



July 10, 2018

**SUBMITTED VIA EMAIL TO HQ.FOIA@EPA.GOV**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**Re: Freedom of Information Act Request for Records Related to EPA’s Non-Enforcement Policy for Super-Polluting “Glider” Diesel Freight Trucks**

Dear National Freedom of Information Officer:

In 2016, the U.S. Environmental Protection Agency (“EPA” or the “agency”) required that glider vehicles satisfy modern emission standards for new heavy-duty trucks, in order to safeguard public health and ensure a level playing field for freight truck manufacturers.<sup>1</sup> A “glider vehicle” is a heavy-duty diesel truck consisting of a used, remanufactured engine and powertrain installed in a new truck body, and it is commonly marketed and sold as a brand new truck.

Environmental Defense Fund (“EDF”) respectfully requests records, as that term is described at 5 U.S.C. § 552(f)(2) of the Freedom of Information Act (“FOIA”), of the EPA related to the agency’s decision—as set forth in the July 6, 2018 “Conditional No Action Assurance” memorandum<sup>2</sup>—not to enforce pollution limits related to glider vehicles, glider engines, and glider kits contained in the 2016 final rule, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73478 (October 25, 2016). Specifically, EDF requests:

- (1) all correspondence between EPA and interested parties—manufacturers and suppliers of glider vehicles and kits (including but not limited to the companies that

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<sup>1</sup> U.S. EPA, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73478 (Oct. 25, 2016).

<sup>2</sup> Memorandum, Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles, from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Bill Wehrum, Assistant Administrator, EPA Office of Air and Radiation (July 6, 2018), <https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles>.

originally petitioned EPA to reconsider its glider provisions<sup>3</sup>), any agent or representative of such manufacturers and suppliers (including but not limited to attorneys, trade associations, and lobbyists), and members of Congress or their staff—relating to the decision not to enforce glider emission standards, including but not limited to “no action” letters or memoranda;

- (2) all correspondence between EPA and the aforementioned interested parties indicative of a policy or practice of non-enforcement of those standards;
- (3) all other agency records, including internal correspondence, relating to the decision not to enforce glider emission standards or a policy or practice of non-enforcement of those standards.

EDF respectfully seeks records produced, modified, transmitted or received by the agency from March 1, 2018, until the date that EPA begins searching for records responsive to this request. The requested records include, but are not limited to, communications, documents, letters, information, notes, memoranda, electronic mail transmissions or other electronic forms of information, telephone logs and records, meeting records, reports, analyses, assessments, data, and modeling, including all drafts and preliminary forms of any such records.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

### *Request for Expedited Processing*

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” In relation to five other FOIA requests, EPA recently recognized EDF’s eligibility for expedited processing on this basis.<sup>4</sup> In support of this request for expedited processing, I certify that the following information is true and correct to the best of my knowledge and belief:

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

<sup>4</sup> See Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-003545 (Feb. 23, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-005587 (Apr. 12, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-008622 (July 7, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009283 (July 13, 2017); Letter from Larry F. Gottesman (EPA) to Benjamin Levitan (EDF) re: Request Tracking Number EPA-HQ-2017-009579 (July 26, 2017).

- (1) EDF engages in extensive, daily efforts to inform the public about matters involving environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than 2 million members, press releases, blog posts, active engagement on social media, and frequent appearances by staff in major media outlets.<sup>5</sup>
- (2) Under standards promulgated by EPA in October 2016, all new glider vehicles must meet modern emission standards.<sup>6</sup> Starting in January 2018, under current EPA regulations, each manufacturer may produce up to 300 glider vehicles per year that are not compliant with the emission limits for new heavy-duty diesel vehicles and engines.<sup>7</sup>
- (3) In November 2017, EPA issued a proposed rule that would repeal the emission standards for glider vehicles, glider engines, and glider kits.<sup>8</sup> On July 9, 2018, EPA issued a “Conditional No Action Assurance” memorandum announcing that it will not enforce the annual per-manufacturer production allowance of up to 300 nonconforming gliders.<sup>9</sup> Instead, EPA will allow manufacturers to increase their glider truck production back up to 2017 levels for 2018 and 2019.<sup>10</sup> This could result in a ten-fold increase in production by one major glider manufacturer that produced an estimated 3,000 super-polluting glider trucks in 2017.<sup>11</sup>
- (4) EPA’s failure to enforce these standards will have severe and extreme air pollution effects: glider trucks can emit as much as 40 times more smog-forming nitrogen oxides under cruise conditions and as much as 450 times particulate matter (soot) in

