

**COMMENTS OF THE ATTORNEYS GENERAL OF NEW YORK,
CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, THE DISTRICT
OF COLUMBIA, ILLINOIS, MAINE, MARYLAND, MICHIGAN, NEW
JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, AND WASHINGTON, THE CORPORATION
COUNSEL OF THE CITY OF NEW YORK, AND THE DISTRICT COUNSEL
OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

August 15, 2022

Mr. Davon Collins
Environmental Counsel
United States Postal Service
475 L'Enfant Plaza SW
Office 6606
Washington, DC 20260-6201
NEPA@usps.gov

**Re: Notice to Postpone Public Hearing and Extend Public Comment
Period for Supplement to the Next Generation Delivery Vehicles
Acquisitions Final Environmental Impact Statement, 87 Fed.
Reg. 43,561 (July 21, 2022), and Notice of Intent to Prepare a
Supplement to the Next Generation Delivery Vehicles
Acquisitions Final Environmental Impact Statement, 87 Fed.
Reg. 35,581 (June 10, 2022)**

Dear Mr. Collins:

New York, California, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, through their Attorneys General, the City of New York through its Corporation Counsel, and the Bay Area Air Quality Management District through its District Counsel (States) submit these comments on the United States Postal Service's (Postal Service) July 21, 2022 revised Notice of Intent (Notice) to prepare a supplement to the Next Generation Delivery Vehicles (NGDV) Acquisitions Final Environmental Impact Statement (Final EIS).¹ The States strongly support preparation of a Supplemental EIS and the Postal Service's commitment to a greater percentage of battery electric vehicles. However, the scope of topics identified in the Notice should be significantly expanded to address deficiencies in the Final EIS and Record of Decision (ROD).

¹ 87 Fed. Reg. 43,561 (July 21, 2022).

In particular, the total cost of ownership analysis must be redone with data that accurately reflect electric vehicle costs and performance and the cost of fuel for both electric and gas-powered vehicles. The analysis must also pay greater attention to environmental justice impacts and addressing the climate crisis, including state and local climate laws and plans.

Because the Postal Service’s Supplemental EIS is critical to informed decisionmaking, which NEPA requires before the Postal Service irretrievably commits resources to a final action, no additional work to produce gas-powered vehicles should occur under the existing contract with Oshkosh Defense, LLC (Oshkosh), nor should any additional contracts or orders be made with Oshkosh or others until the Postal Service completes this Supplemental EIS and issues a new ROD.

Statutory and Regulatory Background

The National Environmental Policy Act (NEPA)² “is our basic national charter for protection of the environment,”³ with two fundamental purposes: (1) to guarantee that an agency takes a “hard look” at the consequences of its actions *before* the action occurs by ensuring that “the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and (2) to ensure that “the relevant information will be made available to the larger audience that may also play a role in both the decisionmaking process and the implementation of that decision.”⁴ NEPA requires the preparation of a detailed EIS for any “major federal action significantly affecting the quality of the human environment.”⁵ In preparing the EIS, NEPA requires federal agencies to take a “hard look,” which involves considering the direct, indirect, and cumulative impacts of their proposed actions.⁶ When a proposed action has a potential adverse impact on minority or low-income populations, agencies must include an environmental justice analysis as part of this hard look.⁷

NEPA requires accurate and current information, which the agency must disclose to the public. “[A]n agency may not rely on incorrect assumptions or data.”⁸ These “disclosure requirement[s] obligate the agency to make available to the public

² 42 U.S.C. § 4321, *et seq.*

³ *Ctr. for Biological Diversity v. Bernhardt*, 982 F.3d 723, 734 (9th Cir. 2020).

⁴ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989).

⁵ 42 U.S.C. § 4332(2)(C).

⁶ *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002).

⁷ See Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7,629 (Feb. 16, 1994); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330 (D.C. Cir. 2021) (reviewing challenge to agency’s environmental justice analysis under NEPA).

⁸ *Native Ecosystems Council v. U.S. Forest Serv.*, 418 F.3d 953, 964 (9th Cir. 2005).

high quality information, including accurate scientific analysis, expert agency comments and public scrutiny, before decisions are made and actions are taken.”⁹

NEPA further requires that federal agencies provide a “detailed statement” regarding the “alternatives to the proposed action.”¹⁰ This requirement “lies at the heart of any NEPA analysis.”¹¹ Agencies must explore and evaluate all reasonable alternatives that relate to the purposes of the project and discuss the reasons for eliminating any alternatives from detailed study.¹² The existence of “a viable but unexamined alternative renders [an] environmental impact statement inadequate.”¹³

NEPA prohibits an agency from committing resources to a particular course of action prior to completing its environmental review,¹⁴ meaning the agency must “prepare NEPA documents ... before any irreversible and irretrievable commitment of resources.”¹⁵ This “point of commitment” constituting an irreversible and irretrievable commitment of resources can occur when an agency “sign[s] the contract” with a project proponent “and then work[s] to effectuate the Agreement.”¹⁶

The Postal Service is an “independent establishment of the executive branch of the Government of the United States,”¹⁷ and, as an agency of the federal government, is subject to the requirements of NEPA.¹⁸ The Postal Service has recognized its NEPA obligations by, among other things, promulgating agency-specific NEPA procedures in 39 C.F.R. Part 775, in which the Postal Service recognizes its responsibilities to “[i]nterpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in [NEPA] and the NEPA Regulations.”¹⁹ These regulations stress that the Postal Service’s policy must “[e]mphasize environmental issues and alternatives in the consideration of proposed actions,” to “identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse impacts on the environment,” and to “[u]se all practicable means to protect, restore, and enhance the

⁹ *Ctr. for Bio. Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

¹⁰ 42 U.S.C. § 4332(2)(C)(iii).

¹¹ *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006).

¹² See 40 C.F.R. § 1502.14.

¹³ *Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999).

¹⁴ See 40 C.F.R. § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before making a final decision”), see also *id.* § 1506.1 (headed “Limitations on actions during NEPA process”).

¹⁵ *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000).

¹⁶ *Id.*

¹⁷ 39 U.S.C. § 201.

¹⁸ 42 U.S.C. § 4332; 40 C.F.R. § 1500.3(a); see *Akiak Native Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140 (9th Cir. 2000); *Chelsea Neighborhood Ass’ns v. U.S. Postal Serv.*, 516 F.2d 378 (2d Cir. 1975).

¹⁹ 39 C.F.R. § 775.2(a).

quality of the human environment.”²⁰ The Postal Service regulations state that the consideration of alternatives in an EIS “is vitally important.”²¹

The NEPA regulations recognize that an EIS should be supplemented where necessary to evaluate all potential environmental impacts,²² and the Postal Service has determined it must do so here.

In issuing the Final EIS and ROD, the Postal Service violated NEPA by committing resources to a contract with Oshkosh before completing its environmental review and adopted a ROD based on a flawed and incomplete analysis of impacts and alternatives. These flaws in the Final EIS, substantial changes to the action, and significant new circumstances and information, require the Postal Service to prepare this Supplemental EIS before any further activity occurs under this program, including production of vehicles under the existing order or further orders.

Factual Background

A. The States’ Strong Interest in NEPA Review of the Postal Service’s Action

The States have a strong interest in preventing the adverse environmental and public health impacts of fossil fuel development and combustion, including air quality degradation and public health harms associated with the use of fossil fuel-powered vehicles. The transportation sector accounts for a significant percentage of emissions of both criteria pollutants and greenhouse gases, and Postal Service facilities are often located within environmental justice communities who are exposed to disproportionate emissions from mail delivery vehicles.²³

The States also have a strong interest in preventing and mitigating harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, increased wildfire risk, disrupted ecosystems, more severe weather events, and longer and more frequent droughts.²⁴ The States have long been leaders in adopting laws and plans to reduce greenhouse gas emissions and slow the pace of climate change, including policies to promote the electrification of the transportation sector. As a result, the States have strong

²⁰ *Id.* § 775.2(c), (e), (f).

²¹ *Id.* § 775.11(c)(5).

²² 40 C.F.R. §§ 1502.9(d)(1), (2) (An Agency must prepare a supplement when: (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts; and may prepare a supplement “when the agency determines the purposes of the Act will be furthered by doing so.”).

²³ *See* First Amended Complaint, *California v. U.S. Postal Serv.*, Civil Case No. 3:22-cv-02583-JD, Doc. 79, ¶¶ 30-33 (N.D. Cal. filed Apr. 28, 2022) (Attachment 1).

²⁴ *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007).

interests in preventing adverse impacts to these state and local laws and policies—including adopted policies, targets, statutes, and regulations aimed at reducing greenhouse gas emissions and associated climate harms.

Finally, the States have a strong interest in the Postal Service’s compliance with NEPA to provide timely and accurate information so commenters and residents can participate in public decision-making processes.

B. The Final EIS and Record of Decision and Subsequent Developments

The Postal Service awarded a contract to Oshkosh in February 2021 to produce 50,000 to 165,000 Next Generation Delivery Vehicles. At the same time, the Postal Service placed an order that funded the production design, assembly tooling, and factory start-up costs, for this contract—committing more than \$480 million before completing NEPA analysis. After making this commitment, the Postal Service began its NEPA review, eventually issuing its Final EIS in December 2021.²⁵

In early February 2022, before the Postal Service had issued its ROD, the U.S. Environmental Protection Agency (EPA), Council on Environmental Quality (CEQ), members of Congress, and citizens groups wrote letters to the Postal Service identifying serious flaws with its NEPA process. EPA’s letter identified numerous substantive flaws in the Final EIS analysis and requested that the Postal Service address these flaws in a supplemental EIS. In particular, EPA stated that (1) critical features of the Postal Service’s contract with Oshkosh were not disclosed in the Final EIS; (2) the Final EIS underestimated greenhouse gas emissions from internal combustion engine vehicles and overestimated those from battery electric vehicles; (3) the Final EIS did not disclose data and other essential information underlying total cost of ownership analysis that drove the Postal Service’s decision-making; (4) the Final EIS failed to consider a single feasible alternative to the Proposed Action—particularly alternatives that are more environmentally protective; and (5) the Final EIS inadequately considered impacts on environmental justice communities. Despite these critical flaws in its NEPA process and analysis, the Postal Service nonetheless proceeded with issuing its ROD on February 23, 2022. The ROD rejected EPA’s call for supplemental analysis without adequately addressing the numerous flaws identified by EPA and others.

On March 21, 2022, the Postal Service’s Office of Inspector General issued a report entitled “Electric Delivery Vehicles and the Postal Service.”²⁶ The report found that electric vehicles are capable of meeting most of Postal Service’s needs, particularly on longer routes. The Inspector General’s total cost of ownership model

²⁵ See 87 Fed. Reg. 994 (Jan. 7, 2022).

²⁶ See U.S. Postal Service, Office of Inspector General, *Electric Delivery Vehicles and the Postal Service*, Report No. RISC-WP-22-003 (Mar. 17, 2022) [hereinafter, IG Report], available at <https://www.uspsoig.gov/document/electric-delivery-vehicles-and-postal-service>.

projected that electric vehicles are likely to be more affordable to own than gasoline-powered vehicles in certain cases, even in the absence of any financial incentives. About a week before issuing this report, the Inspector General received a congressional request to review the Postal Service’s compliance with NEPA with respect to its Next Generation Delivery Vehicle Acquisitions program. According to publicly available sources, this review has not been completed or its findings issued.

Meanwhile, on April 5, 2022, the House Committee on Oversight and Reform held a hearing on the Postal Service’s delivery fleet, where it heard testimony from representatives from the Postal Service, its Inspector General, and other stakeholders. The next day, the President signed the Postal Service Reform Act of 2022. This significant overhaul of the Postal Service’s financial requirements for funding pension and medical benefits is projected to save the Postal Service billions of dollars in costs over the coming decade.²⁷

On April 28, 2022, the States and others filed suit in the United States District Court for the Northern District of California challenging the Postal Service’s defective NEPA analysis.²⁸ The States’ complaint alleged that the Postal Service violated NEPA by (1) making “an irreversible and irretrievable commitment of resources” before completing the NEPA process by signing contracts with Oshkosh to procure vehicles six months before even releasing its draft environmental review, and a year prior to issuing the Final EIS and Record of Decision; (2) failing to consider and evaluate reasonable alternatives to its action that would largely continue the status quo by replacing 90 percent of its fleet with fossil-fuel powered, internal combustion engine vehicles, evaluating only 10 percent electric and 100 percent electric vehicle options, while arbitrarily rejecting any consideration of vehicle fleets with a larger mix of electric vehicles; (3) failing to take a “hard look” at these alternatives, including air quality, environmental justice, and climate harms, by simply assuming that any upgrade to its vehicle fleet would have positive impacts on the environment; (4) failing to ensure the scientific integrity of its analysis by relying on unfounded assumptions regarding the costs and performance of electric vehicles, infrastructure, and gas prices, and refusing to identify the source of the data relied upon in the Final EIS; and (5) failing to consider inconsistencies of its preferred alternative with the States’ laws and policies to reduce fossil fuel consumption and to electrify the transportation sector.

²⁷ See Congressional Budget Office, Estimated Budgetary Effects of Rules Committee Print 117-32 for H.R. 3076, the Postal Service Reform Act of 2022, as Posted on February 3, 2022, and as Amended by Amendment #1, the Manager's Amendment, as Posted on February 4, 2022 (Feb. 4, 2022) [hereinafter CBO Report], available at https://www.cbo.gov/system/files/2022-02/hr3076_rules.pdf.

²⁸ See *California v. U.S. Postal Serv.*, Civil Case No. 3:22-cv-02583-JD (N.D. Cal.).

