

## McDougall, Robert

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**From:** McDougall, Robert  
**Sent:** Thursday, January 25, 2018 5:07 PM  
**To:** [REDACTED]  
**Subject:** RE: Public Records Act request  
**Attachments:** 20180125 PRR Document Response.pdf

1-25-18

Dear Mr. Milloy:

In response to your public records act request dated January 10, 2018 (below), please find the attached potentially responsive records.

We have withheld attorney-client communications and attorney work product exchanged with other state Attorney General Offices, and exchanged between and among Vermont Assistant Attorneys General and our client the Vermont Agency of Natural Resources. These potentially responsive records are exempt from public disclosure pursuant to 1 V.S.A. § 317(c)(3) and (4).


Please note, the attached records do not include duplicate copies of responsive e-mails or attachments. Non-glider related attachments, which are not responsive to your request, have not been provided. A copy of the Attorney General's January 11, 2018 press release, which included a reference to the gliders comment letter, is provided though it falls outside of your request period. The press release is also available online at the Attorney General's website: <http://www.ago.vermont.gov>

To the extent you consider that this response constitutes a denial of your request, you may appeal to the Deputy Attorney General. Any appeal should be in writing and addressed to:

Joshua Diamond, Esq.  
Deputy Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001

Sincerely,

Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
Division Chief, Environmental Protection Division  
109 State Street  
Montpelier, VT 05609  
Phone - (802) 828-5506  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

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-----Original Message-----

From: Steve Milloy [mailto: ]  
Sent: Wednesday, January 10, 2018 1:37 PM  
To: AGO - Info <mailto:AGO.Info@vermont.gov>  
Subject: Public Records Act request

January 10, 2018

Public Records Officer  
Vermont Attorney's General Office

Under the Vermont Public Records Act, I am requesting copies of all e-mail to and from the Vermont Attorney General's Office (AGO) related to so-called "glider trucks" between the period July 1, 2017 to January 10, 2018. This request covers all staff in the AGO. This request also covers any work related e-mail about glider trucks that AGO staff has sent or received via personal e-mail accounts.

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$100. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.  
Thank you for considering my request.

Sincerely,

/s/

Steve Milloy

mailto:

**Attorneys General of New York, California, Illinois, Iowa, Maine,  
Maryland, Massachusetts, Oregon, Rhode Island, Vermont, Virginia,  
and the District of Columbia, and the Secretary of the Pennsylvania  
Department of Environmental Protection**

December 20, 2017

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Schumer  
Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

The Honorable Paul D. Ryan  
Speaker  
U.S. House of Representatives  
1233 Longworth House Office Building  
Washington, DC 20515

The Honorable Nancy Pelosi  
Minority Leader  
U.S. House of Representatives  
233 Cannon House Office Building  
Washington, DC 20515

Re: House and Senate FY 2018 Appropriations for EPA

Dear Majority Leader McConnell and Minority Leader Schumer; Speaker Ryan  
and Minority Leader Pelosi:

We are writing to express our strong opposition to deep and damaging proposed cuts to the fiscal year 2018 budget for the Environmental Protection Agency (“EPA” or “Agency”) and the anti-environmental riders contained in the federal government appropriation legislation in both the United States Senate and House of Representatives. We understand that the Senate will likely bypass regular order with its appropriations bills, and negotiate with the Trump Administration and the House on a final EPA budget based on the House-passed Interior, Environmental, and Related Agencies FY 2018 appropriations bill (H.R. 3354) and the Senate Appropriations Committee Chairman’s Mark for FY 2018 appropriations for these agencies.

While the Senate bill offers greater funding for the EPA and includes fewer anti-environmental riders than its House counterpart, the budget cuts and riders contained in both bills would undermine EPA, the agency responsible for implementing and enforcing federal laws that protect and enhance public health and the environment. Americans depend on EPA to be a strong and committed partner, working shoulder-to-shoulder with states and local communities to ensure safe drinking water, healthy recreational waters, clean air and land, and a safe environment. For almost a half century, this partnership has been founded on EPA's active co-enforcement of laws, support of state regulatory programs, and provision of grants and other financial assistance.

Grossly underfunding EPA – as the House and Senate bills do in their current form – directly impacts states and harms our ability to protect our residents. Since EPA was established, our nation's air, water and other natural resources have become much cleaner, and the health and quality of life for Americans have greatly improved. The unprecedented budget cuts and anti-environmental riders contained in the Senate and House bills for FY2018 would undo decades of environmental improvements. Depriving EPA of necessary funding to do its job, and to assist our states with enforcement of the nation's environmental laws, threatens to take us back to the dark days before EPA's establishment – a time when air and water pollution was rampant, contaminated sites frequently jeopardized the health of communities, and the presence of unregulated toxic chemicals in food, water, and the environment were a constant threat to the safety of Americans.

### **Overall Budget Cuts**

Notwithstanding EPA's critical role in protecting the health and the safety of the country's water, air, and communities, the House-passed budget bill would cut EPA's FY2018 budget by \$650 million from its 2017 budget. The Senate Appropriations Committee Chair's Mark would cut the Agency's budget by \$150 million. While both houses have soundly rejected the Trump Administration's misguided \$2.4 billion proposed cut in EPA funding, even the Senate funding cuts, which are the least draconian of the three proposals, would still leave the Agency with its smallest budget since 1986, adjusting for inflation. These cuts will be taken from an agency that already operates with one of the most modest budgets in the federal government.

For years, the Agency has struggled with budgets that have not kept pace with its needs and obligations. In fact, there is a strong argument to be made that more – not less – funding for the Agency is needed to address pressing environmental and public health issues, and the new responsibilities assigned to EPA by Congress over the years. For example, while neither the Senate nor House budgets would reduce EPA funding for local drinking water and wastewater infrastructure, it is clear that the Agency's prior funding has been insufficient to help states and municipalities keep pace with the burgeoning challenge of providing safe drinking water and properly treating wastewater. Nationally, EPA

estimates at least \$271 billion is needed for wastewater infrastructure over the next 25 years and, according to the American Water Works Association, our nation's drinking water infrastructure will require an estimated \$1 trillion.<sup>1</sup> In New York alone, over the next 20 years, the American Society of Civil Engineers estimates that over \$38 billion will be needed to repair, replace, and update the state's drinking water infrastructure and over \$36 billion will be needed to repair, replace, and update its wastewater infrastructure.<sup>2</sup>

Dramatically cutting EPA's already chronically underfunded budget will severely undercut the Agency's ability to meet its needs and obligations, and to be a reliably strong and committed partner with states and local communities in protecting Americans' health and environment.

### **Cuts to Core Programs**

EPA's core environmental programs augment state budget and technical capacities, providing essential assistance to state and local efforts to protect the health of communities, and keep water, land, and air clean and safe. States rely on EPA to provide scientific and technical assistance on emission and discharge standards, testing and monitoring methods, emission control and remediation systems, and pollution prevention and best management practices. EPA's oversight of state programs ensures uniform enforcement of national pollution standards and averts a "race to the bottom." EPA core programs serve a critical regulatory role in addressing complex multi-state and multi-facility pollution problems. And EPA's Office of Environmental Justice directly supports the efforts by states and historically disadvantaged communities to improve health and environment in these communities, and reverse decades of disparate treatment.

Cuts to EPA's core programs will directly impact states and communities. For example, a reduction in funding for EPA's oversight of Clean Air Act compliance endangers the health of millions of Americans, especially the most vulnerable, such as children, the elderly, and those with existing respiratory ailments. The transport of air pollution across state borders is a persistent challenge for downwind states, making it difficult for them to attain and maintain compliance with health-based air quality standards and, thus, protect their residents. This problem requires continuing and substantial federal government engagement to address, as Congress recognized when it passed the current version of the Clean Air Act. The Clean Air Act's "good neighbor" provision requires the EPA and states to partner in addressing the interstate transport of air pollution. Cutting funds of the federal partner so that citizens of downwind states are not being

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<sup>1</sup> American Society of Civil Engineers, *2017 Infrastructure Report Card* (available at <https://www.infrastructurereportcard.org/>).

<sup>2</sup> American Society of Civil Engineers' New York State Council, *Report Card for New York's Infrastructure 2015*, September 2015 (available at <https://www.infrastructurereportcard.org/state-item/new-york/>).

protected will likely result in wasteful, lengthy, and costly inter-state litigation and delay achievement of the Act's purpose.

Additionally, EPA funds provide direct grant and other dollars to states to run state delegated programs. The Pennsylvania Department of Environmental Protection, for example, derives one-third of its funding from EPA dollars to run fundamental programs like clean water, safe drinking water, and remediation. Absent this funding or with significant reductions in these funds going directly to states, state agencies will not be able to run or administer programs that are vital to public health, environmental sustainability, and environmental protection.

Despite the essential role of EPA's core environmental programs, the bulk of the EPA cuts proposed by both the Senate and House fall on central activities of the Agency – environmental enforcement and compliance assurance, setting environmental standards, issuing permits, monitoring emissions, and providing technical and legal assistance to enforcement, compliance, and oversight. The House-passed bill cuts funding for EPA's core environmental programs and management account by 24 percent – an even deeper cut for these programs than proposed in the Trump Administration's budget. As this account pays for two-thirds of EPA's workforce, this cut could require laying off more than a thousand additional employees from an agency that has already lost over 14 percent of its workforce since 2014. The House would also cut funds for science and technology – used to assess the health and environmental risk of pollutants – by 16 percent. Similarly, the Senate Appropriations Committee Chairman's Mark also disproportionately cuts EPA's environmental programs and management account, reduces funding for core clean air, water, compliance, enforcement, and scientific review programs by 10 percent, and cuts science and technology funding by 10 percent. The Senate bill also provides funding to cut EPA's workforce by one-quarter.

Stripping hundreds of millions of dollars from EPA's core programs and depleting its workforce would hamstring the Agency, and directly jeopardize not only its central activities but also the partnership that our states depend upon – with the net result being diminished protection of our air, water, and land, and the health and safety of our residents.

### **Specific Program Cuts**

Notwithstanding the overall inadequacy of the proposed EPA funding, we acknowledge that in several important instances – e.g., funding for Superfund, drinking water and wastewater treatment, and continuation of the EnergyStar program – the Senate and House bills reject the Trump Administration's misguided budget proposal for the Agency. However, in other important instances, such as significant cuts in funding for the Chesapeake Bay Program, the House bill endorses the Trump Administration's proposed severe cuts. Moreover, both the Senate and House follow the Administration's lead in

proposing a 10 percent and 15 percent cut, respectively, in funding for the EPA Office of Environmental Justice.

Both the Senate and House budget bills contain a number of specific cuts to EPA's budget that would be damaging to our states' environmental and public health protection efforts. We believe that these cuts are ill considered and shortsighted, and should be rejected. We highlight two of the most troubling below.

### Reductions in EPA Enforcement Budget

The Senate Appropriation Committee Chair's Mark contains a 10 percent cut in the EPA's enforcement budget, and the House Committee on Appropriations in its Report on H.R. 3354 recommends a 15 percent cut in this budget. As mentioned above, EPA's ability to initiate a parallel enforcement action in the context of federally delegated programs provides another critical EPA function – the Agency thus serves as a “watch dog” to ensure that federal law is implemented on a consistent, baseline level across the country. Cutting EPA's enforcement budget threatens to remove the federal law enforcement “floor,” creating a situation where violations of federal law are enforced differently in different states. This would create competitive imbalances for businesses and catalyze a “race to the bottom” by states toward providing reduced public health and environmental protections. Such a race to the bottom can have particularly severe and adverse impacts on disadvantaged communities.

There is already evidence of a troubling retreat in the enforcement of our nation's environmental laws by the Trump Administration. A recent analysis by the Environmental Integrity Project<sup>3</sup> found that the Administration has collected, on average, 60 percent less in civil penalties from environmental violators than the Obama, George W. Bush, and Clinton administrations by the end of July in their first year of office. The analysis also identified a significant drop in the number of environmental enforcement settlements lodged by the Trump Administration, compared to similar periods in the past three administrations. This reduction of core enforcement activity is directly at odds with the EPA Administrator's stated “back to basics” agenda. Any reduction by Congress in the budget for enforcement would send the wrong message to the Agency, which instead should be told that Congress strongly supports the EPA's enforcement of this nation's environmental laws.

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<sup>3</sup> Environmental Integrity Project, *Environmental Enforcement Under Trump*, August 10, 2017 (available at: <http://www.environmentalintegrity.org/wp-content/uploads/2017/08/Enforcement-Report.pdf>). A New York Times investigation confirmed the substantial drop-off in enforcement actions and penalties sought under the Trump Administration. “Under Trump, E.P.A. Has Slowed Actions Against Polluters, and Put Limits on Enforcement Officers,” New York Times, Dec. 10, 2017 (available at <https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html>).

## Elimination of the Integrated Risk Information System (IRIS)

The Senate Appropriation Committee Chairman's Mark cut of more than \$15 million from EPA's chemical safety and sustainability research effort – which includes the elimination of the IRIS program – is another particular concern. The IRIS program conducts scientific review and analysis, providing the scientific backbone for understanding the health and environmental impacts of toxic chemicals. Information generated by the IRIS program is critical to the development and implementation of many federal, state, and local public health protection activities. The cleanup of hazardous waste sites, performance of emergency and rapid response, and assessment of risks from air emissions, and establishment of drinking water standards all depend on IRIS. The elimination of IRIS will undermine these activities – thereby directly imperiling the health and safety of our residents.

For example, the elimination of IRIS will likely impede or block the establishment of federal drinking water standards for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS), industrial chemicals that many states across the country have discovered in public drinking water supplies. A 2016 Harvard University School of Public Health led study, based on EPA data, found drinking water supplies for 6 million U.S. residents exceed the Agency's health advisory for these chemicals.<sup>4</sup> In New York, EPA advisories based on PFOA and PFOS health risks – including birth defects, cancer, hormone disruption and other serious health problems – have driven the remediation of drinking water supplies in the Town of Hoosick/Village of Hoosick Falls, the Town of Petersburg and the City of Newburgh. These chemicals have also been identified in water supplies on Long Island, where groundwater serves as the sole source of drinking water to nearly 3 million residents. In Massachusetts, concentrations of PFOA and PFOS exceeding EPA's health advisory have been found in several wells, including those serving private water supplies and the public drinking water supply in the Towns of Mashpee and Westfield, resulting in these wells being subject to treatment or removed from service. Nonetheless, PFOA and PFOS are currently unregulated under the federal Safe Drinking Water Act, with no national monitoring or enforcement mechanism in place to ensure that people are not exposed at levels that can cause adverse health effects.

EPA is evaluating the establishment of national drinking water standards for PFOA and PFOS pursuant to the Safe Drinking Water Act. By identifying and characterizing the health hazards of chemicals in the environment, the IRIS program plays a fundamental role in the setting of protective standards. Accordingly, EPA added the evaluation of PFOA and PFOS to its IRIS multi-year agenda in 2015, initiating the program's assessment of these chemicals' hazards. Even if, as the Senate proposes, a small subset of the IRIS program's

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<sup>4</sup> Xindi Hu, et. al., *Detection of Poly- and Perfluoroalkyl Substances (PFASs) in U.S. Drinking Water Linked to Industrial Sites, Military Fire Training Areas, and Wastewater Treatment Plants*, Environ. Sci. Technol. Lett. 2016, 3, 344–350 (available at <http://pubs.acs.org/doi/pdf/10.1021/acs.estlett.6b00260>).



responsibilities survive to help implement the Lautenberg Chemical Safety Act, it is likely the work of the Office of Water – which uses IRIS to set national drinking water standards – will be significantly impacted by the proposal to eliminate IRIS. As a result, the elimination or reduction of the IRIS program will likely delay, if not end, progress toward effective, science-based regulation of these dangerous chemicals, and toward ensuring the health and safety of the water Americans drink.

### **Anti-Environmental Budget Riders**

Finally, the House and Senate legislation contain several troubling policy riders, including:

- Both the House and Senate budget bills would allow EPA to withdraw the “Waters of the United States” rule and replace it with prior regulations without compliance with the federal Administrative Procedures Act (APA). This rider would also create a dangerous precedent for by-passing the APA, which requires public input and participation before repealing rules or adopting replacements for them, and reasonable justifications for such repeal and replacement. As the EPA has recognized on numerous occasions, the scope of the “Waters of the United States” definition is of tremendous national importance. Rather than allowing a deviation from long-established administrative rulemaking, any changes to the definition of “Waters of the United States” should include public input and participation as part of the normal agency rulemaking process.
- The House-passed budget bill would delay the implementation of the 2015 national ambient air quality standards for ozone for 10 years. More than one-third – 36 percent – of Americans currently live in areas with levels of ozone pollution that EPA has determined to be unhealthy. EPA conservatively estimated that meeting the new smog standards would result in net annual public health benefits of up to \$4.5 billion starting in 2025 (not including California), while also preventing up to 660 premature deaths, 230,000 asthma attacks in children, 160,000 missed school days, and 28,000 missed work days each year. While the Senate bill does not specifically delay the ozone standards, it does express concern about the economic impact of the 2015 standards, signaling a clear inclination to likewise delay these standards. A delay in the implementation of these scientifically-founded, health-based standards will result in direct and serious damage to the health of millions of Americans.
- The House-passed budget bill would block the BLM Methane Rule, a regulation which controls the leaking, venting, and flaring of the highly potent greenhouse gas, methane, from oil and natural gas developments on public lands. The Senate has already endorsed the rule, voting this past spring against voiding this cost-effective, common-sense regulation under

the Congressional Review Act. Eliminating the BLM Methane Rule would potentially result in an additional 180,000 tons of methane emissions per year, roughly equivalent to pollution of up to 950,000 vehicles – or roughly 2.5% of New York’s total annual emissions of greenhouse gases. It would also result in an addition of approximately 250,000 tons of smog-forming volatile organic compounds (VOCs) emissions each year. In addition to allowing more pollution, such a step would also be financially harmful. Rolling back this rule would cost states, tribes, and federal taxpayers up to \$14 million annually in royalty revenues as a result of uncontrolled venting, flaring, and leaking. Overall, the blocking the BLM Methane rule would forfeit millions of dollars of benefits – including reduced public health costs and industry savings from the recovery and sale of natural gas – over the next decade.

- The House-based bill also would block EPA from implementing the “Methane Rule,” the first-ever limits on methane pollution from new sources in the oil and natural gas sector. Oil and natural gas operations – production, processing, transmission, and distribution – are the largest single industrial source of methane emissions in the U.S. The Methane Rule is expected to prevent the emission of 300,000 tons of methane in 2020 and 510,000 tons in 2025. The controls required by the rule are also expected to reduce emissions of smog-forming VOCs, and hazardous air pollutants, including benzene and formaldehyde. EPA’s analysis of the costs and benefits of the rule, including the revenues from recovered natural gas that would otherwise be vented, determined that the rule would result in a net benefit estimated at \$35 million in 2020 and \$170 million in 2025.
- The House-passed bill would deny funding to EPA to “prepare, propose, or promulgate any regulation or guidance that references or relies on the analysis” of the social cost of carbon contained in several technical support documents issued by the Interagency Working Group on Social Cost of Carbon between 2010 and 2016, and revised draft guidance issued by the Council on Environmental Quality in December 2014, thereby blinding the agency entrusted with protecting the nation’s environment to the increasing economic damage caused by climate change.
- The House-passed bill would prohibit EPA from applying its “Phase 2 rules” on greenhouse gas emissions standards for medium and heavy-duty trucks to “glider kits” and classifying glider vehicles as “new vehicles.” According to EPA, glider vehicles – heavy-duty trucks that are built by pairing a new chassis with an old diesel engine and transmission – irresponsibly prolong the use of outdated, dirty diesel engines that emit 20 to 40 times more pollution than other new trucks containing cleaner engines. EPA estimated that gliders sold in a single year would generate pollution over their lifetime that could result in between 350 and 1,600 premature deaths related to particulate emissions, and that the Phase 2

rules would generate between \$1.5 billion and \$11 billion in monetized benefits associated with reduced particulate emissions. The Senate bill expresses concern about EPA's rulemaking to classify "Glider kits" as new motor vehicles, and urges the Agency to expedite its reconsideration of the rule. This concern conflicts with the facts and law: if glider emissions remain unchecked, they will constitute one-third of the truck fleet emissions of nitrogen oxides in the U.S. – gases that result in harmful smog and acid rain. We believe that the Agency should affirm the Phase 2 rules and regulate glider vehicles the same way that other new vehicles are regulated in order to ensure that older, dirtier engines are phased out and air quality continues to improve.

\* \* \*

Citizens of our states and across the country need EPA to play a strong and committed role in protecting their health and that of their environment. We firmly believe that, if adopted, the deep budget cuts to core EPA programs and anti-environmental riders, as currently proposed by both the House and Senate bills, will lead to more pollution of our air, water, and communities, and an accompanying increase in damage to public health. The deep and damaging budget cuts and anti-environmental riders that the House-passed budget bill and the Senate Appropriations Committee Chairman's budget propose, if adopted, would profoundly undermine EPA and its vital mission of protecting public health and the environment. We strongly urge Congress to reject that approach and instead pass a budget for EPA that fully funds its programs and omits any anti-environmental riders.

Sincerely,



ERIC T. SCHNEIDERMAN  
Attorney General of New York



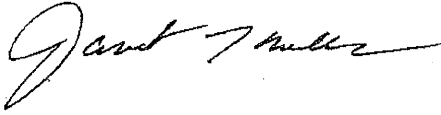
XAVIER BECERRA  
Attorney General of California



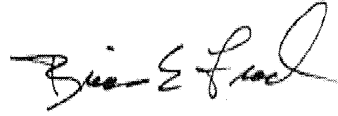
LISA MADIGAN  
Attorney General of Illinois



TOM MILLER  
Attorney General of Iowa



JANET T. MILLS  
Attorney General of Maine



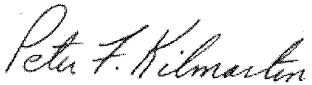
BRIAN E. FROSH  
Attorney General of Maryland



MAURA HEALEY  
Attorney General of Massachusetts



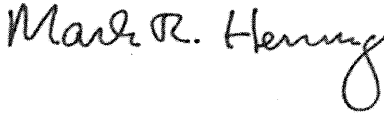
ELLEN ROSENBLUM  
Attorney General of Oregon



PETER F. KILMARTIN  
Attorney General of Rhode Island



T. J. DONOVAN  
Attorney General of Vermont



MARK HERRING  
Attorney General of Virginia



KARL A. RACINE  
Attorney General of the District  
of Columbia



PATRICK MCDONNELL  
Secretary of Pennsylvania Department of Environmental Protection

CC: Thad Cochran, Chairman, Senate Committee on Appropriations  
Patrick Leahy, Vice Chairman, Senate Committee on Appropriations  
Rodney Frelinghuysen, Chairman, House Committee on Appropriations  
Nita Lowey, Ranking Member, House Committee on Appropriations

## McDougall, Robert

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**From:** McDougall, Robert  
**Sent:** Friday, December 29, 2017 3:41 PM  
**To:** Persampieri, Nick; Murphy, Laura  
**Subject:** enviro round up  
**Attachments:** 20171228 Enviro round up.docx

Nick & Laura: Please take a look at this. I'd like to send it up to Natalie and Josh for the end of next week (after we join/if we join the Gliders opposition comments).

I'd appreciate any edits to tighten this up, and would also like to see any ideas for linking to other past actions that might be related to the recent ones.

Thanks,

Rob

Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
Division Chief, Environmental Protection Division  
109 State Street  
Montpelier, VT 05609  
Phone - (802) 828-5506  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)



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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:  
January --, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

**ENVIRONMENTAL ROUND-UP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

Vermont Attorney General T.J. Donovan announced some recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters care about - and deserve - clean air to breath and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. Sometimes that's going to mean joining a case to make the EPA follow its statutory obligations. We have opposed the proposed federal budget cuts to the EPA and will continue to fight dangerous roll-backs coming from Washington that could hurt Vermont's environment."

Recent actions taken by the Attorney General include:

- On January 5<sup>th</sup>, Attorney General Donovan continued Vermont's longstanding and active role in the regulation of motor vehicle emissions by joining with XX of attorneys general to file comments in opposition to the U.S. Environmental Protection Agency's (EPA) proposed repeal of vehicle emission standards for "gliders." A glider consists of an older truck engine (typically a pre-2002 diesel engine) that is paired with a new truck tractor body and sold as a new vehicle. The older engines do not meet current emission standards

Commented [MR1]: Link to comments

and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.

- In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. Specifically, the lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region.
- In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.

**Commented [MR2]:** [Hyperlink to complaint here](#)

**Commented [MR3]:** [Hyperlink to letter](#)

- On December 15<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams and wetlands receive proper protection under the federal Clean Water Act. The Attorney General has been active in opposing the proposed repeal of the Clean Water Rule and the threatened rollbacks of clean water protections.

**Commented [MR4]:** [Hyperlink comments](#)

- Vermont joined with 14 other state attorneys general to file a lawsuit against the EPA on December 5<sup>th</sup> alleging that the Agency had failed to meet the Clean Air Act’s statutory deadline for designing areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog). In October of 2015, the EPA revised and strengthened the national air quality standards for smog. Under the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in “attainment” or “non-attainment” with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not include “non-attainment” areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont.

**Commented [MR5]:** [Hyperlink to complaint here](#)



- In a Vermont-specific action, Attorney General Donovan announced on December 20<sup>th</sup> that his Office had agreed to settle water quality claims with a Berkshire, Vermont farm. To resolve allegations that a silage leachate pond at Pleasant Valley Farms of Berkshire, LLC discharged into the nearby Godin Brook, the farm agreed to pay \$14,000 in civil penalties and to not use the pipe/valve system that caused the discharge from the leachate pond. Attorney General Donovan noted the cooperation of the farm in reaching this settlement.

For more information on the Attorney General's environmental work and to keep up-to-date on the latest activities of the Office of the Attorney General, please visit the Office's website – [www.ago.vermont.gov](http://www.ago.vermont.gov) – and find us on [Facebook](#), [Instagram](#) and [Twitter](#)

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## McDougall, Robert

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**From:** Murphy, Laura  
**Sent:** Tuesday, January 2, 2018 11:51 AM  
**To:** McDougall, Robert; Persampieri, Nick  
**Subject:** RE: enviro round up  
**Attachments:** 20171228 Enviro round up.LM.docx

Hi Rob, looks good. Just a few minor edits/suggestions in attached.  
Laura

**From:** McDougall, Robert  
**Sent:** Friday, December 29, 2017 3:41 PM  
**To:** Persampieri, Nick <nick.persampieri@vermont.gov>; Murphy, Laura <Laura.Murphy@vermont.gov>  
**Subject:** enviro round up

Nick & Laura: Please take a look at this. I'd like to send it up to Natalie and Josh for the end of next week (after we join/if we join the Gliders opposition comments).

I'd appreciate any edits to tighten this up, and would also like to see any ideas for linking to other past actions that might be related to the recent ones.

Thanks,

Rob

Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
Division Chief, Environmental Protection Division  
109 State Street  
Montpelier, VT 05609  
Phone - (802) 828-5506  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)



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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:  
January --, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

**ENVIRONMENTAL ROUND-UP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

Vermont Attorney General T.J. Donovan announced some recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters care about - and deserve - clean air to breathe and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. Sometimes that's going to mean joining a case to make the EPA follow its statutory obligations. We have opposed the proposed federal budget cuts to the EPA and will continue to fight dangerous roll-backs coming from Washington that could hurt Vermont's environment."

Recent actions taken by the Attorney General include:

- On January 5<sup>th</sup>, Attorney General Donovan continued Vermont's longstanding and active role in the regulation of motor vehicle emissions by joining with XX other attorneys general to file comments in opposition to the U.S. Environmental Protection Agency's (EPA) proposed repeal of vehicle emission standards for "gliders." A glider consists of an older truck engine (typically a pre-2002 diesel engine) that is paired with a new truck tractor body and sold as a new vehicle. The older engines do not meet current emission

Commented [MR1]: Link to comments

standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.

