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6  
7 **IN THE THIRD JUDICIAL DISTRICT COURT**  
8 **IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

9  
10 Randy Lieber, an individual,  
Natruell, LLC, a Utah Limited  
11 Liability Company, Technocarb, a  
Canadian limited corporation,  
12 Natural Solutions, LLC, a Utah  
Limited Liability Company and  
Green and Clean Auto, LLC,

13 Plaintiffs,

14 vs.

15 Lance Davenport, in his capacity as  
16 the acting Commissioner of Utah  
Department of Public Safety, and  
17 the Utah Safety Inspection  
Advisory Board

18 Defendants.  
19

**VERIFIED COMPLAINT**

Civil No. \_\_\_\_\_

Honorable

20 COME NOW Plaintiffs and allege as follows:

21 **PARTIES AND JURISDICTION**

22 1. Plaintiff Randy Lieber is an individual residing in Salt Lake County, Utah who  
23 owns a vehicle converted to use Compressed Natural Gas (CNG) as a fuel in addition to  
24 gasoline. Plaintiff Randy Lieber's address is 5313 South Appian Way, Taylorsville Utah 84118.  
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1           2.       Natruell, LLC is a Utah Limited Liability Company, which distributes after market  
2 automobile CNG conversions for installation by authorized dealers to convert automobiles to  
3 run on either gasoline or CNG. Natruell, LLC has its principal offices at 51 East 400 North in  
4 Cedar City, Iron County, Utah 84720.

5           3.       Technocarb is a company incorporated under the laws of the Province of British  
6 Columbia, Canada as a non-reporting, limited company. The company's current head office is  
7 located at: 4 – 30435 Progressive Way, Abbotsford, British Columbia, Canada. Technocarb  
8 manufactures EPA certified, as well as non-EPA certified, aftermarket kits for conversion of  
9 automobiles to allow them to run on either gasoline or CNG.

10          4.       Natural Solutions, LLC, is a small automotive repair facility and Utah Highway  
11 Patrol Safety Inspection Station as well as an authorized Natruell installation facility located  
12 1418 West 70 South Lindon, Utah County, Utah 84042.

13          5.       Green and Clean Auto, LLC is a Utah used automobile dealer, which sells used  
14 automobiles which operate on CNG (as well as gasoline). Clean and Green Automotive, LLC  
15 has its principal place of business, at 4036 South Main Street, Salt Lake City, Utah 84107.

16          6.       Defendant Lance Davenport is the Commissioner of the Department of Public  
17 Safety and is sued in his official capacity. The Department of Public Safety's address is 4501  
18 South 2700 West, Salt Lake City, Utah 84114.

19          7.       On information and belief, Defendant Utah Safety Inspection Advisory Board is  
20 an administrative agency of the State of Utah and is, in part, responsible for the creation of the  
21 "Official Vehicle Safety Inspection Manual for Passenger Vehicle and Light Truck, 2009." The  
22 Utah Safety Inspection Advisory Board's address is 5500 West Amelia Earhart Drive, Suite  
23 360, Salt Lake City, Utah 84116.

24          8.       As set forth in more detail herein, Plaintiffs are parties who have been aggrieved  
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1 by the Defendants' failure to comply with the Utah Administrative Rulemaking Act, Utah Code  
2 Ann. § 63G-3-101 *et seq.*

3 9. Jurisdiction and Venue are appropriate in this court pursuant to Utah Code Ann.  
4 §63G-3-602(1) (a) (2008).

5 ENTITLEMENT TO JUDICIAL REVIEW

6 10. Pursuant to Utah Code Ann. § 63G-3-602 (1) (2008):

7 (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a  
8 complaint with the county clerk in the district court where the person resides or in the  
9 district court in Salt Lake County.

10 (b) Any person aggrieved by an agency's failure to comply with Section 63G-3-201 may  
11 obtain judicial review of the agency's failure to comply by filing a complaint with the  
12 clerk of the district court where the person resides or in the district court in Salt Lake  
13 County.

