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By Electronic Transmission  
Environmental Protection Agency  
Office of Transportation and Air Quality  
2000 Traverwood Drive  
Ann Arbor, MI 48105

**Re: City of New York Comments on Repeal of Emission Standards and Other Requirements for Heavy-Duty Glider Vehicles, Glider Engines, and Glider Kits (Docket ID EPA-HQ-OAR-2014-0827)**

To Whom It May Concern:

The City of New York ("City"), offers the following comments in response to the November 16, 2017 publication by the United States Environmental Protection Agency ("EPA") of a proposed rule ("Proposed Rule") to repeal the emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits (the "glider provisions") based upon a new interpretation of the Clean Air Act ("CAA"). *See* 82 Fed. Reg. 53442.

The City strongly opposes the proposed repeal and urges EPA to retain the rule and reaffirm its commitment to controlling emissions from glider vehicles. First, any effort to roll-back EPA's previously adopted regulations on glider vehicles, engines and kits will pose a significant health risk to New York City and its residents and exacerbate the effects of climate change, which are already being felt by the City. Second, EPA's new interpretation of the Clean Air Act, which proposes to repeal the glider provisions and to exclude glider vehicles from the classification of "new motor vehicles" under the Clean Air Act is irrational and not supported by law. Each of these points is discussed in detail below.

## **I. Strong Federal Action is Necessary to Address Climate Change Emissions from Heavy Duty Vehicles.**

The City has been a leader on climate issues, working with a variety of stakeholders to mitigate the worst impacts of climate change through citywide reduction of greenhouse gas (“GHG emissions”) and to manage those impacts that are already manifesting through adaptation and climate resiliency strategies. With respect to vehicle emissions in particular, the City has sought to lead by example in the procurement and operation of its municipal vehicle fleet, which consists of more than 30,000 vehicles and off-road equipment. Most relevant here are the City’s efforts to curtail consumption of petroleum diesel and reduce its attendant emissions. Those efforts include:

- All City diesel vehicles must use biodiesel blends between 5 and 20 percent by volume (*i.e.*, B2 to B20);
- New diesel vehicles purchased must be equipped with EPA Certified Engines which include PM and NOx emission reduction technology. Further, the City has retrofitted more than 90% of older diesel vehicles to bring them into compliance with the 2007 EPA emission standards;
- The City now includes stop-start and anti-idling technology in specifications for new purchases of certain vehicle types, including more than 330 Stealth ambulances utilizing auxiliary power units to power on-board services to reduce idle waste;
- The Hunts Point Clean Trucks Program, sponsored by the New York City Department of Transportation, promotes sustainable transportation and a cleaner environment in the South Bronx by offering among other things, rebates to truck owners who invest in clean technology. The program also incentivizes the adoption and implementation of additional safety features such as sideguards, consistent with the City’s Vision Zero goals of eliminating traffic fatalities.

The City has committed to reduce its own GHG emissions by 80 percent below 2005 levels by 2050 and has set a goal to have the best air quality of any large United States city by 2030. However, no city can confront the complex challenges of climate change alone. Achieving these objectives will require complementary efforts from the regulatory systems on which New York City depends, including EPA’s various programs to regulate GHG emissions under the Clean Air Act. EPA’s GHG Emissions and Fuel Efficiency Standards for Medium-and Heavy-duty Engines and Vehicles is an important component of that effort and should continue regulating glider vehicles as “new motor vehicles”

The climate of the New York metropolitan region is changing—annual temperatures are hotter, heavy downpours are increasingly frequent, and the sea is rising. These trends are projected to continue and even worsen in the coming decades due to higher concentrations of GHGs in the atmosphere caused primarily by burning of fossil fuels.<sup>1</sup>

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<sup>1</sup> New York City Panel on Climate Change, *Building the Knowledge Base for Climate Resiliency: New York City Panel on Climate Change 2015 Report*, Annals of the New York

