

DC 440 (Rev. 10/93) Summons In a Civil Action

# United States District Court

SOUTHERN

NEW YORK

DISTRICT OF

LISA SARRION and  
LUIS F. LOZANO,

Plaintiffs,

v.

## SUMMONS IN A CIVIL CASE

CASE NUMBER:

U.S. NUCLEAR REGULATORY COMMISSION,  
RICHARD A. MERSERVE, Chairman,  
GRETA JOY DICUS, NILS J. DIAZ,  
EDWARD MCGAFFIGAN, JR., AND  
S. MERRIFIELD, Commissioner

**02 CV 2474**

*12*  
*pls open to assign to Fisher*

Defendants.

TO: (Name and address of defendant)

U.S. NUCLEAR REGULATORY COMMISSION  
No. 1. White Flint North  
11555 Rockville Pike  
Rockville, Maryland 20852-2738

RECEIVED  
By

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

STUART JAY YOUNG, Esq.  
65-08 Austin Street  
Rego Park, New York 11374

JAMES B. COMEY  
U.S. ATTORNEY, SDNY

an answer to the complaint which is herewith served upon you, within Sixty (60) days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

JAMES M. PARKISON

CLERK

(BY) DEPUTY CLERK

DATE

12/2/02

JAMES B. COMEY  
U.S. ATTORNEY, SDNY

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and LUIS F. LOZANO,

Plaintiffs,

-against-

UNITED STATES NUCLEAR REGULATORY  
COMMISSION, RICHARD A. MERSERVE,  
Chairman, GRETA JOY DICUS, NILS J. DIAZ,  
EDWARD McGAFFIGAN, JR. and JEFFREY  
S. MERRIFIELD, COMMISSIONERS.

Defendants.

02 CV

2474

Dkt. No 02 CV

VERIFIED COMPLAINT  
IN THE NATURE OF A  
MANDAMUS PURSUANT  
28 U.S.C. § 1361

MAR 29 2002

U.S.D.C.

Plaintiffs by their counsel, STUART JAY YOUNG, Esq. do hereby show and  
allege to this Court as follows:

JURISDICTION

1. Jurisdiction arises and obtains under and pursuant to 28 U.S.C. §1361, a federal  
statute vesting in U.S. District Courts original jurisdiction of any action in the nature of  
mandamus to compel an officer or employee of the United States or an agency thereof to  
perform a duty mandated by law.

PARTIES

2. At all times herein mentioned LISA SARRION and LUIS F. LOZANO were  
and are natural persons, are United States citizens respectively currently having an office  
or place of business in and residing in the County of Westchester, State of New York and  
residing within a radius of about forty-five miles of the town of Buchanan, New York  
within the County of Westchester, State of New York.

JUDGE PLAZENCIA

3. At all times herein mentioned defendant UNITED STATES NUCLEAR REGULATORY COMMISSION, ("COMMISSION") was and is a duly and lawfully constituted agency of the Executive Branch of the federal government, having its office and headquarters at No. One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

4. At all times herein mentioned the defendants, RICHARD A. MERSERVE,, as Chairman, GRETA JOY DICUS, NILS J. DIAZ, EDWARD McGAFFIGAN, JR., and JEFFREY S. MERRIFIELD, were and are duly and lawfully appointed respectively as Chairman and Commissioners of the COMMISSION ("COMMISSIONERS").

5. At all times herein mentioned two nuclear power plants were and are in operation at or near the Town of Buchanan, County of Westchester, State of New York, ("Indian Point").

6. Upon information and belief, the nuclear power plants at Indian Point are owned and/or operated by ENTERGY, a corporation duly licensed and authorized to operate the Indian Point nuclear power plants in the State of New York.

#### STATEMENT OF FACTS

7. Upon information and belief the defendant COMMISSION is headed by five Commissioners appointed by the President and confirmed by the Senate for five-years terms. One of them is designated by the President to be the Chairman and official spokesperson of the Commission.

8. Upon information and belief the COMMISSION'S statutory function is set forth in the Energy Reorganization Act of 1974 and *inter alia*, is charged with regulating the operation of the 104 nuclear power plants currently in operation throughout the United States in a manner consistent with the safety of its citizens including the plaintiffs. The COMMISSION is a collegial body and formulates policies, develops regulations governing nuclear reactor and nuclear material safety, issues orders to licensees, and adjudicates legal matters. The COMMISSIONERS are charged with the implementation and enforcement of such regulations pursuant to that end.

9. Since the advent of the September 11<sup>th</sup>, 2001 terrorist attack upon the World Trade Center in New York City, it has become evident from a series of newspaper and television news releases that the federal intelligence community has learned that United States as a nation is under further threat of imminent attack by terrorists and that a series of increasingly deadly and devastating terrorist attacks on specific United States national targets are intended by a worldwide terrorist network. These targets include essential facilities such as bridges, tunnels, dams, water supply systems, high profile buildings and particularly nuclear power plants.

10. Upon information and belief a successful terrorist aerial attack upon a nuclear power plant such as those at Indian Point as hereinbefore alleged, has the potential for releasing deadly radiation with the probability of causing tens of thousands of deaths from radiation sickness and rendering extensive territories of this nation uninhabitable for perhaps hundreds of years. The destructive impact of such an attack upon this nation would by comparison dwarf the devastating effect of the World Trade Center attack.

11. Upon information and belief that in the event of such a successful aerial attack upon a nuclear power plant, the release of deadly radiation as alleged aforesaid would have the potential for causing the death of the plaintiffs and/or their serious and permanent sickness and disability together with the permanent loss of their habitation and place of business.

12. Accordingly, to increase security and protection against such a foregoing disaster and correspondingly to decrease the potential of its occurrence there is an urgent, immediate need for constant, continuous, minute by minute, round the clock, seamless aerial surveillance combined with ability to interdict and prevent aerial attack upon the Indian Point nuclear plants in particular and other nuclear power plants nationwide so as to prevent actual impact by an aerial intruder with the nuclear plant structure.

13. Upon information and belief the Department of Defense has had available to it suitable technology to protect and insulate targets from aerial attack by generating an electronic "shield", "sensory field" or "bubble" to create a "no-fly zone" over potential targets so that an aerial intruder intending to penetrate such a "no-fly zone" would trigger an Surface To Air (SAM) missile retaliatory response which would effectively obliterate

an Surface To Air (SAM) missile retaliatory response which would effectively obliterate the threat before such intruder could intercept its target, thus preventing the intended destructive result.

14. Upon information and belief, notwithstanding the availability of the foregoing technology and perhaps of even more advanced, sophisticated technology now available and suitable to such purpose, no such technology has as yet been installed to protect nuclear facilities generally and the Indian Point nuclear plants in particular from what should long have been (and is now) evident to be a grave threat to the continued existence of this nation, nor have regulations requiring such installation been promulgated by the COMMISSION.

15. Given the national alert now in effect warning of the imminent probability of terrorist attacks and the tragic example of the World Trade Center aerial attack, the foregoing measures when required by COMMISSION regulations and implemented by nuclear plant licensees and/or appropriate federal agencies would constitute reasonable, appropriate and necessary measures incident to the COMMISSION'S legal responsibilities to insure the safe and secure operation of the Indian Point nuclear plants in the context of our government's war on terrorism. Correspondingly, the COMMISSION'S failure or refusal to adopt such regulations and to require their compliance would be entirely unreasonable and in violation of its statutorily mandated responsibilities—and thus the failure to promulgate such regulations would be unlawful.

16. Indeed the continued failure or refusal to promulgate such regulations directing nuclear plant licensees and/or other appropriate federal agencies to do so can only be viewed as a dangerous, impermissible and irresponsible abdication of the COMMISSION'S statutory governmental mandate to protect this nation's citizenry from radiation leaks ensuing from aerial attacks upon nuclear power plants.

17. Upon information and belief the foreseeable consequence of the COMMISSION'S continued failure forthwith to require the installation of this type of technology or of such other available, similar or superior technology to shield nuclear plants from aerial attack will be to expose plaintiffs and indeed thousands of other persons similarly situated to nothing less than an agonizing death in the event of a successful terrorist attack upon the nuclear power plants at Indian Point (Buchanan, New

York). Furthermore, in such event vast tracts of New York State including New York City will likely be rendered virtually permanently uninhabitable as would vast territories of other States from attacks on nuclear power plants nationwide, causing political, economic and social crises and chaos of such magnitude as to threaten the very existence of this nation and leaving its very survival in doubt.

**WHEREFORE** it is respectfully requested that this Court forthwith make and enter an Order/Judgment/Decree pursuant to 28 U.S.C. § 1361

A. Directing the COMMISSION and the COMMISSIONERS forthwith to promulgate and enforce suitable regulations directing the installation with all deliberate speed of appropriate technology herein described as well as other available technology suitable to protect the nuclear power plants at Buchanan, New York in particular and all nuclear power plants nationwide in general from terrorist aerial attack, and

B. For such other, further and different relief as to this Court may seem just and appropriate in the premises.

DATED: Rego Park, New York  
March 16<sup>th</sup>, 2002

  
STUART JAY YOUNG (SJY3958)  
Attorney for Plaintiffs  
Office and P.O. Address  
65-08 Austin Street  
Rego Park, New York 11374  
Tel. No. 1(718) 459-6601

TO:  
UNITED STATES NUCLEAR REGULATORY  
COMMISSION,  
RICHARD A. MERSERVE,, Chairman,  
GRETA JOY DICUS, Commissioner  
NILS J. DIAZ, Commissioner  
EDWARD McGAFFIGAN, JR., Commissioner  
JEFFREY S. MERRIFIELD, Commissioner  
No. One White Flint North,  
11555 Rockville Pike,  
Rockville, Maryland 20852-2738.

VERIFICATION

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WESTCHESTER )

LUIS F. LOZANA, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

Luis Lozana

Subscribed and sworn to before me this 22<sup>nd</sup> day of March, 2002

[Signature]  
Notary Public, State of New York

Notary Public, State of New York  
2003

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF WESTCHESTER )

LISA SARRION, being first duly sworn, does depose and say: I am a Plaintiff in the within action; I have read the foregoing Verified Complaint and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are: statements of persons, parties, records and documents.

[Signature]

Subscribed and sworn to before me this 22<sup>nd</sup> day of March, 2002

[Signature]  
Notary Public, State of New York

Notary Public, State of New York  
2003

File No. 02 CV Year 2002

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LISA SARRION and LUIS F. LOZANO,  
Plaintiffs,

-against-

UNITED STATES NUCLEAR REGULATORY COMMISSION, et al.,  
Defendants.

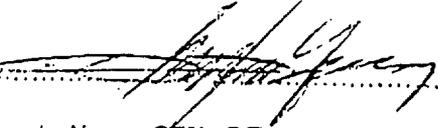
VERIFIED COMPLAINT FOR AN ORDER/JUDGMENT/DECREE  
PURSUANT TO 28 U.S.C. § 1361

Law Offices Of  
STUART JAY YOUNG  
Plaintiffs  
65-08 Austin Street  
Rego Park, N.Y. 11374  
Tel. (718) 459-6601

Attorney for:

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated... March 22nd, 2002.