This litigation was related to a similar action brought by a coalition of citizen groups,²⁹ and these claims remain pending. Additionally, another coalition of citizen groups and unions filed suit in federal district court in New York.³⁰

In early August 2022, Congress passed the Inflation Reduction Act. Section 70002 contains approximately \$3 billion in funding for the Postal Service zero-emissions delivery vehicles and associated infrastructure. Once enacted, this legislation will close the purported gap in funding that the Postal Service identified in the Final EIS and ROD between the cost of gas-powered replacement vehicles and a battery electric delivery vehicle fleet.

C. Proposed Supplemental EIS Scope

The Postal Service announced its intention to prepare a Supplemental EIS and published a draft scope on June 10, 2022 in the *Federal Register*.³¹ The June 10 notice identified several issues requiring supplementation of the Final EIS, including network changes that could increase the minimum number of electric vehicles acquired under the NGDV program,³² the need to accelerate replacement of Long-Life Vehicles (LLVs) and Flexible Fuel Vehicles (FFVs) with a combination of NGDV and up to 37,000 left-hand-drive commercially available vehicles, and additional acquisition of up to 86,000 other non-LLV/FFV vehicles.

On July 21, 2022, the Postal Service published a revised draft scope (Notice) which identified several significant changes to the proposed Supplemental EIS. First, the Notice states that the Postal Service proposes to modify its preferred alternative to the purchase and deployment of only 50,000 NGDV, with at least 50 percent of those having battery electric powertrains. Any additional NGDV acquisitions beyond these 50,000 would require future supplements to the EIS to address then-current technology, costs, availability and Postal Service operations.³³ Second, the Notice states that the Postal Service has a critical need to accelerate replacements of LLVs and FFVs and thus proposes to acquire within a two-year period: (1) up to 20,000 left-hand-drive commercial vehicles, including “as many BEVs as are commercially available and consistent with [the Postal Service’s] delivery profile,” and (2) up to 14,500 right-hand-drive gas-powered vehicles. In summary, the revised Notice states that the Supplemental EIS would evaluate the potential environmental impacts of 50,000 NGDVs and an additional 34,500 commercial vehicles, with at least 40 percent

²⁹ *CleanAirNow v. DeJoy*, Case No. 3:22-cv-02576-JD (N.D. Cal. filed Apr. 28, 2022).

³⁰ *NRDC v. DeJoy*, Case No. 1:22-cv-03442-AT (S.D.N.Y. filed Apr. 28, 2022).

³¹ 87 Fed. Reg. at 35,581.

³² *Id.*; see also U.S. Postal Serv., Press Release, USPS Delivery Network Improvement Plan Offers Potential to Expand Number of Electric Vehicles in Postal Fleet (June 1, 2022) at 2 (stating that the Postal Service “anticipates taking advantage of the flexibility built into the contract with Oshkosh Defense to increase the number of BEVs purchased in the initial delivery order.”).

³³ 87 Fed. Reg. at 43,561.

of the total quantity having battery electric powertrains.³⁴ Additional vehicle acquisitions beyond these 84,500 to be analyzed in the Supplemental EIS would be addressed in future supplements.³⁵

Comments on Supplemental EIS Process and Scope

The States provide the following comments on the Notice:

1. USPS should pause its unlawful contract with Oshkosh and existing 50,000-vehicle order while the supplemental NEPA review is completed.

NEPA requires that an agency complete its environmental review, including preparation of environmental documents such as an EIS, before committing resources to a particular course of action,³⁶ including advancing work under a contract.³⁷ Here, the Postal Service executed its contract with Oshkosh before issuing even a draft EIS, committing \$480 million of public resources before NEPA review was completed. After issuing the Final EIS and ROD, the Postal Service placed an initial order for Oshkosh to produce up to 50,000 vehicles beginning in August 2023. The Postal Service continues to march forward with its Oshkosh contract despite a defective and inadequate NEPA process, which is currently under investigation by the Postal Service's own Inspector General and is the subject of three lawsuits. Moreover, the Notice states that the Postal Service is proposing a material increase in the percentage of battery electric vehicles for acquisition under this initial 50,000-vehicle order. The Postal Service should use the Supplemental EIS as an opportunity to avoid further NEPA violations, not compound its unlawful approach to environmental review of these major acquisitions.

To avoid additional NEPA violations and ensure the Supplemental EIS fully informs this major purchasing decision, the Postal Service should pause its Oshkosh contract, including its current 50,000-vehicle order, until the Supplemental EIS is completed. This pause is critical because the Notice has identified significant new information and alternatives requiring supplementation, and there are numerous issues the Postal Service should consider, detailed below, that may dramatically alter the acquisitions.

³⁴ *Id.*

³⁵ *Id.*

³⁶ See 40 C.F.R. § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before making a final decision”), *see also id.* § 1506.1 (headed “Limitations on actions during NEPA process”).

³⁷ *Metcalf v. Daley*, 214 F.3d at 1143.

2. The Supplemental EIS should assess a reasonable range of alternatives for the entire vehicle acquisition program, including NGDV vehicles acquired under the Oshkosh contract and additional commercial vehicles proposed for purchase in the next two years.

Under Item 1 of the June 2022 proposed scope, the Postal Service stated it would assess whether “changed route length and characteristics warrant an increase in the minimum number of BEV NGDVs to be procured under the Proposed Action set forth in the FEIS.”³⁸ In the July 2022 revised Notice, the Postal Service states that it proposes to modify its acquisition to procure a “significantly higher percentage of [battery electric vehicles]” due to “favorable cost benefit impacts expected from the changes to both our operational strategy and our acquisition planning horizon.”³⁹ In analyzing these changes and proposed increase in battery electric vehicles, the Postal Service should assess the number of battery electric vehicles in the entire vehicle acquisition program, including the order of 50,000 NGDV vehicles for production beginning in August 2023, any subsequent orders of the up to 115,000 additional vehicles covered by the contract with Oshkosh, and the additional commercial vehicles it now proposes to acquire.

The Postal Service’s current order with Oshkosh of 50,000 vehicles only requires a minimum of 20 percent battery electric vehicles, approximately 10,000. Even if the Postal Service increases the number to 50 percent, up to 25,000 of the vehicles already ordered could be gas-powered. The Postal Service has made no commitment to a percentage of battery electric powertrains for the up to 115,000 additional NGDV still covered by the Oshkosh contract. The Notice suggests the Postal Service no longer intends to acquire these 115,000 NGDVs beyond its initial 50,000-vehicle order, but the Notice does not state that the Postal Service intends to cancel or modify this contract. Therefore, given a signed contract that includes the possibility of such acquisition, the Postal Service should analyze these 115,000 vehicles as part of its discussion of alternatives.

The Postal Service should also assess a reasonable range of alternative powertrain mixes for the 20,000 left-hand-drive commercial vehicles and up to 14,500 right-hand-drive gas-powered vehicles proposed for acquisition within two years. The States support acquiring as many of the left-hand-drive commercial vehicles with electric powertrains as possible, but NEPA requires that the Postal Service’s analysis also consider whether battery electric powertrains are available for the 14,500 right-hand-drive vehicles, currently proposed to be gas-powered. If all 14,500 commercially available right-hand-drive vehicles are gas-powered—and even if 20,000 commercially available left-hand-drive vehicles are battery electric—it could result

³⁸ 87 Fed. Reg. at 35,581.

³⁹ 87 Fed. Reg. at 43,561.

in 42 percent of near-term acquisitions being gas-powered, and put thousands of gas-powered trucks on the road for years to come.

In summary, the Postal Service must reassess the entire vehicle acquisition program's minimum battery electric vehicle purchase, including the vehicles already ordered, the additional 115,000 vehicles potentially to be acquired under the contract with Oshkosh, and the additional 34,500 commercially available vehicles proposed for near-term acquisition.

When analyzing alternatives for each of these segments of vehicle procurement, the Postal Service should consider a more realistic range of battery electric alternatives than it examined in the Final EIS and ROD. NEPA requires that the Postal Service provide a "detailed statement" regarding the "alternatives to the proposed action."⁴⁰ The requirement to consider reasonable alternatives "lies at the heart of any NEPA analysis,"⁴¹ and "[t]he existence of a viable but unexamined alternative renders" an EIS inadequate.⁴² As EPA observed in its comment letter on the Final EIS, the Postal Service examined *no* feasible alternative mixes of battery- and gas-powered vehicles besides 10 percent and 100 percent. At the same time, the Postal Service stated that only 5 percent of its routes would be unsuited to battery electric vehicles, suggesting that battery electric vehicles could be suitable on at least 95 percent of routes, and certainly many more than only 10 percent of routes the Postal Service previously selected in the ROD.

The Notice indicates that the Postal Service will not simply rely on the extreme range of 10 percent or 100 percent battery electric alternatives it examined in the Final EIS, but will also consider a 50 percent battery electric alternative for NGDVs and an overall 40 percent battery electric alternative for the 86,500 vehicles proposed for acquisition. However, given the need to electrify its fleet and meet its stated goal of 20,000 battery electric commercially available right-hand-drive vehicles, the Supplemental EIS should also consider minimum 80 percent and 95 percent battery electric alternatives for the entire vehicle acquisition program.

3. The Supplemental EIS should account for significant increases in the cost of fuel in assessment of the total cost of ownership.

The cost of fuel was a significant factor in the total cost of ownership analysis in the Final EIS and ROD. The Postal Service's selection of its preferred alternative was based in significant part on estimates that gasoline would cost \$2.71/gallon, the

⁴⁰ 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14(a); 39 C.F.R. § 775.11(c)(5); *see also id.* §§ 775.8(a)(4), 775.11(b)(2)(iv)-(v).

⁴¹ *California ex rel. Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006).

⁴² *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1050 (9th Cir. 2013) (internal quotations and citations omitted).

average price of fuel in 2021.⁴³ However, fuel prices have increased dramatically since then; for example, as of August 12, 2022, the national average gas price was \$3.97 per gallon.⁴⁴ In the longer term, the 2022 Annual Energy Outlook projects that national average fuel prices for gasoline will exceed the Final EIS figure in *every* future year, rising above \$3.00/gal in nominal dollars by 2027 and \$4.00/gal in nominal dollars by 2035.⁴⁵ Therefore, the Supplemental EIS must consider the increasing price of gasoline on (1) the existing order of 50,000 vehicles, (2) any remainder of up to 115,000 vehicles under the Oshkosh contract potentially to be acquired, and (3) any additional vehicles proposed for acquisition in the Notice, particularly the 14,500 gas-powered vehicles proposed for near-term purchase.

4. The Supplemental EIS should include updated information on battery electric vehicle performance and infrastructure.

The Notice anticipates that changes in the Postal Service's operations will favor the use of more battery electric vehicles. To ensure that the Postal Service's analysis takes the "hard look" required by NEPA, the Supplemental EIS must use current information on battery electric vehicles performance and infrastructure. The Final EIS used older battery performance and cost data, but in this quickly evolving area, current data are critical to making informed decisions. For example, detailed comments on the Notice from the California Air Resources Board (CARB) provide cost data for comparable battery electric vehicles procured through state contracts in California at prices significantly lower than the figures the Postal Service used in its Final EIS.⁴⁶ The CARB comments also provide information on a number of postal agencies in other countries, including in right-hand-drive markets, with recent or anticipated vehicle acquisition programs that the Supplemental EIS should examine for more accurate cost data.⁴⁷ The Supplemental EIS analysis should consider the mileage range offered by current battery technology, the costs of charging infrastructure, and the ratio and number of chargers necessary to support a fleet at higher percentages of electrification.

⁴³ See U.S. Postal Service, Record of Decision & Record of Environmental Consideration, Next Generation Delivery Vehicles Acquisitions 5 (Feb. 23, 2022) [hereinafter ROD], https://uspsngdveis.com/documents/USPS%20NGDV%20Acquisitions%20NEPA%20Record%20of%20Decision_2.23.22.pdf.

⁴⁴ Am. Automobile Ass'n, Gas Prices, <https://gasprices.aaa.com> (visited Aug. 12, 2022).

⁴⁵ U.S. Energy Information Admin., Annual Energy Outlook 2022, Table 12. Petroleum and Other Liquids Prices, Case:AEO2022 Reference Case, *available at* <https://www.eia.gov/outlooks/aeo/data/browser/#/?id=12-AEO2022®ion=0-0&cases=ref2022&start=2020&end=2050&f=A&linechart=ref2022-d011222a.3-12-AEO2022~ref2022-d011222a.87-12-AEO2022&ctype=linechart&sid=ref2022-d011222a.87-12-AEO2022&sourcekey=0>. (last visited August 12, 2022).

⁴⁶ See Cal. Air Resources Board, Letter to Jennifer Beiro-Reveille, U.S. Postal Serv., at 17-20 (Jul. 29, 2022).

⁴⁷ *Id.* at 20-22.

In addition, the Supplemental EIS should provide comparisons to other battery electric vehicles used by other delivery companies such as FedEx and Amazon, which have both committed to significantly electrifying their delivery vehicle fleets. Comparisons to other delivery companies should examine both NGDVs and the 34,500 commercially available vehicles proposed for near-term purchase.

5. The Supplemental EIS must account for inconsistencies with approved state and local laws, policies, and plans.

The NEPA regulations require that “[t]o better integrate environmental impact statements into State, Tribal, or local planning processes,” an EIS “shall discuss any inconsistency of a proposed action with any approved State, Tribal, or local plan or law[,] and [w]here an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.”⁴⁸ The Postal Service’s delivery fleet is the largest civilian public vehicle fleet in the country, deployed in every state and locality across the nation and thus affects every state and local government’s greenhouse gas requirements and initiatives. However, the Final EIS does not analyze this issue, a glaring omission that could undermine numerous States’ requirements to address climate change.