These aspects of a changing climate increase the risks for the people, economy, and infrastructure of New York City and other coastal communities throughout the country and around the world. Indeed, the City has already experienced firsthand the impacts of climate change, as evidenced by Hurricane Sandy in 2012. Sandy, as well as the recent storms that caused massive damage in Texas, Florida, and Puerto Rico, demonstrated the scale of devastation that storms intensified by climate change can impose on coastal areas. The high winds and unprecedented storm surge that accompanied Sandy left forty-four people dead in the City and countless others injured, with at least \$19 billion in damages and lost economic activity in New York City alone.<sup>2</sup>

Similarly, as average global temperatures increase due to climate change, heat waves are expected to become more frequent, last longer, and intensify—posing a serious threat to the City’s power grid and New Yorkers’ health.<sup>3</sup> Data from the National Aeronautics and Space Administration (“NASA”) and the National Oceanic and Atmospheric Administration (“NOAA”) show 2016 as the warmest year on record globally, topping previous records set in 2015 and 2014, and the second warmest for the continental United States.<sup>4</sup> By the 2050s, the average temperature in New York City is projected to increase by 4.0 to 5.7 degrees Fahrenheit and the number of days with temperatures rising above 90 degrees will increase two to three-fold.<sup>5</sup>

In addition, warming temperatures exacerbate or introduce a wide range of health problems, including cardiovascular and respiratory diseases, pollution and allergen-related health problems, and vector-borne diseases.<sup>6</sup> The health consequences of climate change disproportionately affect our most vulnerable populations – the elderly, children, and low income

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Academy of Science, Vol. 1336 (Jan. 2015), at 9 (hereinafter “*New York City Panel on Climate Change 2015 Report*”), available at <http://onlinelibrary.wiley.com/doi/10.1111/nyas.2015.1336.issue-1/issuetoc>.

<sup>2</sup> See City of New York, *A Stronger, More Resilient New York* (2013) at 5, at [www.nyc.gov/html/sirr/html/report/report.shtml](http://www.nyc.gov/html/sirr/html/report/report.shtml); see generally *id.* at 10-18. While this report lists the Sandy death toll as forty-three, an additional fatality was identified by the medical examiner’s office after the report was released, bringing the City’s death toll to forty-four. See City of New York, *One City Built to Last: Transforming New York City’s Buildings for a Low-Carbon Future* (2014) at 19, at <http://www.nyc.gov/html/builttolast/assets/downloads/pdf/OneCity.pdf> (hereinafter “One City”).

<sup>3</sup> *A Stronger, More Resilient New York* at 27.

<sup>4</sup> See NOAA, “National Climate Report - Annual 2016,” at <https://www.ncdc.noaa.gov/sotc/national/201613> (last visited Sept. 22, 2017); New York Times, “Earth Sets a Temperature Record for the Third Straight Year” (Jan. 18, 2017), available at <https://www.nytimes.com/2017/01/18/science/earth-highest-temperature-record.html>.

<sup>5</sup> See *New York City Panel on Climate Change 2015 Report* at 22, 31.

<sup>6</sup> *A Stronger, More Resilient New York* at 78-82.

communities who already experience elevated incidence of cardiovascular and respiratory diseases.<sup>7</sup>

The effects of these changes on the City will be significant. Heat waves, defined as three or more consecutive days of temperatures at or above 90 degrees, strain the City's power grid, cause deaths from heat stroke, and exacerbate chronic health conditions, particularly for vulnerable populations like the elderly.<sup>8</sup> Without mitigation, hotter summers predicted for the 2020s (based on projections by the New York City Panel on Climate Change) could cause an estimated 30 to 70 percent increase in heat-related deaths, or about 110 to 260 additional heat-related deaths per year on average in New York City.<sup>9</sup>

These risks to the City's residents and infrastructure were reiterated in the National Climate Assessment report issued in May 2014, which details the many climate risks in the Northeast region, including heat waves, coastal and river flooding, sea level rise, and intense precipitation events, that will pose a growing challenge to the region's environmental, social and economic systems.<sup>10</sup> Potential impacts to the City's critical coastal infrastructure from sea level rise and coastal flooding cited in the report include, among others, increased saltwater encroachment and damage to low-lying infrastructure in the communications, energy, transportation, water and waste sectors, exacerbated flooding of streets, subways, tunnel and bridge entrances, and sewers, as well as associated structural damage to these assets.<sup>11</sup>

