

# U.S. Postal Service Vehicle Acquisition: Sierra Club Files National Environmental Policy Act Judicial Challenge



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The Sierra Club and two other environmental organizations filed an April 28th Complaint for Declaratory and Injunctive Relief (“Complaint”) against the United States Postal Service (“Service”) alleging violation of the National Environmental Policy Act (“NEPA”).

The Complaint alleges that the Service’s decision to replace up to 165,000 postal delivery vehicles violated NEPA because the purchase was consummated prior to the required environmental analysis being undertaken.

NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA has typically been broadly defined to include as examples:

- Making decisions by federal agencies on permit applications
- Federal land management actions
- Construction and/or funding highways and other publicly owned facilities

NEPA was arguably designed to force mission-oriented agencies to consider the environmental impacts of a particular decision or activity in addition to other objectives. For example, a decision by the Department of Defense to construct a base in a particular location would traditionally consider a variety of issues such as logistics, infrastructure, etc. In the event that this proposed activity triggers a NEPA review, the environmental issues would also have to be addressed. This would include situations in which a state or local government utilizes federal funds to construct infrastructure. Therefore, the objective has been to ensure that environmental considerations are integrated into the planning of the agency actions as early as possible.

NEPA requires federal agencies to include environmental values and issues in their decision-making process. This mandate is accomplished by agency consideration of the environmental impact on proposed actions and reasonable alternatives to those actions. The statute requires federal agencies in certain instances to prepare a detailed Environmental Impact Statement (“EIS”). However, the requirement to produce this document is only triggered in the event of a “major federal action” that will “significantly affect the environment.” As opposed to an EIS, which is a much more detailed document, an Environmental Assessment (“EA”) provides sufficient evidence and analysis for determining whether a finding of no significant impact for an EIS should be prepared.

Note that NEPA differs from action enforcing environmental statutory programs such as the Clean Air Act or Clean Water Act. It does not impose substantive mandates. Instead, it is limited to requiring federal agencies to meet procedural requirements such as preparation of an EA or EIS in certain instances. As a result, NEPA does not require a certain alternative or meet a particular standard. Nevertheless, the failure to comply with NEPA's procedural mandates can result in an activity or project being enjoined.

Sierra Club alleges that in January 2015 the Service issued a request for information for various postal delivery vehicle prototypes. It further alleges that the Service selected and ordered prototypes for internal combustion engine ("ICE") electric vehicles ("EVs"), and hybrid options. The Service is stated to have formalized the contract with Oshkosh Defense ("OD") to produce up to 165,000 ICE vehicles. The Complaint further alleges:

- The contract provides that the initial order would be fulfilled in 2023
- The Service issued a first payment for \$482 million
- The Service began the NEPA review after the call for prototypes, evaluation, and research of different vendors, finalization of the contract and issuance of the first payment

A draft Environmental Impact Statement ("EIS") and Final EIS are stated to have been issued on August 26, 2021, and January 7, 2022, respectively.

The drafting of these NEPA documents is therefore alleged to be untimely.

The Sierra Club, along with co-plaintiffs Clean Air Now and Center for Biological Diversity therefore challenge the Service's Final EIS on Next Generation Delivery Vehicle acquisitions along with its Record of Decision related to the vehicle acquisition. They ask for declaration that the EIS violated NEPA and that the EIS and the Record of Decision be vacated until the Service complies with applicable law.

A copy of the Complaint can be downloaded [here](#).