14 11. Pursuant to Utah Code Ann. §63G-3-602 (1)(b)(2008), Plaintiffs are entitled to  
15 judicial review of Defendants' failure to follow proper "rulemaking" and Plaintiffs cannot  
16 exhaust administrative remedies because none of the administrative rule making procedures  
17 were followed and, therefore, no administrative remedy is appropriate.

18 12. Plaintiffs need not exhaust administrative remedies under Utah Code Ann. §63G-  
19 3-602(2)(b)(iii) (2008) because compliance with Section 63G-3-601 would cause immediate and  
20 irreparable harm.

21 13. Furthermore, pursuant to Utah Code Ann. § 52-4-303 (3) (2008), a person denied  
22 any right under Utah's Open and Public Meetings Act may commence suit to " (a) compel  
23 compliance with or enjoin violations of this chapter; or (b) determine the chapter's applicability  
24 to discussions or decisions of a public body."

1 INTRODUCTION

2 14. Plaintiff Randy Lieber owns a 2002 Chevrolet Suburban Automobile that has been  
3 converted to optionally run on either gasoline or CNG.

4 15. The remaining Plaintiffs are operators of businesses that are involved in the clean  
5 fuel industry, specifically in the business of converting automobiles to run on cleaner burning  
6 natural gas, or selling them, as opposed to those using the more polluting gasoline.

7 16. The Environmental Protection Agency (EPA) and California Air Resources Board  
8 (CARB) are U.S. Government and California state governmental agencies (respectively) that  
9 certify CNG conversion kits with respect to emissions. Neither is charged with duties  
10 concerning automotive equipment safety.<sup>1</sup>

11 17. Accordingly, EPA and CARB certification of a CNG conversion kit is geared  
12 towards environmental impact issues - clean air. EPA Certification does not involve any  
13 significant safety testing of the kit itself, nor, logically is it any measure of how safely any  
14 aftermarket kit is actually installed.

15 18. If installed according to manufacturer's recommendations, both Technocarb and  
16 Natruell CNG conversion kits meet or exceed all known safety standards, irrespective of whether  
17 the particular kit is EPA certified.

18 19. In fact, the EPA-certified Technocarb kit and its non-certified counterpart are  
19 identical except for the label. The certification of the kit applies to only one engine year and  
20 vehicle model, yet the same kit, when applied to the same engine in a different vehicle or a  
21 different year may not be certified.

22  
23 <sup>1</sup>For example CARB's online mission statement is as follows: To promote and protect public  
24 health, welfare and ecological resources through the effective and efficient reduction of air pollutants  
while recognizing and considering the effects on the economy of the state.

1           20.     Because of the significant expense involved in EPA or CARB certification and the  
2 limited life span of such certifications, such certified kits are generally thousands of dollars more  
3 expensive than their equivalent non certified counterparts.

4           21.     This significant price differential is an economic deterrent to many consumers  
5 when considering a CNG conversion.

6           22.     Utah law requires vehicles registered within the state to be inspected for safety  
7 reasons and the Department of Public Safety is charged with overseeing that process.

8           23.     Utah statute provides as follows:

9           In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
10 the division [highway patrol] shall make rules:

11           (a) setting minimum standards covering the design, construction, condition, and  
12 operation of motor vehicle equipment for safely operating a motor vehicle on the  
13 highway;

14           Utah Code Ann. § 53-8-204 (5) (2008).

15           24.     Utah Administrative Code R714-156-8 requires that the Department shall prepare  
16 a vehicle inspection manual based *inter alia* on the Utah Code; Pursuant to Utah statute, such  
17 rules should “conform as nearly as practical to federal motor vehicle *safety* standards.” Utah  
18 Code Ann. §53-8-204(6(a) (2008) (emphasis added, portions omitted).

19           25.     The Department of Public Safety publishes and distributes via the internet to each  
20 a manual for use in the required safety inspection of each vehicle registered in the state of Utah.  
21 It has just recently compiled and released to the media the “Official Vehicle Safety Inspection  
22 Manual for Passenger Vehicle and Light Truck, 2009” (the “Manual”).

