AUTHORIZING SUPPLEMENTAL ENVIRONMENTAL PROJECTS TO INCENT REDUCTIONS OF DIESEL EMISSIONS

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND AIR QUALITY

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

ON

H.R. 3754

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H.R. 3754: AUTHORIZING SUPPLEMENTAL ENVIRONMENTAL PROJECTS TO INCENT REDUCTIONS OF DIESEL EMISSIONS

WEDNESDAY, FEBRUARY 13, 2008

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND AIR QUALITY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 1:27 p.m., in room 2322 of the Rayburn House Office Building, Hon. Rick Boucher (chairman) presiding.

Members present: Representatives Barrow, Matheson, Upton and Shimkus.

Staff present: Lorie Schmidt, Laura Vaught, Chris Treanor, Rachel Bleshman, Alex Haurek, Erin Bzymek, David McCarthy, Tom Hassenboehler, and Garrett Golding.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BOUCHER. The subcommittee will come to order.

I want to begin this afternoon by welcoming to our subcommittee the gentleman from Michigan, Mr. Upton, who is the new ranking member of our subcommittee. It has been a privilege to work with him over the years on a whole range of matters, telecommunications, energy issues, other things, and I am delighted that he is now going to be ranking member of this subcommittee for the balance of this Congress, and I just want to welcome him here today.

Today the subcommittee will examine H.R. 3754, legislation introduced by our colleague, Jim Costa from California, which would allow the continued use of Supplemental Environmental Project funds for diesel retrofit projects. Identical legislation has been introduced by Senator Carper. That legislation last week was unanimously approved by the Senate Committee on the Environment and Public Works.

Following this afternoon's hearing, the legislation will be considered for markup in this subcommittee and I will announce at this time that pursuant to a unanimous-consent request which will be made shortly, we will be proceeding directly to markup of this bill as soon as our hearing is concluded, and so Members who had planned to come here at some other time, 2:30, perhaps, should make their way to the subcommittee if they desire to take part in the markup process.

Diesel emissions from on- and off-road vehicles and engines account for more than one-half of the nitrogen oxide and particulate matter emissions from mobile sources across our country. The Environmental Protection Agency has issued regulations to limit emissions from new diesel engines and vehicles, but the rules only apply to the new vehicles and not to the heavy-duty diesel fleet that is currently on America's highways. Given the long life of many diesel vehicles and engines, it is estimated that the existing fleet of vehicles will not be entirely cycled out of operation until about the year 2030.

In order to achieve emission reductions from the existing diesel fleet, a number of actions have been taken to encourage the retrofit of these vehicles with emission reduction technologies. For example, the EPA has administered the Clean School Bus Program for a number of years, providing grants to school districts for the purpose of retrofitting diesel-powered school buses. As another example, as part of SAFETEA-LU, the Highway Transportation Reauthorization, Congress provided funding for diesel retrofits under the Congestion Mitigation and Air Quality Program. Under the Diesel Emissions Reduction Act, which was enacted as a part of the Energy Policy Act of 2005, the expenditure of $200 million annually over a 5-year period for grants and loans funding diesel retrofit projects was authorized. And most recently, in December, the Congress passed, and the President signed into law, an appropriation of $49.2 million for fiscal year 2008 in that year's appropriations legislation.

In addition to these initiatives administered by the EPA, private entities have also often funded clean diesel programs as part of settlement agreements reached with the EPA in cases in which the Agency had alleged that the private entity had violated the Clean Air Act. These Supplemental Environmental Projects devoted to diesel emission reductions have totaled approximately $45.4 million from fiscal year 2001 through fiscal year 2006. Unfortunately, as a result of the funding which was appropriated for the diesel emissions reduction program, the EPA has concluded that as a matter of law, it is required to cease allowing Supplemental Environmental Projects for diesel retrofits as a part of settlement cases for violations of the Clean Air Act. That decision was made based on the conclusion by EPA that continuation of the Supplemental Environmental Projects for diesel retrofits violates the Miscellaneous Receipts Act, which prohibits the augmentation of Agency budgets that are appropriated by the Congress from other means. Given the estimated 10 million heavy-duty diesel vehicles and engines in use today, there is an extraordinary need to continue to fund diesel retrofit programs. The reduction of diesel emissions through retrofit technologies is cost-effective, and it clearly will produce a needed environmental benefit.

The legislation Mr. Costa has brought to us, H.R. 3754, would ensure that all available means of funding for these valuable programs are allowed to continue. It would grant EPA specific authority to accept diesel emission reduction Supplemental Environment Projects as part of the settlement of alleged violations of environmental laws, provided that these projects protect human health and the environment, are related to the underlying violation and

do not constitute activities that the defendant otherwise would be required legally to perform, and do not provide funds for the staff of the Agency or contractors to carry out EPA's internal operations.

I would note that this legislation has the support of more than 40 groups consisting of a broad range of health, environment, industry and non-governmental organizations. It reflects a commonsense approach to ensuring that we utilize all available and appropriate means to reduce diesel emissions, and I very much look forward to hearing from today's witnesses regarding this consensus measure.

The bill before us, as I indicated, was authored by our colleague, Jim Costa from California, and I want to thank him for bringing this matter before the subcommittee. In just a moment we will welcome his comments. Following Mr. Costa's testimony and that of our second panel of witnesses, I will announce again that the subcommittee will proceed directly to markup on this measure.

At this time I will include in the record a copy of the bill, H.R. 3754.

[The bill follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 3754

To authorize the Administrator of the Environmental Protection Agency to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 4, 2007

Mr. COSTA (for himself, Mr. CARDOZA, Mr. MCNERNEY, and Mr. NUNES) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To authorize the Administrator of the Environmental Protection Agency to accept, as part of a settlement, diesel emission reduction Supplemental Environmental Projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EPA AUTHORITY TO ACCEPT DIESEL EMISSIONS REDUCTION SUPPLEMENTAL ENVIRONMENTAL PROJECTS.

The Administrator of the Environmental Protection Agency (hereinafter, the "Agency") may accept (notwithstanding sections 3302 and 1301 of title 31, United States

Code) diesel emissions reduction Supplemental Environmental Projects if the projects, as part of a settlement of any alleged violations of environmental law—

(1) protect human health or the environment;

(2) are related to the underlying alleged violations;

(3) do not constitute activities that the defendant would otherwise be legally required to perform; and

(4) do not provide funds for the staff of the Agency or for contractors to carry out the Agency's internal operations.

○

Mr. BOUCHER. Jim, we are pleased to have you with us this afternoon, and we thank you for bringing this matter before us. We will be happy to hear your comments.

STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. COSTA. Thank you very much, Mr. Chairman, for allowing me to testify before the subcommittee on H.R. 3754.

This bill is an important measure, not just for my district but I think it has national implications as it relates to air quality issues throughout the country, and with the subcommittee's efforts this afternoon, I think we will continue to provide greater opportunities to clean our air throughout the country. My cosponsors of this measure, Representatives Cardoza, McNerney, Nunes, Matsui, Kind, Bono Mack, Shimkus, Butterfield, Matheson and Hill, are also to be thanked for their support for this important measure.

This measure would allow the Environmental Protection Agency, if it becomes law, to continue its prior practice of accepting diesel emission reduction projects as part of the environmental enforcement settlement agreements, as the chairman outlined in his opening statement.

For many years the Environmental Protection Agency has funded diesel retrofit projects through Supplemental Environmental Projects, otherwise known as SEPs, with corporations as part of overall settlement agreements. From the fiscal year 2001 to the fiscal year 2006, the Environmental Protection Agency entered in diesel emission reduction SEPs that were valued at over $45 million. This bill would maintain that separate private source of funding for these projects and would continue these private-public partnerships to improve air quality throughout the country. This is particularly important to my district, which suffers from some of the worst air quality issues in the country as a nonattainment area.

The map there that you have, of course you are familiar with California. I know the chairman has been in the valley in the past. This is the area we are talking about. It is over 250 miles in length and 60 to 80 miles in width, and it is ringed by the Sierra Mountain range, the wonderful mountains of the Sierras that go up to 14,000 feet, and the Coast Range Mountains go to 4,000 to 6,000 feet, and the air quality therefore that comes in from the Bay area across the Pacheco Pass and the emissions, both stationary and mobile sources of emissions that we create, creates a very difficult problem, as we continue to grow in managing our mobile and stationary sources of emission.

With me today, I have a group of folks who are very familiar with all of that area. They are a group of both elected and private citizens that are involved in commerce on the valley's one voice who come to Washington every year to advocate on behalf of the valley on a host of issues. I would like them all to stand briefly. I don't go anywhere without my group.

Mr. UPTON. You are just lucky we didn't impose the line-sitter fee today.

Mr. COSTA. But we are happy that they are here this week working with their valley representatives, and I thought that since all

of them are involved in this issue in one fashion or another, they would like to listen and be a part of the hearing today.

Anyway, as a result of the challenges that we face in the valley, coupled with the fact that two major transportation corridors cut through the valley, both Interstate 5 as well as Highway 99, that not only provide important corridors for the valley but commerce for the entire Nation as well, both north and south, contributes to a large portion of our pollution issues. Over 60 percent of our emissions are mobile sources of emissions. Less than 40 percent are stationary. The reason this is important is because State and local government have control to regulate and to provide solutions to the stationary sources of emissions, and I think we have done an effective job through an air pollution control authority that I helped create when I was in the State legislature back in the late 1980's.

However, over 60 percent of the emissions come from mobile sources and that is the jurisdiction of the Federal Government and therefore this legislation becomes more important, not just to the rest of the country but to the valley as well that suffers from PM emissions, as well as smog, that provide health hazards for heart disease, lung cancer and asthma. The problem is considerable throughout the State, but particularly in the valley as a nonattainment area. We experience 35 to 40 days in which we exceed the Federal health standards for ground-level ozone and more than 100 days that we exceed the levels for State ozone standards.

