit on their production.

Can you confirm for the readers of *Heavy Duty Trucking* that this is correct?
Any other comments on elated rulemaking activity would also be helpful.

Thank you,

David

David Cullen
Executive Editor
Heavy Duty Trucking & *Truckinginfo.com*
Bobit Business Media
P.O. Box 1524
Fairfield CT 06825
203-371-0040
dcullen@truckinginfo.com
Twitter: @David_L_Cullen
LinkedIn: David Lee Cullen

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/25/2018 2:57:23 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: RE: Draft memo withdrawing glider NAA & draft cover letter template

Thank you for reviewing.

Attorney Client; Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Tuesday, July 24, 2018 10:54 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>
Subject: Re: Draft memo withdrawing glider NAA & draft cover letter template

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 24, 2018, at 8:32 PM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 2:52 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Draft memo withdrawing glider NAA & draft cover letter template

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency

(202) 564-3392 (office) | Personal Matters / Ex. 6 (telework/cell) | WJCN 7426KK

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 1:29 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin David (Orlin.David@epa.gov) <Orlin.David@epa.gov>
Subject: Draft memo withdrawing glider NAA & draft cover letter template

Please find attached a draft memo from the Acting Administrator withdrawing the gliders No Action Assurance that is ready for your review. Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Please let us know if it would be helpful to discuss either attachment further.

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office) | Personal Matters / Ex. 6 (telework/cell) | WJCN 7426KK

<DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm.docx>

<DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm clean.docx>

Message

From: Konkus, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=555471B2BAA6419E8E141696F4577062-KONKUS, JOH]
Sent: 10/25/2018 4:16:38 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]
Subject: RE: I hear EPA won't be delaying compliance for glider kits?

Daily Caller: SCOOP: EPA DELAYS REPEAL OF OBAMA-ERA TRUCK REGULATIONS CAUSING MASS LAYOFFS
https://dailycaller.com/2018/10/25/epa-delays-repeal-truck-regulations-mass-layoffs/
Michael Bastasch 11:20 AM 10/25/2018

EPA won't be giving any short-term relief to embattled glider kit manufacturers.
Instead, EPA will try to issue a rule change to Obama-era regulations by late next year.
Meanwhile, glider manufacturers have had to lay off hundreds of employees.
The Environmental Protection Agency (EPA) will not be providing any near-term relief to manufacturers burdened by Obama-era regulations on glider kits, two sources familiar with the matter told The Daily Caller News Foundation.

EPA Acting Administrator Andrew Wheeler told EPA staffers Wednesday he would not be granting glider kit manufacturers a compliance extension, one source with knowledge of the meeting told TheDCNF.

A second source said EPA would instead be issuing a rule to keep the glider industry from going under in the long-term, but that's not expected to come out until late next year. An EPA spokesman confirmed the agency is working on a glider rule. (RELATED: No 'Smoking Gun'? New York's Climate Lawsuit Against Exxon Isn't What You Think)

"EPA is continuing to develop a rule for the glider industry that better balances economic growth alongside continued environmental progress," EPA spokesman James Hewitt told TheDCNF.

Gliders are new truck chassis fitted over refurbished engines, which typically cost less and are more fuel efficient than new trucks. Obama-era rules capped glider kit production at individual companies, meaning some have had to lay off hundreds of workers to decrease their output.

Acting Administrator of the Environmental Protection Agency Andrew Wheeler speaks during an event in the Oval Office of the White House in Washington
Acting Administrator of the Environmental Protection Agency Andrew Wheeler speaks during an event hosted by U.S. President Donald Trump with workers on "Cutting the Red Tape, Unleashing Economic Freedom" in the Oval Office of the White House in Washington, U.S., Oct. 17, 2018. REUTERS/Joshua Roberts.

It's another hurdle in the Trump administration's plan to keep companies that refurbish used truck engines from having to lay off more workers. Already, major glider manufacturers have laid off hundreds of employees because of Obama-era rules.

Glider manufacturer Fitzgerald will be forced to cut production about 90 percent from previous years to meet Obama-era regulations, and the company has already laid off about half its workforce, which numbered more than 700 before

regulations went into effect. Indiana Phoenix Inc. and Harrison Truck Centers have also warned of layoffs should regulations continue.

Former EPA Administrator Scott Pruitt began working to repeal glider kit regulations after Fitzgerald submitted a petition to the agency in 2017. However, that effort has been hampered by legal setbacks and career bureaucrats resisting the administration's agenda.

President Donald Trump supported rolling back glider regulations, and as a candidate met with coal miners and glider executives at a Fitzgerald facility in 2016.

Recent court decisions, however, have made EPA more wary of how it goes about rolling back Obama administration regulations, according to a source familiar with the agency's thinking. In other words, EPA sees pursuing a compliance extension for glider makers as a waste of resources.

EPA officials feel the "court has shown the willingness to limit tools under the Trump administration that previous administrations had enjoyed," the source told TheDCNF. That includes limits on EPA's discretion in enforcing regulations.

EPA's biggest setback came in July when the D.C. Circuit Court blocked EPA from issuing a "no action assurance" notice on glider regulations. After the decision, Wheeler reversed course and decided to enforce Obama-era glider regulations.

"I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion," Wheeler said in a statement at the time.

Democrats praised Wheeler's decision, including from Delaware Democratic Sen. Tom Carper, the ranking member on the Senate committee responsible for EPA oversight — the Committee on Environment and Public Works (EPW).

EPW would also be responsible for confirmation hearings should Trump promote Wheeler from acting administrator to full-time agency head. Wheeler has met with Carper at least twice since taking over EPA in July, according to his public schedule.

Democrats, environmentalists and major truck manufacturers, including Volvo, support capping glider kit production.

From: Gunasekara, Mandy
Sent: Thursday, October 25, 2018 10:59 AM
To: Abboud, Michael <abboud.michael@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>; Konkus, John <konkus.john@epa.gov>; Hewitt, James <hewitt.james@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Re: I hear EPA won't be delaying compliance for glider kits?

Deliberative Process / Ex. 5

Sent from my iPhone

On Oct 25, 2018, at 10:44 AM, Abboud, Michael <abboud.michael@epa.gov> wrote:

> **Deliberative Process / Ex. 5**
>
> ---
>
> **From:** Hewitt, James
> **Sent:** Thursday, October 25, 2018 10:43 AM

To: Konkus, John <konkus.john@epa.gov>; Abboud, Michael <abboud.michael@epa.gov>; Block, Molly <block.molly@epa.gov>
Subject: Fwd: I hear EPA won't be delaying compliance for glider kits?

Sent from my iPhone

Begin forwarded message:

> **From:** Michael Bastasch <Mike@dailycallernewsfoundation.org>
> **Date:** October 25, 2018 at 10:41:50 AM EDT
> **To:** "Hewitt, James" <hewitt.james@epa.gov>
> **Subject: I hear EPA won't be delaying compliance for glider kits?**
>
> This true? EPA have a statement on it?
>
> --
> Michael Bastasch
> Daily Caller News Foundation

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/25/2018 12:32:30 AM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Draft memo withdrawing glider NAA & draft cover letter template
Attachments: DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm.docx; DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm clean.docx

---

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 2:52 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Draft memo withdrawing glider NAA & draft cover letter template

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office) Personal Matters / Ex. 6 (telework/cell) | WJCN 7426KK

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 1:29 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin David (Orlin.David@epa.gov) <Orlin.David@epa.gov>
Subject: Draft memo withdrawing glider NAA & draft cover letter template

Please find attached a draft memo from the Acting Administrator withdrawing the gliders No Action Assurance that is ready for your review. **Attorney Client; Deliberative Process / Ex. 5**

Attorney Client; Deliberative Process / Ex. 5

Please let us know if it would be helpful to discuss either attachment further.

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office) | Personal Matters / Ex. 6 (telework/cell) | WJCN 7426KK

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 10/23/2018 8:34:07 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
CC: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Background document for this morning's 10am glider briefing for AA Wehrum
Attachments: Glider Reconsideration Update for Bill Wehrum - February 2 2018.pptx

This just in from OTAQ…in case it helps in what you're putting together for Andrew

From: Hengst, Benjamin
Sent: Tuesday, October 23, 2018 4:13 PM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Grundler, Christopher <grundler.christopher@epa.gov>; Charmley, William <charmley.william@epa.gov>
Subject: FW: Background document for this morning's 10am glider briefing for AA Wehrum

Josh—

Deliberative Process / Ex. 5

Please let us know if you need anything further. Ben

From: Hengst, Benjamin
Sent: Friday, March 16, 2018 9:09 AM
To: OAR Briefings <OAR_Briefings@epa.gov>
Cc: Burch, Julia <Burch.Julia@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>
Subject: Fwd: Background document for this morning's 10am glider briefing for AA Wehrum

Hi folks — one additional item for Bill Wehrum's 10am on gliders. Please forward to him as appropriate. Thanks. Ben

Begin forwarded message:

> **From:** "Charmley, William" <charmley.william@epa.gov>
>
> AA Wehrum has the 2-page document we will walk through this morning at 10am.
>
> Given that the AA may be participating by phone, we also want to ensure he has a copy of the February 2 briefing we gave on this topic, in the event a question comes up regarding the details of any of the public comments.
>
> Please send this material up to OAR and to AA Wehrum.
>
> Thanks

Bill

Message

From: Dominguez, Alexander [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=5CED433B4EF54171864ED98A36CB7A5F-DOMINGUEZ,]
Sent: 11/9/2018 3:21:06 PM
To: Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]
Subject: FW: Gliders
Attachments: Glider Points_2018 07 16.docx

-----Original Message-----
From: Gunasekara, Mandy
Sent: Monday, July 16, 2018 4:02 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: RE: Gliders

TPs included in the attached.
-----Original Message-----
From: Wheeler, Andrew
Sent: Monday, July 16, 2018 7:31 AM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
Subject: Gliders

I need a one-pager of talking points on the glider issue before I meet with carper tomorrow. Not a background piece but talking points on what I should say. Thanks.

Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/17/2018 3:23:54 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: Fwd: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

Sent from my iPhone

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** July 17, 2018 at 11:19:33 AM EDT
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Subject: Re: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)**
>
> Concur.
>
> Sent from my iPhone
>
> On Jul 17, 2018, at 11:18 AM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:

Attorney Client / Ex. 5

> > Sent from my iPhone
> >
> > On Jul 17, 2018, at 11:17 AM, Harlow, David <harlow.david@epa.gov> wrote:
> >
> > > FYI.
> > >
> > > Sent from my iPhone
> > >
> > > Begin forwarded message:
> > >
> > > **From:** "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>
> > > **Date:** July 17, 2018 at 11:03:01 AM EDT
> > > **To:** "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Belser, Evan" <Belser.Evan@epa.gov>
> > > **Cc:** "Orlin, David" <Orlin.David@epa.gov>, "Srinivasan,

Gautam" <Srinivasan.Gautam@epa.gov>, "Zenick, Elliott" <Zenick.Elliott@epa.gov>
Subject: Decision Needed on Schedule/Stay by 1 pm re: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

Attorney Work Product; Attorney Client / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)|
WJCN 7426KK

From: Carrillo, Andrea
Sent: Tuesday, July 17, 2018 9:42 AM
To: OGC Immediate Office Support <OGCFrontOfficeSupportStaff@epa.gov>; OGC Immediate Office MGMT <OGC_Immediate_Office_MGMT@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William

<charmley.william@epa.gov>
Cc: Orlin David (Orlin.David@epa.gov) <Orlin.David@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Subject: NEW CAA LITIGATION: NGO challenges to no action assurance for gliders (Environmental Defense Fund, et al. v. EPA, DC Cir. 18-1190)

We have received the docketed petition filed by three NGOs seeking an emergency stay or summary vacatur, and an administrative stay while the court considers that motion, in the DC Circuit of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles," signed on July 6, 2018. The petition was filed on July 17 by the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

Attorney Work Product; Attorney Client / Ex. 5

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)|
WJCN 7426KK

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/26/2018 10:04:31 PM
To: Beach, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=6b124299bb6f46a39aa5d84519f25d5d-Beach, Chri]
Subject: Fwd: Gliders

The attached should help

Sent from my iPhone

Begin forwarded message:

> **From:** "Konkus, John" <konkus.john@epa.gov>
> **Date:** July 26, 2018 at 6:31:55 AM EDT
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Cc:** "Abboud, Michael" <abboud.michael@epa.gov>, "Hewitt, James" <hewitt.james@epa.gov>
> **Subject: Re: Gliders**
>
> Thank you.
>
>> On Jul 25, 2018, at 11:26 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>
>> Info attached. I believe this will happen tomorrow afternoon. Will keep you posted. The attached is more for information to use in response queries once word gets out.
>>
>> -----Original Message-----
>>
>> From: Konkus, John
>>
>> Sent: Wednesday, July 25, 2018 6:08 PM
>>
>> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
>>
>> Cc: Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
>>
>> Subject: Re: Gliders
>>
>> Please send info
>>
>>> On Jul 25, 2018, at 6:06 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>>>
>>> Do y'all have the latest on gliders? If not, I'll work up some info tonight. Tomorrow, we will be resending the no action assurance.

It's going to be a big deal. I'll follow up with more. Give me a call if anything comes up in the interim

Sent from my iPhone

<Glider NAA Comms.docx>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/1/2018 2:58:47 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: Re: Draft statement on gliders

Attorney Client; Deliberative Process / Ex. 5

Talk soon,
Mandy

Sent from my iPhone

On Jun 29, 2018, at 9:10 PM, Harlow, David <harlow.david@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jun 29, 2018, at 8:51 PM, Wehrum, Bill <Wehrum.Bill@epa.gov> wrote:

Thanks David and Alex. Three things:

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Thanks.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

On Jun 29, 2018, at 8:03 PM, Harlow, David <harlow.david@epa.gov> wrote:

Bill and Mandy,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

<dshREVGliders Programmatic Update_Draft (V1).docx>

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/26/2018 3:40:06 AM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]
Subject: FW: Gliders
Attachments: Glider NAA Comms.docx

FYI

From: Gunasekara, Mandy
Sent: Wednesday, July 25, 2018 11:30 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Cc: Jackson, Ryan <jackson.ryan@epa.gov>
Subject: Gliders

Per our earlier conversation. Keep this close. Once I get the go ahead that the withdrawal is communicated to petitioners/challengers, I'll let you know and you can call key folks on the hill.

Mandy M. Gunasekara
Principal Deputy Assistant Administrator
Office of Air and Radiation
US Environmental Protection Agency

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/26/2018 3:26:23 AM
To: Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
CC: Abboud, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6f5af791a1842f1adcc088cbf9ed3ce-Abboud, Mic]; Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]
Subject: RE: Gliders
Attachments: Glider NAA Comms.docx

Info attached. I believe this will happen tomorrow afternoon. Will keep you posted. The attached is more for information to use in response queries once word gets out.

-----Original Message-----
From: Konkus, John
Sent: Wednesday, July 25, 2018 6:08 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Abboud, Michael <abboud.michael@epa.gov>; Hewitt, James <hewitt.james@epa.gov>
Subject: Re: Gliders

Please send info

> On Jul 25, 2018, at 6:06 PM, Gunasekara, Mandy <Gunasekara.Mandy@epa.gov> wrote:
>
> Do y'all have the latest on gliders? If not, I'll work up some info tonight. Tomorrow, we will be resending the no action assurance. It's going to be a big deal. I'll follow up with more. Give me a call if anything comes up in the interim
>
> Sent from my iPhone

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/18/2018 6:45:19 PM
To: Hewitt, James [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=41b19dd598d340bb8032923d902d4bd1-Hewitt, Jam]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]
CC: Block, Molly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=60d0c681a16441a0b4fa16aa2dd4b9c5-Block, Moll]; Konkus, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=555471b2baa6419e8e141696f4577062-Konkus, Joh]
Subject: RE: Glider truck lawsuit

The agency is reviewing the decision.

From: Hewitt, James
Sent: Wednesday, July 18, 2018 2:44 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>
Cc: Block, Molly <block.molly@epa.gov>; Konkus, John <konkus.john@epa.gov>
Subject: FW: Glider truck lawsuit

David & Mandy,

How should we respond on this?

Thanks,
James

From: Timothy Cama [mailto:tcama@thehill.com]
Sent: Wednesday, July 18, 2018 2:40 PM
To: Press <Press@epa.gov>
Subject: Glider truck lawsuit

Hi folks-

It looks like the DC Circuit just put a stay on the July 6 glider truck "no action assurance" memo. It's attached.

Would you like to comment?

Thanks.

--
Timothy Cama, Staff writer
The Hill
(202) 695-6245
Secure: timothy.cama@protonmail.com

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/25/2018 9:11:22 PM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Orlin, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aa64dad518d64c5f9801eb9bb15b7ec3-DORLIN]
CC: Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]
Subject: RE: Talking point for Glider one-pager

Yes

From: Sutton, Tia
Sent: Wednesday, July 25, 2018 5:10 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>
Subject: Talking point for Glider one-pager

Mandy and David,

Attorney Client; Deliberative Process / Ex. 5

Thanks!
-Tia

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 7/25/2018 1:00:13 AM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Fwd: Draft memo withdrawing glider NAA & draft cover letter template
Attachments: DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm.docx; ATT00001.htm; DRAFT Memo to Withdraw Gliders NAA 7.24.18 243pm clean.docx; ATT00002.htm

To discuss tomorrow

Sent from my iPhone

Begin forwarded message:

From: "Schwab, Justin" <Schwab.Justin@epa.gov>
Date: July 24, 2018 at 8:32:30 PM EDT
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Subject: FW: Draft memo withdrawing glider NAA & draft cover letter template

---

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 2:52 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: RE: Draft memo withdrawing glider NAA & draft cover letter template

Attorney Client; Deliberative Process / Ex. 5

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

From: Carrillo, Andrea
Sent: Tuesday, July 24, 2018 1:29 PM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>; Orlin David (Orlin.David@epa.gov) <Orlin.David@epa.gov>
Subject: Draft memo withdrawing glider NAA & draft cover letter template

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Thanks,

Andrea Carrillo
Attorney-Advisor
Office of General Counsel
U.S. Environmental Protection Agency
(202) 564-3392 (office)| (202) 603-4003 (telework/cell)| WJCN 7426KK

Message

From: Gunasekara, Mandy [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=53D1A3CAA8BB4EBAB8A2D28CA59B6F45-GUNASEKARA,]
Sent: 10/2/2018 7:52:02 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

YAAAS

From: Schwab, Justin
Sent: Tuesday, October 2, 2018 3:51 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Hah!

The YOLO Doctrine.

From: Gunasekara, Mandy
Sent: Tuesday, October 2, 2018 3:51 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Tuesday, October 2, 2018 3:48 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Attorney Client; Deliberative Process / Ex. 5

From: Gunasekara, Mandy
Sent: Tuesday, October 2, 2018 3:44 PM
To: Schwab, Justin <Schwab.Justin@epa.gov>; Palich, Christian <palich.christian@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Tuesday, October 2, 2018 3:40 PM
To: Palich, Christian <palich.christian@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>

Cc: Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Attorney Client; Deliberative Process / Ex. 5

From: Palich, Christian
Sent: Tuesday, October 2, 2018 12:58 PM
To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Thanks Mandy!

Attorney Client; Deliberative Process / Ex. 5

Christian R. Palich
Deputy Associate Administrator
Office of Congressional & Intergovernmental Affairs
U.S Environmental Protection Agency
O: 202.564.4944
C: 202.306.4656
E: Palich.Christian@epa.gov

From: Gunasekara, Mandy
Sent: Tuesday, October 2, 2018 10:15 AM
To: Frye, Tony (Robert) <frye.robert@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>
Subject: RE: Administrator Wheeler EPW Hearing QFRs OMB Passback

Attorney Client; Deliberative Process / Ex. 5

Thanks!

From: Frye, Tony (Robert)
Sent: Thursday, September 27, 2018 12:29 PM
To: Woods, Clint <woods.clint@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>
Cc: Palich, Christian <palich.christian@epa.gov>; Haman, Patricia <Haman.Patricia@epa.gov>; Dominguez, Alexander

<dominguez.alexander@epa.gov>
Subject: Administrator Wheeler EPW Hearing QFRs OMB Passback

Hello Air Team – OMB reviewed Administrator Wheeler's QFR responses from his EPW hearing on 8.1.2018 and had the following questions and feedback. Let us know if you have any responses or updates by noon tomorrow, 9.28.2018, so we can get them back for review by Administrator Wheeler this weekend. Thank you in advance!

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

Deliberative Process / Ex. 5

3. EPA is currently taking public comment on its proposed renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020. EPA issued this proposal three days before issuing its second triennial report to Congress on biofuels and the environment.
    a. How does EPA plan to incorporate the findings of its second triennial report into the final renewable fuel volume obligations for 2019 and biomass-based diesel volume obligations for 2020?

Deliberative Process / Ex. 5

b. Will EPA seek to mitigate the impacts to the environment, as documented in the second triennial report, in its final volume obligations for 2019 and 2020, respectively?