Signature:   
Print Signer's Name...STUART JAY YOUNG.....

Service of a copy of the within  
Dated:

is hereby admitted.

.....  
Attorney(s) for

PLEASE TAKE NOTICE

Notice of [ ] that the within is a (certified) true copy of an  
Entry entered in the office of the clerk of the within named Court on .....

Notice of [ ] that an Order of which the within is a true copy will be presented for settlement to the  
Settlement

Hon one of the judges of the within named Court

at  
on

, at M.

Dated... March 22<sup>nd</sup>, 2002

Attorney for:

Law Offices Of  
STUART JAY YOUNG  
Plaintiffs  
65-08 Austin Street  
Rego Park, NY 11374  
Tel. (718) 459-6601

TO United States Attorneys Office,  
Southern District of New York  
Attorney for Defendants,  
No. 1 St. Andrews Plaza, New York, NY 10007  
U.S. Nuclear Regulatory Commission, No. One White Flint North,  
11555 Rockville Pike, Rockville, Maryland 20852-2738.



This Court has jurisdiction over this Petition for Review pursuant to Section 119 of the Act, 42 U.S.C. §10139.

WHEREFORE, the State of Nevada, Clark County, Nevada, and the City of Las Vegas, Nevada respectfully requests that the Court, inter alia:

- (1) Grant this Petition for Review;
- (2) Declare that Part 63 is inconsistent with applicable law; and
- (3) Direct the NRC to reissue Part 63 to make it consistent with the NWPA, other applicable laws, and this Court's findings.

Respectfully submitted,

Frankie Sue Del Papa, Attorney General  
Marta A. Adams,\* Sr. Deputy Attorney General  
STATE OF NEVADA  
100 North Carson Street  
Carson City, NV 89701  
(775) 684-1237 TEL  
(775) 684-1108 FAX

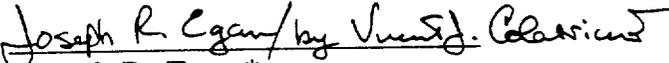
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500 South Grand Central Parkway  
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Joseph R. Egan\*

Counsel of Record

*Attorneys for Petitioners the State of Nevada, Clark  
County, Nevada, and the City of Las Vegas, Nevada*

\* Member, D.C. Circuit Bar

DATED: April 11, 2002

CERTIFICATE OF SERVICE

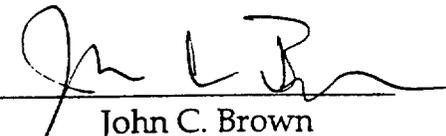
I hereby certify that a true and correct copy of the foregoing document was served this 11th day of April, 2002 via Certified U.S. Mail upon the following:

Annette L. Vietti-Cook  
Secretary of the Commission  
United States Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Room 16 H3, Mail Stop 16 C1  
Rockville, MD 20852-2738  
301-415-1969

Karen D. Cyr  
General Counsel  
United States Nuclear Regulatory Commission  
One White Flint North  
11555 Rockville Pike  
Room 16 H3, Mail Stop 16C1  
Rockville, MD 20852-2738  
301-415-1743

The Honorable John Ashcroft  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Roscoe C. Howard, Jr.  
United States Attorney  
U.S. Attorney's Office  
District of Columbia  
Judiciary Center  
555 Fourth Street, N.W.  
Washington, D.C. 20530

  
John C. Brown

ORIGINAL  
FILED

82 JUN -2 PM 3:05

EDWARD W. WYKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 James J. Tutchton (CA Bar No. 150908)  
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5  
6 Attorneys for Plaintiffs

7  
8 UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
9 SAN FRANCISCO DIVISION

MEJ

10 CENTER FOR BIOLOGICAL  
DIVERSITY,  
11 BLUEWATER NETWORK, and  
SIERRA CLUB,  
12 Plaintiffs,

C 02 0027  
Civil Action No:

13 v.

COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

14 SPENCER ABRAHAM, in his  
official capacity as Secretary  
15 of the U.S. Department of  
Energy,  
16 U.S. DEPARTMENT OF ENERGY,  
DONALD L. EVANS, in his  
17 official capacity as Secretary  
of the U.S. Department of  
18 Commerce,  
U.S. DEPARTMENT OF COMMERCE,  
19 DONALD H. RUMSFELD, in his  
official in his official  
20 capacity as Secretary of the  
U.S. Department of Defense,  
21 U.S. DEPARTMENT OF DEFENSE,  
GALE A. NORTON, in her official  
22 capacity as Secretary of the  
U.S. Department of the  
23 Interior,  
U.S. DEPARTMENT OF THE

COPY

24  
25 Complaint For Declaratory  
& Injunctive Relief

1 INTERIOR,  
2 JOHN ASHCROFT, in his official  
3 capacity as Attorney General of  
4 the United States,  
5 U.S. DEPARTMENT OF JUSTICE,  
6 STEPHEN A. PERRY, in his  
7 official capacity as  
8 Administrator of the U.S.  
9 General Services  
10 Administration,  
11 U.S. GENERAL SERVICES  
12 ADMINISTRATION,  
13 ANTHONY J. PRINCIPI, in his  
14 official capacity as Secretary  
15 of the U.S. Department of  
16 Veterans Affairs,  
17 U.S. DEPARTMENT OF VETERANS  
18 AFFAIRS,  
19 NORMAN Y. MINETA, in his  
20 official capacity as Secretary  
21 of the U.S. Department of  
22 Transportation,  
23 U.S. DEPARTMENT OF  
24 TRANSPORTATION,  
25 RICHARD A. MESERVE, in his  
official capacity as Chairman  
of the U.S. Nuclear Regulatory  
Commission,  
U.S. NUCLEAR REGULATORY  
COMMISSION,  
CHRISTINE T. WHITMAN, in her  
official capacity as the  
Administrator of the U.S.  
Environmental Protection  
Agency,  
U.S. ENVIRONMENTAL PROTECTION  
AGENCY,  
ANN M. VENEMAN, in her official  
capacity as Secretary of the  
U.S. Department of Agriculture,  
U.S. DEPARTMENT OF AGRICULTURE,  
TOMMY G. THOMPSON, in his  
official capacity as Secretary  
of the U.S. Department of  
Health & Human Resources,  
U.S. DEPARTMENT OF HEALTH &

1 HUMAN SERVICES,  
2 MEL R. MARTINEZ, in his  
3 official capacity as Secretary  
4 of the U.S. Department of  
5 Housing and Urban Development,  
6 U.S. DEPARTMENT OF HOUSING AND  
7 URBAN DEVELOPMENT,  
8 ELAINE L. CHAO, in her official  
9 capacity as Secretary of the  
10 U.S. Department of Labor,  
11 U.S. DEPARTMENT OF LABOR,  
12 COLIN L. POWELL, in his  
13 official capacity as Secretary  
14 of the U.S. Department of  
15 State,  
16 U.S. DEPARTMENT OF STATE,  
17 PAUL H. O'NEILL, in his  
18 official capacity as Secretary  
19 of the U.S. Department of  
20 Treasury,  
21 U.S. DEPARTMENT OF TREASURY,  
22 DANIEL R. MULVILLE, in his  
23 official capacity as Acting  
24 Administrator of the National  
25 Aeronautics and Space  
Administration,  
NATIONAL AERONAUTICS AND SPACE  
ADMINISTRATION,  
JOHN E. POTTER, in his official  
capacity as Postmaster General  
of the U.S. Postal Service, and  
U.S. POSTAL SERVICE,

Defendants.

## INTRODUCTION

1  
2       1.     In signing the Energy Policy Act of 1992 into law, former  
3 president George H.W. Bush stated "[m]y action today will place  
4 America upon a clear path toward a more prosperous, energy  
5 efficient, environmentally sensitive, and economically secure  
6 future." His hope was short-lived. America strayed far from the  
7 "clear path" toward an environmentally sensitive and energy  
8 efficient future because the federal government failed to implement  
9 the Energy Policy Act.

10       2.     This action seeks to compel the federal Defendants to  
11 comply with Energy Policy Act requirements that Congress designed  
12 to achieve cleaner air, strengthen energy security, and establish a  
13 nationwide alternative fuels infrastructure.

14       3.     First, this action seeks to compel all Defendants, with  
15 the exception of the U.S. Department of Energy, to comply with the  
16 Energy Policy Act's requirement that if an agency buys vehicles  
17 covered by the Act, a certain percentage of those vehicles must be  
18 alternative fuel vehicles ("AFVs").

19       4.     Second, this action seeks to compel all Defendants to  
20 comply with the Energy Policy Act's requirement that they place  
21 their annual AFV fleet percentage compliance reports on a publicly  
22 available website, the location of which must be provided to the  
23 public in the Federal Register.



1 floods and drought. Additionally, Plaintiffs' members are already  
2 and will continue to be adversely affected by the impacts of oil  
3 exploration and development in sensitive wildlife areas due to the  
4 increasing demand for petroleum oil.

5 16. The acts and omissions of Defendants alleged in this  
6 complaint related to AFV procurement cause injury to Plaintiffs'  
7 members and staff by contributing to global warming, prolonging air  
8 quality conditions that adversely affect Plaintiffs' health,  
9 welfare, and environment, compounding the need for petroleum oil  
10 exploration and development in sensitive wildlife areas in the U.S.  
11 and abroad, and nullifying measures mandated by the Energy Policy  
12 Act to protect their health, welfare, and environment.

13 17. Furthermore, Plaintiffs' members and staff derive  
14 scientific, recreational, health, conservation, spiritual, and  
15 aesthetic benefits from the preservation and protection of  
16 threatened and endangered species, which are adversely impacted by  
17 vehicle emissions. The decline of many species, such as  
18 California's mountain yellow-legged frog and other imperiled  
19 amphibian species, are associated with air pollution. The health,  
20 recreational, aesthetic, and environmental interests of the  
21 Plaintiffs' staff and members have been and continue to be  
22 adversely affected by the acts and omissions of Defendants alleged

1 in this complaint. Granting the requested relief would redress the  
2 injuries described above.

3 18. The acts and omissions of all Defendants alleged herein  
4 related to their refusal to publish AFV compliance reports on a  
5 publicly accessible website and notify the public of their location  
6 and availability through the Federal Register as required by the  
7 Energy Policy Act deprive Plaintiffs' members and staff of  
8 information guaranteed to the public by the Energy Policy Act.  
9 Plaintiffs' members and staff are adversely affected by Defendants'  
10 failure to publish this guaranteed information.

11 19. If Plaintiffs' staff and members had this information,  
12 they would use it to educate the public about air pollution,  
13 alternative fuels, and AFVs, and to advocate for the adoption of  
14 measures by the government for attaining and maintaining compliance  
15 with the Energy Policy Act's AFV purchasing requirements.  
16 Defendants' failure to produce this information as required by the  
17 Act deprives the Plaintiffs' staff and members of these benefits  
18 and thus causes them injury. Granting the requested relief would  
19 redress the injuries described above.