- In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. Specifically, the lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region.
- In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.

Commented [MR2]: [Hyperlink to complaint here](#)

Commented [MR3]: [Hyperlink to letter](#)

- On December 13<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. The Attorney General also has been active in defending the Clean Water Rule and opposing the proposed repeal of the Clean Water Rule and the threatened rollbacks of clean water protections.

**Commented [MR4]:** Hyperlink comments

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**Commented [ML5]:** Insert link to press release/filing for this case.

**Commented [MR6]:** Hyperlink to complaint here

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## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Tuesday, January 2, 2018 3:32 PM  
**To:** Murphy, Laura; Persampieri, Nick  
**Subject:** RE: enviro round up  
**Attachments:** 20180102 Enviro round up (2).docx

Nick – to you with some edits.

Rob

**From:** Murphy, Laura  
**Sent:** Tuesday, January 02, 2018 11:51 AM  
**To:** McDougall, Robert <[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)>; Persampieri, Nick <[nick.persampieri@vermont.gov](mailto:nick.persampieri@vermont.gov)>  
**Subject:** RE: enviro round up

Hi Rob, looks good. Just a few minor edits/suggestions in attached.  
Laura

**From:** McDougall, Robert  
**Sent:** Friday, December 29, 2017 3:41 PM  
**To:** Persampieri, Nick <[nick.persampieri@vermont.gov](mailto:nick.persampieri@vermont.gov)>; Murphy, Laura <[Laura.Murphy@vermont.gov](mailto:Laura.Murphy@vermont.gov)>  
**Subject:** enviro round up


Nick & Laura: Please take a look at this. I'd like to send it up to Natalie and Josh for the end of next week (after we join/if we join the Gliders opposition comments).

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Thanks,

Rob

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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:  
January --, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

**ENVIRONMENTAL ROUND-UP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

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engines do not meet current emission standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.

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Commented [MR2]: [Hyperlink to complaint here](#)

- **EPA BUDGET:** In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter

Commented [MR3]: [Hyperlink to letter](#)

follows a [similar letter sent to Congressional Appropriation Committees in March](#), also opposing proposed cuts to the EPA budget.

- **FOR CLEAN WATER:** On December 13<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. The Attorney General also has been active in defending the Clean Water Rule and opposing the proposed repeal of the [Clean Water Rule](#) and the threatened rollbacks of clean water protections.

Commented [MR4]: [Hyperlink comments](#)

Commented [ML5]: [Insert link to press release/filing for this case.](#)

- **OZONE STANDARDS:** Vermont joined with 14 other state attorneys general to file a lawsuit against the EPA on December 5<sup>th</sup> alleging that the Agency had failed to meet the Clean Air Act’s statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog). In October of 2015, the EPA revised and strengthened the national air quality standards for smog. Under the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in “attainment” or “non-attainment” with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not include “non-attainment” areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone

Commented [MR6]: [Hyperlink to complaint here](#)

standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont.

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###

## McDougall, Robert

---

**From:** Persampieri, Nick  
**Sent:** Thursday, January 4, 2018 1:56 PM  
**To:** McDougall, Robert  
**Subject:** Ideas for Press Release  
**Attachments:** 20160812 States Amicus Brief in Support of Rule as filed.pdf; 20171005 NY et al Comments on EPA Reconsideration w. exh.pdf; 20170123 Motion to Intervene of Vermont et al.pdf; 20171010 FINAL NY et al Comments on CAFE Penalty Reconsideration.pdf; 20180102 Enviro round up nfp changes (2).docx

The press release looks good to me. I have proposed some additions- feel free to go with only those additions you feel are appropriate. Also, I enclose documents that could be linked to my new language:

The States Amicus Brief goes with the sentence added to the Ozone Section- you might want to delete the attachments to the brief.

The NY et al Comments goes with the rollback of 2021-2025 car standards in the Motor Vehicle Emissions section

The Motion to Intervene goes with the truck trailer standards in the motor vehicles section

The Final NY comments on CAFÉ . . . goes with the rollback of penalties for violation of fuel economy standards in the motor vehicle section

I don't know if you want any more categories. It seems that we have enough. Chlorpyrifos might be an addition, though it doesn't really fit the clean air/clean water theme.

Nicholas F. Persampieri  
Assistant Attorney General  
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109 State Street  
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nick.persampieri@vermont.gov

STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:  
January --, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

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ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

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**Commented [PN1]:** This link relates to oil and gas facilities not motor vehicles. It could be moved to the For Clean Air Section- see below.

**Commented [MR2]:** Link to comments

engines do not meet current emission standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open. The Attorney General has also been active in opposing initial steps by EPA and the National Highway Traffic Safety Administration to roll back greenhouse gas emission and fuel economy standards for 2021-2025 model year cars, opposing the National Highway Traffic Safety Administration's delay and possible rollback of increased civil penalties for automakers' violations of fuel economy standards, and in defending EPA's greenhouse gas standards for truck trailers.

- **FOR CLEAN AIR:** In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. Specifically, the lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region. The Attorney General has also been active in defending EPA's rules for control of greenhouse gas emissions from oil and gas facilities, and in opposing EPA's stay and initial steps to repeal the rules. The Attorney General also remains

Commented [MR3]: Hyperlink to complaint here

Commented [PN4]: The link from the auto section should go hear.

involved in long-ongoing efforts to defend the Clean Power Plan, the prior administration's landmark regulation of greenhouse gas emissions from existing power plants.

- **EPA BUDGET:** In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.
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Commented [MR5]: Hyperlink to letter

Commented [MR6]: Hyperlink comments

Commented [ML7]: Insert link to press release/filing for this case.

Commented [MR8]: Hyperlink to complaint here



2015, the EPA revised and strengthened the national air quality standards for smog. Under the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in “attainment” or “non-attainment” with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not include “non-attainment” areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont. The Attorney General has also been involved in defending the October, 2015 revised smog standards.

**Commented [PN9]:** Add link here to Amicus Brief I am emailing you. You might leave this out as it dates back to August 2016 and this entry is already somewhat long.

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###

## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Thursday, January 4, 2018 1:46 PM  
**To:** Silver, Natalie  
**Subject:** Environmental Recap  
**Attachments:** 20180104 Enviro recap (3).docx


Hi Natalie: I went with "recap" over "round-up" for this after we spoke. All of the listed items are since 12/1.

Would be great to be able to have Kim finalize this to put it out on Monday morning. I am out of the office (maybe) on Tuesday, and I think with the first item going out Friday 1/5, it would be good for us to get this out soon after.

Lots of links in this to past press releases or filings. We will add the Gliders comments when it goes final Friday.

Rob

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[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

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STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001

FOR IMMEDIATE RELEASE:  
January 8, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

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###

## McDougall, Robert

---

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**Sent:** Thursday, January 4, 2018 2:10 PM  
**To:** Silver, Natalie  
**Subject:** RE: Environmental Recap

Hold up on this so I can make a couple more edits.

Thanks

Rob

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**Sent:** Thursday, January 04, 2018 1:46 PM  
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## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Thursday, January 4, 2018 3:34 PM  
**To:** Silver, Natalie  
**Subject:** RE: Environmental Recap  
**Attachments:** 20180104 Enviro recap (3).docx

**\*\*\*USE THIS VERSION FOR REVIEW\*\*\***

A few more edits to the version I sent you earlier.

We'd still like for this to go Monday if possible.

Rob

**From:** McDougall, Robert  
**Sent:** Thursday, January 04, 2018 1:46 PM  
**To:** Silver, Natalie <[Natalie.Silver@vermont.gov](mailto:Natalie.Silver@vermont.gov)>  
**Subject:** Environmental Recap


Hi Natalie: I went with "recap" over "round-up" for this after we spoke. All of the listed items are since 12/1.

Would be great to be able to have Kim finalize this to put it out on Monday morning. I am out of the office (maybe) on Tuesday, and I think with the first item going out Friday 1/5, it would be good for us to get this out soon after.

Lots of links in this to past press releases or filings. We will add the Gliders comments when it goes final Friday.

Rob

Robert F. McDougall  
Assistant Attorney General  
Office of the Attorney General  
Division Chief, Environmental Protection Division  
109 State Street  
Montpelier, VT 05609  
Phone - (802) 828-5506  
[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)

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**STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001**

FOR IMMEDIATE RELEASE:  
January 8, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
(802) 828-3186

**ENVIRONMENTAL RECAP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

Vermont Attorney General T.J. Donovan announced some recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters care about - and deserve - clean air to breathe and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. Sometimes that means opposing proposed federal budget cuts to the EPA, joining a lawsuit to make the EPA follow its statutory obligations, or fighting dangerous roll-backs coming from Washington that could hurt Vermont's environment. We will continue to work to protect our environment."

Recent actions taken by the Attorney General include:

- **MOTOR VEHICLE EMISSIONS:** Continuing Vermont's longstanding and active role in the regulation of motor vehicle emissions, on January 5<sup>th</sup>, Attorney General Donovan joined with XX other attorneys general to file comments in opposition to the U.S. Environmental Protection Agency's (EPA) proposed repeal of vehicle emission standards for "gliders." A glider consists of an older truck engine (typically a pre-2002 diesel engine) that is paired with a new truck tractor body and sold as a new vehicle. The older

Commented [MR1]: Link to comments when filed (1/5)

engines do not meet current emission standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.

- **FOR CLEAN AIR:** In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. Specifically, the lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region. The Attorney General remains active in defending EPA's rules for control of greenhouse gas emissions from oil and gas facilities, opposing EPA's stay and initial steps to repeal the rules, and supporting the Clean Power Plan, the prior administrations' landmark regulation of greenhouse gas emissions from existing power plans.
- **EPA BUDGET:** In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that

the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.

- **FOR CLEAN WATER:** On December 13<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. The Attorney General also has been active in defending the Clean Water Rule and opposing the proposed repeal of the Clean Water Rule and the threatened rollbacks of clean water protections.
- **OZONE STANDARDS:** Vermont joined with 14 other state attorneys general to file a lawsuit against the EPA on December 5<sup>th</sup> alleging that the Agency had failed to meet the Clean Air Act’s statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog). In October of 2015, the EPA revised and strengthened the national air quality standards for smog. Under the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in “attainment” or “non-attainment” with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not

include “non-attainment” areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont.

- **AGRICULTURAL WATER QUALITY:** In a Vermont-specific action, Attorney General Donovan announced on December 20<sup>th</sup> that his Office had agreed to settle water quality claims with a Berkshire, Vermont farm. To resolve allegations that a silage leachate pond at Pleasant Valley Farms of Berkshire, LLC discharged into the nearby Godin Brook, the farm agreed to pay \$14,000 in civil penalties and to not use the pipe/valve system that caused the discharge from the leachate pond. Attorney General Donovan noted the cooperation of the farm in reaching this settlement.

For more information on the Attorney General’s environmental work and to keep up-to-date on the latest activities of the Office of the Attorney General, please visit the Office’s website – [www.ago.vermont.gov](http://www.ago.vermont.gov) – and find us on [Facebook](#), [Instagram](#) and [Twitter](#)

###

## Diamond, Joshua

---

**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Thursday, January 4, 2018 7:11 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** Template Release for Glider Rule

Hi all,

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Thank you, and hope you have a great afternoon.

### **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

**SACRAMENTO** – Joining a coalition of XXX attorneys general, Attorney General XXX today filed his/her strong opposition to the U.S. Environmental Protection Agency's (EPA) proposal to repeal regulations that place strict emissions standards on highly polluting "glider" trucks. Known as the 2016 Glider Rule, the regulations mandate that most engines installed in "gliders" – new heavy-duty truck bodies outfitted with refurbished or rebuilt pre-2010 highly polluting engines – meet the same emissions standards applicable to all newly manufactured engines. The coalition of attorneys general is being led by California Attorney General Xavier Becerra.

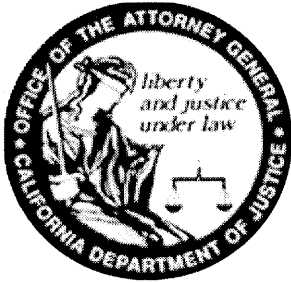
#### XXX QUOTE

"Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines," said **Attorney General Becerra**. "Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy."

Glidens that do not comply with the 2016 Glider Rule produce 20 to 40 times more emissions of hazardous pollutants that are linked to asthma, low birth weight, infant mortality, and lung cancer. The EPA has estimated that a single year in which it allowed 10,000 additional gliders to be produced with non-compliant engines could result in up to 1,600 premature deaths, 415,000 tons of additional nitrogen oxide emissions, and 6,800 tons of additional particulate matter emissions. In XXX (STATE), and elsewhere, the rest of the trucking industry has already made substantial investments to comply with stringent emissions standards and would face an unlevel playing field if forced to continue to compete against unregulated glider manufacturers who avoid such investments.

Joining Attorney General XXX in filing today's comments were the attorneys general of: XXX.

###



Walter Garcia  
Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

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## Diamond, Joshua

---

**From:** Diamond, Joshua  
**Sent:** Friday, January 5, 2018 6:58 AM  
**To:** Natalie Silver (Natalie.Silver@vermont.gov)  
**Subject:** FW: Template Release for Glider Rule

Please discuss with Rob and TJ whether we want to do a press release on joining these comments.

I suspect we will need to do a substantial rewrite.

Thanks. Josh

Joshua R. Diamond, Deputy Attorney General  
Vermont Attorney General's Office  
109 State Street  
Montpelier, Vermont 05609  
802-828-3175  
[joshua.diamond@vermont.gov](mailto:joshua.diamond@vermont.gov)

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**From:** Walter Garcia [mailto:Walter.Garcia@doj.ca.gov]  
**Sent:** Thursday, January 4, 2018 7:11 PM  
**To:** Thompson, Annie <PThompson@atg.state.il.us>; Gignac, James <JGignac@atg.state.il.us>; Karr, Gerald <GKarr@atg.state.il.us>; Dunn, Matthew <MDunn@atg.state.il.us>; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua <Joshua.Diamond@vermont.gov>; Silver, Natalie <Natalie.Silver@vermont.gov>; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO) <jillian.fennimore@state.ma.us>; jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov  
**Cc:** Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>; Patricia Moscoso <Patricia.Moscoso@doj.ca.gov>  
**Subject:** Template Release for Glider Rule

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Thank you, and hope you have a great afternoon.

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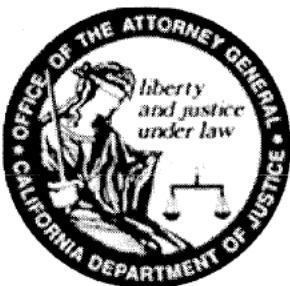
### XXX QUOTE

“Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines,” **said Attorney General Becerra.** “Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy.”

Glidors that do not comply with the 2016 Glider Rule produce 20 to 40 times more emissions of hazardous pollutants that are linked to asthma, low birth weight, infant mortality, and lung cancer. The EPA has estimated that a single year in which it allowed 10,000 additional gliders to be produced with non-compliant engines could result in up to 1,600 premature deaths, 415,000 tons of additional nitrogen oxide emissions, and 6,800 tons of additional particulate matter emissions. In XXX (STATE), and elsewhere, the rest of the trucking industry has already made substantial investments to comply with stringent emissions standards and would face an unlevel playing field if forced to continue to compete against unregulated glider manufacturers who avoid such investments.

Joining Attorney General XXX in filing today’s comments were the attorneys general of: XXX.

###



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## Diamond, Joshua

---

**From:** Silver, Natalie  
**Sent:** Friday, January 5, 2018 7:51 AM  
**To:** McDougall, Robert; Donovan, Thomas; Diamond, Joshua  
**Subject:** Fwd: Template Release for Glider Rule

Do you want to do a press release on these comments?

Natalie Silver  
Executive Assistant to the Attorney General  
Vermont Attorney General's Office  
109 State St, Montpelier VT  
Office: 802 828 3173  
Cell: 802 595 8679

---

**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Thursday, January 4, 2018 7:10:58 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov  
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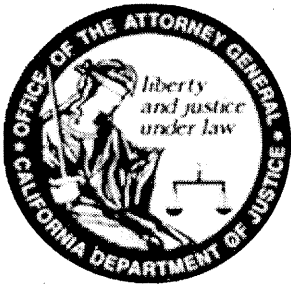
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**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 8:03 AM  
**To:** Silver, Natalie; Donovan, Thomas; Diamond, Joshua  
**Subject:** Re: Template Release for Glider Rule

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Rob

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---

**From:** Silver, Natalie  
**Sent:** Friday, January 5, 2018 7:50:33 AM  
**To:** McDougall, Robert; Donovan, Thomas; Diamond, Joshua  
**Subject:** Fwd: Template Release for Glider Rule

Do you want to do a press release on these comments?

Natalie Silver  
Executive Assistant to the Attorney General  
Vermont Attorney General's Office  
109 State St, Montpelier VT  
Office: 802 828 3173  
Cell: 802 595 8679

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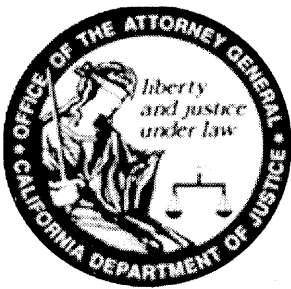
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Great. Those were my thoughts as well. Thanks Rob.

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**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 8:02:44 AM  
**To:** Silver, Natalie; Donovan, Thomas; Diamond, Joshua  
**Subject:** Re: Template Release for Glider Rule

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msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov

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#### XXX QUOTE

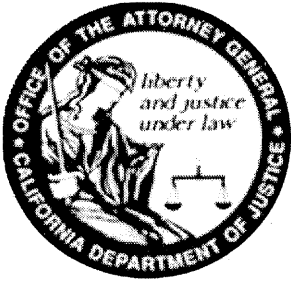
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Joining Attorney General XXX in filing today's comments were the attorneys general of: XXX.

###





Walter Garcia  
Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

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## Diamond, Joshua

---

**From:** Donovan, Thomas  
**Sent:** Friday, January 5, 2018 8:03 AM  
**To:** Diamond, Joshua; Silver, Natalie; McDougall, Robert  
**Subject:** Re: Template Release for Glider Rule

Let's do that

Get [Outlook for iOS](#)

---

**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 8:02:44 AM  
**To:** Silver, Natalie; Donovan, Thomas; Diamond, Joshua  
**Subject:** Re: Template Release for Glider Rule

We have the glider comments as the first bullet in our "environmental recap" press release draft that we'd like to get out Monday (if possible).

I don't think a separate press release on this is needed, but will do whatever you all want.

Rob

Get [Outlook for iOS](#)

---

**From:** Silver, Natalie  
**Sent:** Friday, January 5, 2018 7:50:33 AM  
**To:** McDougall, Robert; Donovan, Thomas; Diamond, Joshua  
**Subject:** Fwd: Template Release for Glider Rule

Do you want to do a press release on these comments?

Natalie Silver  
Executive Assistant to the Attorney General  
Vermont Attorney General's Office  
109 State St, Montpelier VT  
Office: 802 828 3173  
Cell: 802 595 8679

---

**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Thursday, January 4, 2018 7:10:58 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** Template Release for Glider Rule

Hi all,

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Thank you, and hope you have a great afternoon.

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**SACRAMENTO** – Joining a coalition of XXX attorneys general, Attorney General XXX today filed his/her strong opposition to the U.S. Environmental Protection Agency's (EPA) proposal to repeal regulations that place strict emissions standards on highly polluting "glider" trucks. Known as the 2016 Glider Rule, the regulations mandate that most engines installed in "gliders" – new heavy-duty truck bodies outfitted with refurbished or rebuilt pre-2010 highly polluting engines – meet the same emissions standards applicable to all newly manufactured engines. The coalition of attorneys general is being led by California Attorney General Xavier Becerra.

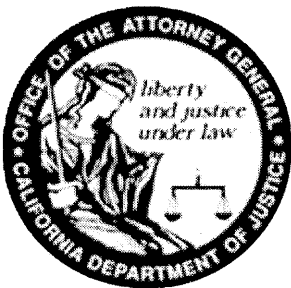
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## Diamond, Joshua

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**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Friday, January 5, 2018 1:27 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew;  
rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond,  
Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us;  
Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov;  
msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov;  
BrionnaF@ATG.WA.GOV  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** RE: Template Release for Glider Rule

Hi all,

Below you'll find the final version of the template press release. A total of 11 states are part of our coalition. As our attorneys are still working to finalize the comment letter, the embargo time is now 11:00 am PT/2:00 pm ET. I will make sure to send the final version of the comment letter as soon as I have.

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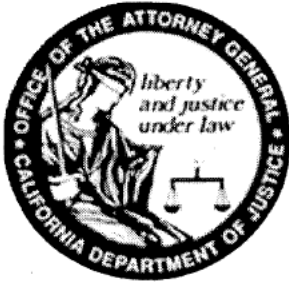
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Joining Attorney General XXX in filing today's comments were the attorneys general of California, Illinois, Maryland, Massachusetts, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (REMOVE YOUR STATE).



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Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

**From:** Walter Garcia

**Sent:** Thursday, January 04, 2018 4:11 PM

**To:** 'Thompson, Annie' <PThompson@atg.state.il.us>; 'Gignac, James' <JGignac@atg.state.il.us>; 'Karr, Gerald' <GKarr@atg.state.il.us>; 'Dunn, Matthew' <MDunn@atg.state.il.us>; 'rcoombs@oag.state.md.us' <rcoombs@oag.state.md.us>; 'ctobar@oag.state.md.us' <ctobar@oag.state.md.us>; 'lbrewer@ncdoj.gov' <lbrewer@ncdoj.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>; 'Natalie.Silver@vermont.gov' <Natalie.Silver@vermont.gov>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'chloe.gotsis@state.ma.us' <chloe.gotsis@state.ma.us>; 'Fennimore, Jillian (AGO)' <jillian.fennimore@state.ma.us>; 'jgrace@attorneygeneral.gov' <jgrace@attorneygeneral.gov>; 'csimpson@attorneygeneral.gov' <csimpson@attorneygeneral.gov>; 'msartoretto@attorneygeneral.gov' <msartoretto@attorneygeneral.gov>; 'jhallinan@nmag.gov' <jhallinan@nmag.gov>; 'Amy.Spitalnick@ag.ny.gov' <Amy.Spitalnick@ag.ny.gov>

**Cc:** Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>; Patricia Moscoso <Patricia.Moscoso@doj.ca.gov>

**Subject:** Template Release for Glider Rule

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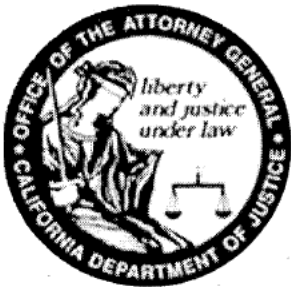
XXX QUOTE

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## Diamond, Joshua

---

**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Friday, January 5, 2018 1:53 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov; BrionnaF@ATG.WA.GOV; samuel.carmody@ct.gov; Jaclyn.Severance@ct.gov  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** RE: Template Release for Glider Rule

All,

Another update here. We are now a 12 state coalition. Connecticut just joined. Embargo time is now 11:30 am PT/2:30 pm ET. Thank you for your patience. Updated release below. Comment letter coming your way.

### **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

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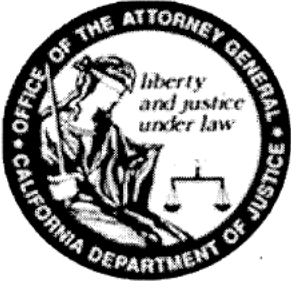
#### XXX QUOTE

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Joining Attorney General XXX in filing today’s comments were the attorneys general of California, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (REMOVE YOUR STATE).





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Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

**From:** Walter Garcia  
**Sent:** Friday, January 05, 2018 10:27 AM  
**To:** 'Thompson, Annie' <PThompson@atg.state.il.us>; 'Gignac, James' <JGignac@atg.state.il.us>; 'Karr, Gerald' <GKarr@atg.state.il.us>; 'Dunn, Matthew' <MDunn@atg.state.il.us>; 'rcoombs@oag.state.md.us' <rcoombs@oag.state.md.us>; 'ctobar@oag.state.md.us' <ctobar@oag.state.md.us>; 'lbrewer@ncdoj.gov' <lbrewer@ncdoj.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>; 'Natalie.Silver@vermont.gov' <Natalie.Silver@vermont.gov>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'chloe.gotsis@state.ma.us' <chloe.gotsis@state.ma.us>; 'Fennimore, Jillian (AGO)' <jillian.fennimore@state.ma.us>; 'jgrace@attorneygeneral.gov' <jgrace@attorneygeneral.gov>; 'csimpson@attorneygeneral.gov' <csimpson@attorneygeneral.gov>; 'msartoretto@attorneygeneral.gov' <msartoretto@attorneygeneral.gov>; 'jhallinan@nmag.gov' <jhallinan@nmag.gov>; 'Amy.Spitalnick@ag.ny.gov' <Amy.Spitalnick@ag.ny.gov>; 'BrionnaF@ATG.WA.GOV' <BrionnaF@ATG.WA.GOV>  
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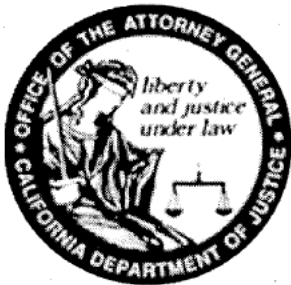
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**Cc:** Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>; Joanne Adams <[Joanne.Adams@doj.ca.gov](mailto:Joanne.Adams@doj.ca.gov)>; Patricia Moscoso <[Patricia.Moscoso@doj.ca.gov](mailto:Patricia.Moscoso@doj.ca.gov)>

**Subject:** Template Release for Glider Rule

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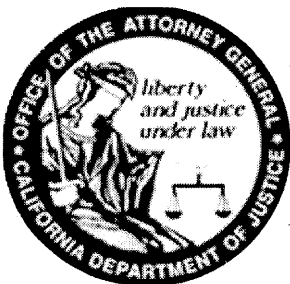
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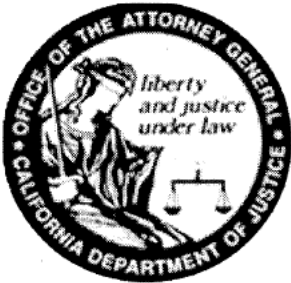
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## Diamond, Joshua

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**From:** Walter Garcia <Walter.Garcia@doj.ca.gov>  
**Sent:** Friday, January 5, 2018 2:31 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov; BrionnaF@ATG.WA.GOV; samuel.carmody@ct.gov; Jaclyn.Severance@ct.gov  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** RE: Template Release for Glider Rule

Pushed back to 12:00 pm PT/3:00 pm ET. Thanks again for your patience.



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Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

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**Sent:** Friday, January 05, 2018 10:53 AM  
**To:** 'Thompson, Annie' <PThompson@atg.state.il.us>; 'Gignac, James' <JGignac@atg.state.il.us>; 'Karr, Gerald' <GKarr@atg.state.il.us>; 'Dunn, Matthew' <MDunn@atg.state.il.us>; 'rcoombs@oag.state.md.us' <rcoombs@oag.state.md.us>; 'ctobar@oag.state.md.us' <ctobar@oag.state.md.us>; 'lbrewer@ncdoj.gov' <lbrewer@ncdoj.gov>; 'Joshua.Diamond@vermont.gov' <Joshua.Diamond@vermont.gov>; 'Natalie.Silver@vermont.gov' <Natalie.Silver@vermont.gov>; 'kristina.edmunson@doj.state.or.us' <kristina.edmunson@doj.state.or.us>; 'chloe.gotsis@state.ma.us' <chloe.gotsis@state.ma.us>; 'Fennimore, Jillian (AGO)' <jillian.fennimore@state.ma.us>; 'jgrace@attorneygeneral.gov' <jgrace@attorneygeneral.gov>; 'csimpson@attorneygeneral.gov' <csimpson@attorneygeneral.gov>; 'msartoretto@attorneygeneral.gov' <msartoretto@attorneygeneral.gov>; 'jhallinan@nmag.gov' <jhallinan@nmag.gov>; 'Amy.Spitalnick@ag.ny.gov' <Amy.Spitalnick@ag.ny.gov>; 'BrionnaF@ATG.WA.GOV' <BrionnaF@ATG.WA.GOV>; 'samuel.carmody@ct.gov' <samuel.carmody@ct.gov>; 'Jaclyn.Severance@ct.gov' <Jaclyn.Severance@ct.gov>  
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All,

Another update here. We are now a 12 state coalition. Connecticut just joined. Embargo time is now 11:30 am PT/2:30 pm ET. Thank you for your patience. Updated release below. Comment letter coming your way.

