

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**INTERNATIONAL CENTER FOR
TECHNOLOGY ASSESSMENT,**

660 Pennsylvania Ave., SE
Suite 302
Washington, DC 20003,

SIERRA CLUB,

85 Second Street
2nd Floor
San Francisco, CA 94105,

GREENPEACE,

702 H Street, NW
3rd Floor
Washington, DC 20001,

Plaintiffs,

v.

Civil Action No. 02-2376/RBW

CHRISTINE TODD WHITMAN,

in her official capacity as,
Administrator,
U. S. Environmental Protection Agency,
1200 Pennsylvania Ave., NW
Washington, DC 20460,

Defendant.

**FIRST AMENDED COMPLIANT FOR DECLARATORY RELIEF
AND WRIT OF MANDAMUS OR OTHER ORDER**

1. This is an action for declaratory judgment and mandamus relief challenging defendant's, and others acting under her authority, failure to substantively respond to plaintiff International Center for Technology Assessment's (CTA) petition for rulemaking concerning the emission of greenhouse gases from motor vehicles (Greenhouse Gas Petition).

2. Defendant's failure to substantively respond to the Greenhouse Gas Petition violates

the Administrative Procedure Act, 5 U.S.C. § 555(b).

JURISDICTION AND VENUE

3. This court has jurisdiction over this action pursuant to the Administrative Procedure Act (APA), 5 U.S.C. § 706(1), Clean Air Act (CAA), 42 U.S.C. § 7604(a), as well as 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as a defendant), and 28 U.S.C. § 1361 (mandamus).

4. The relief requested is specifically authorized pursuant to 28 U.S.C. § 1651 (writs), 28 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (further relief), 28 U.S.C. § 2412 (costs and fees) and plaintiffs have a right to bring this action pursuant to the APA, 5 U.S.C. §§ 701 - 706.

5. Venue is properly vested in this court pursuant to 28 U.S.C. § 1391(e) because the defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district, as well as pursuant to 42 U.S.C. § 7604(a).

PARTIES

6. Plaintiff International Center for Technology Assessment is located at 660 Pennsylvania Ave., S.E., Suite 302, Washington, DC 20003. Plaintiff is a tax-exempt, non-profit organization incorporated in the District of Columbia. Since the organization's founding in 1994, the activities of CTA have been centered in several areas including addressing the environmental, economic, and ethical concerns raised by the development and commercialization of transportation technologies.

7. CTA develops and disseminates to policymakers, members of local, state and federal government, non-profit organizations and interested members of the general public a wide array of educational and informational materials that address the environmental and public health impacts (including those from global warming) associated with various transportation technologies. These materials include, but are not limited to, reprints of news articles and agency's regulatory positions, legal briefs, press releases, fact sheets, action alerts, electronic mail alerts and investigative and technical

reports. CTA's materials often analyze the legal and regulatory means taken by federal agencies to address the various economic and environmental impacts associated with transportation technologies.

8. Along with its capacity as an informational clearinghouse, CTA serves in an advocacy function to, *inter alia*, protect human health and the environment from the impacts raised by the use of transportation technologies that contribute to global warming. Accordingly, CTA's activities seek to encourage full public participation in local, state and federal policymaking and rulemaking proceedings so that public concerns over the use of certain transportation technologies are considered and acted upon by governmental decisionmaking bodies.

9. To achieve its goals, CTA participates extensively in federal agency decisionmaking processes through comments on agency rulemaking, calls for formal investigations, other administrative actions and appeals, meetings with agency officials, petitions for rulemaking, and litigation when agency's fail to meet statutory environmental, human health and/or procedural requirements. CTA also expends financial resources to facilitate and encourage public participation during various governmental decisionmaking processes.

10. The interests of CTA are being, and will be, adversely affected by defendant's actions complained of herein. In particular, defendant's unreasonable delay in responding to the Greenhouse Gas Petition injures CTA by, *inter alia*, abridging the organization's procedural right to petition a federal agency for rulemaking under the APA. The defendant's unreasonable delay also directly harms CTA's goals and functions by impeding the organization's ability to further facilitate public involvement in governmental decisionmaking by foreclosing a statutory right that allows for public participation through petition's for rulemaking.

