

October 11, 2006

Ford Motor Company
Customer Service Division
Regent Court Building
16800 Executive Plaza Drive
Dearborn, MI 48126

**Re: Second Demand for Refund of Purchase Price or Replacement Vehicle
for Model Year 2005 Taurus Flex Fuel Vehicle (FFV)**

Dear Sir or Madam:

This letter is written as a demand for a refund or a replacement vehicle under Neb. Rev. Stat. § 60-2701 for the 2005 Taurus FFV I purchased that does not operate properly on E85 fuel. My repeated attempts to resolve this issue at the dealership level were unsuccessful, my first demand to Ford's customer relations center for a refund was not responded to in writing, and the offer Ford put forth at the Better Business Bureau hearing on this matter was unacceptable. This second claim more clearly explains why Ford is required to grant my demand for a refund or replacement vehicle. Additionally, I am filing separate complaints with the Federal Trade Commission and the Office of the Nebraska Attorney General.¹ I will pursue this matter until Ford acknowledges its error and provides me with a refund or replacement vehicle.

As Ford is aware, I took possession of my 2005 Taurus FFV on September 6, 2005, in reliance upon Ford's advertisements and Kenesaw Motor Co.'s assurances that the vehicle would operate properly on E85 fuel. I am a Nebraska corn farmer and owner of another FFV, a Chevrolet. The primary reason I purchased the Taurus FFV was to because it was, like my Chevrolet, supposedly capable of running of E85. Specifically, Ford's advertisements claimed that "Ford FFVs automatically adjust for any mixture of ethanol and gasoline for a hassle-free and environmentally sound driving."² Ford's advertisements also claimed that FFVs "can function on either conventional gasoline, ethanol, or a combination of the two within the same tank."³ The owners' manual for my Taurus FFV also stated that my vehicle "is designed to operate on [E85] ethanol, unleaded gasoline alone, or any mixture of the two."

However, the Taurus FFV has not performed as promised in those express warranties. I had problems with the vehicle very soon after I purchased it. On September 13, 2005, I attempted to operate the car with ethanol for the first time. The vehicle immediately began malfunctioning. It took multiple attempts to start the Taurus FFV many times when I tried to operate it on E-85. More specifically, when the car was parked for 4 hours or more, 70% of the time it will take multiple cranking attempts to stay running on E-85. When the Taurus FFV finally did start, it sometimes ran rough.

¹ Copies of these complaints are attached as Appendix 1.

² Ford advertisement, no longer available online, 2006 version attached as Appendix 2.

³ User manual for model year 2005 Ford Taurus FFV, at 162 attached as Appendix 3 (available online at https://www.fleet.ford.com/maintenance/owners_manuals/default.asp?FFV=Y).

For example, on the morning of September 28, 2005, it took 3 cranking attempts to start the Taurus FFV. After I drove the car out of the garage and accelerated to 25 miles per hour, the car hesitated, misfired, and began to stall. At the time the car's fuel tank contained an E-85 blend.

Although I brought the Taurus FFV in for repairs on four occasions, Ford was never able to repair the defect. I first returned the vehicle to Kenesaw on September 26, 2005 for repairs.⁴ Although the dealership claimed to have fixed the problem, I had to take the Taurus FFV back to the dealership on September 28, 2005, because the problem persisted as described above.⁵ The mechanic's notes on the back of the service ticket stated that it took him 6-8 times to start the car, and that it ran "rough" with a bad noise once it did start.⁶ The dealership did not attempt to repair the car further because it did not know how to correct the operational flaw. On October 7, 2005 I called the dealership to discuss the problem. Again, the dealership insisted they could not make the problem dissipate. I took the car to another dealership, Anderson Ford, to see if they could fix the Taurus FFV. Anderson noted the same problems, but there was no improvement with the vehicle's performance when I picked it up on October 22, 2005.⁷ Finally, I dropped the vehicle back off at Kenesaw Motor's for a fourth and final time to allow Ford and its agents a reasonable opportunity to repair the Taurus FFV. When I picked the car up on October 25, 2005 the problems persisted.⁸ The next day Kenesaw called and informed me that no repair was available.