## **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

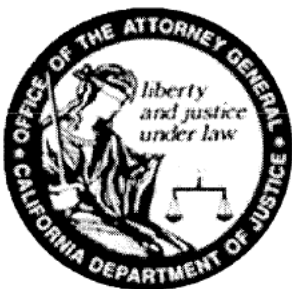
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### **XXX QUOTE**

“Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines,” said **Attorney General Becerra**. “Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy.”

Glidens that do not comply with the 2016 Glider Rule produce 20 to 40 times more emissions of hazardous pollutants that are linked to asthma, low birth weight, infant mortality, and lung cancer. The EPA has estimated that a single year in which it allowed 10,000 additional gliders to be produced with non-compliant engines could result in up to 1,600 premature deaths, 415,000 tons of additional nitrogen oxide emissions, and 6,800 tons of additional particulate matter emissions. In XXX (STATE), and elsewhere, the rest of the trucking industry has already made substantial investments to comply with stringent emissions standards and would face an unlevel playing field if forced to continue to compete against unregulated glider manufacturers who avoid such investments.

Joining Attorney General XXX in filing today’s comments were the attorneys general of California, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (REMOVE YOUR STATE).



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**Cc:** Bethany Lesser <Bethany.Lesser@doj.ca.gov>; Joanne Adams <Joanne.Adams@doj.ca.gov>; Patricia Moscoso <Patricia.Moscoso@doj.ca.gov>

**Subject:** RE: Template Release for Glider Rule

Hi all,

Below you'll find the final version of the template press release. A total of 11 states are part of our coalition. As our attorneys are still working to finalize the comment letter, the embargo time is now 11:00 am PT/2:00 pm ET. I will make sure to send the final version of the comment letter as soon as I have.

Thanks.

### **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

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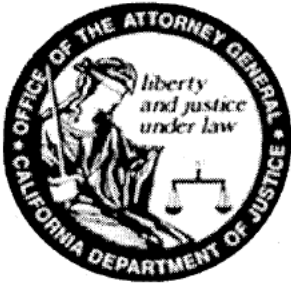
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**From:** Walter Garcia

**Sent:** Thursday, January 04, 2018 4:11 PM

**To:** 'Thompson, Annie' <[PThompson@atg.state.il.us](mailto:PThompson@atg.state.il.us)>; 'Gignac, James' <[JGignac@atg.state.il.us](mailto:JGignac@atg.state.il.us)>; 'Karr, Gerald' <[GKarr@atg.state.il.us](mailto:GKarr@atg.state.il.us)>; 'Dunn, Matthew' <[MDunn@atg.state.il.us](mailto:MDunn@atg.state.il.us)>; 'rcoombs@oag.state.md.us' <[rcoombs@oag.state.md.us](mailto:rcoombs@oag.state.md.us)>; 'ctobar@oag.state.md.us' <[ctobar@oag.state.md.us](mailto:ctobar@oag.state.md.us)>; 'lbrewer@ncdoj.gov' <[lbrewer@ncdoj.gov](mailto:lbrewer@ncdoj.gov)>; 'Joshua.Diamond@vermont.gov' <[Joshua.Diamond@vermont.gov](mailto:Joshua.Diamond@vermont.gov)>; 'Natalie.Silver@vermont.gov' <[Natalie.Silver@vermont.gov](mailto:Natalie.Silver@vermont.gov)>; 'kristina.edmunson@doj.state.or.us' <[kristina.edmunson@doj.state.or.us](mailto:kristina.edmunson@doj.state.or.us)>; 'chloe.gotsis@state.ma.us' <[chloe.gotsis@state.ma.us](mailto:chloe.gotsis@state.ma.us)>; 'Fennimore, Jillian (AGO)' <[jillian.fennimore@state.ma.us](mailto:jillian.fennimore@state.ma.us)>; 'jgrace@attorneygeneral.gov' <[jgrace@attorneygeneral.gov](mailto:jgrace@attorneygeneral.gov)>; 'csimpson@attorneygeneral.gov' <[csimpson@attorneygeneral.gov](mailto:csimpson@attorneygeneral.gov)>; 'msartoretto@attorneygeneral.gov' <[msartoretto@attorneygeneral.gov](mailto:msartoretto@attorneygeneral.gov)>; 'jhallinan@nmag.gov' <[jhallinan@nmag.gov](mailto:jhallinan@nmag.gov)>; 'Amy.Spitalnick@ag.ny.gov' <[Amy.Spitalnick@ag.ny.gov](mailto:Amy.Spitalnick@ag.ny.gov)>

**Cc:** Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>; Joanne Adams <[Joanne.Adams@doj.ca.gov](mailto:Joanne.Adams@doj.ca.gov)>; Patricia Moscoso <[Patricia.Moscoso@doj.ca.gov](mailto:Patricia.Moscoso@doj.ca.gov)>

**Subject:** Template Release for Glider Rule

Hi all,

Below you'll find a template release on the comment letter that we'll be sending tomorrow. This is currently embargoed until 10:30 am PT/1:30 pm ET, but is subject to change. I will make sure to keep you all updated. I will also make sure to share the final version of the comment letter tomorrow. Final list of states is being finalized as well.

Thank you, and hope you have a great afternoon.

### **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

**SACRAMENTO** – Joining a coalition of XXX attorneys general, Attorney General XXX today filed his/her strong opposition to the U.S. Environmental Protection Agency's (EPA) proposal to repeal regulations that place strict emissions standards on highly polluting "glider" trucks. Known as the 2016 Glider Rule, the



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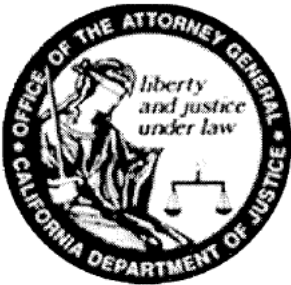
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“Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines,” said **Attorney General Becerra**. “Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy.”

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Joining Attorney General XXX in filing today’s comments were the attorneys general of: XXX.

###



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Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

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## Diamond, Joshua

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**Sent:** Friday, January 5, 2018 2:57 PM  
**To:** Thompson, Annie; Gignac, James; Karr, Gerald; Dunn, Matthew; rcoombs@oag.state.md.us; ctobar@oag.state.md.us; lbrewer@ncdoj.gov; Diamond, Joshua; Silver, Natalie; kristina.edmunson@doj.state.or.us; chloe.gotsis@state.ma.us; Fennimore, Jillian (AGO); jgrace@attorneygeneral.gov; csimpson@attorneygeneral.gov; msartoretto@attorneygeneral.gov; jhallinan@nmag.gov; Amy.Spitalnick@ag.ny.gov; BrionnaF@ATG.WA.GOV; samuel.carmody@ct.gov; Jaclyn.Severance@ct.gov  
**Cc:** Bethany Lesser; Joanne Adams; Patricia Moscoso  
**Subject:** RE: Template Release for Glider Rule  
**Attachments:** Repeal of Glider Regs Comment Letter by AGOs.pdf

Final comment letter attached. Good to send at 12:00 pm PT/3:00 pm ET.

Hope you all have a great weekend.

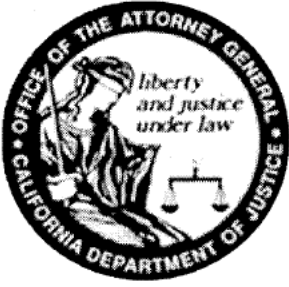


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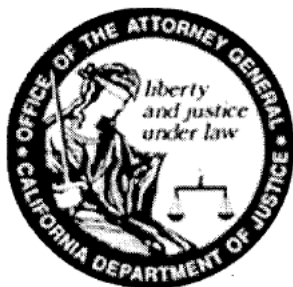
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**From:** Walter Garcia  
**Sent:** Friday, January 05, 2018 10:27 AM  
**To:** 'Thompson, Annie' <[PThompson@atg.state.il.us](mailto:PThompson@atg.state.il.us)>; 'Gignac, James' <[JGignac@atg.state.il.us](mailto:JGignac@atg.state.il.us)>; 'Karr, Gerald' <[GKarr@atg.state.il.us](mailto:GKarr@atg.state.il.us)>; 'Dunn, Matthew' <[MDunn@atg.state.il.us](mailto:MDunn@atg.state.il.us)>; 'rcoombs@oag.state.md.us' <[rcoombs@oag.state.md.us](mailto:rcoombs@oag.state.md.us)>; 'ctobar@oag.state.md.us' <[ctobar@oag.state.md.us](mailto:ctobar@oag.state.md.us)>; 'lbrewer@ncdoj.gov' <[lbrewer@ncdoj.gov](mailto:lbrewer@ncdoj.gov)>; 'Joshua.Diamond@vermont.gov' <[Joshua.Diamond@vermont.gov](mailto:Joshua.Diamond@vermont.gov)>; 'Natalie.Silver@vermont.gov' <[Natalie.Silver@vermont.gov](mailto:Natalie.Silver@vermont.gov)>; 'kristina.edmunson@doj.state.or.us' <[kristina.edmunson@doj.state.or.us](mailto:kristina.edmunson@doj.state.or.us)>; 'chloe.gotsis@state.ma.us' <[chloe.gotsis@state.ma.us](mailto:chloe.gotsis@state.ma.us)>; 'Fennimore, Jillian (AGO)' <[jillian.fennimore@state.ma.us](mailto:jillian.fennimore@state.ma.us)>; 'jgrace@attorneygeneral.gov' <[jgrace@attorneygeneral.gov](mailto:jgrace@attorneygeneral.gov)>; 'csimpson@attorneygeneral.gov' <[csimpson@attorneygeneral.gov](mailto:csimpson@attorneygeneral.gov)>; 'msartoretto@attorneygeneral.gov' <[msartoretto@attorneygeneral.gov](mailto:msartoretto@attorneygeneral.gov)>; 'jhallinan@nmag.gov' <[jhallinan@nmag.gov](mailto:jhallinan@nmag.gov)>; 'Amy.Spitalnick@ag.ny.gov' <[Amy.Spitalnick@ag.ny.gov](mailto:Amy.Spitalnick@ag.ny.gov)>; 'BrionnaF@ATG.WA.GOV' <[BrionnaF@ATG.WA.GOV](mailto:BrionnaF@ATG.WA.GOV)>  
**Cc:** Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>; Joanne Adams <[Joanne.Adams@doj.ca.gov](mailto:Joanne.Adams@doj.ca.gov)>; Patricia Moscoso <[Patricia.Moscoso@doj.ca.gov](mailto:Patricia.Moscoso@doj.ca.gov)>  
**Subject:** RE: Template Release for Glider Rule

Hi all,

Below you'll find the final version of the template press release. A total of 11 states are part of our coalition. As our attorneys are still working to finalize the comment letter, the embargo time is now 11:00 am PT/2:00 pm ET. I will make sure to send the final version of the comment letter as soon as I have.

Thanks.

**Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

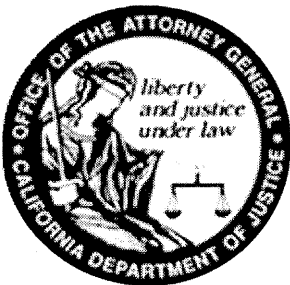
**SACRAMENTO** – Joining a coalition of 11 attorneys general, Attorney General XXX today filed his/her strong opposition to the U.S. Environmental Protection Agency's (EPA) proposal to repeal regulations that place strict emissions standards on highly polluting "glider" trucks. Known as the 2016 Glider Rule, the regulations mandate that most engines installed in "gliders" – new heavy-duty truck bodies outfitted with refurbished or rebuilt pre-2010 highly polluting engines – meet the same emissions standards applicable to all newly manufactured engines. The coalition of attorneys general is being led by California Attorney General Xavier Becerra.

**XXX QUOTE**

“Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines,” said **Attorney General Becerra**. “Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy.”

Glider trucks that do not comply with the 2016 Glider Rule produce 20 to 40 times more emissions of hazardous pollutants that are linked to asthma, low birth weight, infant mortality, and lung cancer. The EPA has estimated that a single year in which it allowed 10,000 additional gliders to be produced with non-compliant engines could result in up to 1,600 premature deaths, 415,000 tons of additional nitrogen oxide emissions, and 6,800 tons of additional particulate matter emissions. In XXX (STATE), and elsewhere, the rest of the trucking industry has already made substantial investments to comply with stringent emissions standards and would face an unlevel playing field if forced to continue to compete against unregulated glider manufacturers who avoid such investments.

Joining Attorney General XXX in filing today's comments were the attorneys general of California, Illinois, Maryland, Massachusetts, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (REMOVE YOUR STATE).



Walter Garcia

Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

**From:** Walter Garcia

**Sent:** Thursday, January 04, 2018 4:11 PM

**To:** 'Thompson, Annie' <[PThompson@atg.state.il.us](mailto:PThompson@atg.state.il.us)>; 'Gignac, James' <[JGignac@atg.state.il.us](mailto:JGignac@atg.state.il.us)>; 'Karr, Gerald' <[GKarr@atg.state.il.us](mailto:GKarr@atg.state.il.us)>; 'Dunn, Matthew' <[MDunn@atg.state.il.us](mailto:MDunn@atg.state.il.us)>; 'rcoombs@oag.state.md.us' <[rcoombs@oag.state.md.us](mailto:rcoombs@oag.state.md.us)>; 'ctobar@oag.state.md.us' <[ctobar@oag.state.md.us](mailto:ctobar@oag.state.md.us)>; 'lbrewer@ncdoj.gov' <[lbrewer@ncdoj.gov](mailto:lbrewer@ncdoj.gov)>; 'Joshua.Diamond@vermont.gov' <[Joshua.Diamond@vermont.gov](mailto:Joshua.Diamond@vermont.gov)>; 'Natalie.Silver@vermont.gov' <[Natalie.Silver@vermont.gov](mailto:Natalie.Silver@vermont.gov)>; 'kristina.edmunson@doj.state.or.us' <[kristina.edmunson@doj.state.or.us](mailto:kristina.edmunson@doj.state.or.us)>; 'chloe.gotsis@state.ma.us' <[chloe.gotsis@state.ma.us](mailto:chloe.gotsis@state.ma.us)>; 'Fennimore, Jillian (AGO)' <[jillian.fennimore@state.ma.us](mailto:jillian.fennimore@state.ma.us)>; 'jgrace@attorneygeneral.gov' <[jgrace@attorneygeneral.gov](mailto:jgrace@attorneygeneral.gov)>; 'csimpson@attorneygeneral.gov' <[csimpson@attorneygeneral.gov](mailto:csimpson@attorneygeneral.gov)>; 'msartoretto@attorneygeneral.gov' <[msartoretto@attorneygeneral.gov](mailto:msartoretto@attorneygeneral.gov)>; 'jhallinan@nmag.gov' <[jhallinan@nmag.gov](mailto:jhallinan@nmag.gov)>; 'Amy.Spitalnick@ag.ny.gov' <[Amy.Spitalnick@ag.ny.gov](mailto:Amy.Spitalnick@ag.ny.gov)>

**Cc:** Bethany Lesser <[Bethany.Lesser@doj.ca.gov](mailto:Bethany.Lesser@doj.ca.gov)>; Joanne Adams <[Joanne.Adams@doj.ca.gov](mailto:Joanne.Adams@doj.ca.gov)>; Patricia Moscoso <[Patricia.Moscoso@doj.ca.gov](mailto:Patricia.Moscoso@doj.ca.gov)>

**Subject:** Template Release for Glider Rule

Hi all,

Below you'll find a template release on the comment letter that we'll be sending tomorrow. This is currently embargoed until 10:30 am PT/1:30 pm ET, but is subject to change. I will make sure to keep you all updated. I will also make sure to share the final version of the comment letter tomorrow. Final list of states is being finalized as well.

Thank you, and hope you have a great afternoon.

### **Attorney General XXX Prepared for Court Fight to Stop EPA from Allowing High-Polluting Trucks Back on the Road**

**SACRAMENTO** – Joining a coalition of XXX attorneys general, Attorney General XXX today filed his/her strong opposition to the U.S. Environmental Protection Agency's (EPA) proposal to repeal regulations that place strict emissions standards on highly polluting "glider" trucks. Known as the 2016 Glider Rule, the regulations mandate that most engines installed in "gliders" – new heavy-duty truck bodies outfitted with refurbished or rebuilt pre-2010 highly polluting engines – meet the same emissions standards applicable to all newly manufactured engines. The coalition of attorneys general is being led by California Attorney General Xavier Becerra.

#### **XXX QUOTE**

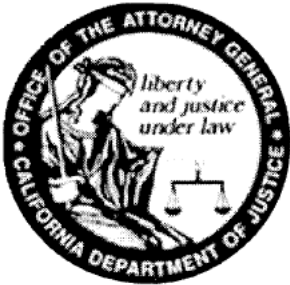
“Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines,” said **Attorney General Becerra**. “Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy.”

Glider trucks that do not comply with the 2016 Glider Rule produce 20 to 40 times more emissions of hazardous pollutants that are linked to asthma, low birth weight, infant mortality, and lung cancer. The EPA has estimated

that a single year in which it allowed 10,000 additional gliders to be produced with non-compliant engines could result in up to 1,600 premature deaths, 415,000 tons of additional nitrogen oxide emissions, and 6,800 tons of additional particulate matter emissions. In XXX (STATE), and elsewhere, the rest of the trucking industry has already made substantial investments to comply with stringent emissions standards and would face an unlevel playing field if forced to continue to compete against unregulated glider manufacturers who avoid such investments.

Joining Attorney General XXX in filing today's comments were the attorneys general of: XXX.

###



Walter Garcia  
Press Secretary  
Office of California Attorney General Xavier Becerra  
Email: [Walter.Garcia@doj.ca.gov](mailto:Walter.Garcia@doj.ca.gov)

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## Persampieri, Nick

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Agency: Environmental Protection Agency (EPA)  
Document Type: Rulemaking  
Title: Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits  
Document ID: EPA-HQ-OAR-2014-0827-2368

**Comment:**

This letter is submitted on behalf of the Attorneys General of California, New York, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington. See attached file.

**Uploaded File(s):**

- Repeal of Glider Regs Comment Letter by AGOs.pdf

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Organization Name: California Department of Justice  
Submitter's Representative: Deputy Attorney General Megan K. Hey  
Government Agency Type: State  
Government Agency: California Department of Justice

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**Persampieri, Nick**

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**Sent:** Friday, January 05, 2018 3:58 PM  
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Agency: Environmental Protection Agency (EPA)  
Document Type: Rulemaking  
Title: Repeal of Emission Requirements for Glider Vehicles, Glider Engines, and Glider Kits  
Document ID: EPA-HQ-OAR-2014-0827-2368

**Comment:**  
This letter is submitted on behalf of the Attorneys General of California, New York, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington. See attached file.

**Uploaded File(s):**

- AGO Comments Re Proposed Repeal of Glider Regs 152018.pdf

This information will appear on Regulations.gov:

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Organization Name: California Department of Justice  
Submitter's Representative: Deputy Attorney General Megan K. Hey  
Government Agency Type: State  
Government Agency: California Department of Justice

**For further information about the Regulations.gov commenting process, please visit <https://www.regulations.gov/faqs>.**

**Persampieri, Nick**

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**From:** Persampieri, Nick  
**Sent:** Friday, January 5, 2018 4:05 PM  
**To:** McDougall, Robert; Ingraham, Kim  
**Subject:** Final Glider Letter  
**Attachments:** Repeal of Glider Regs Comment Letter by AGOs.pdf

I enclose the final letter on gliders that CA submitted on our behalf today. Kim, please add this to the sign on spreadsheet. Thanks.

Nick

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**Attorneys General of California, New York, Connecticut, Illinois, Maryland, Massachusetts,  
New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington**

January 5, 2017

EPA Docket Center (EPA/DC)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

*Via <https://www.regulations.gov>*

Re: Comments on Proposed “Repeal of Emission Requirements for Glider Vehicles,  
Glider Engines, and Glider Kits,” 82 Fed. Reg. 53,442

**Attention: Docket No. EPA-HQ-OAR-2014-0827**

The Attorneys General of California,<sup>1</sup> New York, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (the States) submit these comments in opposition to the United States Environmental Protection Agency’s (EPA) proposal to repeal those provisions of 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 (October 25, 2016) and 82 Fed. Reg. 29,761 (June 30, 2017) (correcting table), that apply to glider vehicles, glider engines, and glider kits (hereinafter, the Glider Rule). *See* 82 Fed. Reg. 53,442 (November 16, 2017) (Proposed Repeal). Gliders are heavy duty vehicles where a used or refurbished engine is incorporated into a new vehicle chassis. These trucks are typically manufactured alongside of, and sold as, new trucks.<sup>2</sup>

EPA’s Proposed Repeal rests on a legally untenable reinterpretation of the Agency’s duty to regulate harmful air pollutants from “new motor vehicles” and “new motor vehicle engines,” which conflicts with the language, history and purpose of section 202(a)(1) of the Clean Air Act (CAA), and the CAA as a whole. 42 U.S.C. §§ 7401, *et seq.* Further, EPA uncritically accepts the contentions of a few glider manufacturers that were soundly rejected in the 2016 rulemaking, and ignores its own economic and environmental analysis from the Glider Rule. In doing so, EPA proposes to act arbitrarily and capriciously, without providing any good reason or substantial justification for its reversal of position.

Simply put, gliders are a pollution menace that, unless properly regulated, threaten to undermine the entire national program to reduce harmful emissions from heavy duty vehicles and engines. By way of example, in the record for the Glider Rule, EPA estimated that: 500

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<sup>1</sup> The California Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. *See* Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D’Amico v. Bd. of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

<sup>2</sup> *See, e.g.*, <http://trucks.fitzgeraldgliderkits.com/> (including “fully built” trucks)(last viewed 1/4/18); <https://www.fitzgeraldgliderkits.com/what-is-a-glider-kit/> (“a complete unit ready to go”)(last viewed 1/4/18); <http://www.dtnaglider.com/Features.aspx> (“factory built alongside new trucks”)(last viewed 1/4/18).

non-compliant gliders produce the same total amount of harmful particulate matter (PM) and oxides of nitrogen (NO<sub>x</sub>) emissions as do 20,000 fully compliant vehicles; and 5,000 non-compliant gliders produce the same PM and NO<sub>x</sub> as 200,000 fully compliant 2014 Class-8 tractors.<sup>3</sup> In that same record, EPA estimated that a single model year of unregulated glider PM pollution would result in up to 1,600 premature deaths.<sup>4</sup> Additionally, many of the States, including California, Illinois, New Mexico, New York, and Oregon have nonattainment areas for NO<sub>x</sub>, PM, or both; and EPA also found that the Glider Rule would assist states in complying with national ambient air quality standards (NAAQS) for these and other harmful pollutants.<sup>5</sup> EPA's Proposed Repeal, however, discusses none of these consequences of reversing course and deregulating glider production.

Rather, EPA predicates its Proposed Repeal on an erroneous, legally unjustified "reinterpretation" of its congressionally-mandated duties under Section 202(a)(1). As explained in section II, *infra*, EPA's new interpretation is legally indefensible: it fails to comport with the plain language, context and purpose of the CAA provisions at issue. Moreover, EPA's purported reasons for its reinterpretation—including the same narrow view of the CAA that the Supreme Court rejected in *Massachusetts v. EPA*—crumble under any level of examination. Additionally, as set forth in section III, ignoring its own robust scientific evidence and myriad factual findings underpinning the Glider Rule that demonstrate the harm to public health and welfare caused by glider emissions has legal consequence for EPA's Proposed Repeal. Because EPA has failed to present any rational connection between those facts and the Proposed Repeal, its proposed action is arbitrary and capricious and, if finalized, would violate the Administrative Procedure Act.

Therefore, the States urge EPA adhere to the intent of Congress and to the Agency's duty to protect the health and welfare of our residents and all Americans, by abandoning its unlawful and irresponsible Proposed Repeal.

## **I. THE GLIDER RULE IS ESSENTIAL TO REDUCE HARMFUL EMISSIONS FROM HEAVY-DUTY VEHICLES**

### **A. Background to the Glider Rule**

Found within Title II of the CAA, regarding regulation of mobile sources of pollution, section 202(a)(1) compels EPA to establish and revise emission standards for any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that in the Administrator's judgment "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(a)(3)

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<sup>3</sup> EPA FAQ about Heavy-Duty Glider Vehicles and Glider Kits, July 2015, EPA-420-F-25-904 ("EPA Glider FAQ"), p. 2.

<sup>4</sup> Response to Comments for Joint Rulemaking, EPA-426-R-16-901 (August 2016) (Phase 2 RTC) at 1877.

<sup>5</sup> 81 Fed. Reg. at 73,522-73,523, 73,856 (Phase 2 Standards "will be helpful" to states with PM<sub>2.5</sub> and ozone NAAQS compliance).

requires standards for heavy-duty vehicles or engines to “reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available” for the relevant model year standards. 42 U.S.C. § 7521(a)(3)(A)(i).

EPA’s duty to regulate heavy duty truck emissions is integral to the CAA’s express purpose of protecting the Nation’s air resources so as to promote “public health and welfare.” See 42 U.S.C. § 7401(b)(1). Emissions from heavy-duty vehicles contribute greatly to a number of serious air pollution problems, including the health and welfare effects related to so-called “conventional” or “criteria” pollutants such as PM, NO<sub>x</sub>, ozone, sulfur dioxide, and volatile organic compounds. 66 Fed. Reg. 5,002, 5,005 (January 18, 2001). EPA has documented these adverse effects to include: premature mortality; increased risk of lung cancer, aggravation of respiratory and cardiovascular disease, changes to lung tissues and structures, chronic bronchitis, and decreased lung function; crop and forestry losses; substantial visibility impairment in many parts of the U.S.; and the acidification, nitrification and eutrophication of water bodies. See, e.g., *id.* at 5,006.<sup>6</sup> EPA estimated in 2001 that as of 2007, heavy-duty vehicles would account for 28-34 percent of mobile source NO<sub>x</sub> emissions and 20-38 percent of mobile source PM emissions, especially in urban areas such as Sacramento, Washington, D.C., Los Angeles, Hartford, and Santa Fe. *Id.* at 5,006-5,007. Heavy-duty vehicle emissions also can disproportionately impact urban areas already economically disadvantaged. *Id.* at 5,007. EPA also has determined that emissions reductions from heavy-duty vehicles and engines are a critical component of achieving and maintaining compliance with NAAQS. *Id.* at 5,006.

Pursuant to its section 202(a)(1) authority, and consistent with the overarching purpose of the CAA to protect public health and welfare, EPA has regulated criteria pollutant emissions from heavy-duty on-highway engines and vehicles with increasing stringency. See, e.g., 81 Fed. Reg. at 73,485, 73,522. In 2001, EPA issued diesel emission standards for heavy-duty on-highway engines that were phased in from the 2007 to 2010 model years. *Id.* at 73,522; see also, 66 Fed. Reg. 5,002 (Heavy-Duty Engine and Vehicle Standards requiring 100% of 2010 model year on-road heavy-duty diesel engines to have NO<sub>x</sub> exhaust control technology).