Deliberative Process / Ex. 5

21. During the development of the "Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-26 Passenger Cars and Light Trucks", EPA officials met with OMB and NHTSA officials to convey their concerns about the proposal several times. They left numerous documents with OMB officials that are now part of the rulemaking docket[1].These documents indicate that there are significant problems with the model that was used by NHTSA to develop the proposal to freeze fuel economy and greenhouse gas tailpipe standards from 2020-26. One such example is a document titled "Email_5_-_Email_from_William_Charmley_to_Chandana_Achanta_-_June_18,_2018%20(1).pdf". This 122 page long document includes a number of PowerPoint presentations EPA made to OMB and NHTSA staff along with additional documentation and analysis.

    a. The document notes that "EPA analysis to date shows significant and fundamental flaws in CAFE model (both the CAFE version and the "GHG version").... These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards." Do you believe that each of these flaws were fully remedied before the rules were proposed? If so, please list the specific remedies that addressed each of EPA's concerns. If not, will you ensure that all necessary technical input from EPA's Office of Transportation and Air Quality is incorporated into the final rule in order to ensure that the rule cannot be successfully over-turned in court on grounds that the model on which it is based is significantly or fundamentally flawed?
    b. One of the main contributors to the NHTSA conclusions that the augural standards would cause thousands of additional deaths is NHTSA's "consumer choice" module, which asserts that making the fleet more fuel efficient will cause people to keep their less safe, older vehicles for

[1] https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0283-0453

longer, and that this will mean there are more unsafe vehicles on the road (because newer vehicles have more safety technologies). The document states that EPA believed this NHTSA model was flawed, because it predicts an additional 26 million non-existent vehicles would be in the 2016 fleet and 46 million additional non-existent vehicles in the 2030 fleet. For context, this would represent a 15-20% increase in registered vehicles. The document also notes that this problem appeared to be un-remedied several months after EPA first raised it. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

c. The document also found that NHTSA's consumer choice model predicts an unexplained, and apparently fictitious 10-15% increase in vehicle miles traveled (VMT). Specifically, the model somehow predicts people will drive an extra 239 billion miles in 2016 and 302 billion more miles in 2030. The increased deaths associated with higher efficiency standards in the NHTSA model are highly correlated to VMT (more driving equals more accidents equals more deaths). It would thus seem that EPA believes that the NHTSA safety numbers are predicated on an entirely fictitious driving scenario. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

d. The document also notes that NHTSA does not accurately model the manner in which automobile manufacturers trade credits as part of their compliance strategies, observing that NHTSA does not assume that compliance credits are traded between manufacturers' car and truck fleets (which is what manufacturers currently do), and that this has the effect of over-estimating compliance costs. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

e. The document observes that NHTSA's model overestimates the costs of particular technologies compared to their actual costs and use in the real world. The model also reportedly selects the most expensive technology packages to meet the standards, which overestimates the most cost-effective ways to do so by $1-2,000 per vehicle. Do you agree that manufacturers would be more likely to select the most cost-effective set of technologies with which to meet standards, rather than the least cost-effective set of technologies? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

f. The document stated that the NHTSA model omitted the benefits of some fuel-efficient technologies entirely, while others were erroneously inputted into the model. For example, 'start/stop' technology, a technology that causes engines to automatically shut off while vehicles are stopped in traffic (and thus use no fuel), is estimated to have a negative effect on fuel-efficiency, which is simply not plausible. Were these problems remedied in the proposed rule? If so, how? If not, will you ensure that they are remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

g. The document observed that NHTSA's model appears to add vehicle miles travelled in unexplained ways. For example, it observed that as many as 25 billion more miles of driving were predicted in a given year, even when the rebound effect (a measure of how much extra driving consumers are expected to do as a result of having more fuel-efficient vehicles) was set to 0 percent. The document observes that NHTSA's model actually predicts *less* driving when the rebound effect was set to 20 percent (meaning 20% more driving by consumers in more fuel-efficient vehicles would have been included in the model) than when it was kept to 0 percent. This suggests that NHTSA's model is incapable of predicting anything accurately, separate and

apart from whether one agrees with its policy premise. Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

h. The document states that NHTSA's "Proposed standards are detrimental to safety, rather than beneficial" once NHTSA's modeling errors were corrected. In fact, EPA found that the proposed standards result in "an average increase of 17 fatalities per year in VYs 2036-2045" relative to the current standards. Do you agree with this conclusion? If not, why not?

i. The document states that the NHTSA model projects that the current standards result in 8,000 fewer new automobiles sold annually in CYs 2021-2032, but that the used vehicle fleet would grow by 512,000 vehicles per year. That means that for every new fuel-efficient vehicle that consumers do not purchase (because NHTSA predicts their costs will be too high), somehow an additional 60 used vehicles will remain in the fleet. Do you agree that this scenario is simply implausible in the real world, as the EPA document points out? If not, why not? Was this problem remedied in the proposed rule? If so, how? If not, will you ensure that it is remedied before the EPA rule is finalized in order to avoid litigation that will result in the rule being overturned on grounds that the model on which it is based is significantly or fundamentally flawed?

j. In draft comments submitted to OMB on June 29, EPA commented that more than 90% of the net benefits for which the proposed rule to freeze fuel economy and greenhouse gas tailpipe standards takes credit are in fact benefits associated with vehicles manufactured prior to 2021. EPA attributed this to NHTSA's flawed consumer choice model, and questioned whether these could technically be attributable to the actual post-2021 rule. What would the net benefits of the preferred alternative— and for each of the other seven alternatives included in the NPRM — be if the agencies were to compare the costs to the benefits of cars manufactured within the MY 2021-29 cohort timeframe?

Deliberative Process / Ex. 5

22. On March 14, 2018, I wrote with several of my colleagues to former EPA Administrator Scott Pruitt about our deep concern over the reversal of the EPA's longstanding policy under Section 112 of the Clean Air Act to continuously regulate hazardous air pollution from major industrial sources. We believe revoking the "once in, always in" policy will lead to greater levels of arsenic, lead, mercury, and almost two hundred other air toxic pollutants in communities around the United States. In the letter, we asked that the "once in, always in" policy be reinstated at least until EPA has performed, and received public comment on, a thorough analysis of the expected increases in air toxic pollution and its corresponding impacts on human health.

    a. When former EPA Administrator Scott Pruitt was before the EPW Committee on January 30, 2018, he acknowledged the agency failed to do any analysis before making its ill-advised decision. Please provide all EPA analysis and modeling of the impacts of this policy change, including cancer and other human health effects, environmental effects, effects on state air

pollution emissions, cost-benefit analysis, and effects on interstate emissions. If none still exists today, I request that EPA complete such analysis and provide a timeline for completion.

b. How many individual facilities in the country were considered a "major source" under Section 112 on January 24, 2018?
c. Please identify, as of January 24, 2018, how many of the "major source" facilities identified in question 1(b) had complied with one or more MACT standards with the result being the source no longer emits more than 10 tons per year of any hazardous air pollutant or more than 25 tons per year of any combination of hazardous air pollutants? Please group these facilities by source categories (for example, there were X number of chemical plants meeting a MACT standard that resulted in lower emissions than the major source threshold).
d. Please provide state-by-state data and a national total for facilities identified in 1(c)
e. Please provide the potential maximum amount of pollution increases for all 187 hazardous air pollutants as a result of EPA's decision to revoke the "once in, always in" policy.
f. How much additional particulate matter, ozone, lead and other criteria pollution will be added to the atmosphere as a result of revoking the "once in, always in" policy?
g. Under the new memorandum, have any major source facilities in the power plant source category requested to be re-designated as an area source? If so, please provide a list of all such facilities, also indicating whether EPA has approved the re-designation.
h. Under the new memorandum how many major sources facilities, other than facilities in the power plant source category, have asked to be re-designated as an area source? Please provide a list of all facilities, also indicating whether EPA has approved the re-designation.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

25. During the August 1, 2018 EPW hearing, you fielded several questions from my colleagues on the Renewable Fuel Standard (RFS). Several times you mentioned that under your leadership, EPA would focus more on transparency when it comes to implementing the RFS program. This is welcome news since I've tried to get EPA to take this step for years. However, I am concerned that you may only be focused on transparency when it comes to the small refinery waiver process and not the entire program. I remain concerned about the volatility in the RFS compliance trading system used by EPA, known as the Renewable Identification Number (RIN) market, and believe market transparency is a big part of the solution.

    a. In your answers, you talked about creating a dashboard –without disclosing proprietary information – on who is getting the small refinery waivers and why. Can you discuss further what this dashboard may look like and a timeline on when it may be released?

Deliberative Process / Ex. 5

    b. The State of California has created a dashboard to provide weekly, monthly, quarterly and annually trading data for its own renewable fuel program. After talking to many stakeholders involved in that process, it seems that California's renewable fuel trading dashboard has been able to provide valuable insight into trading and helped reduced market volatility. EPA could implement something similar for the RFS RIN trading market. Is EPA considering a RIN dashboard that provides the public weekly, quarterly and annual RIN trading data? If not, why not?

Deliberative Process / Ex. 5

c. What further transparency measures is the EPA considering regarding the RFS program?

Deliberative Process / Ex. 5

32. Administrator Wheeler, during questioning, I discussed with you small refinery exemptions awarded to petitioners for the reason of disproportionate economic hardship. When EPA conducts its analysis to determine disproportionate economic hardship, please clarify if the EPA compares the high cost of compliance to only small refiners (those that produce 75,000 barrels of crude per day) **or** if the EPA compares the high cost of compliance to the entire refining industry.

Deliberative Process / Ex. 5

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

65. As you know, many of former Administrator Pruitt's proposed rulemakings have generated lawsuits from outside groups due to their questionable legality. You recognized the questionable legality of at least one of these rules in reversing former Administrator Pruitt's decision to lift the sales limits on so called "glider trucks." Given that many of former Administrator Pruitt's rules and proposed rulemakings were based on the same questionable legal ground as the glider trucks rule, please describe your plan, including a timeline, for withdrawing all other proposed rulemakings signed by former Administrator Pruitt.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5 | Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Tony Frye
Special Advisor
Office of Congressional Affairs
Environmental Protection Agency
Cell: 202.603.3225

Message

From: Fogarty, Johnpc [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8546B387C687410D88EEEE387DADDF56-JFOGAR02]
Sent: 7/27/2018 1:20:20 AM
To: Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Denton, Loren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d43f2615e2134c829d2bff835fc1bd3a-LDenton]
Subject: Fwd: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

FYI

Sent from my iPhone

Begin forwarded message:

> **From:** "Orquina, Jessica" <Orquina.Jessica@epa.gov>
> **Date:** July 26, 2018 at 9:12:06 PM EDT
> **To:** "Shiffman, Cari" <Shiffman.Cari@epa.gov>
> **Cc:** "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>, "egan, patrick" <egan.patrick@epa.gov>, "Prince, Christopher" <prince.christopher@epa.gov>
> **Subject: RE: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)**
>
> The document has been posted here: https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles-withdrawn
>
> I'm working now to publish the other pages.
>
> Jess
>
> Jessica Ann Orquina, Director
> Office of Web Communications
> U.S. Environmental Protection Agency
> Email: orquina.jessica@epa.gov
> Office: 202-564-0446
> Mobile: 202-322-8369
>
> ---
>
> **From:** Shiffman, Cari
> **Sent:** Thursday, July 26, 2018 9:04 PM
> **To:** Orquina, Jessica <Orquina.Jessica@epa.gov>
> **Cc:** Grantham, Nancy <Grantham.Nancy@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Fogarty, Johnpc <Fogarty.Johnpc@epa.gov>; egan, patrick <egan.patrick@epa.gov>
> **Subject:** Re: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)
>
> Yes, that is the document.
>
> Cari Shiffman, Chief of Staff

U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

On Jul 26, 2018, at 9:01 PM, Orquina, Jessica <Orquina.Jessica@epa.gov> wrote:

Can someone please confirm this is the document that needs to be posted?

Jess

Jessica Ann Orquina, Director
Office of Web Communications
U.S. Environmental Protection Agency
Email: orquina.jessica@epa.gov
Office: 202-564-0446
Mobile: 202-322-8369

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:23 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Orquina, Jessica <Orquina.Jessica@epa.gov>; Millett, John <Millett.John@epa.gov>; Birgfeld, Erin <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara,

Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

<Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf>

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/25/2018 7:12:44 PM
To: Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Mackey, Cyndy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b2f2b414786040ee8d75a21fa1c04a9b-Mackey, Cyndy]
Subject: RE: Agenda items for this Monday's ENRD call?

Attorney Client; Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Kelley, Rosemarie
Sent: Wednesday, July 25, 2018 11:49 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>
Subject: Agenda items for this Monday's ENRD call?

Susan and Patrick –

Do you have any suggested agenda topics for Monday's call with ENRD?

Rosemarie

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/25/2018 4:02:27 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS New Assignment - Ethel Bailey - AX-18-000-9416

Control AX-18-000-9416 has been assigned to your office on 7/25/18 12:02 PM by Ethel Bailey. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-18-000-9416
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Edge, Valerie S.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/23/2018 1:56:33 PM
To: Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]
CC: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]
Subject: RE: Agenda topics for ENRD call

We all agree.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Kelley, Rosemarie
Sent: Monday, July 23, 2018 9:48 AM
To: Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: RE: Agenda topics for ENRD call

Patrick –

Attorney Client; Deliberative Process / Ex. 5

Rosemarie

From: Traylor, Patrick
Sent: Wednesday, July 18, 2018 3:08 PM
To: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>
Subject: RE: Agenda topics for ENRD call

Attorney Client; Deliberative Process / Ex. 5

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Kelley, Rosemarie
Sent: Wednesday, July 18, 2018 2:53 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>

Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Mackey, Cyndy <Mackey.Cyndy@epa.gov>
Subject: Agenda topics for ENRD call

Susan and Patrick –

Do you have any topics that you would like to add to this Monday's ENRD call?

Rosemarie

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/21/2018 9:14:31 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS New Assignment - Cari Shiffman - AX-18-000-9371

Control AX-18-000-9371 has been assigned to your office on 7/21/18 5:14 PM by Cari Shiffman. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-18-000-9371
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Schultz, Gregory S.; Kilmartin, Peter F.; Becerra, Xavier; Jepsen, George; Corey, Richard W.; Madigan, Lisa; Mills, Janet T.; Frosh, Brian E.; Healey, Maura; Grewal, Gurbir S.; Underwood, Barbara D.; Stein, Joshua H.; McDonnell, Patrick; Rosenblum, Ellen F; Shapiro, Josh; Donovan, Thomas J.; Ferguson, Robert W.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/21/2018 9:13:55 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS New Assignment - Cari Shiffman - AX-18-000-9372

Control AX-18-000-9372 has been assigned to your office on 7/21/18 5:13 PM by Cari Shiffman. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-18-000-9372
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Kieley, Max; Corey, Richard W.; Jepsen, George; Madigan, Lisa; McDonnell, Patrick; Rosenblum, Ellen F; Shapiro, Josh; Donovan, Thomas J.; Ferguson, Robert W.; Becerra, Xavier; Mills, Janet T.; Frosh, Brian E.; Healey, Maura; Grewal, Gurbir S.; Underwood, Barbara D.; Stein, Joshua H.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/26/2018 8:59:24 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS Take Over Control - Cynthia Gaines - AX-18-000-9410

Control AX-18-000-9410 was taken over by Cynthia Gaines. The item has been removed from your CMS In Box, and does not currently require any action on your part.

Summary Information -
Control Number: AX-18-000-9410
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Hoffmann, David S.; Racine, Karl A.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/26/2018 8:58:44 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS Take Over Control - Cynthia Gaines - AX-18-000-9416

Control AX-18-000-9416 was taken over by Cynthia Gaines. The item has been removed from your CMS In Box, and does not currently require any action on your part.

Summary Information -
Control Number: AX-18-000-9416
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Edge, Valerie S.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/26/2018 8:56:16 PM
To: Pollins, Mark [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=591f52a6cc074a2394fb5ddc306c2fd7-Mpollins]; Kabler, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=43ad0b706d274149971842470865a30b-Kabler, Lauren]; McCray, Deborah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=680a397581f54431ba8725d446b5c7fa-Debbie McCray]; Bunnell, Julia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=07e03e4b1d4a4a44be575b8d613c5532-Jbunnell]; Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]; Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: CMS Take Over Control - Cynthia Gaines - AX-18-000-9409

Control AX-18-000-9409 was taken over by Cynthia Gaines. The item has been removed from your CMS In Box, and does not currently require any action on your part.

Summary Information -
Control Number: AX-18-000-9409
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Zonana, David A.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 7/10/2018 10:15:58 PM
To: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Holmes, Carol [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a63f745584114ae9b119547a4dc845fd-Holmes, Carol]
CC: Theis, Joseph [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a559a9bf75f14d13b38275cd3757c40e-Jtheis02]
Subject: Fwd: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827
Attachments: Gliders_Withdrawal_Stay_Letter_07.10.18_FINAL SUBMISSION - FINAL.pdf; ATT00001.htm; Super Polluting Diesel Freight Trucks - No Action Assurance - July 6 -2018.pdf; ATT00002.htm

FYI

Rosemarie

Begin forwarded message:

From: "Traylor, Patrick" <traylor.patrick@epa.gov>
Date: July 10, 2018 at 5:31:14 PM EDT
To: "Kelley, Rosemarie" <Kelley.Rosemarie@epa.gov>, "Brooks, Phillip" <Brooks.Phillip@epa.gov>, "Belser, Evan" <Belser.Evan@epa.gov>
Subject: FW: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

FYSA

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

From: Vickie Patton [mailto:vpatton@edf.org]
Sent: Tuesday, July 10, 2018 5:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; A-AND-R-DOCKET <A-AND-R-DOCKET@epa.gov>
Cc: Martha Roberts <mroberts@edf.org>; Peter Zalzal <pzalzal@edf.org>; Alice Henderson <ahenderson@edf.org>; matt@donahuegoldberg.com; 'Sean Donahue' <sean@donahuegoldberg.com>; Susannah Weaver (susannah@donahuegoldberg.com) <susannah@donahuegoldberg.com>; 'Vera Pardee' <VPardee@biologicaldiversity.org>; 'Joanne Spalding' <joanne.spalding@sierraclub.org>; Vickie Patton <vpatton@edf.org>
Subject: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

RE: Docket ID No. EPA–HQ–OAR–2014–0827

Dear Acting Administrator Wheeler,

As set forth in the attached correspondence, the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you immediately withdraw or stay the U.S. Environmental Protection Agency's attached decision to cease enforcing vital air pollution limits that the Clean Air Act and EPA's own duly promulgated regulations impose on super polluting "glider" diesel freight trucks. This extreme action is unlawful and is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers who must comply with the pollution limitations that the Agency is unlawfully not enforcing for their competitors.

Thank you for your immediate attention to this urgent matter.

Sincerely yours,
Vickie Patton
General Counsel
Environmental Defense Fund
(720) 837-6239

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00009907-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

ED_002444_00009907-00003

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00009907-00004

Message

From: Kelley, Rosemarie [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=23B7C900323047FCA012DF62C58C4D22-RKELLEY]
Sent: 7/26/2018 10:01:47 PM
To: Starfield, Lawrence [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8a89d6cd217d4254a5879abecb3f314e-Starfield, Lawrence]
Subject: FW: Glider NAA withdrawal memo - update on current status

FYI

Rosemarie

-----Original Message-----
From: Fogarty, Johnpc
Sent: Thursday, July 26, 2018 5:37 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>
Cc: Kelley, Rosemarie <Kelley.Rosemarie@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>
Subject: Glider NAA withdrawal memo - update on current status

Susan & Patrick - just a quick note to let you know where things stand. Folks here have been working to get the EPA web page ready to post the withdrawal memo once it is signed. The hope/expectation is that it will be signed sometime this evening, and folks are standing by to post the memo once it's done. If/when that happens tonight, one of us will let you know.

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 2/27/2019 10:21:18 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Fwd: Materials - SAB Response Briefing
Attachments: Draft SAB Response 2.27.19.docx; ATT00001.htm

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: February 27, 2019 at 3:45:26 PM EST
To: "Eby, Natasha" <eby.natasha@epa.gov>, "Humphreys, Hayly" <humphreys.hayly@epa.gov>
Cc: "Fitzmorris, Amanda" <fitzmorris.amanda@epa.gov>
Subject: Materials - SAB Response Briefing

All,

Attached is draft response. In addition, could we print the pages of the following letters to accompany in binder?:
Pg. 1 -2:
https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/7A84AADF3F2FE04A85258307005F7D70/$File/EPA-SAB-18-003+.pdf
Pg. 1-4:
https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/4ECB44CA28936083852582BB004ADE54/$File/EPA-SAB-18-003+Unsigned.pdf
Pg. 1-6:
https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/E7CB10891C8CAD8F852582B3006EFAF7/$File/EPA-SAB-18-002+.pdf
Pg. 1-7:
https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebReportsLastMonthBOARD/CF4E90721EEBC4C0852582B3006F0FD6/$File/EPA-SAB-18-001+.pdf

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/6/2018 8:47:08 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: OAR NAA request (clean copy)
Attachments: NAA Request Clean.docx

Here's what should be the final version.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/6/2018 8:17:20 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: No Action Assurance request
Attachments: consolRLSOnaamem (002).pdf

Clint,

Attached is a clean copy of the request, in .pdf form.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/6/2018 8:15:46 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: No Action Assurance request
Attachments: consolRLSOnaamem (002).docx

Bill,

A clean copy is attached.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Bolen, Brittany [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=31E872A691114372B5A6A88482A66E48-BOLEN, BRIT]
Sent: 7/6/2018 4:08:43 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Jackson, Ryan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=38bc8e18791a47d88a279db2fec8bd60-Jackson, Ry]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: Re: Revised Draft NAA Request -- Confidential

Deliberative Process / Ex. 5 Thanks.

Sent from my iPad

On Jul 6, 2018, at 9:27 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Attorney Client; Deliberative Process / Ex. 5

From: Bodine, Susan
Sent: Friday, July 6, 2018 10:15 AM
To: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Molina, Michael <molina.michael@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Bolen, Brittany <bolen.brittany@epa.gov>
Subject: RE: Revised Draft NAA Request -- Confidential

From: Leopold, Matt (OGC)
Sent: Friday, July 6, 2018 10:10 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Revised Draft NAA Request -- Confidential

I'm available as well **Attorney Client; Deliberative Process / Ex. 5**
Attorney Client; Deliberative Process / Ex. 5 Thanks

From: Bodine, Susan
Sent: Friday, July 6, 2018 9:51 AM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Molina, Michael <molina.michael@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Revised Draft NAA Request -- Confidential

Works for me as well.

Tamika, can you send an invite?

From: Wehrum, Bill
Sent: Friday, July 6, 2018 9:50 AM
To: Molina, Michael <molina.michael@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>
Cc: Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Revised Draft NAA Request -- Confidential

11:00 works for me.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Molina, Michael
Sent: Friday, July 6, 2018 9:48 AM
To: Bodine, Susan <bodine.susan@epa.gov>; Burton, Tamika <burton.tamika@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: Re: Revised Draft NAA Request -- Confidential

Attorney Client; Deliberative Process / Ex. 5

MM

Sent from my iPhone

On Jul 6, 2018, at 9:16 AM, Bodine, Susan <bodine.susan@epa.gov> wrote:

Michael,

Attorney Client; Deliberative Process / Ex. 5

Susan

From: Wehrum, Bill
Sent: Thursday, July 5, 2018 7:06 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Revised Draft NAA Request

Attorney Client; Deliberative Process / Ex. 5

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

<naamem (002).docx>

<naamem comments.docx>

<RFS Attest date NAA.PDF>

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/5/2018 1:40:21 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Fwd: Glider No Action Assurance

FYI.

Sent from my iPhone

Begin forwarded message:

> **From:** "Brooks, Phillip" <Brooks.Phillip@epa.gov>
> **Date:** July 5, 2018 at 9:38:18 AM EDT
> **To:** "Harlow, David" <harlow.david@epa.gov>
> **Cc:** "Fogarty, Johnpc" <Fogarty.Johnpc@epa.gov>
> **Subject: Glider No Action Assurance**
>
> David
>
> **Deliberative Process / Ex. 5**
>
> Thank you.