Should regulations limiting greenhouse gas emissions be curtailed, rising temperatures and sea levels and incidence of extreme weather events will present even graver dangers than those we must already abate. Accordingly, the City urges EPA to maintain its current interpretation of the Clean Air Act, as set forth in its prior rulemaking (81 Fed. Reg. 73512), which treats glider vehicles as "new motor vehicles" under the Clean Air Act and thus subject to more stringent emissions standards.

## **II. Strong Emissions Standards are Critical for Improving Local Air Quality in New York City and Protecting Public Health.**

EPA's proposed repeal of the glider provisions will result in a significantly higher level of emissions from motor vehicles, which poses a public health risk to New York City and its residents. Indeed, EPA's own analysis indicates glider vehicles produce much more fine

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<sup>7</sup> See DOHMH, *Air Pollution and the Health of New Yorkers: The Impact of Fine Particles and Ozone* at 4, at <https://www1.nyc.gov/assets/doh/downloads/pdf/eode/eode-air-quality-impact.pdf>; see also Globalchange.gov, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment Ch. 9, Populations of Concern* (April 2016), at <https://health2016.globalchange.gov/populations-concern>.

<sup>8</sup> *A Stronger, More Resilient New York* at 26.

<sup>9</sup> As compared to the baseline period for analysis of 1998-2002. *A Stronger, More Resilient New York* at 31.

<sup>10</sup> See generally U.S. Global Change Research Program, *National Climate Assessment* (2014), Chap. 16, at <http://nca2014.globalchange.gov/>.

<sup>11</sup> *2014 National Climate Assessment* at 379.

particulate matter and ozone forming precursors than other modern trucks. Specifically, EPA has found that emissions of NOx – a leading ozone precursor – from glider vehicles can be up to 40 times higher than other modern trucks and particulate matter emissions are up to 450 times higher than conventionally manufactured 2014 and 2015 model year engines.<sup>12</sup> Moreover, as EPA has already acknowledged, glider vehicles only represent roughly 2 percent of the Class 8 vehicles manufactured annually, but account for almost **one-half** of total NOx and particulate matter emissions from all new Class 8 vehicles.<sup>13</sup>

Moreover, since 2010, when EPA's current NOx and PM2.5 standards for heavy duty engines took effect, glider sales have increased nearly 10-fold as compared to the 2004-2006 timeframe. EPA has further stated that it believes this increase reflects an attempt to avoid using engines that comply with the EPA's 2010 standards (most glider vehicles manufactured today use model year 2001 or older engines), and thus "is an attempt to circumvent the Clean Air Act's purpose to protect human health and the environment."<sup>14</sup> Nothing in the current rulemaking indicates the contrary.

New York City residents in particular suffer greater risk of exposure to harmful air pollutants than those living in other areas of the United States. Specifically, New York City contains the four most densely populated counties in the United States (New York, Kings, Bronx, and Queens).<sup>15</sup> These four counties also have the highest emissions density (tons/sq mile) of primary PM2.5 and NOx emissions from heavy-duty diesel vehicles.<sup>16</sup> Thus, New York City is particularly vulnerable to the criteria air pollutant emissions from heavy-duty diesel vehicles due to the close proximity of its many residents to these emissions.

A 2016 study found that emissions from on-road mobile sources in the 28 county New York metropolitan region contributed to 320 premature deaths and 870 hospitalizations and emergency department visits annually within the City due to PM2.5 exposures, accounting for 5850 years of life lost each year.<sup>17</sup> Trucks and buses within the City account for the largest share of on-road vehicle-attributable PM2.5 emissions, contributing up to 14.9 percent of annual

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<sup>12</sup> *Id.*

<sup>13</sup> See Frequently Asked Questions about Heavy-Duty “Glider Vehicles” and “Glider Kits” available at <https://nepis.epa.gov/>, published July 2015.