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<sup>5</sup> See, e.g., Eric Lipton, ‘*Super Polluting*’ Trucks Receive Loophole on Pruitt’s Last Day, N.Y. Times (July 6, 2018), <https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html> (quoting EDF General Counsel Vickie Patton); Alice Henderson, *Public Speaks Out Against Pruitt’s Effort to Reopen a Loophole for Super-Polluting Glider Trucks*, EDF Climate 411 Blog (Dec. 8, 2017), <http://blogs.edf.org/climate411/2017/12/08/public-speaks-out-against-pruitts-effort-to-reopen-a-loophole-for-super-polluting-glider-trucks>; Press Release, EDF, EDF Calls on EPA to Protect Americans’ Health from Super-Polluting Glider Trucks at Public Hearing Today (Dec. 4, 2017), <https://www.edf.org/media/edf-calls-epa-protect-americans-health-super-polluting-glider-trucks-public-hearing-today>; Alice Henderson, *EPA’s Pruitt Tries to Open a Loophole to Allow Super-Polluting Trucks on Our Roads*, EDF Climate 411 Blog (Nov. 16, 2017), <http://blogs.edf.org/climate411/2017/11/16/epas-pruitt-tries-to-open-a-loophole-to-allow-super-polluting-trucks-on-our-roads>.

<sup>6</sup> EPA, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,748 (Oct. 25, 2016); see also 40 C.F.R. §§ 1037.150(t), 1037.635.

<sup>7</sup> 40 C.F.R. § 1037.150(t)(1)(ii).

<sup>8</sup> U.S. EPA, Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53,442 (Nov. 16, 2017).

<sup>9</sup> Memorandum, Conditional No Action Assurance Regarding Small Manufacturers of Glider Vehicles, from Susan Parker Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Bill Wehrum, Assistant Administrator, EPA Office of Air and Radiation (July 6, 2018), <https://www.epa.gov/enforcement/conditional-no-action-assurance-regarding-small-manufacturers-glider-vehicles>.

<sup>10</sup> *Id.*

<sup>11</sup> Eric Lipton, ‘*Super Polluting*’ Trucks Receive Loophole on Pruitt’s Last Day, N.Y. Times (July 6, 2018), <https://www.nytimes.com/2018/07/06/us/glider-trucks-loophole-pruitt.html>.

transient conditions.<sup>12</sup> Glider trucks also emit diesel exhaust, which has been classified as a known human carcinogen by the World Health Organization<sup>13</sup> and as a likely human carcinogen by EPA.<sup>14</sup> Production levels before the 2018 limits went into effect indicate that major glider vehicle manufacturers have the capacity to substantially ramp up production of these super-polluting freight trucks to take advantage of the newly-created loophole.<sup>15</sup> Thus, EPA's July 6, 2018 action will have an abrupt, detrimental impact on air quality—and correspondingly, human health.