In 2009, EPA made an Endangerment Finding under its section 202(a)(1) authority, expressing its judgment that elevated concentrations of greenhouse gas (GHG) emissions in the atmosphere may reasonably be anticipated to “endanger public health or welfare.” 74 Fed. Reg. 66,496 (Dec. 15, 2009); 42 U.S.C. § 7521(a)(1); see *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 117-123 (D.C. Cir. 2012) (upholding both the Endangerment Finding and EPA’s regulation of GHG emissions from motor vehicles).<sup>7</sup> Consistent with the Endangerment

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<sup>6</sup> In particular, NO<sub>x</sub> is an ozone precursor that contributes to climate change, and it has been linked to asthma, especially in children. 81 Fed. Reg. at 73,522. PM poses many adverse health effects: cardiovascular and respiratory effects, reproductive and developmental effects including low birth weight and infant mortality, and carcinogenic, mutagenic, and genotoxic effects (for example, lung cancer mortality). *Id.* at 73,837.

<sup>7</sup> Harms associated with climate change caused by human emissions of GHGs, including from heavy duty vehicles, are widespread and complex, from increased death and illnesses related to increases in weather related events (heat waves, increased ozone pollution, and deaths associated with increased intensity in

Finding and in an effort to reduce GHGs emissions and fuel consumption for on-road heavy-duty vehicles, in 2011, EPA and the National Highway Traffic Safety Administration, on behalf of the U.S. Department of Transportation (NHTSA) implemented the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles (Diesel GHG Program). 76 Fed. Reg. 57,106 (September 15, 2011). The Diesel GHG Program is a comprehensive two-phase course of action designed to address diesel engine contribution to climate change. *Id.* Phase 1 applied to several categories of medium and heavy-duty engines and vehicles in MY 2014-2018 (Phase 1 Standards). *Id.* at 57,108; 81 Fed. Reg. at 73,479.

Following two years of stakeholder meetings and fact finding, in 2015, EPA and NHTSA proposed Phase 2 of the Diesel GHG Program (Phase 2 Standards), comprised of additional technology-forcing standards applicable to various categories of medium and heavy-duty engines and vehicles phased in MY 2018 to MY 2027. 81 Fed. Reg. at 73,480-73,481. After additional meetings with stakeholders and responding to thousands of public comments, many from new heavy-duty truck manufacturers in support of the Glider Rule, EPA issued the final Phase 2 Standards on October 25, 2016. *See* 81 Fed. Reg. 73,478.<sup>8</sup>

The Phase 2 Standards included a number of changes and clarifications of rules respecting so-called “glider kits” and “glider vehicles.” 81 Fed. Reg. at 73,512. Specifically, a “glider kit” is “a tractor chassis with frame, front axle, interior and exterior cab, and brakes.” *Id.* It is “intended for self-propelled highway use, and becomes a glider vehicle [aka glider] when an engine, transmission, and rear axle are added.” *Id.* at 73,513. Some or all of these drivetrain parts are used or rebuilt. The final manufacturer of the glider vehicle is typically a different manufacturer than the glider kit. *Id.* However, glider kit manufacturers generally know the final configuration of the glider vehicle, because in order for the glider vehicle to work, the wiring of the glider kit must be designed to match the configuration of the powertrain. *Id.* at 73,517.

In use for decades, gliders were originally intended as a way to salvage relatively new powertrains that were still operable from a truck chassis that had been irreparably damaged (e.g., in an accident) or to allow trucks with localized and minimal use to be updated. *See* 81 Fed. Reg. at 73,513. Prior to 2007, when emissions standards issued in 2001 became fully applicable, only about 300 gliders were being produced per year. Phase 2 RTC at 1883. EPA impliedly provided an interim exemption from the Phase 1 Standards to gliders and glider kits, by adopting 40 C.F.R. § 1037.150(j) that indicated “the general prohibition against introducing a vehicle not subject to current model year standards does not apply to MY 2013 or earlier engines.” 81 Fed.

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severe weather events such as flooding, tornadoes, and hurricanes) to adverse impacts to property, habitat, and energy, transportation, and water resource infrastructure from extreme weather events and rising sea levels. *See* 81 Fed. Reg. 73,486.

<sup>8</sup> NHTSA did not include gliders in its Phase 1 or Phase 2 fuel consumption standards. 81 Fed. Reg. at 73,584-73,585. EPA and NHTSA treat gliders differently under their respective regulations. *Id.* As EPA noted in response to comments during the Phase 2 rulemaking that EPA’s treatment of gliders should reflect principles in existing NHTSA regulations, NHTSA and EPA regulate gliders under different statutory authority and for different, albeit related, purposes. Phase 2 RTC at 1886. “More importantly,” EPA noted, “such comments ignore the severe public health impacts of gliders vehicles.” *Id.*

Reg. at 73, 513-14; Phase 2 RTC at 55-56, 62. However, after the promulgation of the Phase 1 Standards, EPA and NHTSA both “observed a sharp increase in glider sales, which suggests that gliders are being used more and more as a loophole to avoid purchasing engines that meet 2010 EPA emissions standards, and potentially to avoid NHTSA safety regulations.”<sup>9</sup>

**B. EPA Issued the Glider Rule to Close an Increasingly Abused, Pollution-Increasing Loophole That Harms Public Health and Welfare.**

From 2004 onward, and especially after EPA promulgated the Phase 1 Standards, glider production increased rapidly from a few hundred per year in 2004 to approximately 10,000 per year by 2015. 81 Fed. Reg. at 73,943. Gliders are typically marketed and sold as “brand new” trucks with new legal titles. 81 Fed. Reg. at 72,514; 82 Fed. Reg. at 53,445; Phase 2 RTC at 55-56. However, most gliders use rebuilt engines originally manufactured before 2002 that lack the pollution control equipment required by the 2010 heavy duty truck standards for conventional pollutant control. 81 Fed. Reg. at 73,942-72,943. While this may result in upfront cost savings to the buyer, any extra costs of a compliant glider will be recouped by greater fuel savings within the first few years.<sup>10</sup> More importantly from a public health perspective, preventing the harm that non-compliant glider emissions cause would offset any upfront cost savings. *See, e.g.*, 81 Fed. Reg. at 73,943 (“removal of all unrestricted glider vehicle emissions from the atmosphere would yield between \$6 to \$14 billion in benefits annually.”)<sup>11</sup> In promulgating the Glider Rule, EPA found that most gliders have NOx and PM emissions that are between 20-40 times higher than current MY vehicle engines. 81 Fed. Reg. 73,942-73,943. Even gliders using relatively recent engines—produced in 2007 or later—have NOx and PM emissions at least 10 times higher than current engines. *Id.* at 73,942. An EPA study in 2017 corroborates the emissions results that EPA found in promulgating the Glider Rule: NOx emissions from gliders with pre-2002 engines were *43 times higher* than conventionally built 2014 and 2015 tractors under highway cruise conditions, and 4 to 5 times higher in conditions of transient operations.<sup>12</sup>

EPA’s review of the record when promulgating the Glider Rule led it to conclude that glider manufacturing had become, and would continue to be, an industry dependent on a regulatory loophole that harms human health.<sup>13</sup> Consequently, EPA established the Glider Rule

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<sup>9</sup> EPA Glider FAQ, p. 1.

<sup>10</sup> Comments by California Air Resources Board at pp. 23-24, 38-39 (citing Phase 2 RTC at 1885,1878-879). Additionally, compliant gliders also are less expensive than most new compliant trucks; thus upfront cost savings of non-compliant gliders are no justification for the Proposed Repeal. *See id.*

<sup>11</sup> EPA estimated that the PM and ozone reductions from Phase 1 Standards alone will result in benefits from \$1.3 to \$4.2 billion in 2030. 81 Fed. Reg. 73,492.

<sup>12</sup> Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles, November 20, 2017, Docket No.: EPA-HQ-OAR-2014-0827-2417 (Chassis Dynamometer Testing Study) at p. 3.

<sup>13</sup> *See* 81 Fed. Reg. at 73,942-43. *See also*, Comments by California Air Resources Board, §§ 1.4 and 1.5.

to balance the legitimate salvage purpose gliders originally served with its mandate to protect public health and the environment.<sup>14</sup> The Glider Rule caps sales of gliders/kits with non-compliant engines in phases, to allow the glider market to transition into selling only gliders/kits compliant with the Phase 2 Standards.<sup>15</sup> In 2017, glider manufacturers could sell gliders/kits using non-compliant engines, up to the number sold during the highest year of production between 2010 and 2014. Starting in January 2018, engines in gliders would have to meet GHG and criteria pollutant emission requirements for the year of the glider assembly, subject to an exception allowing them to sell 300 gliders per year with non-compliant engines. 81 Fed. Reg. 73,518. Beginning in MY 2021, all gliders, including those using engines exempted under the transition period, must meet the Phase 2 Standards.<sup>16</sup> Additionally, under the Glider Rule, glider kit manufacturers must certify that the engines intended for the kits meet the Phase 2 Standards. *Id.* at 73,515-73,517.

**C. The Phase 2 Standards Record Shows That the Glider Loophole Resulted in Significant Harm to Public and Environmental Health and Created an Uneven Playing Field for Diesel Truck Manufacturers.**

EPA found that each glider used in lieu of a new truck with controlled emissions “results in significantly higher in-use emissions of air pollutants associated with a host of adverse human health effects, including premature mortality.” 81 Fed. Reg. 73,943. EPA analyses of the impacts of glider vehicles on public health concluded that “without new restrictions, glider vehicles on the road in 2025 would emit nearly 300,000 tons of NOx and nearly 8,000 tons of diesel PM annually,” noting that although gliders “would make up only 5 percent of heavy-duty tractors on the road, their emissions would represent about *one-third* of all NOx and PM emissions from heavy-duty tractors in 2025.” Phase 2 RTC at 1875-1876 (original emphasis). The removal of these unrestricted glider emissions is estimated to yield between \$6 and \$14 billion in annual PM-related benefits. *Id.* at 1876. Further, EPA’s own risk analysis indicated that PM<sub>2.5</sub>-related exposures<sup>17</sup> from a single model year of 5,000-10,000 high polluting glider engines would result in 350 to 1,600 premature deaths, an estimate EPA called “significantly conservative.” Phase 2 RTC at 1877; *see also* Comments by California Air Resources Board, § 1.5.2.

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<sup>14</sup> *Id.*

<sup>15</sup> 81 Fed. Reg. at 73,518, 73,941-73,946; *see also* 40 C.F.R. part 1037 (GHG heavy duty vehicle standards, which refer to 40 C.F.R. part 1036 (heavy duty engine standards); 40 C.F.R. part 86 (criteria pollutant standards).

<sup>16</sup> EPA also included a limited allowance to exempt gliders from the Phase 2 Standards altogether where the reused engines were newer or had very low mileage. 81 Fed. Reg. at 73,944.

<sup>17</sup> PM<sub>2.5</sub> particles are “‘fine’ particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm. 81 Fed. Reg. at 73,836. Their harm to human health when inhaled includes developmental, reproductive, carcinogenic, mutagenic, and genotoxic effects. *Id.*; *see also*, fn. 6, *supra*.



Additionally, a lack of regulation of gliders distorts the marketplace and tilts the playing field against heavy-duty truck manufacturers who have invested in developing pollution controls, since “glider sales now come at the expense of sales of fully compliant new trucks.”<sup>18</sup> Both glider and major truck manufacturers estimated that without regulation, the glider industry would continue to grow. But as noted by several commenters, including much of the new truck/engine industry, continuation of the exemption for gliders threatened to undermine the goal of not only the Phase 2 Standards, but the earlier conventional pollutant standards as well, since glider emissions per vehicle are significantly higher than those from trucks required to meet all of the proposed 2017 heavy-duty vehicle emissions standards. *See* Phase 2 RTC at 1881; Glider FAQ, p. 2. In turn, this undercuts manufacturers who had made major investments to comply with current MY emissions standards.<sup>19</sup>

The Glider Rule became effective December 27, 2016, without any legal challenge. *See* 81 Fed. Reg. 73,478.<sup>20</sup> In particular, EPA noted in the Phase 2 RTC that “[n]o commenters disagreed with EPA’s assessment of NOx and PM impacts.” Phase 2 RTC, p. 1875. Following the Administration change, however, three glider manufacturers petitioned EPA for reconsideration of the Glider Rule, stating as grounds for reconsideration the very basis on which EPA has now premised its proposed reinterpretation of section 202(a)(1).<sup>21</sup> The factual basis for the three manufacturers’ petition was a glider industry-funded June 2017 Tennessee Tech study that claims gliders emit fewer pollutants than EPA had found in its analysis.<sup>22</sup> One month later,

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<sup>18</sup> RTC at 1877; *see also* Comments of the Volvo Group, October 1, 2015, EPA-HQ-OAR-2014-0827-1290, pp. 62-67.

<sup>19</sup> *See e.g.*, Phase 2 RTC at 1877; EPA-HQ-OAR-2014-0827-1290, p. 63 “Such a gross expansion will threaten the ability of OEM dealers to compete in the marketplace with fully compliant products.”

<sup>20</sup> EPA has been sued over other provisions of the Phase 2 Standards pertaining to emissions standards for trailer manufacturers.

<sup>21</sup> The petition for reconsideration by Fitzgerald Gliders et al. states EPA lacks section 202 authority to regulate gliders, because “the most significant parts of the vehicle – the engine, transmission, and typically the rear axle – are not new.” Petition for Reconsideration filed July 10, 2017, p. 3, Docket No.: EPA-HQ-OAR-2014-0827-2373 (Glider Petition). Petitioners also claim glider kits are not within the CAA definition of “motor vehicle” because they are not “self-propelled.” *Id.*

<sup>22</sup> Glider Petition, p. 5. As noted in the November 13, 2017 “Memo re: EPA Teleconference with Tennessee Tech Univ. Regarding Glider Test Report” by EPA’s National Vehicle and Fuel Emissions Lab, Fitzgerald Gliders was involved in the Tennessee Tech study. Docket No.: EPA-HQ-OAR-2014-0827-2416. Fitzgerald also underwrites the Center for Intelligent Mobility at Tennessee Tech, which calls into question the study’s value as unbiased research. <https://www.tntech.edu/news/releases/tennessee-tech,-tcat-livingston,-fitzgerald-companies-announce-new-partnership> (last viewed 1/4/18). As noted by the California Air Resources Board, the ability to assess the merit of the Tennessee Tech study, which was not peer-reviewed, is impeded by its lack of accompanying data and Tennessee Tech’s later admission that “no particulate matter samples were collected during testing” undermines its assertions regarding PM emissions from gliders in particular. *See*, Comments by California Air Resources Board, § 1.5.2. Tennessee Tech also has not yet provided any information regarding the source, mileage, age, or

in August 2017, EPA announced its intent to revisit the Glider Rule. EPA published its notice of the Proposed Repeal on November 9, 2017, relying on the legal theory presented in the three glider-manufacturers' petition for reconsideration, and referring to the Tennessee Tech study. 82 Fed. Reg. at 53,444. The indefensible legal interpretations and self-serving study proffered by three representatives of an industry that has flourished based on the exploitation of a loophole in the regulation of harmful pollutants do not provide a reasoned basis for EPA's wholesale reversal of its position on the Glider Rule.

## **II. THE PROPOSED REPEAL IS PREMISED ON AN ERRONEOUS AND INVALID REINTERPRETATION OF EPA'S DUTIES UNDER CAA SECTION 202(A)(1).**

### **A. EPA's 2017 Analysis.**

EPA proposes to repeal the Glider Rule based its current view "that the statutory interpretations on which the [Glider Rule] predicated its regulation of glider vehicles, glider engines, and glider kits were incorrect." Specifically, EPA now asserts that glider vehicles are excluded from the term "new motor vehicles" and glider engines are excluded from the definition of "new motor vehicle engines" under CAA Section 216(3). 82 Fed. Reg. at 53,444. "Consistent with this interpretation," EPA states that it "has no authority to treat glider kits as 'incomplete' new vehicles under CAA section 202(a)(1). *Id.* The Administrator's proposed rationale for this is that EPA's prior reading "was not the best" and that:

the Agency failed to consider adequately the most important threshold consideration: i.e., whether or not Congress, in defining 'new motor vehicle' for purposes of Title II, had a specific intent to include within the statutory definitions such a thing as a glider vehicle – a vehicle comprised both of new *and* previously owned components. See *Chevron [USA, Inc. v. NRDC, Inc.]*, 467 U.S. 837,843 n.9 (1984), ('Where the 'traditional tools of statutory construction 'allow one to 'ascertain[] that Congress had an intention on the precise question at issue,' that 'intention is the law and must be given effect.'). Where 'Congress has not directly addressed the precise question at issue,' and the 'statute is silent or ambiguous with respect to the specific issue,' it is left to the agency charged with implementing the statute to provide an 'answer based on a permissible construction of the statute.' *Id.* at 843. 82 Fed. Reg. at 53,445.

Applying *Chevron*, the Administrator concludes that, "in light of these principles, it is clear that EPA's reading of the statutory definition of 'new motor vehicle' in the Phase 2 rule fell short." *Id.* The basis for the Administrator's reinterpretation is not in the statute itself, since EPA admits up front that gliders fall within the definition of "new motor vehicle" and "new

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condition of the "OEM 'certified' engines" cited by Tennessee Tech as examples of the emissions performance for newer engines. November 13, 2017 Memorandum concerning meeting between EPA and Tennessee Tech, pp. 2-3, Docket No.: EPA-HQ-OAR-2014-0827-2416. Furthermore, as mentioned *supra*, testing in 2017 by EPA's National Vehicle & Fuel Emissions Laboratory corroborated EPA's findings in 2016, that gliders emit significantly more NOx and PM than do comparable conventionally-manufactured MY vehicles. Chassis Dynamometer Testing Study, p. 3.

motor vehicle engine” in CAA section 216(3).<sup>23</sup> Instead, the Administrator focuses on whether Congress specifically *intended* to cover gliders when it wrote the definitions applicable to CAA section 202(a)(1). EPA concludes “it is likely that Congress did not have in mind that the definition would be construed” as covering gliders, since they were not produced in any great number until recently. *Id.* EPA further “supports” this conclusion by turning to the Automobile Information Disclosure Act of 1958 (AIDA), which has definitions of “new motor vehicle” and “new motor vehicle” that the Agency argues “appear” to be the source of the definitions in the CAA, although “the legislative history of the 1965 CAA does not expressly indicate” this to be the case. *Id.* The AIDA is a consumer protection law that requires a label containing information such as the Manufacturer’s Suggested Retail Price (MSRP) be affixed to the windshield or side window of new automobiles. 15 U.S.C. § 1232. “New” automobiles under AIDA are defined as passenger cars or station wagons for which “the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.” 15 U.S.C. § 1231(c), (d). EPA alleges that the use of the AIDA definitions:

serves to illuminate congressional intent. As with the Disclosure Act, Congress in the 1965 CAA selected the point of first transfer of ‘equitable or legal title’ to serve as a bright line – *i.e.*, to distinguish between those ‘new’ vehicles (and engines) that would be subject to CAA section 202(a)(1) and those existing vehicles that would not be subject. [. . .] it would seem clear that Congress intended, for purposes of Title II, that a ‘new motor vehicle’ would be understood to mean something equivalent to a ‘new automobile’ – *i.e.*, a true ‘showroom new’ vehicle. It is implausible that Congress would have had in mind that a ‘new motor vehicle’ might also include a vehicle comprised of new body parts and a previously owned powertrain.

*Id.* at 53,446. EPA deliberately misinterprets “new motor vehicle” to mean “a true, ‘showroom new vehicle,’” even though the term “showroom new” is not used in the AIDA, the CAA, or defined anywhere by the Administrator. EPA replaces the regulatory definition of “new,” which is based on the transfer of title, with the colloquial definition of “new,” as in “never used.” However, neither the AIDA nor the CAA provide any textual or factual support for EPA’s interpretation, since both statutes define newness in terms of transfer of title rather than the age of any of the components. Instead, the Administrator appears to rely on the association between an MSRP sticker and a new car showroom, where one would not expect to purchase a vehicle with a refurbished engine. EPA goes on to conclude that based on “that structure and history, it seems likely that Congress” did not intend to regulate gliders and that “[a]t a minimum, ambiguity exists,” leaving EPA “with the task of providing ‘an answer based on a permissible construction of the statute.’” *Id.*, citing *Chevron*, 467 U.S. at 843. EPA then concludes that neither glider vehicles, glider engines, nor glider kits would be covered under the CAA’s definitions of “new motor vehicle,” “new motor vehicle engine,” or EPA’s authority to regulate “incomplete” vehicles. *Id.*

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<sup>23</sup> 82 Fed. Reg. at 53,445 (“Focusing solely on that portion of the statutory definition that provides that a motor vehicle is considered ‘new’ prior to the time its ‘equitable or legal title’ has been ‘transferred to an ultimate purchaser,’ a glider vehicle would appear to qualify as ‘new.’”).

**B. EPA's Analysis Attempts to Circumvent the Plain Language Reading of Sections 202 and 216 by Manufacturing Ambiguity Where None Exists.**

1. The CAA's Plain Language Confirms That EPA's Original Interpretations of Sections 202 and 216 Reflect Congressional Intent to Regulate Gliders and Kits.

As EPA decided in 2016, the plain language of Sections 202 and 216 unambiguously compels it to regulate completed gliders (i.e., kits with engines) as new motor vehicles. Completed gliders are “motor vehicles” under the plain language of section 216(2), because they are self-propelled. 42 U.S.C. § 7550(2).<sup>24</sup> And when sold new, i.e., prior to the final transfer of title, they are “new motor vehicles” under the plain language in 216(3). 42 U.S.C. § 7550(3).<sup>25</sup> The engines installed in new gliders, although they have been used prior to being remanufactured, are “new motor vehicle engines” under the plain language of section 216, which defines “new motor vehicle engine” as an “engine in a new motor vehicle” or a “motor vehicle engine *the equitable or legal title to which has never been transferred to the ultimate purchaser.*” *Id.* (emphasis added). As discussed above, gliders are sold with a new legal title. In its proposal, EPA correctly admits that pursuant to the plain language of section 216, which “provides that a motor vehicle is considered ‘new’ prior to the time its ‘equitable or legal title has been ‘transferred to an ultimate purchaser,’ a glider vehicle would appear to qualify as ‘new.’” 82 Fed. Reg. at 53,445.

Similarly, the plain language of section 202(a)(1), which specifies that EPA's emissions standards apply to the vehicle or engine during its useful life “whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution,” reflects Congress' intent that EPA regulate emissions from “incomplete” motor vehicles, i.e., motor vehicles that are pieced together, such as gliders built from glider kits. 42 U.S.C. § 7521(a)(1).

In its notice of proposed action, EPA acknowledges the extensive case law holding that a *Chevron* step one analysis requires examination of the language relative to “the whole law, and to its object and policy.” 82 Fed. Reg. 53,445, quoting *Dole v. United Steelworkers of Amer.*, 494 U.S. 26, 35 (1990), among others. It is a “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *F.D.A. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000). Indeed, to find ambiguity, a court must “examine the meaning of [those] words or phrases in context and . . . ‘exhaust the traditional tools of statutory construction.’” *Sierra Club*

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<sup>24</sup> Section 216(2) defines a “motor vehicle” as “any self-propelled vehicle designed for transporting persons or property on a street or highway.” 42 U.S.C. 7550(2).

<sup>25</sup> Section 216(3) defines a “new motor vehicle” as “motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.” 42 U.S.C. 7550(3).

*v. E.P.A.*, 551 F.3d 1019, 1026-27 (D.C. Cir. 2008)(quoting *Am. Bankers Ass'n v. Nat'l. Credit Union Admin.*, 271 F.3d 262, 267 (D.C. Cir. 2001)(emphasis added).

However, EPA does not engage in the required analysis at all. Rather, it concludes that the language is ambiguous because: (1) Congress likely did not have vehicles like gliders in mind when drafting because, although gliders existed, they were not widely produced; and (2) definitions in the AIDA *might* have inspired the drafting of section 216's definitions. Neither of these reasons relates to the language of section 216 itself, the other parts of the CAA, or the CAA's purpose, i.e., the required statutory analysis factors. *See, e.g., Brown & Williamson Tobacco Corp.*, 529 U.S. at 132. And, as explained below, neither argument is persuasive.

Under the required analysis, it is clear "by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" that Congress contemplated regulating a vehicle as "new" irrespective of its engine age when it drafted section 216. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341. Importantly, Congress did not define "engine" for purposes of CAA Title II. Nor did it constrain the definitions of "motor vehicle" or "new motor vehicle" in any way relating to the engine or even the vehicle's age. Under its definition of "motor vehicle," a vehicle with any engine – old or new – that propels the vehicle so that people or things can be transported on a street or highway is a "motor vehicle." 42 U.S.C. § 7550(2). And Congress made no carve out or proviso that only "motor vehicles" with engines that have never been used counted as such. Rather, any motor vehicle prior to sale (i.e., transfer of title) is a "new motor vehicle" under the Act, subject to regulation under 202(a)(1). 42 U.S.C. §§ 7521(a)(1), 7550(3).<sup>26</sup> The plain language is clear itself, and in the context of the Act as a whole. The argument that a glider is not a "new motor vehicle" because it lacks an engine before assembly is of no moment. As soon as the glider receives its engine, it becomes a motor vehicle under Title II, and prior to transfer of title, it is a "new motor vehicle." *See id.*

The statutory language reflects Congress' intent for breadth of coverage since it requires standards for: (1) new engines prior to title change; *and* (2) any "engine in a new motor vehicle." 42 U.S.C. § 7550(3). This language demonstrates Congress intended EPA to regulate emissions from any engine, not just new engines, in a new motor vehicle. Had Congress intended to restrict EPA's Section 202 authority to regulate "new vehicle motor engines" to "*new engines* in new motor vehicles," it would have limited the definition of "new motor vehicle engine" to the first category (new engines prior to title change). Under EPA's proposed interpretation of section 216(3), where a new engine can only be one that has never been sold before, the second category of engine – an engine in a new motor vehicle – is simply redundant of the first, which violates basic canons of statutory interpretation. *See Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 574-75 (1995).

The surrounding provisions of the statute confirm this reading. EPA acknowledged in its notice of proposed repeal, "[a]s Title II currently reads, the term new motor vehicle; appears

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<sup>26</sup> Whether or not there is ambiguity in the definition of "new motor vehicle" in other contexts, none exists in the context of gliders.

some 32 times, and in all but two instances, the term is accompanied by “new motor vehicle engine,” indicating that, at the inception of Title II, Congress understood that the regulation of *engines* was essential to control emissions from “motor vehicles.” 81 Fed. Reg. 53,443, n.3 (original emphasis).

Similarly, EPA’s original view that it should regulate glider kits as *incomplete* new motor vehicles finds support in the provision of section 202(a)(1), which states that EPA’s emissions standards shall apply to the vehicle or engine during its useful life “whether such vehicles and engines are designed as complete systems.” Other parts of Title II also support this conclusion. Congress directed that emissions standards be implemented through regulation of the *manufacturer* of the new motor vehicle. *See, e.g.*, § 203(a)(1) (prohibiting “manufacturer of new motor vehicles or new motor vehicle engines” from selling such vehicles/engines without certificate of conformity); § 206(a)(1) (certification testing of motor vehicle must be submitted by “a manufacturer”). Congress plainly intended “manufacturer” to include multiple parties at different times throughout the vehicle’s completion, defining “manufacturer” as “*any* person engaged in the manufacturing *or assembling* of new motor vehicles *or* new motor vehicle engines . . .” 42 U.S.C. § 7550(1) (emphasis added). Congress’ use of “any” and “or” within the definition of manufacturer clearly show that it intended a manufacturer whose business is creating, rebuilding, and assembling incomplete new motor vehicles, like a glider kit maker, be responsible for such things as testing and certification of conformity. *See id.*

EPA’s proposed reinterpretations of the CAA in this rulemaking unlawfully insert constraints on the definitions of “motor vehicle,” “new motor vehicle,” “new motor vehicle engine.” and “manufacturer” that Congress did not include, thereby changing the meaning of Congress’ definitions. *See Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980) (agency “‘interpretation’ of the statute cannot supersede the language chosen by Congress”); *Motor & Equip. Mfrs. Ass’n v. E.P.A.*, 627 F.2d 1095, 1108 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952, 100 (1980) (“statute must be construed to avoid that result so that no provision will be inoperative or superfluous”); *see Brown & Williamson Tobacco Corp.*, 529 U.S. at 132-133 (court must “interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into a harmonious whole.’”)(internal cite omitted); *see also, Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (the Court construes terms broadly where the act at issue “clearly falls into the category of remedial legislation”).