20 20. The acts and omissions of Defendant Department of Energy  
21 alleged in this complaint deprive the Plaintiffs' members and staff  
22 of procedural rights and protections to which they would otherwise  
23 be entitled, including, but not limited to, the right to comment on

1 | the overdue proposed rule to determine whether a private and  
2 | municipal fleet requirement is necessary to achieve the Energy  
3 | Policy Act's goals. The Department of Energy's failure to timely  
4 | determine whether a private and municipal fleet requirement is  
5 | necessary in order to achieve the goals of the Act has the same  
6 | effect as a decision that such a requirement is not necessary,  
7 | without providing Plaintiffs' and their members with the right they  
8 | would otherwise have to comment on the overdue proposed rule and  
9 | challenge the final rule in court. Plaintiffs' members and staff  
10 | have been, are being, and unless the relief requested is granted,  
11 | will continue to be adversely affected and injured by the above  
12 | violation.

13 |         21. Defendant SPENCER ABRAHAM is sued in his official  
14 | capacity as Secretary of the U.S. Department of Energy. Defendant  
15 | U.S. DEPARTMENT OF ENERGY is an agency of the government of the  
16 | United States and is legally charged with implementing the Energy  
17 | Policy Act and complying with its provisions, including the actions  
18 | sought herein. Hereinafter, Defendants Abraham and U.S. Department  
19 | of Energy are collectively referred to as "DOE."

20 |         22. Defendant DONALD L. EVANS is sued in his official  
21 | capacity as Secretary of the U.S. Department of Commerce.  
22 | Defendant U.S. DEPARTMENT OF COMMERCE is a federal executive  
23 | department of the United States government and is legally charged

1 with complying with the Energy Policy Act, including the actions  
2 sought herein. Hereinafter, Defendants Evans and U.S. Department  
3 of Commerce are collectively referred to as "Commerce."

4 23. Defendant DONALD H. RUMSFELD is sued in his official  
5 capacity as Secretary of the U.S. Department of Defense. Defendant  
6 U.S. DEPARTMENT OF DEFENSE is a federal executive department of the  
7 United States government and is legally charged with complying with  
8 the Energy Policy Act, including the actions sought herein.

9 Hereinafter, Defendants Rumsfeld and U.S. Department of Defense are  
10 collectively referred to as "DOD."

11 24. Defendant GALE A. NORTON is sued in her official capacity  
12 as Secretary of the U.S. Department of the Interior. Defendant  
13 U.S. DEPARTMENT OF INTERIOR is a federal executive department of  
14 the United States government and is legally charged with complying  
15 with the Energy Policy Act, including the actions sought herein.  
16 Hereinafter, Defendants Norton and U.S. Department of the Interior  
17 are collectively referred to as "DOI."

18 25. Defendant JOHN ASHCROFT is sued in his official capacity  
19 as Attorney General of the United States and head of the U.S.  
20 Department of Justice. Defendant U.S. DEPARTMENT OF JUSTICE is a  
21 federal executive department of the United States government and is  
22 legally charged with complying with the Energy Policy Act,  
23 including the actions sought herein. Hereinafter, Defendants

1 Ashcroft and U.S. Department of Justice are collectively referred  
2 to as "DOJ."

3 26. Defendant STEPHEN A. PERRY is sued in his official  
4 capacity as Administrator of the U.S. General Services  
5 Administration. Defendant U.S. GENERAL SERVICES ADMINISTRATION is  
6 an independent establishment of the U.S. government and is legally  
7 charged with complying with the Energy Policy Act, including the  
8 actions sought herein. Hereinafter, Defendants Perry and U.S.  
9 General Services Administration are collectively referred to as  
10 "GSA."

11 27. Defendant ANTHONY J. PRINCIPI is sued in his official  
12 capacity as Secretary of the U.S. Department of Veterans Affairs.  
13 Defendant U.S. DEPARTMENT OF VETERANS AFFAIRS is a federal  
14 executive department of the United States government and is legally  
15 charged with complying with the Energy Policy Act, including the  
16 actions sought herein. Hereinafter, Defendants Principi and U.S.  
17 Department of Veterans Affairs are collectively referred to as  
18 "DVA."

19 28. Defendant NORMAN Y. MINETA is sued in his official  
20 capacity as Secretary of the U.S. Department of Transportation.  
21 Defendant U.S. DEPARTMENT OF TRANSPORTATION is a federal executive  
22 department of the United States government and is legally charged  
23 with complying with the Energy Policy Act, including the actions

1 sought herein. Hereinafter, Defendants Mineta and U.S. Department  
2 of Transportation are collectively referred to as "DOT."

3 29. Defendant RICHARD A. MESERVE is sued in his official  
4 capacity as Chairman of the U.S. Nuclear Regulatory Commission.  
5 Defendant U.S. NUCLEAR REGULATORY COMMISSION is an independent  
6 establishment of the U.S. government and is legally charged with  
7 complying with the Energy Policy Act, including the actions sought  
8 herein. Hereinafter, Defendants Meserve and U.S. Nuclear  
9 Regulatory Commission are collectively referred to as "NRC."

10 30. Defendant CHRISTINE T. WHITMAN is sued in her official  
11 capacity as Administrator of the U.S. Environmental Protection  
12 Agency. Defendant U.S. ENVIRONMENTAL PROTECTION AGENCY is an  
13 executive agency of the U.S. government and is legally charged with  
14 complying with the Energy Policy Act, including the actions sought  
15 herein. Hereinafter, Defendants Whitman and U.S. Environmental  
16 Protection Agency are collectively referred to as "EPA."

17 31. Defendant ANN M. VENEMAN is sued in her official capacity  
18 as Secretary of the U.S. Department of Agriculture. Defendant U.S.  
19 DEPARTMENT OF AGRICULTURE is a federal executive department of the  
20 United States government and is legally charged with complying with  
21 the Energy Policy Act, including the actions sought herein.  
22 Hereinafter, Defendants Veneman and U.S. Department of Agriculture  
23 are collectively referred to as "USDA."

1           32. Defendant TOMMY G. THOMPSON is sued in his official  
2 capacity as Secretary of the U.S. Department of Health & Human  
3 Resources. Defendant U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES is  
4 a federal executive department of the United States government and  
5 is legally charged with complying with the Energy Policy Act,  
6 including the actions sought herein. Hereinafter, Defendants  
7 Thompson and U.S. Department of Health & Human Resources are  
8 collectively referred to as "HHS."

9           33. Defendant MEL R. MARTINEZ is sued in his official  
10 capacity as Secretary of the U.S. Department of Housing and Urban  
11 Development. Defendant U.S. DEPARTMENT OF HOUSING AND URBAN  
12 DEVELOPMENT is a federal executive department of the United States  
13 government and is legally charged with complying with the Energy  
14 Policy Act, including the actions sought herein. Hereinafter,  
15 Defendants Martinez and U.S. Department of Housing and Urban  
16 Development are collectively referred to as "HUD."

17           34. Defendant ELAINE L. CHAO is sued in her official capacity  
18 as Secretary of the U.S. Department of Labor. Defendant U.S.  
19 DEPARTMENT OF LABOR is a federal executive department of the United  
20 States government and is legally charged with complying with the  
21 Energy Policy Act, including the actions sought herein.  
22 Hereinafter, Defendants Chao and U.S. Department of Labor are  
23 collectively referred to as "DOL."

1           35. Defendant COLIN L. POWELL is sued in his official  
2 capacity as Secretary of the U.S. Department of State. Defendant  
3 U.S. DEPARTMENT OF STATE is a federal executive department of the  
4 United States government and is legally charged with complying with  
5 the Energy Policy Act, including the actions sought herein.  
6 Hereinafter, Defendants Powell and U.S. Department of State are  
7 collectively referred to as "State."

8           36. Defendant PAUL H. O'NEILL is sued in his official  
9 capacity as Secretary of the U.S. Department of Treasury.  
10 Defendant U.S. DEPARTMENT OF TREASURY is a federal executive  
11 department of the United States government and is legally charged  
12 with complying with the Energy Policy Act, including the actions  
13 sought herein. Hereinafter, Defendants O'Neill and U.S. Department  
14 of Treasury are collectively referred to as "Treasury."

15           37. Defendant DANIEL R. MULVILLE is sued in his official  
16 capacity as Acting Administrator of the National Aeronautics and  
17 Space Administration. Defendant NATIONAL AERONAUTICS AND SPACE  
18 ADMINISTRATION is an independent establishment of the U.S.  
19 government and is legally charged with complying with the Energy  
20 Policy Act, including the actions sought herein. Hereinafter,  
21 Defendants Mulville and National Aeronautics and Space  
22 Administration are collectively referred to as "NASA."

1 38. Defendant JOHN E. POTTER is sued in his official capacity  
2 as Postmaster General and Chief Executive Officer of the U.S.  
3 Postal Service. Defendant U.S. POSTAL SERVICE is an independent  
4 establishment of the U.S. government and is legally charged with  
5 complying with the Energy Policy Act, including the actions sought  
6 herein. Hereinafter, Defendants Potter and U.S. Postal Service are  
7 collectively referred to as "USPS."

8 **LEGAL FRAMEWORK**

9 39. The Energy Policy Act of 1992, 42 U.S.C. §§ 13201 et  
10 seq., establishes a comprehensive scheme to achieve environmental,  
11 economic, and national security benefits by promoting the use of  
12 alternative fuels and reducing the transportation sector's  
13 consumption of petroleum fuel.

14 40. The Act confronts the direct link between the level and  
15 type of energy consumption and the quality of the environment. The  
16 Act also embodies Congress's effort to enact a national energy  
17 policy that gradually and steadily increases U.S. energy security  
18 in part by reducing our use of oil-based fuels in our motor vehicle  
19 sector. A barrel reduction in oil demand through substitution or  
20 efficiency is at least as valuable as an additional barrel of oil  
21 produced.

1           41.       Congress intended the Energy Policy Act to displace  
2 conventional petroleum fuel with non-petroleum energy sources,  
3 focusing on light-duty motor vehicle fleet operations.

4           42.       By initially focusing on federal fleets, Congress  
5 intended for the federal government to pave the way for alternative  
6 fuel use and fuel flexibility for society at large by demonstrating  
7 the in-use practicability of the technology on a substantial scale  
8 and to provide the necessary critical mass to catalyze markets into  
9 supplying alternative fuels and vehicles with sufficient scale and  
10 access.

11          43.       In this way, the federal fleet AFV requirements would  
12 plant the seeds for growth of AFV use.

13          44.       Under the Act, DOE is required to develop and oversee a  
14 program designed to replace 10 percent of our petroleum motor fuel  
15 consumption by the year 2000 and 30 percent by the year 2010.

16          45.       To achieve this purpose, the Act contains several  
17 regulatory mandates directed at federal agencies. The three  
18 requirements that follow are the focus of this litigation.

