

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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June 21, 2018

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (2410T)
Washington, D.C. 20460

Dear Mr. Elkins:

The Committee is aware of communications between certain Environmental Protection Agency (EPA) employees and an outside party that raise questions about the integrity of a study conducted at the EPA’s National Vehicle and Fuel Emissions Laboratory (NVFEL).

On October 25, 2016, the EPA and the National Highway Traffic Safety Administration (NHTSA) issued a final rule, Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 (Phase 2 Rule or Rule).¹ Among other things, the Phase 2 Rule generally required engines in new “glider” vehicles to meet the emissions standards applicable for the year the vehicle was assembled, rather than the year the engine itself was manufactured.² As the EPA explains, “A glider vehicle is a truck . . . that utilizes a previously owned powertrain (including the engine, the transmission, and usually the rear axle) but which has new body parts . . . (which generally include the tractor chassis with frame, front axle, brakes, and cab).”³

On July 11, 2017, the glider industry petitioned the EPA to reconsider the Phase 2 Rule.⁴ The EPA announced on August 17, 2017, that it intended to revisit provisions of the Phase 2 Rule related to trailers and gliders.⁵

¹ Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium-and-Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478 (Oct. 25, 2016).

² *Id.* at 73,478.

³ Repeal of Emissions Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53,442, 53,443 (Nov. 16, 2017).

⁴ Tommy Fitzgerald, President, Fitzgerald Glider Kits et al., to Scott Pruitt, Administrator, Env’tl. Prot. Agency, Petition for Reconsideration of Application of the Final Rule Entitled “Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2 Final Rule” to Gliders (July 11, 2017), *available at* <https://www.epa.gov/sites/production/files/2017-07/documents/hd-ghg-fr-fitzgerald-recons-petition-2017-07-10.pdf>.

⁵ Letter from Scott Pruitt, Administrator, Env’tl. Prot. Agency, to Dane Keeper, Ind. Phoenix; Press Release, Env’tl. Prot. Agency, EPA Announces Intent to Revisit Provisions of Phase 2 Heavy-Duty Rules (Aug. 17, 2017), *available at* <https://www.epa.gov/newsreleases/epa-announces-intent-revisit-provisions-phase-2-heavy-duty-rules>.

Meanwhile, documents show certain EPA employees were communicating with Volvo Group (Volvo) representatives about Fitzgerald Glider Kits, a glider assembler. Volvo—a new truck manufacturer and regulated entity in competition with the glider industry—supported increased regulation of gliders.⁶ In March 2017, a few months after the Phase 2 Rule went into effect, a Volvo employee emailed two EPA employees, pointing out there was “[n]o loss of enthusiasm by glider manufacturers at the Mid-America Truck Show,” and “Fitzgerald had a larger than normal presence.”⁷

Less than a month after the EPA announced its intent to review the Rule, emails show an employee from Volvo corresponded with certain EPA employees about conducting an emissions test on gliders at the EPA’s NVFEL. The emails show the Volvo employee offered to provide the EPA with at least one glider to test, outlined a request to a Volvo dealer who the employee hoped could help obtain gliders for testing, and forwarded the request to the EPA employees for review.

In these emails, the Volvo employee outlined the “ideal” request to the dealer and acknowledged there are “limitations in what can be done.”⁸ He also included specifications on desired engine types and noted a preference to “stay away from” a particular company’s engine.⁹ Notably, Volvo’s request to the dealer inquired into the “charges we’ll be incurring”¹⁰—implying Volvo intended to cover at least some of the costs associated with the EPA’s glider testing. In a later September email, an EPA employee thanked the Volvo dealer for working with them to test the glider and provided instructions for delivering it to the NVFEL, copying the Volvo employee.¹¹

In October 2017, the Volvo employee contacted one of the EPA employees to ask when the agency would be ready for a second glider. Later that month, the Volvo employee informed an EPA employee he had a second glider available for testing, although it did not contain “a remanufactured engine as we had targeted, but another Fitzgerald rebuild.”¹²

The EPA proposed “to repeal the emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits,” on November 16, 2017, citing its lack of authority to regulate gliders under section 202(a)(1) of the Clean Air Act.¹³ On the same date, an

⁶ Comments of the Volvo Group, Greenhouse Gas Emission and Fuel Efficiency Standards for Medium-Duty and Heavy-Duty Engines and Vehicles – Phase 2; Proposed Rules, Docket No. EPA-HQ-OAR-2014-0132 (Oct. 1 2015).