Many of the States have adopted laws, regulations, policies and plans to reduce greenhouse gas emissions and fossil fuel consumption to mitigate the devastating consequences of global climate change, as well as to electrify the transportation sector. For example, New York’s Climate Leadership and Community Protection Act requires the state to reduce economy-wide greenhouse gas emissions 40 percent below 1990 levels by 2030 and at least 85 percent below 1990 levels by 2050.⁴⁹ The City of New York has committed to reducing greenhouse gas emissions 80 percent below 2005 levels by 2050⁵⁰ and has issued numerous plans describing its path to achieving this goal, all of which call for increased electrification of the transportation sector.

California’s laws and plans include (1) California’s statutory target of reducing greenhouse gas emissions by 40 percent below 1990 levels by 2030;⁵¹ (2) the California Air Resources Board’s plan to reduce fossil fuel consumption by 45 percent by 2030 to meet this target; (3) California’s policies to phase out the sale of new conventional passenger cars and trucks by 2035 and achieve 100 percent zero-emission medium and heavy duty vehicle sales by 2045;⁵² and (4) California’s policy to achieve carbon neutrality by 2045.⁵³ Local requirements are often complementary or stricter. For example, the Bay Area Air Quality Management District has set a target that 90

⁴⁸ 40 C.F.R. § 1506.2(d).

⁴⁹ See N.Y. Env’tl. Conserv. L. § 75-0107(1).

⁵⁰ See NYC Admin. Code § 24-803.

⁵¹ Cal. Health & Safety Code § 38566.

⁵² Cal. Executive Order N-79-20.

⁵³ Cal. Executive Order B-55-18.

percent of vehicles in the Bay Area should be zero emissions by 2050, with an interim target of 1.5 million such vehicles by 2030. Access to electric vehicle charging stations will increase as governments work to meet these targets.

Similarly, Connecticut must reduce the level of greenhouse gas emissions in the state by at least 45 percent below the 2001 level by 2030 and by at least 80 percent below the 2001 level by 2050.⁵⁴ Washington must reduce overall greenhouse gas emissions in the state by 45 percent below 1990 levels by 2030⁵⁵ and set a statewide target that all publicly and privately owned passenger and light duty vehicles of model year 2030 or later that are sold, purchased, or registered in Washington State be electric vehicles.⁵⁶ New Mexico has enacted an Energy Transition Act, which sets standards for electric utilities of 50 percent renewable energy by 2030, 80 percent by 2040, and zero-carbon resources by 2050. Pennsylvania has adopted a Climate Action Plan to comply with the governor's commitment to reach a 26 percent reduction in greenhouse gases by 2025 and an 80 percent reduction by 2050.⁵⁷ New Jersey's Global Warming Response Act requires the state to reduce greenhouse gas emissions from their 2006 levels by 80 percent by 2050.⁵⁸ Among many actions Oregon has taken to combat climate change, it has established a policy to reduce greenhouse gas emissions by 45 percent below 1990 levels by the year 2035, and 80 percent below by 2050, and has enacted a requirement that the state's electric utilities transition to 100 percent renewable energy by 2040.⁵⁹

In Rhode Island, these laws and plans include, among others: Rhode Island's 2021 Act on Climate which, *inter alia*, mandates greenhouse gas emission reductions to 45 percent below 1990 levels by 2030; 80 percent below 1990 levels by 2040, and to net-zero emissions by 2050.⁶⁰ As of 2026, there will be a statutory right to bring actions, including actions against the State and its agencies, for failure to comply with the 2021 Act on Climate.⁶¹ In Maryland, the Climate Solutions Act of 2022 requires the State to reduce greenhouse gas emissions 60 percent below 2006 levels by 2031.⁶²

⁵⁴ Conn. Gen. Stat. § 22a-200a(a).

⁵⁵ Wash. Rev. Code § 70A.45.020(1)(a)(ii).

⁵⁶ S.B. 5974, 67th Leg., Reg. Sess. (Wash. 2022).

⁵⁷ See Pa. Executive Order 2019-01, *available at* <https://www.governor.pa.gov/newsroom/executive-order-2019-01-commonwealth-leadership-in-addressing-climate-change-and-promoting-energy-conservation-and-sustainable-governance/> and <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>.

⁵⁸ N.J.S.A. 26:2C-37.

⁵⁹ Executive Order No. 20-04; Or. Rev. Stat. § 469A.410.

⁶⁰ See R.I. Gen Laws § 42-6.2-9.

⁶¹ See R.I. Gen Laws § 42-6.2-9.

⁶² Md. Code Ann., Env't § 2-1204.1.

Having failed to address the inconsistencies of its NGDV program with these state and local laws, policies and plans, the Postal Service must do so now when preparing the Supplemental EIS.

6. The Supplemental EIS should account for other significant new information and developments that have arisen since issuance of Final EIS and ROD.

Several developments after the issuance of the Final EIS or ROD present significant new information and changed circumstances that the Supplemental EIS must address.

A. Postal Service Reform Act of 2022 and Inflation Reduction Act of 2022

The Supplemental EIS must address the Postal Service's significantly changed financial situation following enactment of the Postal Service Reform Act of 2022 (HR 3076) and Inflation Reduction Act of 2022 (HR 5376). In the Final EIS and ROD, the Postal Service's selection of an only 10 percent battery electric vehicle alternative was based largely on the purported higher costs and alleged lack of funding for electric vehicles.⁶³ However, the enactment on April 6, 2022 of the Postal Service Reform Act has dramatically changed the Postal Service's financial outlook. This major law restructured pre-funding obligations that have for years saddled the Postal Service with unsustainable pension and medical costs. As a result, the Congressional Budget Office estimates billions of dollars in cost savings to the Postal Service between 2022-2031.⁶⁴

The enactment of the Inflation Reduction Act of 2022 will even more dramatically transform the Postal Service's ability to electrify its vehicle fleet. In the ROD, the Postal Service stated that a 100 percent battery electric fleet would cost \$2.3 billion more than its 90 percent gas-powered alternative.⁶⁵ The Inflation Reduction Act recently passed by Congress will provide the Postal Service with \$3 billion in funding for zero-emission delivery vehicles and infrastructure, which should close any purported gap in necessary funding and support the Postal Service's ability to electrify its fleet to the maximum extent operationally possible.

Therefore, the Supplemental EIS should assess the impact of this additional available funding on the Postal Service's ability to acquire more battery electric vehicles overall, and to do so more quickly.

⁶³ See ROD, at 5.

⁶⁴ CBO Report, at 1.

⁶⁵ See ROD, at 5.

B. Litigation

Several lawsuits have been filed challenging the Final EIS and ROD on the basis of procedural and substantive violations of NEPA.⁶⁶ The claims in these suits echo the serious problems identified by CEQ, EPA, members of Congress and others earlier this year. A copy of the current amended complaint filed by the States is appended as **Attachment 1** to this letter. As proposed, the Supplemental EIS scope does not address the numerous deficiencies identified in the complaint, nor the letters from various agencies and groups following the Final EIS. The Postal Service should use this opportunity to address the deficiencies in its existing analysis of the NGDV program and undertake a lawful and complete analysis of the additional vehicle acquisitions it is proposing under the Notice.

NEPA requires the Postal Service to take a “hard look” at the environmental impacts of its proposed acquisition program, identifying and analyzing the direct, indirect, and cumulative impacts of the NGDV program and the expanded acquisitions proposed in the Supplemental EIS scope.⁶⁷ Because this proposed action has a potential adverse impact on minority or low-income populations, the Postal Service should include an environmental justice analysis as part of this hard look.⁶⁸ As detailed in the litigation, the Final EIS and ROD were woefully deficient in this area. The Supplemental EIS must include a comprehensive and updated analysis of air quality, environmental justice, and climate impacts with respect to the various alternatives, along with updated information regarding gas prices and battery electric vehicle performance.

C. Postal Service Inspector General Report

The Postal Service Inspector General’s report issued in March 2022, after issuance of the current ROD, found that electric vehicles could generally meet the Postal Service’s needs. For example, the Inspector General found that the average 24-mile postal route was well within the ability of current electric vehicle technology, and even the 2 percent of routes that are 70 miles or longer could be more suited to electric vehicles because the Postal Service saves money on each mile driven compared to gas-powered vehicles.⁶⁹ The Supplemental EIS should address this conclusion and analysis, and should address missing or inadequate areas identified by the Inspector General.

⁶⁶ See *California v. U.S. Postal Serv.*, Civil Case No. 3:22-cv-02583-JD (N.D. Cal.); *CleanAirNow v. DeJoy*, Case No. 3:22-cv-02576-JD (N.D. Cal.); *NRDC v. DeJoy*, Case No. 1:22-cv-03442-AT (S.D.N.Y.).

⁶⁷ *Idaho Sporting Cong. v. Rittenhouse*, 305 F.3d at 973.

⁶⁸ See Exec. Order No. 12898, § 1-101, 59 Fed. Reg. 7,629 (Feb. 16, 1994); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th at 1330 (reviewing challenge to agency’s environmental justice analysis under NEPA).

⁶⁹ See IG Report, at 1.

Additionally, the Inspector General is currently responding to a congressional request to examine NEPA compliance of the Final EIS and ROD.⁷⁰ If this review is completed before the Postal Service issues its Draft Supplemental EIS, the document should address issues identified by the Inspector General's review.

7. The Postal Service should commit to 90 percent or more battery electric vehicles in its initial order.

The Postal Service should pause its production of vehicles while it completes the supplemental NEPA analysis. In the meantime, the Postal Service should also commit to 90 percent or more battery electric vehicles for its first 5,000-vehicle order, which is slated for production in the fall of 2023. This would demonstrate the Postal Service's seriousness of intent to electrify its fleet and would represent a significant initial effort in replacing its existing gas-powered fleet with battery electric vehicles.

Conclusion

In conclusion, the States appreciate the opportunity to comment on the proposed scope for the Postal Service's Supplemental EIS. We support preparation of this supplemental analysis, but have identified a number of areas to expand this NEPA review to address existing deficiencies in the Final EIS and ROD and to avoid duplicating them for this Supplemental EIS. While the Postal Service prepares its final scope and drafts the Supplemental EIS, there should be no further actions for vehicle production under the existing NGDV contract that would lock in production of gas-powered vehicles, and no order for the purchase of up to 34,500 commercially available vehicles proposed in the Notice. NEPA requires an agency to complete its analysis before taking an action, and the Postal Service must comply with this fundamental environmental protection.

⁷⁰ See IG Report, at 2.

Respectfully submitted,

STATE OF NEW YORK

LETITIA JAMES
Attorney General

/s/Claiborne E. Walthall

MICHAEL J. MYERS

Senior Counsel

RACHEL HANNAFORD

Senior Enforcement Counsel

LINDSAY MCKENZIE

Assistant Attorney General

CLAIBORNE E. WALTHALL

Assistant Attorney General

New York State Office of the Attorney
General

Environmental Protection Bureau

State Capitol

Albany, NY 12224

Telephone: (518) 776-2400

E-mail: claiborne.walthall@ag.ny.gov

**BAY AREA AIR QUALITY
MANAGEMENT DISTRICT**

ALEXANDER G. CROCKETT
District Counsel

/s/ Marcia L. Raymond

MARCIA L. RAYMOND

Assistant Counsel

Bay Area Air Quality

Management District

350 Beale Street, Suite 600

San Francisco, CA 94105

(415) 749-5158

mraymond@baaqmd.gov

STATE OF CALIFORNIA

ROB BONTA

Attorney General of California

DAVID A. ZONANA

Supervising Deputy Attorney General

/s/ Stacy J. Lau

GEORGE TORGUN

STACY J. LAU

Deputy Attorneys General

1515 Clay Street, 20th Floor

P.O. Box 70550

Oakland, CA 94612-0550

Telephone: (510) 879-1973

E-mail: Stacy.Lau@doj.ca.gov

STATE OF COLORADO

PHILIP J. WEISER

Attorney General

/s/ Scott Steinbrecher

SCOTT STEINBRECHER

Assistant Deputy Attorney General

Natural Resources and

Environment Section

Ralph C. Carr Colorado Judicial Center

1300 Broadway, Seventh Floor

Denver, Colorado 80203

(720) 508-6287

scott.steinbrecher@coag.gov

STATE OF CONNECTICUT

WILLIAM TONG
Attorney General of Connecticut

/s/ William E. Dornbos
WILLIAM E. DORNBOS
Assistant Attorney General
Office of the Attorney
General of Connecticut
165 Capitol Avenue
Hartford, CT 06106
Telephone: (860) 808-5250
Email: William.Dornbos@ct.gov

DISTRICT OF COLUMBIA

KARL A. RACINE
Attorney General of the
District of Columbia

/s/ Lauren Cullum
LAUREN CULLUM
Special Assistant Attorney General
Office of the Attorney General for the
District of Columbia
400 6th St. NW
Washington, DC 20001
Telephone: 202-727-3400
Email: lauren.cullum@dc.gov

STATE OF DELAWARE

KATHLEEN JENNINGS
Attorney General of Delaware

/s/ Vanessa L. Kassab
CHRISTIAN DOUGLAS WRIGHT
Director of Impact Litigation
VANESSA L. KASSAB
JAMESON A. L. TWEEDIE
RALPH K. DURSTEIN, III
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8899

STATE OF ILLINOIS

KWAME RAOUL
Attorney General

/s/ Jason E. James
MATTHEW J. DUNN
Chief, Environmental Enforcement/
Asbestos Litigation Division
JASON E. JAMES
Assistant Attorney General
Office of the Attorney General
201 West Pointe Drive, Suite 7
Belleville, IL 62226
Tel: (872) 276-3583
jason.james@ilag.gov

