

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

DAVID M. WALKER, Comptroller  
General of the United States,  
Plaintiff,

v.

C.A. No.1:02cv340JDB

RICHARD B. CHENEY, Vice President  
of the United States,  
Defendant.

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**DEFENDANT'S RESPONSE TO PLAINTIFF'S  
STATEMENT OF MATERIAL FACTS**

Pursuant to Local Rule 56.1, defendant submits his response to the numbered paragraphs of plaintiff's Statement of Material Facts:

1. Not disputed that President Bush established the National Energy Policy Development Group (NEPDG) by memorandum dated January 29, 2001, that a copy of that memorandum is attached as Exhibit A to the Complaint, and that plaintiff has accurately quoted portions of that memorandum in this paragraph. Defendant refers the Court to the memorandum for a full statement of its contents.

2. Not disputed.

3. Not disputed.

4. Not disputed that funding for the NEPDG was to be provided by the Department of Energy to the maximum extent permitted by law and that the Vice President or his designee was authorized to submit to the President a proposal to use appropriations available to the President to meet any funding needs which could not be met through DOE appropriations. Compl. Ex. A at 2-3.

5. Not disputed that the NEPDG was supported by five professionals employed at the DOE and a White House Fellow, and that plaintiff has accurately quoted a portion of Responses by Andrew Lundquist, Executive Director of the NEPDG, to Questions from the Ranking

Minority Members of the House Committee on Government Reform and the House Committee on Energy and Commerce. Compl. Ex. E. Defendant refers the Court to those responses for a full statement of their contents.

6. Not disputed that individuals on the NEPDG support staff met with individuals who were not federal employees to gather information relevant to the NEPDG's work and that such meetings did not involve deliberations or efforts to achieve consensus, but were used as forums to collect individual views. Compl. Ex. E, attachments 1 at 2.

7. Not disputed that, to the extent there were costs for the activities of the NEPDG, including its meetings, public money defrayed those costs.

8. Not disputed that a letter was sent by Reps. Dingell and Waxman to plaintiff on April 19, 2001, that a copy of that letter is contained at Exhibit B to the Complaint, and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to the letter for a full statement of its contents.

9. Not disputed.

10. Not disputed that Exhibit C to plaintiff's Complaint was provided by GAO staff to the Counsel to the Vice President on May 8, 2001. Defendant refers the Court to that exhibit for a full statement of its contents.

11. Not disputed that David S. Addington, Counsel to the Vice President, sent the letter contained at Exhibit D to the Complaint to Anthony A. Gamboa, GAO General Counsel, on May 16, 2001. Defendant refers the Court to that letter for a full statement of its contents.

12. As to the first sentence, not disputed that Mr. Addington included with the May 16 letter a copy of the Responses by Andrew Lundquist, Executive Director of the NEPDG, to Questions from the Ranking Minority Members of the House Committee on Government Reform and the House Committee on Energy and Commerce, referred to in ¶ 5, above. As to the second sentence, see response to ¶ 6, above. As to the third sentence, not disputed that the Vice President convened nine meetings of the NEPDG between January 29, 2001, and May 2, 2001. Defendant refers the Court to the Responses for a full statement of their contents.

13. Not disputed that the May 4 letter and attachment do not disclose such information. Disputed that information of this type has not been made available to GAO. See, e.g., Pl's. Statement ¶ 32; Letter of Margot H. Anderson, Deputy Director, DOE's Office of Policy, to Jim Wells, Director, GAO's Natural Resources and Environment, July 16, 2001 (attachment A, infra) (identifying, inter alia, DOE employees serving as NEPDG staff, DOE attendees at NEPDG meetings, dates, times, and places of meetings with non-federal employees by Secretary Abrams).

14. Not disputed that Mr. Gamboa sent the letter contained in Exhibit F to the Complaint to Mr. Addington on June 1, 2001. Defendant refers the Court to that letter for a full statement of its contents.

15. Not disputed that Mr. Addington sent the letter contained at Exhibit G to the Complaint to Mr. Gamboa on June 7, 2001. Defendant refers the Court to that letter for a full statement of its contents.

16. Not disputed that the Counsel to the Vice President sent to GAO as a matter of comity, under cover of a letter to the GAO General Counsel dated June 21, 2001 (Pl's. S.J. Mem. Ex. 2), 77 pages retrieved from files in the Office of the Vice President responsive to GAO's inquiry that it was "interested in obtaining the direct and indirect costs incurred by both the Vice President and the Group support staff." Defendant refers the Court to that letter for a full statement of its contents.

17. Not disputed that the letter dated June 21, 2001 forwarded 77 pages from the files of the Office of the Vice President and directed the GAO to the Department of Energy for more detailed information. See Pl's. S.J. Mem. Ex. 2.

18. Not disputed that Mr. Gamboa sent the letter contained at Exhibit H to the Complaint to Mr. Addington on June 22, 2001. Defendant refers the Court to that letter for a full statement of its contents.

19. Not disputed.

20. Not disputed.

21. Not disputed.

22. Not disputed, except to clarify that both contacts occurred in July 2001, not 2002.

23. Not disputed that the Deputy White House Counsel and GAO's General Counsel were unable to reach a compromise.

24. Not disputed that the Comptroller General sent the letter contained in Exhibit I to the Complaint to the Vice President on July 18, 2001 and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to that letter for a full statement of its contents.

25. See response to ¶ 24, above.

26. Not disputed that the Comptroller General unsuccessfully attempted to call the Vice President on July 30, 2001.

27. As to the first sentence, not disputed. As to the second sentence, not disputed that GAO has stated that it no longer seeks minutes or notes of the meetings, although defendant lacks sufficient basis to confirm or deny the particular statement to which plaintiff refers. See Pl's. Statement ¶ 30. The date on which GAO eliminated such materials from its requests is not material.

28. Not disputed that the Comptroller General received copies of the August 2, 2001, of the Messages from the Vice President of the United States to the Senate and the House of Representatives dated August 2, 2001, contained in Exhibit J to the Complaint. Defendant refers the Court to those letters for a full statement of their contents.

29. Not disputed.

30. Not disputed that the Comptroller General sent, on August 17, 2001, to the President, the Vice President, the leaders of the Senate and House of Representatives, the Director of the Office of Management and Budget, and the Attorney General the letter at Exhibit K to the Complaint. Defendant refers the Court to that Exhibit for a full statement of its contents. As to the last sentence, see response to ¶ 27, above.

31. Not disputed.

32. Not disputed.

33. Not disputed.

34. Not disputed.

35. Not disputed that the listed senators sent to plaintiff the letter contained in Exhibit P to the Complaint on January 22, 2002, and that plaintiff has accurately quoted a portion of that letter. Defendant refers the Court to the letter for a full statement of its contents.

36. Not disputed that the Vice President and the Comptroller General spoke by telephone and that no compromise was reached.

37. Not disputed that plaintiff sent the letter contained in Exhibit R to the Complaint to the persons identified in this paragraph on January 30, 2002. Defendant refers the Court to that exhibit for a full statement of its contents.

Respectfully submitted,

May 21, 2002	
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