23           26.     On information and belief, on or about January 15, 2009, through one of its  
24 spokespersons, the Department appeared on local television (KUTV, Channel 2 on Get Gephart)  
25 and pronounced that under the Manual, EPA certification was now required for all CNG

1 conversions to pass and further that state safety inspection stations were to reject all vehicles  
2 converted to run on CNG unless they were EPA certified.

3 27. On information and belief, despite this pronouncement, the Manual has not been  
4 published on the internet or actually been made available to the safety inspection stations.

5 28. The Manual, or part of its contents constitutes a Rule (or Rules) as that term is  
6 defined in the Utah Administrative Rulemaking Act, Utah Code Ann. §63-3-102(16(a) (2008),  
7 because it:

- 8 a. is explicitly or implicitly required by state law;
- 9 b. implements or interprets a state or federal mandate; and
- 10 c. applies to a class of persons - specifically those persons who own vehicles  
11 subject to Utah's vehicle registration laws.

12 29. The Manual states at the bottom of page 1 that it "supersedes all previous manuals  
13 and shall be used in determining the pass/fail condition of vehicle equipment." This statement,  
14 at a minimum, implies that it has changed and is an enforceable rule as that term is defined in  
15 the Utah Administrative Rulemaking Act, Utah Code Ann. §§63G-3-101 *et seq.* (2008).

16 30. The Department's Manual has now changed to more specifically address CNG  
17 conversion kits. A copy of the relevant portions of the new "Official Vehicle Safety Inspection  
18 Manual for Passenger Vehicle and Light Truck, 2009" is attached as exhibit A.

19 31. On information and belief, the Department of Public Safety became involved in  
20 some unknown way with issues involving EPA certification of CNG conversion kits; By some  
21 unknown method, the Department decided that EPA or CARB certification was, by itself, a  
22 determination that a particular CNG conversion kit was safer, whereas a non-certified kit was  
23 necessarily unsafe.

24 32. On information and belief, the changes in the Manual resulted from an incident  
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1 or incidents involving improper self-installations of CNG kits, damaged tanks, or inadequate  
2 testing for leakage. EPA (or CARB) certification was irrelevant.

3 33. Section twelve of the Manual, now states the if the vehicle to be inspected has  
4 been modified to use CNG and the conversion is not EPA or CARB certified, the inspector is  
5 required to reject the vehicle unless the equipment is removed or the owner obtains EPA  
6 certification. *See* Exhibit A p. 74.

7 34. The Manual is a rule that requires that the owner of a converted vehicle to show  
8 that the conversion kit is EPA or CARB certified or have the vehicle rejected outright, even  
9 though the vehicle may otherwise meet all Federal and Utah safety standards. *Id.*

10 35. The forgoing portion of the Manual is a rule within the meaning of Utah Code  
11 Ann. §63G-3-102(16)(b) (2008), because it amends an existing rule.

12 36. On information and belief, in making this rule, Defendants did not comply with  
13 The Utah Administrative Rulemaking Act, Utah Code Ann. §63G-3-101, *et seq.*, as required, to  
14 wit:

- 15 a. Defendants never filed the proposed amendment to the Manual with the Division  
16 of Administrative Rules, as required by Utah Code Ann. §63G-3-301(4) (2008);
- 17 b. Defendants never filed a rule analysis with the Division of Administrative Rules  
18 as required by Utah Code Ann. §63G-3-301(4) (2008);
- 19 c. The proposed amendment to the Manual was never published in the Utah State  
20 Bulletin as required by Utah Code Ann. §63G-3-301(4)(c)(2008);
- 21 d. The department head never considered the amendment's financial impact on  
22 business as required by Utah Code Ann. §63G-3-301(5)(2008);
- 23 e. Because the Department failed to consider the fiscal impact of this rule change,  
24 the Department necessarily failed to consider methods of reducing that fiscal  
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1 impact as required by Utah Code Ann. §63G-3-301(6) (2008); and

2 f. Because the Department failed to file a proposed rule with the Division of  
3 Administrative Rules and notice of the proposed amendment was not published  
4 as required, Plaintiffs and no fewer than ten other persons were denied the  
5 opportunity to request a public hearing on the advisability of the proposed  
6 amendment.

