

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE)	
COUNCIL, INC.; and INTERNATIONAL)	
UNION, UNITED AUTOMOBILE,)	
AEROSPACE AND AGRICULTURAL)	
IMPLEMENT WORKERS OF AMERICA)	
(UAW),)	22-cv-3442
)	
Plaintiff,)	
)	
v.)	
)	
LOUIS DEJOY, in his official capacity as)	
U.S. Postmaster General; and U.S. POSTAL)	
SERVICE,)	
)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This case is about the U.S. Postal Service’s failure to comply with the National Environmental Policy Act (NEPA) in its acquisition of thousands of Next Generation Delivery Vehicles. The Postal Service’s Final Environmental Impact Statement (EIS) supporting that acquisition is deficient at every step. The Postal Service signed a contract to purchase vehicles before undertaking environmental review. It failed to evaluate reasonable alternatives. It made irrational assumptions about the future prices of gasoline, electricity, and electric vehicles. It committed to buying a new fleet of gas-powered vehicles without considering greenhouse gas emissions. And when commenters—including the Environmental Protection Agency (EPA) and the Council on Environmental Quality (CEQ), two fellow government agencies—pointed out

these errors, the Postal Service quickly doubled down in a flawed Record of Decision (ROD) based on the woefully inadequate EIS.

2. In light of these failures, plaintiffs Natural Resources Defense Council, Inc. (NRDC) and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) challenge the U.S. Postal Service's final EIS for Purchase of Next Generation Delivery Vehicles. *See* 87 Fed. Reg. 994 (Jan. 7, 2022) (notice of availability).

3. The Postal Service owns and operates a fleet of roughly 212,000 delivery vehicles, most of which were designed and built specifically for the Postal Service. These purpose-built vehicles have exceeded their expected service lives, average over \$5,000 per vehicle in annual maintenance costs, and lack basic features such as airbags and anti-lock brakes. Shifting delivery needs, including increases in parcels and decreases in letter volume, also no longer match what the vehicles were designed for. As a result, the Postal Service has decided to replace this aging fleet with new delivery vehicles.

4. Replacing the Postal Service fleet is a historic opportunity to put electric vehicles (EVs) and related charging infrastructure in every community in the country. The transportation sector accounts for the largest share of greenhouse gas emissions in the United States. Vehicles with internal combustion engines also emit large quantities of other air pollutants such as nitrogen oxides, which contribute to the formation of both particulate matter pollution and ground-level ozone, the main ingredient in smog. Investing in EVs would substantially mitigate the harmful pollution caused by the Postal Service's operations.

5. The Postal Service began the process of replacing its aging delivery vehicle fleet when it issued a request for information in January 2015. It then ordered prototypes based on

manufacturers' bids for internal combustion, hybrid, and plug-in electric vehicles. And on February 23, 2021, it announced that it had selected Oshkosh Defense ("Oshkosh") for a ten-year contract to produce up to 165,000 new vehicles, beginning in 2023. At that time, the Postal Service provided Oshkosh with an initial \$482 million task order covering February 2021 to August 2023. Some of that funding is designated for outfitting a new assembly plant. In June 2021, Oshkosh publicly announced that it will open a dedicated facility in South Carolina to produce new vehicles for the Postal Service.

6. After issuing and funding the vehicle contract, the Postal Service belatedly began to evaluate the environmental impacts of its new vehicle acquisition under NEPA. The Postal Service issued a draft EIS on August 26, 2021. 86 Fed. Reg. 47,662 (Aug. 26, 2021). The draft's preferred alternative was to purchase up to 90% internal combustion vehicles, and a minimum of 10% EVs, over ten years. Based on an assumption that an EV designed specifically for the Postal Service would have a range of 70 miles on a single charge, the EIS projected that all but 12,500 routes, or about 5% of total routes, could be served by EVs. The draft considered and rejected all commercially available "off the shelf" EVs, reasoning that because they were all left-hand-drive vehicles, they could not support curb-side delivery. The draft did not consider impacts from the production, as opposed to the operation, of the Postal Service's custom-built vehicles. Likewise, the draft did not disclose that the vehicles would be produced in South Carolina or consider impacts related to the location of production.

7. Public comments poured in identifying flaws in the Postal Service's analysis, including from Plaintiffs. Plaintiffs criticized the Postal Service for missing an opportunity to increase the number of EVs in the fleet by guaranteeing that only 10% of new delivery vehicles will be electric. Plaintiffs objected to the draft for failing to consider reasonable alternatives,

using obsolete data, ignoring the latest EV technology advancements, inflating costs, and misrepresenting benefits. Plaintiffs faulted the Postal Service for failing to examine the impacts or alternatives associated with production of the new fleet, including the selected contractor's decision to create a new production facility for these vehicles. Plaintiffs explained that the Postal Service's plan would cause undisclosed and unexamined adverse environmental and socioeconomic impacts and proposed specific alternatives to reduce those adverse impacts.

8. EPA also commented on the draft and found that it was "inadequate and preclude[d] meaningful consideration of the proposed action and alternatives." EPA identified and explained in detail specific deficiencies in the Postal Service's selection and analysis of alternatives, economic analysis, air pollutant emission calculations, and consideration of environmental justice. EPA directed the Postal Service to address these deficiencies in a new draft EIS and to make the new draft EIS available for public comment.

9. Despite these and other comments critical of the draft, the Postal Service issued its final EIS on January 7, 2022. *See* 87 Fed. Reg. 994 (Jan. 7, 2022). The final EIS again selected the 90% maximum gas-powered purchase as the preferred alternative. The Postal Service's analysis concluded that the 100% EV alternative would cost \$2.3 to \$3.3 billion more than the preferred alternative. The final EIS made only minimal revisions to the draft, and the Postal Service failed to meaningfully respond to substantive comments.

10. After reviewing the final EIS, EPA concluded that the final EIS "remain[ed] seriously deficient," stated that its "concerns with the draft EIS were not adequately addressed," and found that the EIS was "inconsistent with the requirements of NEPA." EPA again directed the Postal Service to prepare a supplemental EIS to address these flaws. CEQ, which is tasked with implementing NEPA across the entire federal government, echoed the request for a

supplemental EIS and noted that if the Postal Service did not correct the deficiencies through a supplemental EIS that “the Federal courts may compel USPS to alter course.”

11. UAW also submitted comments to the Postal Service after reviewing the final EIS. UAW’s comments on the final EIS highlighted how the Postal Service had provided internally inconsistent and illogical justifications for refusing to consider the impacts and alternatives that UAW identified in its comments on the draft EIS. UAW also advised the Postal Service that it cannot lawfully refuse to consider impacts from the production of the vehicles the agency is causing to be built. However, the Postal Service explicitly refused to consider UAW’s comments on the final EIS.

12. On February 23, 2022, the Postal Service issued a ROD based on and incorporating the final EIS, which the Postal Service chose not to revise. 87 Fed. Reg. 14,588, 14,589 (Mar. 15, 2022). The ROD included the Postal Service’s responses to EPA’s comments on the final EIS, but did not include any response to UAW’s comments on the final EIS.

13. The Postal Service’s decision is based on an unlawfully deficient environmental analysis conducted after the Postal Service had already decided on a course of action. If allowed to stand, it would lock in decades of fossil fuel consumption and pollution in communities across the United States, resulting in higher maintenance and fuel costs, worse air quality, and increased climate impacts. If the Postal Service undertook a supplemental environmental analysis, it could reach a different conclusion and instead invest in much-needed EVs that would reduce air pollution, mitigate the causes of climate change, provide union jobs, and save the Postal Service money.



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