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/3/2018 8:16:34 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: OAR memo to OECA

Concerns raised by OECA staff:

Deliberative Process / Ex. 5

Thanks,

Susan

Message

From: Lewis, Josh [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B22D1D3BB3F84436A524F76AB6C79D7E-JOLEWIS]
Sent: 12/21/2018 8:29:54 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: RE: AW SEPW QFR Updates - OAR
Attachments: 2018.10.04 - EPA MANAGEMENT REVIEW - FINAL OMB REVIEW - ALL Wheeler QFRs 08.01.2018 BH+jl.docx

Deliberative Process / Ex. 5

From: Harlow, David
Sent: Thursday, December 20, 2018 11:19 AM
To: Lewis, Josh <Lewis.Josh@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Fwd: AW SEPW QFR Updates - OAR

Deliberative Process / Ex. 5

Sent from my iPhone

Begin forwarded message:

From: "Ringel, Aaron" <ringel.aaron@epa.gov>
Date: December 20, 2018 at 10:49:48 AM EST
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
Cc: "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
Subject: AW SEPW QFR Updates - OAR

Team OAR,

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Best,
Aaron

Aaron E. Ringel
Deputy Associate Administrator
Office of Congressional & Intergovernmental Relations
U.S. Environmental Protection Agency

W: 202.564.4373
Ringel.Aaron@epa.gov

Chairman Barrasso:

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: "In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol." 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

Deliberative Process / Ex. 5

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

Deliberative Process / Ex. 5

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to "initiate

dialogue on this matter."[1]

a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

Deliberative Process / Ex. 5

b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

Deliberative Process / Ex. 5

c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

Deliberative Process / Ex. 5

d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

Deliberative Process / Ex. 5

Senator Inhofe:

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from

[1] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

Deliberative Process / Ex. 5

Senator Markey:

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the "reconsideration process," the EPA would place a 90-day stay on oil and gas companies' compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA's suspension of the rule, the EPA's rationale for pursuing this issue still raises significant questions.

    a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

Deliberative Process / Ex. 5

Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA's denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

Deliberative Process / Ex. 5

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 12/20/2018 4:19:09 PM
To: Lewis, Josh [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22d1d3bb3f84436a524f76ab6c79d7e-JOLEWIS]
CC: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Fwd: AW SEPW QFR Updates - OAR
Attachments: 2018.10.04 - EPA MANAGEMENT REVIEW - FINAL OMB REVIEW - ALL Wheeler QFRs 08.01.2018.docx; ATT00001.htm

Not sure who can do/manage this, with Mandy away for the duration. The putative deadline is next Friday, and while I'm planning to be here next Thursday and Friday (the 27th and 28th), I'm not in a position to do the substantive work involved because I don't really know anything about these issues (which are almost all RFS).

Could you help us get this to the appropriate people, assuming anyone in the program offices are still around at this point in the week? Thanks!

Sent from my iPhone

Begin forwarded message:

> **From:** "Ringel, Aaron" <ringel.aaron@epa.gov>
> **Date:** December 20, 2018 at 10:49:48 AM EST
> **To:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
> **Cc:** "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Palich, Christian" <palich.christian@epa.gov>, "Frye, Tony (Robert)" <frye.robert@epa.gov>
> **Subject: AW SEPW QFR Updates - OAR**
>
> Team OAR,
>
> AA Wheeler went through the QFRs and had updates he needs made before we can get them submitted. I've pasted the relevant questions for your program office below that need edits and attached the doc for reference.
>
> We need to get these turned in by next Friday so we can move forward with his confirmation hearing. Considering there aren't many substantive changes required, if you can turn these around in next couple days so we can do a final review and get sign off it would be greatly appreciated. Please let myself, Christian, or Tony know if you have any questions.
>
> Best,
> Aaron
>
> **Aaron E. Ringel**
> *Deputy Associate Administrator*
> *Office of Congressional & Intergovernmental Relations*
> *U.S. Environmental Protection Agency*
>
> W: 202.564.4373
> Ringel.Aaron@epa.gov

Chairman Barrasso:

1. The administration has indicated that it plans to issue a Reid Vapor Pressure (RVP) waiver for fuels with ethanol concentrations higher than ten percent. However, in 2011, EPA formally reaffirmed that it did not have the authority to issue a RVP waiver for these fuels. Specifically, EPA stated that: "In sum, the text of section 211(h)(4) [of the Clean Air Act] and this legislative history supports EPA's interpretation, adopted in the 1991 rulemaking, that the 1 psi waiver only applies to gasoline blends containing 9 - 10 vol% ethanol." 76 Fed. Reg. 44406, 44433 (July 25, 2011). Please explain the process by which EPA has re-evaluated its statutory authority and come to a new conclusion.

Deliberative Process / Ex. 5

2. On June 29, 2018, EPA published a report entitled, "Biofuels and the Environment: Second Triennial Report to Congress." The report documents how activities associated with biofuel production and use have negatively affected the environment. Specifically, it shows how activities associated with biofuel production and use have reduced air quality, polluted waters, destroyed wildlife habitat and ecosystems, and depleted already stressed aquifers. Has EPA evaluated how a RVP waiver for fuels with more than ten percent ethanol would affect demand for biofuel feedstocks and the use of biofuels, and, in turn, make the impacts to the environment worse? If not, will EPA do so before issuing a RVP waiver for these fuels?

Deliberative Process / Ex. 5

27. Last year, I asked the Federal Trade Commission (FTC) staff to offer their expertise to EPA to help address RFS RIN market manipulation. I was told by former Administrator Scott Pruitt that on February 8, 2018, EPA and FTC did have a meeting to "initiate dialogue on this matter."[1]

    a. Have there been further conversations with the FTC? If so, please provide further details. If not, why not?

Deliberative Process / Ex. 5

[1] *See* Scott Pruitt, Administrator Environmental Protection Agency, Responses to Questions for the Record, Hearing Before the U.S. Senate Committee on Environment and Public Works entitled "*Oversight Hearing to Receive Testimony from Environmental Protection Agency Administrator Scott Pruitt*" (Jan. 30, 2018).

b. Please provide any suggestions received from FTC on what data EPA should be collecting to mitigate RIN market manipulation.

Deliberative Process / Ex. 5

c. On August 6, 2009, the FTC finalized a rule that prohibited market manipulation in the petroleum industry. So far, EPA has not taken similar steps. Why is market manipulation banned for the wholesale petroleum markets and not for the RFS RIN markets?

Deliberative Process / Ex. 5

d. Is the EPA considering a similar rulemaking to prohibit market manipulation in the RFS RIN market? If not, why not? If so, please provide further details and a planned timeline.

Deliberative Process / Ex. 5

Senator Inhofe:

39. In April, EPA issued a policy statement announcing that it would proactively address congressional directives and stakeholder concerns, by treating biogenic emissions from forest biomass as carbon neutral in a forthcoming regulatory action. What is the timeframe in which we can expect the proposed regulation will issue?

Deliberative Process / Ex. 5

Senator Markey:

51. Late last April, former EPA Administrator Scott Pruitt announced that the EPA will reconsider its methane emissions rule set by the last administration that aimed to combat climate change and protect public health, and simultaneously stated that during the

"reconsideration process," the EPA would place a 90-day stay on oil and gas companies' compliance with the rule. Methane is the second-biggest driver of climate change after carbon dioxide. Even though the D.C. Circuit Court of Appeals ruled 2-1 against the EPA's suspension of the rule, the EPA's rationale for pursuing this issue still raises significant questions.

a. What are the existing regulations that would curb the leaking of methane and other harmful pollutants without this rule?

Deliberative Process / Ex. 5

Senator Wicker:

81. On July 20, 2018, the U.S. Court of Appeals for the Fourth Circuit vacated and remanded the EPA's denial of a 2016 petition for small refinery hardship filed by Ergon – West Virginia, Inc., under the Renewable Fuel Standard. What actions is the EPA prepared to take to respond to this court ruling? What is the expected timeline for such actions?

Deliberative Process / Ex. 5

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/19/2018 10:23:02 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Molina, Michael [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c1d68da1a4587866e1850f22a6ae5-Molina, Mic]
CC: Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: paper for tomorrow morning's meeting
Attachments: gliders litigation paper for 07202018 briefing.docx

Please find attached.

Message

From: Leopold, Matt (OGC) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=4E5CDF09A3924DADA6D322C6794CC4FA-LEOPOLD, MA]
Sent: 7/18/2018 9:10:10 PM
To: Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]
CC: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: Re: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

Attorney Client; Deliberative Process / Ex. 5

Sent from my iPhone

On Jul 18, 2018, at 4:17 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:

> **Attorney Client; Deliberative Process / Ex. 5**
>
> Sent from my iPhone
>
> On Jul 18, 2018, at 3:59 PM, Leopold, Matt (OGC) <Leopold.Matt@epa.gov> wrote:
>
> > **Attorney Client; Deliberative Process / Ex. 5**
> >
> > Sent from my iPhone
> >
> > On Jul 18, 2018, at 3:55 PM, Bodine, Susan <bodine.susan@epa.gov> wrote:
> >
> > > **Attorney Client; Deliberative Process / Ex. 5**
> > >
> > > Sent from my iPhone
> > >
> > > On Jul 18, 2018, at 3:47 PM, Wheeler, Andrew <wheeler.andrew@epa.gov> wrote:
> > >
> > > > Sent from my iPhone
> > > >
> > > > Begin forwarded message:
> > > >
> > > > **From:** "Edge, Valerie (DOJ)" <Valerie.Edge@state.de.us>
> > > > **Date:** July 18, 2018 at 2:44:39 PM EDT
> > > > **To:** "wheeler.andrew@Epa.gov" <wheeler.andrew@Epa.gov>
> > > > **Subject: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles**

Dear Acting Administrator Wheeler,

Attached is a letter in which the Delaware Attorney General joins the request by several states last Friday to withdraw or issue an administrative stay regarding the above. The letter is also being submitted by certified mail.

Thank you for your consideration.

Valerie Edge

Valerie Edge
Deputy Attorney General
Delaware Department of Justice
102 W. Water Street
Dover, DE 19904
Email: valerie.edge@state.de.us
Phone: 302-739-4636
Direct Dial: 302-257-3219

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<gliderletter.pdf>

Message

From: White, Elizabeth [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F8AF641A6306479C9026142EF3B02BD7-WHITE, ELIZ]
Sent: 7/26/2018 9:13:40 PM
To: Leopold, Matt (OGC) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e5cdf09a3924dada6d322c6794cc4fa-Leopold, Ma]; Bodine, Susan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8c2cc6086fcc44c3be6b5d32b262d983-Bodine, Sus]; Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: FW: Gliders memo and response letters
Attachments: DRAFT Memo to Withdraw Gliders for 3rd floor review.docx; Draft NAA response template for 3rd floor review.docx

Importance: High

Attorney Client; Deliberative Process / Ex. 5

Thanks,
Beth

Beth White
Director, Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1781 direct
(202) 816-1701 cell

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 4:28 PM
To: White, Elizabeth <white.elizabeth@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>
Subject: Gliders memo and response letters
Importance: High

Good afternoon everyone,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 6/13/2018 5:23:02 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
Subject: FW: NAA documents
Attachments: NAArequest.docx; revNAA.docx

Bill,

For your awareness.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Harlow, David
Sent: Wednesday, June 13, 2018 1:22 PM
To: Ringel, Aaron <ringel.aaron@epa.gov>
Subject: NAA documents

As we discussed.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Wheeler, Andrew [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=17A1669EF5B54FBA8CB457845308787E-WHEELER, AN]
Sent: 7/17/2018 5:07:03 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: Fwd: Gliders
Attachments: Glider Points_2018 07 16.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
> **Date:** July 16, 2018 at 4:01:54 PM EDT
> **To:** "Wheeler, Andrew" Administrator's Email / Ex. 6 "Lyons, Troy" <lyons.troy@epa.gov>
> **Subject: RE: Gliders**
>
> TPs included in the attached.
> -----Original Message-----
> From: Wheeler, Andrew
> Sent: Monday, July 16, 2018 7:31 AM
> To: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>
> Subject: Gliders
>
> I need a one-pager of talking points on the glider issue before I meet with carper tomorrow. Not a background piece but talking points on what I should say. Thanks.
>
> Sent from my iPhone

Message

From: Hoffmann, David (OAG) [David.Hoffmann@dc.gov]
Sent: 7/19/2018 1:49:20 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
Subject: Request for Withdrawal or Administrative Stay of EPA's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
Attachments: Glider.Corr.to.Wheeler.pdf

On behalf of the Attorney General for the District of Columbia, please see attached correspondence regarding the above-captioned matter.

David S. Hoffmann
Assistant Attorney General
Public Integrity Section
Office of the Attorney General
for the District of Columbia
441 Fourth Street N.W.
Suite 650 North
Washington, D.C. 20001
O: (202) 442-9889
F : (202) 715-7768
david.hoffmann@dc.gov

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE

PUBLIC ADVOCACY DIVISION

July 19, 2018

Via Email and Overnight Mail
Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorney General for the District of Columbia writes to join in full, the request from the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board in their July 13, 2018 letter to you, annexed hereto, that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] *See* Susan P.Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding SmallManufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension").

[1] 1 The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).

441 Fourth Street, NW, Suite 1100S, Washington, D.C. 20001, (202) 727-3400, Fax (202) 741-0580

Thank you for your consideration.

Sincerely,

KARL A. RACINE
Attorney General

By:_____/S/_____
DAVID S. HOFFMANN
Assistant Attorney General
Office of the Attorney General
for the District of Columbia
441 Fourth Street N.W.
Suite 650 North
Washington, D.C. 20001
O: (202) 442-9889
F : (202) 715-7768
david.hoffmann@dc.gov

Message

From: Karen Ragosta [kragosta@riag.ri.gov]
Sent: 7/18/2018 7:59:59 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: Gregory Schultz [gSchultz@riag.ri.gov]
Subject: Glider Vehicles
Attachments: ATT00001.txt; RIAG Letter to EPA 7.18.18.pdf

Attached please find letter relative to the above. The original has been sent to you today by UPS Next Day Air.

Thank you.

Karen

Karen M. Ragosta | Legal Assistant, Civil Division
The State of Rhode Island |
Office of the Attorney General
150 South Main Street |
Providence, RI - 02903
Office: +1 401 274 4400 |
Ext:2328
kragosta@riag.ri.gov|
www.riag.ri.gov |

Please note: Starting Monday, July 23, 2018, the Bureau of Criminal Identification (BCI), Consumer Protection Unit, and Diversion Unit will be located at 4 Howard Avenue, Cranston (on the corner of Howard Avenue and Pontiac Avenue). As of that date, all in-person state and/or national background checks will ONLY be available at the 4 Howard Avenue, Cranston location (background checks will NO LONGER be available at the Attorney General's main office in Providence). For more information, please visit www.riag.ri.gov or call 401-274-4400.

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State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

July 18, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: ***Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"***

Dear Acting Administrator Wheeler:

Rhode Island Attorney General Peter F. Kilmartin hereby respectfully requests that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glide Rule").[1] *See* Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

In support of this request, Attorney General Kilmartin adopts and incorporates the attached July 13, 2018 letter to you from the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board.

Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, Attorney General

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).

Kilmartin respectfully requests, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.
Please feel free to contact this office if you wish to discuss this request for withdrawal or issuance of an administrative stay of the Glide Rule.

Yours Sincerely,

PETER F. KILMARTIN
Rhode Island Attorney General

By: _____
GREGORY S. SCHULTZ
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
Office: (401) 274 4400 | Ext: 2400
gschultz@riag.ri.gov

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

ED_002444_00012335-00003

The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

---

[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

ED_002444_00012335-00004

produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: ...on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion...." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

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Attorney General

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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00012335-00008

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

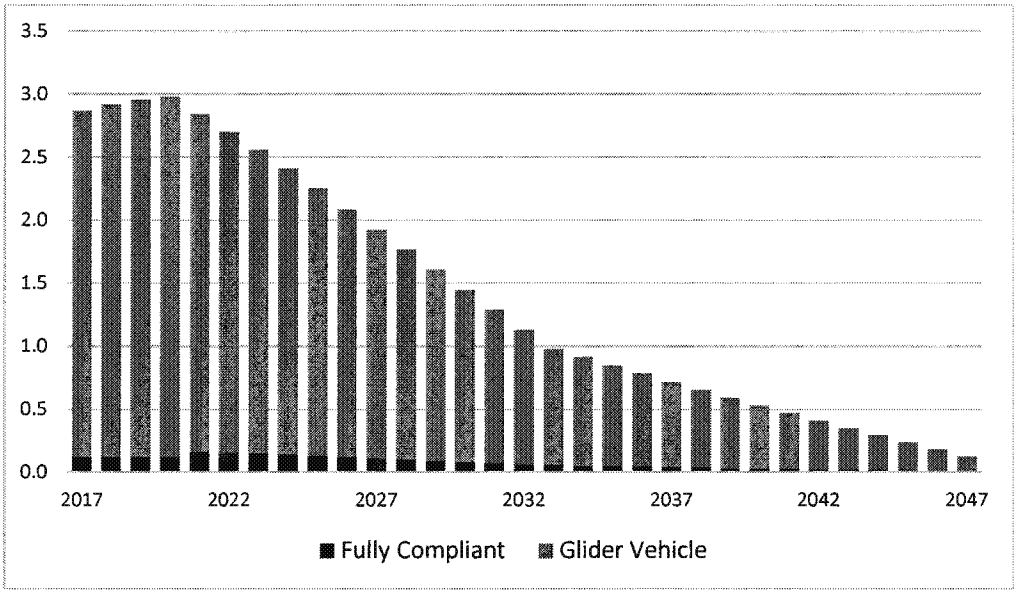
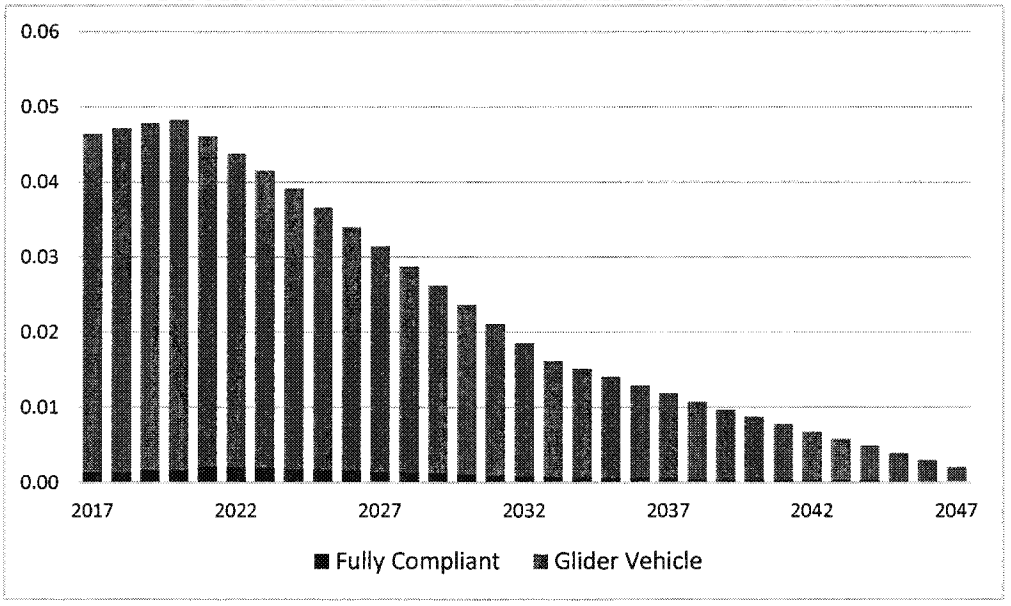


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

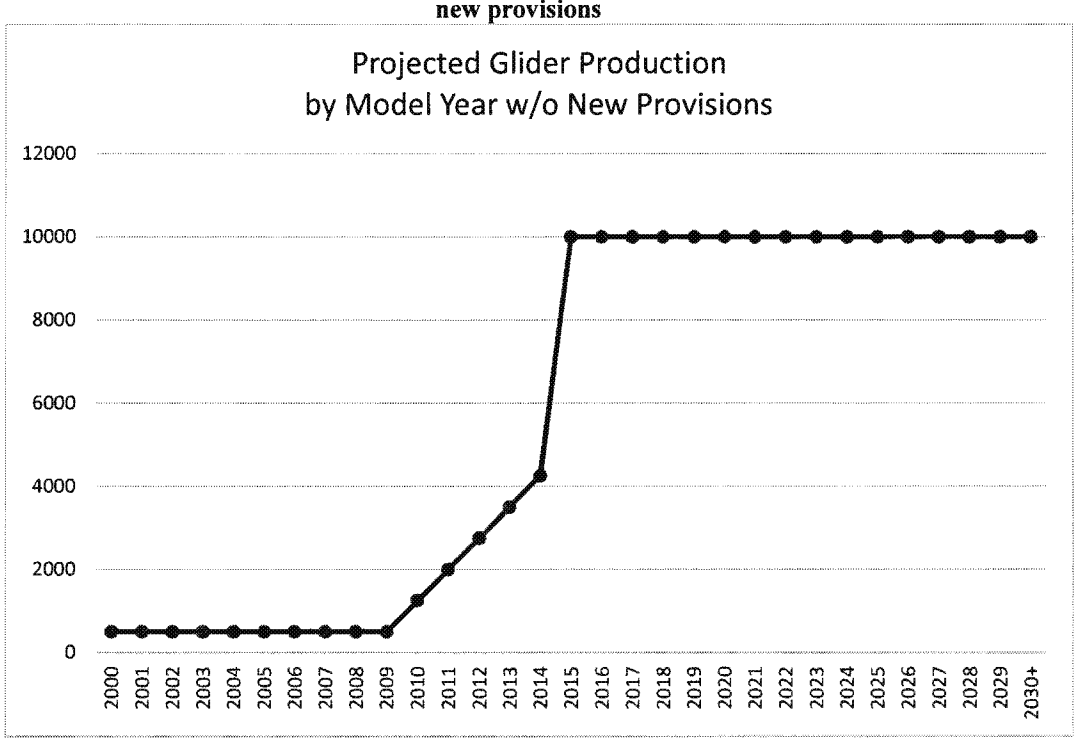


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

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ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

MEMORANDUM

OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: Debra Baldwin [Debra.Baldwin@doj.ca.gov]
Sent: 7/17/2018 10:08:39 PM
To: Wheeler, Andrew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=17a1669ef5b54fba8cb457845308787e-Wheeler, An]
CC: David Zonana [David.Zonana@doj.ca.gov]
Subject: Letter from Supervising Deputy Attorney General David Zonana Re Status of July 13, 2018 Correspondence
Attachments: DAZ 07.17.18 Letter to Andrew K. Wheeler (USEPA).pdf; States Letter to EPA regarding withdrawal or stay of NAA.pdf

Dear Acting Administrator Wheeler:

Please see the attached letter dated July 17, 2018, from Supervising Deputy Attorney General David A. Zonana, regarding the current status of the States' letter originally sent to you last Friday, July 13, 2018, via Federal Express, for anticipated delivery on Monday, July 16.

Hard copies of both attachments will be sent to you today by U.S. Certified Mail.

Thank you for your attention to this matter.