Today more than 90 percent of the commercial trucks are powered, as the chairman noted, by diesel engines. Two-third of all the farms and construction equipment run from diesel engines, and this valley that I outlined to you earlier is among the richest agricultural regions in the entire country and therefore the world. We produce half the Nation's fruits and vegetables, and we lead in a host of other specialty crops as well. So therefore when you look at the combination of the challenges, this legislation becomes more important. California has done a lot. We lead the Nation in clean diesel technology and diesel retrofit projects that can make important contributions to improve air quality, not only in California but throughout the country. In addition to retrofitting clean diesel technologies for diesel vehicles and equipment, we think this is one of the more cost-effective strategies for teaching tangible and immediate results when we look at our long-term strategies to cleaning up the air in this nonattainment area.

The Environmental Protection Agency estimates that these retrofit projects have a 13 to 1 benefit-to-cost ratio. Let me repeat that. This project, these projects like this have a 13 to 1 benefit-to-cost ratio, meaning that the $45 million invested during that 5-year period from fiscal year 2001 to 2006 translated into almost $600 million in health benefits. That results obviously in fewer asthma cases, fewer cardiovascular cases and other health-related issues that we have to deal with.

So in closing, Mr. Chairman, I want to thank you and the subcommittee members for inviting me to testify today. This bill is not just cost-effective in allowing us to try to provide meaningful air quality improvements in the valley but in the Nation as well, and for all of those reasons I ask the subcommittee to support this effort.

[The prepared statement of Mr. Costa follows:]

PREPARED STATEMENT OF HON. JIM COSTA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

First, I want to thank Chairman Boucher for inviting me to testify today. This is an important issue for my district, and for improving air quality throughout the country, and I appreciate the opportunity to discuss this bill.

H.R. 3754 will allow the Environmental Protection Agency (EPA) to continue its prior practice of accepting diesel emission reduction projects as part of environmental enforcement settlement agreements.

For many years, the EPA has funded diesel retrofit projects through Supplemental Environmental Projects (SEP's) with corporations as part of settlement agreements. From fiscal year 2001 to fiscal year 2006, EPA entered into diesel emission reduction SEP's valued at $45.5 million. This bill will help maintain this separate, private source of funding for these projects.

In recent years, there has been a new era in clean diesel technology, which includes three critical parts. First, a cleaner burning, lower sulfur diesel; second, lower-emitting diesel engines; and third, new emissions control technology.

Retrofitting clean diesel technologies for diesel vehicles and equipment is one of the most cost-effective strategies for achieving tangible and immediate air quality benefits. Areas of the country struggling to meet clean air standards can greatly benefit from diesel retrofits to help improve air quality.

Retrofits can be done on older vehicles or equipment. The EPA estimates these retrofit projects have a 13-to-1 benefit-to-cost ratio, meaning that the $45.5 million invested from fiscal year 2001 to 2006 translates into almost $600 million in health benefits—from fewer asthma cases to fewer cardiopulmonary deaths.

Right now, more than 90 percent of commercial trucks are powered by diesel engines, and two-thirds of all farm and construction equipment run from diesel engines.

Diesel retrofitting for these engines can make a significant contribution to improving air quality—in particular, by reducing particulate matter emissions, which are linked to health hazards such as heart disease and lung cancer.

In closing, I want thank you, Chairman Boucher, and the members of the subcommittee, for inviting me to testify. This bill will allow cost-effective, meaningful air quality improvement to continue, and I hope that the subcommittee will give its support.

Mr. BOUCHER. Thank you very much, Mr. Costa. It is a pleasure to have you with us today, and you are quite right, I have on a number of occasions visited your part of California. It is indeed a gorgeous place, and I am impressed with the number of your constituents who have journeyed here to show their support for this measure. The only time I get that many of my constituents coming here is when they are angry about something. You are to be congratulated for having them here for a positive purpose.

Mr. COSTA. I promised them I would take them out this evening.

Mr. BOUCHER. And they are to be congratulated for being here to show support for your efforts.

I want to recognize Mr. Upton. I intended to recognize him for a statement earlier and neglected to do that, so at this time let me call on him for whatever statement he decides to make.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. I thank the chairman, and I appreciate Mr. Costa's work on this issue and the way that he has really begun on this from a bipartisan way from the get-go, and I know Mr. Shimkus and others are cosponsors and certainly I want to be part of the process to make sure that we have smooth sailing today and I suggested to my chairman that we move right away to the markup.

We have had lots of extra votes today and we don't need to have this put off because of action on the House floor, so I would like to see this happen very quickly.

This is an issue that we can all rally around, reducing diesel emissions in an immediate cost-effective manner that eliminates the need for new infrastructure requirements. This legislation will address EPA's legal interpretation that SEP money may not be used for diesel retrofits. Today we will take a legislative step forward to authorize the EPA to use these funds under the Diesel Emissions Reduction Act for reducing diesel emissions through retrofits. This is an issue that is supported by a broad coalition of environmental, science-based, public health, industry, State and local government groups.

One of the groups that is in fact going to testify on the second panel is Corning, and at the invitation of our former colleague, Amo Houghton, I visited Corning's headquarters in Corning, NY, back in 2006. I was particularly impressed by the commitment that Corning has made toward advancing environmental technology. The company invests over 10 percent of its revenue in R&D. I visited the research lab that day to see the fruits of their investments. The advances being made to reduce pollution from diesel engines in fact are very significant and it is yet another example of how we can effectively address our environmental problems through technology. I know that they are in support of this legislation.

I look forward to being part of the positive process of moving this legislation forward, and at this point I will yield back my time to my chairman. Thank you.

Mr. BOUCHER. Thank you, Mr. Upton.

Let me ask other members if they care to make opening statements. The gentleman from Georgia, Mr. Barrow.

Mr. BARROW. No, I will waive my opening statement, Mr. Chairman.

Mr. BOUCHER. That is fine.

The gentleman from Illinois, Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. I would just like to thank Jim for bringing the legislation, and I am proud to be a cosponsor.

We are moving into an era where diesel is not a dirty word anymore. We all remember, especially in communities, diesel buses and the big fumes but with new technology, research and development, clean diesel, the fact that diesel is a primary fuel for automobiles in Europe is bringing a new venue, and we focus in this committee on energy security. Diesel is going to have a big role in that, and the fact that we can also tie this to this Supplemental Environmental Projects, it is a win-win all around, and I am just pleased to be a cosponsor.

Thank you for your work, and I yield back my time.

Mr. BOUCHER. Thank you, Mr. Shimkus.

The gentleman from Utah, Mr. Matheson.

Mr. MATHESON. I waive.

Mr. BOUCHER. Thank you, Mr. Matheson.

Mr. Costa, I just have one question of you. I note that the legislation requires that for a project to be accepted under its terms, the project itself must be related to the underlying violation, and I am

wondering if you can give us a sense of how that will apply, and I realize that was also a part of Senator Carper's legislation in the Senate, but do you have any examples for us of what would be in bounds and out of bounds, given that requirement?

Mr. COSTA. The committee has noted that in fact we need to ensure that we are flexible and it is my intent to ensure that we bring that about so as it relates to this legislation, I want to make sure that the conditions in which the EPA is working with private parties on settlement agreements that the enabling legislation will allow for that flexibility under those circumstances when we think it is deemed appropriate. But I think the sense of Congress clearly needs to be determined prior to us moving. So on the markup I would like to get a sense of the subcommittee's own experiences in terms of how we can best ensure that the individual examples that we have in our districts that we know of in which parties have had to negotiate with the Environmental Protection Agency on these matters that we include what is fitting and appropriate to address the air quality issues because whether it is in the San Joaquin Valley, in the area that I represent, or whether it is in other parts of the country where you have nonattainment issues, I think it is critical that we are able to leverage these dollars and to put them to the use of trying to provide for these Supplemental Environmental Projects that will do the most good.

Mr. BOUCHER. OK. Thank you. And you don't see this requirement as unduly restricting the acceptance of projects by EPA?

Mr. COSTA. It has not come to my attention that it is. If you have some examples or other members do, I would clearly want to look at them to ensure that we address that issue.

Mr. BOUCHER. OK. That is great. Thank you.

Mr. Upton, any questions?

Mr. UPTON. I really don't have any questions. I just want to say thanks again for introducing the legislation and working in a bipartisan manner. Thank you.

Mr. BOUCHER. Mr. Barrow.

Mr. BARROW. Mr. Chairman, you don't know how long I have waited to get this witness on the stand where I could submit him to a thorough and sifting cross-examination. But unfortunately, there is nothing I can add by way of either eloquence or comprehension to his statement, so I just want to thank him for sponsoring this legislation and I will yield the balance of my time.

Mr. COSTA. And I want to thank my classmate for that wonderful response.

Mr. BOUCHER. Thank you, Mr. Barrow.

Mr. Shimkus?

Mr. SHIMKUS. No questions.

Mr. BOUCHER. Mr. Matheson.

Mr. MATHESON. No questions.

Mr. BOUCHER. Mr. Costa, with the subcommittee's thanks, we excuse you and we will treat your legislation very tenderly.

Mr. COSTA. Thank you very much.

Mr. BOUCHER. Thank you very much.

Let me welcome now our second panel of witnesses, the senior vice president of Corning Incorporated, Mr. Tim Regan, speaking from an industrial perspective, and also Mr. Conrad Schneider,

who is advocacy director of the Clean Air Task Force, an organization comprised of numerous environmental and health associations. We welcome both of you here today, and thank you for taking time to share your views with the subcommittee. Without objection, your prepared written statements will be made a part of the record. We would welcome your oral summaries and hope that you would keep those summaries to approximately 5 minutes.

Mr. Regan, since I mentioned your name first, we will begin with you.