11. The failure of the defendant to provide an answer to the Greenhouse Gas Petition (and the substantive information contained therein) impedes CTA's daily operations by impairing the

organization's use of the petitioning process to obtain a complete and comprehensive agency interpretation of the EPA's legal authority to regulate greenhouse gas (GHG) emissions under the Clean Air Act and whether GHG are a reasonably anticipated to endanger public health or welfare. CTA's technical reports and policy analysis rely upon the receipt of such federal agency interpretations of their statutory authority. The information provided to CTA by federal agencies in their responses to petitions for rulemaking play a critical role in the organization's ability to provide informative and novel transportation policy proposals that comply with the current federal regulatory agency interpretations of their statutory mandates and requirements. Defendant's failure to provide an answer to the Greenhouse Gas Petition deprives the organization of the information necessary to create and analyze policy proposals concerning transportation technologies that conform to the agency's current statutory interpretation of the Clean Air Act. Additionally, defendant's unreasonable delay adversely affects CTA's ability to disseminate the agency's current statutory interpretation of the Clean Air Act to the public, state and local governments, policymakers and others interested in the possible use of existing federal laws as regulatory tools for addressing the emissions of GHG from transportation sources and the impacts of global warming.

12. The economic interests of CTA are being and will be adversely affected by defendant's actions complained of herein. After the filing of the Greenhouse Gas Petition, defendant instigated a process to solicit public comments to inform and aid its response to the petition. In pursuit of its organizational goal of encouraging public participation in governmental decisionmaking processes, plaintiff CTA expended significant resources to print, distribute and send to thousands of members of the public materials designed to encourage their participation in the defendant's commenting process. Defendant's failure to answer the Greenhouse Gas Petition has rendered these expenditures futile.

13. The interests of CTA employees and members of its board of directors are additionally

being, and will continue to be, injured by defendant's actions complained of herein. Defendant's unreasonable delay in answering and addressing the issues contained in the Greenhouse Gas Petition ensures that CTA employees and members of its board of directors are, and will be, aesthetically, economically, physically and recreationally harmed by the impacts of global warming caused by motor vehicle GHG emissions. Defendant's delay in answering the petition and its failure to regulate GHG from motor vehicles causes, *inter alia*, increases in the number of extreme heat events, increases in unhealthy levels of air pollution, sea level rise, melting of glaciers, altering of weather patterns, expansion in the geographic range of disease-bearing insects, shifts in the geographic range and seasonal attributes of tree species, and alterations in bird and fish populations, behavior and breeding patterns. As result, CTA employees and board members are injured because they often must limit their own, and their family's, outdoor recreational activities to avoid heat stress and heat stroke and exposure to increased levels of air pollution. Similarly, CTA employees and board members suffer aesthetic and recreational harm when vacationing on coastal beaches that have been reduced in size because of sea level rise; gardening during increasingly intense weather events such as drought and increased rainfall intensity; hiking to view glaciers that have been reduced in size because of global warming induced surface temperature increases; viewing diminished and altered levels of fall foliage; fishing in ecologically disrupted water bodies; and watching birds that have disrupted or altered breeding and behavioral patterns. Additionally, CTA employees and board members are injured because they must spend increasing amounts of money on personal care and other products that repel insects that are increasingly vectors of harmful diseases such as Lyme Disease and encephalitis.

14. Plaintiff Sierra Club's national headquarters is located at 85 Second Street, 2nd Floor, San Francisco, CA 94105. Sierra Club is a nonprofit corporation organized under California law, with more than 700,000 members in the United States. Sierra Club is dedicated to exploring, enjoying and

protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth's resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives.

15. Sierra Club's concerns encompass the threats posed to human health and the environment by global warming. One of Sierra Club's national priorities is to combat global warming, and Sierra Club submitted comments in support of the Greenhouse Gas Petition.