STATE OF MAINE

AARON M. FREY
Attorney General of Maine

/s/ Jillian R. O'Brien
JASON ANTON
PAUL SUITTER
JILLIAN R. O'BRIEN
Assistant Attorneys General
Six State House Station
Augusta, Maine 04333-0006
Telephone: (207) 626-8800
Fax: (207) 287-3145
Email: Jason.Anton@maine.gov
Email: Paul.Suitter@maine.gov
Email: Jill.Obrien@maine.gov

**FOR THE PEOPLE OF THE
STATE OF MICHIGAN**

DANA NESSEL
Attorney General

/s/ Elizabeth Morrisseau
ELIZABETH MORRISSEAU
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
Michigan Attorney General's Office
6th Floor, G. Mennen Williams
Building
525 West Ottawa Street
PO Box 30755
Lansing, MI 48933
Telephone: (517) 335-7664
Email: MorrisseauE@michigan.gov

STATE OF MARYLAND

BRIAN E. FROSH
Attorney General of Maryland

/s/ Steven J. Goldstein
STEVEN J. GOLDSTEIN
Special Assistant Attorney General
Office of the Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Telephone: (410) 576-6414
Email: sgoldstein@oag.state.md.us

STATE OF NEW JERSEY

MATTHEW J. PLATKIN
Acting Attorney General of New Jersey

/s/ Lisa Morelli
LISA MORELLI
Deputy Attorney General
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-093
Telephone: 609-376-2745
Email: lisa.morelli@law.njoag.gov

STATE OF NEW MEXICO

HECTOR BALDERAS
Attorney General of New Mexico

/s/ William Grantham
WILLIAM GRANTHAM
Assistant Attorney General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
E-Mail: wgrantham@nmag.gov

STATE OF NORTH CAROLINA

JOSHUA H. STEIN
Attorney General of North Carolina

/s/ Francisco Benzoni
ASHER SPILLER
Assistant Attorney General
FRANCISCO BENZONI
Special Deputy Attorney General
114. W. Edenton Street
Raleigh, NC 27063
Telephone: (919)716-7600
Email: fbenzoni@ncdoj.gov
Email: aspiller@ncdoj.gov

CITY OF NEW YORK

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel of the
City of New York

/s/ Alice R. Baker
ALICE R. BAKER
JOSEPH PEPE
Senior Counsels
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-2314
E-mail: albaker@law.nyc.gov

STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/ Paul Garrahan
PAUL GARRAHAN
Attorney-in-Charge
STEVE NOVICK
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4540
Email: Steve.Novick@doj.state.or.us

**COMMONWEALTH OF
PENNSYLVANIA**

JOSH SHAPIRO
Attorney General of Pennsylvania
MICHAEL J. FISCHER
Chief Counsel and Executive
Deputy Attorney General

/s/ Michael J. Fischer
MICHAEL J. FISCHER
Senior Deputy Attorney General
Office of Attorney General
1600 Arch Street, Suite 300
Philadelphia, PA 19103
Telephone: (215) 560-2171
Email: mfischer@attorneygeneral.gov

STATE OF VERMONT

SUSANNE R. YOUNG
Attorney General of Vermont

/s/ Nicholas F. Persampieri
NICHOLAS F. PERSAMPIERI
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-6902
nick.persampieri@vermont.gov

STATE OF RHODE ISLAND

PETER F. NERONHA
Attorney General

/s/ Nicholas M. Vaz
NICHOLAS M. VAZ
Special Assistant Attorney General
Office of the Attorney General
Environmental and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400 ext. 2297
nvaz@riag.ri.gov

STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General of Washington

/s/ Megan Sallomi
MEGAN SALLOMI
Assistant Attorney General
Environmental Protection Division
Washington State Attorney General's
Office
800 5th Ave Suite 2000,
Seattle, WA 98104-3188
Telephone: (206) 389-2437
Email: Megan.Sallomi@atg.ca.gov

ATTACHMENT 1

1 ROB BONTA
Attorney General of California
2 DAVID A. ZONANA
Supervising Deputy Attorney General
3 GEORGE TORGUN, State Bar No. 222085
Deputy Attorney General
4 1515 Clay Street, 20th Floor
P.O. Box 70550
5 Oakland, CA 94612-0550
Telephone: (510) 879-1002
6 Fax: (510) 622-2270
E-mail: George.Torgun@doj.ca.gov

7 *Attorneys for Plaintiff State of California*

8 *[Additional counsel listed on signature page]*

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 **STATE OF CALIFORNIA, STATE OF**
13 **NEW YORK, COMMONWEALTH OF**
14 **PENNSYLVANIA, STATE OF**
15 **COLORADO, STATE OF**
16 **CONNECTICUT, STATE OF**
17 **DELAWARE, STATE OF ILLINOIS,**
18 **STATE OF MAINE, STATE OF**
19 **MARYLAND, PEOPLE OF THE STATE**
20 **OF MICHIGAN, STATE OF NEW**
JERSEY, STATE OF NEW MEXICO,
STATE OF NORTH CAROLINA, STATE
OF OREGON, STATE OF RHODE
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, and
the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,

21 Plaintiffs,

22 v.

23 **UNITED STATES POSTAL SERVICE,**
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

24 Defendants.

Case No. 3:22-cv-02583-JD

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

25
26 **INTRODUCTION**

27 1. The United States Postal Service has one of the largest civilian vehicle fleets in the
28 world. Its vehicles are on the road, six days a week, in every community in the United States.

1 While they play a critical role delivering the nation’s mail, these vehicles also pollute the air in
2 the communities where they operate and emit significant amounts of greenhouse gases. As its
3 current vehicle fleet nears the end of its useful life, the Postal Service has been presented with a
4 tremendous opportunity to convert its fleet to zero-emission, electric vehicles, a change that
5 would alleviate pollution in overburdened communities and help tackle the climate crisis.

6 2. Given the transformational nature of this change and its significant environmental and
7 public health implications, the Postal Service was obligated to follow a process mandated by the
8 National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321, *et seq.*, to take a “hard look” at
9 the impacts of its “Next Generation Delivery Vehicle Acquisitions” program – to look before it
10 leaps. The Postal Service failed to do so here. Instead, the Postal Service first chose a
11 manufacturer with minimal experience in producing electric vehicles, signed a contract, and made
12 a substantial down payment for new vehicles. Only then did the Postal Service publish a cursory
13 environmental review to justify the decision to replace 90 percent of its delivery fleet with fossil-
14 fuel-powered, internal combustion engine vehicles, despite other available, environmentally
15 preferable alternatives. In doing so, the Postal Service failed to comply with even the most basic
16 requirements of NEPA.

17 3. In particular, the Postal Service violated well-established legal precedent prohibiting
18 “an irreversible and irretrievable commitment of resources” before completing the NEPA process
19 by signing contracts with a defense company (Oshkosh Defense, LLC) to procure vehicles six
20 months before even releasing its draft environmental review, and a year prior to issuing the Final
21 Environmental Impact Statement (“Final EIS”) and Record of Decision.

22 4. The Postal Service also failed to consider and evaluate reasonable alternatives to its
23 action. During its environmental review, the Postal Service put forward a proposed action that
24 would largely continue the status quo by replacing 90 percent of its fleet with fossil-fuel powered,
25 internal combustion engine vehicles. The Postal Service then evaluated only 10 percent electric
26 and 100 percent electric vehicle options, while arbitrarily rejecting any consideration of fleets
27 with a larger mix of electric vehicles.
28

1 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) and 39 U.S.C.
 2 § 409 because this is the judicial district in which Plaintiffs State of California and the Bay Area
 3 Air Quality Management District reside, and this action seeks relief against agencies and/or
 4 officers of the United States.

5 11. Pursuant to Civil Local Rules 3-5(b) and 3-2(c), there is no basis for assignment of
 6 this action to any particular location or division of this Court.

7 **PARTIES**

8 12. Plaintiff STATE OF CALIFORNIA brings this action by and through Attorney
 9 General Rob Bonta. The Attorney General is the chief law enforcement officer of the State and
 10 has the authority to file civil actions in order to protect public rights and interests, including
 11 actions to protect the natural resources of the State. Cal. Const. art. V, § 13; Cal. Gov't Code
 12 §§ 12511, 12600-12612. This challenge is brought in part pursuant to the Attorney General's
 13 independent constitutional, statutory, and common law authority to represent the people's
 14 interests in protecting the environment and natural resources of the State of California from
 15 pollution, impairment, or destruction. *Id.*; *D'Amico v. Bd. of Med. Exam'rs*, 11 Cal. 3d 1 (1974).

16 13. Plaintiff STATE OF NEW YORK brings this action by and through Attorney General
 17 Letitia James. The Attorney General is the chief legal officer of the State of New York and
 18 brings this action on behalf of the State and its citizens and residents to protect their interests, and
 19 in furtherance of the State's sovereign and proprietary interests in the conservation and protection
 20 of the State's natural resources and the environment.

21 14. Plaintiff the COMMONWEALTH OF PENNSYLVANIA is a sovereign state of the
 22 United States of America. This action is brought on behalf of the Commonwealth by Attorney
 23 General Josh Shapiro, the "chief law officer of the Commonwealth." Pa. Const. art. IV, § 4.1.
 24 Attorney General Shapiro brings this action on behalf of the Commonwealth pursuant to his
 25 statutory authority. 71 Pa. Stat. § 732-204.

26 15. Plaintiff STATE OF COLORADO brings this action by and through Attorney
 27 General Phil Weiser. The Attorney General of Colorado is authorized to appear for the State and
 28 prosecute and defend all actions in which the State is a party or is interested. Colo. Rev. Stat. §

1 24-31-101(1)(a) (2021). Attorney General Phil Weiser brings this action in defense of the State's
2 interest in protecting the public health and environment.

3 16. Plaintiff STATE OF CONNECTICUT brings this action by and through Attorney
4 General William Tong. The Attorney General of Connecticut is generally authorized to have
5 supervision over all legal matters in which the State of Connecticut is a party. He is also
6 statutorily authorized to appear for the State "in all suits and other civil proceedings, except upon
7 criminal recognizances and bail bonds, in which the State is a party or is interested ... in any court
8 or other tribunal, as the duties of his office require; and all such suits shall be conducted by him
9 or under his direction." Conn. Gen. Stat. § 3-125.

10 17. Plaintiff STATE OF DELAWARE is a sovereign state of the United States of
11 America. This action is brought on behalf of the State of Delaware by Attorney General Kathleen
12 Jennings, the "chief law officer of the State." *Darling Apartment Co. v. Springer*, 22 A.2d 397,
13 403 (Del. 1941). Attorney General Jennings also brings this action on behalf of the State of
14 Delaware pursuant to her statutory authority. Del. Code Ann. tit. 29, § 2504.

15 18. Plaintiff STATE OF ILLINOIS brings this action by and through Attorney General
16 Kwame Raoul. The Attorney General is the chief legal officer of the State of Illinois (Ill. Const.,
17 art V, § 15) and "has the prerogative of conducting legal affairs for the State." *EPA v. Pollution*
18 *Control Bd.*, 372 N.E.2d 50, 51 (Ill. Sup. Ct. 1977). He has common law authority to represent
19 the People of the State of Illinois and "an obligation to represent the interests of the People so as
20 to ensure a healthful environment for all the citizens of the State." *People v. NL Indus.*, 604
21 N.E.2d 349, 358 (Ill. Sup. Ct. 1992).

22 19. Plaintiff STATE OF MAINE brings this action by and through its Attorney General,
23 Aaron M. Frey. The Attorney General of Maine is a constitutional officer with the authority to
24 represent the State of Maine in all matters and serves as its chief legal officer with general charge,
25 supervision, and direction of the State's legal business. Me. Const. art. IX, Sec. 11; Me. Rev.
26 Stat. tit. 5, §§ 191 *et seq.* The Attorney General's powers and duties include acting on behalf of
27 the State and the people of Maine in the federal courts on matters of public interest. The Attorney
28 General has the authority to file suit to challenge action by the federal government that threatens

1 the public interest and welfare of Maine residents as a matter of constitutional, statutory, and
2 common law authority.

3 20. Plaintiff STATE OF MARYLAND brings this action by and through its Attorney
4 General, Brian E. Frosh. The Attorney General of Maryland is the State's chief legal officer with
5 general charge, supervision, and direction of the State's legal business. Under the Constitution of
6 Maryland, and as directed by the Maryland General Assembly, the Attorney General has the
7 authority to file suit to challenge action by the federal government that threatens the public
8 interest and welfare of Maryland residents. Md. Const. art. V, § 3(a)(2); Md. Code Ann., State
9 Gov't § 6-106.1.

10 21. By and through Michigan State Attorney General Dana Nessel, Plaintiff PEOPLE OF
11 THE STATE OF MICHIGAN brings this action to defend their sovereign and proprietary
12 interests. MCL 14.28. Conserving Michigan's natural resources is of "paramount public
13 concern." Mich. Const. art IV, § 52.

14 22. Plaintiff STATE OF NEW JERSEY is a sovereign state of the United States of
15 America and brings this action on behalf of itself and as a trustee, guardian and representative of
16 the residents and citizens of New Jersey. The Attorney General is authorized to file civil suits to
17 vindicate the State's rights and interests, and as he deems necessary to protect the public. N.J.
18 Stat. Ann. § 52:17A-4; *Alexander v. New Jersey Power & Light Co.*, 21 N.J. 373, 380 (1956);
19 N.J. Stat. Ann. § 23:2A-2. Acting Attorney General Matthew J. Platkin brings this action in
20 defense of the State's sovereign interest to protect the public health and the environment.