STATEMENT OF TIM REGAN, SENIOR VICE PRESIDENT, CORNING INCORPORATED, WASHINGTON, DC

Mr. REGAN. Thank you, Mr. Chairman, Mr. Upton, members of the committee. It is a pleasure to be here today. We are here to endorse the bill because we think it really is necessary to clear up a conflict that we have been the many acts of Congress that many of you have been involved with, as a matter of fact, and this interpretation of the Miscellaneous Receipts Act by EPA.

I am here as president of the Emissions Control Technology Association. We are the guys that invented the material that sits inside a catalytic converter and creates a passive chemical reaction which breaks up the various pollutants in the exhaust. This technology has had a phenomenal impact to remove 1.5 billion tons of pollution from the air we breathe over the last 35 years, and this is the successor technology. This is what we call a diesel particulate filter. This is a device that will filter out very, very fine particulate matter about 1 to 2 percent of the width of your human hair and it will withstand thermal shocks and will last about 435,000 miles in a diesel truck.

This here is an example of what we take out of the air. This is the amount of fine particulate matter that is generated out of a school bus over its operation for 500 miles. So I think you can see that this is very significant. This one device here which looks like simply a piece of ceramic, a rather large piece, cost Corning $850 million to invest and to invest to manufacture, so it is a rather significant achievement.

The challenge, as has been said already before, is to see that this technology is now crafted onto the 11 million vehicles and engines that are out there today. It is on all new vehicles that have been on the road since January 1, 2007, as required equipment, but there are 22 times more vehicles and engines in the fleet today than are put on every year. So we have a rather significant source of pollution on these existing vehicles, and the goal here has been and Congress's goal has been to help get those vehicles retrofitted by providing the equipment owners with the financial resources to make those kinds of investments.

Mr. Boucher reviewed with you all the things that have been done by Congress over the last 5 years and they are indeed very significant. Mr. Shimkus has been very much involved in moving ahead with the appropriation that the chairman mentioned, $49.2 million last year, to retrofit the vehicles under the Diesel Emissions Reduction Act.

The problem we have is—and of course, EPA has supplemented all that with these Supplemental Environmental Projects which

have provided another source of funding for this kind of activity. In fact, 37 percent of the diesel retrofits that were diesel particulate filters that were deployed from 2003 to 2006 were funded with SEPs, so it is a significant source. The problem we have is just not enough funds, and that is sort of exemplified by the EPA's school bus program. Seventy-five percent of the grants don't get funded. The applications don't get funded. And in the case of Virginia, for example, the chairman's State, there have been 11 grants requested and only one was funded. And so it demonstrates vividly the need for more resources. The problem we have now is that EPA is about to make a determination, in fact, has already made a determination or about to implement it that they can no longer fund diesel retrofits with these SEPs because of a potential violation relative to the Miscellaneous Receipts Act.

Now, this is a real conflict, and we would argue in this particular instance a statutory exclusion would be appropriate. Statutory exclusions to the Miscellaneous Receipts Act have been adopted before and it has been ruled that where there is such an exclusion, SEPs can continue. This bill will effectively provide such an exclusion.

We would say there are four compelling reasons to do this. One, the existing vehicles are a major source of pollution on the road today. Number 2, there are very sensitive populations that are being affected by this pollution, for example, the 25 million students that are riding school buses every year that are affected by it. Third, Congress has obviously acted over and over again to provide such funding and the demand far exceeds the supply. And finally, this is not going to have any direct impact on the budget. So taken together, because of these factors, we were able to generate for you a letter from 43 different groups from business, NGOs, trade associations in support of the bill. It passed unanimously out of the Environment and Public Works Committee last week on the Senate side, and we can really see no compelling public policy reason not to proceed with this.

Thank you very much.

[The prepared statement of Mr. Regan follows:]

TESTIMONY BY

TIMOTHY J. REGAN
PRESIDENT
EMISSIONS CONTROL TECHNOLOGY ASSOCIATION

BEFORE THE
THE HOUSE ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE
ON ENERGY AND AIR QUALITY

FEBRUARY 13, 2008

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Introduction

Mr. Chairman, my name is Tim Regan. I'm the President of the Emissions Control Technology Association ("ECTA") and an executive with Corning Incorporated. I'm here today to express our support for H.R. 3754, a bill to undertake Supplemental Environmental Projects ("SEPs") for diesel retrofits.

ECTA represents the companies that have been at the cutting edge of mobile source emissions control technology for three and a half decades. Our members invented and developed the core, specifically the substrate and the catalyst, of the catalytic converter. Our technology has had a profound positive impact on the environment both here and abroad, removing 1.5 billion tons of pollution from American skies and 3 billion tons worldwide since 1975.[1]

They call our technology "after-treatment" because it performs a chemical conversion or a filtering function to the emissions produced by the engine. In essence, the technology acts like a small chemical plant that neutralizes the nitrogen oxide ("NOx"), carbon monoxide ("CO"), and hydrocarbons ("HC") in gasoline exhaust. In the case of diesel engines, it goes one step further by filtering out the fine particulate matter ("$PM_{2.5}$") that creates the black smoke we have all seen and smelled in the exhaust of trucks and buses.

Our technology is required equipment on all new on-road heavy duty vehicles entered into service after January 1, 2007. This will make a significant contribution toward cleaner air and better health. In fact, EPA estimated at the time the so-called 2007 Heavy Duty Rule was promulgated that the technology would generate $66 billion in economic and health benefits annually when the new vehicles have significantly penetrated the fleet after the year 2020.

[1] *See* Corning Press Release citing the Manufacturers of Emission Controls Association ("MECA") (February 15, 2005), http://www.corning.com/environmentaltechnologies/media-center/press-releases/2005021501.aspx.

Obviously, there is a cost associated with installing this equipment on new vehicles, but the pay-off is significant. EPA estimates that for every dollar spent on the technology $16 of economic benefit will be generated.[2]

The Challenge

The challenge before us now is how to retrofit this new technology onto existing vehicles and engines that are being used today. These vehicles and engines do not have the emissions control technology that is required for new vehicles. Consequently, they are the "dirtiest" diesel vehicles and engines in use, and there are a lot of them. EPA estimates there are currently 11 million heavy duty vehicles and engines in use. This compares to about 500,000 new clean diesel vehicles and engines that are normally put in use annually. In other words, there are 22 existing vehicles and engines in the fleet for every new clean diesel vehicle or engine that is added each year.

Because diesel engines are so durable, the existing equipment in the fleet will not be fully replaced until the year 2030.[3] The best way to clean up these vehicles and engines is to retrofit them with the same kind of technology that is being installed in new ones.

Fortunately, this can be done quite cost-effectively. ECTA has undertaken studies to examine the cost-effectiveness of various emission reduction strategies. These studies adjust for the difference in the economic and health impact associated with reducing different pollutants. According to studies done by the California Air Resources Board, reducing a ton of particulate matter is 20 times more valuable to society than reducing a ton of NOx.[4] When this adjustment

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[2] *See* Environmental Protection Agency (July 7, 2005), "2007 Heavy-Duty Highway Final Rule," i.e. http://www.epa.gov/OMSWWW/diesel.htm.

[3] *See* Senator Voinovich Press Release (June 16, 2005), http://voinovich.senate.gov/news_center/record.cfm?id=238996&.

[4] *See* The Carl Moyer Program Guidelines, approved in revision 2005, California Environmental Protection Agency Air Resources Board, released January 6, 2006, Executive Summary, p. 1, http://www.arb.ca.gov/msprog/moyer/guidelines/Carl_Moyer_Guidlines_Part1.doc.

is made, diesel retrofits prove to be the most cost-effective emission reduction strategy other than inspection and maintenance. For example, installing a diesel particulate filter on a Class 7 heavy duty truck is 15 times more cost-effective than replacing a conventional bus with a new bus, and over 46 times more cost effective than building an HOV lane.[5]

The only way to retrofit these 11 million existing vehicles and engines is to provide owners with financial assistance to install the necessary equipment to substantially reduce the emissions of particulate matter and other pollutants in the exhaust. Such a retrofit could include an after-treatment device, such as a diesel particulate filter ("DPF") or diesel oxidization catalyst ("DOC"). It also could include vehicle replacement, engine replacement, engine rebuilds, engine repair, and refueling.

Financial assistance is necessary because the installation of a retrofit involves a cost that oftentimes does not introduce enough operational efficiency to generate a return on the investment. So, equipment owners are understandably reluctant to invest in a retrofit unless they are given some form of financial assistance to help defray the cost. And, it makes sense for the public to help finance retrofits because they generate benefits in the form of cleaner air for all of society.

Congressional Initiatives

Fortunately, Congress has authorized three programs to help provide financial assistance to these equipment owners. And, Congress has appropriated funds to support these programs.

First, EPA has administered the Clean School Bus program for over five years. This program, which received its first appropriation in FY03, provides grants to school districts for the purpose of retrofitting their diesel-powered school buses. There are over 500,000 school

[5] *See* ECTA comments (February 20, 2007) in Federal Highway Administration Docket No. FHWA-2006-26383, Table 4, p. 10.

buses on the road today that need to be retrofitted in order to improve air quality for children transported to and from school in these vehicles. Over 25 million children ride these buses.[6] These children are uniquely susceptible to bronchial problems associated with breathing vehicle exhaust.

Second, Congress decided as part of the 2005 Energy Policy Act to enact the Diesel Emissions Reduction Act ("DERA"). The Act authorizes the expenditure of $200 million a year for five years for grant and loan programs administered by EPA and the states to finance the installation of diesel retrofits on a full range of diesel-powered vehicles ranging from drayage trucks to bulldozers. The Act enjoyed an enormous amount of bi-partisan support passing the Senate by a vote of 92 to 1. And, it was supported by over 150 companies, trade associations, public interest groups, and NGOs. Last year, Congress appropriated $49.2 million for DERA. One of the Subcommittee Members, Mr. Shimkus, took the lead along with Ms. Matsui to secure this funding.

