

DECLARATION OF PAUL GRANT

Pursuant to 28 U.S.C. § 1746, I, Paul Grant, declare under penalty of perjury that the following facts are true and correct:

1. I am counsel for petitioner in this action.
2. I am a licensed attorney in the state of Colorado, and admitted to practice before the bar of this Court.
3. On September 3, 2003, I participated in a telephone conference call with Bill Orr, the Chairman, co-founder and a member of the National Alternative Fuels Association, and various EPA scientific personnel in Ann Arbor, Michigan, and with Michael Horowitz, Office of General for EPA.
4. In that conference call, Mr. Orr advised EPA of the problems with their science as provided in the December 1999 Appendix B.
5. Mr. Orr also provided EPA notice of the Southwest Research Institute Research Report criticizing the bad science in Appendix B, and Mr. Orr provided EPA with the web site address (<http://www.altfuels.us>) where the SwRI Report could be found. The report is still there today.
6. On January 22, 2004, I wrote a letter to Michael Horowitz, Office of General Counsel, U.S. Environmental Protection Agency, reminding him of our September 2003 conversation, in which NAFA had requested exemption from the Final Rule for its oxygenated fuel additive, and in which NAFA had explained the problems with and bad science in Appendix B, and in which NAFA had pointed EPA to the SwRI Report. Exhibit 1, attached.
7. To the best of my knowledge, EPA has never responded to NAFA's criticism of Appendix B or to the SwRI Report.

Dated this 1st day of December, 2004.



Paul Grant

PAUL GRANT

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January 22, 2004

Michael Horowitz
Office of General Counsel
U.S. Environmental Protection Agency
Mail Code 2344A
Washington D.C. 20460

Re: *NAFA v. EPA*, D.C. Cir. Case No. 00-1147
Settlement Discussions

Dear Mr. Horowitz:

I am writing to you on behalf of my client, National Alternative Fuels Association (NAFA), the Petitioner in the above-described action. When we talked a few months ago, we talked about NAFA's request for an exemption from the Tier 2 low sulfur requirements for a proprietary oxygenated gasoline that could enable Tier 2 vehicles to meet Tier 2 emission standards without using low sulfur fuels.

We briefly discussed NAFA's contention that EPA's science in adopting the Tier 2 Rule was fundamentally flawed. Specifically, we referred you to the Southwest Research Institute report available online where that report points out the flaws in EPA's science. I assume your scientists have since reviewed that report and have considered its implications if our litigation were to go forward.

We also discussed NAFA's contention that EPA ignored the best available science when it adopted its regulation. NAFA provided its comments and evidence to EPA on the record during the public comments period. I know EPA has those records.

Your clients told us you want to see some data demonstrating support for my client's claims. My client continues its testing programs now, but we need some guidance on what data you would like to see and will accept.

My client is seeking an exemption for NAFA and its members (1) waiving the low sulfur requirement for a proprietary oxygenated gasoline fuel composition which achieves Tier 2 emission requirements (absent sulfur reduction) for Tier 1 vehicles; and (2) waiving the low sulfur requirement for a proprietary oxygenated gasoline fuel composition which achieves Tier 2 emission requirements (absent sulfur reduction) for Tier 2 vehicles without disabling Tier 2 catalysts.

NAFA does believe that the TIER 2 Rule is fundamentally flawed and subject to invalidation through court action. Nevertheless, NAFA is not interested in court action if it can accomplish its objectives through negotiation. What NAFA needs to know from EPA - before deciding whether it is in its best interest to pursue litigation or to spend millions of dollars generating data - is whether EPA is willing to consider granting the exemption it seeks if it can meet the criteria stated above, and what form and amount of evidence will EPA accept as proof that NAFA has met the criteria.

Can we discuss this further at this time? If not, we are both soon going to be investing substantial efforts in litigation and we may lose the chance to settle these matters to mutual advantage. Please let me know your client's response to this letter.

Regards,

Paul Grant

cc: NAFA