

TESTIMONY BY
TIMOTHY J. REGAN
PRESIDENT
EMISSIONS CONTROL TECHNOLOGY ASSOCIATION

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

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Timothy J. Regan
President
Emissions Control Technology Association
325 7th Street, NW, Suite 600
Washington, DC 20004-2818
202/661-4150
E-mail regantj@corning.com

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 payoff 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

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_Guidelines_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.

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

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.

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.

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	<p>Indiana: \$166,670.00 to the IDEM Special Fund to be used for projects retrofitting diesel vehicles</p> <p>Ohio: \$166,670.00 to the State of Ohio Environmental Protection Agency's fund for the Clean Diesel School Bus Program</p> <p>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.</p> <p>Iowa: \$83,335.00 to the Bus Emissions Education Program administered by the School Administrators of Iowa</p> <p>Alabama: \$83,333.00 for a project retrofitting diesel vehicles owned and operated by the Decatur City Schools and/or the City of Huntsville</p>
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	<ul style="list-style-type: none"> • 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 John Dingell
Energy and Commerce Committee
U.S. House of Representatives
Washington, DC 20515

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

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