Third, Congress also included a provision in the Safe, Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users ("SAFETEA-LU") to provide financing for diesel retrofits under the Congestion Mitigation and Air Quality ("CMAQ") program.[7] Specifically, Congress made funding for diesel retrofits a priority for CMAQ funding under the Act. Significantly, Congress decided that diesel retrofits should be the only specific activity which is given a priority in the CMAQ program.

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[6] *See* School Bus Pollution Report Card 2006: Grading the States, Union of Concerned Scientists (May 2006), Table 2, p. 11.

[7] *See* 23 U.S.C. § 149 (f).

Lack of Funding

Despite the significant efforts that have been made by Congress to provide the financing for diesel retrofits, the amount of funding made available is woefully inadequate. For example, during the period from FY03 to FY05, 292 proposals for funding under EPA's Clean School Bus program were submitted. In aggregate, these proposals requested $106 million in grants. Because only $17.3 million was appropriated for EPA's Clean School Bus program, only 72 of the 292 proposals could be funded. In other words, because of funding constraints 75% of the proposals presented by school districts to clean up buses for school children could not be funded.

This lack of funding had an impact on all the states represented by Members of the Subcommittee. For example, Mr. Chairman, 11 proposals for $3.7 million were filed with EPA from your state of Virginia, but because of the scarcity of funds only one was funded, less than 10% of the proposals. This is truly unfortunate because Virginia has a very significant need for funds to retrofit its school bus fleet. As of 2006, Virginia had 13,204 school buses on the road with an average age of ten years. These school buses emit on average 2.1 times more particulate matter per mile than a big heavy duty truck. Only 2.3% of the school buses in Virginia have been cleaned up through the use of retrofits. Nearly 98% of the fleet is on hold. Clearly, the need for funding far exceeds the funds available.[8]

This need for funding to retrofit school buses goes well beyond Virginia. Every state represented in this Subcommittee is in need of funding. In fact, an average 97% of the school buses in the states of the Members on the Subcommittee await funding.

EPA has been trying to address this funding problem for many years by using Supplemental Environmental Projects ("SEPs") to fund diesel retrofits, particularly on school buses. These projects are undertaken by a defendant as part of a settlement in an environmental

[8] *See Supra* Note 6, Chapter 5, pp. 35-60.

enforcement action brought by EPA or the Department of Justice. They specifically do not include actions which a defendant is otherwise legally required to perform. So they generate environmental and public health benefits that would not have occurred without the settlement.[9]

SEP projects for diesel retrofits have been very significant. Between 2003 and 2006 nearly $62 million in diesel retrofit projects have been funded by SEPs. In fact, of all the diesel particulate trap retrofits installed between 2003 and 2006, 37% were financed in whole or in part by SEPs.[10] Most of these projects involved funding diesel retrofits for school buses. In fact, the SEP funding for diesel retrofits on school buses far exceeded the funds appropriated under EPA's Clean School Bus program.

Funding under SEPs for diesel retrofits have benefitted many of the states represented in this Subcommittee. Mr. Chairman, in your state, Virginia Electric and Power Company funded $2 million in diesel retrofits on school buses as part of a SEP. Appendix A to my testimony includes a listing of the SEP projects for diesel retrofits that are publicly known so that Members of the Subcommittee can see how these SEPs have benefitted their states.

The Problem

Unfortunately, EPA has now decided that it must cease funding such projects because of a potential conflict with the Miscellaneous Receipts Act. The Agency has no choice. In a July 20, 2006 Policy Memorandum, EPA published its decision to stop funding SEP projects that involve the retrofit or replacement of school buses.[11] Although the Policy Memorandum states that diesel retrofits/and replacement projects for buses, trucks, and other vehicles to reduce

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[9] *See* EPA Policy Memorandum, Issuance of Final Supplemental Environmental Projects Policy (April 10, 1998), p. 1.

[10] *See Supra* Note 6 at Chapter 4, P. 33.

[11] *See* EPA Policy Memorandum, Transmittal of Updated List of "Project Ideas for Potential Supplemental Environmental Projects" (July 20, 2006), p. 2.

emissions that contribute to childhood asthma can be funded, the Memorandum goes on to state that:

> *In light of the Diesel Emission Reduction Act of 2005, USEPA and USDOJ enforcement staff are advised to discuss the diesel emission reduction projects identified below with USEPA Headquarters enforcement staff prior to their inclusion as SEPs in a federal enforcement settlement.*

EPA's decision to limit SEPs for diesel retrofits is motivated out of a concern that such projects might contravene the Miscellaneous Receipts Act.[12] This conclusion is drawn from a June 2003 Policy Statement in which EPA explains that the prohibition of the use of SEP funds for activities mandated by Congress is drawn specifically from the Miscellaneous Receipts Act.[13]

This decision appears on its face to be totally inconsistent with all of the actions taken by Congress to promote and fund diesel retrofits over the last five years. These include: appropriations for the Clean School Bus program dating back to FY03, the enactment of DERA in the 2005 Energy Policy Act, and the enactment of a provision in SAFETEA-LU funding diesel retrofits under CMAQ a priority.

The Solution

H.R. 3754 merely rectifies this inconsistency. It authorizes EPA to continue to use SEPs to fund diesel retrofits regardless of the restrictions that may exist in the Miscellaneous Receipts Act, as long as such SEPs: (1) protect human health and the environment; (2) are related to the alleged violations; (3) do not constitute activities the defendant would otherwise be required to perform; and (4) does not provide funds for the agency to carry out internal operations. In other words, H.R. 3754 is a tightly constrained exclusion.

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[12] *See* 31 U.S.C.§ 3302(b).

[13] *See* EPA Policy Memorandum "Expanding the Use of Supplemental Environmental Projects" (August 7, 2007); p. 2-3.

Such statutory exclusions from the Miscellaneous Receipts Act have been adopted before by Congress. These include:

- a provision permitting federal agencies to retain a share of the savings from energy savings performance contracts under the National Energy Conservation Policy Act;[14]
- a provision authorizing federal agencies to accept any financial incentive, goods, or services generally available from utilities companies to increase energy efficiency or to conserve water or manage electricity demand;[15] and
- a provision establishing a Department of Veterans Affairs Medical Care Collections Fund and allowing the agency to retain settlement funds under the Federal Medical Care Recovery Act stemming from care provided at the Department of Veterans Affairs facilities.[16]

Certainly, such a statutory action is justified for diesel retrofits because:

- existing heavy duty vehicles and engines are the major source of fine particulate matter pollution from the transportation sector;
- such pollution is a serious threat especially to sensitive populations like the 25 million children riding older diesel-powered school buses;
- the technology to retrofit these vehicles is proven and is the most cost effective emissions reduction strategy other than inspection and repair;
- Congress has acted many times to provide funding for diesel retrofits because it sees the wisdom of such an investment;
- the demand for funding far exceeds the supply; and
- the funding provided under SEPs for diesel retrofits will not affect the federal budget.

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[14] 42 U.S.C. § 8287. *See* GAO, B-287488, (June 19, 2001) (42 U.S.C. § 8287 and section 625 of Pub.L.No. 104-52 permitted federal agencies to retain a share of savings from energy savings performance contracts under the National Energy Conservation Act).

[15] 42 U.S.C. § 8256. *See* GAO, B-265734, (February 13, 1996))section 625 of Pub.L.No. 104-52, with a provision then in 42 U.S.C. § 8256, permitted federal agency to credit 50 percent of an energy efficient rebate to accounts that fund its energy and water conservation activities. (The former provision of 42 U.S.C. § 8256 which provided for an agency's retention of the 50 percent credit for expenditure for additional energy efficiency measures has since been repealed by 110 P.L. 140 (2007).)

[16] 38 U.S.C. § 1729A. *See* Memorandum for Assistant Attorney General, Civil Division, and Office of The Legal Counsel *Miscellaneous Receipts Act Exception for Veterans' Health Care Recoveries* (December 3, 1998).

In light of these factors, there does not appear to be any compelling rationale for opposing H.R. 3754. This is why 43 companies, associations, and NGOs have endorsed the bill and the Senate Environment and Public Works Committee unanimously approved it last week. I have included a copy of the letter from the 43 groups endorsing H.R.3754 in Appendix B of my testimony.

Mr. Chairman, thank you for the opportunity to appear before the Subcommittee.

APPENDIX A

SEP PROJECTS 2003-2007

DIESEL RETROFITS

SEP PROJECTS 2003-2007 – DIESEL RETROFITS

RESPONDENT	DATE	SEP AMOUNT	LOCATION	DESCRIPTION
3M		$65,000	Minnesota	For South Washington County School District - 71 buses with catalysts
A. Finkl	8/11/2006	$75,000	Illinois	To retrofit 34 vehicles owned by the City of Chicago with DOCs
Alcoa, Inc.	4/10/2003	$750,000	Texas	For retrofitting school buses.
American Electric Power Service Corporation	10/9/2007	$60,000,000	New York, New Jersey, Massachusetts, Vermont, Connecticut, New Hampshire, Maryland, Rhode Island, Ohio, Indiana, Kentucky, North Carolina, Virginia, West Virginia, and Pennsylvania	Total SEP of $60 million for mitigation projects, of which $24 million goes to New York, New Jersey, Massachusetts, Vermont, Connecticut, New Hampshire, Maryland, and Rhode Island. Of the remaining $36 million, $21 must be spent on mobile source emission projects including truck stop electrification in Ohio, Indiana, Kentucky, North Carolina, Virginia, West Virginia, and Pennsylvania.
Archer Daniels Midland	4/9/2003	$6,300,000	Missouri	Retrofitting diesel engines in school buses, to result in significant reductions of air emissions from those mobile sources. ($1.1 million to retrofit at least 650 school buses in St. Louis area with diesel oxidation catalysts and $2 million for A Illinois Green School Bus Program.)
ARCO Terminal Services Corporation	10/21/2005	$675,000	California	To control diesel exhaust from cargo handling equipment, such as fork lifts, rubber tire gantry cranes, and trucks at the Ports of Long Beach and Los Angeles
Brunswick Corporation, Mercury Marine Division	9/25/2005	$107,500	Wisconsin	To install diesel oxidation catalysts on vehicles owned by the company, the City of Fond du Lac, the County of Fond du Lac, and/or other municipal vehicles in Fond du Lac County.