Furthermore, EPA’s erroneous new reading of the statute would create a loophole whereby any manufacturer of new engines or vehicles ostensibly could legally skirt emissions control regulations applicable to “new motor vehicles” simply by including some used/refurbished parts in the engine installed in an otherwise brand new vehicle. EPA did not include any limitation on its new reading of the statute that would prevent this result, which would affect vehicles beyond heavy-duty trucks, as the definitions in section 216 apply to a wide array of cars and trucks. Under the Proposed Repeal, *any* car manufacturer willing to reconfigure its manufacturing process could insert a refurbished third-party engine into an otherwise new car body, and claim such a vehicle was not a “new motor vehicle” subject to

section 202(a)(1). This would obviously contradict the purpose of the CAA. In contrast, EPA's 2016 interpretations are consistent with the CAA's overarching purpose.<sup>27</sup>

2. The CAA's Overarching Purpose Affirms That EPA's 2016 Interpretations of Sections 202 and 216 Reflect Congressional Intent to Regulate Gliders and Kits.

Congress enacted the CAA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” *Chemical Mfrs. Ass’n v. EPA*, 217 F.3d 861, 866 (D.C. Cir. 2000) (quoting CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1)). Courts have oft noted that the CAA is “is one of the most comprehensive pieces of legislation in our nation’s history” enacted specifically to address public health problem caused by air pollution. *Motor Vehicle Manufacturers Ass’n v. New York State Dep’t of Env’tl. Conserv.*, 17 F.3d 521, 524 (2<sup>nd</sup> Cir. 1994) (CAA enacted “[i]n response to the serious public health problems caused by ozone and carbon monoxide and the enormous task of cleaning up the air we breathe”); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 190 (3<sup>rd</sup> Cir. 2013)(CAA enacted “in response to evidence of the increasing amount of air pollution created by the industrialization and urbanization of the United States and its threat to public health and welfare.”).

EPA’s 2016 interpretation of its section 202(a)(1) duty – to regulate air emissions found to cause pose public health risks as including its duty to regulate gliders – is consistent with overarching purpose of the CAA to ensure the protection of public health and welfare from harmful air pollution. *See id.*

In contrast, EPA’s newly proposed reinterpretations undermine the very purpose of the CAA to protect air quality and promote the public health and welfare, and EPA’s duty to uphold and enforce the CAA. *See* 42 U.S.C. § 7401(b)(1); *Massachusetts v. EPA*, 549 U.S. at 532, citing 42 U.S.C. § 7521 (“EPA has been charged with protecting the public’s ‘health’ and ‘welfare’”). EPA’s reinterpretations—which impair the CAA’s purpose—are not permissible constructions of the statutes. Consequently, a court would not uphold them. *See Chevron*, 467 U.S. at 843.

**C. EPA’s Arguments in Support of Deference to its Flawed Reinterpretation Are Unfounded.**

Instead of undertaking a complete *Chevron* analysis of the statutes’ plain language and application in context of the Act, EPA’s proposed reinterpretations rely on an argument that Congress’ intent was ambiguous, thereby triggering a more deferential review of the “reasonableness” of the Agency’s interpretation of the statute. EPA asserts two reasons why the statutory provisions are ambiguous as to gliders. Neither succeeds.

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<sup>27</sup> EPA’s original interpretations are also consistent with its treatment of remanufactured or refurbished locomotives and locomotive engines as “new.” 40 C.F.R. § 1033.901.

1. EPA's Reinterpretation Relies on the Faulty Premise that Congress did not Draft the CAA to Adapt to Changes in Technology or Markets.

First, EPA supposes that when Congress defined “new motor vehicle” in Section 202, it “likely” did not envision the definition would apply “to a vehicle comprised of new body parts and a previously owned powertrain.” 82 Fed. Reg. 53,445-46.

In material respects, this is the same rationale that EPA advanced to self-limit its section 202 authority to regulate greenhouse gases that the Supreme Court rejected in *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). EPA contended that when drafting section 202, Congress could not have envisioned a problem that arose years later such as greenhouse gas emissions. *Id.* The Court rejected this idea, finding that “[w]hile the Congresses that drafted § 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the CAA obsolete.” *Id.* The Court held that, “[t]he broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence.” *Id.* (citing *Pennsylvania Dept. of Corrections v. Yeskey* 524 U.S. 206, 212 (1998)(“the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”)(Internal quote omitted).

EPA’s proposal to reinterpret section 202 in a way that fails to keep up with evolving air pollution problems (here, resulting from market changes in the glider industry) is contrary to the Court’s view in *Massachusetts*; hence, it fails. Beyond EPA’s rejection of the Supreme Court’s instruction that the CAA should be read to cover issues about which Congress might not have been aware when drafting, EPA’s Proposed Repeal contradicts the purpose of the Act that Congress clearly *did* have in mind: to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1)). In advancing the Proposed Repeal, EPA is arguing, contrary to the Act’s history and *Massachusetts*, that Congress intended to allow high-polluting vehicles to escape regulation entirely.

2. EPA's Claim that Section 216's Definitions Derived From the AIDA is Speculative and Immaterial.

EPA’s second argument that section 216 is ambiguous is based on the connection that it assumes exists between the definition of “new motor vehicle” in CAA section 216 and the definition in the AIDA that requires dealers affix the MSRP to “showroom new” cars. 82 Fed. Reg. 53,445-46. It claims Congress must have used the AIDA as the basis for the CAA section 216 definitions because the AIDA predated the 1965 creation of CAA Title II and because they use similar language regarding transfer of title to ultimate purchaser. Further, EPA alleges that because it is clear the MSRP requirements in the AIDA only relate to “showroom new” vehicles – a definition EPA invents and fails to define, Congress must have intended “new motor vehicles” as used in CAA 216 and 202 only to relate to “showroom new” vehicles. *Id.*



However, EPA admits this is conjecture: “[w]hile the legislative history of the 1965 CAA does not expressly indicate that Congress based its definition of “new motor vehicle” on the definition of “new automobile” first adopted by the Automobile Information Disclosure Act of 1958, it seems clear that such was the case.” 82 Fed. Reg. 53,445. Beyond EPA’s admission there is no evidence that Congress based the section 216 definitions on those in AIDA, it provides no proof or analysis that would show gliders or kits not to be “new” under AIDA’s definitions. Rather, it leaps from discussion of AIDA to the conclusion that Congress must have meant “showroom new” in drafting section 216’s definitions, to further concluding that gliders are not “showroom new.” 82 Fed. Reg. 53,446.

The AIDA’s purpose is wholly different from that of the CAA. Congress enacted the AIDA to protect consumers from the bewildering “marketing jungle” created by car dealers. H.R. Rep. 85-1958 (June 24, 1958) at 2903. Specifically, it noted that, “the primary purpose of this bill is to disclose the manufacturer’s suggested retail price of the new automobile [passenger car or station wagon] so that the buyer will know what it is. This information is not available now.” *Id.* Congress crafted the AIDA, a specific, narrow law, to address a specific, narrow issue. It has no relation whatsoever to the significantly broader purpose of protecting public health and welfare from air pollution via one of the most comprehensive laws that Congress has enacted. *See Motor Vehicle Manufacturers Ass’n.*, 17 F.3d at 524. Comparison of the AIDA’s definitions to section 216 is inapt.

Assuming *arguendo* that any ambiguity *could* be found, which it cannot, as discussed above, no grounds would support deference to EPA’s reinterpretation. EPA’s new self-limiting view of its section 202 responsibility abrogates the Supreme Court’s determination in *Massachusetts v. EPA*, and spurns the CAA’s objective to protect air quality and promote the public health and welfare. Indeed, the proposed reinterpretations require one to believe Congress intended to create a loophole for the use of old engines in new bodies as substitutes for new, compliant vehicles, even when that would vastly *increase* pollution, a result that directly conflicts with the stated purpose of the CAA.

### III. THE PROPOSED REPEAL IS ARBITRARY AND CAPRICIOUS

#### A. Standard of Review

Even if EPA’s proposed reinterpretation of CAA section 202(a)(1) were not clearly erroneous, rulemaking under the CAA or the Administrative Procedure Act (APA) will be reversed by a court where such action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 7607(d)(9)(A); 5 U.S.C. § 706(2)(A); *see also Ethyl Corp. v EPA*, 51 F.3d 1053, 1064 (D.C. Cir. 1995) (holding that the standard of review under the CAA or the APA is “essentially the same under either Act.”). When engaged in rulemaking, including the repeal of an existing rule, an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins.Co.*, 463 U.S. 29, 43 (1983) (internal quotation and citation omitted); *Encino Motorcars LLC v. Navarro*, 136 S. Ct. at 2125.

An agency action is arbitrary and capricious “if it has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm*, 463 U.S. at 43. Although agencies are allowed to change an existing position, as EPA has done here, an agency cannot choose to not enforce laws of which it disapproves or ignore statutory standards in carrying out its duties. *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part). Rather, agencies changing position must “show that there are good reasons for the new policy.” *Encino Motorcars*, 136 S.Ct. at 2126 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996)); see also *Comcast Corp. v. FCC*, 600 F.3d 642, 658-59 (D.C. Cir. 2010) (applying arbitrary and capricious standard factors to an agency’s changed interpretation of regulatory authority).

Further, an agency must “provide more substantial justification when ‘its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.’” *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1209 (2015) (citation omitted). Any “unexplained inconsistency” between a rule and its repeal is “a reason for holding an interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). In addition, an agency cannot suspend a validly promulgated rule without first “pursu[ing] available alternatives that might have corrected the deficiencies in the program which the agency relied upon to justify the suspension.” *Public Citizen v. Steed*, 733 F.2d. 93, 103 (D.C. Cir. 1984).

**B. EPA Has Failed to Acknowledge the Extensive Record Supporting the Glider Rule, Much Less Justify its Proposed Repeal.**

As discussed above in Section II, due to its clearly erroneous interpretation of CAA section 202(a), EPA fails to provide a “good reason” for repealing the Glider Rule. *Encino Motorcars*, 136 S.Ct. at 2126. Additionally, the entirety of the Proposed Repeal and EPA’s request for comment advances arguments regarding EPA’s statutory authority to regulate gliders/kits that were made by stakeholders during the Glider Rule rulemaking, and were thoroughly discussed, vetted, and then rejected by EPA when it issued the Glider Rule. See 80 Fed. Reg. at 40,169-41,170, 40,527-40,530; Phase 2 RTC sections 1.3.1 and 14.2; 81 Fed. Reg. at 73,512-73,519, 73,941-73,946. Although the Proposed Repeal acknowledges that EPA intends to change its 2016 interpretation, EPA cites only to comments made by the glider industry during the Phase 2 Standards comment period and in its petition for reconsideration, and ignores the myriad and detailed bases for EPA’s earlier rejections of these very same arguments. See 82 Fed. Reg. 53,443-53,447. EPA’s action in reviving and seeking further comment on these previously rejected arguments, while ignoring the robust Glider Rule record that clearly addressed them, is arbitrary and capricious. *Fox Television Stations*, 556 U.S. at 515 (“a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”).

1. EPA's Failure to Explain Inconsistencies in the Record Pertaining to its Legal Analysis is Arbitrary and Capricious.

While an agency can change its interpretation of its legal authority, to the extent that its new interpretation is inconsistent with its prior interpretations, an acknowledgment of those inconsistencies and justification for the new interpretation is required, especially where the regulated community is relying on the existing rule. *Brand X*, 545 U.S. at 981; *Perez* 135 S.Ct. at 1209. Here, EPA merely acknowledges the fact that it is changing interpretation while ignoring completely EPA's own extensive record analyzing congressional intent supporting the Glider Rule interpretation, including section 202(a)(1)'s relationship with other provisions of the CAA; the alternative statutory bases EPA has to regulate gliders; and EPA's longstanding practice of regulating new vehicles with some rebuilt or refurbished parts.<sup>28</sup> This failure does not meet the requirement to acknowledge that inconsistencies exist, much less meet the requirement for "reasoned analysis" and discussion of these alternatives and is therefore arbitrary and capricious. *State Farm*, 463 U.S. at 4.

EPA has also failed to consider "serious reliance interests" that were created when it adopted the Glider Rule. *See Perez*, 135 S.Ct. at 1209. As discussed *supra*, Original Equipment Manufacturers (OEMs) have placed considerable reliance on the Glider Rule as being necessary to ensure a level playing field among heavy duty vehicle manufacturers under the Phase 2 Standards. Given that glider sales are now coming at the expense of fully compliant conventional trucks and the fact that a tiny percentage of glider emissions can dwarf the emissions of hundreds of thousands of compliant trucks, EPA must look for ways to correct the perceived deficiencies in its statutory authority. *Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. at 1209; *Steed* 733 F.2d. at 103. EPA's failure in the Proposed Repeal to acknowledge the importance of the Glider Rule to the rest of the regulated industry, or to explain why it did not address its current supposed deficient authority under Section 202(a)(1) by considering the alternative statutory bases set forth in the Glider Rule rulemaking, is arbitrary and capricious under *Encino*, *Perez*, and *Steed*.

2. EPA's Proposed Adoption of the Glider Industry's Arguments Without Justification is Arbitrary.

The history of the Proposed Repeal itself evidences arbitrary decision making by EPA. As mentioned above in Section I, the Glider Rule was finalized in 2016 after years of stakeholder

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<sup>28</sup> *See* Phase 2 RTC Sections 1.3.1 and 14.2; 81 Fed. Reg. 73,513-73,519 (discussing the clear congressional purpose of the CAA to control air pollutant emissions and drive technology, the relationship with NHTSA regulations of glider vehicles, the relationship to standards for incomplete vehicles, definitions of "manufacturer", the prohibition against acts that "cause" violations of emissions standards, EPA's authority under Sections 203(a)(3)(B), and 202(a)(3)(D) granting explicit authority to prescribe requirements of rebuilt heavy-duty engines; *see also*, Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act, Feb. 2016, EPA-HQ-OAR-2014-0827-1627.

meetings with all sectors of industry, and responding to thousands of public comments. The Glider Rule relied on extensive technical analyses by EPA, glider manufacturers, and OEMs regarding glider emissions, and it went into effect without legal challenge from either glider manufacturers or OEMs. However, after gaining a private meeting with the Trump Administration, three glider manufacturers submitted a Petition for Reconsideration of the Glider Rule, in which they recycled legal arguments they had made during the Glider Rule promulgation, and which EPA had considered and rejected.<sup>29</sup> EPA then published its notice of the Proposed Repeal, relying on the legal theory presented in the glider manufacturers' petition for reconsideration.

As part of the introduction for the Proposed Repeal, EPA cites to arguments raised by the glider manufactures about potential "benefits" of gliders on the grounds that they emit less, as alleged by the Tennessee Tech study submitted with the petition for reconsideration. 82 Fed. Reg. at 53,444. This industry-designed and funded study was not peer reviewed, and among other glaring deficiencies, it makes claims regarding PM emissions that it did not even test for, rendering its assertions questionable at best. *See* fn. 22, *supra*. In contrast, EPA staff recently released a report about glider emissions that corroborates EPA's initial glider emissions estimates supporting the Glider Rule.<sup>30</sup> Yet EPA cites to the Tennessee Tech study in the Proposed Repeal without any critical review or explanation about the differences in its results, as compared to the extensive and scientifically robust analysis conducted by EPA in 2016 and 2017. EPA has failed to acknowledge the severe and substantial health and environmental impacts supported by the Glider Rule record,<sup>31</sup> issues at the heart of the CAA's purpose and the Administrator's statutory responsibility.

The comments that EPA solicits as part of the Proposed Repeal further reflect arbitrary and capricious action, since the questions on which it seeks comment (the suitability of gliders for small businesses, whether "limiting the availability of glider vehicles could result in older, less safe, more-polluting trucks remaining on the road," and "whether glider vehicles produce significantly fewer emissions overall compared to the older trucks they would replace" as well as "the relative expected emissions impacts if the regulatory requirements at issue here were to be repealed or were to be left in place") were already asked and answered as part of the Glider Rule and notice and comment process 82 Fed. Reg. at 53,446-53,447, *see also* RTC to Phase 2 Rule Sections 1.3.1 and 14.2; 81 Fed. Reg. at 73,512-73,519, 73,941-73,946.

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<sup>29</sup> See fn. 21, *supra*.

<sup>30</sup> Chassis Dynamometer Testing Study; see fn. 12, *supra*.

<sup>31</sup> The California Air Resources Board comment letter thoroughly discusses the technical merits and evidence provided by the various studies cited in the Glider Rule record and the Proposed Repeal.

3. EPA's Failure to Analyze the Economic and Environmental Impacts of the Proposal Repeal, Including States' Abilities to Comply with NAAQS, are Additional Reasons the Proposed Repeal is an Arbitrary and Capricious Action.

Two other aspects of the Proposed Repeal are further evidence of EPA's arbitrary and capricious failure to adequately explain how its Proposed Repeal rebuts the facts found during promulgation of the Glider Rule. First, EPA failed to address its many findings of health protectiveness, and assessment of costs and benefits that it set out in the Regulatory Impact Assessment (RIA) for the Glider Rule.

EPA's only attempt at satisfying its obligations to provide the RIA information is a three-page long memo titled "Assessment of Economic Factors Associated with Glider Vehicles" (Memo) dated Nov. 16, 2017. Docket No. EPA-HQ-OAR-2014-0827-2407. In the Memo, EPA expressly acknowledges that it "is not including a Draft RIA for this proposed rule." Memo, p. 1. The Administrator acknowledges that he reviewed and considered the RIA for the Phase 2 rulemaking (Phase 2 RIA). But this is all he says about the Phase 2 RIA. That RIA (docket no. EPA-HQ-OAR-2014-0827-2345) is more than 1,000 pages long, and its economic impact analysis includes, among other things, the quantified monetized non-GHG health and environmental impacts of the Phase 2 rule, including the Glider Rule. Phase 2 RIA, chapter 8.6. It discusses the changes in ambient concentrations of PM and ozone that will result from the Phase 2 standards, and the fact that it is "important to quantify the health and environmental impacts associated with the standards because a failure to adequately consider ancillary impacts could lead to an incorrect assessment of their costs and benefits." Phase 2 RIA, p. 8-41. It presents monetized benefits from reducing exposure to PM. *Id.* at ch. 8.6.1. EPA's failure to consider whether or how the Proposed Repeal would affect the health-related benefits and costs found in the Phase 2 RIA renders the Proposed Repeal arbitrary and capricious. The discretion the CAA accords EPA does not matter here, since the omission pertains to the Administrator's duty to protect public health and welfare. 42 U.S.C. § 7617(e)(2).

Additionally, the meager economic analysis provided with the Proposed Repeal includes determinations that it will not result in costs/impacts to consumer costs and energy use. Memo, p. 2. However, EPA based these determinations on *unverified* claims by the glider industry that glider engines have better fuel efficiency and maintenance costs than new compliant engines. *Id.* A determination based on unverified claims, particularly when they are counter-intuitive – old engines have better fuel efficiency – and belied by the Agency's earlier findings,<sup>32</sup> is arbitrary; especially when the claims are advanced by *the action's proponents*.

Second, it is clear from the notice of Proposed Repeal that EPA gave no consideration to the effect the repeal would have on the States' ability to meet the NAAQS, an aspect of the Phase 2 program that the Glider Rule considered. Specifically, EPA found that further NOx reductions would "assist[] states and local areas in attaining and maintaining the applicable ozone NAAQS." 81 Fed. Reg. at 73,522. Further, it found that, "the emissions reductions and

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<sup>32</sup> See, e.g., Phase 2 RTC at 1877-1879.

improvements in ambient PM<sub>2.5</sub> concentrations from this action [ . . . ] will be helpful to states as they work to attain and maintain the PM<sub>2.5</sub> NAAQS.” *Id.* at 73,856. In the Proposed Repeal, EPA totally ignored these prior findings. See 82 Fed. Reg. at 53,442-49. EPA mentions NAAQS only once, in its justification why it need not comply with Executive Order 13045 and study the Proposed Repeal’s effects on the protection of children (despite its admission that some of the benefits to children’s health will be lost in repealing the Glider Rule). 82 Fed. Reg at 53,448. However, this mention is not a substitute for analysis,<sup>33</sup> as it does not approach the requisite consideration of EPA’s previous findings that Phase 2 with the Glider Rule would assist the States with NAAQS compliance. Repeal of the Glider Rule will have the exact opposite effect on the States’ abilities to meet the NAAQS requirements. Finalization of the Proposed Repeal would be arbitrary and capricious, and subject to reversal by courts, for any of the foregoing reasons.

#### **IV. EPA CANNOT DEFENSIBLY MAKE THE ALTERNATIVE CHANGES TO THE GLIDER RULE ON WHICH EPA REQUESTS COMMENT.**

In addition to requesting comment on repeal of the Glider Rule EPA also seeks comment on two alternative changes that could substantially weaken and undermine the Rule. 82 Fed. Reg. at 53,446-47. First, EPA asks whether it should increase the exemption for small manufacturers above the current limit of 300 glider vehicles per year. *Id.* Second, EPA seeks comment on whether it should extend the date of compliance for glider vehicles and glider engines, and if so by how long. *Id.* The CAA and the record from the Glider Rule foreclose either option.

In response to concerns expressed by small business manufacturers and assemblers, the Glider Rule carved out an exemption that allows such entities to produce up to 300 vehicles per year (or up to the highest annual production volume for calendar years 2010 through 2014, whichever is less) with engines meeting the criteria pollutant standards corresponding to the year of the engine. 40 C.F.R. § 1037,150(t)(1)(ii); *see also* 81 Fed. Reg. 73,518, 73,942, 73,944-45. EPA found that this 300-unit level “reflects the upper end of the range of production that occurred before significant avoidance of the 2007 criteria pollutant standards began.” *Id.* at 73,944. EPA further found that:

[G]iven this relief combined with other changes being made into the final regulations, any small businesses that have been focused on producing gliders for legitimate purposes will not be significantly impacted by the new requirements since they can use donor engines within their regulatory useful life for either age or mileage. See generally RIA Chapter 12.7.3. Only those small businesses that have significantly increased production to create new trucks to avoid the 2010 NO<sub>x</sub> and PM standards will have their sales significantly restricted.

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<sup>33</sup> In fact, it appears that EPA copied and pasted language from the section regarding E.O. 13045 in its notice of proposed repeal of the Clean Power Plan, even forgetting to swap out “glider rule” for “CPP” in the last sentence.

*Id.* at 73,944-45. Further, EPA noted that commenters who had argued against any limit or proposed a higher limit during the 2016 rulemaking “did not address the very significant adverse environmental impacts of the huge increase in glider vehicle production over the last several years.” *Id.* at 73,944.

The historical facts regarding the volume of glider production prior to their manufacture to evade emissions requirements are not subject to reasonable dispute. Further, the fact that increasing the exemption would increase the very pollution that EPA is required to control is well established by EPA’s own testing. Thus, EPA cannot provide the required “good reason” for an expansion of the exemption or “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox Television Stations*, 556 U.S. at 515.

EPA’s second alternative, to delay the date of compliance for glider vehicles and glider engines, is similarly untenable. In relevant part, the CAA provides that “[a]ny regulation shall take effect after a period of time the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.” CAA § 202(a)(3)(D); 42 U.S.C. § 7521(a)(3)(D). Here, as EPA found, “no time is needed to develop and apply the requisite control measures for criteria pollutants because compliant engines are immediately available.” 81 Fed. Reg. 73,518. Additionally, EPA noted that “manufacturers of compliant engines, and dealers of trucks containing those engines, commented that they are disadvantaged by manufacturing more costly compliant engines while glider vehicles avoid using those engines.” *Id.* And, EPA noted the risks of “massive pre-buys” if compliance deadlines were lengthy. *Id.* For these reasons, the Glider Rule capped production of gliders using higher polluting engines starting January 1, 2017, and requires use of engines meeting Phase 1 Standards as of January 1, 2018. *Id.* at 73,942. EPA further noted that “[g]iven the severity of these [associated health] impacts, delaying these provisions cannot be justified by merely the potential for inconvenience to the industry.” Phase 2 RTC at 1881. Simply put, there is no statutory basis for extending the January 1, 2018 compliance date, because the engines needed for manufacturers to comply are available.<sup>34</sup>

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<sup>34</sup> Nor would any other statutory provision authorize EPA to extend the January 1, 2018 compliance date or other later compliance dates. For example, Section 705 of the Administrative Procedure Act does not apply because, among other reasons: (a) the Glider Rule has already taken effect and (b) the Glider Rule has not been challenged in litigation. *See Safety-Kleen Corp. v. EPA*, No. 92-1629, 1996 U.S. App. LEXIS 2324, at \*2-3 (D.C. Cir. Jan. 19, 1996) (per curiam); *see also Becerra v. United States Department of the Interior*, No. 17-CV-02376-EDL, 2017 WL 3891678, at \*9 (N.D. Cal. Aug. 30, 2017); *California v. Bureau of Land Management*, No. 17-CV-03804-EDL, 2017 WL 4416409, at \*8 (N.D. Cal. Oct. 4, 2017). Similarly, section 301 of the Clean Air Act “does not provide the Administrator with carte blanche authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes.” *Citizens to Save Spencer City v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979). The general power of section 301 does not trump the specific statutory provisions of the Clean Air Act. *See Natural Res. Def. Council v. Reilly*, 976 F.2d 36, 40-41 (D.C. Cir. 1992); *see also Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

**CONCLUSION**

The basis for the Proposed Repeal is an incorrect, unjustifiable reinterpretation of EPA's Congressionally-mandated duties in the CAA that violates its cardinal obligation to protect public health and welfare from harmful air pollution, and EPA has not articulated any valid basis for the Proposed Repeal. EPA should withdraw its Proposed Repeal and retain the Glider Rule in its entirety.

Sincerely,

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## McDougall, Robert

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**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 4:06 PM  
**To:** Bailey, Jay  
**Subject:** FW: Final Glider Letter  
**Attachments:** Repeal of Glider Regs Comment Letter by AGOs.pdf

Jay: Can I get another hyperlink?

State's Comments on Glider Regs 1-5-18

Thanks

**From:** Persampieri, Nick  
**Sent:** Friday, January 05, 2018 4:05 PM  
**To:** McDougall, Robert <robert.mcdougall@vermont.gov>; Ingraham, Kim <Kim.Ingraham@vermont.gov>  
**Subject:** Final Glider Letter

I enclose the final letter on gliders that CA submitted on our behalf today. Kim, please add this to the sign on spreadsheet. Thanks.

Nick

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**Subject:** RE: Final Glider Letter

Rob,

Here you go:

<http://www.ago.vermont.gov/assets/files/Environmental/States%20Comments%20on%20Glider%20Regs%201-5-18.pdf>

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**From:** Persampieri, Nick  
**Sent:** Friday, January 05, 2018 4:05 PM  
**To:** McDougall, Robert <robert.mcdougall@vermont.gov>; Ingraham, Kim <Kim.Ingraham@vermont.gov>  
**Subject:** Final Glider Letter

I enclose the final letter on gliders that CA submitted on our behalf today. Kim, please add this to the sign on spreadsheet. Thanks.

Nick

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## **Persampieri, Nick**

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**From:** Persampieri, Nick  
**Sent:** Friday, January 5, 2018 5:02 PM  
**To:** McDougall, Robert; O'Toole, Megan; Ingraham, Kim  
**Subject:** Gliders- Corrected Comment Letter  
**Attachments:** AGO Comments Re Proposed Repeal of Glider Regs 152018.pdf

Here is a corrected Glider comment letter that California filed. Please ignore the earlier version, which was dated 1/5/17.