⁷ E-mail from Volvo Employee, to Env’tl. Prot. Agency Employees (Mar. 28, 2017, 11:56 a.m.).

⁸ E-mail from Volvo Employee, to Env’tl. Prot. Agency Employee (Sept. 8, 2017, 11:08 a.m.).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Email from Env’tl. Prot. Agency Employee, to Volvo Dealer (Sept. 26, 2017, 1:23 p.m.).

¹² Email from Volvo Employee, to Env’tl. Prot. Agency Employee (Oct. 20, 2017, 10:19 a.m.).

¹³ Repeal of Emissions Requirements for Glider Vehicles, Glider Engines, and Glider Kits, 82 Fed. Reg. 53,442, 53,442 (Nov. 16, 2017). In the EPA’s proposed interpretation of the Clean Air Act, glider vehicles would not constitute “new motor vehicles,” glider kits would not qualify as “incomplete” new motor vehicles, and glider engines were not “new motor vehicle engines.” *Id.*

EPA employee confirmed to the Volvo employee EPA planned to complete testing of the second glider that day.¹⁴ The Volvo employee then inquired as to whether the EPA staff wanted to test a third glider.¹⁵

On November 20, 2017, the EPA employees produced a report on the emissions testing performed on the Volvo-provided gliders. Their report concluded the tested glider vehicles produced higher pollutant emissions than conventionally manufactured trucks.¹⁶ The report also stated when the lab received the first glider tested, its check engine light was illuminated.¹⁷ The emails obtained by the Committee show the Volvo employee arranged to provide the glider to the EPA, but do not definitively show whether Volvo or the EPA employees intentionally used a malfunctioning vehicle in order to influence the outcome of the emissions testing.

The Committee also obtained information that shows a small number of employees orchestrated this testing and submitted the test results to the public rulemaking docket without the knowledge or approval of EPA leadership.

Additionally, it appears one former EPA official, who was reportedly involved in the drafting of the original Phase 2 Rule, communicated with EPA employees about the repeal of the Rule while employed by the Truck & Engine Manufacturers Association. Depending on the circumstances of his employment and participation in the original rulemaking, he may have violated post-employment restrictions on federal officials.¹⁸

Collaboration between agency employees and a regulated entity to potentially sway the outcome of NVFEL tests in order to disadvantage a competitor compromises the EPA's integrity and allows a handful of agency staff and one company the opportunity to manipulate the regulatory process. In light of this potentially improper coordination between EPA staff and a third party, I ask that you investigate whether the selection, provision, and testing of glider vehicles in the course of the November 20, 2017, study violated any policies or procedures intended to ensure the objectivity and integrity of tests conducted at the NVFEL, as well as any potential violation of 18 U.S.C § 207 by a former EPA employee in connection with the Phase 2 Rule and its repeal.

¹⁴ Email from Env'tl. Prot. Agency Employee, to Volvo Employee and Volvo Dealer (Nov. 16, 2017, 11:05 a.m.).

¹⁵ Email from Volvo Employee, to Env'tl. Prot. Agency Employees (Nov. 16, 2017, 4:16 p.m.).

¹⁶ NATIONAL VEHICLE & FUEL EMISSIONS LABORATORY, ENVTL. PROT. AGENCY, CHASSIS DYNAMOMETER TESTING OF TWO RECENT MODEL YEAR HEAVY-DUTY ON-HIGHWAY DIESEL GLIDER VEHICLES (2017) (EPA-HQ-OAR-2014-0827-2417).

¹⁷ *Id.* at 4.

¹⁸ *See* 18 U.S.C. § 207.

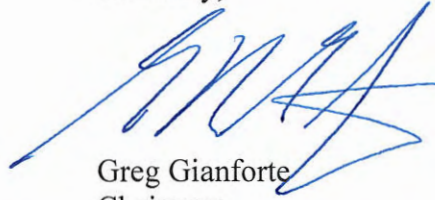
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To assist your investigation, the Committee will make relevant documents available upon request. Please contact Christen Harsha of the Committee staff at (202) 225-5074 with any questions about this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Gianforte', with a stylized flourish at the end.

Greg Gianforte
Chairman

Subcommittee on the Interior, Energy, and Environment

cc: The Honorable Stacey E. Plaskett, Ranking Member