Bunge North America, Inc	11/6/2006	$522,648	Multistate	**Indiana:** $166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles **Ohio**: $166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program **Kansas**: Emporia School District Diesel Retrofit: $22,640.36 to the Emporia Unified School District No. 253 for the purchase and installation of diesel oxidation catalyst retrofitting equipment on school buses owned and operated by USD 253. **Iowa**: $83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa **Alabama**: $83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville
Cargill	9/1/2005	$3,500,000	Tennessee and Arkansas	For the Mid-South Clean Air Coalition Diesel Retrofit Program located in the states of Arkansas and Tennessee (greater Memphis metropolitan region). Details of the EPA consent decree with Cargill are available at: cfpub.epa.gov/compliance/cases/.
Casting Corporation (ICC)	9/29/2005	$145,000	Indiana	To retrofit the Indianapolis IndyGo municipal bus fleet with Diesel Oxidation Catalysts
Caterpillar	9/6/2002	$40,000	Ohio	To retrofit 26 pieces of cargo-handling equipment (tow motors and cranes) at the Port of Cleveland with DOCs.
Chevron	10/16/2003	$1,500,000		For diesel retrofits
Cosmed	8/18/2005	$1,000,000	Multistate	These environmental projects will include the emission control retrofit of municipal on-road and off-road diesel vehicles in Camden, NJ, Lake County, Ill, and San Diego, CA.
DaimlerChrysler	12/21/2005	$3,000,000	Nationwide	To reduce emissions from existing diesel engines
Equistar Chemicals Settlement	7/18/2007	$175,000	Illinois	Total SEP is $125 million of which at least $70,000 to the Minooka Community School District No. 201 to fund the purchase of one new school bus for the School District and at least $105,000 to the Illinois EPA Clean School Bus Program.

Exelon Mystic LLC	1/30/2004	$4,500,000	Massachusetts	$3.25 million to fund the retrofit of Boston school buses with diesel emission control technologies and supply these buses with ultra-low sulfur diesel fuel. An additional $1.25 million of the enforcement action will be used to fund pollution control improvements to commuter rail trains operating out of Boston's North Station.
Exxon Mobile	10/14/2005	$1,300,000	Illinois	For implementation of diesel emission reduction projects located near refineries in Torrance, California; Billings, Montana; Joliet, Illinois; Baytown, Texas; and Beaumont, Texas. These projects will include the retrofit of existing diesel municipal bus fleets operating in each of these communities with emissions control technology such as diesel oxidation catalysts and/or diesel particulate filters. (250,000 for city fleets in Chicago)
Georgia Pacific	9/2/2005	$3,600,000	Georgia	To retrofit buses in Atlanta Public Schools
PSEG Fossil L.L.C.	11/30/2006	$3,250,000	New Jersey	To reduce particulate matter from diesel engines in New Jersey.
Sunoco	6/16/2005	$1,600,000	Pennsylvania	Provide the City's Diesel Difference program with $1.2 million of diesel retrofit installations and equipment to be used for public vehicle fleets. Provide a $400,000 credit to offset the increased cost between regular diesel fuel and ultra-low-sulfur diesel fuel for City and Philadelphia School District vehicles.
Toyota	3/7/2003	$20,000,000	Nationwide	Start the Clean Buses for Kids program
Valero (Premcor) Refinery	8/16/2007	$100,000	Ohio, Tennessee	**Total SEP of $4.25 million, including:** **Lima, Ohio:** $50,000 for diesel retrofits of municipal trucks and buses **Memphis, Tennessee:** $50,000 for diesel engine and truck retrofits at the Port of Memphis
Valero Eagle Petroleum Refinery	6/16/2005	$2,500,000	Multistate	targeting the reduction of emissions from diesel fleets operating in various cities in California, Colorado, Oklahoma, Louisiana, and Texas, near some of their refineries. Projects that could be funded in these communities could include diesel retrofit projects, including enhancing the availability of ultra-low sulfur diesel fuel for fleets operating in these areas. (Total SEP funds are $5.5 million)

Virginia Electric and Power Company	4/21/2003	$8,300,000	Virginia and West Virginia	• Clean Diesel, Idle Reduction and School Bus Retrofit Project - To Be Conducted within the District of Columbia, Delaware, Maryland, Pennsylvania, Virginia and West Virginia - $2.5 million • New Jersey Public Transit -- Diesel Bus Catalyzed Particulate Filters Retrofit - $2.7 million • Connecticut School Bus Retrofit Project – $1.1 million • Virginia School Bus Retrofit Project – $2.0 million
	Total Funding:	**$122,830,148**		

APPENDIX B

FEBRUARY 8, 2008 LETTER ENDORSING H.R. 3754

February 8, 2008

The Honorable Barbara Boxer
Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable James Inhofe
Environment and Public Works Committee
United States Senate
Washington, DC 20510

The Honorable John Dingell
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

The Honorable Joe Barton
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

As a uniquely broad coalition of environmental, science-based, public health, industry, and state and local governmental groups, we support the enactment of legislation (S. 2146/H.R. 3754) to allow the Environmental Protection Agency (EPA) to continue to fund diesel retrofits through Supplemental Environmental Projects (SEPs).

Congress recognized diesel retrofits as one of the most cost-effective ways to improve air quality by passing and funding the Diesel Emissions Reduction Act (DERA). DERA was enacted in the Energy Policy Act of 2005, and $49.2 million was included in the FY2008 Consolidated Appropriations Act for this important program. Retrofits have also received funding through SEPs, which are environmentally beneficial projects included in enforcement settlements. More than $60 million in diesel retrofit projects have been funded over the past few years through SEPs. This is an effective way to improve air quality around the country without impacting the Treasury.

However, a 2006 EPA memo put forth a new policy that diesel retrofits no longer qualify for funding through SEPs once DERA receives appropriations. The memo cites the Miscellaneous Receipts Act in stating that funds appropriated by Congress cannot be supplemented via other means. Bipartisan legislation (S. 2146/H.R. 3754) introduced in the Senate and House would allow SEPs to fund diesel retrofits regardless of congressional appropriations.

We urge Congress to quickly enact this legislation (S. 2146/H.R. 3754) in order to not jeopardize the inclusion of diesel retrofits in pending EPA settlements. Thank you for your assistance in this important matter.

Sincerely,

American Association of Port Authorities (AAPA)
American Lung Association
American Road and Transportation Builders Association
Associated General Contractors of America (AGC)
Association of Equipment Manufacturers
BASF Catalyst LLC
BOSCH
Breakthrough Technologies Inc
Caterpillar Inc.
Clean Air Task Force (CATF)
Clean Air Watch
Clean Fuels Ohio
Corning Incorporated
CSX
Cummins Inc.
Diesel Technology Forum (DTF)
Donaldson Company, Inc
Emissions Control Technology Association (ECTA)
Engine Control Systems
Engine Manufacturers Association (EMA)
Environmental Defense
Greater Akron Partnership for Sustainability
Johnson Matthey, Inc
Manufacturers of Emission Controls Association (MECA)
National Association for Pupil Transportation (NAPT)
National Association of Clean Air Agencies (NACAA)
National Association of State Directors of Pupil Transportation Services
National Association of Waterfront Employers (NAWE)
National Conference of State Legislatures
National School Transportation Association
Natural Resources Defense Council (NRDC)
Navistar International Corp
NGK Automotive Ceramics USA, Inc.
Northeast States for Coordinated Air Use Management (NESCAUM)
Ohio Environmental Council
Regional Air Pollution Control Agency
Tenneco Automotive
Unifrax Corporation
Union of Concerned Scientists
United Motorcoach Association
United States Chamber of Commerce

Mr. BOUCHER. Thank you, Mr. Regan.

Mr. Schneider, we would be happy to hear from you.

STATEMENT OF CONRAD SCHNEIDER, ADVOCACY DIRECTOR, CLEAN AIR TASK FORCE, BRUNSWICK, ME

Mr. SCHNEIDER. Thank you, Mr. Chairman, Representative Upton and other members of the committee. My name is Conrad Schneider and I am the advocacy director of the Clean Air Task Force, an environmental advocacy group based in Boston but working nationwide, and we work with a national partnership to reduce diesel emissions, a coalition of hundreds of public health, environmental and other organizations and we support H.R. 3754 to allow the continued use of diesel retrofits in SEPs.

As part of the recent budget bill, Congress for the first time appropriated money under the Diesel Emission Reduction Act, approximately $50 million, it has been said. That will help to pay for the retrofits that we so desperately need for public health reasons. That is the good news. The bad news is that EPA now has decided that these no longer qualify to be used as part of settlements under these Supplemental Environmental Projects, and that is because they say that it would violate the Miscellaneous Receipts Act. We ask for your support for this to create a clarification that EPA may continue to use that money.

Why do we care about this as an environmental organization? We care about it because we are engaged in a comprehensive campaign to try to clean up diesel pollution, which is a brew of toxins and pollution particles that can be considered the number one environmental health problem that threats the United States today. Eleven million diesel engines and buses and trucks, construction equipment and so forth produce 1,000 tons of toxic particulate matter every year, and according to a study that was performed by EPA's benefits consultant using EPA-approved methodology, that pollution results in approximately 21,000 premature deaths each year plus tens of thousands of asthma attacks and heart attacks. Nationally, diesel exhaust poses a cancer risk that is more than eight times higher than all of the air toxics that EPA tracks combined. While EPA's new engine rules set the standards for emissions from new diesel engines, EPA estimates there are about 11 million engines currently in operation that will take decades to fully replace them with new, cleaner engines.