Ford has been on notice about this failure to fix the operational problem at least since October 28, 2005. Kenesaw Motor Company wrote to Ford and confirmed the operational problems of the Taurus FFV and my complaints detailed above.⁹ In November, 2005 I wrote to Ford to demand a refund or replacement vehicle.¹⁰ Instead of responding in writing, Ford called me on November 23, 2005. During our 21 minute conversation, Ford's agents repeatedly asserted there was not a serious defect with the Taurus FFV because it could operate properly on gasoline. Instead of fulfilling its legal obligation to refund the purchase price or replace the defective product, Ford only offered me an upgraded service plan on the vehicle and requested more time to fix the problem. This unacceptable alternative was obviously a delay tactic; as Ford was still asking for more time to fix the problem at the December 23, 2005, Better Business Hearing on the matter.¹¹

Ford clearly breached its express warranty under Neb. Rev. Stat. § 60-2701 et seq. Under § 2701 the "Manufacturer's express warranty shall mean the written warranty." The written warranty for the 2005 Taurus provides that, "Under your New Vehicle

⁴ See 9/26/2005 service ticket, attached as Appendix 4.

⁵ See 9/29/2005 service ticket, attached as Appendix 5.

⁶ *Id.*

⁷ See 10/22/2005 service ticket, attached as Appendix 6.

⁸ See 10/25/2005 service ticket, attached as Appendix 7.

⁹ See 10/28/2005 letter from Keneshaw Motor Company to Ford, attached as Appendix 8.

¹⁰ See 11/2005 letter from Buss to Ford Motor Company and Kenesaw Motor Company, attached as Appendix 9.

¹¹ See BBB case number FRD0595848.

Limited Warranty, Bumper to Bumper Coverage begins at the warranty start date and lasts for three years or 36,000 miles, whichever occurs first. During this coverage period, authorized Ford Motor Company dealers will repair, replace, or adjust all parts on your vehicle that are defective in factory-supplied materials or workmanship.”¹² Ford’s agents acknowledged that the defect was covered by the express warranty. Indeed, both the Kenesaw and Anderson dealerships attempted to fix the problem as repairs covered by the warranty.¹³

Two separate Ford dealerships were unable to repair the defect in my Taurus FFV on four separate occasions that I took the vehicle in for repair. Therefore, I have fulfilled my obligation under Neb. Rev. Stat. § 60-2704 to allow Ford and its agents a reasonable number of attempts to conform my defective Taurus FFV to the applicable express warranty.

Thus, pursuant to Neb. Rev. Stat. § 60-2703, Ford is obligated to replace the vehicle with a comparable motor Taurus FFV that operates properly on E85 or it must refund the purchase price including all taxes and fees. Under § 2703, “If the manufacturer, its agents, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all sales taxes, license fees, and registration fees and any similar governmental charges, less a reasonable allowance for the consumer’s use of the vehicle.” Ford has been unable to repair a defect in my Taurus FFV that substantially impairs my use of the vehicle. As a result, Ford is obligated to grant my demand.

Moreover, Ford breached its implied warranty of fitness as deceptively advertised that the Taurus FFV was able to operate on E85 “hassle free.”¹⁴ Ford has repeatedly missed the point by insisting that I operate the Taurus FFV using gasoline. Not only does that “solution” fail to fix the manufacturing defect or remedy Ford’s breach of its express warranty, it undermines Ford’s claims that the Taurus FFV is an outstanding dual-fuel vehicle. In fact, Ford’s breach of this implied warranty and its suggestion that the best way to remedy the problem is not to use E85 fuel supports my truth-in-advertising and fraud actions.

Please respond in writing to this letter to alert me to any proceedings on my request to have Ford refund the purchase price of the Taurus FFV I purchased or replace the vehicle with a Taurus FFV that operates properly on E85 fuel.

¹² See Warranty at page 5, attached as Appendix 10, available at https://www.fleet.ford.com/maintenance/owners_manuals/default.asp.

¹³ See 9/26/2005 service ticket, attached as Appendix 4 and 10/22/2005 service ticket, attached as Appendix 6.

¹⁴ Ford advertisement, no longer available online, 2006 version attached as Appendix 2.

Sincerely,

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