7 37. Therefore, under the provisions of Utah Code Ann. §63G-3-202 (2008) the Manual  
8 is an unenforceable rule.<sup>2</sup>

9 38. On information and belief, the Department also failed to comply with Utah's Open  
10 and Public Meetings Act, Utah Code Ann. §§54-4-101 *et seq.* (2008).

11 39. Because of recent news stories and publicity about the Manual, and as a result of  
12 the change, many consumers are not considering, or economically cannot consider, conversion  
13 to cleaner CNG fuel. This effect is immediate in terms of inquiries and sales and is adversely  
14 affecting Plaintiffs' businesses.

15 40. Additionally, some former purchasers of CNG conversion kits, which were  
16 previously approved for state inspection purposes, including Plaintiff Lieber will face rejection  
17 and those persons may consider litigation against some of the Plaintiffs, and thereby seek  
18 damages and equitable relief.

19 41. On information and belief, Defendant's enforcement of its unenforceable rule  
20 adversely impacts each Plaintiff economically in an amount that exceeds one days' gross

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22 <sup>2</sup> Section 202 states: (1) An agency's written statement is a rule if it conforms to the definition of a rule  
23 under Section 63G-3-102, but the written statement is not enforceable unless it is made as a rule in  
24 accordance with the requirements of this chapter.

(2) An agency's written statement that is made as a rule in accordance with the requirements of this chapter  
is enforceable and has the effect of law.

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1 revenue, but because the overall adverse impact on Plaintiffs' businesses may be very difficult  
2 or impossible to ascertain, Plaintiffs damages may not be adequately addressed by or  
3 compensable in monetary damages.

4  
5 FIRST CAUSE OF ACTION  
6 {INJUNCTIVE RELIEF}

7 42. Plaintiffs adopt by reference paragraphs 1-41 set forth above as if fully set forth  
8 herein in this cause of action.

9 43. On information and belief, no accident or damage regarding a CNG conversion  
10 has ever occurred in Utah where such accident or damage was attributable to fact that the kit was  
11 not EPA / CARB certified.

12 44. Plaintiffs' concede that the Department has legitimate safety concerns regarding  
13 CNG conversions and does not object to those other portions of the Manual that implement  
14 legitimate safety inspection procedures for such conversions. Nor do Plaintiffs object to those  
15 portions of the Manual that restate federal safety regulations that are already in force.

16 45. There is no basis, however, to conclude that EPA / CARB certifications address  
17 safety issues. Accordingly, Plaintiffs object to the portion of the Manual mandating EPA/  
18 CARB certification as a de facto threshold determination of a particular conversion's safety, and  
19 request an Order of Injunction, enjoining Defendants from enforcing such portions of the  
20 Manual.

21 46. The Plaintiffs will suffer irreparable harm unless the order of injunction issues in  
22 the following respects:

- 23 a. Plaintiffs have become involved in the clean fuel industry at significant expense  
24 in both time and money, which Defendants' actions will significantly impede; and,
- 25 b. The adverse impact on Plaintiffs may not be compensable in money damages; and

- 1 c. On information and belief, Defendants have undertaken no research or  
2 investigation of whether non-EPA certified conversion kits are inherently unsafe;  
3 and,  
4 d. When properly converted to run on CNG, such automobiles are considerably less  
5 polluting than vehicles operated on gasoline, irrespective of EPA certification;  
6 and,  
7 e. The air quality in the Salt Lake Valley has been determined to be or declared the  
8 worst in the United States - or at least some of the worst; and  
9 f. Plaintiff Lieber is an individual who, along with everyone else living in the Salt  
10 Lake Valley, is adversely affected by the hazardous air quality caused by vehicle  
11 emissions and the harm done thereby is irreparable. The order or injunction, if  
12 issued, would not be adverse to the public interest. In fact, there is a strong public  
13 policy to encourage clean fuel conversions. Both Governor Jon Huntsman, jr. and  
14 President Barack Obama have issued strong statements in support of clean fuel  
15 and the Governor has gone so far as to propose CNG infrastructure along the I-15  
16 corridor from Idaho to Arizona.