Debra Baldwin, Legal Secretary to
David A. Zonana, Supervising Deputy Attorney General

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Attorney General

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DEPARTMENT OF JUSTICE

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July 17, 2018

VIA EMAIL AND CERTIFIED MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

RE: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

On July 13, 2018, the enclosed letter was sent to your attention via email and Federal Express. The email to you and to your colleagues Susan Bodine and Bill Wehrum at EPA appears to have successfully transmitted. Federal Express, however, has reported that it was unable to deliver the letter to your office at EPA. For that reason, I am enclosing another copy of the letter, which is to be delivered via certified mail.

Sincerely,

DAVID A. ZONANA
Supervising Deputy Attorney General

For XAVIER BECERRA
Attorney General

Encl.

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

---

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

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[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: …on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion…." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By: _____
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Supervising Deputy Attorney General
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ED_002444_00012340-00004

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ED_002444_00012340-00005

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FOR THE STATE OF VERMONT

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ROBERT W. FERGUSON
Attorney General
KATHARINE G. SHIREY
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6769

cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00012340-00006

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

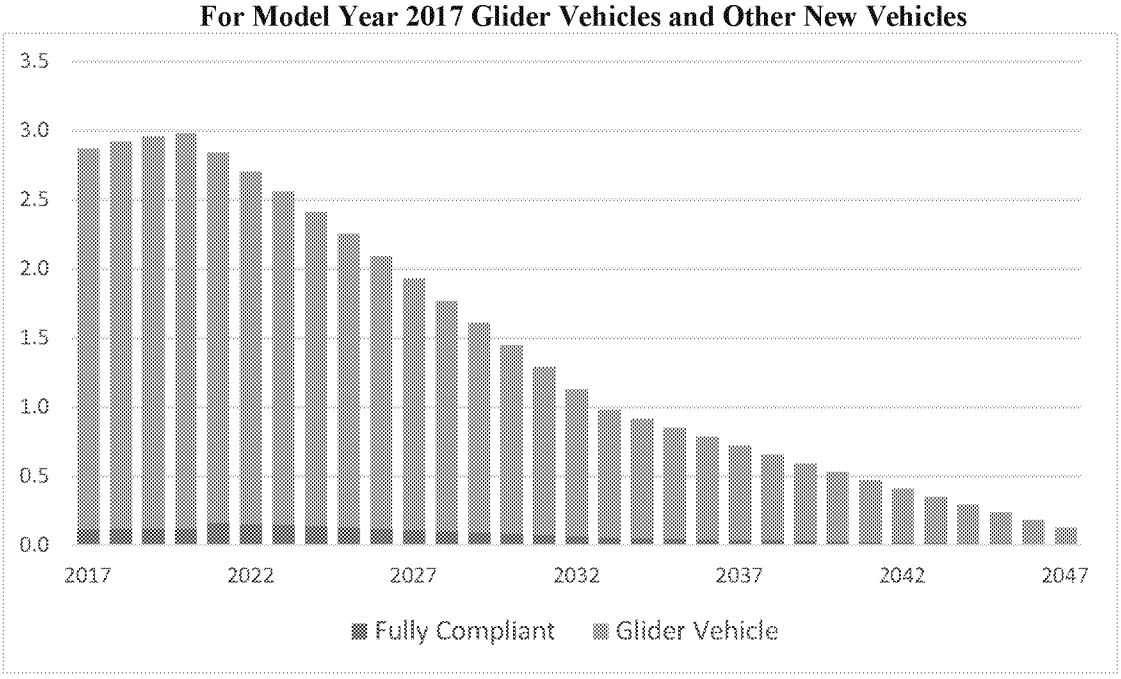
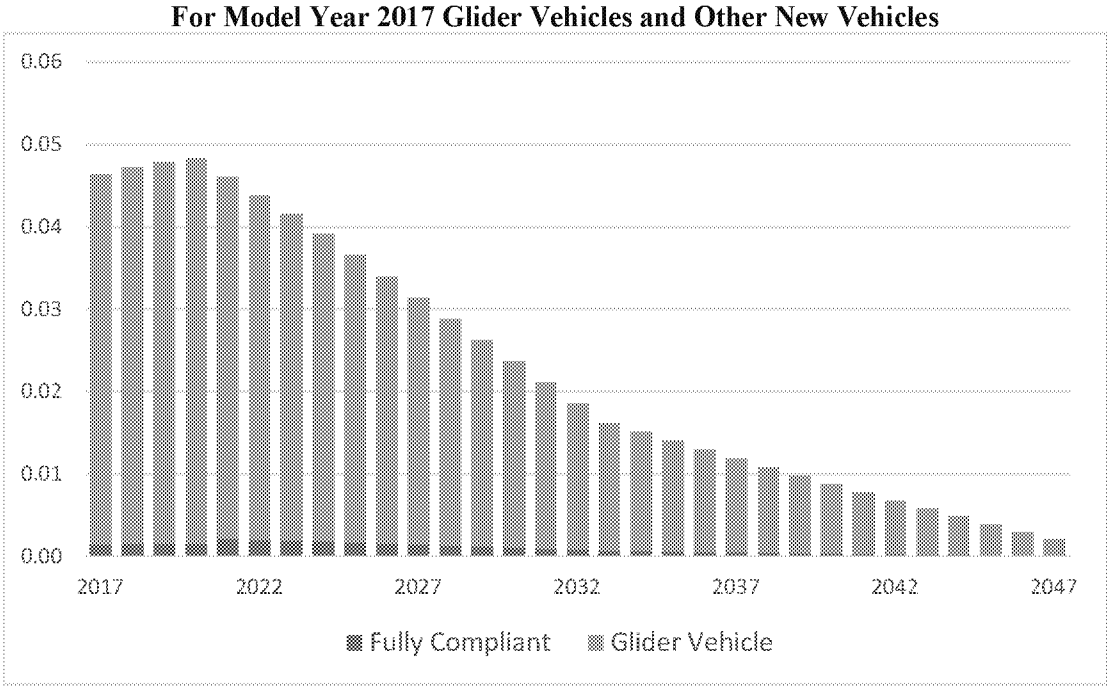


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

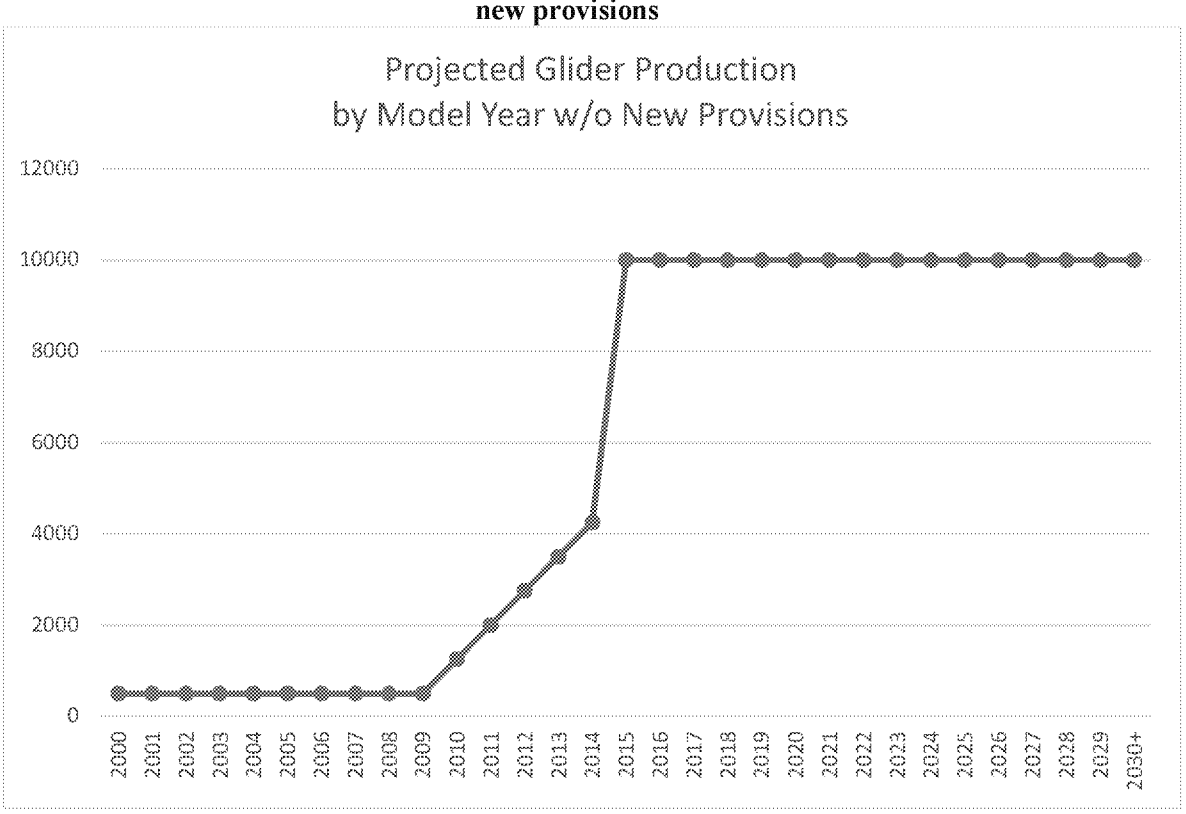


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

FEB 25 1998
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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: woods.clint@epa.gov [woods.clint@epa.gov]
Sent: 2/25/2019 2:48:24 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: Fwd: Updated SAB Draft
Attachments: Draft SAB Response 2-23-19.docx; ATT00001.htm

Begin forwarded message:

From: "Woods, Clint" <woods.clint@epa.gov>
Date: February 25, 2019 at 8:37:21 AM EST
To: "Bolen, Brittany" <bolen.brittany@epa.gov>, "Dunlap, David" <dunlap.david@epa.gov>, "Fitzmorris, Amanda" <fitzmorris.amanda@epa.gov>, "Jones, Lindsey" <jones.lindsey@epa.gov>
Cc: "Schwab, Justin" <schwab.justin@epa.gov>, "Harlow, David" <harlow.david@epa.gov>
Subject: Updated SAB Draft

Attached – Happy to discuss further. Saw the AAW briefing for Thursday – I will be in Ann Arbor, bbut plan to join by phone and happy to help on briefing material. Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Hoffman, Howard [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=9B294B6D14284E0D86D25BC366EFE259-HHOFFMAN]
Sent: 7/12/2018 7:29:02 PM
To: Marks, Matthew [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=66cf58c470d84403af7d7dfd7efc8016-Marks, Matthew]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Tsirigotis, Peter [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d19c179f3ccb4fadb48e3ae85563f132-PTSIRIGO]; Koerber, Mike [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c513901d4fd49f9ab101a6f7a7a863e-Koerber, Mike]; Culligan, Kevin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ab7ef4a59614fd4b4485668c42818c7-KCULLIGA]; Srinivasan, Gautam [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d69332838210416ba51779b19025f832-GSRINIVA]; Zenick, Elliott [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=1b2eaa2a560d415fb7c8ce9bb56c7ce5-EZENICK]
CC: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: RE: By COB Fri. - Draft Response to SAB Letter
Attachments: EDIT Draft 071218 - Admin Response to SAB re 2017 Actions + Sci Transpy + Comments_HJH.docx

Attorney Client; Deliberative Process / Ex. 5

From: Marks, Matthew
Sent: Thursday, July 12, 2018 3:12 PM
To: Shoaff, John <Shoaff.John@epa.gov>; Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike

<Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: RE: By COB Fri. - Draft Response to SAB Letter

Hi John,

Attorney Client; Deliberative Process / Ex. 5

Matt

From: Shoaff, John
Sent: Thursday, July 12, 2018 2:51 PM
To: Tsirigotis, Peter <Tsirigotis.Peter@epa.gov>; Koerber, Mike <Koerber.Mike@epa.gov>; Culligan, Kevin <Culligan.Kevin@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>; Cook, Leila <cook.leila@epa.gov>; Hengst, Benjamin <Hengst.Benjamin@epa.gov>; Charmley, William <charmley.william@epa.gov>; Burch, Julia <Burch.Julia@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hoffman, Howard <hoffman.howard@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Zenick, Elliott <Zenick.Elliott@epa.gov>
Cc: Schwab, Justin <Schwab.Justin@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: By COB Fri. - Draft Response to SAB Letter

ATTORNEY CLIENT COMMUNICATIONS
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All,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

John

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OFFICE OF AIR POLICY & PROGRAM SUPPORT (OAPPS)
OFFICE OF AIR & RADIATION | U.S. EPA | WJC NORTH 5442-B
1200 PENNSYLVANIA AVE. NW | MC 6103A | WASHINGTON, D.C. | 20460 | USA
ShoaffJohn@epa.gov | **1-202-564-0531 DIRECT | 1-202-257-1755 MOBILE**

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 6/14/2018 9:47:40 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Fwd: Letter from Fitzgerald Glider Kits to Administrator Pruitt, requesting a "no action assurance"
Attachments: No Action Request_FGK.pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: June 14, 2018 at 3:02:15 PM EDT
To: "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>
Cc: "Woods, Clint" <woods.Clint@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>
Subject: Letter from Fitzgerald Glider Kits to Administrator Pruitt, requesting a "no action assurance"

A short while ago, one of Fitzgerald's counsel sent me a courtesy copy of this, which is addressed to the Administrator. I pass it along to you for your immediate awareness.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 7/12/2018 12:41:19 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
CC: Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: RE: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency
Attachments: EDIT Draft 070518 - Admin Response to SAB re 2017 Actions + Sci Transpy cw.docx

ATTORNEY CLIENT COMMUNICATIONS
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Attorney Client; Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Wednesday, July 11, 2018 2:38 PM
To: Shoaff, John <Shoaff.John@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency

John, Leif, and Justin,

Attorney Client; Deliberative Process / Ex. 5

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

From: Shoaff, John
Sent: Thursday, July 5, 2018 12:29 PM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Hockstad, Leif <Hockstad.Leif@epa.gov>
Subject: Draft Admin. Response to SAB re: 2017 Actions & Scientific Transparency

Clint,

Attorney Client; Deliberative Process / Ex. 5

John

Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/10/2018 9:56:44 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: Fwd: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827
Attachments: Gliders_Withdrawal_Stay_Letter_07.10.18_FINAL SUBMISSION - FINAL.pdf; ATT00001.htm; Super Polluting Diesel Freight Trucks - No Action Assurance - July 6 -2018.pdf; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

From: "Bodine, Susan" <bodine.susan@epa.gov>
Date: July 10, 2018 at 5:25:01 PM EDT
To: "Schwab, Justin" <Schwab.Justin@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>
Subject: FW: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

FYSA

From: Vickie Patton [mailto:vpatton@edf.org]
Sent: Tuesday, July 10, 2018 5:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>; A-AND-R-DOCKET <A-AND-R-DOCKET@epa.gov>
Cc: Martha Roberts <mroberts@edf.org>; Peter Zalzal <pzalzal@edf.org>; Alice Henderson <ahenderson@edf.org>; matt@donahuegoldberg.com; 'Sean Donahue' <sean@donahuegoldberg.com>; Susannah Weaver (susannah@donahuegoldberg.com) <susannah@donahuegoldberg.com>; 'Vera Pardee' <VPardee@biologicaldiversity.org>; 'Joanne Spalding' <joanne.spalding@sierraclub.org>; Vickie Patton <vpatton@edf.org>
Subject: Request for Immediate Withdrawal or Administrative Stay of Decision to Cease Enforcement of Regulatory Limits on Pollution from Super Polluting "Glider" Diesel Freight Trucks - Docket ID No. EPA–HQ–OAR–2014–0827

RE: Docket ID No. EPA–HQ–OAR–2014–0827

Dear Acting Administrator Wheeler,

As set forth in the attached correspondence, the Environmental Defense Fund, Center for Biological Diversity, and Sierra Club respectfully request that you

immediately withdraw or stay the U.S. Environmental Protection Agency's attached decision to cease enforcing vital air pollution limits that the Clean Air Act and EPA's own duly promulgated regulations impose on super polluting "glider" diesel freight trucks. This extreme action is unlawful and is extraordinarily harmful to public health (as EPA's own data show) and to the vast majority of truck manufacturers who must comply with the pollution limitations that the Agency is unlawfully not enforcing for their competitors.

Thank you for your immediate attention to this urgent matter.

Sincerely yours,
Vickie Patton
General Counsel
Environmental Defense Fund
(720) 837-6239

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Message

From: Harlow, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B5A9A34E31FC4FE6B2BEADDDA2AFFA44-HARLOW, DAV]
Sent: 7/6/2018 1:51:19 PM
To: Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
CC: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: FW: Revised Draft NAA Request -- Confidential
Attachments: naamem (002).docx; naamem comments.docx

Justin,

Attorney Client; Deliberative Process / Ex. 5

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

From: Bodine, Susan
Sent: Friday, July 6, 2018 9:16 AM
To: Molina, Michael <molina.michael@epa.gov>
Cc: Wehrum, Bill <Wehrum.Bill@epa.gov>; Harlow, David <harlow.david@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: FW: Revised Draft NAA Request -- Confidential

Michael,

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Susan

From: Wehrum, Bill
Sent: Thursday, July 5, 2018 7:06 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Harlow, David <harlow.david@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Subject: Revised Draft NAA Request

Attorney Client; Deliberative Process / Ex. 5

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Message

From: Schwab, Justin [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EED0F609C0944CC2BBDB05DF3A10AADB-SCHWAB, JUS]
Sent: 2/14/2019 10:01:49 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]
Subject: RE: Draft Response
Attachments: EDIT dshRLSO SAB Response.docx

Purple line/bubbles attached.

From: Woods, Clint
Sent: Thursday, February 14, 2019 4:33 PM
To: Schwab, Justin <schwab.justin@epa.gov>
Subject: Fwd: Draft Response

Begin forwarded message:

> **From:** "Harlow, David" <harlow.david@epa.gov>
> **Date:** February 13, 2019 at 9:55:15 AM EST
> **To:** "Woods, Clint" <woods.clint@epa.gov>
> **Subject: RE: Draft Response**
>
> Clint,
>
> **Deliberative Process / Ex. 5**
>
> **David S. Harlow**
> **Senior Counsel**
> **Immediate Office of the Assistant Administrator**
> **Office of Air and Radiation, USEPA**
> **WJC-N Room 5409K**
> **1200 Pennsylvania Avenue NW**
> **Washington, DC 20460**
> **202-564-1233**
> Harlow.David@epa.gov
>
> ---
>
> **From:** Woods, Clint
> **Sent:** Monday, February 11, 2019 11:36 AM
> **To:** Harlow, David <harlow.david@epa.gov>
> **Subject:** FW: Draft Response

From: Woods, Clint
Sent: Sunday, February 10, 2019 6:23 PM
To: Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Dunlap, David <dunlap.david@epa.gov>
Subject: Draft Response

For discussion tmrw – Thanks!

Message

From: Dunlap, David [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=591EB15A268249DDA0C05A7451F765C3-DUNLAP, DAV]
Sent: 3/18/2019 3:11:34 PM
To: Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Jones, Lindsey [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4e1ca93678b0469eb3943c9612a2b7ff-Jones, Lind]
CC: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]; Schwab, Justin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eed0f609c0944cc2bbdb05df3a10aadb-Schwab, Jus]
Subject: RE: SAB Response Updated Letter - Draft/Deliberative
Attachments: Draft SAB Response 3.15.19-lj cw DDD.docx

Attorney Client; Deliberative Process / Ex. 5

Thanks

DDD

David D. Dunlap
O – 202.564.6620

From: Woods, Clint
Sent: Friday, March 15, 2019 10:44 AM
To: Jones, Lindsey <jones.lindsey@epa.gov>; Dunlap, David <dunlap.david@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: SAB Response Updated Letter - Draft/Deliberative

Attorney Client; Deliberative Process / Ex. 5

From: Woods, Clint
Sent: Thursday, March 14, 2019 7:44 AM
To: Jones, Lindsey <jones.lindsey@epa.gov>; Dunlap, David <dunlap.david@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>
Subject: RE: SAB Response Updated Letter - Draft/Deliberative

All,

Attorney Client; Deliberative Process / Ex. 5

Thanks!

From: Jones, Lindsey
Sent: Monday, March 4, 2019 11:16 AM
To: Dunlap, David <dunlap.david@epa.gov>; Woods, Clint <woods.clint@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: SAB Response Updated Letter - Draft/Deliberative

Attorney Client; Deliberative Process / Ex. 5

Thanks,
Lindsey

From: Dunlap, David
Sent: Monday, March 4, 2019 8:57 AM
To: Woods, Clint <woods.clint@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Jones, Lindsey <jones.lindsey@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: RE: SAB Response Updated Letter - Draft/Deliberative

Clint,

Attorney Client; Deliberative Process / Ex. 5

DDD

David D. Dunlap
O – 202.564.6620

From: Woods, Clint
Sent: Monday, March 4, 2019 6:49 AM
To: Dunlap, David <dunlap.david@epa.gov>
Cc: Bolen, Brittany <bolen.brittany@epa.gov>; Jones, Lindsey <jones.lindsey@epa.gov>; Schwab, Justin <Schwab.Justin@epa.gov>
Subject: Re: SAB Response Updated Letter - Draft/Deliberative

Attorney Client; Deliberative Process / Ex. 5

On Mar 3, 2019, at 8:29 PM, Dunlap, David <dunlap.david@epa.gov> wrote:

This is a follow-up to the meeting we had with the Administrator last week.

Attorney Client; Deliberative Process / Ex. 5

Thanks

DDD

David D. Dunlap
Deputy Assistant Administrator
US Environmental Protection Agency
Office of Research & Development
Office: 202.564.6620

<Draft SAB Response 3.3.19.docx>

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 7/6/2018 10:32:24 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: Fwd: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf; ATT00001.htm

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 7/6/2018 8:21:03 PM
To: Aaron.L.Szabo@ceq.eop.gov
Subject: Fwd: No Action Assurance request
Attachments: consolRLSOnaamem (002).pdf; ATT00001.htm

Draft attached - No separate policy. Thanks!

Begin forwarded message:

From: "Harlow, David" <harlow.david@epa.gov>
Date: July 6, 2018 at 4:17:20 PM EDT
To: "Woods, Clint" <woods.clint@epa.gov>
Cc: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
Subject: No Action Assurance request

Clint,

Attached is a clean copy of the request.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/26/2019 2:17:05 PM
To: Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]; Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]
Subject: SAB Response Draft
Attachments: Draft SAB Response 3.15.19-lj cw.docx

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 3/20/2019 1:22:54 PM
To: Dominguez, Alexander [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ced433b4ef54171864ed98a36cb7a5f-Dominguez,]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beadda2affa44-Harlow, Dav]
Subject: Fwd: Glider Trucks
Attachments: OAR-23 CLEAN Glider Kits 2018.docx; ATT00001.htm; 19-000-1965 Ricketts Glider Kits.pdf; ATT00002.htm; AL-19-000-1965 Resp Ltr_v4.docx; ATT00003.htm

Could you all give me a hand here?