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

<sup>15</sup> US Census, American Factfinder: Population, Housing Units, Area, and Density: 2010 - United States -- County by State; and for Puerto Rico, 2010 Census Summary File 1. Available at: <https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>, Accessed 9/6/2017

<sup>16</sup> EPA 2014 National Emissions Inventory estimates. Available at <https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data>.

<sup>17</sup> Kheirbek I, Haney J, Doughlas S, Ito K, Matte, T. 2016. The contribution of motor vehicle emissions to ambient fine particulate matter public health impacts in New York City: a health burden assessment. *Environmental Health*. 15:89. Available at: <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-016-0172-6>. Accessed 12/8/2017

average levels in some areas of the City. They are also associated with 170 PM2.5-attributable deaths each year and 460 PM2.5-attributable emergency department visits and hospitalizations.<sup>18</sup> These impacts are greatest in the City's high poverty neighborhoods where PM2.5 exposures from heavy diesel vehicles are 1.7 times higher than in low poverty neighborhoods. In addition, the associated emergency department visits for asthma were 9.4 times higher in high poverty neighborhoods as compared to low poverty neighborhoods.

Emissions from trucks also contribute to chronic pollution hot-spots throughout New York City. The New York City Department of Health and Mental Hygiene ("DOHMH") conducts the New York City Community Air Survey using data from 60 monitoring sites throughout the City to develop spatial models of air pollution exposure and assess sources contributing to high levels of air pollution within the City. The survey found that from 2009 to 2015, emissions from vehicles were associated with increased levels of PM2.5, NO2, and NO levels near the monitoring sites.<sup>19</sup> The industrial areas of the City, with high densities of truck traffic also faced disproportionately large exposures to PM2.5 and black carbon levels. Moreover, the entire City of New York is currently designated to be in nonattainment of the National Ambient Air Quality Standards (NAAQS) for ozone and New York County is designated nonattainment for PM10. The additional air pollution that would result from EPA's proposal would be a major setback to current efforts to improve air quality.

Accordingly, EPA's repeal of the emission standards for glider vehicles, kits, and engines would have a profound impact on public health and would inhibit the significant progress already made by the City in limiting the impact of emissions on the City's residents. Therefore, the City strongly urges EPA to maintain its current standards, which provide appropriate and necessary regulations on the glider industry and would help reduce harmful air emissions from mobile sources.

### **III. EPA's Proposed Interpretation of the Clean Air Act to Support its Decision to Repeal the Glider Provisions is Irrational.**

EPA argues that it has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation. EPA has failed to meet this standard in its current rulemaking. EPA's proposed interpretation of the Clean Air Act, which excludes glider vehicles from the definition of "new motor vehicle" is not only unreasonable, but also directly contradicts EPA's previous position and the administrative record supporting that position without sufficient justification.<sup>20</sup> As such, the proposed repeal, if finalized, would be arbitrary and capricious and in violation of law.

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<sup>18</sup> *Id.*

<sup>19</sup> New York City Community Air Survey, Neighborhood Air Quality 2008-2015. April, 2017. New York City Department of Health and Mental Hygiene. Available at: <https://www1.nyc.gov/assets/doh/downloads/pdf/environmental/comm-air-survey-08-15.pdf> Accessed 9/6/2017.

<sup>20</sup> See 81 Fed. Reg. 73512, October 25, 2016.

Under CAA § 216(3) new motor vehicle is defined as a, “motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.” When a salvaged and refurbished powertrain is combined with a glider kit, a new motor vehicle is created, which has an equitable and legal title that has yet to be transferred to an ultimate purchaser. Upon selling a glider vehicle (comprised of the glider kit and the salvaged powertrain), the equitable and legal title is transferred to an ultimate purchaser for the first time. This position was clearly articulated by the EPA in its Phase 2 rulemaking.<sup>21</sup>

Simply put, glider vehicles are marketed and treated by the industry as new vehicles.<sup>22</sup> EPA’s new contention that Congress did not have the “specific intent” to regulate glider vehicles as new motor vehicles under the Clean Air Act is unreasonable and illogical, and circumvents both the facts in the record and the plain language of the statute.