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**Attorneys General of California, New York, Connecticut, Illinois, Maryland, Massachusetts,  
New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington**

January 5, 2018

EPA Docket Center (EPA/DC)  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, NW  
Washington, DC 20460

*Via <https://www.regulations.gov>*

Re: Comments on Proposed “Repeal of Emission Requirements for Glider Vehicles,  
Glider Engines, and Glider Kits,” 82 Fed. Reg. 53,442

**Attention: Docket No. EPA-HQ-OAR-2014-0827**

The Attorneys General of California,<sup>1</sup> New York, Connecticut, Illinois, Maryland, Massachusetts, New Mexico, North Carolina, Oregon, Pennsylvania, Vermont, and Washington (the States) submit these comments in opposition to the United States Environmental Protection Agency’s (EPA) proposal to repeal those provisions of 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 (October 25, 2016) and 82 Fed. Reg. 29,761 (June 30, 2017) (correcting table), that apply to glider vehicles, glider engines, and glider kits (hereinafter, the Glider Rule). *See* 82 Fed. Reg. 53,442 (November 16, 2017) (Proposed Repeal). Gliders are heavy duty vehicles where a used or refurbished engine is incorporated into a new vehicle chassis. These trucks are typically manufactured alongside of, and sold as, new trucks.<sup>2</sup>

EPA’s Proposed Repeal rests on a legally untenable reinterpretation of the Agency’s duty to regulate harmful air pollutants from “new motor vehicles” and “new motor vehicle engines,” which conflicts with the language, history and purpose of section 202(a)(1) of the Clean Air Act (CAA), and the CAA as a whole. 42 U.S.C. §§ 7401, *et seq.* Further, EPA uncritically accepts the contentions of a few glider manufacturers that were soundly rejected in the 2016 rulemaking, and ignores its own economic and environmental analysis from the Glider Rule. In doing so, EPA proposes to act arbitrarily and capriciously, without providing any good reason or substantial justification for its reversal of position.

Simply put, gliders are a pollution menace that, unless properly regulated, threaten to undermine the entire national program to reduce harmful emissions from heavy duty vehicles and engines. By way of example, in the record for the Glider Rule, EPA estimated that: 500

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<sup>1</sup> The California Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. *See* Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D’Amico v. Bd. of Medical Examiners*, 11 Cal.3d 1, 14-15 (1974).

<sup>2</sup> *See, e.g.*, <http://trucks.fitzgeraldgliderkits.com/> (including “fully built” trucks)(last viewed 1/4/18); <https://www.fitzgeraldgliderkits.com/what-is-a-glider-kit/> (“a complete unit ready to go”)(last viewed 1/4/18); <http://www.dtnaglider.com/Features.aspx> (“factory built alongside new trucks”)(last viewed 1/4/18).



non-compliant gliders produce the same total amount of harmful particulate matter (PM) and oxides of nitrogen (NOx) emissions as do 20,000 fully compliant vehicles; and 5,000 non-compliant gliders produce the same PM and NOx as 200,000 fully compliant 2014 Class-8 tractors.<sup>3</sup> In that same record, EPA estimated that a single model year of unregulated glider PM pollution would result in up to 1,600 premature deaths.<sup>4</sup> Additionally, many of the States, including California, Illinois, New Mexico, New York, and Oregon have nonattainment areas for NOx, PM, or both; and EPA also found that the Glider Rule would assist states in complying with national ambient air quality standards (NAAQS) for these and other harmful pollutants.<sup>5</sup> EPA's Proposed Repeal, however, discusses none of these consequences of reversing course and deregulating glider production.

Rather, EPA predicates its Proposed Repeal on an erroneous, legally unjustified "reinterpretation" of its congressionally-mandated duties under Section 202(a)(1). As explained in section II, *infra*, EPA's new interpretation is legally indefensible: it fails to comport with the plain language, context and purpose of the CAA provisions at issue. Moreover, EPA's purported reasons for its reinterpretation—including the same narrow view of the CAA that the Supreme Court rejected in *Massachusetts v. EPA*—crumble under any level of examination. Additionally, as set forth in section III, ignoring its own robust scientific evidence and myriad factual findings underpinning the Glider Rule that demonstrate the harm to public health and welfare caused by glider emissions has legal consequence for EPA's Proposed Repeal. Because EPA has failed to present any rational connection between those facts and the Proposed Repeal, its proposed action is arbitrary and capricious and, if finalized, would violate the Administrative Procedure Act.

Therefore, the States urge EPA adhere to the intent of Congress and to the Agency's duty to protect the health and welfare of our residents and all Americans, by abandoning its unlawful and irresponsible Proposed Repeal.

## **I. THE GLIDER RULE IS ESSENTIAL TO REDUCE HARMFUL EMISSIONS FROM HEAVY-DUTY VEHICLES**

### **A. Background to the Glider Rule**

Found within Title II of the CAA, regarding regulation of mobile sources of pollution, section 202(a)(1) compels EPA to establish and revise emission standards for any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that in the Administrator's judgment "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(a)(3)

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<sup>3</sup> EPA FAQ about Heavy-Duty Glider Vehicles and Glider Kits, July 2015, EPA-420-F-25-904 ("EPA Glider FAQ"), p. 2.

<sup>4</sup> Response to Comments for Joint Rulemaking, EPA-426-R-16-901 (August 2016) (Phase 2 RTC) at 1877.

<sup>5</sup> 81 Fed. Reg. at 73,522-73,523, 73,856 (Phase 2 Standards "will be helpful" to states with PM<sub>2.5</sub> and ozone NAAQS compliance).

requires standards for heavy-duty vehicles or engines to “reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available” for the relevant model year standards. 42 U.S.C. § 7521(a)(3)(A)(i).

EPA’s duty to regulate heavy duty truck emissions is integral to the CAA’s express purpose of protecting the Nation’s air resources so as to promote “public health and welfare.” See 42 U.S.C. § 7401(b)(1). Emissions from heavy-duty vehicles contribute greatly to a number of serious air pollution problems, including the health and welfare effects related to so-called “conventional” or “criteria” pollutants such as PM, NO<sub>x</sub>, ozone, sulfur dioxide, and volatile organic compounds. 66 Fed. Reg. 5,002, 5,005 (January 18, 2001). EPA has documented these adverse effects to include: premature mortality, increased risk of lung cancer, aggravation of respiratory and cardiovascular disease, changes to lung tissues and structures, chronic bronchitis, and decreased lung function; crop and forestry losses; substantial visibility impairment in many parts of the U.S.; and the acidification, nitrification and eutrophication of water bodies. See, e.g., *id.* at 5,006.<sup>6</sup> EPA estimated in 2001 that as of 2007, heavy-duty vehicles would account for 28-34 percent of mobile source NO<sub>x</sub> emissions and 20-38 percent of mobile source PM emissions, especially in urban areas such as Sacramento, Washington, D.C., Los Angeles, Hartford, and Santa Fe. *Id.* at 5,006-5,007. Heavy-duty vehicle emissions also can disproportionately impact urban areas already economically disadvantaged. *Id.* at 5,007. EPA also has determined that emissions reductions from heavy-duty vehicles and engines are a critical component of achieving and maintaining compliance with NAAQS. *Id.* at 5,006.

Pursuant to its section 202(a)(1) authority, and consistent with the overarching purpose of the CAA to protect public health and welfare, EPA has regulated criteria pollutant emissions from heavy-duty on-highway engines and vehicles with increasing stringency. See, e.g., 81 Fed. Reg. at 73,485, 73,522. In 2001, EPA issued diesel emission standards for heavy-duty on-highway engines that were phased in from the 2007 to 2010 model years. *Id.* at 73,522; see also, 66 Fed. Reg. 5,002 (Heavy-Duty Engine and Vehicle Standards requiring 100% of 2010 model year on-road heavy-duty diesel engines to have NO<sub>x</sub> exhaust control technology).

In 2009, EPA made an Endangerment Finding under its section 202(a)(1) authority, expressing its judgment that elevated concentrations of greenhouse gas (GHG) emissions in the atmosphere may reasonably be anticipated to “endanger public health or welfare.” 74 Fed. Reg. 66,496 (Dec. 15, 2009); 42 U.S.C. § 7521(a)(1); see *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 117-123 (D.C. Cir. 2012) (upholding both the Endangerment Finding and EPA’s regulation of GHG emissions from motor vehicles).<sup>7</sup> Consistent with the Endangerment

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<sup>6</sup> In particular, NO<sub>x</sub> is an ozone precursor that contributes to climate change, and it has been linked to asthma, especially in children. 81 Fed. Reg. at 73,522. PM poses many adverse health effects: cardiovascular and respiratory effects, reproductive and developmental effects including low birth weight and infant mortality, and carcinogenic, mutagenic, and genotoxic effects (for example, lung cancer mortality). *Id.* at 73,837.

<sup>7</sup> Harms associated with climate change caused by human emissions of GHGs, including from heavy duty vehicles, are widespread and complex, from increased death and illnesses related to increases in weather related events (heat waves, increased ozone pollution, and deaths associated with increased intensity in

Finding and in an effort to reduce GHGs emissions and fuel consumption for on-road heavy-duty vehicles, in 2011, EPA and the National Highway Traffic Safety Administration, on behalf of the U.S. Department of Transportation (NHTSA) implemented the Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles (Diesel GHG Program). 76 Fed. Reg. 57,106 (September 15, 2011). The Diesel GHG Program is a comprehensive two-phase course of action designed to address diesel engine contribution to climate change. *Id.* Phase 1 applied to several categories of medium and heavy-duty engines and vehicles in MY 2014-2018 (Phase 1 Standards). *Id.* at 57,108; 81 Fed. Reg. at 73,479.

Following two years of stakeholder meetings and fact finding, in 2015, EPA and NHTSA proposed Phase 2 of the Diesel GHG Program (Phase 2 Standards), comprised of additional technology-forcing standards applicable to various categories of medium and heavy-duty engines and vehicles phased in MY 2018 to MY 2027. 81 Fed. Reg. at 73,480-73,481. After additional meetings with stakeholders and responding to thousands of public comments, many from new heavy-duty truck manufacturers in support of the Glider Rule, EPA issued the final Phase 2 Standards on October 25, 2016. *See* 81 Fed. Reg. 73,478.<sup>8</sup>

The Phase 2 Standards included a number of changes and clarifications of rules respecting so-called “glider kits” and “glider vehicles.” 81 Fed. Reg. at 73,512. Specifically, a “glider kit” is “a tractor chassis with frame, front axle, interior and exterior cab, and brakes.” *Id.* It is “intended for self-propelled highway use, and becomes a glider vehicle [aka glider] when an engine, transmission, and rear axle are added.” *Id.* at 73,513. Some or all of these drivetrain parts are used or rebuilt. The final manufacturer of the glider vehicle is typically a different manufacturer than the glider kit. *Id.* However, glider kit manufacturers generally know the final configuration of the glider vehicle, because in order for the glider vehicle to work, the wiring of the glider kit must be designed to match the configuration of the powertrain. *Id.* at 73,517.

In use for decades, gliders were originally intended as a way to salvage relatively new powertrains that were still operable from a truck chassis that had been irreparably damaged (e.g., in an accident) or to allow trucks with localized and minimal use to be updated. *See* 81 Fed. Reg. at 73,513. Prior to 2007, when emissions standards issued in 2001 became fully applicable, only about 300 gliders were being produced per year. Phase 2 RTC at 1883. EPA impliedly provided an interim exemption from the Phase 1 Standards to gliders and glider kits, by adopting 40 C.F.R. § 1037.150(j) that indicated “the general prohibition against introducing a vehicle not subject to current model year standards does not apply to MY 2013 or earlier engines.” 81 Fed.

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severe weather events such as flooding, tornadoes, and hurricanes) to adverse impacts to property, habitat, and energy, transportation, and water resource infrastructure from extreme weather events and rising sea levels. *See* 81 Fed. Reg. 73,486.

<sup>8</sup> NHTSA did not include gliders in its Phase 1 or Phase 2 fuel consumption standards. 81 Fed. Reg. at 73,584-73,585. EPA and NHTSA treat gliders differently under their respective regulations. *Id.* As EPA noted in response to comments during the Phase 2 rulemaking that EPA’s treatment of gliders should reflect principles in existing NHTSA regulations, NHTSA and EPA regulate gliders under different statutory authority and for different, albeit related, purposes. Phase 2 RTC at 1886. “More importantly,” EPA noted, “such comments ignore the severe public health impacts of gliders vehicles.” *Id.*

Reg. at 73, 513-14; Phase 2 RTC at 55-56, 62. However, after the promulgation of the Phase 1 Standards, EPA and NHTSA both “observed a sharp increase in glider sales, which suggests that gliders are being used more and more as a loophole to avoid purchasing engines that meet 2010 EPA emissions standards, and potentially to avoid NHTSA safety regulations.”<sup>9</sup>

**B. EPA Issued the Glider Rule to Close an Increasingly Abused, Pollution-Increasing Loophole That Harms Public Health and Welfare.**

From 2004 onward, and especially after EPA promulgated the Phase 1 Standards, glider production increased rapidly from a few hundred per year in 2004 to approximately 10,000 per year by 2015. 81 Fed. Reg. at 73,943. Gliders are typically marketed and sold as “brand new” trucks with new legal titles. 81 Fed. Reg. at 72,514; 82 Fed. Reg. at 53,445; Phase 2 RTC at 55-56. However, most gliders use rebuilt engines originally manufactured before 2002 that lack the pollution control equipment required by the 2010 heavy duty truck standards for conventional pollutant control. 81 Fed. Reg. at 73,942-72,943. While this may result in upfront cost savings to the buyer, any extra costs of a compliant glider will be recouped by greater fuel savings within the first few years.<sup>10</sup> More importantly from a public health perspective, preventing the harm that non-compliant glider emissions cause would offset any upfront cost savings. *See, e.g.*, 81 Fed. Reg. at 73,943 (“removal of all unrestricted glider vehicle emissions from the atmosphere would yield between \$6 to \$14 billion in benefits annually.”).<sup>11</sup> In promulgating the Glider Rule, EPA found that most gliders have NO<sub>x</sub> and PM emissions that are between 20-40 times higher than current MY vehicle engines. 81 Fed. Reg. 73,942-73,943. Even gliders using relatively recent engines—produced in 2007 or later—have NO<sub>x</sub> and PM emissions at least 10 times higher than current engines. *Id.* at 73,942. An EPA study in 2017 corroborates the emissions results that EPA found in promulgating the Glider Rule: NO<sub>x</sub> emissions from gliders with pre-2002 engines were *43 times higher* than conventionally built 2014 and 2015 tractors under highway cruise conditions, and 4 to 5 times higher in conditions of transient operations.<sup>12</sup>

EPA’s review of the record when promulgating the Glider Rule led it to conclude that glider manufacturing had become, and would continue to be, an industry dependent on a regulatory loophole that harms human health.<sup>13</sup> Consequently, EPA established the Glider Rule

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<sup>9</sup> EPA Glider FAQ, p. 1.

<sup>10</sup> Comments by California Air Resources Board at pp. 23-24, 38-39 (citing Phase 2 RTC at 1885,1878-879). Additionally, compliant gliders also are less expensive than most new compliant trucks; thus upfront cost savings of non-compliant gliders are no justification for the Proposed Repeal. *See id.*

<sup>11</sup> EPA estimated that the PM and ozone reductions from Phase 1 Standards alone will result in benefits from \$1.3 to \$4.2 billion in 2030. 81 Fed. Reg. 73,492.

<sup>12</sup> Chassis Dynamometer Testing of Two Recent Model Year Heavy-Duty On-Highway Diesel Glider Vehicles, November 20, 2017, Docket No.: EPA-HQ-OAR-2014-0827-2417 (Chassis Dynamometer Testing Study) at p. 3.

<sup>13</sup> *See* 81 Fed. Reg. at 73,942-43. *See also*, Comments by California Air Resources Board, §§ 1.4 and 1.5.

to balance the legitimate salvage purpose gliders originally served with its mandate to protect public health and the environment.<sup>14</sup> The Glider Rule caps sales of gliders/kits with non-compliant engines in phases, to allow the glider market to transition into selling only gliders/kits compliant with the Phase 2 Standards.<sup>15</sup> In 2017, glider manufacturers could sell gliders/kits using non-compliant engines, up to the number sold during the highest year of production between 2010 and 2014. Starting in January 2018, engines in gliders would have to meet GHG and criteria pollutant emission requirements for the year of the glider assembly, subject to an exception allowing them to sell 300 gliders per year with non-compliant engines. 81 Fed. Reg. 73,518. Beginning in MY 2021, all gliders, including those using engines exempted under the transition period, must meet the Phase 2 Standards.<sup>16</sup> Additionally, under the Glider Rule, glider kit manufacturers must certify that the engines intended for the kits meet the Phase 2 Standards. *Id.* at 73,515-73,517.

**C. The Phase 2 Standards Record Shows That the Glider Loophole Resulted in Significant Harm to Public and Environmental Health and Created an Uneven Playing Field for Diesel Truck Manufacturers.**

EPA found that each glider used in lieu of a new truck with controlled emissions “results in significantly higher in-use emissions of air pollutants associated with a host of adverse human health effects, including premature mortality.” 81 Fed. Reg. 73,943. EPA analyses of the impacts of glider vehicles on public health concluded that “without new restrictions, glider vehicles on the road in 2025 would emit nearly 300,000 tons of NOx and nearly 8,000 tons of diesel PM annually,” noting that although gliders “would make up only 5 percent of heavy-duty tractors on the road, their emissions would represent about *one-third* of all NOx and PM emissions from heavy-duty tractors in 2025.” Phase 2 RTC at 1875-1876 (original emphasis). The removal of these unrestricted glider emissions is estimated to yield between \$6 and \$14 billion in annual PM-related benefits. *Id.* at 1876. Further, EPA’s own risk analysis indicated that PM<sub>2.5</sub>-related exposures<sup>17</sup> from a single model year of 5,000-10,000 high polluting glider engines would result in 350 to 1,600 premature deaths, an estimate EPA called “significantly conservative.” Phase 2 RTC at 1877; *see also* Comments by California Air Resources Board, § 1.5.2.

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<sup>14</sup> *Id.*

<sup>15</sup> 81 Fed. Reg. at 73,518, 73,941-73,946; *see also* 40 C.F.R. part 1037 (GHG heavy duty vehicle standards, which refer to 40 C.F.R. part 1036 (heavy duty engine standards); 40 C.F.R. part 86 (criteria pollutant standards).

<sup>16</sup> EPA also included a limited allowance to exempt gliders from the Phase 2 Standards altogether where the reused engines were newer or had very low mileage. 81 Fed. Reg. at 73,944.

<sup>17</sup> PM<sub>2.5</sub> particles are “‘fine’ particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm. 81 Fed. Reg. at 73,836. Their harm to human health when inhaled includes developmental, reproductive, carcinogenic, mutagenic, and genotoxic effects. *Id.*; *see also*, fn. 6, *supra*.

Additionally, a lack of regulation of gliders distorts the marketplace and tilts the playing field against heavy-duty truck manufacturers who have invested in developing pollution controls, since “glider sales now come at the expense of sales of fully compliant new trucks.”<sup>18</sup> Both glider and major truck manufacturers estimated that without regulation, the glider industry would continue to grow. But as noted by several commenters, including much of the new truck/engine industry, continuation of the exemption for gliders threatened to undermine the goal of not only the Phase 2 Standards, but the earlier conventional pollutant standards as well, since glider emissions per vehicle are significantly higher than those from trucks required to meet all of the proposed 2017 heavy-duty vehicle emissions standards. *See* Phase 2 RTC at 1881; Glider FAQ, p. 2. In turn, this undercuts manufacturers who had made major investments to comply with current MY emissions standards.<sup>19</sup>

The Glider Rule became effective December 27, 2016, without any legal challenge. *See* 81 Fed. Reg. 73,478.<sup>20</sup> In particular, EPA noted in the Phase 2 RTC that “[n]o commenters disagreed with EPA’s assessment of NOx and PM impacts.” Phase 2 RTC, p. 1875. Following the Administration change, however, three glider manufacturers petitioned EPA for reconsideration of the Glider Rule, stating as grounds for reconsideration the very basis on which EPA has now premised its proposed reinterpretation of section 202(a)(1).<sup>21</sup> The factual basis for the three manufacturers’ petition was a glider industry-funded June 2017 Tennessee Tech study that claims gliders emit fewer pollutants than EPA had found in its analysis.<sup>22</sup> One month later,

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<sup>18</sup> RTC at 1877; *see also* Comments of the Volvo Group, October 1, 2015, EPA-HQ-OAR-2014-0827-1290, pp. 62-67.

<sup>19</sup> *See e.g.*, Phase 2 RTC at 1877; EPA-HQ-OAR-2014-0827-1290, p. 63 “Such a gross expansion will threaten the ability of OEM dealers to compete in the marketplace with fully compliant products.”

<sup>20</sup> EPA has been sued over other provisions of the Phase 2 Standards pertaining to emissions standards for trailer manufacturers.

<sup>21</sup> The petition for reconsideration by Fitzgerald Gliders et al. states EPA lacks section 202 authority to regulate gliders, because “the most significant parts of the vehicle – the engine, transmission, and typically the rear axle – are not new.” Petition for Reconsideration filed July 10, 2017, p. 3, Docket No.: EPA-HQ-OAR-2014-0827-2373 (Glider Petition). Petitioners also claim glider kits are not within the CAA definition of “motor vehicle” because they are not “self-propelled.” *Id.*

<sup>22</sup> Glider Petition, p. 5. As noted in the November 13, 2017 “Memo re: EPA Teleconference with Tennessee Tech Univ. Regarding Glider Test Report” by EPA’s National Vehicle and Fuel Emissions Lab, Fitzgerald Gliders was involved in the Tennessee Tech study. Docket No.: EPA-HQ-OAR-2014-0827-2416. Fitzgerald also underwrites the Center for Intelligent Mobility at Tennessee Tech, which calls into question the study’s value as unbiased research. <https://www.tntech.edu/news/releases/tennessee-tech,-tcat-livingston,-fitzgerald-companies-announce-new-partnership> (last viewed 1/4/18). As noted by the California Air Resources Board, the ability to assess the merit of the Tennessee Tech study, which was not peer-reviewed, is impeded by its lack of accompanying data and Tennessee Tech’s later admission that “no particulate matter samples were collected during testing” undermines its assertions regarding PM emissions from gliders in particular. *See*, Comments by California Air Resources Board, § 1.5.2. Tennessee Tech also has not yet provided any information regarding the source, mileage, age, or

in August 2017, EPA announced its intent to revisit the Glider Rule. EPA published its notice of the Proposed Repeal on November 9, 2017, relying on the legal theory presented in the three glider-manufacturers' petition for reconsideration, and referring to the Tennessee Tech study. 82 Fed. Reg. at 53,444. The indefensible legal interpretations and self-serving study proffered by three representatives of an industry that has flourished based on the exploitation of a loophole in the regulation of harmful pollutants do not provide a reasoned basis for EPA's wholesale reversal of its position on the Glider Rule.

## II. THE PROPOSED REPEAL IS PREMISED ON AN ERRONEOUS AND INVALID REINTERPRETATION OF EPA'S DUTIES UNDER CAA SECTION 202(A)(1).

### A. EPA's 2017 Analysis.

EPA proposes to repeal the Glider Rule based its current view "that the statutory interpretations on which the [Glider Rule] predicated its regulation of glider vehicles, glider engines, and glider kits were incorrect." Specifically, EPA now asserts that glider vehicles are excluded from the term "new motor vehicles" and glider engines are excluded from the definition of "new motor vehicle engines" under CAA Section 216(3). 82 Fed. Reg. at 53,444. "Consistent with this interpretation," EPA states that it "has no authority to treat glider kits as 'incomplete' new vehicles under CAA section 202(a)(1). *Id.* The Administrator's proposed rationale for this is that EPA's prior reading "was not the best" and that:

the Agency failed to consider adequately the most important threshold consideration: i.e., whether or not Congress, in defining 'new motor vehicle' for purposes of Title II, had a specific intent to include within the statutory definitions such a thing as a glider vehicle – a vehicle comprised both of new *and* previously owned components. See *Chevron [USA, Inc. v. NRDC, Inc.]*, 467 U.S. 837, 843 n.9 (1984), ('Where the 'traditional tools of statutory construction 'allow one to 'ascertain[] that Congress had an intention on the precise question at issue,' that 'intention is the law and must be given effect.'). Where 'Congress has not directly addressed the precise question at issue,' and the 'statute is silent or ambiguous with respect to the specific issue,' it is left to the agency charged with implementing the statute to provide an 'answer based on a permissible construction of the statute.' *Id.* at 843. 82 Fed. Reg. at 53,445.

Applying *Chevron*, the Administrator concludes that, "in light of these principles, it is clear that EPA's reading of the statutory definition of 'new motor vehicle' in the Phase 2 rule fell short." *Id.* The basis for the Administrator's reinterpretation is not in the statute itself, since EPA admits up front that gliders fall within the definition of "new motor vehicle" and "new

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condition of the "OEM 'certified' engines" cited by Tennessee Tech as examples of the emissions performance for newer engines. November 13, 2017 Memorandum concerning meeting between EPA and Tennessee Tech, pp. 2-3, Docket No.: EPA-HQ-OAR-2014-0827-2416. Furthermore, as mentioned *supra*, testing in 2017 by EPA's National Vehicle & Fuel Emissions Laboratory corroborated EPA's findings in 2016, that gliders emit significantly more NOx and PM than do comparable conventionally-manufactured MY vehicles. Chassis Dynamometer Testing Study, p. 3.

motor vehicle engine” in CAA section 216(3).<sup>23</sup> Instead, the Administrator focuses on whether Congress specifically *intended* to cover gliders when it wrote the definitions applicable to CAA section 202(a)(1). EPA concludes “it is likely that Congress did not have in mind that the definition would be construed” as covering gliders, since they were not produced in any great number until recently. *Id.* EPA further “supports” this conclusion by turning to the Automobile Information Disclosure Act of 1958 (AIDA), which has definitions of “new motor vehicle” and “new motor vehicle” that the Agency argues “appear” to be the source of the definitions in the CAA, although “the legislative history of the 1965 CAA does not expressly indicate” this to be the case. *Id.* The AIDA is a consumer protection law that requires a label containing information such as the Manufacturer’s Suggested Retail Price (MSRP) be affixed to the windshield or side window of new automobiles. 15 U.S.C. § 1232. “New” automobiles under AIDA are defined as passenger cars or station wagons for which “the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.” 15 U.S.C. § 1231(c), (d). EPA alleges that the use of the AIDA definitions:

serves to illuminate congressional intent. As with the Disclosure Act, Congress in the 1965 CAA selected the point of first transfer of ‘equitable or legal title’ to serve as a bright line – *i.e.*, to distinguish between those ‘new’ vehicles (and engines) that would be subject to CAA section 202(a)(1) and those existing vehicles that would not be subject. [. . .] it would seem clear that Congress intended, for purposes of Title II, that a ‘new motor vehicle’ would be understood to mean something equivalent to a ‘new automobile’ – *i.e.*, a true ‘showroom new’ vehicle. It is implausible that Congress would have had in mind that a ‘new motor vehicle’ might also include a vehicle comprised of new body parts and a previously owned powertrain.

*Id.* at 53,446. EPA deliberately misinterprets “new motor vehicle” to mean “a true, ‘showroom new vehicle,’” even though the term “showroom new” is not used in the AIDA, the CAA, or defined anywhere by the Administrator. EPA replaces the regulatory definition of “new,” which is based on the transfer of title, with the colloquial definition of “new,” as in “never used.” However, neither the AIDA nor the CAA provide any textual or factual support for EPA’s interpretation, since both statutes define newness in terms of transfer of title rather than the age of any of the components. Instead, the Administrator appears to rely on the association between an MSRP sticker and a new car showroom, where one would not expect to purchase a vehicle with a refurbished engine. EPA goes on to conclude that based on “that structure and history, it seems likely that Congress” did not intend to regulate gliders and that “[a]t a minimum, ambiguity exists,” leaving EPA “with the task of providing ‘an answer based on a permissible construction of the statute.’” *Id.*, citing *Chevron*, 467 U.S. at 843. EPA then concludes that neither glider vehicles, glider engines, nor glider kits would be covered under the CAA’s definitions of “new motor vehicle,” “new motor vehicle engine,” or EPA’s authority to regulate “incomplete” vehicles. *Id.*

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<sup>23</sup> 82 Fed. Reg. at 53,445 (“Focusing solely on that portion of the statutory definition that provides that a motor vehicle is considered ‘new’ prior to the time its ‘equitable or legal title’ has been ‘transferred to an ultimate purchaser,’ a glider vehicle would appear to qualify as ‘new.’”).