Begin forwarded message:

> **From:** "Carter, Brittany S." <carter.brittanys@epa.gov>
> **Date:** March 20, 2019 at 9:17:48 AM EDT
> **To:** "Woods, Clint" <woods.clint@epa.gov>
> **Subject: FW: Glider Trucks**
>
> Good morning Clint,
>
> I know you are swamped. Just circling back on this. Need to get back to Governor Ivey's office. Thank you!
>
> -Britt
>
> ---
>
> **From:** Carter, Brittany S.
> **Sent:** Monday, March 18, 2019 11:09 AM
> **To:** Woods, Clint <woods.Clint@epa.gov>
> **Subject:** FW: Glider Trucks
>
> Hi Clint,
>
> Hope you are doing well. I sent around this request from Governor Ivey's shop on Thursday and have attached what I received back. Do you have any advice on what I should share with Governor Ivey's office?
>
> (Attached is the background and then Governor Ricketts' letter.)
>
> Thank you!
>
> -Britt
>
> Britt Carter
> Director of Intergovernmental Relations
> U.S. Environmental Protection Agency
> Cell: 202-440-0728

From: Pickle, Julia <Julia.Pickle@governor.alabama.gov>
Sent: Thursday, March 14, 2019 2:25 PM
To: Carter, Brittany S. <carter.brittanys@epa.gov>
Subject: RE: Glider Trucks

Thanks so much! Hope all is well

From: Carter, Brittany S. <carter.brittanys@epa.gov>
Sent: Thursday, March 14, 2019 1:21 PM
To: Pickle, Julia <Julia.Pickle@governor.alabama.gov>
Subject: RE: Glider Trucks

Checking with our team and will get back to you!

From: Pickle, Julia <Julia.Pickle@governor.alabama.gov>
Sent: Thursday, March 14, 2019 2:07 PM
To: Carter, Brittany S. <carter.brittanys@epa.gov>
Subject: Glider Trucks

Hey Britt!

I am reaching out because I had a call today with Jon Toomey with Fitzgerald about glider trucks. He mentioned there is a hold up on a new proposal regarding glider trucks. He made some really valid points on the phone and explained other governors are starting to write letters or have in the past.

Can you provide me with any further background info on this?

Julia Pickle
Federal Affairs Liaison and Special Assistant to the Deputy Chiefs of Staff

Office of Governor Kay Ivey
600 Dexter Avenue • Montgomery, AL • 36130
Office: 334-353-4952 • Fax: 334-242-3770

Julia.Pickle@governor.alabama.gov
https://governor.alabama.gov

Message

From: Woods, Clint [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BC65010F5C2E48F4BC2AA050DB50D198-WOODS, CLIN]
Sent: 2/26/2019 4:11:18 PM
To: Shoaff, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ac16fb09cf2c44adb34a7405dc331532-JShoaff]; Hockstad, Leif [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5a4fb1f8930645efa34fdfa7485bc6da-LHOCKSTA]
Subject: SAB Response - With OGC/ORD Comments
Attachments: Draft SAB Response 2.26.19.docx ORD edits.docx

John and Leif,

Deliberative Process / Ex. 5

Thanks!

Clint Woods
Deputy Assistant Administrator
Office of Air and Radiation, U.S. EPA
202.564.6562

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Andrew R. Wheeler
Acting Administrator

TO: Susan Parker Bodine
Assistant Administrator, Office of Enforcement and Compliance Assurance

William L. Wehrum
Assistant Administrator, Office of Air and Radiation

After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018 (attached), and upon further consideration as explained below, I am today withdrawing this No Action Assurance.

On July 6, 2018, the Office of Air and Radiation requested that the Office of Enforcement and Compliance Assurance exercise enforcement discretion through a no action assurance with respect to: 1) those small manufacturers to which 40 C.F.R. § 1037.150(1) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and 2) those companies to which 40 C.F.R. § 1037.150(t)(l)(vii) applies that sell glider kits to such small manufacturers (Suppliers). OAR explained in this request that in November 2017 the EPA had proposed reconsideration of provisions applicable to glider vehicles in the 2016 HD Phase 2 Rule[1] and was working toward a final action, but needed additional time to evaluate matters before taking final action. In the interim, industry compliance with the glider requirements of the HD Phase 2 Rule was resulting in the loss of jobs and threatening the viability of Small Manufacturers. Thus, OAR requested a No Action Assurance to preserve the status quo for Small Manufacturers and Suppliers as it was at the time of the November 2017 proposed rule reconsidering the HD Phase 2 Rule until such time as the EPA was able to take final action on, among other possible regulatory revisions, a rule extending the applicable compliance date for glider vehicles.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule).

On July 6, 2018, OECA issued a No Action Assurance pursuant to this request, stating that the EPA intends to exercise its enforcement discretion through July 6, 2019, or the effective date of a final rule extending the compliance date applicable to Small Manufacturers, whichever is earlier, with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(1)(3), and that the EPA also will exercise its enforcement discretion during the same period with respect to Suppliers that sell glider kits to those Small Manufacturers to which the No Action Assurance applied. The No Action Assurance explained that this use of enforcement discretion was in the public interest to avoid profound disruptions to small businesses while the EPA completes its reconsideration of the HD Phase 2 Rule. The No Action Assurance also explained that EPA reserves its right to revoke or modify this no action assurance.

Three environmental groups[2] and a coalition of states[3] filed several separate administrative requests for the EPA to either immediately withdraw or administratively stay the No Action Assurance. On July 17, 2018, the environmental groups petitioned for review of the No Action Assurance in the D.C. Circuit and filed an emergency motion for stay or summary vacatur in the D.C. Circuit, and a request for an administrative stay during the court's consideration of the emergency motion. On July 18, the court issued an administrative stay of the No Action Assurance for the duration of time the court considers the emergency motion. On July 19, 2018, the same coalition of states filed a similar petition and emergency motion for summary vacatur, or, in the alternative, for stay pending judicial review, in the same court.

OECA has a general guidance limiting the circumstances under which the agency will consider issuing no action assurances.[4] The 1995 restatement of that policy states that the principles against the issuance of a no action assurance are at "their most compelling in the context of rulemakings." OECA guidance is clear that a no action assurance should be issued only in an "extremely unusual" case when the no action assurance is necessary to serve the public interest and only when no other mechanism can adequately address that interest. Thus, historically OECA has issued no action assurances to address situations where the balance of the public interest supported the EPA temporarily and narrowly exercising its enforcement discretion.

After consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion. I am therefore withdrawing the July 6, 2018, No Action Assurance.

---

[2] Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

[3] California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

[4] Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Policy Against "No Action" Assurance (Nov. 16, 1984); Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Processing Requests for Use of Enforcement Discretion (March 3, 1995).

Furthermore, the EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, OAR shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

ED_002444_00000868-00005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

Internet Address (URL) ● http://www.epa.gov
Recycled/Recyclable ● Printed with Vegetable Oil Based Inks on 100% Postconsumer, Process Chlorine Free Recycled Paper

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000869-00005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00000869-00015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/6/2018 10:27:02 PM
To: Bolen, Brittany [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=31e872a691114372b5a6a88482a66e48-Bolen, Brit]
Subject: Fwd: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

> **From:** "Traylor, Patrick" <traylor.patrick@epa.gov>
> **To:** "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>
> **Subject: Glider No Action Assurance**
>
> Please find attached.
>
> **Patrick Traylor**
> Deputy Assistant Administrator
> Office of Enforcement and Compliance Assurance
> U.S. Environmental Protection Agency
> (202) 564-5238 (office)
> (202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00000888-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00000888-00004

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/6/2018 10:01:20 PM
To: Wehrum, Bill [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=33d96ae800cf43a3911d94a7130b6c41-Wehrum, Wil]
CC: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Gunasekara, Mandy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=53d1a3caa8bb4ebab8a2d28ca59b6f45-Gunasekara,]; Woods, Clint [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=bc65010f5c2e48f4bc2aa050db50d198-Woods, Clin]; Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]; Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
Subject: RE: NAA Request

OK, thanks.

From: Wehrum, Bill
Sent: Friday, July 6, 2018 6:01 PM
To: Bodine, Susan <bodine.susan@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: NAA Request

I will walk a signed copy to you in a minute. I am without admin support, so letterhead is currently beyond my capability.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Bodine, Susan
Sent: Friday, July 6, 2018 5:59 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>
Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: RE: NAA Request

Aren't you going to date and sign? (and letterhead)

From: Wehrum, Bill
Sent: Friday, July 6, 2018 5:56 PM
To: Bodine, Susan <bodine.susan@epa.gov>

Cc: Traylor, Patrick <traylor.patrick@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Woods, Clint <woods.clint@epa.gov>; Harlow, David <harlow.david@epa.gov>; Grundler, Christopher <grundler.christopher@epa.gov>
Subject: NAA Request

Susan – Attached is our final NAA request for small manufacturers of gliders.

_____
Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/6/2018 9:09:10 PM
To: Patrick Traylor (traylor.patrick@epa.gov) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: FW: OAR NAA Request
Attachments: NAA Request Clean.docx

From: Harlow, David
Sent: Friday, July 6, 2018 5:05 PM
To: Wehrum, Bill <Wehrum.Bill@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>
Cc: Woods, Clint <woods.clint@epa.gov>
Subject: OAR NAA Request

Bill,

Susan had picked up a few typos in the version we'd sent her last. She was good enough to flag them for us, and I've implemented the fixes. The fixed version is attached.

David S. Harlow
Senior Counsel
Immediate Office of the Assistant Administrator
Office of Air and Radiation, USEPA
WJC-N Room 5409K
1200 Pennsylvania Avenue NW
Washington, DC 20460
202-564-1233
Harlow.David@epa.gov

Message

From: Bodine, Susan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8C2CC6086FCC44C3BE6B5D32B262D983-BODINE, SUS]
Sent: 7/6/2018 8:59:49 PM
To: Harlow, David [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b5a9a34e31fc4fe6b2beaddda2affa44-Harlow, Dav]
Subject: NAA Request Clean.docx
Attachments: NAA Request Clean.docx

Message

From: Shiffman, Cari [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]
Sent: 7/25/2018 5:19:13 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
CC: Branning, Hannah [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a568a722d33649dfa02f3dc95cd7a3fd-Branning, Hannah]; Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]
Subject: Gliders - AG DC
Attachments: 18-000-9410.pdf

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE

PUBLIC ADVOCACY DIVISION

July 19, 2018

RECEIVED
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Via Email and Overnight Mail
Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorney General for the District of Columbia writes to join in full, the request from the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board in their July 13, 2018 letter to you, annexed hereto, that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] *See* Susan P.Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding SmallManufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension").

[1] 1 The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).

441 Fourth Street, NW, Suite 1100S, Washington, D.C. 20001, (202) 727-3400, Fax (202) 741-0580

Thank you for your consideration.

Sincerely,

KARL A. RACINE
Attorney General

By:_____/S/_____
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FROM:

David Hoffmann, AAG
Office of the Attorney General for District of Columbia
441 4th Street, N.W.
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Washington, D.C. 20001

JUL 23 2018

TO:

Andrew K. Wheeler
Acting Administrator
United States Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

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Message

From: Shiffman, Cari [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]
Sent: 7/20/2018 10:03:06 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: Gliders - Attorney General of Minnesota
Attachments: 18-000-9372.pdf

Another incoming request from the Attorney General of Rhode Island for a withdrawal or stay of the glider NAA.

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

July 18, 2018

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ST. PAUL, MN 55101-2127
TELEPHONE: (651) 297-1075

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
Mail Code 1101A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufactures of Glider Vehicles"*

Dear Acting Administrator Wheeler:

In a letter dated July 13, 2018 ("Multistate Letter"), thirteen state attorneys general and two state agencies requested that the United States Environmental Protection Agency ("EPA") administratively stay or withdraw its recent final action regarding the Glider Rule. *See* Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018). For the reasons stated in the enclosed Multistate Letter, the State of Minnesota, by and through the Minnesota Pollution Control Agency, likewise respectfully requests that EPA immediately withdraw or administratively stay its recent final action regarding the Glider Rule. *See also* Fed. R. Civ. App. P. 18(a)(1).

Sincerely,

MAX KIELEY
Manager, Environmental & Natural
Resources Division
Assistant Attorney General

(651) 757-1244 (Voice)
(651) 297-4139 (Fax)

Attorney for the State of Minnesota, by and through the Minnesota Pollution Control Agency

RECEIVED
2018 JUL 19 PM 4:29
OFFICE OF THE
EXECUTIVE SECRETARIAT

Enclosure

cc: Susan P. Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

---

[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: ...on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion...." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

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Attorney General

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Assistant Attorney General
Office of the Attorney General
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(360) 586-6769

cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

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ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

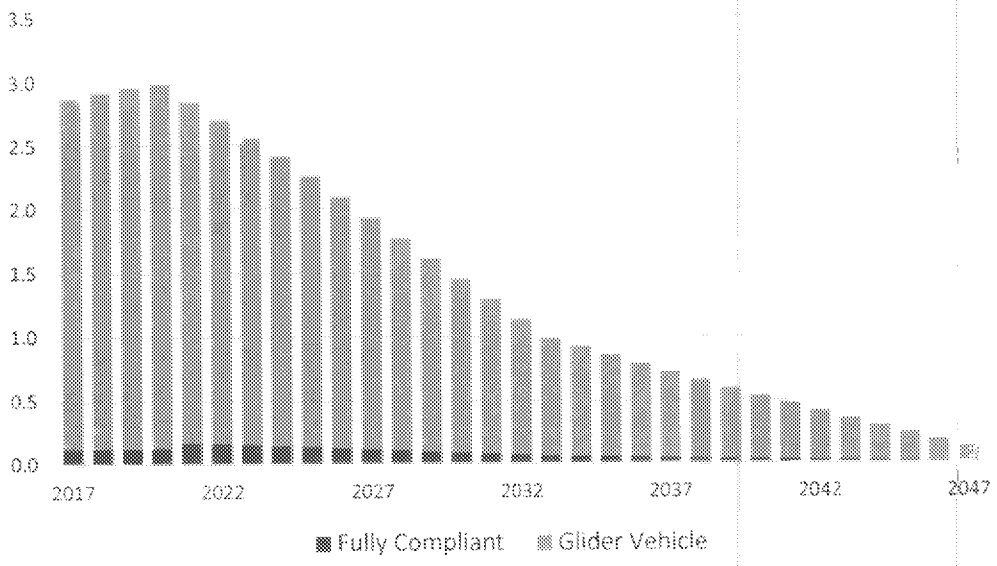
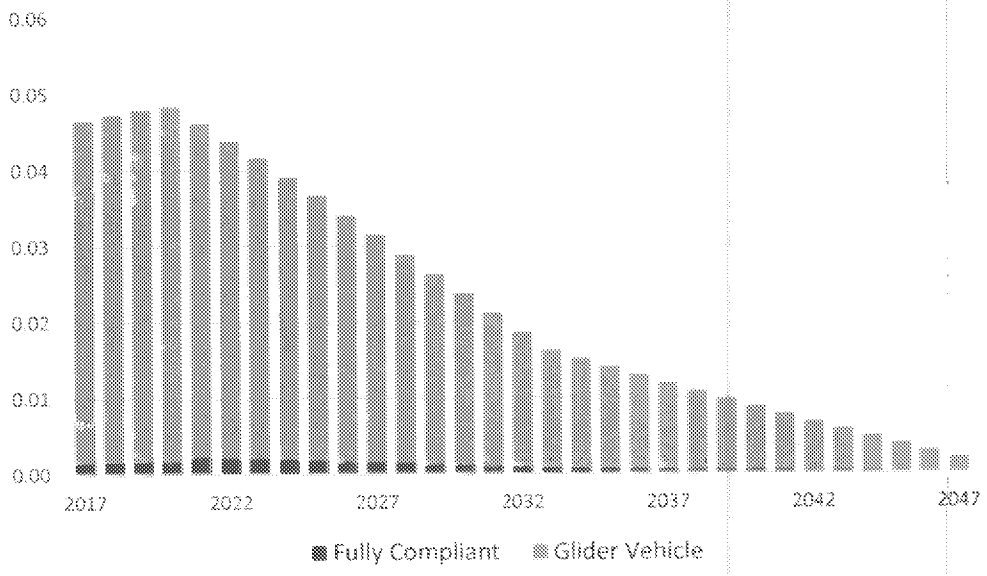


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

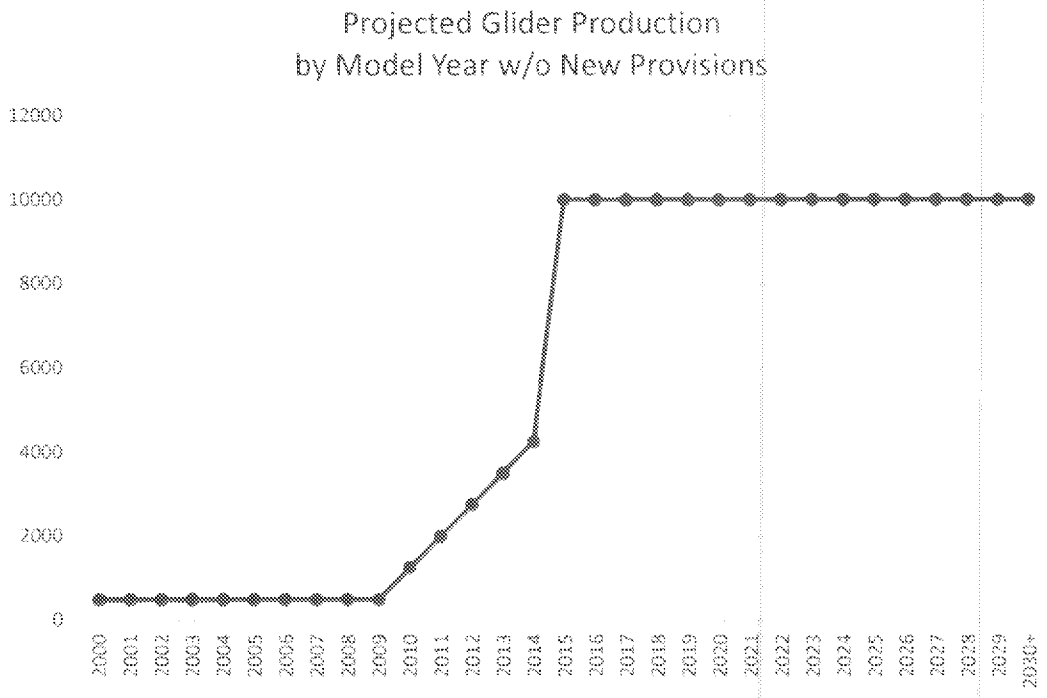


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

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ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
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NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

* both prior to and after a violation has been committed;

* on the basis that a State or local government is responding to the violation;

* on the basis that revisions to the underlying legal requirement are being considered;

* on the basis that the Agency has determined that the party is not liable or has a valid defense;

* on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or

* on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

* where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)

* in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

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[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

00035

00052

FedEx Express — Package US Airbill — 8100 0017 3858

1 From

Date 7/18/18

Sender's Name Max Kuehl — Phone

Company ST OF MN/ATTY GENERALS OFFICE

Address 445 MINNESOTA BREMER TOWER 900

City ST PAUL State MN ZIP 55101

2 Your Internal Billing Reference

3 To

Recipient's Name Andrew K. Wheeler — Phone

Company U.S. EPA (mail code 1101A)

Address 1101 Pennsylvania Ave NW

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address 200 Pennsylvania Ave NW

Use this line for the HOLD location address or for additional address information.

City Washington State D.C. ZIP

Hold Weekday — FedEx location address required. NOT available for FedEx First Overnight.

Hold Saturday — FedEx location address required. Available ONLY for FedEx Priority Overnight and FedEx Express Saver.

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8100 0017 3858

4 Express Packa

Next Business D

FedEx First Overn

FedEx Priority Ov

FedEx Standard Overnight — Next business afternoon. Saturday Delivery NOT available.

FedEx Express Saver — Third business day. Saturday Delivery NOT available.

5 Packaging — Declared value limit $500

FedEx Envelope* FedEx Pak* FedEx Box FedEx Tube Other

6 Special Handling and Delivery Signature Options

Saturday Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver

No Signature Required — Package may be left without obtaining a signature for delivery.

Direct Signature — Someone at recipient's address may sign for delivery.

Indirect Signature — Anyone available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods?

No Yes — As per attached Shipper's Declaration. Yes — Shipper's Declaration not required. Dry Ice — Cargo Aircraft Only

Regulations apply for dangerous goods — see the current FedEx Service Guide.

7 Payment — Bill to:

Sender Recipient Third Party Credit Card Cash/Check

Total Packages Total Weight Credit Card Auth.

611

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Federal Express Corporation

155476/Wrap
155476/Bulk
REV 5/01 RT

100% Recycled Paperboard

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DC-US
IAD

FID 5114996 18JUL18 JOTA 54602/9532/0C8A

H 4 10:30 0170 3858

669 KG 869 74

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Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/6/2018 10:15:47 PM
To: Kelley, Rosemarie [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23b7c900323047fca012df62c58c4d22-Rkelley]; Fogarty, Johnpc [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8546b387c687410d88eeee387daddf56-JFogar02]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
CC: Shiffman, Cari [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=645f74d11eec4eba9337cb5734ad6098-Shiffman, Cari]; Bailey, Ethel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9b33dd651fa04119be02b7b6b151ff91-Bailey, Ethel]
Subject: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf

It's done.

We'll post it Monday.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00002901-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

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Message

From: Shiffman, Cari [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=645F74D11EEC4EBA9337CB5734AD6098-SHIFFMAN, CARI]
Sent: 7/20/2018 3:21:30 PM
To: Traylor, Patrick [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b6d06c6b766c4b4b8bfdf6b0fea4b998-Traylor, Pa]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: Gliders - Attorney General of Rhode Island
Attachments: 18-000-9371.pdf

Patrick and Phill,

Another incoming request from the Attorney General of Rhode Island for a withdrawal or stay of the glider NAA.

Thanks,

Cari Shiffman, Chief of Staff
U.S. Environmental Protection Agency
Office of Enforcement and Compliance Assurance
Office: (202) 564-2898 | Mobile: (202) 823-3277

State of Rhode Island and Providence Plantations

DEPARTMENT OF ATTORNEY GENERAL
150 South Main Street • Providence, RI 02903
(401) 274-4400 - TDD (401) 453-0410

Peter F. Kilmartin, Attorney General

RECEIVED
2018 JUL 19 PM 4:29
OFFICE OF THE
BUSINESS COUNSEL

July 18, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
Office of the Administrator Code 1101A
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Re: ***Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"***

Dear Acting Administrator Wheeler:

Rhode Island Attorney General Peter F. Kilmartin hereby respectfully requests that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glide Rule").[1] *See* Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

In support of this request, Attorney General Kilmartin adopts and incorporates the attached July 13, 2018 letter to you from the Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board.

Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, Attorney General

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).

Kilmartin respectfully requests, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.
Please feel free to contact this office if you wish to discuss this request for withdrawal or issuance of an administrative stay of the Glide Rule.

Yours Sincerely,

PETER F. KILMARTIN
Rhode Island Attorney General

By: _____
GREGORY S. SCHULTZ
Special Assistant Attorney General
Rhode Island Department of Attorney General
150 South Main Street
Providence, RI 02903
Office: (401) 274 4400 | Ext: 2400
gschultz@riag.ri.gov

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

---

[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

---

[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: …on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

---

[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion…." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By: _____
DAVID A. ZONANA
Supervising Deputy Attorney General
MEGAN K. HEY
M. ELAINE MECKENSTOCK
MELINDA PILLING
Deputy Attorneys General
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FOR THE CALIFORNIA AIR RESOURCES BOARD

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Executive Officer
California Air Resources Board
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FOR THE STATE OF CONNECTICUT

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FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
6 State House Station
Augusta. ME 04333-0006
(207) 626-8545

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
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Raleigh, NC 27602
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ED_002444_00002903-00007

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Attorney General
KATHARINE G. SHIREY
Assistant Attorney General
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Olympia, WA 98504-0117
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cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00002903-00008

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

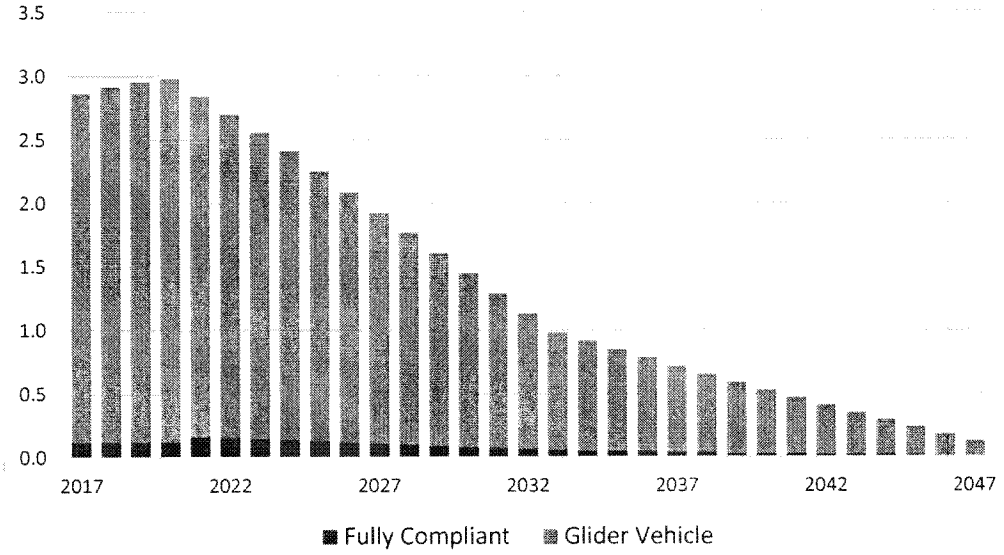
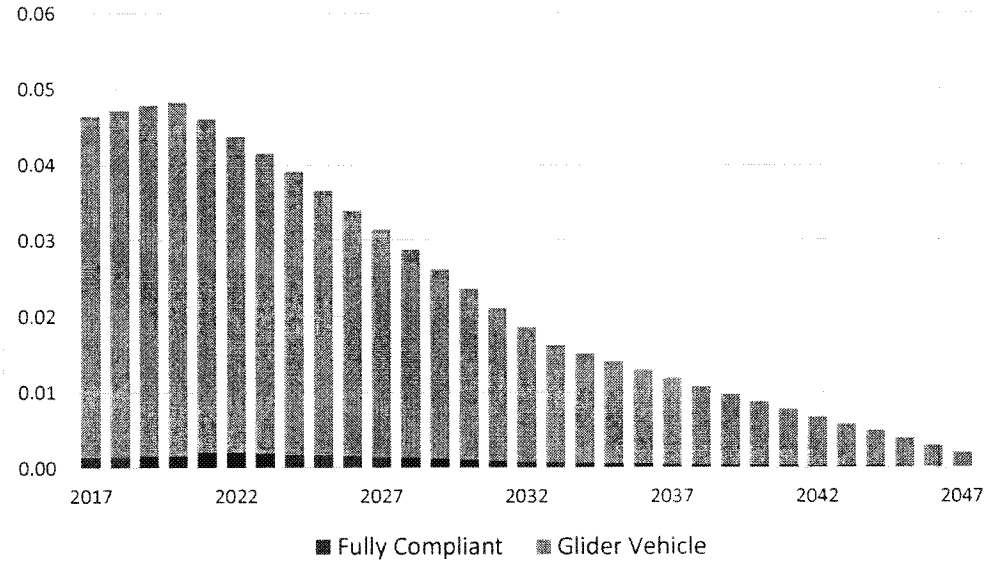


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles



ATTACHMENT B

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/27/2018 1:02:25 AM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]; Hengst, Benjamin [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c414e2bf04a246bb987d88498eefff06-Hengst, Benjamin]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: Fwd: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)
Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf; ATT00001.htm; Memo re Withdrawal of Conditional NAA Regarding Small Manufacturers of Glider Vehicles 07-26-2018.pdf; ATT00002.htm

FYI- to be posted shortly

Sent from my iPhone

Begin forwarded message:

From: "Johnson, Laura-S" <Johnson.Laura-S@epa.gov>
To: "Wheeler, Andrew" <wheeler.andrew@epa.gov>, "Jackson, Ryan" <jackson.ryan@epa.gov>, "Leopold, Matt (OGC)" <Leopold.Matt@epa.gov>, "Schwab, Justin" <Schwab.Justin@epa.gov>, "Orlin, David" <Orlin.David@epa.gov>, "Bodine, Susan" <bodine.susan@epa.gov>, "Wehrum, Bill" <Wehrum.Bill@epa.gov>, "Konkus, John" <konkus.john@epa.gov>, "Lyons, Troy" <lyons.troy@epa.gov>, "White, Elizabeth" <white.elizabeth@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Shaw, Betsy" <Shaw.Betsy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>
Cc: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Richardson, RobinH" <Richardson.RobinH@epa.gov>, "Lewis, Josh" <Lewis.Josh@epa.gov>, "Shiffman, Cari" <Shiffman.Cari@epa.gov>, "Hope, Brian" <Hope.Brian@epa.gov>, "Carrillo, Andrea" <Carrillo.Andrea@epa.gov>, "Sutton, Tia" <sutton.tia@epa.gov>, "Holmes, Carol" <Holmes.Carol@epa.gov>, "Traylor, Patrick" <traylor.patrick@epa.gov>, "Starfield, Lawrence" <Starfield.Lawrence@epa.gov>, "Badalamente, Mark" <Badalamente.Mark@epa.gov>, "Dominguez, Alexander" <dominguez.alexander@epa.gov>, "Atkinson, Emily" <Atkinson.Emily@epa.gov>, "Orquina, Jessica" <Orquina.Jessica@epa.gov>, "Millett, John" <Millett.John@epa.gov>, "Birgfeld, Erin" <Birgfeld.Erin@epa.gov>
Subject: SIGNED: (entire memo attached) Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Please refer to this version of the memo. The scanned version I just sent skipped a page. My apologies.

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 8:08 PM
To: Wheeler, Andrew <wheeler.andrew@epa.gov>; Jackson, Ryan <jackson.ryan@epa.gov>; Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Schwab, Justin <schwab.justin@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill

<Wehrum.Bill@epa.gov>; Konkus, John <konkus.john@epa.gov>; Lyons, Troy <lyons.troy@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Harlow, David <harlow.david@epa.gov>; Gunasekara, Mandy <Gunasekara.Mandy@epa.gov>; Shaw, Betsy <Shaw.Betsy@epa.gov>; Woods, Clint <woods.Clint@epa.gov>
Cc: Wooden-Aguilar, Helena <Wooden-Aguilar.Helena@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Richardson, RobinH <Richardson.RobinH@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Sutton, Tia <sutton.tia@epa.gov>; Holmes, Carol <Holmes.Carol@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Badalamente, Mark <Badalamente.Mark@epa.gov>; Dominguez, Alexander <dominguez.alexander@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
Subject: SIGNED: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles (memo and response letters)

Good evening,
After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018, and upon further consideration as explained in the attached memo, the Administrator is withdrawing the No Action Assurance.

Please see the attached memo for details regarding this decision.

Also attached to this email are letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. Please note that today's signed memo will be included as an enclosure for each response letter. The attachment contains 19 response letters.

Please contact me if you have any questions.

Sincerely,
Laura

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

MEMORANDUM

SUBJECT: Withdrawal of Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Andrew R. Wheeler
Acting Administrator

TO: Susan Parker Bodine
Assistant Administrator, Office of Enforcement and Compliance Assurance

William L. Wehrum
Assistant Administrator, Office of Air and Radiation

After review of the "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (No Action Assurance), signed on July 6, 2018 (attached), and upon further consideration as explained below, I am today withdrawing this No Action Assurance.

On July 6, 2018, the Office of Air and Radiation requested that the Office of Enforcement and Compliance Assurance exercise enforcement discretion through a no action assurance with respect to: 1) those small manufacturers to which 40 C.F.R. § 1037.150(1) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and 2) those companies to which 40 C.F.R. § 1037.150(t)(l)(vii) applies that sell glider kits to such small manufacturers (Suppliers). OAR explained in this request that in November 2017 the EPA had proposed reconsideration of provisions applicable to glider vehicles in the 2016 HD Phase 2 Rule[1] and was working toward a final action, but needed additional time to evaluate matters before taking final action. In the interim, industry compliance with the glider requirements of the HD Phase 2 Rule was resulting in the loss of jobs and threatening the viability of Small Manufacturers. Thus, OAR requested a No Action Assurance to preserve the status quo for Small Manufacturers and Suppliers as it was at the time of the November 2017 proposed rule reconsidering the HD Phase 2 Rule until such time as the EPA was able to take final action on, among other possible regulatory revisions, a rule extending the applicable compliance date for glider vehicles.

[1] Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles-Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule).

On July 6, 2018, OECA issued a No Action Assurance pursuant to this request, stating that the EPA intends to exercise its enforcement discretion through July 6, 2019, or the effective date of a final rule extending the compliance date applicable to Small Manufacturers, whichever is earlier, with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(1)(3), and that the EPA also will exercise its enforcement discretion during the same period with respect to Suppliers that sell glider kits to those Small Manufacturers to which the No Action Assurance applied. The No Action Assurance explained that this use of enforcement discretion was in the public interest to avoid profound disruptions to small businesses while the EPA completes its reconsideration of the HD Phase 2 Rule. The No Action Assurance also explained that EPA reserves its right to revoke or modify this no action assurance.

Three environmental groups[2] and a coalition of states[3] filed several separate administrative requests for the EPA to either immediately withdraw or administratively stay the No Action Assurance. On July 17, 2018, the environmental groups petitioned for review of the No Action Assurance in the D.C. Circuit and filed an emergency motion for stay or summary vacatur in the D.C. Circuit, and a request for an administrative stay during the court's consideration of the emergency motion. On July 18, the court issued an administrative stay of the No Action Assurance for the duration of time the court considers the emergency motion. On July 19, 2018, the same coalition of states filed a similar petition and emergency motion for summary vacatur, or, in the alternative, for stay pending judicial review, in the same court.

OECA has a general guidance limiting the circumstances under which the agency will consider issuing no action assurances.[4] The 1995 restatement of that policy states that the principles against the issuance of a no action assurance are at "their most compelling in the context of rulemakings." OECA guidance is clear that a no action assurance should be issued only in an "extremely unusual" case when the no action assurance is necessary to serve the public interest and only when no other mechanism can adequately address that interest. Thus, historically OECA has issued no action assurances to address situations where the balance of the public interest supported the EPA temporarily and narrowly exercising its enforcement discretion.

After consultation with OAR, OECA and OGC, and after further consideration of the No Action Assurance and information before me, including the administrative and judicial petitions and motions, and the application of agency guidance regarding no action assurances to these particular facts, I have concluded that the application of current regulations to the glider industry does not represent the kind of extremely unusual circumstances that support the EPA's exercise of enforcement discretion. I am therefore withdrawing the July 6, 2018, No Action Assurance.

---

[2] Environmental Defense Fund, Center for Biological Diversity, and Sierra Club.

[3] California, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington and the District of Columbia.

[4] Memorandum from Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Policy Against "No Action" Assurance (Nov. 16, 1984); Memorandum from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, to Assistant Administrators, Regional Administrators, General Counsel, and Inspector General, Processing Requests for Use of Enforcement Discretion (March 3, 1995).

Furthermore, the EPA will not offer any other no action assurance to any party with respect to the currently applicable requirements for glider manufacturers and their suppliers. Instead, OAR shall continue to move as expeditiously as possible on a regulatory revision regarding the requirements that apply to the introduction of glider vehicles into commerce to the extent consistent with statutory requirements and due consideration of air quality impacts.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00002909-00005

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

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vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00002910-00005

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00002910-00006

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

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Message

From: Traylor, Patrick [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=B6D06C6B766C4B4B8BFDF6B0FEA4B998-TRAYLOR, PA]
Sent: 7/16/2018 6:21:39 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Belser, Evan [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9a0635c271a4bac9c20634e45083c66-Belser, Evan]
Subject: Gliders: State AG Letter
Attachments: State Letter Requesting Withdrawal of NAA (July 13, 2018).pdf

FYSA

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington and the Pennsylvania Department of Environmental Protection and the California Air Resources Board

July 13, 2018

VIA EMAIL AND OVERNIGHT MAIL

Andrew K. Wheeler
Acting Administrator, United States
Environmental Protection Agency
William Jefferson Clinton Building
1200 Pennsylvania Ave N.W.
Washington, D.C. 20004

Re: *Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"*

Dear Acting Administrator Wheeler:

The Attorneys General of California, Connecticut, Illinois, Maine, Maryland, Massachusetts, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington, and the Pennsylvania Department of Environmental Protection and the California Air Resources Board (the "States") write to respectfully request that you immediately withdraw or issue an administrative stay of the United States Environmental Protection Agency's ("EPA's") unlawful de facto suspension of its duly promulgated regulation limiting the production of highly polluting glider vehicles and glider kits ("Glider Rule").[1] See Susan P. Bodine, Assistant Administrator, "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles" (July 6, 2018) ("de facto suspension" or "suspension").

As discussed below, EPA's de facto suspension of the Glider Rule is clearly unlawful. While framed as an exercise of enforcement discretion, EPA's action "amount[s] to an abdication of its statutory responsibility[y]"[2] to implement the Glider Rule and circumvents the substantive and procedural requirements that EPA must meet in order to modify a rule. Further, the action violates EPA's own longstanding policy against "no action assurances," and its practice of issuing such assurances only in narrow circumstances not applicable here, such as where there will not be an increase in environmental harm. Here, based on EPA's own data, the detrimental effect of EPA's suspension on public health and the environment will be dramatic. Therefore, absent quick action on your part to withdraw or stay EPA's de facto suspension, the States are prepared to take action in court.

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[1] The Glider Rule is part of the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (81 Fed. Reg. 73, 478 (Oct. 25, 2016)).
[2] See *Heckler v. Chaney*, 470 U.S. 821, 833, fn. 4 (1985).

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The Glider Rule, proposed in 2015 and adopted in 2016 as part of the Phase 2 heavy-duty vehicle fuel efficiency and greenhouse gas emissions standards rulemaking, struck a compromise between the interests of small businesses that salvage and refurbish engines from damaged trucks and the severe public health and environmental impacts from these old, highly polluting engines.[3] After a yearlong transition period, glider manufacturers are subject to limits on the use of *non-emissions compliant* engines, based on historic sales of gliders for their original purpose—to salvage relatively new engines from damaged trucks.[4] The de facto suspension perversely incentivizes the more recent "tenfold increase in glider kit production since the [model year] 2007 criteria pollutant emission standards took effect," an increase that "reflects an attempt to avoid these more stringent standards and (ultimately) the Clean Air Act."[5]

The facts demonstrate that EPA is using a "no action" assurance here because it recognizes it cannot lawfully support an amendment of the Glider Rule. EPA as much as admits that it cannot go forward with its Proposed Repeal without developing a new rationale and evidence to support it, due to concerns raised by public comment.[6] EPA also admits that it must undertake notice and comment rulemaking to alter a duly promulgated rule, such as the Glider Rule—not just issue a memorandum.[7] Further, it is well established that EPA must have statutory authority for any changes it proposes, and particularly for modification of effective dates or compliance dates of rules already in effect.[8]

EPA supplies no good reasons to support its action. EPA's de facto suspension of the Glider Rule from July 2018 through July 2019 will allow the manufacturers of *non-emission compliant* glider vehicles and glider kits to raise their production to many times the level that would otherwise be permissible[9] without fear of enforcement by EPA. Based on data EPA relied on in adopting the Glider Rule in 2015, adding this number of gliders to our nation's roads would lead to hundreds of premature deaths[10] and well over one hundred thousand tons of NOx and diesel particulate matter ("PM") pollution.[11] Without acknowledging the increased risk of premature deaths and other public health and environmental harms the de facto suspension will cause, EPA contends that it will prevent economic harms to manufacturers. However, in addition to the fact that such economic harms are speculative (given that these manufacturers could still

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[3] See, e.g., 81 FR at 73944-45; see also Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1963, Figures A-2 and A-3 (charting the difference in emissions between gliders and other new trucks) (Attachment A).

[4] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1961, Figure A-1 (Attachment B). The data from 2000-2009 reflects the historic number of engines salvaged from damaged trucks, while the numbers post-2009 reflect glider manufacturers expansion into use of non-emissions compliant engines sourced from trucks that had not been damaged in accidents. See 81 Fed. Reg. at 73,943.

[5] 81 Fed. Reg. at 73,943.

[6] De Facto Suspension at 2.

[7] *Id.*

[8] EPA should be well aware of these requirements, having been reminded of them recently by the Court of Appeals for the D.C. Circuit. See *Clean Air Council v. Pruitt*, 862 F.3d 1, 4 (D.C. Cir. 2017); see also *Natural Resources Defense Council v. National Highway Traffic Safety Administration*, -- F.3d --, 2018 WL 3819321 at *12 (2d Cir. June 29, 2018) (holding that an agency may not alter a rule without notice and comment, nor does an agency have any inherent authority to stay a final rule).

[9] See Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1964.

[10] *Id.* at 1877 (5,000-10,000 additional gliders would emit enough particulate matter pollution to cause 350 to 1,600 premature deaths).

[11] *Id.* at 1875-1876.

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produce emission compliant trucks[12]), unsupported and unquantified, EPA failed to consider the far greater economic consequences of the health impacts of increased glider sales—consequences EPA itself estimated to be, on average, from $300,000 to $1,100,000 *for each non-emissions compliant additional glider sold.*[13]

Further, EPA has not met any of the procedural requirements for the suspension of a rule. No proposal was put to the public and no comment was sought. No data or analysis accompanied EPA's arbitrary suspension. Indeed, the memoranda constituting the action were not even released publicly until three days after their issuance. And, the dates of the memoranda indicate that this decision was made with less than a single day's consideration.

EPA cannot avoid these legal requirements by elevating form over substance and seeking to paint its action as an unreviewable exercise of enforcement discretion. EPA's decision not to apply the limitations to any gliders for the next twelve months is a sweeping "abdication of its statutory responsibilities," not an exercise of enforcement discretion. EPA's action also clearly violates its own longstanding "*Policy Against 'No Action' Assurances*," which dates to the Reagan Administration.[14] The 1984 policy expressly states that it "applies in all contexts, including assurances requested: …on the basis that revisions to the underlying legal requirement are being considered,"[15] as is the case with EPA's de facto suspension. The 1984 policy allows for exceptions only in narrow cases, for example, where necessary "to allow action to avoid extreme risks to public health and safety."[16] Here, EPA's action does not avoid such risks, but instead creates them.[17] In short, EPA's action is an unlawful rule suspension masquerading as an exercise of enforcement discretion.

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[12] See 81 Fed. Reg. 73,518; 40 C.F.R. §§ 1037.150(t) and (t)(1)(vii).

[13] Response to Comments, Appendix A, EPA-426-R-16-901 (Aug. 2016) at 1965.

[14] Courtney M. Price, Assistant Administrator For Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances, (Nov. 16, 1984) (Attachment C).

[15] *Id.* at 2. In reaffirming the 1984 policy against "no action assurances" eleven years later, EPA called the policy "a necessary and critically important element of the wise exercise of the Agency's enforcement discretion…." Steven A. Herman, Assistant Administrator, Processing Requests for Use of Enforcement Discretion (Mar. 3, 1995) (Attachment D).

[16] *Id.* at 2.

[17] EPA's present "no action assurance" differs substantially from those that came before it, either because in prior examples EPA has expressly found that the no action assurance will not increase environmental harm, or because EPA has identified technical barriers, or because EPA needed additional time to respond to a court order.

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Given the absence of any rational or lawful basis to maintain EPA's de facto suspension, and in light of the imminent threat posed to public health and the environment, we respectfully request, pursuant to Federal Rule of Appellate Procedure 18(a)(1), that EPA immediately withdraw or administratively stay its action.

Yours Sincerely,

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
Attorney General

By: _____
DAVID A. ZONANA
Supervising Deputy Attorney General
MEGAN K. HEY
M. ELAINE MECKENSTOCK
MELINDA PILLING
Deputy Attorneys General
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, CA 94612
(510) 879-1248

FOR THE CALIFORNIA AIR RESOURCES BOARD

By: _____
RICHARD W. COREY
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, CA 95814
(916) 445-4383

FOR THE STATE OF CONNECTICUT

GEORGE JEPSEN
Attorney General
MATTHEW I. LEVINE
SCOTT N. KOSCHWITZ
Assistant Attorneys General
Office of the Attorney General
P.O. Box 120, 55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250

FOR THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
MATTHEW J. DUNN
GERALD T. KARR
DANIEL I. ROTTENBERG
Assistant Attorneys General
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-3816

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FOR THE STATE OF MAINE

JANET T. MILLS
Attorney General
GERALD D. REID
Assistant Attorney General
Chief, Natural Resources Division
6 State House Station
Augusta. ME 04333-0006
(207) 626-8545

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Assistant Attorney General
AARON A. LOVE
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Office of the Attorney General
25 Market St., P.O. Box 093
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FOR THE STATE OF MARYLAND

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Boston, MA 02108
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Attorney General
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Deputy General Counsel
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400

ED_002444_00003025-00005

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PATRICK McDONNELL
Secretary
16th Floor
400 Market Street
Harrisburg, PA 17101-2301
(717) 787-2814

FOR THE COMMONWEALTH OF PENNSYLVANIA

JOSH SHAPIRO
Attorney General
MICHAEL J. FISCHER
Chief Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, PA 17120
(215) 560-2171

FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General
PAUL GARRAHAN
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
Attorney General
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3186

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General
KATHARINE G. SHIREY
Assistant Attorney General
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6769

cc: Susan Parker Bodine, Assistant Administrator, Office of Enforcement and Compliance Assurance, EPA (via email)
Bill Wehrum, Assistant Administrator, Office of Air and Radiation, EPA (via email)

Encl.

