

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
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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