19 **I.    Minimum Federal Fleet Percentage Requirements**

20 **A.    The Fleet Requirement Program of the Energy Policy Act**

21          46.       Energy Policy Act requires that at least 25 percent of  
22 the total number of Energy Policy Act-covered vehicles acquired by  
23 a federal fleet in fiscal year 1996 must be AFVs; at least 33

1 percent of the total number of covered vehicles acquired by a  
2 federal fleet in fiscal year 1997 must be AFVs; at least 50 percent  
3 of the total number of covered vehicles acquired by a federal fleet  
4 in fiscal year 1998 must be AFVs; and at least 75 percent of the  
5 total number of covered vehicles acquired by a federal fleet in  
6 fiscal year 1999 and thereafter must be AFVs.

7       47. The Act defines a federal fleet as a group of 20 or more  
8 light-duty motor vehicles located in a metropolitan area with a  
9 1980 population of 250,000 or more persons, and owned, operated,  
10 acquired, controlled by, or assigned to any Federal executive  
11 department, military department, Government corporation,  
12 independent establishment, or executive agency, the U.S. Postal  
13 Service, the Congress, the courts of the U.S., or the Executive  
14 office of the President.

15       48. These vehicles must be centrally fueled or capable of  
16 being centrally fueled. DOE regulations define capable of being  
17 centrally fueled as a vehicle that can be refueled at least 75  
18 percent of its time at the location that is owned, operated, or  
19 controlled by the fleet or is under contract for refueling  
20 purposes.

21       49. The Energy Policy Act exempts law enforcement vehicles  
22 from the Act's requirements.

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1        50. The Energy Policy Act exempts emergency motor vehicles  
2 from the Act's requirements.

3        51. The Energy Policy Act exempts from coverage motor  
4 vehicles acquired and used for military purposes that the Secretary  
5 of Defense has certified to the Secretary of Energy must be exempt  
6 for national security reasons.

7        52. The Energy Policy Act exempts from coverage motor  
8 vehicles held for lease or rental to the general public.

9        53. The Energy Policy Act exempts from coverage motor  
10 vehicles held for sale by motor vehicle dealers.

11       54. The Energy Policy Act exempts from coverage motor  
12 vehicles used for motor vehicle manufacturer product evaluations or  
13 tests.

14       55. The Energy Policy Act exempts nonroad vehicles, including  
15 farm and construction vehicles.

16       56. The Energy Policy Act exempts from coverage motor  
17 vehicles that under normal operations are garaged at personal  
18 residences at night.

19       57. The Act defines "alternative fuel vehicle" as a dedicated  
20 vehicle, meaning one that only operates on alternative fuel, or a  
21 dual fueled vehicle, meaning a vehicle that can operate on  
22 alternative fuel and gasoline or diesel.

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1           58. The Act defines "alternative fuel" as: methanol;  
2 denatured ethanol; and other alcohols; mixtures containing 85  
3 percent or more methanol, denatured ethanol, and other alcohols  
4 with gasoline or other fuels; natural gas; liquefied petroleum gas;  
5 hydrogen; coal-derived liquid fuels; fuels derived from biological  
6 materials; electricity; and any other fuel the Secretary determines  
7 by rule is substantially not petroleum and would yield substantial  
8 energy security benefits and substantial environmental benefits.

9           59. In the alternative to fulfilling the Energy Policy Act's  
10 AFV acquisition requirements by purchasing AFVs, the Act provides  
11 that an agency may receive one AFV credit for every 450 gallons of  
12 biodiesel fuel in fuel containing at least 20 percent biodiesel by  
13 volume used in vehicles that weigh more than 8,500 pounds gross  
14 vehicle weight rating. Credits allocated under this section can be  
15 used to satisfy up to 50 percent of an agency's AFV requirements.

16           B. The Fleet Requirement Program In Executive Order 13149

17           60. On April 21, 2000, President Clinton issued an Executive  
18 Order to "ensure that the Federal Government exercises leadership  
19 in the reduction of petroleum consumption through improvements in  
20 fleet fuel efficiency and the use of alternative fuel vehicles  
21 (AFVs) and alternative fuels." Exec. Order No. 13149, Greening the  
22 Government Through Federal Fleet and Transportation Efficiency, 65  
23 Fed. Reg. 24607 (Apr. 21, 2000).

1           61. Executive Order 13149 directs each agency operating 20 or  
2 more vehicles in the U.S. to reduce its entire fleet's annual  
3 petroleum consumption by at least 20 percent by the end of FY 2005  
4 as compared with FY 1999 levels.

5           62. Executive Order 13149 directs each agency to fulfill the  
6 Energy Policy Act's acquisition requirements for AFVs and to use  
7 alternative fuels to meet a majority of the fuel requirements for  
8 those motor vehicles by the end of FY 2005.

9           63. Executive Order 13149 requires each agency to increase  
10 the average Environmental Protection Agency fuel economy rating of  
11 passenger cars and light trucks acquired by at least 1 mile per  
12 gallon by the end of FY 2002 and at least 3 miles per gallon by the  
13 end of FY 2005 as compared to FY 1999 acquisitions.

14           64. Section 401 of Executive Order 13149 makes it easier for  
15 agencies to fulfill their Energy Policy Act AFV requirements by  
16 providing vehicle reporting credits for the following: each agency  
17 acquisition of an alternative fuel light-duty vehicle, regardless  
18 of geographic placement; one additional credit for each light-duty  
19 AFV that exclusively uses an alternative fuel; one additional  
20 credit for each Zero Emission Vehicle of any size; three credits  
21 for dedicated medium-duty AFVs; four credits for dedicated heavy-  
22 duty AFVs; and one credit for every 450 gallons of pure bio-diesel  
23 used in diesel vehicles.

1 **II. Reporting Requirements**

2 65. The Energy Policy Act requires the head of each Federal  
3 agency subject to the Act to prepare and submit annual reports to  
4 Congress summarizing the agency's compliance with the Act's  
5 alternative fuel purchasing requirements for federal fleets. This  
6 summary must include a plan of compliance containing specific dates  
7 when the agency will achieve compliance.

8 66. The agency must place the reports on a publicly available  
9 website and notify the public of the reports' existence and  
10 location through publication of this information in the Federal  
11 Register.

12 **III. Private And Municipal Fleet Requirement Program**

13 67. The Energy Policy Act requires DOE to undertake a staged  
14 rulemaking process to determine whether or not AFV requirements  
15 must also be applied to private and local government fleets.

16 68. DOE is authorized to promulgate a rule under one of two  
17 distinct rulemaking schedules to determine whether a private and  
18 municipal fleet requirement is necessary.

19 69. Under the "early rulemaking" provisions, DOE must publish  
20 an advance notice of proposed rulemaking to evaluate the federal  
21 government's progress toward achieving the replacement fuel goals  
22 of the Act and assess the achievability and adequacy of those  
23 goals.

1           70. Subsequently, DOE must publish in the Federal Register a  
2 proposed rule implementing a private and municipal fleet  
3 requirement and provide a public comment period with hearings on  
4 the proposal. DOE is then authorized to promulgate a final rule.

5           71. However, any rule DOE promulgates under this early  
6 rulemaking section must be completed by December 15, 1996 to be  
7 enforceable. If DOE misses this deadline or determines under this  
8 section that a fleet requirement program is not necessary at the  
9 time, the agency must proceed with later rulemaking.

10           72. The section of the Act concerning later rulemaking  
11 provides that by April 1, 1998, the Secretary must publish an  
12 advance notice of proposed rulemaking to evaluate the progress made  
13 toward reaching the goals set out in section 13252(b)(2) of the Act  
14 of reducing 10 percent of our petroleum motor fuel consumption by  
15 the year 2000 and 30 percent by the year 2010. DOE must provide  
16 for at least three regional hearings and a public comment period on  
17 this advance notice.

18           73. The Act requires DOE to publish a proposed rule for a  
19 fleet requirement program by May 1, 1999, with hearings and public  
20 comment to follow.

21           74. By January 1, 2000, DOE must determine whether a fleet  
22 requirement program applicable to private and municipal fleets is  
23 necessary.

1           75. A private and municipal fleet program "shall be  
2 considered necessary" if DOE determines the following: (1) the goal  
3 of 30 percent replacement fuel by 2010 (or other goal if modified  
4 under the proper modification procedures) is not expected to be  
5 achieved without a private and municipal fleet requirement program;  
6 and (2) the 30 percent goal (or goal as modified) is practicable  
7 and achievable with a private and municipal fleet requirement  
8 program in combination with voluntary means and other programs.

9           76. The determination that a private and municipal fleet  
10 requirement is necessary can serve to modify the goal of 30 percent  
11 reduction in motor fuel consumption by 2010, and establish a  
12 revised goal, if DOE determines through the proper rulemaking  
13 procedures that the goal in place is inadequate, impracticable, or  
14 not expected to be achievable.

15           77. DOE also may modify the private and municipal fleet  
16 requirement percentages for a given year, but at least 10 percent  
17 of the vehicles acquired must be AFVs.

18           78. If DOE determines that a private and municipal fleet  
19 requirement program is not necessary, DOE must by January 1, 2000  
20 publish this determination in the Federal Register as a final  
21 agency action, including an explanation of DOE's findings and basis  
22 for the determination.

1 79. If DOE determines that a private and municipal fleet  
2 requirement program is necessary, then DOE must by January 1, 2000  
3 require by rule that certain percentages of the total number of new  
4 light duty motor vehicles acquired for a fleet, (other than  
5 Federal, State, or covered alternative fuel provider) must be AFVs  
6 beginning in model year 2002.

7 80. Model year 2002 began on September 1, 2001.

8 81. Under the Act, the following phased-in percentages of  
9 AFVs apply to private and municipal fleet vehicle acquisitions: 20  
10 percent of the light duty motor vehicles acquired in model year  
11 2002 must be AFVs; 40 percent in model year 2003 must be AFVs; 60  
12 percent in model year 2004 must be AFVs; and 70 percent in model  
13 year 2005 and thereafter must be AFVs.

14 82. If accomplished by proper rulemaking, the Secretary can  
15 establish lower percentages of AFV purchasing requirements (not  
16 less than 10 percent) or later years for initiating the program.

17 83. The statute permits the Secretary to extend the January  
18 1, 2000 deadline for determining whether a private and municipal  
19 fleet requirement is necessary for a maximum of 90 days.

#### 20 FACTUAL BACKGROUND

#### 21 I. Motor Vehicle Emissions Harm Public Health and The Environment

#### 22 A. The U.S. Consumes a Significant Amount of Oil for 23 Transportation, and Significant Air Pollution Results

1 84. In 2000, the U.S. was responsible for 25 percent of the  
2 world total oil consumption. In 2000, the U.S. imported  
3 approximately 58 percent of its total oil demand.