21 23. Plaintiff STATE OF NEW MEXICO brings this action by and through Attorney
22 General Hector Balderas. The Attorney General of New Mexico is authorized to prosecute in any
23 court or tribunal all actions and proceedings, civil or criminal, when, in his judgment, the interest
24 of the State requires such action. NMSA 1978, § 8-5-2. Under the Constitution of New Mexico,
25 "protection of the state's beautiful and healthful environment is ... declared to be of fundamental
26 importance to the public interest, health, safety and the general welfare." N.M. Const. art. XX,
27 § 21. This provision "recognizes that a public trust duty exists for the protection of New
28

1 Mexico’s natural resources ... for the benefit of the people of this state.” *Sanders-Reed ex rel.*
2 *Sanders-Reed v. Martinez*, 350 P.3d 1221, 1225 (N.M. Ct. App. 2015).

3 24. Plaintiff STATE OF NORTH CAROLINA brings this action by and through
4 Attorney General Joshua H. Stein. The North Carolina Attorney General is the chief legal officer
5 of the State of North Carolina. The Attorney General is empowered to appear for the State of
6 North Carolina “in any cause or matter ... in which the state may be a party or interested.” N.C.
7 Gen. Stat. § 114-2(1). Moreover, the Attorney General is authorized to bring actions on behalf of
8 the citizens of the state in “all matters affecting the public interest.” *Id.* § 114-2(8)(a).

9 25. Plaintiff STATE OF OREGON brings this suit by and through Attorney General
10 Ellen Rosenblum. The Oregon Attorney General is the chief legal officer of the State of Oregon.
11 The Attorney General’s duties include acting in federal court on matters of public concern and
12 upon request by any State officer when, in the discretion of the Attorney General, the action may
13 be necessary or advisable to protect the interests of the State. Ore. Rev. Stat. § 180.060(1).

14 26. Plaintiff STATE OF RHODE ISLAND brings this action by and through Attorney
15 General Peter F. Neronha. The Attorney General is the chief law enforcement officer of the State
16 and has the authority to file civil actions in order to protect public rights and interests, including
17 actions to protect the natural resources of the State. R.I. Const. art. I, § 17; R.I. Gen. Laws R.I.
18 § 10-20-1, *et seq.* This challenge is brought in part pursuant to the Attorney General’s
19 independent constitutional, statutory, and common law authority to represent the people’s
20 interests in protecting the environment and natural resources of the State of Rhode Island from
21 pollution, impairment, or destruction. *Id.*; *Newport Realty, Inc. v. Lynch*, 878 A.2d 1021 (R.I.
22 2005).

23 27. Plaintiff STATE OF VERMONT brings this action by and through Attorney General
24 Thomas J. Donovan, Jr. The Attorney General is the chief legal officer of the State of Vermont.
25 *See* Vt. Stat. Ann. tit. 3, § 152 (“The Attorney General may represent the State in all civil and
26 criminal matters as at common law and as allowed by statute.”). Vermont is a sovereign entity
27 and brings this action to protect its own sovereign and proprietary rights. The Attorney General’s
28 powers and duties include acting in federal court on matters of public concern. This challenge is

1 brought pursuant to the Attorney General’s independent constitutional, statutory, and common
2 law authority to bring suit and obtain relief on behalf of the State of Vermont.

3 28. Plaintiff STATE OF WASHINGTON is a sovereign entity and brings this action to
4 protect its sovereign and proprietary rights by and through its Attorney General, Robert W.
5 Ferguson. The Attorney General is the chief legal adviser to the State of Washington, and his
6 powers and duties include acting in federal court on matters of public concern. *See* WASH. REV.
7 CODE § 43.10.030. This challenge is brought pursuant to the Attorney General’s statutory
8 authority to bring suit and obtain relief on behalf of the State of Washington.

9 29. Plaintiff the DISTRICT OF COLUMBIA is a municipal corporation empowered to
10 sue and be sued and is the local government for the territory constituting the permanent seat of the
11 government of the United States. The District is represented by and through its chief legal
12 officer, the Attorney General for the District of Columbia, Attorney General Karl Racine. The
13 Attorney General has general charge and conduct of all legal business of the District and all suits
14 initiated by and against the District and is responsible for upholding the public interest. D.C.
15 Code § 1-301.81(a)(1).

16 30. Plaintiff the CITY OF NEW YORK brings this action by and through the Corporation
17 Counsel Hon. Sylvia O. Hinds-Radix. The Corporation Counsel is the chief legal officer of the
18 City of New York and brings this action on behalf of the City and its residents to protect New
19 York City’s sovereign and proprietary interest in the conservation and protection of its natural
20 resources and the environment and the health of its residents. *See* New York City Charter Chap.
21 17, § 394.

22 31. Plaintiff BAY AREA AIR QUALITY MANAGEMENT DISTRICT (“BAAQMD”),
23 acting to protect the public health, welfare, and resources of the State of California, brings this
24 action by and through its Acting District Counsel, Adan A. Schwartz. BAAQMD is a body
25 corporate and politic, organized pursuant to Chapter 4 of Part 3 of Division 26 of the California
26 Health and Safety Code (“Health & Saf.”) with the power to bring this action in its own name and
27 on behalf of the People of the State of California. Health & Saf. Code §§ 40700, 40701 and
28 42403(a). BAAQMD is the governmental agency charged with the primary responsibility for

1 controlling air pollution from non-vehicular sources, adopting and enforcing BAAQMD rules and
2 regulations relating to air pollution, and maintaining healthy air quality in the San Francisco Bay
3 Area. Health & Saf. Code §§ 39002, 40000, 40200, 40702 and 42402.

4 32. Plaintiffs have a strong interest in preventing the adverse environmental and public
5 health impacts of fossil fuel development and combustion, including air quality degradation and
6 public health harms associated with the use of fossil fuel powered vehicles. Not only does the
7 transportation sector account for a significant percentage of emissions of both criteria pollutants
8 and greenhouse gases, but Postal Service facilities are often located within environmental justice
9 communities that are exposed to disproportionate emissions from mail delivery vehicles. For
10 example, in the San Francisco Bay Area, tailpipe emissions from 5.3 million light duty vehicles
11 account for approximately 31% of the region's carbon monoxide and 12% of its nitrogen oxides,
12 as well as 28% of the region's greenhouse gas emissions. The Postal Service operates a major
13 mail distribution facility at 675 7th Street in West Oakland, a site that contributes to the heavy
14 pollution burden already experienced in neighboring communities from industrial facilities, an
15 adjacent port, highways, and distribution centers. The Postal Service's San Francisco Processing
16 & Distribution Center is located in the Bayview neighborhood, where the population is
17 predominantly Black, Hispanic or Latino, and Asian, and which is already overburdened by air
18 pollution and the related negative health effects from multiple industrial facilities operating in and
19 around the neighborhood.

20 33. Transportation is currently the largest in-state source of greenhouse gas emissions in
21 Delaware, as well as a significant source of carbon monoxide, nitrous oxide, and particulate
22 matter, which disproportionately affects communities near highways and industrial centers.

23 34. Likewise, in New York City, a 2016 study estimated that fine particulate (PM 2.5)
24 emissions from vehicle traffic alone caused 320 premature deaths in the City each year (5,850 life
25 years lost), as well as 870 asthma-related emergency room visits and cardiovascular or respiratory
26 hospitalizations.¹ The health impacts were especially severe in neighborhoods where poverty is

27 ¹ See Iyad Kheirbek, *et al.*, *The contribution of motor vehicle emissions to ambient fine*
28 *particulate matter public health impacts in New York City: a health burden assessment*,

1 very high, such as East New York, Brooklyn, where a major Postal Service distribution facility is
2 located at 1050 Forbell Street. Those neighborhoods are burdened with 70% more PM 2.5
3 emissions from trucks and buses, and over eight times as many asthma-related emergency room
4 visits attributable to those emissions, compared to low poverty neighborhoods.

5 35. Plaintiffs also have a strong interest in preventing and mitigating harms that climate
6 change poses to human health and the environment, including increased heat-related deaths,
7 damaged coastal areas, increased wildfire risk, disrupted ecosystems, more severe weather events,
8 and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007).
9 For example, California is already experiencing the adverse effects of climate change, including
10 increased risk of wildfires, a decline in the average annual snowpack that provides approximately
11 35 percent of the State's water supply, increased erosion of beaches and low-lying coastal
12 properties from rising sea levels, and increased formation of ground-level ozone (also known as
13 smog), which is linked to asthma, heart attacks, and pulmonary problems, especially in children
14 and the elderly. In Washington, warmer temperatures have led to diminished snowpack, harming
15 downstream communities that rely on snowmelt for hydroelectric power, drinking water, and
16 agriculture.²

17 36. For these reasons, among others, Plaintiffs have long been leaders in adopting laws
18 and plans to reduce greenhouse gas emissions and slow the pace of climate change, including
19 policies to promote the electrification of the transportation sector.

20 37. For example, California's laws and plans include (1) California's statutory target of
21 reducing greenhouse gas emissions by 40 percent below 1990 levels by 2030, Cal. Health &
22 Safety Code § 38566; (2) the California Air Resources Board's plan to reduce fossil fuel
23 consumption by 45 percent by 2030 to meet this target; (3) California's policies to phase out the
24 sale of new conventional passenger cars and trucks by 2035 and achieve 100% zero-emission
25

26 Environmental Health Vol. 15, Article 89 (2016), <https://doi.org/10.1186/s12940-016-0172-6>
(article) and <https://a816-dohbexp.nyc.gov/IndicatorPublic/Traffic/index.html> (infographic).

27 ² See H.A. Roop, *et al.*, Univ. Wash. Climate Impacts Group, *Shifting Snowlines and Shorelines*
28 (2020), https://cig.uw.edu/wp-content/uploads/sites/2/2020/02/CIG_SnowlinesShorelinesReport_2020.pdf.

1 medium and heavy duty vehicle sales by 2045, Executive Order N-79-20; and (4) California's
2 policy to achieve carbon neutrality by 2045, Executive Order B-55-18. Local requirements are
3 often complementary or stricter. For example, the Bay Area Air Quality Management District
4 has set a target that 90 percent of vehicles in the Bay Area should be zero emissions by 2050,
5 with an interim target of 1.5 million such vehicles by 2030. Access to electric vehicle charging
6 stations will increase as governments work to meet these targets.

7 38. Connecticut must reduce the level of greenhouse gas emissions in the state by at least
8 45 percent below the 2001 level by 2030 and by at least 80 percent below the 2001 level by 2050.
9 Conn. Gen. Stat. § 22a-200a(a).

10 39. Pursuant to the Climate Leadership and Community Protection Act, New York must
11 reduce economy-wide greenhouse gas emissions 40 percent below 1990 levels by 2030 and at
12 least 85 percent below 1990 levels by 2050. *See* N.Y. Env'tl. Conserv. L. § 75-0107(1).

13 40. Washington must reduce overall greenhouse gas emissions in the state by 45 percent
14 below 1990 levels by 2030. Wash. Rev. Code § 70A.45.020(1)(a)(ii).

15 41. In response to the dangers posed by greenhouse gases, New Mexico has enacted an
16 Energy Transition Act, which sets standards for electric utilities of 50% renewable energy by
17 2030, 80% by 2040, and zero-carbon resources by 2050.

18 42. Pennsylvania has adopted a Climate Action Plan to comply with the governor's
19 commitment to reach a 26 percent reduction in greenhouse gases by 2025 and an 80 percent
20 reduction by 2050. Executive Order 2019-01.³

21 43. In Rhode Island, these laws and plans include, among others: Rhode Island's 2021
22 Act on Climate which, *inter alia*, mandates greenhouse gas emission reductions to forty-five
23 percent (45%) below 1990 levels by 2030; eighty percent (80%) below 1990 levels by 2040, and
24 to net-zero emissions by 2050. *See* R.I. Gen Laws § 42-6.2-9. As of 2026, there will be a
25 statutory right to bring actions, including actions against the State and its agencies, for failure to
26 comply with the 2021 Act on Climate. *See* R.I. Gen Laws § 42-6.2-9.

27 ³ [https://www.governor.pa.gov/newsroom/executive-order-2019-01-commonwealth-leadership-](https://www.governor.pa.gov/newsroom/executive-order-2019-01-commonwealth-leadership-in-addressing-climate-change-and-promoting-energy-conservation-and-sustainable-governance/)
28 [in-addressing-climate-change-and-promoting-energy-conservation-and-sustainable-governance/](https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx)
and <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>.

1 44. Effective June 1, 2022, Maryland law requires the State to reduce greenhouse gas
2 emissions 60 percent below 2006 levels by 2031, and to achieve net-zero greenhouse gas
3 emissions by 2045. Climate Solutions Now Act of 2022, 2022 Md. Laws, ch. 38, §§ 3-4.

4 45. The City of New York has committed to reducing greenhouse gas emissions 80
5 percent below 2005 levels by 2050, *see* NYC Admin. Code § 24-803, and has issued numerous
6 plans describing its path to achieving this goal, all of which call for increased electrification of the
7 transportation sector.

8 46. The Postal Service failed to consider the impacts of its decision on state and local
9 government laws and policies. The Postal Service’s procurement of a new gas-powered fleet will
10 adversely impact Plaintiffs by continuing substantial and unnecessary emissions of air pollutants,
11 including greenhouse gases; adversely affecting public health; and undermining and increasing
12 the costs of Plaintiffs’ efforts to address these critical problems.