16. The interests of Sierra Club are being, and will be, adversely affected by defendant's actions complained of herein. EPA's unreasonable delay in responding to the Greenhouse Gas Petition and regulating GHG's has inflicted, and will continue to inflict, physical, economic and aesthetic injuries on Sierra Club members in many ways. Among the injuries to Sierra Club members caused by EPA's failure to respond to the Greenhouse Gas Petition and, thus to regulate GHGs, are: increased risk of and exposure to infectious diseases, including malaria, Lyme Disease, Dengue fever, arboviral encephalitis and cholera; increased risk of heat stress and heat stroke; exposure to increased levels of air pollution; loss of oceanfront property due to sea-level rise; property losses due to melting permafrost; diminished opportunities to observe migratory birds; diminished opportunities to observe other wildlife; diminished opportunities to enjoy forest recreation, including loss of opportunities to view fall foliage; diminished opportunities to enjoy freshwater recreation, including swimming, boating and fishing; diminished opportunities to enjoy winter recreation, including skiing and other snow-dependent winter recreation; diminished opportunities to enjoy glacier recreation; and diminished opportunities to enjoy marine recreation, including fishing and observing marine wildlife.

17. In addition, EPA's unreasonable delay in responding to the Greenhouse Gas Petition injures Sierra Club and its members by adversely affecting the Club's ability to disseminate information to the public, federal employees, policymakers and others concerning the use of the Clean Air Act as

a regulatory tool for addressing the impacts of global warming. EPA's unreasonable delay also directly harms Sierra Club and its members by effectively eliminating their statutory right to petition a federal agency for rulemaking under the APA.

18. Plaintiff Greenpeace, Inc.'s national headquarters is located at 702 H Street, 3rd Floor, Washington, DC 20001. Greenpeace is a non-profit, non-violent environmental membership organization. Its mission is to raise public awareness of environmental problems and promote changes that are essential to a green and peaceful future.

19. Greenpeace's concerns encompass the threats posed to human health and environment by global warming. Greenpeace has been a lead international advocacy organization working to raise awareness of global warming, and to pressure for serious cuts in greenhouse gas emissions through local, national and global action. Greenpeace is an original petitioning organization on the Greenhouse Gas Petition.

20. The interests of Greenpeace are being, and will be, adversely affected by defendant's actions complained of herein. In particular, defendant's unreasonable delay in responding to the Greenhouse Gas Petition injures Greenpeace by, *inter alia*, abridging the organization's procedural right to petition a federal agency for rulemaking under the APA. The defendant's unreasonable delay also directly harms Greenpeace's goals and functions by impeding the organization's ability to further facilitate public involvement in governmental decisionmaking by foreclosing a statutory right that allows for public participation through petition's for rulemaking.

21. The interests of Greenpeace are being, and will be, adversely affected by defendant's actions complained of herein. EPA's unreasonable delay in responding to the Greenhouse Gas Petition and regulating GHG's has inflicted, and will continue to inflict, physical, economic and aesthetic injuries on Greenpeace members in many ways. Among the injuries to Greenpeace members caused by EPA's

failure to respond to the Greenhouse Gas Petition and, thus regulate GHGs, are: increased risk of and exposure to infectious diseases, including malaria, Lyme Disease, Dengue fever, arboviral encephalitis and cholera; increased risk of heat stress and heat stroke; exposure to increased levels of air pollution; loss of oceanfront property due to sea-level rise; property losses due to melting permafrost; diminished opportunities to observe migratory birds; diminished opportunities to observe other wildlife; diminished opportunities to enjoy forest recreation, including loss of opportunities to view fall foliage; diminished opportunities to enjoy freshwater recreation, including swimming, boating and fishing; diminished opportunities to enjoy winter recreation, including skiing and other snow-dependent winter recreation; diminished opportunities to enjoy glacier recreation; and diminished opportunities to enjoy marine recreation, including fishing and observing marine wildlife.

22. Defendant Christine Todd Whitman is sued in her official capacity as Administrator of the United States Environmental Protection Agency with its principal office located at 1200 Pennsylvania Avenue, NW, Washington, DC 20460. As Administrator, defendant Whitman has the ultimate responsibility for the activities of the EPA, including those actions complained of herein.

STATEMENT OF FACTS

23. Scientists now predict that average world temperatures will increase up to 6° F over the next century. This rise in global temperature is caused by human activities creating a build up of greenhouse gases - primarily carbon dioxide, methane and nitrous oxide - in the atmosphere. As a result of the heat-trapping properties of these built up greenhouse gases, surface temperatures on the Earth continue to rise. Ten of the warmest years ever recorded have occurred in the last fifteen years. The World Meteorological Organization has found that the year 2002 was second warmest on record. This change in the world's climate is known as global warming.

24. The impacts of global warming on the public health and welfare of the United States are

already being felt and will be unprecedented. Rising global temperatures are, *inter alia*, exacerbating air pollution problems, increasing incidents of and risks of infectious disease, causing sea levels to rise, and harming marine resources, rangelands, forests, non-tidal wetlands, fisheries and birds.

25. Among the human activities fueling global warming is the burning of fossil fuels in internal-combustion-engine automobiles. Cars and trucks account for over 20% of CO₂ emissions in the United States. This figure is likely to grow in coming years because the federal government has done nothing to reduce cars' and trucks' GHG emissions, and transportation analysts predict that the number of miles that Americans drive annually will continue along an upward trend that began decades ago.

26. After years of government inaction and defendant's refusal to address the problem of global warming, on October 20, 1999, the plaintiff CTA (joined by plaintiff Greenpeace and 17 other organizations) filed the Greenhouse Gas Petition with the EPA, formally entitled "Petition for Rulemaking and Collateral Relief Seeking the Regulation of Greenhouse Gas Emissions from New Motor Vehicles Under § 202 of the Clean Air Act."

27. The Greenhouse Gas Petition asks EPA to take required action under the Clean Air Act. Because CO₂ and other greenhouse gases are "air pollutants" that are released from motor vehicles and reasonably anticipated to harm public health and welfare, section 202(a) of the CAA requires EPA to regulate these emissions.

28. Upon receipt of the Greenhouse Gas Petition, EPA created Air and Radiation Docket No. A-2000-04.

29. On January 23, 2001, the EPA published a Notice and Request for Comments entitled "Control of Emissions from New and In-use Highway Vehicles and Engines in the Federal Register, 66 Federal Register 7486 (January 23, 2001). The Notice described and summarized the Greenhouse Gas Petition and requested public comments. The public comment period ended May 23, 2001. Almost

50,000 public comments were submitted to the docket.

30. On May 23, 2001, plaintiff Sierra Club, in conjunction with several other organizations, submitted comments to the EPA in support of the Greenhouse Gas Petition.

31. On January 10, 2002, CTA sent a letter to EPA stating that the agency must substantively respond to the Greenhouse Gas Petition and that if no such response was received by June 1, 2002, that CTA would consider the agency to have unreasonably delayed in providing a response.

32. Now over three years since the filing of the Greenhouse Gas Petition and almost two years after the close of the public comment period, plaintiffs seek to compel EPA to provide a substantive response.

CAUSE OF ACTION

33. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 32 *supra*.

34. Pursuant to the Administrative Procedure Act, 5 U.S.C. § 553(e), *inter alia*, plaintiff CTA presented a petition for rulemaking entitled “Petition for Rulemaking and Collateral Relief Seeking the Regulation of Greenhouse Gas Emissions from New Motor Vehicles Under § 202 of the Clean Air Act.” To date, EPA has failed to provide the plaintiff with a substantive answer to the Greenhouse Gas Petition.

35. The Administrative Procedure Act, 5 U.S.C. § 555(b) requires the Administrator of the EPA “within a reasonable time . . . proceed to conclude a matter presented to it.”

36. The Administrative Procedure Act, 5 U.S.C. § 706(1) further provides that a reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.”

37. EPA’s failure to provide a substantive answer to the Greenhouse Gas Petition in a reasonable period of time is a violation of Administrative Procedure Act, 5 U.S.C. § 555(b).

RELIEF REQUESTED

WHEREFORE, plaintiffs respectfully request that this Court enter an Order:

- (1). Declaring that defendant's unreasonable delay in responding to the Greenhouse Gas Petition is a violation of the Administrative Procedure Act;
- (2). Ordering EPA to provide a substantive answer to the Greenhouse Gas Petition within sixty (60) days after the entrance of this Order;
- (3). Retaining jurisdiction of this action to ensure compliance with its decree;
- (4). Awarding plaintiffs attorney's fees and all other reasonable expenses occurred in pursuit of this action; and
- (5). Granting other such relief as the Court deems just and proper.

Respectfully submitted,

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