4 85. According to DOE, the gap between the transportation  
5 sector's demand for petroleum and U.S. petroleum production  
6 continues to widen. In the transportation sector alone, U.S.  
7 consumption of petroleum surpasses total U.S. domestic petroleum  
8 production by 5.9 million barrels. This gap is estimated to  
9 increase to 12.8 million barrels per day by the year 2020.

10 86. The transportation sector is projected to use 17.8  
11 million barrels of petroleum per day by 2020. Light-duty motor  
12 vehicles will use approximately ten million of these barrels.

13 87. Each year in the U.S., approximately 65 percent of the  
14 oil consumed is used for transportation. As a result, vehicle  
15 emissions have become the leading source of U.S. air pollution.

16 88. Transportation related activities are responsible for an  
17 estimated quarter of the greenhouse gases produced in this country,  
18 with the U.S. contributing approximately 20 percent of these gases  
19 globally.

20 **B. Poor Air Quality From Vehicle Emissions Adversely Affects**  
21 **Humans And The Environment**

22 89. The U.S. Public Health Service has determined that high  
23 levels of air pollution can cause and aggravate lung illnesses,  
24

1 including acute respiratory infections, asthma, chronic bronchitis,  
2 emphysema, and lung cancer.

3 90. Vehicles running on petroleum emit several "criteria"  
4 pollutants regulated by the U.S. EPA under the Clean Air Act,  
5 including ozone, carbon monoxide (CO), nitrogen oxides (NOx),  
6 sulfur oxides (SOx), and particulate matter (PM).

7 91. Emitted NOx and volatile organic compounds ("VOCs"), form  
8 low-level ozone (O<sub>3</sub>) in the presence of sunlight and high  
9 temperatures.

10 92. Low-level ozone is a major component of smog, which is  
11 the most serious and persistent outdoor air quality problem in the  
12 San Francisco Bay Area and in other parts of the country.

13 93. In the past five years, the San Francisco Bay Area has  
14 violated the National Ambient Air Quality Standard ("NAAQS") for  
15 ozone twenty-nine times. As a result, EPA has reclassified the Bay  
16 Area as a non-attainment area for the federal one-hour ozone  
17 standard.

18 94. Even at very low levels, ground-level ozone triggers a  
19 variety of health problems including aggravated asthma, reduced  
20 lung capacity, and increased susceptibility to respiratory  
21 illnesses like pneumonia and bronchitis.

22 95. People with respiratory problems and children are most  
23 vulnerable to ozone. However, when present in high levels, ozone

1 also can affect healthy adults, especially those active outdoors.  
2 Repeated exposure to ozone pollution for several months may cause  
3 permanent lung damage.

4 96. Ground-level ozone interferes with the ability of plants  
5 to produce and store food, which makes them more susceptible to  
6 disease, insects, other pollutants, and harsh weather. Ozone  
7 damages the leaves of trees and other plants, ruining the  
8 appearance of cities, national parks, and recreation areas. Ozone  
9 reduces crop and forest yields and increases plant vulnerability to  
10 disease, pests, and harsh weather.

11 97. Motor vehicle exhaust is responsible for about 56 percent  
12 of all Carbon Monoxide (CO) emissions nationwide.

13 98. Higher levels of CO generally occur in areas with heavy  
14 traffic congestion. In cities, 85 to 95 percent of all CO  
15 emissions may come from motor vehicle exhaust.

16 99. At high levels in the air, CO is poisonous even to  
17 healthy people. CO can affect the heart and central nervous  
18 system. For a person with heart disease, a single exposure to CO  
19 at low levels may cause chest pain and reduce that person's ability  
20 to exercise; repeated exposure may contribute to other  
21 cardiovascular effects.

22 100. People who breathe high levels of CO can develop vision  
23 problems, reduced ability to work or learn, reduced manual

1 dexterity, and difficulty performing complex tasks. At extremely  
2 high levels, CO is poisonous and can cause death.

3 101. Nitrogen oxide (NOx) is the term used to describe a group  
4 of highly reactive gases, all of which contain nitrogen and oxygen  
5 in varying amounts. NOx forms from fuels burned at high  
6 temperatures. Motor vehicles are a primary source of NOx.

7 102. NOx is one of the main components involved in the  
8 formation of ground-level ozone. NOx also reacts to form nitrate  
9 particles, acid aerosols, as well as NO<sub>2</sub>, which also cause  
10 respiratory problems. NOx contributes to the formation of acid  
11 rain, nutrient overload that deteriorates water quality, and  
12 visibility impairment. Lost visibility is now noted in many  
13 National Parks. Furthermore, NOx reacts to form toxic chemicals  
14 and contributes to global warming.

15 103. Sulfur dioxide, or SO<sub>2</sub>, is a member of the family of  
16 sulfur oxide (Sox) gases. These gases are formed when gasoline is  
17 extracted from oil and when fuel that contains sulfur, including  
18 oil, is burned.

19 104. According to EPA, SO<sub>2</sub> dissolves in water vapor to form  
20 acid and interacts with other gases and particles in the air to  
21 form sulfates and other products that can harm human health and the  
22 environment.

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1 105. SO<sub>2</sub> contributes to respiratory illness and exacerbates  
2 heart and lung diseases. SO<sub>2</sub> contributes to acid rain, which  
3 damages trees, crops, historic buildings, and monuments. SO<sub>2</sub> makes  
4 soils, lakes, and streams acidic. SO<sub>2</sub> also contributes to the  
5 formation of atmospheric particles that cause visibility  
6 impairment.

7 106. Particulate Matter (PM) is the term used to describe  
8 particles found in the air, including dust and smoke. PM can be  
9 directly emitted into the air from a variety of sources including  
10 cars, trucks, and buses.

11 107. PM is associated with serious health effects, including  
12 aggravated asthma, increases in respiratory symptoms like coughing  
13 and difficult or painful breathing, chronic bronchitis, decreased  
14 lung function, and premature death.

15 108. According to EPA, PM is the major source of haze that is  
16 responsible for reducing visibility in many areas of the U.S.,  
17 including our national parks. PM settles on soil and water and  
18 changes their nutrient and chemical balance. PM makes lakes and  
19 streams acidic, changes the nutrient balance in coastal waters and  
20 large river basins, depletes the nutrients in soil, damages  
21 sensitive forests and farm crops, and affects the diversity of  
22 ecosystems. PM erodes and stains structures including monuments  
23 and statues.

1 109. Motor vehicles also emit several hazardous pollutants  
2 that EPA classifies as known or probable human carcinogens. EPA  
3 estimates that mobile sources of air toxics, such as cars, trucks,  
4 and buses, account for as much as half of all cancers attributed to  
5 outdoor sources of air toxics.

6 110. The gasoline additive benzene, for instance, is a known  
7 human carcinogen. Benzene causes leukemia and blood disorders in  
8 adults. Short-term exposure to benzene can cause dizziness,  
9 headaches, vomiting, unconsciousness, and, at high levels, death.

10 111. Studies also indicate an association between high traffic  
11 streets and childhood cancer, including leukemia. An estimated  
12 80% of benzene emissions in the U.S. originate from motor vehicles.

13 112. Children, the elderly, athletes, and people with  
14 compromised immune systems suffer the worst health problems  
15 associated with poor air quality. Among these individuals, poor  
16 air quality causes heightened health impacts, such as difficulty  
17 breathing, lowered disease-resistance, and hindered development of  
18 lung capacity in children.

19 113. Air pollution is a problem that affects millions of  
20 Americans. In California, for example, over ninety percent of the  
21 population lives in regions adversely affected by air quality  
22 problems, largely as a result of vehicle exhaust.

1 114. Long-term exposure to air pollution in the four San  
2 Francisco Bay Area counties may cause an additional 208 cases of  
3 cancer for every million residents, which is 208 times greater than  
4 the acceptable risk of cancer caused by air pollution as  
5 established by the Clean Air Act of 1990. Most of the cancer risk  
6 is attributable to benzene, discussed above, and butadiene, a  
7 byproduct of fuel combustion.

8 **II. Alternative Fuel Vehicles Are Better For Energy Security,  
Public Health, and The Environment**

9  
10 115. Displacing petroleum with alternative transportation  
11 fuels reduces our dependence on imported petroleum, reduces U.S.  
12 vulnerability to oil price shocks, decreases emissions of  
13 greenhouse gases, criteria and toxic pollutants, and promotes  
14 domestic economic development.

15 116. Substitution of petroleum-based transportation fuels  
16 (gasoline and diesel) by non-petroleum-based fuels ("replacement  
17 fuels," including alternative fuels such as electricity, ethanol,  
18 hydrogen, liquefied petroleum gas, methanol, and natural gas) could  
19 be a key means of reducing the vulnerability of the U.S.  
20 transportation sector to disruptions of the petroleum supply.

21 117. The vehicles using alternative fuels work well and have  
22 operating characteristics that are acceptable to a significant  
23 portion of the vehicle-owning population.

1 118. Alternative fuels that have lower carbon fuel-cycles  
2 than gasoline or diesel fuel also have the added benefit of  
3 reducing greenhouse gas emissions.

4 119. Alternative fuels are inherently cleaner than gasoline  
5 because they are chemically less complex and burn cleaner.

6 120. When used with advanced engine and emission control  
7 technologies, alternative fuels burn more efficiently and thus  
8 release fewer emissions from incomplete combustion. In addition,  
9 because alternative fuels evaporate less readily than gasoline,  
10 there are fewer evaporative emissions from the vehicle's tank,  
11 limiting smog-forming emissions.

12 121. Electric vehicles, which have no internal combustion  
13 engine, potentially offer the greatest emission reductions. Their  
14 primary source of air pollution comes from the power plants that  
15 create electricity to charge batteries. Yet even after these  
16 emissions are considered, electric vehicles typically have 90  
17 percent fewer emissions than an internal combustion engine.

#### 18 **FACTS GIVING RISE TO PLAINTIFFS' CAUSES OF ACTION**

##### 19 **I. Defendants Are In Violation Of The Act's AFV Purchasing** 20 **Requirements**

21 122. Defendant Commerce is in violation of the Energy Policy  
22 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).  
23 In its response to Plaintiffs' August 10, 2001 Freedom of  
24

1 Information Act (FOIA) request, Commerce provided no 1996  
2 compliance data. On information and belief, Commerce is in  
3 violation of the requirement that of the covered vehicles Commerce  
4 acquired in 1996, 25 percent must be AFVs. In its response to  
5 Plaintiffs' FOIA request, Commerce stated that in 1998, only 11  
6 percent of the covered vehicles it acquired were AFVs rather than  
7 the 50 percent required by law. In 1998, Commerce was  
8 approximately 127 AFVs short of the Energy Policy Act requirement.  
9 In its response to Plaintiffs' FOIA request, Commerce stated that  
10 only 16 percent of the covered vehicles Commerce acquired in 1999  
11 were AFVs rather than the 75 percent required by law. In 1999,  
12 Commerce was approximately 227 AFVs short of the Act's requirement.  
13 In its response to Plaintiffs' FOIA request, Commerce stated that  
14 only 17 percent of the covered vehicles it acquired in 2000 were  
15 AFVs rather than the 75 percent required by law. In 2000, Commerce  
16 was approximately 76 AFVs short of the Act's requirement. In its  
17 response to Plaintiffs' FOIA request, Commerce stated it only plans  
18 to purchase 19 percent AFVs in 2001 and 35 percent in 2002, rather  
19 than the 75 percent required for both years by the Energy Policy  
20 Act.