This retrofit technology, as Mr. Regan mentioned, is proven and cost-effective and I would direct your attention both to the screen and toward I believe a piece of paper in front of you. We did some emissions testing of a vehicle, a box truck, before it had a diesel particulate filter on it, and you can see the emissions there on the left, and on the right-hand side of that chart, you can see that once it had a diesel particulate filter, those emissions were reduced by up to 90 percent. That is the effective part of the cost-effective that we are talking about here.

These SEP monies have been a very important funding stream for diesel projects, providing tens of millions of dollars. In fact, just this past December, EPA entered into a settlement with American Electric Power containing a Federal SEP, designating as much as $21 million for diesel retrofits. More of concern, there are settle-

ments that are currently under consideration by the Agency that may exclude these very cost-effective measures because of EPA's current opinion on this. We feel that this position unnecessarily hampers the progress we could be making and we applaud Representative Costa and his cosponsors for addressing this problem by introducing this legislation to correct it.

The Miscellaneous Receipts Act was really passed in order to ensure that government agencies didn't bypass your appropriations authority and keep monies that otherwise would inure to their agency budgets rather than turning them back over to the Federal Treasury. There is no legislative history in that act to suggest that it was meant to disturb private settlement agreements, particularly where the money as in here in SEPs is really not directed toward the Agency or to the Treasury. It is directed to really third parties who administer these Supplemental Environmental Projects. So there is no loss to either the Agency budget or to the Federal Treasury by creating this exclusion as we described it.

We feel that rather than engage in a protracted argument with the Agency about their interpretation, a statutory clarification is in order if it can be enacted quickly, primarily because EPA is in the midst of negotiating many of these settlements and they won't be able to have these type of cost-effective projects if Congress fails to act, and it won't mean that additional dollars won't flow to the treasury. It will mean that probably the Supplemental Environmental Projects that are included won't be as effective as the ones that use diesel.

So in conclusion, I just would also echo that this wouldn't be the first time that Congress created an exclusion to the Miscellaneous Receipts Act. It has happened many times before and I detailed those in my written testimony. And unlike the current bill, even those exemptions would have allowed the executive agencies to hold onto the money. That is not what we are asking here. We are asking that they continue to go to cost-effective pollution control.

So thank you very much. I will be happy to answer any questions, and we just urge passage of the bill as soon as practicable. Thank you.

[The prepared statement of Mr. Schneider follows:]

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON ENERGY AND AIR QUALITY

HEARING ON H.R. 3754, TO ALLOW THE CONTINUED USE OF SUPPLEMENTAL ENVIRONMENTAL PROJECT FUNDS FOR DIESEL RETROFITS

TESTIMONY OF
CONRAD SCHNEIDER, ADVOCACY DIRECTOR
CLEAN AIR TASK FORCE

FEBRUARY 13, 2008

Conrad G. Schneider
Advocacy Director
Clean Air Task Force
169 Park Row
Brunswick, ME 04011
cschneider@catf.us

Chairman Boucher, Rep. Upton, distinguished members of the Subcommittee, I am Conrad Schneider, Advocacy Director of the Clean Air Task Force. I am pleased to testify today on behalf of the National Partnership to Reduce Diesel Emissions – a coalition of hundreds of public health, environmental, and other organizations -- in support of H.R. 3754 to allow the continued use of Supplemental Environmental Projects (SEP) to fund diesel emission retrofits. See attached Platform of the National Partnership to Reduce Diesel Pollution and List of Endorsers. As part of the recent Omnibus Budget bill, Congress for the first time appropriated funds under the Diesel Emissions Reduction Act of 2005 (DERA). Congress approved approximately $50 million, with another $10 million specifically for California, out of the $200 million per year authorized under DERA. This money will be help pay for emission control retrofits of existing diesel engines in areas of the country that fail to meet federal air quality standards. That is the good news.

The bad news is that with the funding of DERA, the U.S. Environmental Protection Agency (EPA) has phased out including diesel retrofit projects as Supplemental Environmental Projects (SEPs) in its enforcement settlements. In settling environmental enforcement cases, EPA can require inclusion of environmentally beneficial projects, known as Supplemental Environmental Projects or SEPs. However, EPA believes that allowing diesel retrofits to be funded by SEPs once Congress has specifically appropriated monies for that purpose violates the Miscellaneous Receipts Act, which says that agency budgets appropriated by Congress cannot be supplemented via other means. We ask your support for passage of H.R. 3754, which would correct this problem by clarifying that EPA may continue to include diesel retrofit programs in its SEPs.

The Clean Air Task Force (CATF) through the National Partnership to Reduce Diesel Emissions is engaged in a comprehensive campaign to significantly reduce diesel pollution—a brew of toxins and pollution particles that can be considered the number one environmental health threat in the U.S. today. Every day in the United States more than 11 million diesel engines in buses, trucks, construction and farm equipment produce more than 1,000 tons of diesel particulate matter. According to a study performed by EPA's own health benefits consulting firm using EPA-approved methodology, this pollution results in approximately 21,000 premature deaths each year plus tens of thousands of asthma attacks, and heart attacks.

Diesel exhaust is most often concentrated in urban neighborhoods, on school buses and transit buses, and near schools and workplaces—where people are most likely to be exposed in large numbers. In addition to the health risk from particulate matter, nationally, diesel exhaust poses a cancer risk that is more than eight times higher than the total cancer risk of all the other air toxics that EPA tracks ***combined.*** This risk is three times greater if you live in a city. Finally, global warming and its resultant health and environmental threats are also impacted by diesel pollution. Recent NASA climate research suggests that black carbon from diesel engines and other sources may be causing as much as a quarter of the world's global warming. And because black carbon warms the atmosphere quickly and stops warming it quickly when removed, eliminating U.S. diesel particulate emissions "overnight" would have the same effect in *10 years* as full U.S. compliance with the Kyoto Protocol would have had in *100 years.*

Currently, more than 90 million Americans are living in counties designated by EPA to be in nonattainment for particulate matter. While EPA's diesel engine regulations set standards for diesel particulate matter emissions from new diesel engines, EPA estimates that there are more than 11 million diesel engines currently in operation and

that it will take decades to fully replace them with newer, cleaner engines. Meanwhile, the fleet of existing dirty engines contributes to the difficulty of states to meet particulate matter attainment. Diesel retrofit technology is a proven, cost-effective way to achieve this goal.

SEPs have been an important funding stream for diesel retrofit projects. Most recently, in December of 2007, EPA entered into a settlement with American Electric Power containing a federal SEP designating as much as $21 million for diesel retrofits. In February 2006, DaimlerChrysler entered into a settlement with EPA containing a SEP for $3 million for diesel retrofits. In 2004, Toyota agreed to spend $20 million on a diesel retrofit SEP aimed specifically at school buses. Archer Daniel Midlands has also spent upwards of $6 million retrofitting schools buses as part of a SEP. This is just a small sampling of diesel retrofit projects that have been funded through SEP dollars. Moreover, we understand that several enforcement settlements are pending that may exclude diesel retrofit SEPs due to EPA's position on this matter.

Undercutting the new DERA funding with a prohibition on SEP money for diesel retrofits unnecessarily hampers the progress that we could make in retrofitting many additional diesel engines. Representatives Costa, Cardoza, McNerney, and Nunes have co-sponsored legislation; H.R. 3754, to address this problem by clarifying that EPA may continue to include diesel retrofit programs in its SEPs. The Senate companion bill, S. 2146, sponsored by Senators Carper, Clinton, and Voinovich, just passed unanimously out of the Senate Environment and Public Works Committee last week. A broad, diverse group of stakeholders including environmental and public health organizations, government agencies, and the diesel industry supports continued use of SEP funds for diesel retrofits. See the attached letter to the chairs and ranking members of this

Committee as well as the Senate Environment and Public Works Committee dated February 8, 2008. In fact, we are aware of no opposition to the bill.

The Miscellaneous Receipts Act was passed in order to ensure that government agencies did not bypass the appropriations authority of Congress by augmenting their budgets via other means, for example: user fees, fees for training courses, parking fees, contract and lease fees and revenues, monetary awards in court cases involving the agencies, court costs and fees, or civil penalties. There is no legislative history to suggest that Congress intended to preclude agencies from directing private settlement money to help mitigate environmental damage allegedly caused by an environmental defendant. Frankly, we think this extension of the Miscellaneous Receipts Act stands reason on its head because SEP money never goes to the EPA and will not be disbursed through the process set up under DERA. The SEP money goes directly from the alleged environmental violator to the SEP project (generally administered by a third party) to mitigate environmental damage caused by the alleged violation. In the case of the recent AEP settlement, the consent decree simply directed the company to retrofit the fleets of locomotives and barges it uses to move coal. Nevertheless, the legal position taken by EPA's lawyers in this matter means that inclusion of these cost-effective measures in SEPs must stop. However, rather than engage in a protracted argument with EPA over its interpretation of the Act, we all believe a statutory clarification is in order if it can be enacted quickly. EPA is in the midst of settling numerous environmental enforcement cases. If EPA cannot include diesel retrofit SEPs in these settlements, it will not mean that additional dollars will flow to the U.S. Treasury. More likely it will mean that the monies will go to less cost-effective SEP projects. Until Congress acts, EPA will not include diesel retrofit SEPs in these settlements.