- (5) It is therefore critical that the public obtain access to information as promptly as possible regarding EPA's decision not to enforce the glider regulations, so that concerned citizens and stakeholders can understand the basis for the agency action, including whether EPA considered the impact of its decision on human health. Expedited processing is critical so that the American public can obtain and analyze this information in a timely manner.
- (6) There is considerable public interest in EPA's policies relating to glider vehicles, and attention has particularly focused on the dangerous levels of harmful air pollution emitted by these heavy-duty freight trucks since the agency proposed to reopen the old loophole in September 2017.<sup>16</sup> Many concerned members of the public, health and environmental organizations, and others have voiced their opposition to efforts to reopen this loophole.<sup>17</sup>

#### *Request for Fee Waiver*

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<sup>12</sup> U.S. EPA, Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles, Nov. 20, 2017, Docket No. EPA-HQ-OAR-2014-0827-2417, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2417>.

<sup>13</sup> Bulletin of the World Health Organization, <http://www.who.int/bulletin/volumes/90/7/12-010712/en/> (last visited December 21, 2017).

<sup>14</sup> U.S. Environmental Protection Agency, Chemical Assessment Summary – diesel engine exhaust, available at [https://cfpub.epa.gov/ncea/iris/iris\\_documents/documents/subst/0642\\_summary.pdf](https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0642_summary.pdf).

<sup>15</sup> See *supra* n.11 (explaining that one glider manufacturer produced about 3,000 glider vehicles in 2017).

<sup>16</sup> See Jennifer Dlouhy, *EPA's Own Science Advisers to Rebuke Agency Over Auto Rollback*, Bloomberg (May 29, 2018), <https://www.bloomberg.com/news/articles/2018-05-29/epa-s-own-science-advisers-to-rebuke-agency-over-auto-rollback>; Eric Lipton, *How \$225,000 Can Help Secure a Pollution Loophole at Trump's E.P.A.*, N.Y. Times (Feb. 15, 2018), <https://www.nytimes.com/2018/02/15/us/politics/epa-pollution-loophole-glider-trucks.html>; Eric Lipton, *University Pulls Back on Pollution Study That Supported Its Benefactor*, N.Y. Times (Feb. 21, 2018), <https://www.nytimes.com/2018/02/21/admin/trucking-pollution-study.html>.

<sup>17</sup> American Lung Association, Press Release: Repeal of Emissions Rule for Super-Polluting Glider Kits Would Result in Preventable Deaths, Lung Cancer, Asthma Attacks (Oct. 23, 2017), <http://www.lung.org/about-us/media/press-releases/repeal-of-emissions-rule-glider-kits.html>; Union of Concerned Scientists, Press Release: EPA Rollback of Glider Truck Rule Puts Health, Lives at Risk for a Single Company's Gain (Nov. 9, 2017), <https://www.ucsusa.org/news/press-release/glider-truck-rule>; Erin Murphy, *Freight truck fleets, manufacturers, and dealers to Pruitt: stop supporting super-polluting glider trucks*, Environmental Defense Fund Climate 411 Blog (Jan. 24, 2018), <http://blogs.edf.org/climate411/2018/01/24/freight-truck-fleets-manufacturers-and-dealers-to-pruitt-stop-supporting-super-polluting-glider-trucks/>; *supra* n.9.

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of issues of considerable public interest: exemptions granted to manufacturers of glider vehicles and EPA's monitoring and enforcement of its emission limits pertaining to super-polluting gliders. 5 U.S.C. § 552(a)(4)(A)(iii). EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, reports, analyses, and other public outreach materials. These outreach channels are proven effective: a press release that EDF released in response to a partial production of EPA records was quickly picked up by a major media outlet.<sup>18</sup> We fully intend to disseminate newsworthy information received in response to this request. Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 683-6895 or by email at [matt@donahuegoldberg.com](mailto:matt@donahuegoldberg.com).

Respectfully submitted,

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<sup>18</sup> See, e.g., Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, Bloomberg (June 1, 2018), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-ready-california-autos-challenge-in-2017> (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*, Assoc. Press (May 26, 2018), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4> (same); Michael Biesecker, *Emails: Pruitt Monitored Changes to EPA Webpages on Climate*, Assoc. Press (Feb. 2, 2018), <https://www.apnews.com/85e69300761040a2995f5b457f2ac9f4> (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. Times (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html> (same).