21 123. Defendant DOD is in violation of the Energy Policy Act's  
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). DOD  
23 has not responded to Plaintiffs' FOIA request of August 10, 2001.

1 According to DOE information produced in response to Plaintiffs'  
2 August 7, 2001 FOIA request to DOE, DOD stated that only 21 percent  
3 of the covered vehicles DOD acquired in 1996 were AFVs rather than  
4 the 25 percent required by law. In 1996, DOD was approximately 279  
5 AFVs short of the Act's requirement. According to DOE information  
6 produced in response to Plaintiffs' August 7, 2001 FOIA request to  
7 DOE, DOD stated that only 24 percent of the covered vehicles DOD  
8 acquired in 1997 were AFVs rather than the 33 percent required by  
9 law. In 1997, DOD was approximately 722 AFVs short of the Act's  
10 requirement. According to DOE information produced in response to  
11 Plaintiffs' August 7, 2001 FOIA request to DOE, DOD stated that  
12 only 33 percent of the covered vehicles DOD acquired in 1998 were  
13 AFVs rather than the 50 percent required by law. In 1998, DOD was  
14 approximately 1,184 AFVs short of the Act's requirement. According  
15 to DOE information produced in response to Plaintiffs' August 7,  
16 2001 FOIA request to DOE, DOD stated that only 36 percent of the  
17 covered vehicles DOD acquired in 1999 were AFVs rather than the 75  
18 percent required by law. In 1999, DOD was approximately 3,056 AFVs  
19 short of the Act's requirement. According to DOE information  
20 produced in response to Plaintiffs' August 7, 2001 FOIA request to  
21 DOE, DOD stated that only 47 percent of the covered vehicles DOD  
22 acquired in 2000 were AFVs rather than the 75 percent required by

1 law. In 2000, DOD was approximately 2,233 AFVs short of the Act's  
2 requirement.

3 124. Defendant DOI is in violation of the Energy Policy Act's  
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
5 its response to Plaintiffs' August 10, 2001 FOIA request, DOI  
6 provided no 1996 compliance data. On information and belief, DOI  
7 is in violation of the Act's requirement that 25 percent of the  
8 covered vehicles DOI acquired in 1996 must be AFVs. In its  
9 response to Plaintiffs' FOIA request, DOI stated that of the  
10 covered vehicles DOI acquired in 1997, only 22 percent were AFVs  
11 rather than the 33 percent required by law. In 1997, DOI was  
12 approximately 7 AFVs short of the Act's requirement. In its  
13 response to Plaintiffs' FOIA request, DOI stated that of the  
14 vehicles it acquired in 2000, only 31 percent were AFVs rather than  
15 the 75 percent required by the Act. In 2000, DOI was approximately  
16 335 AFVs short of the Act's requirement.

17 125. Defendant DOJ is in violation of the Energy Policy Act's  
18 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
19 its response to Plaintiffs' August 7, 2001 FOIA request, DOJ  
20 claimed a 100 percent exemption from compliance in 1996.  
21 Plaintiffs contend that a 100 percent exemption was not warranted  
22 in 1996. On information and belief, DOJ is in violation of the  
23 Act's requirement that 25 percent of the covered vehicles DOJ

1 | acquired in 1996 must be AFVs. In its response to Plaintiffs' FOIA  
2 | request, DOJ claimed a 100 percent exemption from compliance in  
3 | 1997. Plaintiffs contend that a 100 percent exemption was not  
4 | warranted in 1997. On information and belief, DOJ is in violation  
5 | of the Act's requirement that 33 percent of the covered vehicles  
6 | DOJ acquired in 1997 must be AFVs. According to DOE information  
7 | produced in response to Plaintiffs' August 7, 2001 FOIA request to  
8 | DOE, DOJ stated that only 42 percent of the covered vehicles DOJ  
9 | acquired in 1998 were AFVs rather than the 50 percent required by  
10 | law. According to DOE information produced in response to  
11 | Plaintiffs' August 7, 2001 FOIA request to DOE, DOJ stated that  
12 | 4,791 out of the 4,828 covered vehicles DOJ purchased in 1998 were  
13 | exempt for law enforcement. Plaintiffs contend that a 99.2  
14 | percent exemption was not warranted in 1998. On information and  
15 | belief, DOJ is in violation of the Act's requirement that of the  
16 | covered vehicles DOJ acquired in 1998, 50 percent must be AFVs. In  
17 | its response to Plaintiffs' FOIA request, DOJ provided insufficient  
18 | data to determine whether DOJ complied with the Act's requirement  
19 | that of the covered vehicles DOJ acquired in 1999, at least 75  
20 | percent must be AFVs. In its response to Plaintiffs' FOIA request,  
21 | DOJ stated that 4,233 out of the 4,237 covered vehicles DOJ  
22 | purchased in 1999 were exempt for law enforcement. Plaintiffs  
23 | contend that a 99.9 percent exemption was not warranted in 1998.

1 On information and belief, DOJ is in violation of the Act's  
2 requirement that of the covered vehicles DOJ acquired in 1999, at  
3 least 75 percent must be AFVs. In its response to Plaintiffs' FOIA  
4 request, DOJ stated that of the covered vehicles it acquired in  
5 2000, only 28 percent were AFVs rather than the 75 percent required  
6 by law. In 2000, DOJ was approximately 54 AFVs short of the Act's  
7 requirements.

8 126. Defendant GSA is in violation of the Energy Policy Act's  
9 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
10 its response to Plaintiffs' August 10, 2001 FOIA request, GSA  
11 stated that of the covered vehicles GSA acquired in 1996, only 23  
12 percent were AFVs rather than the 25 percent required by law. In  
13 1996, GSA was approximately 4 AFVs short of the Act's requirement.  
14 In its response to Plaintiffs' FOIA request, GSA did not provide  
15 any 1997 or 1998 compliance data. On information and belief, GSA  
16 did not comply with the Act's requirement that 33 percent of the  
17 covered vehicles GSA acquired in 1997 must be AFVs. On information  
18 and belief, GSA did not comply with the Act's requirement that 50  
19 percent of the covered vehicles GSA acquired in 1998 must be AFVs.  
20 In its response to Plaintiffs' FOIA request, GSA stated that only  
21 71 percent of the vehicles GSA acquired in 2000 were AFVs rather  
22 than the 75 percent required by law. In 2000, GSA was  
23 approximately 7 AFVs short of the Act's requirements.

1 127. Defendant DVA is in violation of the Energy Policy Act's  
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
3 its response to Plaintiffs' August 10, 2001 FOIA request, DVA did  
4 not provide any 1996 compliance data. On information and belief,  
5 DVA is in violation of the Act's requirement that 25 percent of the  
6 covered vehicles DVA acquired in 1996 must be AFVs. In its  
7 response to Plaintiffs' FOIA request, DVA did not provide any 1997  
8 compliance data. On information and belief, DVA is in violation of  
9 the Act's requirement that 33 percent of the covered vehicles DVA  
10 acquired in 1997 must be AFVs. In its response to Plaintiffs' FOIA  
11 request, DVA did not provide any 1998 compliance data. On  
12 information and belief, DVA is in violation of the Act's  
13 requirement that 50 percent of the covered vehicles DVA acquired in  
14 1998 must be AFVs. In its response to Plaintiffs' FOIA request,  
15 DVA did not provide any 1999 compliance data. On information and  
16 belief, DVA is in violation of the Act's requirement that 75  
17 percent of the covered vehicles DVA acquired in 1999 must be AFVs.  
18 In its response to Plaintiffs' FOIA request, DVA stated that only  
19 22 percent of the covered vehicles DVA acquired in 2000 were AFVs  
20 rather than the 75 percent required by law. In 2000, DVA was  
21 approximately 662 AFVs short of the Act's requirement. In its  
22 response to Plaintiffs' FOIA request, DVA stated that it only  
23 planned to purchase 11 percent AFVs in 2001 rather than the 75

1 percent required by law. In its response to Plaintiffs' FOIA  
2 request, DVA stated that it only planned to purchase 16 percent  
3 AFVs in 2002 rather than the 75 percent required by law.

4 128. Defendant DOT is in violation of the Energy Policy Act's  
5 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
6 its response to Plaintiffs' August 7, 2001 FOIA request, DOT stated  
7 that only 23.2 percent of the covered vehicles DOT acquired in 1996  
8 were AFVs rather than the 25 percent required by law. In 1996, DOT  
9 was approximately 11 AFVs short of the Act's requirements. In its  
10 response to Plaintiffs' FOIA request, DOT stated that only 24.1  
11 percent of the covered vehicles DOT acquired in 1997 were AFVs  
12 rather than the 33 percent required by law. In 1997, DOT was  
13 approximately 56 AFVs short of the Act's requirements. In its  
14 response to Plaintiffs' FOIA request, DOT stated that only 40  
15 percent of the covered vehicles DOT acquired in 1998 were AFVs  
16 rather than the 50 percent required by law. In 1998, DOT was  
17 approximately 65 AFVs short of the Act's requirement. In its  
18 response to Plaintiffs' FOIA request, DOT stated that only 53  
19 percent of the covered vehicles DOT acquired in 1999 were AFVs  
20 rather than the 75 percent required by law. In 1999, DOT was  
21 approximately 133 AFVs short of the Act's requirement. In its  
22 response to Plaintiffs' FOIA request, DOT stated that only 54  
23 percent of the covered vehicles DOT acquired in 2000 were AFVs

1 rather than the 75 percent required by law. In 2000, DOT was  
2 approximately 386 AFVs short of the Act's requirements.

3 129. Defendant NRC is in violation of the Energy Policy Act's  
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
5 its response to Plaintiffs' August 7, 2001 FOIA request, NRC stated  
6 that only 15 percent of the covered vehicles NRC acquired in 1996  
7 were AFVs rather than the 25 percent required by law. In 1996, NRC  
8 was approximately 2 AFVs short of the Act's requirement. In its  
9 response to Plaintiffs' FOIA request, NRC admits that zero percent  
10 of the vehicles NRC acquired in 1999 were AFVs rather than the 75  
11 percent required by law. In its response to Plaintiffs' FOIA  
12 request, NRC admits that of the covered vehicles NRC acquired in  
13 2000, zero percent were AFVs rather than the 75 percent required by  
14 law.

15 130. Defendant EPA is in violation of the Energy Policy Act's  
16 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). EPA  
17 has not responded to Plaintiffs' FOIA request of August 10, 2001.  
18 On information and belief, EPA did not comply with the Act's  
19 requirement that 25 percent of the covered vehicles EPA acquired in  
20 1996 must be AFVs. According to DOE information produced in  
21 response to Plaintiffs' August 7, 2001 FOIA request to DOE, EPA  
22 stated that only 14 percent of the covered vehicles EPA acquired in  
23 1997 were AFVs rather than the 33 percent required by law. In

1 | 1997, EPA was approximately 35 AFVs short of the Act's requirement.  
2 | According to DOE information produced in response to Plaintiffs'  
3 | August 7, 2001 FOIA request to DOE, EPA stated that only 35 percent  
4 | of the covered vehicles EPA acquired in 1998 were AFVs rather than  
5 | the 50 percent required by law. In 1998, EPA was approximately 22  
6 | AFVs short of the Act's requirement. EPA has not responded to  
7 | Plaintiffs' FOIA request of August 10, 2001. In response to  
8 | Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999  
9 | compliance data for EPA. On information and belief, EPA did not  
10 | comply with the Act's requirement that 75 percent of the covered  
11 | vehicles EPA acquired in 1999 must be AFVs.

12 |       131. Defendant USDA is in violation of the Energy Policy Act's  
13 | AFV purchasing requirements. 42 U.S.C. § 13212.(b) (1) (A-D). USDA  
14 | has not responded Plaintiffs' August 10, 2001 FOIA request. On  
15 | information and belief, USDA did not comply with the Act's  
16 | requirement that 25 percent of the covered vehicles USDA acquired  
17 | in 1996 must be AFVs. On information and belief, USDA did not  
18 | comply with the Act's requirement that 33 percent of the covered  
19 | vehicles USDA acquired in 1997 must be AFVs. On information and  
20 | belief, USDA did not comply with the Act's requirement that 50  
21 | percent of the covered vehicles USDA acquired in 1998 must be AFVs.  
22 | On information and belief, USDA did not comply with the Act's

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1 requirement that 75 percent of the covered vehicles USDA acquired  
2 in 1999 must be AFVs.

3 132. Defendant HHS is in violation of the Energy Policy Act's  
4 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
5 its response to Plaintiffs' August 10, 2001 FOIA request, HHS did  
6 not provide any 1996 compliance data. On information and belief,  
7 HHS did not comply with the Act's requirement that 25 percent of  
8 the covered vehicles HHS acquired in 1996 must be AFVs. In its  
9 response to Plaintiffs' FOIA request, HHS did not provide any 1997  
10 compliance data. On information and belief, HHS did not comply  
11 with the Act's requirement that 33 percent of the covered vehicles  
12 HHS acquired in 1997 must be AFVs. In its response to Plaintiffs'  
13 FOIA request, HHS did not provide any 1998 compliance data. On  
14 information and belief, HHS did not comply with the Act's  
15 requirement that 50 percent of the covered vehicles HHS acquired in  
16 1998 must be AFVs. In its response to Plaintiffs' FOIA request,  
17 HHS did not provide any 1999 compliance data. On information and  
18 belief, HHS did not comply with the Act's requirement that 75  
19 percent of the covered vehicles HHS acquired in 1999 must be AFVs.  
20 In its response to Plaintiffs' FOIA request, HHS did not provide  
21 any 2000 compliance data. On information and belief, HHS did not  
22 comply with the Act's requirement that 75 percent of the covered  
23 vehicles HHS acquired in 2000 must be AFVs.

1 133. Defendant HUD is in violation of the Energy Policy Act's  
2 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). HUD  
3 has not responded to Plaintiffs' August 10, 2001 FOIA request. On  
4 information and belief, HUD did not comply with the Act's  
5 requirement that 25 percent of the covered vehicles HUD acquired in  
6 1996 must be AFVs. According to DOE information produced in  
7 response to Plaintiffs' August 7, 2001 FOIA request to DOE, HUD  
8 stated that zero percent of the covered vehicles HUD acquired in  
9 1997 were AFVs rather than the 33 percent required by law.  
10 According to DOE information produced in response to Plaintiffs'  
11 August 7, 2001 FOIA request to DOE, HUD stated that zero percent  
12 of the covered vehicles HUD acquired in 1998 were AFVs rather than  
13 the 50 percent required by law. In 1998, HUD was approximately 1  
14 AFV short of the Act's requirements. HUD has not responded to  
15 Plaintiffs' FOIA request of August 10, 2001. In response to  
16 Plaintiffs' August 7, 2001 FOIA request to DOE, DOE had no 1999 or  
17 2000 compliance data for HUD. On information and belief, HUD did  
18 not comply with the Act's requirement that 75 percent of the  
19 covered vehicles HUD acquired in 1999 and 2000 must be AFVs.

20 134. Defendant DOL is in violation of the Energy Policy Act's  
21 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
22 its response to Plaintiffs' August 10, 2001 FOIA request, DOL did  
23 not provide any 1996 compliance data. On information and belief,  
24

1 DOL is in violation of the Act's requirement that 25 percent of the  
2 covered vehicles DOL acquired in 1996 must be AFVs. In its  
3 response to Plaintiffs' FOIA request, DOL provided insufficient  
4 information to determine whether DOL complied with the Act's  
5 requirement that 75 percent of the covered vehicles DOL acquired in  
6 1999 must be AFVs. On information and belief, DOL failed to comply  
7 with the Act's requirement that 75 percent of the covered vehicles  
8 DOL acquired in 1999 must be AFVs. In its response to Plaintiffs'  
9 FOIA request, DOL provided insufficient information to determine  
10 whether DOL complied with the Act's requirement that 75 percent of  
11 the covered vehicles DOL acquired in 2000 must be AFVs. On  
12 information and belief, DOL failed to comply with the Act's  
13 requirement that 75 percent of the covered vehicles DOL acquired in  
14 2000 must be AFVs.

15 135. Defendant State is in violation of the Energy Policy  
16 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).  
17 State has not responded to Plaintiffs' August 14, 2001 FOIA  
18 request. On information and belief, State is in violation of the  
19 Act's requirement that 25 percent of the covered vehicles State  
20 acquired in 1996 must be AFVs. On information and belief, State is  
21 in violation of the Act's requirement that 33 percent of the  
22 covered vehicles State acquired in 1997 must be AFVs. On  
23 information and belief, State is in violation of the Act's

1 requirement that 50 percent of the covered vehicles State acquired  
2 in 1998 must be AFVs. On information and belief, State is in  
3 violation of the Act's requirement that 75 percent of the covered  
4 vehicles State acquired in 1999 must be AFVs.

5 136. Defendant Treasury is in violation of the Energy Policy  
6 Act's AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D).  
7 Treasury has not responded to Plaintiffs' August 10, 2001 FOIA  
8 request. On information and belief, Treasury is in violation of  
9 the Act's requirement that 25 percent of the covered vehicles  
10 Treasury acquired in 1996 must be AFVs. On information and belief,  
11 Treasury is in violation of the Act's requirement that 33 percent  
12 of the covered vehicles Treasury acquired in 1997 must be AFVs. On  
13 information and belief, Treasury is in violation of the Act's  
14 requirement that 50 percent of the covered vehicles Treasury  
15 acquired in 1998 must be AFVs. On information and belief, Treasury  
16 is in violation of the Act's requirement that 75 percent of the  
17 covered vehicles Treasury acquired in 1999 must be AFVs. On  
18 information and belief, Treasury is in violation of the Act's  
19 requirement that 75 percent of the covered vehicles Treasury  
20 acquired in 2000 must be AFVs.

21 137. Defendant NASA is in violation of the Energy Policy Act's  
22 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
23 its response to Plaintiffs' August 10, 2001 FOIA request, NASA did

1 not provide any 1996 compliance data. On information and belief,  
2 NASA is in violation of the Act's requirement that 25 percent of  
3 the covered vehicles NASA acquired in 1996 must be AFVs. In its  
4 response to Plaintiffs' FOIA response, NASA did not provide any  
5 1999 compliance data. On information and belief, NASA is in  
6 violation of the Act's requirement that 75 percent of the covered  
7 vehicles NASA acquired in 1999 must be AFVs. In its response to  
8 Plaintiffs' FOIA response, NASA did not provide any 2000 compliance  
9 data. On information and belief, NASA is in violation of the Act's  
10 requirement that 75 percent of the covered vehicles NASA acquired  
11 in 2000 must be AFVs.

12 138. Defendant USPS is in violation of the Energy Policy Act's  
13 AFV purchasing requirements. 42 U.S.C. § 13212(b)(1)(A-D). In  
14 its response to Plaintiffs' October 24, 2001 FOIA request, USPS  
15 stated that 28 percent of the covered vehicles USPS acquired in  
16 1997 were AFVs rather than the 33 percent required by law. In  
17 1997, USPS was approximately 137 AFVs short of the Act's  
18 requirement.

19 **II. All Defendants Are In Violation of The Act's Public Reporting**  
20 **Requirements**

21 139. Defendant DOE has failed to place its annual federal  
22 fleet AFV compliance report on a publicly available website and  
23 failed to notify the public of the reports' existence and location

1 through publication of this information in the Federal Register as  
2 required by Energy Policy Act section 13218. See 42 U.S.C. §  
3 13218 (b) .

4 140. Defendant Commerce has failed to place its annual federal  
5 fleet AFV compliance report on a publicly available website and  
6 failed to notify the public of the reports' existence and location  
7 through publication of this information in the Federal Register as  
8 required by Energy Policy Act section 13218. See 42 U.S.C. §  
9 13218 (b) .

10 141. Defendant DOD has failed to place its annual federal  
11 fleet AFV compliance report on a publicly available website and  
12 failed to notify the public of the reports' existence and location  
13 through publication of this information in the Federal Register as  
14 required by Energy Policy Act section 13218. See 42 U.S.C. §  
15 13218 (b) .

16 142. Defendant DOI has failed to place its annual federal  
17 fleet AFV compliance report on a publicly available website and  
18 failed to notify the public of the reports' existence and location  
19 through publication of this information in the Federal Register as  
20 required by Energy Policy Act section 13218. See 42 U.S.C. §  
21 13218 (b) .

22 143. Defendant DOJ has failed to place its annual federal  
23 fleet AFV compliance report on a publicly available website and  
24

1 failed to notify the public of the reports' existence and location  
2 through publication of this information in the Federal Register as  
3 required by Energy Policy Act section 13218. See 42 U.S.C. §  
4 13218 (b) .

5 144. Defendant GSA has failed to place its annual federal  
6 fleet AFV compliance report on a publicly available website and  
7 failed to notify the public of the reports' existence and location  
8 through publication of this information in the Federal Register as  
9 required by Energy Policy Act section 13218. See 42 U.S.C. §  
10 13218 (b) .

11 145. Defendant DVA has failed to place its annual federal  
12 fleet AFV compliance report on a publicly available website and  
13 failed to notify the public of the reports' existence and location  
14 through publication of this information in the Federal Register as  
15 required by Energy Policy Act section 13218. See 42 U.S.C. §  
16 13218 (b) .