Note that Congress previously has created explicit exemptions to the Miscellaneous Receipts Act. For example, Congress enacted a provision permitting federal agencies to retain a share of the savings from energy savings performance contracts under the National Energy Conservation Policy Act. See 42 U.S.C. § 8287 (energy savings performance contract program); Act Sept. 29, 1988, P.L. 100-456, Div A, Title VII, Part D, § 736, 102 Stat. 2006; Nov. 29, 1989, P.L. 101-189, Div A, Title III, Part C, § 331, 103 Stat. 1417 (savings retention authorization, for DOD; note, retained funds must be spent for designated purposes). Similarly, Congress enacted a provision authorizing federal agencies to accept any financial incentive, goods, or services generally available from [utility companies] to increase energy efficiency or to conserve water or manage electricity demand. 42 U.S.C. § 8256 (this program--financial incentives for federal energy saving-- is related to above-referenced program. For specific authorization for agencies to retain 50% of rebates from utility energy efficiency programs and from energy savings, see: Act Nov. 19, 1995, P.L. 104-52, Title VI, § 625, 109 Stat. 502. In addition, the Veterans Reconciliation Act of 1997 (38 U.S.C. §1729A) exempts funds recovered or collected under the Federal Medical Care Recovery Act for certain medical care furnished to veterans, and thus those funds may be deposited in the VA's Medical Care Collections Fund and does not need to be deposited in the general Treasury. Lastly, 10 U.S.C. §2646 allows Department of Defense agencies to retain credits, discounts, or other fees received pursuant to contracts for travel-related services. Unlike the current bill, these exemptions expressly allow executive agencies to retain the money. In H.R. 3754, we are asking only that settlement money continue to be used for cost-effective pollution reduction, not that it go to EPA's budget.

Passage of H.R. 3754 is urgently needed. In order not to jeopardize inclusion of diesel retrofit SEPs in pending EPA settlements, we urge passage of the bill as soon as practicable.

Thank you for your attention to this important matter.

Campaign Platform of the National Partnership to Reduce Diesel Pollution

In the United States, more than 13 million engines use diesel fuel to build our nation's buildings and roads and to transport our goods and citizens. However, particulate matter pollution from diesel emissions shortens the lives of an estimated 21,000 people nationwide every year. In addition, the cancer risk that diesel exhaust poses is 8 times greater than the cancer risk from all other 133 air toxics tracked by EPA combined.

The National Partnership to Reduce Diesel Pollution, a collaboration of organizations throughout the country, is committed to the following goals: To reduce direct diesel fine particulate matter emissions 40 percent by the year 2012, 55 percent by 2015, and 70 percent by 2020. Achieving these goals would save tens of thousands of lives between now and 2030, improve health and well-being by reducing ailments such as heart and asthma attacks, and help mitigate global warming.

The National Partnership to Reduce Diesel Pollution advocates that plans incorporating the following principles should be implemented to significantly reduce diesel pollution:

1. **Plans should be designed to minimize risk to public health.** Acknowledging that there is no known safe level for exposure to diesel pollution, diesel emissions reductions should go beyond attainment of state and federal ambient health standards for air quality, and deeper diesel pollution reductions should be pursued as technology improves.

2. Plans should consider options to reduce diesel pollution from all sources.

3. Plans should utilize the best pollution controls and management practices to guarantee the greatest possible reduction in diesel emissions. Strategies could include: retrofits, rebuilds, replacements, cleaner fuel, implementing and enforcing no-idling policies, encouraging stricter inspection and maintenance practices, and implementing commercial and industrial environmental management systems

4. Plans to reduce diesel pollution should target particulate matter, as its components have serious health and global warming impacts. Particulate matter has been identified by public health and medical experts as the most dangerous component of diesel pollution. Targeting particulate matter will also reduce black carbon soot, a global warming pollutant, helping to reduce the serious economic, health, and environmental threats posed by global warming.

5. Plans to reduce diesel particulate matter should not significantly increase other air pollutants. Policies that create other pollution, including net increases in nitrogen oxides (NOx) or other air toxics, should be avoided.

6. Plans should require that, to the maximum extent feasible, each sector contributing to diesel pollution share in the expense and effort of reducing this pollution. A diversity of funding sources, public and private, should be utilized to achieve maximum pollution reductions. Innovative funding and incentive strategies (for example: loans, tax credits, and small-scale grants) should be pursued to encourage private fleet participation.

7. Plans should target reducing exposure to sensitive subpopulations, especially the elderly, children, and environmental justice communities, where pollutant levels are highest and where the potential for human health benefits are greatest.

8. Plans should ensure that adequate pollution monitors exist to create an accurate inventory and to provide on-going tracking of emissions. Comprehensive diesel emission inventories of all sectors (on-road, off-road and stationary) are an essential tool for identifying opportunities and assessing progress.

9. Plans should support engagement of all levels of government to pursue maximum diesel pollution reductions.

Organizations Endorsing the Campaign Platform of the National Partnership to Reduce Diesel Pollution

(Jan 11, 2008)

National Groups
Clean Air Task Force
Environmental Defense
Izaak Walton League of America

CONNECTICUT
Bridgeport East End Community Council
Canton Advocates for Responsible Expansion, Inc.
Center for Serenity
Citizens Awareness Network
Clean Water Action, Connecticut
Collaborative Center for Justice
Common Ground High School Environmental Justice Class
Connecticut Citizen Action Group
Connecticut Coalition Against Millstone
Connecticut Coalition for Environmental Justice
Connecticut Fund for the Environment
Environmental Defense
Environment Northeast
Farmington River Watershed Association
Health Care for All
League of Women Voters
Middlesex Clean Air Association
Milford Environmental Concerns Coalition
People's Action for Clean Energy
Portland-River Valley Garden Club
Northeast Sustainable Energy Association
Southern CT State University Environmental Futures
Sierra Club Connecticut Chapter
SEIU Connecticut State Council
Stamford South End Neighborhood Revitalization Zone
Toxics Action Center
Unitarian Universalist Society East, Sustainable Living Committee

GEORGIA
American Lung Association of Southeast Region
Amalgamated Transit Union Local 732
Atlanta Bicycle Campaign
Earth Covenant Ministry
ECO-Action
Environment Georgia
Environmental Community Action Inc. (Eco-Action)
Georgia Interfaith Power and Light
GreenLaw (formerly Georgia Center for Law in the Public Interest)
Kids Against Pollution
Middle Georgia Democratic Women's Club

Mothers and Others for Clean Air
Southern Alliance for Clean Energy
Physicians for Social Responsibility

ILLINOIS
Accurate Tank Construction, Inc.
Accurate Tank Technologies
Addressing Asthma in Englewood Project
Advocate Health Care
African American Health Council
Amalgamated Transit Union #416
American Bottom Conservancy
American Cancer Society (Illinois)
Asian Health Coalition
Autotherm Enthal Systems, Inc.
Back of the Yards Neighborhood Council
Center for Neighborhood Technology
Centro Comunitario de Juan Diego Chicago Asthma Consortium
Chicago Chapter of the Coalition of Labor Women
Chicagoland Bicycle Federation
Citizen Action/Illinois
Clean Air Coalition of Harvey
Dynamic Fuel Systems, Inc.
Environment Illinois
Environmental Law & Policy Center
Environmental Research Foundation
Faith in Place
Foresight Design Initiative
Health and Environmental Justice- St. Louis
Healthy Chicago Lawn Coalition
Healthy Southeast Chicago Coalition Healthy Schools Campaign
Healthcare Consortium of Illinois
Hollywood North Park Community Association
Human Action Community Organization
Imagine Englewood if
Illinois Environmental Council
Illinois League of Conservation Voters
Illinois Maternal & Child Health Coalition
Illinois Parent Teacher Association
Illinois Public Interest Research Group
La Rabida Children's Hospital
Little Village Environmental Justice Organization
Metro Seniors in Action
McKinley Park Civic Association
Missouri Coalition for the Environment
Mobile C.A.R.E. Foundation
Metropolitan Chicago Healthcare Council
Oak Park Department of Public Health
Oak Park Environmental and Energy
Advisory Commission
People for Community Recovery
Pilsen Environmental Rights and Reform Organization
Public Health Institute of Metropolitan Chicago

Respiratory Health Association of Metropolitan Chicago
RICHTER Foundation
Rogers Park Community Action Network
South Austin Community Coalition
Southeast Environmental Task Force
Team Work Englewood
Voices for Illinois Children
West District Health Council

MASSACHUSETTS
Alternatives for Community & Environment (ACE)
Amalgamated Transit Union, Local 448 AFL-CIO
Chelsea Green Space and Recreation Committee
Clean Water Action Alliance of Massachusetts (CWA)
Dorchester Environmental Health Coalition (DEHC)
Environment Massachusetts
Environment Northeast (ENE)
Environmental Defense
Greater Four Corners Action Center
Lawrence Mayor's Health Task Force
Lowell Alliance
Lowell Board of Health
Neighborhood of Affordable Housing (NOAH- East Boston)
North End Outreach Network (NEON- Springfield)
Nuestras Raices (Holyoke)
Pioneer Valley Asthma Coalition (PVAC)
Pioneer Valley Community Environmental Health Coalition (PVCEHC)
Western Mass COSH

NEW JERSEY
Essex County Environmental Commission
GreenFaith
International Black Women's Congress, New Jersey Chapter
New Jersey Environmental Federation
New Jersey Environmental Justice Alliance-Diesel Committee
North Jersey Environmental Justice Alliance
QuestInk-Christian Youth Organization
Township of Irvington Environmental Commission

NEW YORK
American Lung Association of New York State
Citizens Campaign for the Environment
Huntington Breast Cancer Action Coalition, Inc
Neighborhood Network
Prevention Is The Cure, Inc.
Renewable Energy Long Island (RELI)
Sustainable Energy Alliance of Long Island

NORTH CAROLINA
Carolinas Clean Air Coalition
Southern Alliance for Clean Energy

Environmental Defense
Environment North Carolina
American Lung Association NC
Canary Coalition
Southern Environmental Law Center
NC Waste Awareness and Reduction Network

OHIO
Environment Ohio
Environmental Health Watch
Earthday Coalition
Kent Environmental Council
Izaak Walton League – Ohio Chapter
Izaak Walton League-Anthony Wayne Chapter
Izaak Walton League Black River Chapter
Izaak Walton League Buckeye All-State Chapter
Izaak Walton League Buckeye State Youth Chapter
Izaak Walton League Capital City Chapter
Izaak Walton League Cincinnati Chapter
Izaak Walton League Delta Chapter
Izaak Walton League Dry Fork Chapter
Izaak Walton League Fairfield Chapter
Izaak Walton League Fremont Chapter
Izaak Walton League Hamilton Chapter
Izaak Walton League Hocking County Chapter
Izaak Walton League Lawrence County Chapter
Izaak Walton League Lorain County Ely Chapter
Izaak Walton League Martin L. Davey Chapter
Izaak Walton League Medina Chapter
Izaak Walton League-Monroeville-Huron County Chapter
Izaak Walton League Mount Healthy Chapter
Izaak Walton League Seven Mile Chapter
Izaak Walton League-Tallawanda Chapter
Izaak Walton League Tiffin-Seneca County Chapter
Izaak Walton League Wadsworth Chapter
Izaak Walton League Wayne County Chapter
Izaak Walton League Western Reserve Chapter
Scenic Ohio
Ohio Asthma Coalition.
Ohio Environmental Council
Ohio League of Conservation Voters
Ohio Network of Chemically Injured
The Ohio State University Sierra Student Coalition
University of Toledo Environmental Law Society

PENNSYLVANIA
American Lung Association of Pennsylvania
Bike Pittsburgh
Center for Healthy Environments and Communities (at the University of Pittsburgh, Graduate School of Public Health)
Computer Planning Associates, Inc.