**B. EPA's Analysis Attempts to Circumvent the Plain Language Reading of Sections 202 and 216 by Manufacturing Ambiguity Where None Exists.**

1. The CAA's Plain Language Confirms That EPA's Original Interpretations of Sections 202 and 216 Reflect Congressional Intent to Regulate Gliders and Kits.

As EPA decided in 2016, the plain language of Sections 202 and 216 unambiguously compels it to regulate completed gliders (i.e., kits with engines) as new motor vehicles. Completed gliders are "motor vehicles" under the plain language of section 216(2), because they are self-propelled. 42 U.S.C. § 7550(2).<sup>24</sup> And when sold new, i.e., prior to the final transfer of title, they are "new motor vehicles" under the plain language in 216(3). 42 U.S.C. § 7550(3).<sup>25</sup> The engines installed in new gliders, although they have been used prior to being remanufactured, are "new motor vehicle engines" under the plain language of section 216, which defines "new motor vehicle engine" as an "engine in a new motor vehicle" or a "motor vehicle engine *the equitable or legal title to which has never been transferred to the ultimate purchaser.*" *Id.* (emphasis added). As discussed above, gliders are sold with a new legal title. In its proposal, EPA correctly admits that pursuant to the plain language of section 216, which "provides that a motor vehicle is considered 'new' prior to the time its 'equitable or legal title has been 'transferred to an ultimate purchaser,' a glider vehicle would appear to qualify as 'new.'" 82 Fed. Reg. at 53,445.

Similarly, the plain language of section 202(a)(1), which specifies that EPA's emissions standards apply to the vehicle or engine during its useful life "whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution," reflects Congress' intent that EPA regulate emissions from "incomplete" motor vehicles, i.e., motor vehicles that are pieced together, such as gliders built from glider kits. 42 U.S.C. § 7521(a)(1).

In its notice of proposed action, EPA acknowledges the extensive case law holding that a *Chevron* step one analysis requires examination of the language relative to "the whole law, and to its object and policy." 82 Fed. Reg. 53,445, quoting *Dole v. United Steelworkers of Amer.*, 494 U.S. 26, 35 (1990), among others. It is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *F.D.A. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132-133 (2000). Indeed, to find ambiguity, a court must "examine the meaning of [those] words or phrases in context and . . . 'exhaust the traditional tools of statutory construction.'" *Sierra Club*

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<sup>24</sup> Section 216(2) defines a "motor vehicle" as "any self-propelled vehicle designed for transporting persons or property on a street or highway." 42 U.S.C. 7550(2).

<sup>25</sup> Section 216(3) defines a "new motor vehicle" as "'motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.'" 42 U.S.C. 7550(3).

*v. E.P.A.*, 551 F.3d 1019, 1026-27 (D.C. Cir. 2008)(quoting *Am. Bankers Ass'n v. Nat'l. Credit Union Admin.*, 271 F.3d 262, 267 (D.C. Cir. 2001)(emphasis added).

However, EPA does not engage in the required analysis at all. Rather, it concludes that the language is ambiguous because: (1) Congress likely did not have vehicles like gliders in mind when drafting because, although gliders existed, they were not widely produced; and (2) definitions in the AIDA *might* have inspired the drafting of section 216's definitions. Neither of these reasons relates to the language of section 216 itself, the other parts of the CAA, or the CAA's purpose, i.e., the required statutory analysis factors. *See, e.g., Brown & Williamson Tobacco Corp.*, 529 U.S. at 132. And, as explained below, neither argument is persuasive.

Under the required analysis, it is clear "by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole" that Congress contemplated regulating a vehicle as "new" irrespective of its engine age when it drafted section 216. *See Robinson v. Shell Oil Co.*, 519 U.S. 337, 341. Importantly, Congress did not define "engine" for purposes of CAA Title II. Nor did it constrain the definitions of "motor vehicle" or "new motor vehicle" in any way relating to the engine or even the vehicle's age. Under its definition of "motor vehicle," a vehicle with any engine – old or new – that propels the vehicle so that people or things can be transported on a street or highway is a "motor vehicle." 42 U.S.C. § 7550(2). And Congress made no carve out or proviso that only "motor vehicles" with engines that have never been used counted as such. Rather, any motor vehicle prior to sale (i.e., transfer of title) is a "new motor vehicle" under the Act, subject to regulation under 202(a)(1). 42 U.S.C. §§ 7521(a)(1), 7550(3).<sup>26</sup> The plain language is clear itself, and in the context of the Act as a whole. The argument that a glider is not a "new motor vehicle" because it lacks an engine before assembly is of no moment. As soon as the glider receives its engine, it becomes a motor vehicle under Title II, and prior to transfer of title, it is a "new motor vehicle." *See id.*

The statutory language reflects Congress' intent for breadth of coverage since it requires standards for: (1) new engines prior to title change; *and* (2) any "engine in a new motor vehicle." 42 U.S.C. § 7550(3). This language demonstrates Congress intended EPA to regulate emissions from any engine, not just new engines, in a new motor vehicle. Had Congress intended to restrict EPA's Section 202 authority to regulate "new vehicle motor engines" to "*new engines in new motor vehicles*," it would have limited the definition of "new motor vehicle engine" to the first category (new engines prior to title change). Under EPA's proposed interpretation of section 216(3), where a new engine can only be one that has never been sold before, the second category of engine – an engine in a new motor vehicle – is simply redundant of the first, which violates basic canons of statutory interpretation. *See Gustafson v. Alloyd Co., Inc.*, 513 U.S. 561, 574-75 (1995).

The surrounding provisions of the statute confirm this reading. EPA acknowledged in its notice of proposed repeal, "[a]s Title II currently reads, the term new motor vehicle; appears

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<sup>26</sup> Whether or not there is ambiguity in the definition of "new motor vehicle" in other contexts, none exists in the context of gliders.

some 32 times, and in all but two instances, the term is accompanied by “new motor vehicle engine,” indicating that, at the inception of Title II, Congress understood that the regulation of *engines* was essential to control emissions from “motor vehicles.” 81 Fed. Reg. 53,443, n.3 (original emphasis).

Similarly, EPA’s original view that it should regulate glider kits as *incomplete* new motor vehicles finds support in the provision of section 202(a)(1), which states that EPA’s emissions standards shall apply to the vehicle or engine during its useful life “whether such vehicles and engines are designed as complete systems.” Other parts of Title II also support this conclusion. Congress directed that emissions standards be implemented through regulation of the *manufacturer* of the new motor vehicle. *See, e.g.*, § 203(a)(1) (prohibiting “manufacturer of new motor vehicles or new motor vehicle engines” from selling such vehicles/engines without certificate of conformity); § 206(a)(1) (certification testing of motor vehicle must be submitted by “a manufacturer”). Congress plainly intended “manufacturer” to include multiple parties at different times throughout the vehicle’s completion, defining “manufacturer” as “*any* person engaged in the manufacturing *or assembling* of new motor vehicles *or* new motor vehicle engines . . .” 42 U.S.C. § 7550(1) (emphasis added). Congress’ use of “any” and “or” within the definition of manufacturer clearly show that it intended a manufacturer whose business is creating, rebuilding, and assembling incomplete new motor vehicles, like a glider kit maker, be responsible for such things as testing and certification of conformity. *See id.*

EPA’s proposed reinterpretations of the CAA in this rulemaking unlawfully insert constraints on the definitions of “motor vehicle,” “new motor vehicle,” “new motor vehicle engine.” and “manufacturer” that Congress did not include, thereby changing the meaning of Congress’ definitions. *See Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980) (agency “‘interpretation’ of the statute cannot supersede the language chosen by Congress”); *Motor & Equip. Mfrs. Ass’n v. E.P.A.*, 627 F.2d 1095, 1108 (D.C. Cir. 1979), *cert. denied*, 446 U.S. 952, 100 (1980) (“statute must be construed to avoid that result so that no provision will be inoperative or superfluous”); *see Brown & Williamson Tobacco Corp.*, 529 U.S. at 132-133 (court must “interpret the statute ‘as a symmetrical and coherent regulatory scheme,’ and ‘fit, if possible, all parts into a harmonious whole.’”)(internal cite omitted); *see also, Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (the Court construes terms broadly where the act at issue “clearly falls into the category of remedial legislation”).

Furthermore, EPA’s erroneous new reading of the statute would create a loophole whereby any manufacturer of new engines or vehicles ostensibly could legally skirt emissions control regulations applicable to “new motor vehicles” simply by including some used/refurbished parts in the engine installed in an otherwise brand new vehicle. EPA did not include any limitation on its new reading of the statute that would prevent this result, which would affect vehicles beyond heavy-duty trucks, as the definitions in section 216 apply to a wide array of cars and trucks. Under the Proposed Repeal, *any* car manufacturer willing to reconfigure its manufacturing process could insert a refurbished third-party engine into an otherwise new car body, and claim such a vehicle was not a “new motor vehicle” subject to

section 202(a)(1). This would obviously contradict the purpose of the CAA. In contrast, EPA's 2016 interpretations are consistent with the CAA's overarching purpose.<sup>27</sup>

2. The CAA's Overarching Purpose Affirms That EPA's 2016 Interpretations of Sections 202 and 216 Reflect Congressional Intent to Regulate Gliders and Kits.

Congress enacted the CAA “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” *Chemical Mfrs. Ass’n. v. EPA*, 217 F.3d 861, 866 (D.C. Cir. 2000) (quoting CAA § 101(b)(1), 42 U.S.C. § 7401(b)(1)). Courts have oft noted that the CAA is “is one of the most comprehensive pieces of legislation in our nation’s history” enacted specifically to address public health problem caused by air pollution. *Motor Vehicle Manufacturers Ass’n v. New York State Dep’t of Envtl. Conserv.*, 17 F.3d 521, 524 (2<sup>nd</sup> Cir. 1994) (CAA enacted “[i]n response to the serious public health problems caused by ozone and carbon monoxide and the enormous task of cleaning up the air we breathe”); *Bell v. Cheswick Generating Station*, 734 F.3d 188, 190 (3<sup>rd</sup> Cir. 2013)(CAA enacted “in response to evidence of the increasing amount of air pollution created by the industrialization and urbanization of the United States and its threat to public health and welfare.”).

EPA's 2016 interpretation of its section 202(a)(1) duty – to regulate air emissions found to cause pose public health risks as including its duty to regulate gliders – is consistent with overarching purpose of the CAA to ensure the protection of public health and welfare from harmful air pollution. *See id.*

In contrast, EPA's newly proposed reinterpretations undermine the very purpose of the CAA to protect air quality and promote the public health and welfare, and EPA's duty to uphold and enforce the CAA. *See* 42 U.S.C. § 7401(b)(1); *Massachusetts v. EPA*, 549 U.S. at 532, citing 42 U.S.C. § 7521 (“EPA has been charged with protecting the public’s ‘health’ and ‘welfare’”). EPA's reinterpretations—which impair the CAA's purpose—are not permissible constructions of the statutes. Consequently, a court would not uphold them. *See Chevron*, 467 U.S. at 843.

**C. EPA's Arguments in Support of Deference to its Flawed Reinterpretation Are Unfounded.**

Instead of undertaking a complete *Chevron* analysis of the statutes' plain language and application in context of the Act, EPA's proposed reinterpretations rely on an argument that Congress' intent was ambiguous, thereby triggering a more deferential review of the “reasonableness” of the Agency's interpretation of the statute. EPA asserts two reasons why the statutory provisions are ambiguous as to gliders. Neither succeeds.

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<sup>27</sup> EPA's original interpretations are also consistent with its treatment of remanufactured or refurbished locomotives and locomotive engines as “new.” 40 C.F.R. § 1033.901.

1. EPA's Reinterpretation Relies on the Faulty Premise that Congress did not Draft the CAA to Adapt to Changes in Technology or Markets.

First, EPA supposes that when Congress defined “new motor vehicle” in Section 202, it “likely” did not envision the definition would apply “to a vehicle comprised of new body parts and a previously owned powertrain.” 82 Fed. Reg. 53,445-46.

In material respects, this is the same rationale that EPA advanced to self-limit its section 202 authority to regulate greenhouse gases that the Supreme Court rejected in *Massachusetts v. EPA*, 549 U.S. 497, 532 (2007). EPA contended that when drafting section 202, Congress could not have envisioned a problem that arose years later such as greenhouse gas emissions. *Id.* The Court rejected this idea, finding that “[w]hile the Congresses that drafted § 202(a)(1) might not have appreciated the possibility that burning fossil fuels could lead to global warming, they did understand that without regulatory flexibility, changing circumstances and scientific developments would soon render the CAA obsolete.” *Id.* The Court held that, “[t]he broad language of § 202(a)(1) reflects an intentional effort to confer the flexibility necessary to forestall such obsolescence.” *Id.* (citing *Pennsylvania Dept. of Corrections v. Yeskey* 524 U.S. 206, 212 (1998)) (“the fact that a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth.”) (Internal quote omitted).

EPA’s proposal to reinterpret section 202 in a way that fails to keep up with evolving air pollution problems (here, resulting from market changes in the glider industry) is contrary to the Court’s view in *Massachusetts*; hence, it fails. Beyond EPA’s rejection of the Supreme Court’s instruction that the CAA should be read to cover issues about which Congress might not have been aware when drafting, EPA’s Proposed Repeal contradicts the purpose of the Act that Congress clearly *did* have in mind: to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1)). In advancing the Proposed Repeal, EPA is arguing, contrary to the Act’s history and *Massachusetts*, that Congress intended to allow high-polluting vehicles to escape regulation entirely.

2. EPA's Claim that Section 216's Definitions Derived From the AIDA is Speculative and Immaterial.

EPA’s second argument that section 216 is ambiguous is based on the connection that it assumes exists between the definition of “new motor vehicle” in CAA section 216 and the definition in the AIDA that requires dealers affix the MSRP to “showroom new” cars. 82 Fed. Reg. 53,445-46. It claims Congress must have used the AIDA as the basis for the CAA section 216 definitions because the AIDA predated the 1965 creation of CAA Title II and because they use similar language regarding transfer of title to ultimate purchaser. Further, EPA alleges that because it is clear the MSRP requirements in the AIDA only relate to “showroom new” vehicles – a definition EPA invents and fails to define, Congress must have intended “new motor vehicles” as used in CAA 216 and 202 only to relate to “showroom new” vehicles. *Id.*

However, EPA admits this is conjecture: “[w]hile the legislative history of the 1965 CAA does not expressly indicate that Congress based its definition of “new motor vehicle” on the definition of “new automobile” first adopted by the Automobile Information Disclosure Act of 1958, it seems clear that such was the case.” 82 Fed. Reg. 53,445. Beyond EPA’s admission there is no evidence that Congress based the section 216 definitions on those in AIDA, it provides no proof or analysis that would show gliders or kits not to be “new” under AIDA’s definitions. Rather, it leaps from discussion of AIDA to the conclusion that Congress must have meant “showroom new” in drafting section 216’s definitions, to further concluding that gliders are not “showroom new.” 82 Fed. Reg. 53,446.

The AIDA’s purpose is wholly different from that of the CAA. Congress enacted the AIDA to protect consumers from the bewildering “marketing jungle” created by car dealers. H.R. Rep. 85-1958 (June 24, 1958) at 2903. Specifically, it noted that, “the primary purpose of this bill is to disclose the manufacturer’s suggested retail price of the new automobile [passenger car or station wagon] so that the buyer will know what it is. This information is not available now.” *Id.* Congress crafted the AIDA, a specific, narrow law, to address a specific, narrow issue. It has no relation whatsoever to the significantly broader purpose of protecting public health and welfare from air pollution via one of the most comprehensive laws that Congress has enacted. *See Motor Vehicle Manufacturers Ass’n.*, 17 F.3d at 524. Comparison of the AIDA’s definitions to section 216 is inapt.

Assuming *arguendo* that any ambiguity *could* be found, which it cannot, as discussed above, no grounds would support deference to EPA’s reinterpretation. EPA’s new self-limiting view of its section 202 responsibility abrogates the Supreme Court’s determination in *Massachusetts v. EPA*, and spurns the CAA’s objective to protect air quality and promote the public health and welfare. Indeed, the proposed reinterpretations require one to believe Congress intended to create a loophole for the use of old engines in new bodies as substitutes for new, compliant vehicles, even when that would vastly *increase* pollution, a result that directly conflicts with the stated purpose of the CAA.

### **III. THE PROPOSED REPEAL IS ARBITRARY AND CAPRICIOUS**

#### **A. Standard of Review**

Even if EPA’s proposed reinterpretation of CAA section 202(a)(1) were not clearly erroneous, rulemaking under the CAA or the Administrative Procedure Act (APA) will be reversed by a court where such action is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 42 U.S.C. § 7607(d)(9)(A); 5 U.S.C. § 706(2)(A); *see also Ethyl Corp. v EPA*, 51 F.3d 1053, 1064 (D.C. Cir. 1995) (holding that the standard of review under the CAA or the APA is “essentially the same under either Act.”). When engaged in rulemaking, including the repeal of an existing rule, an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation and citation omitted); *Encino Motorcars LLC v. Navarro*, 136 S. Ct. at 2125.

An agency action is arbitrary and capricious “if it has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *State Farm*, 463 U.S. at 43. Although agencies are allowed to change an existing position, as EPA has done here, an agency cannot choose to not enforce laws of which it disapproves or ignore statutory standards in carrying out its duties. *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part). Rather, agencies changing position must “show that there are good reasons for the new policy.” *Encino Motorcars*, 136 S.Ct. at 2126 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735 (1996)); see also *Comcast Corp. v. FCC*, 600 F.3d 642, 658-59 (D.C. Cir. 2010) (applying arbitrary and capricious standard factors to an agency’s changed interpretation of regulatory authority).

Further, an agency must “provide more substantial justification when ‘its new policy rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests that must be taken into account. It would be arbitrary and capricious to ignore such matters.’” *Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1209 (2015) (citation omitted). Any “unexplained inconsistency” between a rule and its repeal is “a reason for holding an interpretation to be an arbitrary and capricious change.” *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005). In addition, an agency cannot suspend a validly promulgated rule without first “pursu[ing] available alternatives that might have corrected the deficiencies in the program which the agency relied upon to justify the suspension.” *Public Citizen v. Steed*, 733 F.2d. 93, 103 (D.C. Cir. 1984).

**B. EPA Has Failed to Acknowledge the Extensive Record Supporting the Glider Rule, Much Less Justify its Proposed Repeal.**

As discussed above in Section II, due to its clearly erroneous interpretation of CAA section 202(a), EPA fails to provide a “good reason” for repealing the Glider Rule. *Encino Motorcars*, 136 S.Ct. at 2126. Additionally, the entirety of the Proposed Repeal and EPA’s request for comment advances arguments regarding EPA’s statutory authority to regulate gliders/kits that were made by stakeholders during the Glider Rule rulemaking, and were thoroughly discussed, vetted, and then rejected by EPA when it issued the Glider Rule. See 80 Fed. Reg. at 40,169-41,170, 40,527-40,530; Phase 2 RTC sections 1.3.1 and 14.2; 81 Fed. Reg. at 73,512-73,519, 73,941-73,946. Although the Proposed Repeal acknowledges that EPA intends to change its 2016 interpretation, EPA cites only to comments made by the glider industry during the Phase 2 Standards comment period and in its petition for reconsideration, and ignores the myriad and detailed bases for EPA’s earlier rejections of these very same arguments. See 82 Fed. Reg. 53,443-53,447. EPA’s action in reviving and seeking further comment on these previously rejected arguments, while ignoring the robust Glider Rule record that clearly addressed them, is arbitrary and capricious. *Fox Television Stations*, 556 U.S. at 515 (“a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”).

1. EPA's Failure to Explain Inconsistencies in the Record Pertaining to its Legal Analysis is Arbitrary and Capricious.

While an agency can change its interpretation of its legal authority, to the extent that its new interpretation is inconsistent with its prior interpretations, an acknowledgment of those inconsistencies and justification for the new interpretation is required, especially where the regulated community is relying on the existing rule. *Brand X*, 545 U.S. at 981; *Perez* 135 S.Ct. at 1209. Here, EPA merely acknowledges the fact that it is changing interpretation while ignoring completely EPA's own extensive record analyzing congressional intent supporting the Glider Rule interpretation, including section 202(a)(1)'s relationship with other provisions of the CAA; the alternative statutory bases EPA has to regulate gliders; and EPA's longstanding practice of regulating new vehicles with some rebuilt or refurbished parts.<sup>28</sup> This failure does not meet the requirement to acknowledge that inconsistencies exist, much less meet the requirement for "reasoned analysis" and discussion of these alternatives and is therefore arbitrary and capricious. *State Farm*, 463 U.S. at 4.

EPA has also failed to consider "serious reliance interests" that were created when it adopted the Glider Rule. *See Perez*, 135 S.Ct. at 1209. As discussed *supra*, Original Equipment Manufacturers (OEMs) have placed considerable reliance on the Glider Rule as being necessary to ensure a level playing field among heavy duty vehicle manufacturers under the Phase 2 Standards. Given that glider sales are now coming at the expense of fully compliant conventional trucks and the fact that a tiny percentage of glider emissions can dwarf the emissions of hundreds of thousands of compliant trucks, EPA must look for ways to correct the perceived deficiencies in its statutory authority. *Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. at 1209; *Steed* 733 F.2d. at 103. EPA's failure in the Proposed Repeal to acknowledge the importance of the Glider Rule to the rest of the regulated industry, or to explain why it did not address its current supposed deficient authority under Section 202(a)(1) by considering the alternative statutory bases set forth in the Glider Rule rulemaking, is arbitrary and capricious under *Encino*, *Perez*, and *Steed*.

2. EPA's Proposed Adoption of the Glider Industry's Arguments Without Justification is Arbitrary.

The history of the Proposed Repeal itself evidences arbitrary decision making by EPA. As mentioned above in Section I, the Glider Rule was finalized in 2016 after years of stakeholder

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<sup>28</sup> *See* Phase 2 RTC Sections 1.3.1 and 14.2; 81 Fed. Reg. 73,513-73,519 (discussing the clear congressional purpose of the CAA to control air pollutant emissions and drive technology, the relationship with NHTSA regulations of glider vehicles, the relationship to standards for incomplete vehicles, definitions of "manufacturer", the prohibition against acts that "cause" violations of emissions standards, EPA's authority under Sections 203(a)(3)(B), and 202(a)(3)(D) granting explicit authority to prescribe requirements of rebuilt heavy-duty engines; *see also*, Legal Memorandum Discussing Issues Pertaining to Trailers, Glider Vehicles, and Glider Kits under the Clean Air Act, Feb. 2016, EPA-HQ-OAR-2014-0827-1627.



meetings with all sectors of industry, and responding to thousands of public comments. The Glider Rule relied on extensive technical analyses by EPA, glider manufacturers, and OEMs regarding glider emissions, and it went into effect without legal challenge from either glider manufacturers or OEMs. However, after gaining a private meeting with the Trump Administration, three glider manufacturers submitted a Petition for Reconsideration of the Glider Rule, in which they recycled legal arguments they had made during the Glider Rule promulgation, and which EPA had considered and rejected.<sup>29</sup> EPA then published its notice of the Proposed Repeal, relying on the legal theory presented in the glider manufacturers' petition for reconsideration.

As part of the introduction for the Proposed Repeal, EPA cites to arguments raised by the glider manufactures about potential "benefits" of gliders on the grounds that they emit less, as alleged by the Tennessee Tech study submitted with the petition for reconsideration. 82 Fed. Reg. at 53,444. This industry-designed and funded study was not peer reviewed, and among other glaring deficiencies, it makes claims regarding PM emissions that it did not even test for, rendering its assertions questionable at best. *See* fn. 22, *supra*. In contrast, EPA staff recently released a report about glider emissions that corroborates EPA's initial glider emissions estimates supporting the Glider Rule.<sup>30</sup> Yet EPA cites to the Tennessee Tech study in the Proposed Repeal without any critical review or explanation about the differences in its results, as compared to the extensive and scientifically robust analysis conducted by EPA in 2016 and 2017. EPA has failed to acknowledge the severe and substantial health and environmental impacts supported by the Glider Rule record,<sup>31</sup> issues at the heart of the CAA's purpose and the Administrator's statutory responsibility.

The comments that EPA solicits as part of the Proposed Repeal further reflect arbitrary and capricious action, since the questions on which it seeks comment (the suitability of gliders for small businesses, whether "limiting the availability of glider vehicles could result in older, less safe, more-polluting trucks remaining on the road," and "whether glider vehicles produce significantly fewer emissions overall compared to the older trucks they would replace" as well as "the relative expected emissions impacts if the regulatory requirements at issue here were to be repealed or were to be left in place") were already asked and answered as part of the Glider Rule and notice and comment process 82 Fed. Reg. at 53,446-53,447, *see also* RTC to Phase 2 Rule Sections 1.3.1 and 14.2; 81 Fed. Reg. at 73,512-73,519, 73,941-73,946.

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<sup>29</sup> See fn. 21, *supra*.

<sup>30</sup> Chassis Dynamometer Testing Study; see fn. 12, *supra*.

<sup>31</sup> The California Air Resources Board comment letter thoroughly discusses the technical merits and evidence provided by the various studies cited in the Glider Rule record and the Proposed Repeal.

3. EPA's Failure to Analyze the Economic and Environmental Impacts of the Proposal Repeal, Including States' Abilities to Comply with NAAQS, are Additional Reasons the Proposed Repeal is an Arbitrary and Capricious Action.

Two other aspects of the Proposed Repeal are further evidence of EPA's arbitrary and capricious failure to adequately explain how its Proposed Repeal rebuts the facts found during promulgation of the Glider Rule. First, EPA failed to address its many findings of health protectiveness, and assessment of costs and benefits that it set out in the Regulatory Impact Assessment (RIA) for the Glider Rule.

EPA's only attempt at satisfying its obligations to provide the RIA information is a three-page long memo titled "Assessment of Economic Factors Associated with Glider Vehicles" (Memo) dated Nov. 16, 2017. Docket No. EPA-HQ-OAR-2014-0827-2407. In the Memo, EPA expressly acknowledges that it "is not including a Draft RIA for this proposed rule." Memo, p. 1. The Administrator acknowledges that he reviewed and considered the RIA for the Phase 2 rulemaking (Phase 2 RIA). But this is all he says about the Phase 2 RIA. That RIA (docket no. EPA-HQ-OAR-2014-0827-2345) is more than 1,000 pages long, and its economic impact analysis includes, among other things, the quantified monetized non-GHG health and environmental impacts of the Phase 2 rule, including the Glider Rule. Phase 2 RIA, chapter 8.6. It discusses the changes in ambient concentrations of PM and ozone that will result from the Phase 2 standards, and the fact that it is "important to quantify the health and environmental impacts associated with the standards because a failure to adequately consider ancillary impacts could lead to an incorrect assessment of their costs and benefits." Phase 2 RIA, p. 8-41. It presents monetized benefits from reducing exposure to PM. *Id.* at ch. 8.6.1. EPA's failure to consider whether or how the Proposed Repeal would affect the health-related benefits and costs found in the Phase 2 RIA renders the Proposed Repeal arbitrary and capricious. The discretion the CAA accords EPA does not matter here, since the omission pertains to the Administrator's duty to protect public health and welfare. 42 U.S.C. § 7617(e)(2).