17 47. The threatened injury to the Plaintiffs outweighs whatever damage the proposed  
18 order or injunction may cause the Defendants, especially considering the limited scope of  
19 injunction sought, because there would be significant injury to Plaintiffs and little if any damage  
20 to the Department.

21 48. There is a substantial likelihood that the Plaintiff will prevail on the merits of the  
22 underlying claim and this case presents serious issues on the merits which should be the subject  
23 of further litigation. As is set forth herein, Defendants simply ignored the requirements of Utah  
24 law when it amended Section 12 of the Safety Inspection Manual and it enacted its rule in the  
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1 face of strong contrary evidence submitted by its advisors.

2  
3 SECOND CAUSE OF ACTION  
{DECLARATORY JUDGMENT }

4 49. Plaintiffs adopt by reference paragraphs 1-44 set forth above as if fully set forth  
5 herein in this cause of action.

6 50. Pursuant to Utah Code Ann. §78B-6-401, *et seq.* (2008) this Court has jurisdiction  
7 to afford declaratory relief.

8 51. Defendants’ “Manual” was not made in conformity with Utah Code Ann. §63G-3-  
9 101, *et seq.* (2008).

10 52. Defendants did not comply with the Utah’s Open and Public Meetings Act, Utah  
11 Code Ann. §§54-4-101 *et seq.* (2008).

12 53. Utah law provides that “[a]ny final action taken in violation of Section 52-4-201,  
13 52-4-202, or 52-4-207 is voidable by a court of competent jurisdiction.” Utah Code Ann. §  
14 52-4-302 (1) (a)

15 54. Plaintiffs are entitled to a judgment of this Court that Defendants did not comply  
16 with the procedures of the Utah Administrative Rulemaking Act or the Utah Open and Public  
17 Meetings Act, and accordingly Defendants’ rule, at least insofar as it mandates EPA or CARB  
18 certification, is void and unenforceable.

19 55. Plaintiffs are further entitled to an Order from this court requiring that Defendants  
20 remove any references from its safety inspection manual which were not subjected to appropriate  
21 rulemaking insofar as it mandates EPA or CARB certification.

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THIRD CAUSE OF ACTION  
{MANDAMUS}

56. Plaintiffs adopt by reference paragraphs 1-55 set forth above as if fully set forth herein in this cause of action.

57. This Court should enter an Order compelling Defendants to comply with Utah's Open and Public Meetings Act and the Utah Administrative Rulemaking Act if Defendants wish to enact further rules regarding the subject of this lawsuit.

WHEREFORE Plaintiffs pray that this Court:

1. Issue declaratory judgment declaring that the 2009-2010 Official Vehicle Safety Inspection Manual for Passenger Vehicles and Light Duty Truck up to 26,000 GVWR" is void and an unenforceable rule insofar as it mandates EPA or CARB certification and as such is void;

2. Issue a permanent injunction prohibiting the Utah Department of Public Safety, Highway Patrol, Safety Inspection Advisory Board from enforcing its amendment to chapter twelve concerning rejection of non-EPA certified CNG conversions;

3. Order Defendants to comply with the Utah Open and Public Meetings Act and the Utah Administrative Rulemaking Act in any further rulemaking pertaining to CNG conversions; and

4. Grant Plaintiffs such attorneys' fees and costs as may be proper under the circumstances; and

5. Grant such other and further relief as it deems equitable and just.

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DATED this Day of January 2009.

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Jack M. McIntyre  
Attorney of Plaintiffs

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VERIFICATION

STATE OF UTAH            )  
                                  :  
COUNTY OF SALT LAKE )        ss

I, Randy Lieber, being duly sworn upon my oath, do depose and state that I am a Plaintiff in the above-captioned case; that I have personal knowledge of the facts in this case; that I have read the foregoing Verified Complaint; and that the same is true to the best of my knowledge, except as to those matters stated upon information and belief which I believe to be true.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_ ,

*Petitioner*

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC