

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**SIERRA CLUB and SOUTHERN
ALLIANCE FOR CLEAN ENERGY,**)

Plaintiffs)

v.)

No. 1:11-cv-00041-CMH -TRJ

**U.S. DEFENSE LOGISTICS AGENCY)
ENERGY, f/k/a U.S. DEFENSE ENERGY)
SUPPORT CENTER; KURT KUNKEL, in)
his official capacity as Commander of the U.S.)
Defense Logistics Agency Energy; U.S.)
DEPARTMENT OF DEFENSE; ROBERT)
GATES, in his official capacity as Secretary of)
the Department of Defense; U.S. DEFENSE)
LOGISTICS AGENCY; and ALAN S.)
THOMPSON, in his official capacity as)
Director of the Defense Logistics Agency,**)

Defendants,)

and)

**AMERICAN PETROLEUM INSTITUTE,)
NATIONAL PETROCHEMICAL AND)
REFINERS ASSOCIATION, and)
CHAMBER OF COMMERCE OF THE)
UNITED STATES OF AMERICA,**)

Defendants-Intervenors.)

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Plaintiffs move this Court for Summary Judgment in this Administrative Procedure Act (“APA”) record review case, pursuant to Fed. R. Civ. P. 56, and seek a declaratory judgment that Defendants have violated the APA and the National Environmental Policy Act (“NEPA”), as well as further relief under the APA. Specifically, Plaintiffs seek a declaratory judgment that:

(a) Defendants entered into contracts for the purchase of blends of fuels produced from Canadian oil sands recovered crude in violation of the APA, 5 U.S.C. § 706(2)(A), and Section 526 of the Energy Independence and Security Act (“EISA”), 42 U.S.C. § 17142, which provides:

No Federal agency shall enter into a contract for procurement of an alternative or synthetic fuel, including a fuel produced from nonconventional petroleum sources, for any mobility-related uses, other than for research or testing, unless the contract specifies that the lifecycle greenhouse gas emissions associated with the production and combustion the fuel supplied under the contract must, on an ongoing basis, be less than or equal to such emissions from the equivalent conventional fuel produced from conventional petroleum sources.

(b) Defendants violated the notice and comment rulemaking requirements of the APA, 5 U.S.C. § 553(b), by adopting a rule implementing their policy of non-compliance with Section 526 of the EISA without following the requirements of § 553(b).

(c) Defendants violated the APA, 5 U.S.C. §§ 706(1) and 706(2)(A), and NEPA, 42 U.S.C. § 4332(2)(C), and its implementing regulations, by not conducting any NEPA analysis, including not preparing an Environmental Assessment, not making a Finding of No Significant Impact and/or not preparing an Environmental Impact Statement, prior to their decision to enter into contracts for the purchase of fuels derived from Canadian oil sands and/or prior to the adoption of Defendants’ rule implementing their policy of non-compliance with Section 526.

Plaintiffs move this Court for further relief under the APA to hold unlawful and set aside Defendants’ contracts for purchase of mobility related fuels that contain fuels derived from Canadian oil sands without full compliance with EISA Section 526, to compel Defendants to comply with Section 526 of the EISA in the future, to invalidate the unlawful interim implementation plan for Section 526 that is being relied upon by Defendants, and to compel

Defendants to comply with NEPA with regard to their contracts and the implementation of Section 526.

There are no issues of material fact to be decided in this administrative record review case, and Plaintiffs have attached a Memorandum in support of this Motion, which includes a Statement of Undisputed Material Facts, as well as citations to and excerpts from the administrative record, which demonstrate that they are entitled to summary judgment as a matter of law.

Respectfully submitted, this 17th day of February, 2011.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that, on February 17, 2011, a copy of the foregoing Plaintiffs' Motion for Summary Judgment was filed electronically. I understand that notice of this filing will be sent to the following filing users:

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I also certify that, on February 17, 2011, a copy of the foregoing was mailed to the following non-filing users via US mail, postage paid:

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