13 47. Plaintiffs also rely upon the Postal Service’s compliance with the procedural
14 requirements of NEPA in order to obtain timely and accurate information about activities that
15 may have significant adverse effects on the environment, so that Plaintiffs and their residents can
16 meaningfully participate in the decisionmaking process. The Postal Service’s failure to comply
17 with NEPA adversely affects Plaintiffs by thwarting public participation and by failing to
18 adequately protect the environment. An adequate NEPA review that identifies and evaluates
19 those impacts would provide additional information that could result in a different decision
20 regarding the program – a termination of the program, modification of the program, or other
21 mitigations that would redress Plaintiffs’ injuries.

22 48. Therefore, Plaintiffs have suffered legal wrong because of the Postal Service’s action,
23 have been adversely aggrieved by the approval of the Final EIS and Record of Decision, and have
24 standing to bring this action.

25 49. Defendant UNITED STATES POSTAL SERVICE is “an independent establishment
26 of the executive branch” of the U.S. government, 39 U.S.C. § 201, and bears responsibility, in
27 whole or in part, for the acts complained of in this Complaint.
28

1 53. NEPA further requires that federal agencies provide a “detailed statement” regarding
2 the “alternatives to the proposed action.” 42 U.S.C. § 4332(2)(C)(iii). This requirement “lies at
3 the heart of any NEPA analysis.” *California ex rel. Lockyer v. U.S. Dep’t of Agric.*, 459 F. Supp.
4 2d 874, 905 (N.D. Cal. 2006). Agencies must explore and evaluate all reasonable alternatives
5 that relate to the purposes of the project, and must briefly discuss the reasons for eliminating any
6 alternatives from detailed study. *See* 40 C.F.R. § 1502.14. The existence of “a viable but
7 unexamined alternative renders [an] environmental impact statement inadequate.” *Muckleshoot*
8 *Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 814 (9th Cir. 1999).

9 54. A fundamental requirement of NEPA is that an agency must not commit resources to
10 a particular course of action prior to completing its environmental review. *See* 40 C.F.R.
11 § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before
12 making a final decision”), *see also id.* § 1506.1 (headed “Limitations on actions during NEPA
13 process”). The Ninth Circuit has construed this requirement “as requiring agencies to prepare
14 NEPA documents ... before any irreversible and irretrievable commitment of resources.” *Metcalf*
15 *v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000). “The point of commitment” constituting an
16 irreversible and irretrievable commitment of resources can occur when an agency “sign[s] the
17 contract” with a project proponent “and then work[s] to effectuate the Agreement.” *Id.*

18 55. The Postal Service is an “independent establishment of the executive branch of the
19 Government of the United States,” 39 U.S.C. § 201, and, as an agency of the federal government,
20 the Postal Service is subject to the requirements of NEPA. 42 U.S.C. § 4332; 40 C.F.R. §
21 1500.3(a); *see Akiak Native Cmty. v. U.S. Postal Serv.*, 213 F.3d 1140 (9th Cir. 2000); *Chelsea*
22 *Neighborhood Ass’ns v. U.S. Postal Serv.*, 516 F.2d 378 (2d Cir. 1975).

23 56. The Postal Service has recognized its NEPA obligations by, among other things,
24 promulgating agency-specific NEPA procedures in 39 C.F.R. Part 775, in which the Postal
25 Service recognizes its responsibilities to “[i]nterpret and administer applicable policies,
26 regulations, and public laws of the United States in accordance with the policies set forth in
27 [NEPA] and the NEPA Regulations” 39 C.F.R. §§ 775.2(a). These regulations stress that
28 the Postal Service’s policy is to “[e]mphasize environmental issues and alternatives in the

1 consideration of proposed actions,” to “identify and assess reasonable alternatives to proposed
2 actions in order to avoid or minimize adverse impacts on the environment,” and to “[u]se all
3 practicable means to protect, restore, and enhance the quality of the human environment.” *Id.* §
4 775.2(c), (e), (f). In addition, the regulations state that the consideration of alternatives in an EIS
5 “is vitally important.” *Id.* § 775.11(c)(5).

6 57. Courts review the Postal Service’s compliance with NEPA under an arbitrary and
7 capricious standard of review. *See Akiak*, 213 F.3d at 1144.

8 **II. POSTAL SERVICE HISTORY, OPERATIONS, AND GOVERNING LAWS.**

9 58. The United States Constitution empowers Congress to “establish Post Offices and
10 post Roads.” U.S. Const., art. I, § 8, cl. 7. In 1789, Congress established the first Post Office
11 under the Constitution and made the Postmaster General subject to the President’s direction. U.S.
12 Postal Serv., *The United States Postal Service: An American History* 1, 4 (2020),
13 <https://about.usps.com/publications/pub100.pdf>.

14 59. The Postal Service has played “a vital yet largely unappreciated role in the
15 development of” the United States. *U.S. Postal Serv. v. Council of Greenburgh Civic Assocs.*,
16 453 U.S. 114, 121 (1981). During the early years of this country’s development, “the Post Office
17 was to many citizens situated across the country the most visible symbol of national unity.” *Id.*
18 at 122. Since its beginnings in the pre-Revolutionary period, the Postal Service “has become the
19 nation’s oldest and largest public business.” *U.S. Postal Serv. v. Flamingo Indus. (USA) Ltd.*, 540
20 U.S. 736, 739 (2004) (citations and quotations omitted).

21 60. Since its founding, “the Postal Service’s efforts to deliver mail quickly and reliably
22 have been a force for innovation in the American transportation sector.” USPS Office of Inspect.
23 Gen., *Electric Delivery Vehicles and the Postal Service*, at 3 (Mar. 17, 2022). The Postal Service
24 has spurred nationwide adoption of the stagecoach, nationwide expansion of railroads, nationwide
25 use of air transportation, and the development of electric vehicles. *Id.*

26 61. In 1970, Congress passed the Postal Reorganization Act (“PRA”), *see* Pub. L. No. 91-
27 375, 84 Stat. 719, in large part to “convert the Post Office Department into an independent
28

1 establishment in the Executive Branch of the Government freed from direct political pressures.”
2 H.R. Rep. No. 91-1104, at 1 (1970) (Conf. Rep.), *as reprinted in* 1970 U.S.C.C.A.N. 3649, 3650.

3 62. The PRA renamed the agency the U.S. Postal Service, restructured its operations,
4 removed it from the Cabinet to ensure its political independence, provided that the Postmaster
5 General would be appointed by a newly-established Board of Governors rather than the President,
6 and stated it had the power “to sue and be sued in its official name.” 39 U.S.C. § 401(a). The
7 PRA provides that “[t]he United States Postal Service shall be operated as a basic and
8 fundamental service provided to the people by the Government of the United States, authorized
9 by the Constitution, created by Act of Congress, and supported by the people.” *Id.* § 101(a). The
10 PRA further affirms that the Postal Service’s “basic function” is “to bind the Nation together
11 through the personal, educational, literary, and business correspondence of the people.” *Id.* To
12 do so, the Postal Service “shall render postal services to all communities.” *Id.*

13 63. The Postal Service operates around the clock to process and deliver mail via a highly
14 integrated and complex system through which an average of 425 million pieces of mail moved
15 every day. U.S. Postal Serv., Fun Facts, 1 Day in the Postal Service, [https://facts.usps.com/one-](https://facts.usps.com/one-day/)
16 [day/](https://facts.usps.com/one-day/). The Postal Service delivers to “more than 163 million city, rural, PO Box and highway
17 delivery points.” U.S. Postal Serv., FY 2021 Annual Report to Congress 14,
18 <https://about.usps.com/what/financials/annual-reports/fy2021.pdf>.

19 64. The Postal Service touches the lives of virtually all people in the United States. For
20 example, 18 percent of Americans, and 40 percent of senior citizens, pay their bills via the mail.
21 Nearly 20 percent of Americans who receive tax refunds do so through the mail.⁴ The
22 Department of Veterans Affairs fills about 80 percent of veterans’ prescriptions by mail, sending
23 120 million prescriptions a year. Every day, more than 330,000 veterans receive a package of
24 prescriptions in the mail.⁵ More than half of the people who receive medication by mail are over

25 _____
26 ⁴ Sam Berger & Stephanie Wylie, *Trump’s War on the Postal Service Hurts All*
27 *Americans*, Ctr. For Am. Progress (Aug. 19, 2020), [https://www.americanprogress.org/issues/](https://www.americanprogress.org/issues/democracy/news/2020/08/19/489664/trumps-war-postal-service-hurts-americans/)
28 [democracy/news/2020/08/19/489664/trumps-war-postal-service-hurts-americans/](https://www.americanprogress.org/issues/democracy/news/2020/08/19/489664/trumps-war-postal-service-hurts-americans/).

⁵ Hope Yen, “Lawmakers: Postal changes delay mail-order medicine for vets,” ABC News (Aug. 14, 2020), [https://abcnews.go.com/Politics/wireStory/lawmakers-postal-delay-mail-order-](https://abcnews.go.com/Politics/wireStory/lawmakers-postal-delay-mail-order-medicine-vets-72374343)
[medicine-vets-72374343](https://abcnews.go.com/Politics/wireStory/lawmakers-postal-delay-mail-order-medicine-vets-72374343).

1 the age of 65. In rural areas, where more than a third of post offices are located and where private
2 mail carriers often do not deliver, the Postal Service provides a vital link to more than 14 million
3 people without broadband access. In 2020, the Postal Service delivered approximately 543
4 million pieces of election mail, including 135 million ballots, allowing millions of Americans to
5 securely vote in local, state, and national elections. U.S. Postal Serv., FY 2021 Annual Report to
6 Congress, at 22-23.

7 65. The PRA provides that it “shall be the responsibility of the Postal Service to maintain
8 an efficient system of collection, sorting, and delivery of the mail nationwide.” 39 U.S.C.
9 § 403(b)(1). The PRA further requires that “[i]n selecting modes of transportation, the Postal
10 Service shall give highest consideration to the prompt and economical delivery of all mail.
11 Modern methods of transporting mail by containerization and programs designed to achieve
12 overnight transportation to the destination of important letter mail to all parts of the Nation shall
13 be a primary goal of postal operations.” 39 U.S.C. § 101(f).

14 66. The Postal Service has adopted new transportation technologies when necessary to
15 carry out its mission—from boats, to airplanes, to motorized delivery vehicles. U.S. Postal Serv.,
16 The United States Postal Service: An American History, at 12-24, 40, 57, 80-81, 110-118.

17 67. In 2021, the Postal Service had 212,327 delivery and collection vehicles in its
18 inventory. U.S. Postal Serv., FY 2021 Annual Report to Congress, at 28.

19 **FACTUAL AND PROCEDURAL BACKGROUND**

20 **I. THE POSTAL SERVICE’S NEXT GENERATION VEHICLE DELIVERY ACQUISITIONS** 21 **PROGRAM.**

22 68. The Postal Service has one of the largest civilian vehicle fleets in the world,
23 consisting of approximately 212,000 vehicles that are on the road delivering mail at least six days
24 per week to more than 163 million delivery points in every community in the United States. Most
25 of these vehicles, known as Long Life Vehicles, were manufactured between 1986 and 1994 and
26 are now beyond their intended service life and becoming increasingly expensive and dangerous to
27 operate and maintain.
28

1 69. To address this problem, the Postal Service launched its Next Generation Delivery
2 Vehicle Acquisitions program to evaluate, test, and eventually purchase up to 165,000 new
3 purpose-built vehicles over the next ten years.

4 70. On February 23, 2021, the Postal Service announced a contract award to a defense
5 contractor, Oshkosh Defense, LLC (“Oshkosh”), for the future production of these vehicles. The
6 contract covers non-recurring engineering and tooling costs and allows the Postal Service to order
7 between 50,000 and 165,000 Next Generation Delivery Vehicles over a ten-year period. The
8 Postal Service has claimed that the contract requires the company to be able to support two
9 powertrain alternatives: (1) a modern and efficient internal combustion engine, and (2) a battery
10 electric vehicle powertrain. At the time the contract was awarded, though, Oshkosh did not
11 manufacture any electric vehicles. The contract was allegedly “contingent on the satisfactory
12 completion of the NEPA process.” However, the Postal Service provided as much as \$482
13 million to Oshkosh under the contract prior to initiating the NEPA process.

14 71. In June 2021, Oshkosh announced that it would open a new facility in Spartanburg,
15 South Carolina, to construct vehicles for the Postal Service under this contract.

16 **II. NEPA PROCESS FOR THE PROGRAM.**

17 72. On August 26, 2021, the Postal Service announced the availability of a draft EIS for
18 its Proposed Action—namely, to “purchase and deploy[] up to 165,000 Next Generation Delivery
19 Vehicles (“NGDVs”) over a ten-year period.” *See* 86 Fed. Reg. 47,662 (Aug. 26, 2021). The
20 stated purpose and need of the Proposed Action in the draft EIS were “to replace the end-of-life
21 and high-maintenance long life vehicles (“LLVs”) and flexible fuel vehicles (“FFVs”) with
22 vehicles with more energy-efficient powertrains, updated technology, reduced emissions,
23 increased cargo capacity and improved loading characteristics, improved ergonomics and carrier
24 safety, and reduced maintenance costs,” and “to enable the Postal Service to meet its
25 Congressional mandate to maintain efficient nationwide delivery of the mail and to provide
26 prompt, reliable, and efficient services to patrons.”