17 146. Defendant DOT has failed to place its annual federal  
18 fleet AFV compliance report on a publicly available website and  
19 failed to notify the public of the reports' existence and location  
20 through publication of this information in the Federal Register as  
21 required by Energy Policy Act section 13218. See 42 U.S.C. §  
22 13218 (b) .

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1 147. Defendant NRC has failed to place its annual federal  
2 fleet AFV compliance report on a publicly available website and  
3 failed to notify the public of the reports' existence and location  
4 through publication of this information in the Federal Register as  
5 required by Energy Policy Act section 13218. See 42 U.S.C. §  
6 13218(b).

7 148. Defendant EPA has failed to place its annual federal  
8 fleet AFV compliance report on a publicly available website and  
9 failed to notify the public of the reports' existence and location  
10 through publication of this information in the Federal Register as  
11 required by Energy Policy Act section 13218. See 42 U.S.C. §  
12 13218(b).

13 149. Defendant USDA has failed to place its annual federal  
14 fleet AFV compliance report on a publicly available website and  
15 failed to notify the public of the reports' existence and location  
16 through publication of this information in the Federal Register as  
17 required by Energy Policy Act section 13218. See 42 U.S.C. §  
18 13218(b).

19 150. Defendant HHR has failed to place its annual federal  
20 fleet AFV compliance report on a publicly available website and  
21 failed to notify the public of the reports' existence and location  
22 through publication of this information in the Federal Register as  
23  
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1 required by Energy Policy Act section 13218. See 42 U.S.C. §  
2 13218(b).

3 151. Defendant HUD has failed to place its annual federal  
4 fleet AFV compliance report on a publicly available website and  
5 failed to notify the public of the reports' existence and location  
6 through publication of this information in the Federal Register as  
7 required by Energy Policy Act section 13218. See 42 U.S.C. §  
8 13218(b).

9 152. Defendant DOL has failed to place its annual federal  
10 fleet AFV compliance report on a publicly available website and  
11 failed to notify the public of the reports' existence and location  
12 through publication of this information in the Federal Register as  
13 required by Energy Policy Act section 13218. See 42 U.S.C. §  
14 13218(b).

15 153. Defendant State has failed to place its annual federal  
16 fleet AFV compliance report on a publicly available website and  
17 failed to notify the public of the reports' existence and location  
18 through publication of this information in the Federal Register as  
19 required by Energy Policy Act section 13218. See 42 U.S.C. §  
20 13218(b).

21 154. Defendant Treasury has failed to place its annual federal  
22 fleet AFV compliance report on a publicly available website and  
23 failed to notify the public of the reports' existence and location

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1 through publication of this information in the Federal Register as  
2 required by Energy Policy Act section 13218. See 42 U.S.C. §  
3 13218(b).

4 155. Defendant NASA has failed to place its annual federal  
5 fleet AFV compliance report on a publicly available website and  
6 failed to notify the public of the reports' existence and location  
7 through publication of this information in the Federal Register as  
8 required by Energy Policy Act section 13218. See 42 U.S.C. §  
9 13218(b).

10 156. Defendant USPS has failed to place its annual federal  
11 fleet AFV compliance report on a publicly available website and  
12 failed to notify the public of the reports' existence and location  
13 through publication of this information in the Federal Register as  
14 required by Energy Policy Act section 13218, See 42 U.S.C. §  
15 13218(b).

16 **III. Defendant DOE Has Violated The Act's Private And Municipal**  
17 **Fleet Provisions**

18 157. Defendant DOE has missed its January 1, 2000 deadline for  
19 determining through rulemaking whether a private and municipal  
20 fleet requirement program is necessary to comply with the Act's  
21 clean air and energy security goals.

22 158. DOE complied with the first step of the mandatory fleet  
23 requirement program rulemaking by publishing an advance notice of  
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1 | proposed rulemaking to evaluate the progress made toward achieving  
2 | the 10 and 30 percent oil consumption reduction goals of the Act as  
3 | required under Energy Policy Act section 13257(a)(3). Alternative  
4 | Fueled Vehicle Acquisition Requirements for Private and Local  
5 | Government Fleets, Advance Notice of Proposed Rulemaking and Notice  
6 | of Public Hearings, 61 Fed. Reg. 41032 (Aug. 7, 1996).

7 | 159. DOE held three regional hearings in Dallas, TX,  
8 | Sacramento, CA, and Washington, D.C. and invited the public to  
9 | express oral views, data, and arguments on the proposed rulemaking  
10 | and submit written comments. Id.

11 | 160. DOE was unable to meet the December 15, 1996 deadline for  
12 | early rulemaking. Notice of Termination of Proposed Rule, 62 Fed.  
13 | Reg. 19701 (Apr. 23, 1997). As a result, the Act requires DOE to  
14 | follow the later rulemaking procedures. Under these procedures,  
15 | DOE was required to begin rulemaking by April 1998, 42 U.S.C. §  
16 | 13257(c)(c), and publish a proposed rule for a fleet requirement  
17 | program before May 1, 1999, with hearings and public comment to  
18 | follow. 42 U.S.C. §§ 13257(d).

19 | 161. DOE was required to issue a final rule determining  
20 | whether a fleet requirement program is or is not necessary by  
21 | January 1, 2000. Id. at §§ 13257(e)(1), 13257(f)(2), 13257(g)(1).

22 | 162. On April 17, 1998, DOE published an advance notice of  
23 | proposed rulemaking and notice of public hearings for the Act's

1 private and municipal fleet requirement. Advance Notice of  
2 Proposed Rulemaking and Notice of Public Hearings, 63 Fed. Reg.  
3 19372 (Apr. 17, 1998). DOE held public hearings in Los Angeles,  
4 CA, Minneapolis, MN, and Washington, D.C. Id. DOE missed its May  
5 1, 1999 deadline for issuing a proposed rule.

6 163. The Act authorizes the Secretary of DOE to take advantage  
7 of a one-time extension of the January 1, 2000 deadline for 90  
8 days, which the Secretary did on December 29, 1999. Advance Notice  
9 of Proposed Rulemaking; Extension of Deadline, 65 Fed. Reg. 1831  
10 (Jan. 12, 2000). As a result, DOE's final determination was due on  
11 April 1, 2000. However, DOE still has not even issued the proposed  
12 rule due on May 1, 1999, a deadline with no statutory provision for  
13 an extension.

14 164. Even though the Energy Policy Act has no other deadline  
15 extension provisions, in July 2000, DOE announced that it is  
16 "pausing its rulemaking efforts regarding whether and what to  
17 propose as regulatory requirements on local government and private  
18 fleets with respect to alternative fueled vehicles until after  
19 consultations with State and local government officials have  
20 occurred." Notice of Public Workshops and Opportunity for Public  
21 Comment, 65 Fed. Reg. 44987 (July 20, 2000).

22 165. In a separate publication, DOE provided the following  
23 tentative timetable for complying with the fleet requirement

1 program deadlines: (1) it will meet the May 1, 1999 deadline by May  
2 2001; and (2) it will meet the January 1, 2000 deadline by January  
3 2002. Unified Agenda, 65 Fed. Reg. 73763, 73764 (Nov. 30, 2000).

4 **FIRST CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13212(b)(1))

6 166. Each and every allegation set forth above in the  
7 Complaint is incorporated herein, by reference.

8 167. Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,  
9 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS have  
10 violated the Energy Policy Act by failing to meet the Energy Policy  
11 Act federal fleet acquisition requirements. 42 U.S.C. §

12 13212(b)(1). This failure constitutes agency action unlawfully  
13 withheld, unreasonably delayed, and contrary to law within the  
14 meaning of the APA, 5 U.S.C. § 706(1).

15 **SECOND CLAIM FOR RELIEF**

16 (Violation of the Energy Policy Act, 42 U.S.C. §13218(b)(1)-(3))

17 168. Each and every allegation set forth above in the  
18 Complaint is incorporated herein, by reference.

19 169. All Defendants have failed to make AFV acquisition  
20 compliance reports available to the public on the Internet and  
21 notify the public of the existence and location of these reports  
22 through publication of this information in the Federal Register.  
23 Defendants' failure to comply with section 13218 of the Energy

1 Policy Act constitutes agency action unlawfully withheld,  
2 unreasonably delayed, and contrary to law within the meaning of the  
3 APA, 5 U.S.C. § 706(1).

4 **THIRD CLAIM FOR RELIEF**

5 (Violation of the Energy Policy Act, 42 U.S.C. § 13257)

6 170. Each and every allegation set forth above in the  
7 Complaint is incorporated herein, by reference.

8 171. Defendant DOE has violated section 13257 of the Energy  
9 Policy Act by failing to issue a proposed rule and final  
10 determination on the necessity of a private and municipal fleet  
11 program by May 1, 1999 and April 1, 2000 respectively as required  
12 by the Energy Policy Act. Defendant's failure constitutes agency  
13 action unlawfully withheld, unreasonably delayed, and contrary to  
14 law within the meaning of the APA, 5 U.S.C. § 706(1).

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs request that this Court enter judgment  
17 providing the following relief:

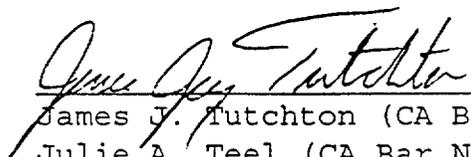
18 1. Declare that Defendants Commerce, DOI, DOJ, GSA, DVA, DOT,  
19 NRC, EPA, USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS  
20 are in violation of their nondiscretionary duties under 42 U.S.C. §  
21 13212(b)(1).

- 1 2. Declare that all Defendants are in violation of their  
2 nondiscretionary duties under 42 U.S.C. § 13218(b) of the Energy  
3 Policy Act;
- 4 3. Declare that Defendant DOE is in violation of its  
5 nondiscretionary duties under 42 U.S.C. § 13257 of the Energy  
6 Policy Act;
- 7 4. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,  
8 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to comply  
9 with 42 U.S.C. § 13212(b)(1) of the Energy Policy Act.
- 10 5. Order Defendants Commerce, DOI, DOJ, GSA, DVA, DOT, NRC, EPA,  
11 USDA, DOD, HHS, HUD, DOL, State, Treasury, NASA, and USPS to offset  
12 future conventional vehicle purchases with the number of AFVs  
13 necessary to bring Defendants into compliance with the Act's 1996,  
14 1997, 1998, 1999, 2000 and 2001 percentage requirements.
- 15 6. Order all Defendants to comply with 42 U.S.C. § 13218 of the  
16 Energy Policy Act;
- 17 7. Order Defendant DOE to comply with 42 U.S.C. § 13257 of the  
18 Energy Policy Act;
- 19 8. Retain jurisdiction over this action to ensure compliance with  
20 the Court's decree;
- 21 9. Award Plaintiffs their costs of litigation, including  
22 reasonable attorneys' fees; and
- 23 10. Grant such other relief as the Court deems just and proper.

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Dated December 27, 2001.

Respectfully submitted,

  
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