ED_002444_00003025-00006

ATTACHMENT A

Figure A-2: Annual Per-Vehicle NOx Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

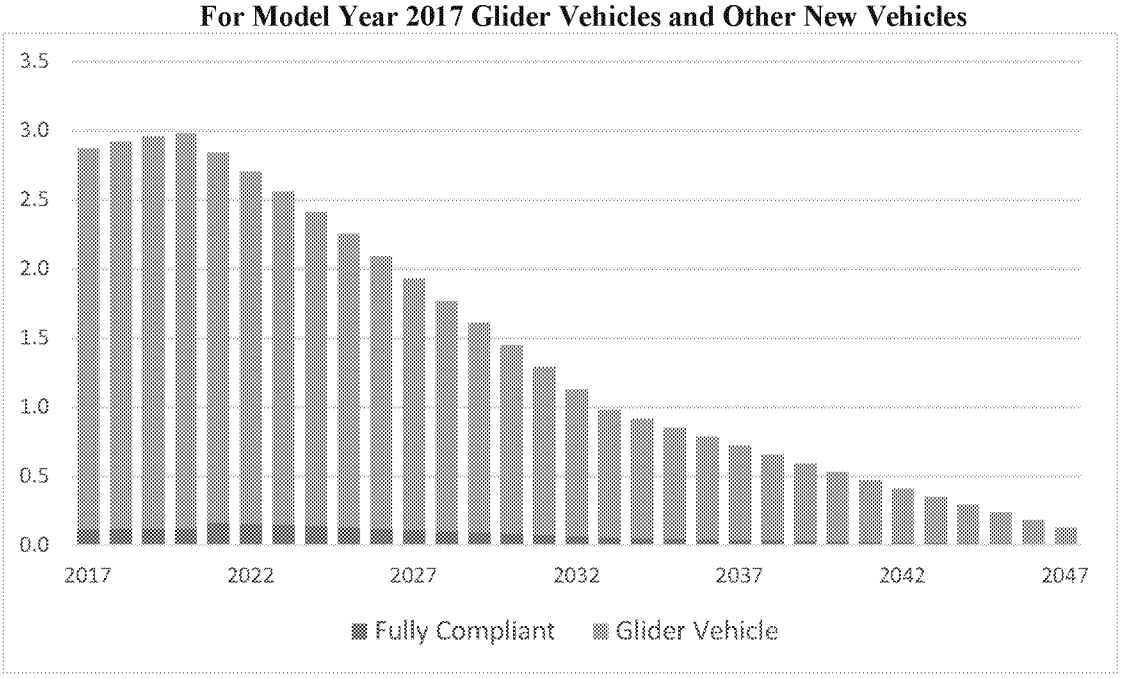
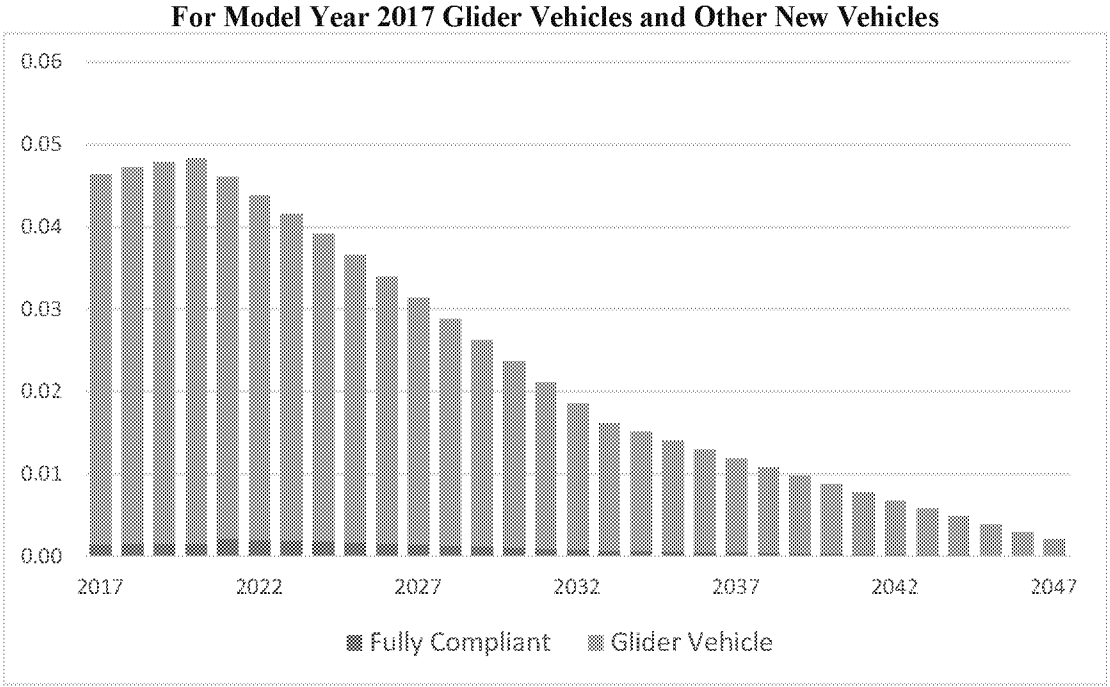


Figure A-3: Annual Per-Vehicle PM Emissions (tons/year)
For Model Year 2017 Glider Vehicles and Other New Vehicles

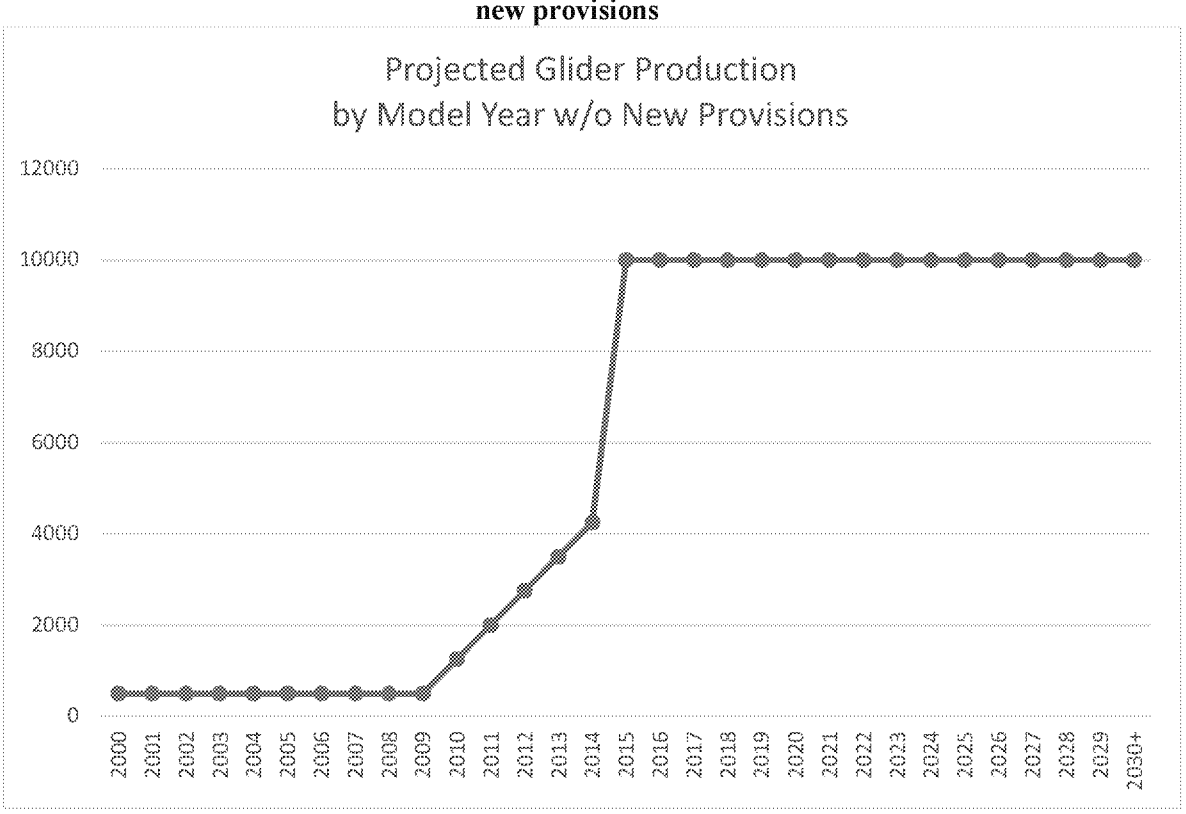


ATTACHMENT B

Fleetwide Emission Projections

Based on public comments, EPA is estimating that approximately 10,000 gliders will be produced in 2016. Consistent with this, the modeling of gliders discussed here assumed annual glider sales of 10,000 for 2015 and later. As noted above, the modeling assumed that these gliders emit at the level equivalent to the engines meeting the MY 1998-2001 standards without miscalibration.

Figure A- 1: Glider vehicle production projected for fleetwide analysis without new provisions



We modeled impacts on NOx and PM inventories with and without restrictions for two calendar years: 2025 and 2040. The restrictions were modeled as limiting sales in 2018 and later to 1,000 new gliders each year. This control case roughly approximates the restrictions being adopted for 2018 and later, and is consistent with the proposed requirements. The total number of vehicles was held constant by increasing the number of fully compliant vehicles (i.e., vehicles with engines meeting 2017 and later standards for NOx and PM) by 9,000 for each model year after 2017. However, we recognize that the actual number of gliders produced annually under the control case may vary by year and/or be higher or lower than 1,000. The results are shown below. This control scenario does not reflect the restrictions being adopted for 2017. See the model year analysis below for the impacts of model year 2017 glider vehicles.

ATTACHMENT C

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

GM #34
SE. 1-5

NOV 16 1984

OFFICE OF
ENFORCEMENT AND
COMPLIANCE MONITORING

MEMORANDUM

SUBJECT: Policy Against "No Action" Assurances

FROM: Courtney M. Price
Assistant Administrator for Enforcement
and Compliance Monitoring

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

This memorandum reaffirms EPA policy against giving definitive assurances (written or oral) outside the context of a formal enforcement proceeding that EPA will not proceed with an enforcement response for a specific individual violation of an environmental protection statute, regulation, or other legal requirement.

"No action" promises may erode the credibility of EPA's enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. This credibility is vital as a continuing incentive for regulated parties to comply with environmental protection requirements.

In addition, any commitment not to enforce a legal requirement against a particular regulated party may severely hamper later enforcement efforts against that party, who may claim good-faith reliance on that assurance, or against other parties who claim to be similarly situated.

This policy against definitive no action promises to parties outside the Agency applies in all contexts, including assurances requested:

- both prior to and after a violation has been committed;
- on the basis that a State or local government is responding to the violation;

- on the basis that revisions to the underlying legal requirement are being considered;
- on the basis that the Agency has determined that the party is not liable or has a valid defense;
- on the basis that the violation already has been corrected (or that a party has promised that it will correct the violation); or
- on the basis that the violation is not of sufficient priority to merit Agency action.

The Agency particularly must avoid no action promises relating either to violations of judicial orders, for which a court has independent enforcement authority, or to potential criminal violations, for which prosecutorial discretion rests with the United States Attorney General.

As a general rule, exceptions to this policy are warranted only

- where expressly provided by applicable statute or regulation (e.g., certain upset or bypass situations)
- in extremely unusual cases in which a no action assurance is clearly neccessary to serve the public interest (e.g., to allow action to avoid extreme risks to public health or safety, or to obtain important information for research purposes) and which no other mechanism can address adequately.

Of course, any exceptions which EPA grants must be in an area in which EPA has discretion not to act under applicable law.

This policy in no way is intended to constrain the way in which EPA discusses and coordinates enforcement plans with state or local enforcement authorities consistent with normal working relationships. To the extent that a statement of EPA's enforcement intent is necessary to help support or conclude an effective state enforcement effort, EPA can employ language such as the following:

"EPA encourages State action to resolve violations of the _____ Act and supports the actions which __(State)__ is taking to address the violations at issue. To the extent that the State action does not satisfactorily resolve the violations, EPA may pursue its own enforcement action."

I am requesting that any definitive written or oral no action commitment receive the advance concurrence of my office. This was a difficult decision to reach in light of the valid concerns raised in comments on this policy statement; nevertheless, we concluded that Headquarters concurrence is important because the precedential implications of providing no action commitments can extend beyond a single Region. We will attempt to consult with the relevant program office and respond to any formal request for concurrence within 10 working days from the date we receive the request. Naturally, emergency situations can be handled orally on an expedited basis.

All instances in which an EPA official gives a no action promise must be documented in the appropriate case file. The documentation must include an explanation of the reasons justifying the no action assurance.

Finally, this policy against no action assurances does not preclude EPA from fully discussing internally the prosecutorial merit of individual cases or from exercising the discretion it has under applicable law to decide when and how to respond or not respond to a given violation, based on the Agency's normal enforcement priorities.

cc: Associate Enforcement Counsels
OECM Office Directors
Program Compliance Office Directors
Regional Enforcement Contacts

ATTACHMENT D

EC-P-1998-07

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 0 3 1995

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Processing Requests for Use of Enforcement Discretion

FROM: Steven A. Herman
Assistant Administrator

TO: Assistant Administrators
Regional Administrators
General Counsel
Inspector General

In light of the reorganization and consolidation of the Agency's enforcement and compliance assurance resources activities at Headquarters, I believe that it is useful to recirculate the attached memorandum regarding "no action" assurances[1] as a reminder of both this policy and the procedure for handling such requests. The Agency has long adhered to a policy against giving definitive assurances outside the context of a formal enforcement proceeding that the government will not proceed with an enforcement response for a specific individual violation of an environmental protection statue, regulation, or legal requirement. This policy, a necessary and critically important element of the wise exercise of the Agency's enforcement discretion, and which has been a consistent feature of the enforcement program, was formalized in 1984 following Agency-wide review and comment. Please note that OECA is reviewing the applicability of this policy to the CERCLA enforcement program, and will issue additional guidance on this subject.

A "no action" assurance includes, but is not limited to: specific or general requests for the Agency to exercise its enforcement discretion in a particular manner or in a given set of circumstances (i.e., that it will or will not take an enforcement action); the development of policies or other statements purporting to bind the Agency and which relate to or would affect the Agency's enforcement of the Federal environmental laws and regulations; and other similar requests

[1] Courtney M. Price, Assistant Administrator for Enforcement and Compliance Monitoring, Policy Against "No Action" Assurances (Nov. 16, 1984) (copy attached).

FEB 25 1998
ECDIC

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for forbearance or action involving enforcement-related activities. The procedure established by this Policy requires that any such written or oral assurances have the advance written concurrence of the Assistant Administrator for Enforcement and Compliance Assurance.

The 1984 reaffirmation of this policy articulated well the dangers of providing "no action" assurances. Such assurances erode the credibility of the enforcement program by creating real or perceived inequities in the Agency's treatment of the regulated community. Given limited Agency resources, this credibility is a vital incentive for the regulated community to comply with existing requirements. In addition, a commitment not to enforce a legal requirement may severely hamper later, necessary enforcement efforts to protect public health and the environment, regardless of whether the action is against the recipient of the assurances or against others who claim to be similarly situated.

Moreover, these principles are their most compelling in the context of rulemakings: good public policy counsels that blanket statements of enforcement discretion are not always a particularly appropriate alternative to the public notice-and-comment rulemaking process. Where the Agency determines that it is appropriate to alter or modify its approach in specific, well-defined circumstances, in my view we must consider carefully whether the objective is best achieved through an open and public process (especially where the underlying requirement was established by rule under the Administrative Procedures Act), or through piecemeal expressions of our enforcement discretion.

We have recognized two general situations in which a no action assurance may be appropriate: where it is expressly provided for by an applicable statute, and in extremely unusual circumstances where an assurance is clearly necessary to serve the public interest *and* which no other mechanism can address adequately. In light of the profound policy implications of granting no action assurances, the 1984 Policy requires the advance concurrence of the Assistant Administrator for this office. Over the years, this approach has resulted in the reasonably consistent and appropriate exercise of EPA's enforcement discretion, and in a manner which both preserves the integrity of the Agency and meets the legitimate needs served by a mitigated enforcement response.

There may be situations where the general prohibition on no action assurances should not apply under CERCLA (or the Underground Storage Tanks or RCRA corrective action programs). For example, at many Superfund sites there is no violation of law. OECA is evaluating the applicability of no action assurances under CERCLA and RCRA and will issue additional guidance on the subject.

Lastly, an element of the 1984 Policy which I want to highlight is that it does not and should not preclude the Agency from discussing fully and completely the merits of a particular action, policy, or other request to exercise the Agency's enforcement discretion in a particular manner. I welcome a free and frank exchange of ideas on how best to respond to violations, mindful of the Agency's overarching goals, statutory directives, and enforcement and compliance priorities. I do, however, want to ensure that all such requests are handled in a consistent and coordinated manner.

Attachment

cc: OECA Office Directors
Regional Counsels
Regional Program Directors

Message

From: McCray, Deborah [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=680A397581F54431BA8725D446B5C7FA-DEBBIE MCCRAY]
Sent: 7/30/2018 5:53:34 PM
To: Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]
CC: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: FW: Glider response letters
Attachments: response letters withdrawal of NAA glider vehicles 07-26-2018.pdf

FYI – I didn't see you all on the attached email but thought you all might benefit from having a copy of the final response to the CMS requests that came in last week. There is no action on you all part, just an FYI.

Debbie

Deborah McCray, Director
Resources Management Staff
OECA/OCE
Mail Code 2248A
Work: 202-564-7494
Fax: 202-564-0010

From: Johnson, Laura-S
Sent: Friday, July 27, 2018 11:06 AM
To: Sutton, Tia <sutton.tia@epa.gov>; Bailey, Ethel <Bailey.Ethel@epa.gov>; McCray, Deborah <Mccray.Deborah@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>; Lewis, Josh <Lewis.Josh@epa.gov>; Shiffman, Cari <Shiffman.Cari@epa.gov>; Gaines, Cynthia <Gaines.Cynthia@epa.gov>; Hope, Brian <Hope.Brian@epa.gov>
Subject: Glider response letters

Good morning everyone,
Thanks for helping move the memo and response letters through the CMS system so that OEX and the AO could respond to the Administrator's request of signing it yesterday. Keep in mind, we were only notified of this request early yesterday afternoon and had no prior knowledge of it coming. Lots of coordination and choreography happened to get this done. So thank you for pitching in and working together as a group towards achieving a common goal.

I wanted to be sure that everyone is aware of the work that OEX accomplished last night, so that folks don't duplicate efforts. Please take a look at the attachment I'm providing that contains 19 letters responding to requests that EPA withdraw or administratively stay the No Action Assurance. I believe that Cynthia Gaines did some reassigning of the CMS controls to reflect that these responses "answer the mail." If you're curious as to who received a response letter, please see the attachment.

Thanks to Cynthia Gaines and Brian Hope for their help last night.

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

From: Sutton, Tia
Sent: Thursday, July 26, 2018 4:02 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Bailey, Ethel <Bailey.Ethel@epa.gov>; McCray, Deborah <Mccray.Deborah@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Hi Laura,
Thanks much! I'm also adding Ethel Bailey and Deborah McCray (OECA and OECA-OCE coordinators, respectively) so that we have the CMS coordinators from all of the offices looped in here and we can all be on the same page (Tanya Meekins, our OAR-OTAQ coordinator is cc'ed as well).

Thanks!
-Tia

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 3:39 PM
To: Sutton, Tia <sutton.tia@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>; Moritz, Brigette <Moritz.Brigette@epa.gov>; Hamilton, Sabrina <Hamilton.Sabrina@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Hi Tia,

Attorney Client; Deliberative Process / Ex. 5

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

From: Sutton, Tia
Sent: Thursday, July 26, 2018 3:33 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Cc: Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Hi Laura,

Attorney Client; Deliberative Process / Ex. 5

Thanks,
Tia

From: Johnson, Laura-S
Sent: Thursday, July 26, 2018 1:58 PM
To: Orlin, David <Orlin.David@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya

<Meekins.Tanya@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

Laura S. Johnson | U.S. Environmental Protection Agency
Special Assistant, Office of the Administrator | Cell (202) 819-4941
Office (202) 566-1273 | johnson.laura-s@epa.gov

From: Orlin, David
Sent: Thursday, July 26, 2018 1:43 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: RE: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions

Attorney Client; Deliberative Process / Ex. 5

David Orlin
U.S. EPA, Office of General Counsel
(202) 564-1222

From: Orlin, David
Sent: Thursday, July 26, 2018 1:35 PM
To: Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Cc: Sutton, Tia <sutton.tia@epa.gov>; Carrillo, Andrea <Carrillo.Andrea@epa.gov>; Meekins, Tanya <Meekins.Tanya@epa.gov>
Subject: FW: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Laura—

Attorney Client; Deliberative Process / Ex. 5

David Orlin

U.S. EPA, Office of General Counsel
(202) 564-1222

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 1:03 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>; Johnson, Laura-S <Johnson.Laura-S@epa.gov>
Subject: resending with approvals noted FW: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Attorney Client; Deliberative Process / Ex. 5

From: Schwab, Justin
Sent: Thursday, July 26, 2018 12:50 PM
To: Jackson, Ryan <jackson.ryan@epa.gov>
Cc: Leopold, Matt (OGC) <Leopold.Matt@epa.gov>; Orlin, David <Orlin.David@epa.gov>
Subject: gliders - draft withdrawal, draft letter granting administrative petitions
Importance: High

Ryan –

Attorney Client; Deliberative Process / Ex. 5

Attorney Client; Deliberative Process / Ex. 5

Best,

Justin

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Max Kieley
Manager, Environmental and Natural Resources Division
Assistant Attorney General
Office of the Attorney General
445 Minnesota Street, Suite 900
St. Paul, Minnesota 55101-2127

Dear Mr. Kieley:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

Internet Address (URL) ● http://www.epa.gov
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Ms. Vickie Patton
Ms. Martha Roberts
Mr. Peter Zalzal
Ms. Alice Henderson
Environmental Defense Fund
1875 Connecticut Avenue, N.W., Suite 600
Washington, D.C. 20009

Dear Ms. Patton, Ms. Roberts, Mr. Zalzal and Ms. Henderson:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Peter F. Kilmartin
The Attorney General of Rhode Island
Department of Attorney General
150 South Main Street
Providence, Rhode Island 02903

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Matthew P. Denn
The Attorney General of Delaware
Department of Justice
102 West Water Street
Dover, Delaware 19904

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Karl A. Racine
The Attorney General of the District of Columbia
Office of the Attorney General
441 Fourth Street, NW, Suite 1100S
Washington, D.C. 20001

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Xavier Becerra
The Attorney General of California
California Department of Justice
1515 Clay Street, Suite 2000
Oakland, California 94612

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00003033-00006

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

Mr. Richard W. Corey
Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814

Dear Mr. Corey:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00003033-00007

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable George Jepsen
The Attorney General of Connecticut
Office of the Attorney General
P.O. Box 120
55 Elm Street
Hartford, Connecticut 06141-0120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Lisa Madigan
The Attorney General of Illinois
Illinois Attorney General's Office
69 West Washington Street, 18th Floor
Chicago, Illinois 60602

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Janet T. Mills
The Attorney General of Maine
6 State House Station
Augusta, Maine 04333-0006

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00003033-00010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Gurbir S. Grewal
The Attorney General of New Jersey
Office of the Attorney General
25 Market Street
P.O. Box 093
Trenton, New Jersey 08625-0093

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Brian E. Frosh
The Attorney General of Maryland
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Barbara D. Underwood
The Attorney General of New York
120 Broadway, 26th Floor
New York, New York 10271

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Maura Healey
The Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, Massachusetts 2108

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF
THE ADMINISTRATOR

The Honorable Joshua H. Stein
The Attorney General of North Carolina
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00003033-00015

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Josh Shapiro
The Attorney General of Pennsylvania
Pennsylvania Office of Attorney General
Strawberry Square
Harrisburg, Pennsylvania 17120

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Ellen F. Rosenblum
The Attorney General of Oregon
Oregon Department of Justice
1162 Court Street NE
Salem, Oregon 97301-4096

Dear Madame Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Thomas J. Donovan, Jr.
The Attorney General of Vermont
Office of the Attorney General
109 State Street
Montpelier, Vermont 5609

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 26, 2018

OFFICE OF THE
ADMINISTRATOR

The Honorable Robert W. Ferguson
The Attorney General of Washington
Office of the Attorney General
P.O. Box 40117
Olympia, Washington 98504-0117

Dear Mr. Attorney General:

Thank you for writing to request that the U.S. Environmental Protection Agency withdraw or administratively stay the EPA's conditional "no action assurance" regarding small manufacturers of glider vehicles.