27 73. In evaluating the Proposed Action and alternatives, the Draft EIS considered (1) the
28 purchase and deployment of custom-made vehicles with 90% gas-powered, internal-combustion

1 engines and 10% electric vehicles (Alternative 1, or the “Preferred Alternative”); (2) the purchase
2 and deployment of 100% custom-made electric vehicles (a different “scenario” under Alternative
3 1); (3) an alternative of purchasing 100% commercial off-the-shelf gas-powered vehicles with
4 right-hand drive (Alternative 1.1); (4) an alternative of purchasing 100% commercial off-the-shelf
5 electric vehicles with left-hand drive (Alternative 1.2); and (5) the required “No Action
6 Alternative” of attempting to maintain the Postal Service’s existing fleet.

7 74. The Postal Service accepted comments on the draft EIS until October 18, 2021.
8 Comments critical of the Draft EIS were submitted by the United States Environmental Protection
9 Agency (“EPA”), the Bay Area Air Quality Management District, the International Union, United
10 Automobile, Aerospace & Agricultural Implement Workers of America, and several non-
11 governmental organizations, among others.

12 75. For example, EPA explained that while the Postal Service identified a clear need to
13 update its vehicle fleet, “we do not believe a proper analysis was conducted that would support
14 the Postal Service’s preferred alternative.” In particular, EPA stated that the draft EIS lacked
15 adequate data and presented biased cost and emissions estimates to support its Preferred
16 Alternative, thereby precluding “meaningful consideration of the proposed action and
17 alternatives.”

18 76. The Bay Area Air Quality Management District also commented that the 10 percent
19 electric requirement in the Preferred Alternative was insufficient, given that this proposal (1)
20 would negatively impact the region’s progress in improving local air quality and reducing GHG
21 emissions, especially in vulnerable communities; (2) did not reflect current and rapidly expanding
22 electric vehicle technology; (3) would unnecessarily delay the transition to clean technologies,
23 and (4) would likely cost the Postal Service and taxpayers more money in the long term because
24 gas-powered vehicles are more expensive than electric vehicles to operate and maintain.

25 77. On January 7, 2022, the Postal Service released the Final EIS with minimal changes
26 from the draft EIS. 87 Fed. Reg. 994 (Jan. 7, 2022).

27 78. In the Final EIS, the Postal Service decide to move forward with its Preferred
28 Alternative of procuring custom-made, right-hand-drive delivery vehicles with 90 percent internal

1 combustion engines and 10 percent battery electric vehicles. The Final EIS noted that the actual
2 delivery vehicle types purchased would be contingent, in part, “upon the supplier’s production
3 and delivery capabilities.”

4 79. The Final EIS stated that the Preferred Alternative was chosen because battery
5 electric vehicles involved a higher total cost of ownership and would have limited range
6 rendering their use infeasible on longer rural routes, despite comments and evidence submitted to
7 the agency contradicting these conclusions. In fact, the Final EIS assumes fuel costs for gas-
8 powered vehicles of \$2.19 per gallon, grossly underestimating even current gasoline prices, let
9 alone future ones. The Final EIS rejected an alternative of 100 percent battery electric vehicles as
10 infeasible, and evaluated no other percentage of electric powertrains between the 10 percent it
11 selected and the 100 percent it rejected.

12 80. The Final EIS relied on acquisition and maintenance cost data at least in part based on
13 the contract awarded to Oshkosh, which was not provided to the public, despite requests for the
14 Postal Service to make this information public as required by NEPA.

15 81. The Final EIS failed to fully evaluate environmental justice impacts from the
16 program.

17 82. The Final EIS did not evaluate environmental impacts from the construction and
18 renovation of the Spartanburg, South Carolina production facility that Oshkosh had announced
19 would be built to meet the demands of its contract.

20 83. The Final EIS did not consider the inconsistency of the Preferred Alternative with
21 State and local laws and plans that require reductions in greenhouse gas emissions and fossil fuel
22 consumption, including from the transportation sector.

23 84. On February 2, 2022, EPA Associate Administrator Vicky Arroyo wrote to the Postal
24 Service to express the agency’s disapproval of the Final EIS. In particular, EPA wrote that its
25 “concerns with the draft EIS were not adequately addressed and the final EIS remains seriously
26 deficient,” and “preparation of a supplemental EIS is particularly important to maintain the
27 integrity of the NEPA process.” For example, using well-established metrics for estimating
28

1 greenhouse gas emissions, EPA calculated that carbon dioxide emissions from the use of gas-
2 powered vehicles would be 2.5 times greater than what the Postal Service had estimated.

3 85. On the same day, the White House Council on Environmental Quality (“CEQ”), the
4 federal agency responsible for implementing NEPA, wrote to the Postal Service to express similar
5 concerns. In a letter addressed to Defendant DeJoy, CEQ Chair Brenda Malloy reiterated EPA’s
6 “grave concerns” with the adequacy of the Final EIS, criticized the Postal Service’s decision to
7 contract with Oshkosh prior to completing the NEPA review, and urged the Postal Service to redo
8 its analysis.

9 86. On February 4, 2022, these concerns were echoed in a letter to the Postal Service
10 signed by several members of Congress, who wrote to express “strong opposition to the failure of
11 the United States Postal Service (USPS) to plan to electrify its fleet of mail delivery vehicles and
12 contribute to the fight against climate change.” The letter continued: “After an unjustifiable,
13 truncated, and deficient process, it is unacceptable that the USPS intends to cling to an
14 overwhelmingly fossil fuel-powered fleet whose emissions are endangering our planet.”

15 87. On February 23, 2022, the Postal Service signed the Record of Decision, which
16 finalized the NEPA process, incorporated the findings and analysis of the Final EIS, and
17 announced the agency’s determination that it would implement the Preferred Alternative. *See* 87
18 Fed. Reg. 14,588 (Mar. 15, 2022).

19 88. On March 17, 2022, the United States Postal Service Office of Inspector General
20 released a report titled “Electric Delivery Vehicles and the Postal Service,” which found that
21 “electric vehicle technology is generally capable of meeting the Postal Service’s needs” and is
22 generally more cost-effective than using gas-powered vehicles. Contrary to the findings in the
23 Final EIS and Record of Decision, the Inspector General found that the average 24-mile postal
24 route was well within the ability of current electric vehicle technology, and even the 2 percent of
25 routes that are 70 miles or longer could be more suited to electric vehicles because the Postal
26 Service saves money on each mile driven compared to gas-powered vehicles.

FIRST CAUSE OF ACTION

(Violation of NEPA:

Irreversible Commitment of Resources

42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.2(f); 39 C.F.R. § 775.11(b)(2)(vi)

89. Paragraphs 1 through 88 are realleged and incorporated herein by reference.

90. Plaintiffs have a right of action to declare unlawful and set aside agency action that is arbitrary and capricious, exceeds the agency’s statutory authority, and violates NEPA.

91. A fundamental requirement of NEPA is that agencies must not commit resources to a particular course of action prior to completing their environmental review. *See* 40 C.F.R. § 1502.2(f) (“Agencies shall not commit resources prejudicing selection of alternatives before making a final decision”), *see also id.* § 1506.1 (Limitations on actions during NEPA process); 39 C.F.R. § 775.11(b)(2)(vi) (EIS must “[s]erve to assess the environmental impact of proposed actions, rather than to justify decisions already made”). As the Ninth Circuit has found, agencies are required to prepare NEPA documents “*before* any irreversible and irretrievable commitment of resources.” *Metcalf v. Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000) (emphasis added). “The point of commitment” constituting an irreversible and irretrievable commitment of resources can occur when an agency “sign[s] the contract” with a project proponent “and then work[s] to effectuate the Agreement.” *Id.*

92. Here, the Postal Service awarded a contract for the manufacture of Next Generation Delivery Vehicles to Oshkosh in February 2021, roughly six months before the agency even issued its Draft EIS, and a year before it finalized the EIS and issued the Record of Decision. The Final EIS states that “[a]t the time of awarding the contract, the Postal Service placed an order that funds the production design, assembly tooling, and factory start-up costs to support the production of both vehicle types in parallel” – even though Oshkosh had only minimal experience producing electric vehicles. The Final EIS notes that the type of vehicles ultimately purchased will, in part, “be contingent upon the supplier’s production and delivery capabilities.” According

1 to CEQ, the Postal Service committed more than \$480 million to begin engineering and factory
2 construction for its procurement decision before completing this NEPA process.

3 93. In the Record of Decision, the Postal Service incorporated the Final EIS's findings
4 and analysis and determined that it would implement the Preferred Alternative.

5 94. Accordingly, the Postal Service's issuance of the Final EIS and Record of Decision
6 was arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal
7 Service's statutory authority, and was contrary to the requirements of NEPA, 42 U.S.C. §
8 4332(2)(C), 40 C.F.R. § 1502.2(f), and 39 C.F.R. § 775.11(b)(2)(vi), the Final EIS and Record of
9 Decision should be held unlawful and set aside, and the Postal Service should be enjoined from
10 taking action under its Next Generation Delivery Vehicle Acquisitions program until it has
11 complied with NEPA.

12 SECOND CAUSE OF ACTION

13 (Violation of NEPA:

14 Failure to Consider Reasonable Alternatives

15 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14; 39 C.F.R. § 775.11(c)(5)

16 95. Paragraphs 1 through 94 are realleged and incorporated herein by reference.

17 96. Plaintiffs have a right of action to declare unlawful and set aside agency action that is
18 arbitrary and capricious, exceeds the agency's statutory authority, and violates NEPA.

19 97. NEPA requires that Defendants provide a "detailed statement" regarding the
20 "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.14(a); 39 C.F.R.
21 § 775.11(c)(5); *see also* 30 C.F.R. §§ 775.8(a)(4), 775.11(b)(2)(iv)-(v). The requirement to
22 consider reasonable alternatives "lies at the heart of any NEPA analysis." *California ex rel.*
23 *Lockyer v. U.S. Dept. of Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006). "The existence of a
24 viable but unexamined alternative renders" an EIS inadequate. *W. Watersheds Project v. Abbey*,
25 719 F.3d 1035, 1050 (9th Cir. 2013) (internal quotations and citations omitted).

26 98. Here, the Postal Service failed to consider reasonable alternatives to its Preferred
27 Alternative of procuring 90% gas-powered vehicles and 10% electric vehicles.

28

1 99. While the Postal Service put forward 100% electric vehicle alternatives for both
2 custom-made and commercial off-the-shelf vehicles, it summarily rejected these alternatives as
3 impractical and infeasible without any legitimate justification for doing so. The Postal Service
4 claims to have identified at least 12,500 delivery routes where length, environmental conditions,
5 or facility constraints do not allow for electric vehicles. However, these routes account for only
6 5% of the agency's total delivery routes, and the Postal Service's assumptions regarding the
7 infeasibility of using electric vehicles for the vast majority of its routes have no factual basis. The
8 Postal Service unreasonably failed to consider alternatives that would have involved a greater mix
9 of electric vehicles that could still meet its delivery needs.

10 100. Nor does the Postal Service's reliance on alleged cost constraints provide a legitimate
11 basis for its failure to consider reasonable alternatives under NEPA.

12 101. In the Record of Decision, the Postal Service incorporated the Final EIS's findings
13 and analysis and determined that it would implement the Preferred Alternative.

14 102. Accordingly, the Postal Service's issuance of the Final EIS and Record of Decision
15 was arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal
16 Service's statutory authority, and was contrary to the requirements of NEPA, 42 U.S.C. §
17 4332(2)(C), 40 C.F.R. § 1502.14, and 39 C.F.R. § 775.11(c)(5), the Final EIS and Record of
18 Decision should be held unlawful and set aside, and the Postal Service should be enjoined from
19 taking action under its Next Generation Delivery Vehicle Acquisitions program until it has
20 complied with NEPA.

21 **THIRD CAUSE OF ACTION**

22 **(Violation of NEPA:**

23 **Failure to Take a "Hard Look"**

24 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.16(a)(1); 39 C.F.R. § 775.11(c)(6))**

25 103. Paragraphs 1 through 102 are realleged and incorporated herein by reference.

26 104. Plaintiffs have a right of action to declare unlawful and set aside agency action that is
27 arbitrary and capricious, exceeds the agency's statutory authority, and violates NEPA.

1 105. As discussed above, a fundamental requirement of NEPA is that federal agencies take
2 a “hard look” at the environmental consequences of a proposed activity before acting. *See* 42
3 U.S.C. § 4332; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“The
4 sweeping policy goals” of NEPA are “realized through a set of action-forcing procedures that
5 require that agencies take a hard look at environmental consequences, and that provide for broad
6 dissemination of relevant environmental information”) (cleaned up). When preparing an EIS, an
7 agency must disclose and consider any “environmental impacts of the proposed action and
8 reasonable alternatives to the proposed action and the significance of those impacts.” 40 C.F.R.
9 § 1502.16(a)(1); 42 U.S.C. § 4332(2)(C); 39 C.F.R. § 775.11(c)(6); *see also* 40 C.F.R.
10 § 1508.1(g).

11 106. Here, the Final EIS fails to take the required “hard look” at numerous environmental
12 impacts from the Proposed Action and alternatives, including impacts related to air quality,
13 environmental justice, and climate. Instead, the Final EIS simply assumes that because there will
14 be no change to the overall number of vehicles and because the agency will ultimately be
15 replacing older model vehicles with more fuel-efficient engines, there will be no negative
16 impacts. This analysis is flawed for several reasons.

17 107. The Final EIS fails to properly consider the specific impacts of continued fossil fuel
18 use on environmental justice communities that are located near postal facilities and that are
19 already suffering from significantly degraded air quality. *See Vecinos para el Bienestar de la*
20 *Comunidad Costera v. FERC*, 6 F.4th 1321, 1330-31 (D.C. Cir. 2021).