Furthermore, EPA’s purported “common sense” argument that gliders cannot be new because they incorporate previously used parts is without merit. Not only does this argument contradict the plain language of the statute, it ignores that a glider vehicle is a new motor vehicle that would not be in circulation but for its salvaged and remanufactured powertrain. EPA’s attempt to deconstruct the definition of new motor vehicle by looking instead to whether each part of the vehicle is new or used, and not at whether those parts as whole, create a new vehicle, is nonsensical. Such a definition undermines EPA’s obligation to adequately protect human health through its implementation of the Clean Air Act. The statutory definition does not rely on the status of vehicle components as new or used. Instead, Congress gave a clear statutory mandate, which provides that a new motor vehicle is one for which the legal or equitable title has yet to be transferred to an ultimate purchaser. Glider vehicles fall squarely within this definition. If Congress meant to exclude vehicles with used parts from that definition and wanted instead to construe new motor vehicle to mean “showroom new,” it could have stated this clearly in the definition.

Citing *Motor Vehicle Manufacturers Ass’n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29 (1983), EPA provides the following legal justification for their new interpretation of “new motor vehicles” under the Clean Air Act:

A change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations,” and so as long as an agency “remains within the bounds established by Congress,” the agency “is entitled to assess administrative records and evaluate priorities in light of the philosophy of the administration.” 82 Fed. Reg. at 53443.

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<sup>21</sup> *Id.* at 73513.

<sup>22</sup> *Id.* at 73514.



EPA's reliance on *State Farm* is misplaced. This case adheres to the bedrock principle of administrative law that in undertaking a rulemaking, an agency must "examine the relevant data and articulate a satisfactory explanation for its action." *State Farm*, 463 U.S. at 43. Here, EPA has not undertaken a full examination of the "relevant data" – the record supporting the GHG Fuel Emissions and Fuel Efficiency Standards for Medium and Heavy-Duty Engines and Vehicles – Phases 1 and 2, which included information on how the industry actually treats these vehicles and their health impacts. Moreover, the Court in *State Farm* did not excuse agencies seeking to change policy from engaging in review of the relevant data underpinning an existing policy or rule. Instead, *State Farm* acknowledges that an agency proposing to change its course by rescinding a rule is obligated to supply a reasoned analysis for the change of course. In the instant rulemaking, EPA has not provided a reasoned explanation for its disregard of the record supporting the Phase 1 and Phase 2 rules, as well as more recent research published by the EPA relating to glider vehicles, which clearly demonstrates the inefficiency of these vehicles in comparison to other new heavy duty vehicles. Importantly, *State Farm* involved a change in agency policy and revision of the cost benefit analysis associated with that policy, which is distinctly different than the *curtailment of jurisdiction* and *unilateral reinterpretation* of its regulatory authority under the Clean Air Act (*i.e.*, a reinterpretation of the threshold issue of whether it can or cannot regulate glider vehicles in the first instance) which EPA seeks to accomplish through the current rulemaking.

#### IV. Conclusion

New York City has been a leader in addressing air pollution and climate change at the local level and is working to reduce our own emissions of criteria pollutants and greenhouse gases while preparing for the inevitable effects of climate change. Because vehicle emissions are regulated almost exclusively at the federal level, the City needs EPA to vigorously pursue policies to ensure the continued reduction of GHGs and criteria pollutant emissions from motor vehicles to protect the health of our residents and meet our objectives of reducing GHG emissions 80% from 2005 levels by 2050 and having the best air quality of any large US city by 2030. This proposed rule to repeal emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits is not only arbitrary and capricious, but also a step in the wrong direction. Repeal of the glider provisions will lead to increased criteria pollutant and GHG emissions that would not occur under the current rule.

The City urges EPA to maintain its interpretation of the Clean Air Act as set forth in Phases 1 and 2 of rulemaking, which is correct under the law and consistent with common sense. The EPA should not repeal the glider provisions, as they provide appropriate and necessary protections to public health and welfare.



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