After considering your request and other information before me, I have decided to withdraw the July 6, 2018, no action assurance for small manufacturers of glider vehicles and their suppliers, as detailed in the enclosed memorandum.

Sincerely,

Andrew R. Wheeler
Acting Administrator

Enclosure

ED_002444_00003033-00019

Message

From: Sutton, Tia [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=25E87403F63143ACBB959446512A372C-SUTTON, TIA]
Sent: 7/7/2018 3:41:22 PM
To: Grundler, Christopher [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d3be58c2cc8545d88cf74f3896d4460f-Grundler, Christopher]
CC: Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]
Subject: Re: Glider No Action Assurance

I'll send this and a page mock-up to the web team tomorrow (they all get in ~7 Monday), so we can try to be ready to go live first thing Monday.

Sent from my iPhone

On Jul 6, 2018, at 11:52 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

_____

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/7/2018 2:54:38 PM
To: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: Re: Glider No Action Assurance

That was fast

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

On Jul 7, 2018, at 9:59 AM, Brooks, Phillip <Brooks.Phillip@epa.gov> wrote:

https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html

Sent from my iPhone

On Jul 6, 2018, at 11:52 PM, Grundler, Christopher <grundler.christopher@epa.gov> wrote:

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq<http://www.epa.gov/otaq>

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov<mailto:Wehrum.Bill@epa.gov>>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov<mailto:Gunasekara.Mandy@epa.gov>>, "Woods, Clint" <woods.clint@epa.gov<mailto:woods.clint@epa.gov>>, "Harlow, David" <harlow.david@epa.gov<mailto:harlow.david@epa.gov>>, "Grundler, Christopher" <grundler.christopher@epa.gov<mailto:grundler.christopher@epa.gov>>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov<mailto:bodine.susan@epa.gov>>; Wehrum, Bill <Wehrum.Bill@epa.gov<mailto:Wehrum.Bill@epa.gov>>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

<Glider No Action Assurance (July 6, 2018).pdf>

Message

From: Grundler, Christopher [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D3BE58C2CC8545D88CF74F3896D4460F-GRUNDLER, CHRISTOPHER]
Sent: 7/7/2018 3:52:49 AM
To: Sutton, Tia [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=25e87403f63143acbb959446512a372c-Sutton, Tia]; Simon, Karl [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4d781d1ad595415db3a4e768c2d2b3fc-Simon, Karl]; Charmley, William [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb1828fb00af42ffb68b9e0a71626d95-Charmley, William]; Cook, Leila [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d4536ad140a1461781d78ca67921b02f-Cook, Leila]; Moulis, Charles [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d9ba8bd68b3c4fb28b767e15aef54d61-Moulis, Charles]; Carrillo, Andrea [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=242465abb76c4aef81c2afbf6e2ccba7-Carrillo, Andrea]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Nelson, Brian [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fee03a4337c543d8aa60277da00c63ae-Nelson, Brian]
Subject: Fwd: Glider No Action Assurance
Attachments: Glider No Action Assurance (July 6, 2018).pdf; ATT00001.htm

---

Christopher Grundler, Director
Office of Transportation and Air Quality
U.S. Environmental Protection Agency
202.564.1682 (Washington DC)
734.214.4207 (Ann Arbor MI)
734.645.5221 (mobile)
www.epa.gov/otaq

Begin forwarded message:

From: "Wehrum, Bill" <Wehrum.Bill@epa.gov>
To: "Gunasekara, Mandy" <Gunasekara.Mandy@epa.gov>, "Woods, Clint" <woods.clint@epa.gov>, "Harlow, David" <harlow.david@epa.gov>, "Grundler, Christopher" <grundler.christopher@epa.gov>
Subject: FW: Glider No Action Assurance

Fyi. I plan to call the company to let them know it is signed, but will not be posted until Monday.

_____

Bill Wehrum
Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
(202) 564-7404

From: Traylor, Patrick
Sent: Friday, July 6, 2018 6:08 PM
To: Bodine, Susan <bodine.susan@epa.gov>; Wehrum, Bill <Wehrum.Bill@epa.gov>
Subject: Glider No Action Assurance

Please find attached.

Patrick Traylor
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
(202) 564-5238 (office)
(202) 809-8796 (cell)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 6, 2018

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

MEMORANDUM

SUBJECT: Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles

FROM: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

Pursuant to your attached request of July 6, 2018, I am today providing a "no action assurance" relating to: (1) those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers); and (2) to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such Small Manufacturers (Suppliers).

As noted in your memorandum, in conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, *see* 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency specified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period of 2010–2014 without having to meet the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured. On November 16, 2017, EPA published a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. *See* 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM).

We understand that after taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, the Office of Air and Radiation (OAR) has determined that additional evaluation of several matters is required before it can take final action on the November 16 NPRM. Consequently, OAR now recognizes that finalizing the November 16 NPRM will require more time than it had previously anticipated. In the meantime, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 annual allocation under the HD Phase 2 Rule must cease production for the remainder of calendar year 2018 of additional glider vehicles, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

As noted in your memorandum, OAR now intends to move as expeditiously as possible to undertake rulemaking in which it will consider extending the compliance date applicable to Small Manufacturers to December 31, 2019.

Consistent with the intent and purpose of OAR's planned course of action, this no action assurance provides that EPA will exercise its enforcement discretion with respect to the applicability of 40 C.F.R. § 1037.635 to Small Manufacturers that in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowances as was available to them in calendar year 2017 under 40 C.F.R. § 1037.150(t)(3). This no action assurance further provides that EPA will exercise its enforcement discretion with respect to Suppliers that sell glider kits to those Small Manufacturers to which this no action assurance applies. This no action assurance will remain in effect until the earlier of: (1) 11:59 p.m. (EDT), July 6, 2019; or (2) the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles.

The issuance of this no action assurance is in the public interest to avoid profound disruptions to small businesses while EPA completes its reconsideration of the HD Phase 2 Rule. The EPA reserves its right to revoke or modify this no action assurance.

If you have further questions regarding this matter, please contact Rosemarie Kelley of my staff at (202) 564–4014, or kelley.rosemarie@epa.gov.

Attachment

cc: Byron Bunker, OAR, OTAQ
Rosemarie Kelley, OECA, OCE
Phillip Brooks, OECA, OCE, AED

ED_002444_00003085-00002

MEMORANDUM

SUBJECT: Enforcement Discretion Regarding Companies that Are Producing or that Have Produced Glider Vehicles in Calendar Year 2018

FROM: Bill Wehrum
Assistant Administrator
Office of Air and Radiation

7-6-18

TO: Susan Parker Bodine
Assistant Administrator
Office of Enforcement and Compliance Assurance

The Office of Air and Radiation (OAR) requests that the Office of Enforcement and Compliance Assurance (OECA) exercise enforcement discretion (No Action Assurance) with respect to both those small manufacturers to which 40 C.F.R. § 1037.150(t) applies that either are manufacturing or that have manufactured glider vehicles in calendar year 2018 (Small Manufacturers), and to those companies to which 40 C.F.R. § 1037.150(t)(1)(vii) applies that sell glider kits to such small manufacturers (Suppliers). Specifically, as a bridge to a rulemaking in which we will consider extending the deadline for Small Manufacturers to comply with 40 C.F.R. § 1037.635, OAR requests that OECA provide assurance that it will exercise enforcement discretion for up to one year with respect to the applicability to Small Manufacturers and their Suppliers of 40 C.F.R. §1037.635. Further, OAR requests that OECA provide assurance that it will not take enforcement action against those Suppliers that elect to sell glider kits to those Small Manufacturers of glider vehicles to which this No Action Assurance applies.

In conjunction with EPA's having promulgated in 2016 the final rule entitled Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles–Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016) (the HD Phase 2 Rule), the Agency clarified that glider vehicles were "new motor vehicles" (and glider vehicle engines to be "new motor vehicle engines") within the meaning of 42 U.S.C. § 7550(3). EPA in the HD Phase 2 Rule also stated that glider kits constituted "incomplete motor vehicles." Effective January 1, 2017, Small Manufacturers were permitted to manufacture glider vehicles in 2017 in the amount of the greatest number produced in any one year during the period 2010-2014 without meeting the requirements of 40 C.F.R. § 1037.635 (Interim Allowance). After this transitional period, beginning on January 1, 2018, small manufacturers of glider vehicles have been precluded from manufacturing more than 300 glider vehicles (or fewer, if a particular manufacturer's highest annual production volume from between 2010 and 2014 had been below 300 vehicles), unless they use engines that comply with the emission standards applicable to the model year in which the glider vehicle is manufactured.

On November 16, 2017, EPA published in the *Federal Register* a notice of proposed rulemaking, proposing to repeal the emissions standards and other requirements of the HD Phase 2 Rule as they apply to glider vehicles, glider engines, and glider kits. 82 Fed. Reg. 53,442 (Nov. 16, 2017) (November 16 NPRM). In the November 16 NPRM, EPA proposed an interpretation of the Clean Air Act (CAA) under which glider vehicles would be found not to constitute "new motor

ED_002444_00003085-00003

vehicles" within the meaning of CAA section 216(3), glider engines would be found not to constitute "new motor vehicle engines" within the meaning of CAA section 216(3), and glider kits would not be treated as "incomplete" new motor vehicles. Under this proposed interpretation, EPA would lack authority to regulate glider vehicles, glider engines, and glider kits under CAA section 202(a)(1). EPA also sought comment on whether, were it not to promulgate this proposed interpretation of the CAA, the Agency should increase the interim provision's allocation available to small manufacturers above the current applicable limits (*i.e.*, at most, 300 glider vehicles per year). 82 Fed. Reg. 53,447. Further, EPA solicited comment on whether the compliance date for glider vehicles and glider kits set forth at 40 C.F.R. § 1037.635 should be extended. *Id.*

After taking into consideration the public comments received, and following further engagement with stakeholders and other interested entities, OAR has determined that additional evaluation of a number of matters is required before it can take final action on the November 16 NPRM. As a consequence, OAR now recognizes that finalizing the November 16 NPRM will require more time than we had previously anticipated.

OAR intends to complete this rulemaking as expeditiously as possible under these circumstances, consistent with the Agency's responsibility to ensure that whatever final action it may take conforms with the Clean Air Act and is based on reasoned decision making. In the meantime, while the emissions standards and other requirements of the 2016 Rule applicable to glider vehicles became effective on January 1, 2017, and the Interim Allowance for calendar year 2017 ceased to apply as of January 1, 2018. As a consequence, Small Manufacturers who, in reliance on the November 16 NPRM, have reached their calendar year 2018 interim annual allocation under the HD Phase 2 Rule must cease production for the remainder of 2018, resulting in the loss of jobs and threatening the viability of these Small Manufacturers.

In light of these circumstances, OAR now intends to move as expeditiously as possible to undertake rulemaking to consider extending the compliance date applicable to Small Manufacturers until December 31, 2019. Concurrently, we intend to continue to work towards expeditiously completing a final rule. OAR requests a No Action Assurance in order to preserve the status quo as it was at the time of the November 16 NPRM until such time as we are able to take final action on extending the applicable compliance date. Specifically, OAR requests that OECA exercise its enforcement discretion with respect to Small Manufacturers who in 2018 and 2019 produce for each of those two years up to the level of their Interim Allowance as was available to them in 2017 under 40 C.F.R. § 1037.150(t)(3). OAR requests that OECA leave this No Action Assurance in place for one year from the date of issuance, or until such time as EPA takes final action to extend the compliance date, whichever comes sooner.

I appreciate your prompt consideration of this request.

ED_002444_00003085-00004

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/23/2018 6:22:06 PM
To: Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Cathey, Tawanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be1ec938575d4fb1adcb5f4b04571ab7-Cathey, Tawanna]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: CMS New Assignment - Deborah Mccray - AX-18-000-9372

Control AX-18-000-9372 has been assigned to your office on 7/23/18 2:22 PM by Deborah Mccray. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-18-000-9372
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Kieley, Max; Corey, Richard W.; Jepsen, George; Madigan, Lisa; McDonnell, Patrick; Rosenblum, Ellen F; Shapiro, Josh; Donovan, Thomas J.; Ferguson, Robert W.; Becerra, Xavier; Mills, Janet T.; Frosh, Brian E.; Healey, Maura; Grewal, Gurbir S.; Underwood, Barbara D.; Stein, Joshua H.

Note: This Email was automatically generated. Please do not attempt to respond to it. You can access this control at https://cms.epa.gov/cms. Questions or comments concerning CMS should be directed to CMS Support at 202-564-4985 or CMS Information@epa.gov.

Message

From: cmsadmin@epa.gov [cmsadmin@epa.gov]
Sent: 7/23/2018 6:20:12 PM
To: Chapman, Apple [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c52a18bcf6164b6d9f04545db694cac1-ACHAPMAN]; Cathey, Tawanna [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=be1ec938575d4fb1adcb5f4b04571ab7-Cathey, Tawanna]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]
Subject: CMS New Assignment - Deborah Mccray - AX-18-000-9371

Control AX-18-000-9371 has been assigned to your office on 7/23/18 2:20 PM by Deborah Mccray. Please go to the CMS webpage to view the details of the control.

Summary Information -
Control Number: AX-18-000-9371
Control Subject: Request for Withdrawal or Administrative Stay of United States Environmental Protection Agency's "Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles"
From: Schultz, Gregory S.; Kilmartin, Peter F.; Becerra, Xavier; Jepsen, George; Corey, Richard W.; Madigan, Lisa; Mills, Janet T.; Frosh, Brian E.; Healey, Maura; Grewal, Gurbir S.; Underwood, Barbara D.; Stein, Joshua H.; McDonnell, Patrick; Rosenblum, Ellen F; Shapiro, Josh; Donovan, Thomas J.; Ferguson, Robert W.

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Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 7/23/2018 4:39:08 PM
To: Fried, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=960451767a6a44969c7647c875806e38-Gfried]; Miller, Anthony [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b22a9c0f41174b28bb0dbf0c5a21a8ef-Miller, Anthony]; Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Hoyt, Daniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=831360b6376c4c2e9c05a7da32dcb2f6-Hoyt, Daniel]
Subject: RE: AED Internal Agenda

AED Management Agenda
July 23, 2018

1. Phill's Calendar
2. Issues from OCE Div Dir Meeting/Resource General
3. Personnel
    a. Advertisement for VEEB technical
4. Issues for Rosemarie:
    a. Gliders
    b. Derive injunctive relief
5. Issues for Patrick/Susan
    a. Gliders
    b. RPM Act
    c. Derive Injunctive Relief
6. AED Issues
    a. Apple out July 13-29. Returning on the July 30
    b. Evan out Friday, next week
    c. Miller – Leave
        i. July 30 – Aug 3 – Melissa Acting
        ii. August 9
        iii. Aug 13 – Aug 17 – Kryman Acting
7. CMS
    a. Congressional re: Tampering Policy
    b. Glider letters: enviros, Minnesota, Rhode Island
8. Front Office Fire Drills

9. VEEB
    a. Attorney training Wednesday at DOJ
    b. RPM Act tech assistance
    c. NAA for test fuel
    d. Derive late hit
    e. Ninth Circuit amicus request
    f. Tampering Policy

10. FEB
    a. S/L/P FEB Meeting – July 25, 5:45 pm – 6:45 pm Eastern
    b. NGL Press in Interim
    c. Genscape Pre-meeting – August 1
11. SSEB
    a.

From: Belser, Evan
Sent: Monday, July 23, 2018 10:29 AM
To: Gregory Fried (Fried.Gregory@epa.gov) <Fried.Gregory@epa.gov>; Miller, Anthony <Miller.Anthony@epa.gov>; Brooks, Phillip <Brooks.Phillip@epa.gov>
Cc: Werner, Jacqueline <Werner.Jacqueline@epa.gov>; Chapman, Apple <Chapman.Apple@epa.gov>
Subject: AED Internal Agenda

Send them my way by 12:15 please.

Thanks,
Evan

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Message

From: Belser, Evan [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=D9A0635C271A4BAC9C20634E45083C66-BELSER, EVAN]
Sent: 7/13/2018 1:14:18 PM
To: Folkemer, Nathaniel [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8bed2ac6d40d481287802daab9a47b07-Folkemer, Nathaniel]
CC: Brooks, Phillip [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e89130d467df414390f076286d938815-Brooks, Phillip]; Emmerson, Caroline [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=aafd8051883c48cdadd97e4c3f3c6307-Ahearn, Carolyne]; Tozzi, Lauren [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98acf7f50923404d9491d4f885d34c27-Tozzi, Lauren]; Ingram, Amir [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=19183a7127f7485db4653fee2a696bed-AINGRA02]
Subject: Re: House Science Committee Letter Re Glider Truck Testing

Thank you Nate. This glider issue will not go away anytime soon.

Thanks,
Evan

Evan Belser
Chief, Vehicle and Engine Enforcement Branch
United States Environmental Protection Agency
202-564-6850

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On Jul 13, 2018, at 9:09 AM, Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov> wrote:

> FYI,
> E&E has an article today regarding a new letter from the House Science Committee asking about EPA's testing of glider vehicles. I suspect this will formally come through CMS and be assigned to OAR but wanted to share for your awareness.
> Nate
> https://www.eenews.net/eedaily/2018/07/13/stories/1060088985
>
> From: Belser, Evan
> Sent: Thursday, July 12, 2018 10:08 AM
> To: Brooks, Phillip <Brooks.Phillip@epa.gov>
> Cc: Emmerson, Caroline <Emmerson.Caroline@epa.gov>; Tozzi, Lauren <Tozzi.Lauren@epa.gov>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov>; Ingram, Amir <Ingram.Amir@epa.gov>
> Subject: RE: FYI: Amendment submitted yesterday on EPA's budget bill
>
> So under one rider, we will be prohibited from certifying new marine engines until we certify better marine engines, and under this other rider we cannot enforce our commitment not to enforce. We are now truly in an MS Escher painting.
>
> From: Brooks, Phillip

Sent: Thursday, July 12, 2018 10:06 AM
To: Belser, Evan <Belser.Evan@epa.gov<mailto:Belser.Evan@epa.gov>>
Cc: Emmerson, Caroline <Emmerson.Caroline@epa.gov<mailto:Emmerson.Caroline@epa.gov>>; Tozzi, Lauren <Tozzi.Lauren@epa.gov<mailto:Tozzi.Lauren@epa.gov>>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov<mailto:Folkemer.Nathaniel@epa.gov>>; Ingram, Amir <Ingram.Amir@epa.gov<mailto:Ingram.Amir@epa.gov>>
Subject: Re: FYI: Amendment submitted yesterday on EPA's budget bill

It is just that we cannot do anything in furtherance of doing nothing.
Sent from my iPhone

On Jul 12, 2018, at 9:57 AM, Belser, Evan <Belser.Evan@epa.gov<mailto:Belser.Evan@epa.gov>> wrote:
So we would be prohibited from doing nothing? Is this congress forcing us to enforce the glider cap?

From: Emmerson, Caroline
Sent: Thursday, July 12, 2018 9:55 AM
To: Belser, Evan <Belser.Evan@epa.gov<mailto:Belser.Evan@epa.gov>>; Tozzi, Lauren <Tozzi.Lauren@epa.gov<mailto:Tozzi.Lauren@epa.gov>>; Folkemer, Nathaniel <Folkemer.Nathaniel@epa.gov<mailto:Folkemer.Nathaniel@epa.gov>>; Ingram, Amir <Ingram.Amir@epa.gov<mailto:Ingram.Amir@epa.gov>>
Subject: FYI: Amendment submitted yesterday on EPA's budget bill

https://www.eenews.net/eedaily/2018/07/12/stories/1060088859

#109 -- Version 1

DeGette (CO)<https://amendments-rules.house.gov/amendments/RCP115-81-FLRAMD_03_xml711180954515451.pdf>, Dingell (MI)

Democrat

Prohibits funding being used to implement, administer, or enforce EPA's Memorandum relating to Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles.

Submitted

Caroline Emmerson, Director, Policy and Legislative Coordination Division/OAP/OECA
U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460/ 202-564-1716 (office),
emmerson.caroline@epa.gov<mailto:emmerson.caroline@epa.gov>

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<House_Science_Committee_Letter_to_EPA_Re_Truck_Gliders_7.12.2018.pdf>