21 108. The Final EIS is silent about the potential impacts from the development of a new
22 production facility in Spartanburg, South Carolina, that Oshkosh has announced would be built to
23 meet the demands of its contract. The development of this facility and production of these
24 vehicles are part of the action the Postal Service is undertaking and will clearly cause
25 environmental impacts. 42 U.S.C. § 4332(2)(C). These impacts from the new facility are
26 “reasonably foreseeable and have a reasonably close causal relationship to the proposed action,”
27 and the Postal Service must consider them. *See* 40 C.F.R. § 1508.1(g) (defining “effects” or
28 “impacts” of a proposed action or alternatives).

1 shall make explicit reference to the scientific and other sources relied upon for conclusions in the
2 statement.” 40 C.F.R. § 1502.23.

3 115. The Final EIS fails to ensure the scientific integrity of its analysis by relying upon
4 unsupported assumptions and undisclosed methodologies to justify its Preferred Alternative.
5 Many of the Final EIS’s statements do not reflect electric vehicle technology available today or
6 developments in this rapidly expanding industry, but instead incorrectly assume that conditions
7 today will continue decades into the future.

8 116. For example, the Final EIS claims that, if used on “routes that exceed 70 miles,”
9 electric vehicles “might not have sufficient power to complete the route, especially as the battery
10 ages and has less capacity,” despite the current availability of electric vehicles that far exceed
11 such mileage on a single charge and rapid advances in battery technology. Moreover, such routes
12 constitute just five percent of the Postal Service’s total delivery routes. The Final EIS also fails to
13 account for declining electric vehicle costs and proliferating charging infrastructure, while grossly
14 underestimating costs for gasoline and assuming that such fuel costs will remain largely constant
15 several years into the future. The Final EIS further ignores that many other private delivery fleets
16 are rapidly adopting electric vehicle fleets that are well suited to meet similar needs. And, in
17 many areas of the Final EIS, such as the economic analysis that estimates a “total cost of
18 ownership” for different vehicles, the document does not provide the underlying data or sources
19 of information necessary to evaluate or replicate the results.

20 117. Taken as a whole, the Final EIS presents information regarding environmental
21 impacts and costs that is incomplete and biased in favor of its Preferred Alternative, at the
22 expense of providing the public and decision makers with accurate information to allow for a
23 meaningful consideration of the Proposed Action and alternatives.

24 118. In the Record of Decision, the Postal Service incorporated the Final EIS’s findings
25 and analysis and determined that it would implement the Preferred Alternative.

26 119. Accordingly, the Postal Service’s issuance of the Final EIS and Record of Decision
27 was arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal
28 Service’s statutory authority, and was contrary to the requirements of NEPA, 42 U.S.C. §

1 4332(2)(C) and 40 C.F.R. § 1502.23, the Final EIS and Record of Decision should be held
2 unlawful and set aside, and the Postal Service should be enjoined from taking action under its
3 Next Generation Delivery Vehicle Acquisitions program until it has complied with NEPA.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of NEPA:**

6 **Failure to Consider Inconsistencies with State Laws and Plans**

7 **42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1506.2(d)**

8 120. Paragraphs 1 through 119 are realleged and incorporated herein by reference.

9 121. Plaintiffs have a right of action to declare unlawful and set aside agency action that is
10 arbitrary and capricious, exceeds the agency’s statutory authority, and violates NEPA.

11 122. “To better integrate environmental impact statements into State, Tribal, or local
12 planning processes,” NEPA provides that an EIS “shall discuss any inconsistency of a proposed
13 action with any approved State, Tribal, or local plan or law[,] and [w]here an inconsistency exists,
14 the statement should describe the extent to which the agency would reconcile its proposed action
15 with the plan or law.” 40 C.F.R. § 1506.2(d).

16 123. Here, the Final EIS fails to discuss the inconsistency of the Preferred Alternative with
17 numerous State and local laws and plans to reduce greenhouse gas emissions and fossil fuel
18 consumption to mitigate the devastating consequences of global climate change, as well as to
19 electrify the transportation sector.

20 124. In the Record of Decision, the Postal Service incorporated the Final EIS’s findings
21 and analysis and determined that it would implement the Preferred Alternative.

22 125. Accordingly, the Postal Service’s issuance of the Final EIS and Record of Decision
23 was arbitrary and capricious, did not demonstrate reasoned decision-making, exceeded the Postal
24 Service’s statutory authority, and was contrary to the requirements of NEPA, 42 U.S.C. §
25 4332(2)(C) and 40 C.F.R. § 1506.2(d), the Final EIS and Record of Decision should be held
26 unlawful and set aside, and the Postal Service should be enjoined from taking action under its
27 Next Generation Delivery Vehicle Acquisitions program until it has complied with NEPA.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a declaratory judgment that the Postal Service violated NEPA in issuing the Final EIS and Record of Decision;
2. Issue an order vacating and setting aside the Final EIS and Record of Decision unless and until the Postal Service complies with applicable law;
3. Issue an order enjoining action by the Postal Service under its Next Generation Vehicle Acquisition Program until it has complied with NEPA;
4. Award Plaintiffs their costs, expenses, and reasonable attorneys’ fees; and
5. Award such other relief as the Court deems just and proper.

1 Dated: June 10, 2022

Respectfully submitted,

2 ROB BONTA
3 Attorney General of California
4 DAVID A. ZONANA
5 Supervising Deputy Attorney General

LETITIA JAMES
Attorney General of New York

6 /s/ George Torgun
7 GEORGE TORGUN, State Bar No. 222085
8 Deputy Attorneys General
9 1515 Clay Street, 20th Floor
10 P.O. Box 70550
11 Oakland, CA 94612-0550
12 Telephone: (510) 879-1002
13 Email: George.Torgun@doj.ca.gov

/s/ Claiborne E. Walthall
CLAIBORNE E. WALTHALL (*pro hac vice*)
Assistant Attorney General
New York State Office of the Attorney General
Environmental Protection Bureau
State Capitol
Albany, NY 12224
(518) 776-2380
claiborne.walthall@ag.ny.gov

14 *Attorneys for Plaintiff State of California*

Attorneys for Plaintiff State of New York

15 JOSH SHAPIRO
16 Attorney General of Pennsylvania

KATHLEEN JENNINGS
Attorney General of Delaware

17 /s/ Aimee D. Thomson
18 AIMEE D. THOMSON (*pro hac vice*)
19 Deputy Attorney General
20 ANN R. JOHNSTON
21 Senior Deputy Attorney General
22 Office of Attorney General
23 1600 Arch Street, Suite 300
24 Philadelphia, PA 19103
25 Telephone: (267) 940-6696
26 Email: athomson@attorneygeneral.gov

/s/ Vanessa L. Kassab
CHRISTIAN DOUGLAS WRIGHT
Director of Impact Litigation
VANESSA L. KASSAB (*pro hac vice*)
JAMESON A. L. TWEEDIE
RALPH K. DURSTEIN, III
Deputy Attorneys General
Delaware Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 683-8899

27 *Attorneys for Plaintiff*
28 *Commonwealth of Pennsylvania*

Attorneys for Plaintiff State of Delaware

29 WILLIAM TONG
30 Attorney General of Connecticut

KWAME RAOUL
Attorney General of Illinois

31 /s/ William E. Dornbos
32 WILLIAM E. DORNBOS (*pro hac vice*)
33 Assistant Attorney General
34 Office of the Attorney General of Connecticut
35 165 Capitol Avenue
36 Hartford, CT 06106
37 Telephone: (860) 808-5250
38 Email: William.Dornbos@ct.gov

/s/ Jason E. James
JASON E. JAMES (*pro hac vice*)
Assistant Attorney General
MATTHEW J. DUNN
Chief, Environmental
Enforcement/Asbestos Litigation Division
Office of the Attorney General
69 W. Washington St., 18th Floor
Chicago, IL 60602
Tel: (312) 814-0660
Email: Jason.james@ilag.gov

Attorneys for Plaintiff State of Connecticut

Attorneys for Plaintiff State of Illinois

1 AARON M. FREY
2 Attorney General of Maine

3 /s/ Jason Anton
4 JASON ANTON
5 PAUL SUITTER
6 JILLIAN R. O'BRIEN, State Bar No. 251311
7 Assistant Attorneys General
8 Six State House Station
9 Augusta, Maine 04333-0006
10 Telephone: (207) 626-8800
11 Fax: (207) 287-3145
12 Email: Jason.Anton@maine.gov
13 Email: Paul.Suitter@maine.gov

14 *Attorneys for Plaintiff State of Maine*

15 BRIAN E. FROSH
16 Attorney General of Maryland

17 /s/ Steven J. Goldstein
18 STEVEN J. GOLDSTEIN (*pro hac vice*)
19 Special Assistant Attorney General
20 Office of the Attorney General
21 200 Saint Paul Place, 20th Floor
22 Baltimore, Maryland 21202
23 Telephone: (410) 576-6414
24 Email: sgoldstein@oag.state.md.us

25 *Attorneys for Plaintiff State of Maryland*

26 FOR THE PEOPLE OF THE
27 STATE OF MICHIGAN

28 /s/ Elizabeth Morrisseau
ELIZABETH MORRISSEAU (*pro hac vice*)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
Michigan Attorney General's Office
6th Floor, G. Mennen Williams Building
525 West Ottawa Street
PO Box 30755
Lansing, MI 48933
Telephone: (517) 335-7664
Email: MorrisseauE@michigan.gov

Attorneys for Plaintiff the People of the State of Michigan

MATTHEW J. PLATKIN
Acting Attorney General of New Jersey

/s/ Lisa Morelli
LISA MORELLI, State Bar No. 137092
Deputy Attorney General
Division of Law
25 Market Street
P.O. Box 093
Trenton, NJ 08625-093
Telephone: 609-376-2745
Email: lisa.morelli@law.njoag.gov

Attorneys for Plaintiff State of New Jersey

HECTOR BALDERAS
Attorney General of New Mexico

/s/ William Grantham
WILLIAM GRANTHAM (*pro hac vice*)
Assistant Attorney General
201 Third St. NW, Suite 300
Albuquerque, NM 87102
Telephone: (505) 717-3520
E-Mail: wgrantham@nmag.gov

Attorneys for Plaintiff State of New Mexico

JOSHUA H. STEIN
Attorney General of North Carolina

/s/ Francisco Benzoni
ASHER SPILLER
Assistant Attorney General
FRANCISCO BENZONI*
Special Deputy Attorney General
114. W. Edenton Street
Raleigh, NC 27063
Telephone: (919)716-7600
Email: fbenzoni@ncdoj.gov
aspiller@ncdoj.gov

Attorneys for Plaintiff State of North Carolina

1
2
3
4
5
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7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ELLEN F. ROSENBLUM
Attorney General of Oregon

/s/ Paul Garrahan
PAUL GARRAHAN (*pro hac vice*)
Attorney-in-Charge
STEVE NOVICK (*pro hac vice*)
Special Assistant Attorney General
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
Telephone: (503) 947-4593
Email: Steve.Novick@doj.state.or.us

Attorneys for Plaintiff State of Oregon

PETER F. NERONHA
Attorney General of Rhode Island

/s/ Nicholas M. Vaz
NICHOLAS M. VAZ (*pro hac vice*)
Special Assistant Attorney General
Office of the Attorney General
Environmental and Energy Unit
150 South Main Street
Providence, Rhode Island 02903
Telephone: (401) 274-4400 ext. 2297
nvaz@riag.ri.gov

Attorneys for Plaintiff State of Rhode Island

THOMAS J. DONOVAN, JR.
Attorney General of Vermont

/s/ Nicholas F. Persampieri
NICHOLAS F. PERSAMPIERI (*pro hac vice*)
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-3171
nick.persampieri@vermont.gov

Attorneys for Plaintiff State of Vermont

ROBERT W. FERGUSON
Attorney General of Washington

/s/ Megan Sallomi
MEGAN SALLOMI, State Bar. No. 300580
Assistant Attorney General
Environmental Protection Division
Washington State Attorney General's
Office
800 5th Ave Suite 2000,
Seattle, WA 98104-3188
Telephone: (206) 389-2437
Email: Megan.Sallomi@atg.ca.gov

Attorneys for Plaintiff State of Washington

KARL A. RACINE
Attorney General for the District of Columbia

/s/ Adam Teitelbaum
ADAM TEITELBAUM, State Bar. No. 310565
Deputy Director
Office of the Attorney General
District of Columbia
400 6th St. NW
Washington, DC 20001
Telephone: 202-256-3713
Email: Adam.Teitelbaum@dc.gov

Attorneys for Plaintiff District of Columbia

HON. SYLVIA O. HINDS-RADIX
Corporation Counsel
of the City of New York

/s/ Alice R. Baker
ALICE R. BAKER (*pro hac vice*)
AARON M. BLOOM
JOSEPH PEPE
Senior Counsels
New York City Law Department
100 Church Street
New York, NY 10007
Telephone: (212) 356-2314
E-mail: albaker@law.nyc.gov

Attorneys for Plaintiff City of New York

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADAN A. SCHWARTZ
Acting District Counsel

/s/ Marcia L. Raymond
MARCIA L. RAYMOND, State Bar No. 215655
Assistant Counsel
Bay Area Air Quality Management District
350 Beale Street, Suite 600
San Francisco, CA 94105
(415) 749-5158
mraymond@baaqmd.gov

*Attorneys for Plaintiff Bay Area Air Quality
Management District*

PHIL WEISER
Attorney General of Colorado

/s/ Eric R. Olson
ERIC R. OLSON*
Solicitor General
Office of the Attorney General
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, CO 80203
(720) 508 6548
Eric.Olson@coag.gov

Attorneys for Plaintiff State of Colorado

**Application for admission pro hac vice
forthcoming*