The Center for the Celebration of Creation
Citizens for Pennsylvania's Future
Clean Water Action, Pennsylvania
Farm Fresh Express
Group Against Smog and Pollution
Healthy Childrens Project of the Learning Disabilities Association of America
Idyll Development Foundation
Pennsylvania Interfaith Climate Change Campaign
Rachel Carson Homestead
Save Our Transit
Sierra Club, Allegheny Group
Steel City Biofuels

RHODE ISLAND
Amalgamated Transit Union, Division 618
American Cancer Society
American Lung Association of Rhode Island
Apeiron Institute for Environmental Living
Appalachian Mountain Club
Audobon Society of RI
Center for Hispanic Policy Action
Childhood Lead Action Project
Citizenspeak
Clean Water Action, Rhode Island
Community Outreach Core of Brown University Superfund Basic Research Project
Davey Lopes Recreation Center
Ecology Action for Rhode Island
Elmwood Community Center
Environment Council of Rhode Island
Environment Committee of the Episcopal Diocese of Rhode Island
Environment Northeast
Environment Rhode Island
Friends of the Moshassuck
Green Machine PR
Green Party of Rhode Island
Groundwork Providence
National Association of Social Workers (NASW) RI Chapter
National Education Association
Ocean State Action
Ocean State Clean Cities
Ocean State Home Instruction for Parents of Preschool Youngsters (HIPPY)
Pawtucket Alliance for Downtown Success (PADS)
RI ACORN
RICOSH
RI Parent Teacher Association (PTA)
Rhode Island Public Interest Research Group (RIPIRG)
Sierra Club of Rhode Island
Solar Wrights/Remodel Wrights
Toxics Action Center
Toxics Information Project
United Nurses and Allied Professionals
URI Energy Efficiency Committee

TENNESSEE
Southern Alliance for Clean Energy

TEXAS
Austin Physicians for Social Responsibility
Citizens for Environmental Justice (CFEJ)
Environmental Defense Houston office
Environmental Defense Texas office
Environment Texas
Galveston-Houston Association for Smog Prevention (GHASP)
Global Community Monitor
National Refinery Reform Campaign
Public Citizen Texas office
Sustainable Energy and Economic Development Coalition (SEED)
Texas Campaign for the Environment
Texas Center for Policy Studies
Texas Clean Water Action

Mr. BOUCHER. Thank you very much, Mr. Schneider and Mr. Regan. I think with your testimony and the clear understanding that we have of this matter, there are few questions that we need to propound.

I want to ask Mr. Regan though what the cost of installing one of those devices on an existing vehicle is.

Mr. REGAN. Somewhere within a range of $5,500 to $8,500. It is a major undertaking.

Mr. BOUCHER. It is a considerable expense.

Mr. REGAN. Yes, it is. It involves basically a systems change. It has to be engineered to the particular vehicle that it is on, and there has to be some systematic connection between this device and the engine.

Mr. BOUCHER. And apart from these supplemental projects, how much retrofitting is taking place at the present time just because owners of these vehicles would like to emit less particulate matter, NOx, et cetera?

Mr. REGAN. Without funding, virtually none.

Mr. BOUCHER. Virtually none. So this measure is essential in order to make sure that that happens on a broad basis?

Mr. REGAN. Absolutely.

Mr. BOUCHER. OK. Let me ask Mr. Upton if he has any questions of these witnesses.

Mr. UPTON. Just briefly.

Mr. Regan, did the Clean School Bus Fund, did that appropriate any money to help with school buses with retrofits, or not?

Mr. REGAN. Yes. The Clean School Bus USA Program was developed by EPA and has been funded by the Congress since fiscal year 2003.

Mr. UPTON. Since 2003?

Mr. REGAN. Since 2003. But the amount of funding for that whole period of time is only something on the range of $25 million. So the Agency has not been able to even keep up with the grants. In the period from fiscal year 2003 to 2005, they had 292 requests for grants and they were only able to fund 72. So 75 percent of the grant applications went unfunded.

Mr. UPTON. And Mr. Schneider, do you have any record of what kind of reductions have occurred so far with the settlement payments?

Mr. SCHNEIDER. In terms of tonnage reduced as a result of the money? I don't have that number but we could calculate that number. Because the settlement agreements—the information we have about them that the Agency keeps on that is really in dollars as opposed to tons of pollution reduced, but there is a calculation that we could do to get you that number.

Mr. UPTON. And are there any other ways to look at retrofits, any other funding sources that are out there, or not?

Mr. REGAN. This is a nationwide movement. States are moving ahead doing this as well as the Federal Government so we have got the DERA program underway. We have got the money coming out of the SAFETEA-LU. The SAFETEA-LU made funding diesel retrofits a priority under the CMAQ Program. There is potentially a lot of money. And then you have got States that are doing their own thing. California has had a program in placed called the Carl

Moyer Program funding hundreds of millions of dollars for many years. Texas has a program, a TEFRA program to reduce emissions in Texas. And then New York and North Carolina recently put a law in place, and we have one in Massachusetts, in Connecticut, in Rhode Island, in Ohio, in Oregon. So States are stepping up because they know that this is a very cost-effective way to reduce emissions and meet their nonattainment goal.

Mr. SCHNEIDER. Most of the States have nonattainment areas, and because they know this is one of the most effective things they can do, it is money well spent, and that also means that with respect to these environmental settlements, it is money well spent.

Mr. UPTON. It does make a lot of sense.

Mr. Chairman, I have no further questions.

Mr. BOUCHER. Thank you, Mr. Upton.

Mr. Barrow.

Mr. BARROW. Thank you, Mr. Chairman.

Mr. Regan, I want to commend you and your outfit for what you all are doing for this huge research and development bullet that you all bit down on in order to be able to make this technology as available as you have. For the benefit of those who are here and don't realize, I represent Washington and surrounding counties in Georgia, the kaolin capital of the world, and you folks employ 700 families in order to try and bring this technology to the marketplace, trying to harvest the kaolin in that part of the world, and I commend you for what you are doing. One question I have, I represent the kaolin capital of the world but I also represent the birddog capital of the world. Over in Burke County, they are working with a sorry boy that doesn't want to try. It is a little bit like going bird hunting and having to tote the dog. Well, working with an Agency that doesn't want to do right can sometimes be like going bird hunting and having to tote the dog. And the question I have is, I respect an agency that has been doing something for a long period of time and all of a sudden they decide they haven't got the authority to do what they have been doing, and all of a sudden they adopt a principled stance. Well, we can fix that principled objection with a simple change in the law. We are going to do that. My question is, is there any reluctance or resistance on the part of the EPA to take the authority this bill would give them that is the next roadblock we have to encounter, or will we really get some response from them? Because giving them the authority that they ought to have, that they have had or exercised in the past is good but now they don't want to use it.

So my question to you is, is this really the main hang-up or is there more to it than that?

Mr. REGAN. That is a question that EPA will have to answer itself but I think that EPA's lawyers have made a very cautious interpretation because the Miscellaneous Receipts Act basically says that you can't take funds for activities and use them to fund activities which have been mandated by Congress. Congress has the constitutional authority to appropriate funds and tell you what to do. So when you get funds, you got to put it back into the treasury. Well, they never really touched these funds, and so——

Mr. BARROW. They did in the past, didn't they?

Mr. REGAN. No, they never really touched any of this money.

Mr. BARROW. What I mean to say is, they funded SEPs in the past.

Mr. REGAN. Right. So what they did is, they said now you have done the DERA, you have appropriated money to do a task.

Mr. BARROW. I think that is unintended consequences that actually strips their implied authority to use SEPs in this way. Well, we are going to fix that.

Mr. REGAN. Exactly. So our expectation is, based on our informal conversations with the Agency, is they really would like to continue to do this.

Mr. BARROW. Excellent. That is what I wanted to hear. Thank you very much.

Mr. BOUCHER. Thank you very much, Mr. Barrow.

Mr. Matheson?

Mr. MATHESON. No questions.

Mr. BOUCHER. Thank you, Mr. Matheson.

At this time I am pleased to recognize Mr. Upton for a unanimous-consent request.

Mr. UPTON. Thank you, Mr. Chairman. I would ask unanimous consent that the bill H.R. 3754 be considered immediately by this subcommittee for markup and reporting to the full committee.

Mr. BOUCHER. Without objection, the subcommittee will now considered H.R. 3754, and before we do that, I will excuse this panel of witnesses and thank both of you very much for your outstanding testimony here. We appreciate your joining us this afternoon.

[Whereupon, at 2:05 p.m., the subcommittee proceeded to other business.]

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