Additionally, the meager economic analysis provided with the Proposed Repeal includes determinations that it will not result in costs/impacts to consumer costs and energy use. Memo, p. 2. However, EPA based these determinations on *unverified* claims by the glider industry that glider engines have better fuel efficiency and maintenance costs than new compliant engines. *Id.* A determination based on unverified claims, particularly when they are counter-intuitive – old engines have better fuel efficiency – and belied by the Agency's earlier findings,<sup>32</sup> is arbitrary; especially when the claims are advanced by *the action's proponents*.

Second, it is clear from the notice of Proposed Repeal that EPA gave no consideration to the effect the repeal would have on the States' ability to meet the NAAQS, an aspect of the Phase 2 program that the Glider Rule considered. Specifically, EPA found that further NOx reductions would "assist[] states and local areas in attaining and maintaining the applicable ozone NAAQS." 81 Fed. Reg. at 73,522. Further, it found that, "the emissions reductions and

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<sup>32</sup> See, e.g., Phase 2 RTC at 1877-1879.

improvements in ambient PM<sub>2.5</sub> concentrations from this action [ . . . ] will be helpful to states as they work to attain and maintain the PM<sub>2.5</sub> NAAQS.” *Id.* at 73,856. In the Proposed Repeal, EPA totally ignored these prior findings. See 82 Fed. Reg. at 53,442-49. EPA mentions NAAQS only once, in its justification why it need not comply with Executive Order 13045 and study the Proposed Repeal’s effects on the protection of children (despite its admission that some of the benefits to children’s health will be lost in repealing the Glider Rule). 82 Fed. Reg. at 53,448. However, this mention is not a substitute for analysis,<sup>33</sup> as it does not approach the requisite consideration of EPA’s previous findings that Phase 2 with the Glider Rule would assist the States with NAAQS compliance. Repeal of the Glider Rule will have the exact opposite effect on the States’ abilities to meet the NAAQS requirements. Finalization of the Proposed Repeal would be arbitrary and capricious, and subject to reversal by courts, for any of the foregoing reasons.

#### **IV. EPA CANNOT DEFENSIBLY MAKE THE ALTERNATIVE CHANGES TO THE GLIDER RULE ON WHICH EPA REQUESTS COMMENT.**

In addition to requesting comment on repeal of the Glider Rule EPA also seeks comment on two alternative changes that could substantially weaken and undermine the Rule. 82 Fed. Reg. at 53,446-47. First, EPA asks whether it should increase the exemption for small manufacturers above the current limit of 300 glider vehicles per year. *Id.* Second, EPA seeks comment on whether it should extend the date of compliance for glider vehicles and glider engines, and if so by how long. *Id.* The CAA and the record from the Glider Rule foreclose either option.

In response to concerns expressed by small business manufacturers and assemblers, the Glider Rule carved out an exemption that allows such entities to produce up to 300 vehicles per year (or up to the highest annual production volume for calendar years 2010 through 2014, whichever is less) with engines meeting the criteria pollutant standards corresponding to the year of the engine. 40 C.F.R. § 1037,150(t)(1)(ii); *see also* 81 Fed. Reg. 73,518, 73,942, 73,944-45. EPA found that this 300-unit level “reflects the upper end of the range of production that occurred before significant avoidance of the 2007 criteria pollutant standards began.” *Id.* at 73,944. EPA further found that:

[G]iven this relief combined with other changes being made into the final regulations, any small businesses that have been focused on producing gliders for legitimate purposes will not be significantly impacted by the new requirements since they can use donor engines within their regulatory useful life for either age or mileage. See generally RIA Chapter 12.7.3. Only those small businesses that have significantly increased production to create new trucks to avoid the 2010 NOx and PM standards will have their sales significantly restricted.

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<sup>33</sup> In fact, it appears that EPA copied and pasted language from the section regarding E.O. 13045 in its notice of proposed repeal of the Clean Power Plan, even forgetting to swap out “glider rule” for “CPP” in the last sentence.

*Id.* at 73,944-45. Further, EPA noted that commenters who had argued against any limit or proposed a higher limit during the 2016 rulemaking “did not address the very significant adverse environmental impacts of the huge increase in glider vehicle production over the last several years.” *Id.* at 73,944.

The historical facts regarding the volume of glider production prior to their manufacture to evade emissions requirements are not subject to reasonable dispute. Further, the fact that increasing the exemption would increase the very pollution that EPA is required to control is well established by EPA’s own testing. Thus, EPA cannot provide the required “good reason” for an expansion of the exemption or “a reasoned explanation . . . for disregarding facts and circumstances that underlay or were engendered by the prior policy.” *Fox Television Stations*, 556 U.S. at 515.

EPA’s second alternative, to delay the date of compliance for glider vehicles and glider engines, is similarly untenable. In relevant part, the CAA provides that “[a]ny regulation shall take effect after a period of time the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.” CAA § 202(a)(3)(D); 42 U.S.C. §7521(a)(3)(D). Here, as EPA found, “no time is needed to develop and apply the requisite control measures for criteria pollutants because compliant engines are immediately available.” 81 Fed. Reg. 73,518. Additionally, EPA noted that “manufacturers of compliant engines; and dealers of trucks containing those engines, commented that they are disadvantaged by manufacturing more costly compliant engines while glider vehicles avoid using those engines.” *Id.* And, EPA noted the risks of “massive pre-buys” if compliance deadlines were lengthy. *Id.* For these reasons, the Glider Rule capped production of gliders using higher polluting engines starting January 1, 2017, and requires use of engines meeting Phase 1 Standards as of January 1, 2018. *Id.* at 73,942. EPA further noted that “[g]iven the severity of these [associated health] impacts, delaying these provisions cannot be justified by merely the potential for inconvenience to the industry.” Phase 2 RTC at 1881. Simply put, there is no statutory basis for extending the January 1, 2018 compliance date, because the engines needed for manufacturers to comply are available.<sup>34</sup>

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<sup>34</sup> Nor would any other statutory provision authorize EPA to extend the January 1, 2018 compliance date or other later compliance dates. For example, Section 705 of the Administrative Procedure Act does not apply because, among other reasons: (a) the Glider Rule has already taken effect and (b) the Glider Rule has not been challenged in litigation. See *Safety-Kleen Corp. v. EPA*, No. 92-1629, 1996 U.S. App. LEXIS 2324, at \*2-3 (D.C. Cir. Jan. 19, 1996) (per curiam); see also *Becerra v. United States Department of the Interior*, No. 17-CV-02376-EDL, 2017 WL 3891678, at \*9 (N.D. Cal. Aug. 30, 2017); *California v. Bureau of Land Management*, No. 17-CV-03804-EDL, 2017 WL 4416409, at \*8 (N.D. Cal. Oct. 4, 2017). Similarly, section 301 of the Clean Air Act “does not provide the Administrator with carte blanche authority to promulgate any rules, on any matter relating to the Clean Air Act, in any manner that the Administrator wishes.” *Citizens to Save Spencer City v. EPA*, 600 F.2d 844, 873 (D.C. Cir. 1979). The general power of section 301 does not trump the specific statutory provisions of the Clean Air Act. See *Natural Res. Def. Council v. Reilly*, 976 F.2d 36, 40-41 (D.C. Cir. 1992); see also *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992).

**CONCLUSION**

The basis for the Proposed Repeal is an incorrect, unjustifiable reinterpretation of EPA's Congressionally-mandated duties in the CAA that violates its cardinal obligation to protect public health and welfare from harmful air pollution, and EPA has not articulated any valid basis for the Proposed Repeal. EPA should withdraw its Proposed Repeal and retain the Glider Rule in its entirety.

Sincerely,

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA  
Attorney General

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Olympia, WA 98504-0117  
(360) 586-6769

## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 5:04 PM  
**To:** Bailey, Jay  
**Subject:** FW: Gliders- Corrected Comment Letter  
**Attachments:** AGO Comments Re Proposed Repeal of Glider Regs 152018.pdf

Hey Jay: There was an error (on our end) in the last hyperlink I asked you to make. Can you do it again? Same name, but different document

State's Comments on Glider Regs 1-5-18

Thanks

Rob

**From:** Persampieri, Nick  
**Sent:** Friday, January 05, 2018 5:02 PM  
**To:** McDougall, Robert <robert.mcdougall@vermont.gov>; O'Toole, Megan <Megan.OToole@vermont.gov>; Ingraham, Kim <Kim.Ingraham@vermont.gov>  
**Subject:** Gliders- Corrected Comment Letter

Here is a corrected Glider comment letter that California filed. Please ignore the earlier version, which was dated 1/5/17.

Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-6902  
[nick.persampieri@vermont.gov](mailto:nick.persampieri@vermont.gov)



## McDougall, Robert

---

**From:** Bailey, Jay  
**Sent:** Friday, January 5, 2018 5:14 PM  
**To:** McDougall, Robert  
**Subject:** RE: Gliders- Corrected Comment Letter

Rob,

All set; check it to make sure though.

Jay

**From:** McDougall, Robert  
**Sent:** Friday, January 05, 2018 5:04 PM  
**To:** Bailey, Jay <Jay.Bailey@vermont.gov>  
**Subject:** FW: Gliders- Corrected Comment Letter

Hey Jay: There was an error (on our end) in the last hyperlink I asked you to make. Can you do it again? Same name, but different document

State's Comments on Glider Regs 1-5-18

Thanks

Rob

**From:** Persampieri, Nick  
**Sent:** Friday, January 05, 2018 5:02 PM  
**To:** McDougall, Robert <robert.mcdougall@vermont.gov>; O'Toole, Megan <Megan.OToole@vermont.gov>; Ingraham, Kim <Kim.Ingraham@vermont.gov>  
**Subject:** Gliders- Corrected Comment Letter

Here is a corrected Glider comment letter that California filed. Please ignore the earlier version, which was dated 1/5/17.

Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
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[nick.persampieri@vermont.gov](mailto:nick.persampieri@vermont.gov)

## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Friday, January 5, 2018 5:16 PM  
**To:** Bailey, Jay  
**Subject:** RE: Gliders- Corrected Comment Letter

Looks good. Thanks

**From:** Bailey, Jay  
**Sent:** Friday, January 05, 2018 5:14 PM  
**To:** McDougall, Robert <[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)>  
**Subject:** RE: Gliders- Corrected Comment Letter

Rob,

All set; check it to make sure though.

Jay

**From:** McDougall, Robert  
**Sent:** Friday, January 05, 2018 5:04 PM  
**To:** Bailey, Jay <[Jay.Bailey@vermont.gov](mailto:Jay.Bailey@vermont.gov)>  
**Subject:** FW: Gliders- Corrected Comment Letter

Hey Jay: There was an error (on our end) in the last hyperlink I asked you to make. Can you do it again? Same name, but different document

State's Comments on Glider Regs 1-5-18

Thanks

Rob

**From:** Persampieri, Nick  
**Sent:** Friday, January 05, 2018 5:02 PM  
**To:** McDougall, Robert <[robert.mcdougall@vermont.gov](mailto:robert.mcdougall@vermont.gov)>; O'Toole, Megan <[Megan.OTOole@vermont.gov](mailto:Megan.OTOole@vermont.gov)>; Ingraham, Kim <[Kim.Ingraham@vermont.gov](mailto:Kim.Ingraham@vermont.gov)>  
**Subject:** Gliders- Corrected Comment Letter

Here is a corrected Glider comment letter that California filed. Please ignore the earlier version, which was dated 1/5/17.

Nicholas F. Persampieri  
Assistant Attorney General  
Office of the Attorney General

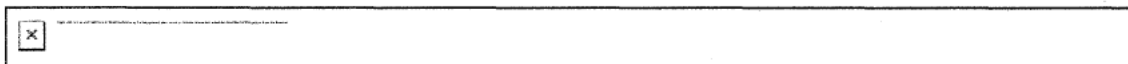
109 State Street  
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[nick.persampieri@vermont.gov](mailto:nick.persampieri@vermont.gov)

**Silver, Natalie**

---

**From:** State Energy & Environmental Impact Center  
<chris.moyer=nyu.edu@mail68.atl91.mcsv.net> on behalf of State Energy &  
Environmental Impact Center <chris.moyer@nyu.edu>  
**Sent:** Friday, January 5, 2018 6:04 PM  
**To:** Silver, Natalie  
**Subject:** State Attorneys General Seek to Slam Brakes on EPA Rollback of Truck Rule

[View this email in your browser](#)



## **State Attorneys General Seek to Slam Brakes on EPA Rollback of Truck Rule**

*California AG Becerra leads 12 AGs in once again fighting for clean air*

**FOR IMMEDIATE RELEASE**

January 5, 2018

**Contact:** Chris Moyer

(603) 479-1402

[Chris.Moyer@nyu.edu](mailto:Chris.Moyer@nyu.edu)

**Washington, D.C.**— California Attorney General Xavier Becerra today led 12 attorneys general in opposing the Environmental Protection Agency's (EPA) attempt to repeal a key rule that limits the amount of emissions permitted from trucks known as "gliders." These trucks have a newer body but a refurbished engine. The 2016 Glider Rule holds these trucks to the same emissions standards newer trucks must meet. EPA Administrator Scott Pruitt announced he would seek to repeal the Glider Rule, reportedly after meeting "with the manufacturer that stands to benefit most from the rule's repeal."

"State attorneys general are seeking to slam the breaks on EPA's latest attempt to repeal an important environmental rule that helps to ensure clear air," **said David J. Hayes, executive director of the State Energy & Environmental Impact Center at NYU School of Law and former Interior deputy secretary in the Obama and Clinton Administrations.** "EPA's own data show that repealing the Glider Rule for a single model year would generate enough particulate pollution to cause up to 1,600 premature deaths. While EPA abdicates its responsibilities, state attorneys general are defending commonsense policies that protect the well-being of residents of their states."

"Repealing the Glider Rule is bad for our environment, for the health of our families, and for truckers and shippers who play by the rules and operate trucks with cleaner fuel-burning engines," **said Attorney General Becerra.** "Under the Clean Air Act, the EPA is required to set and enforce motor-vehicle emissions standards. If EPA Administrator Scott Pruitt decides to neglect this legal responsibility by doing away with the Glider Rule, we are prepared to take any and all action to protect the air our children breathe and the vitality and level playing field of the trucking industry, an important sector of our economy."

"Yet again, EPA Administrator Pruitt is showing his true colors – ignoring his legal obligation, and failing to protect the American people from environmental harm," **said Maryland Attorney General Brian Frosh.** "The Glider Rule was put into place to enforce vehicle emission standards, and helps create a more fair and balanced approach to enforcing those standards on the truck industry."

"Protecting the air we breathe means keeping our families healthier and happier," **said North Carolina Attorney General Josh Stein.** "That is why I oppose the EPA's dirty truck loophole. It will not only make our air dirtier, it also will be unfair to the truck manufacturers, like Volvo Trucks and Mack Trucks in Greensboro, and trucking companies that play by the rules and use up-to-date, cleaner truck engines."

In the **comments**, the attorneys general argue that "EPA's Proposed Repeal rests

on a legally untenable reinterpretation of the Agency's duty to regulate harmful air pollutants from 'new motor vehicles' and 'new motor vehicle engines,' which conflicts with the language, history and purpose of section 202(a)(1) of the Clean Air Act (CAA), and the CAA as a whole. Further, EPA uncritically accepts the contentions of a few glider manufacturers that were soundly rejected in the 2016 rulemaking, and ignores its own economic and environmental analysis from the Glider Rule. In doing so, EPA proposes to act arbitrarily and capriciously, without providing any good reason or substantial justification for its reversal of position. Simply put, gliders are a pollution menace that, unless properly regulated, threaten to undermine the entire national program to reduce harmful emissions from heavy duty vehicles and engines."

The comments were filed by the attorneys general of: California; Connecticut; Illinois; Maryland; Massachusetts; New Mexico; New York; North Carolina; Oregon; Pennsylvania; Vermont; and Washington.

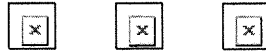
### **BACKGROUND**

The opposition filed today marks the latest effort by attorneys general since the start of the Trump Administration to defend policies and regulations that promote clean air for their residents. Attorneys general have sought to stop harmful oil and gas methane pollution and coal plant carbon dioxide pollution; filed lawsuits to ensure implementation of EPA's cross-state air pollution rule protecting downwind states from smog pollution; challenged EPA's attempts to avoid its obligation to designate areas with unhealthy air; and insisted that EPA continues to implement a full suite of existing fuel efficiency standards. Attorneys general, led by New York AG Eric Schneiderman, have also promised to sue once the proposed repeal of the Clean Power Plan is finalized.

**ABOUT THE STATE IMPACT CENTER:** The State Energy & Environmental Impact Center is a non-partisan Center at the NYU School of Law that is dedicated to helping state attorneys general fight against regulatory rollbacks and advocate for clean energy, climate change, and environmental values and protections. It was

launched in August 2017 with support from Bloomberg Philanthropies. For more information, visit <http://www.law.nyu.edu/centers/state-impact>.

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You indicated an interest in following the State Energy & Environmental Impact Center's work with state attorneys general.

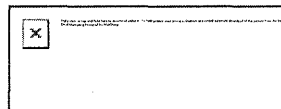
**Our mailing address is:**

State Impact Center  
1616 P Street NW  
Washington, DC 20036

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## McDougall, Robert

---

**From:** McDougall, Robert  
**Sent:** Wednesday, January 10, 2018 3:43 PM  
**To:** Silver, Natalie  
**Subject:** updated Environmental Round Up  
**Attachments:** 20180109 Enviro recap (5).docx

Natalie: Updated with Clean Power Plan paragraph (comments filed yesterday).

Kim can finalize and get this out once you give the go-ahead.

Thanks,

Rob

Robert F. McDougall  
Assistant Attorney General  
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Division Chief, Environmental Protection Division  
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Phone - (802) 828-5506  
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**STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
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FOR IMMEDIATE RELEASE:  
January 11, 2018

CONTACT: T.J. Donovan  
Attorney General  
(802) 828-3173

Rob McDougall  
Assistant Attorney General  
Chief, Environmental Division  
(802) 828-3186

**ENVIRONMENTAL RECAP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

Vermont Attorney General T.J. Donovan announced some recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters care about - and deserve - clean air to breathe and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. Sometimes that means opposing proposed federal budget cuts to the EPA, joining a lawsuit to make the EPA follow its statutory obligations, or fighting dangerous roll-backs coming from Washington that could hurt Vermont's environment. We will continue to work to protect our environment."

Recent actions taken by the Attorney General include:

- **CLEAN POWER PLAN:** The Attorney General remains committed to the ongoing efforts to defend the Clean Power Plan, the EPA's landmark regulation of greenhouse gas emissions from existing power plants. On January 8<sup>th</sup>, Vermont joined with 12 states and 6 municipalities/counties to file comments to the EPA on the proposed repeal of the Clean Power Plan. The Clean Power Plan is a strong, science-based policy that intends to significantly reduce pollution from power plants, the country's largest stationary sources

of climate-damaging pollution. The rule for existing plants is expected to eliminate air pollution equivalent to more than 10 million cars per year – or 70% of the nations' passenger cars.

- **MOTOR VEHICLE EMISSIONS:** Continuing Vermont's longstanding and active role in the regulation of motor vehicle emissions, on January 5<sup>th</sup>, Attorney General Donovan joined with XX other attorneys general to file comments in opposition to the U.S. Environmental Protection Agency's (EPA) proposed repeal of vehicle emission standards for "gliders." A glider consists of an older truck engine (typically a pre-2002 diesel engine) that is paired with a new truck tractor body and sold as a new vehicle. The older engines do not meet current emission standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.
- **FOR CLEAN AIR:** In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. Specifically, the lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and

West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region. The Attorney General remains active in defending EPA’s rules for control of greenhouse gas emissions from oil and gas facilities, opposing EPA’s stay and initial steps to repeal the rules, and supporting the Clean Power Plan, the prior administrations’ landmark regulation of greenhouse gas emissions from existing power plans.

- **EPA BUDGET:** In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.
- **FOR CLEAN WATER:** On December 13<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. The Attorney General also has been active in defending the Clean Water Rule and opposing the proposed repeal of the Clean Water Rule and the threatened rollbacks of clean water protections.

- **OZONE STANDARDS:** Vermont joined with 14 other state attorneys general to file a lawsuit against the EPA on December 5<sup>th</sup> alleging that the Agency had failed to meet the Clean Air Act's statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog). In October of 2015, the EPA revised and strengthened the national air quality standards for smog. Under the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in "attainment" or "non-attainment" with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not include "non-attainment" areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont.
- **AGRICULTURAL WATER QUALITY:** In a Vermont-specific action, Attorney General Donovan announced on December 20<sup>th</sup> that his Office had agreed to settle water quality claims with a Berkshire, Vermont farm. To resolve allegations that a silage leachate pond at Pleasant Valley Farms of Berkshire, LLC discharged into the nearby Godin Brook, the farm agreed to pay \$14,000 in civil penalties and to not use the pipe/valve system that caused the discharge from the leachate pond. Attorney General Donovan noted the cooperation of the farm in reaching this settlement.

For more information on the Attorney General's environmental work and to keep up-to-date on the latest activities of the Office of the Attorney General, please visit the Office's website – [www.ago.vermont.gov](http://www.ago.vermont.gov) – and find us on [Facebook](#), [Instagram](#) and [Twitter](#)

###

## McDougall, Robert

---

**From:** AGO - Press Release  
**Sent:** Thursday, January 11, 2018 1:56 PM  
**To:** agopress@list.vermont.gov  
**Subject:** ENVIRONMENTAL RECAP: ATTORNEY GENERAL DONOVAN ANNOUNCES RECENT ENVIRONMENTAL ACTIONS  
**Attachments:** 20180111 Enviro recap.pdf

### ENVIRONMENTAL RECAP: ATTORNEY GENERAL DONOVAN ANNOUNCES RECENT ENVIRONMENTAL ACTIONS

Vermont Attorney General T.J. Donovan announced recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters deserve clean air to breathe and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. ...

For a complete listing of all Vermont Attorney General press releases, go to: [www.ago.vermont.gov](http://www.ago.vermont.gov).

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**"Like" the Vermont Attorney General's Office on Facebook: [www.facebook.com/VermontAttorneyGeneral](http://www.facebook.com/VermontAttorneyGeneral)**



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**STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
109 STATE STREET  
MONTPELIER, VT 05609-1001**

FOR IMMEDIATE RELEASE:  
January 11, 2018

CONTACT: Rob McDougall  
Assistant Attorney General  
Chief, Environmental Division  
(802) 828-3186

**ENVIRONMENTAL RECAP: ATTORNEY GENERAL DONOVAN  
ANNOUNCES RECENT ENVIRONMENTAL ACTIONS**

Vermont Attorney General T.J. Donovan announced recent actions taken by his office to protect Vermont's environment and issued the following statement: "Vermonters deserve clean air to breathe and clean water to drink," said Attorney General Donovan. "Pollution knows no geographic boundaries and we will do our part to make sure that Vermont's environment is not harmed by out-of-state sources. Sometimes that means opposing proposed federal budget cuts to the EPA, joining a lawsuit to make the EPA follow its statutory obligations, or fighting dangerous roll-backs coming from Washington that could hurt Vermont's environment. We will continue to work to protect our environment."

Recent actions taken by the Attorney General include:

- **CLEAN POWER PLAN:** The Attorney General remains committed to the ongoing efforts to defend the Clean Power Plan, the EPA's landmark regulation to limit greenhouse gas emissions from existing power plants. On January 9<sup>th</sup>, Vermont joined with 12 states and 6 municipalities/counties and filed comments to the EPA opposing the repeal of the Clean Power Plan. The Clean Power Plan is a strong, science-based policy that will to significantly reduce pollution from power plants, the country's largest stationary sources of climate-damaging pollution. The rule for existing plants is expected to eliminate air

pollution equivalent to more than 10 million cars per year – or 70% of the nations' passenger cars.

- **MOTOR VEHICLE EMISSIONS:** Vermont has a longstanding and active role in the regulation of motor vehicle emissions, on January 5<sup>th</sup>, Attorney General Donovan joined with 11 other attorneys general to file comments opposing the U.S. Environmental Protection Agency's (EPA) proposed repeal of vehicle emission standards for "gliders." A glider consists of an older truck engine (typically a pre-2002 diesel engine) that is paired with a new truck tractor body and sold as a new vehicle. The older engines do not meet current emission standards and emit more pollution, including NOx and greenhouse gases, than new trucks that meet the current standards. They contribute significantly to public health issues and to difficulties some states have in meeting national ambient air quality standards. Gliders have been produced in increasing numbers in recent years to exploit a loophole in the regulations that was closed with new rules under the prior federal administration. The proposed EPA rules would repeal the fix and leave the loophole open.
- **CLEAN AIR:** In late December, Attorney General Donovan joined with seven other state attorneys general to file a lawsuit against the EPA to require action under the federal Clean Air Act to control air pollution that blows into Vermont from upwind states. The lawsuit seeks judicial review of the EPA's denial of a petition to add nine states to the "Ozone Transport Region" established under the federal Clean Air Act. Vermont and the other petitioning states believe that the nine upwind states – Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, Virginia, and West Virginia – contribute significantly to violations of the federal smog standards in the Ozone Transport Region. The Attorney General remains active in defending EPA's rules for control of greenhouse



gas emissions from oil and gas facilities, opposing EPA's stay and initial steps to repeal the rules.

- **EPA BUDGET:** In a December 20<sup>th</sup> letter to Congressional leadership in Washington, Attorney General Donovan joined with 12 other state attorneys general to oppose the proposed federal budget cuts to the EPA. The coalition of attorneys general argued that the significant proposed budget cuts in the House and Senate will lead to more pollution of our air, water, and communities, along with an increase in damage to public health. The letter urges Congress to pass a final budget that fully funds the EPA. This letter follows a similar letter sent to Congressional Appropriation Committees in March, also opposing proposed cuts to the EPA budget.
- **FOR CLEAN WATER:** On December 13<sup>th</sup>, Attorney General Donovan joined 10 other attorneys general to file comments with the EPA and the U.S. Army Corps of Engineers to oppose a proposed two-year suspension of the “Clean Water Rule,” a federal regulation that defines “waters of the United States” under federal law. The Clean Water Rule is designed to ensure that the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. The Attorney General also has been active in defending the Clean Water Rule and opposing the proposed repeal of the Clean Water Rule and the threatened rollbacks of clean water protections.
- **OZONE STANDARDS:** Vermont joined with 14 other state attorneys general to file a lawsuit against the EPA on December 5<sup>th</sup> alleging that the Agency had failed to meet the Clean Air Act’s statutory deadline for designating areas of the country impacted by unhealthy levels of ground-level ozone (commonly referred to as smog). In October of 2015, the EPA revised and strengthened the national air quality standards for smog. Under

the Clean Air Act, within two years of issuing the new standards, the EPA was required to designate areas of the country that are in “attainment” or “non-attainment” with the standards. In the case of the 2015 standards, the EPA was required to act by October 1, 2017. The October 1<sup>st</sup> deadline passed without the EPA making any of the required designations. When it did finally make designations, the designations did not include “non-attainment” areas, which are the designations that trigger smog reduction measures to improve air quality and comply with the standards. Non-attainment designations are important because, while Vermont is in attainment with the ozone standards, in recent years advisories that the health of sensitive individuals is at risk due to ozone pollution attributable to out-of-state sources have been issued in Vermont.

- **AGRICULTURAL WATER QUALITY:** In a Vermont-specific action, Attorney General Donovan announced on December 20<sup>th</sup> that his Office had agreed to settle water quality claims with a Berkshire, Vermont farm. To resolve allegations that a silage leachate pond at Pleasant Valley Farms of Berkshire, LLC discharged into the nearby Godin Brook, the farm agreed to pay \$14,000 in civil penalties and to not use the pipe/valve system that caused the discharge from the leachate pond. Attorney General Donovan noted the cooperation of the farm in reaching this settlement.

For more information on the Attorney General’s environmental work and to keep up-to-date on the latest activities of the Office of the Attorney General, please visit the Office’s website – [www.ago.vermont.gov](http://www.ago.vermont.gov) – and find us on [Facebook](#), [Instagram](#) and [Twitter](#)

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