

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy M. Conway 6/27/13
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CAA-01-2013-0025

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Eastern Bus Company
14 Chestnut Street
Somerville, MA 02143

Total Dollar Amount of Receivable \$ 35,000 Due Date: 12/21/13

SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:
1st \$ 12,000 on 7/24/13
2nd \$ 23,000 on 12/21/13
3rd \$ _____ on _____
4th \$ _____ on _____
5th \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
NEW ENGLAND REGION

June 24, 2013

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square
Boston, Massachusetts 02109

RECEIVED

JUN 26 2013

EPA ORC WS
Office of Regional Hearing Clerk

Re: Eastern Bus Company, Respondent
Docket No. CAA-01-2013-0025

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter, please find the original and one copy of the executed Consent Agreement and Final Order in this matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy M. Conway".

Timothy M. Conway
Senior Enforcement Counsel

Enclosures

cc:

Nicholas Rosenberg, Esquire
Jager Smith, P.C.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

**CERTIFIED MAIL –
RETURN RECEIPT REQUESTED**

June 24, 2013

Nicholas J. Rosenberg, Esq.
Jager Smith, P.C.
One Financial Center
Fourth Floor
Boston, MA 02111

Re: Eastern Bus Company
EPA Docket No. CAA-01-2013-0025

Dear Mr. Rosenberg:

Enclosed is the executed Consent Agreement and Final Order in the Eastern Bus Company matter. As you know, the effective date of this order is the date of filing of the CAFO with the Regional Hearing Clerk, which is occurring today. Thanks very much for your hard work to reach this resolution.

Please contact me if you have further questions on this matter.

Sincerely,

A handwritten signature in black ink that reads "Tim Conway".

Tim Conway
Senior Enforcement Counsel

Enclosures

cc:

Julie Ross, MassDEP Boston
Abdi Mohamoud, EPA
Christine Sansevero, EPA
Tom Olivier, EPA

RECEIVED

JUN 26 2013

EPA ORC
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED

JUN 26 2013

EPA ORC WS
Office of Regional Hearing Clerk

In the Matter of:)
)
EASTERN BUS COMPANY)
14 Chestnut Street)
Somerville, Massachusetts)
)
Respondent)
_____)

Docket No. CAA 01-2013-0025

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that Eastern Bus Company (“Respondent” or “Eastern”) violated certain provisions of the Massachusetts state implementation plan (“SIP”) that prohibits the excessive idling of motor vehicles. EPA may enforce SIP provisions under Section 113 of the Clean Air Act (the “Act”), 42 U.S.C. § 7413.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

A. PRELIMINARY STATEMENT

1. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, its officers, directors, successors and assigns.

2. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses it might have as to jurisdiction and venue. Respondent consents to the terms of this CAFO.

3. Respondent neither admits nor denies the specific factual and legal allegations below in Section B. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.

4. Under Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), the Debt Collection Improvement Act (“DCIA”), 31 U.S.C. § 3701, and EPA’s Civil Monetary Penalty Inflation Adjustment Rules, promulgated thereunder at 40 C.F.R. Part 19, EPA may assess a civil administrative penalty of up to \$37,500 per day for each violation of the Clean Air Act occurring after January 12, 2009.

B. EPA FINDINGS

5. The Commonwealth of Massachusetts has adopted a SIP within the meaning of Section 113(a)(1) of the Act, which has been approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410. The Massachusetts SIP includes various federally approved portions of the Massachusetts Air Pollution Control Regulations at 310 CMR § 7.00 *et seq.*

6. The Massachusetts SIP includes the regulation at 310 CMR § 7.11(1)(b) (the “Massachusetts idling regulation”), which provides that no person shall cause, suffer, allow, or permit the unnecessary operation of the engine of a motor vehicle while such vehicle is stopped

for a foreseeable period in excess of five minutes, unless such operation is in accordance with a listed exception.

7. At school bus facilities operated by Respondent in Wellesley, Newton, and Somerville, Massachusetts, EPA alleges to have observed the unnecessary operation of the engines of motor vehicles while such vehicles were stopped for a foreseeable period in excess of five minutes. EPA also alleges that the observed idling did not accord with any exception listed in 310 CMR §§ 7.11(1)(b)(1), (2) or (3).

8. Accordingly, EPA alleges that Respondent violated the Massachusetts idling regulation at 310 CMR § 7.11(1)(b).

9. EPA alleges that Respondent violated Massachusetts idling regulations, rendering Respondent liable for penalties under Section 113(d) of the Act.

10. EPA has provided notice to Respondent, and to the Massachusetts Department of Environmental Protection, of EPA's findings of violations described in this CAFO, at least 30 days prior to the issuance of an administrative penalty order under Section 113(d) of the Act.

C. TERMS OF SETTLEMENT

11. Respondent shall comply with all SIP regulations in Massachusetts. In addition, if in the future, Respondent expands its school bus operations outside of Massachusetts, Respondent shall comply with all SIP regulations in such states that limit engine idling by motor vehicles at all facilities owned or operated by Respondent. Respondent shall also implement the measures described in Attachment 1, incorporated herein by reference, which are intended to promote Respondent's compliance with motor vehicle idling regulations.

- a. Within 60 days of the effective date (the date of filing with the Regional Hearing Clerk) of this CAFO, Respondent shall commence implementation of the Attachment

1 measures, and shall thereafter implement the measures for a period of 10 months.

- b. With respect to implementation of the Attachment 1 measures, Respondent shall submit reports to EPA pursuant to Paragraph 20 of this CAFO.
- c. Following the receipt of each of the Attachment 1 implementation reports referenced in Paragraph 20, EPA will do one of the following:

- i. accept the implementation report;

- ii. reject the implementation report, notify Respondent in writing of deficiencies in the implementation or the implementation report and grant Respondent an additional forty-five (45) days in which to correct any deficiencies; or

- iii. if any such deficiencies cannot be corrected in 45 days, reject the implementation report and seek stipulated penalties in accordance with Paragraph 12 of this CAFO.

12. Stipulated Penalties: Respondent shall be liable for stipulated penalties for actions required in Attachment 1 to this CAFO as follows:

- a. Respondent shall be liable for stipulated penalties in the amount of \$1,500 for every day on which Respondent fails to:

- i. commence timely implementation of the required measures in accordance with the provisions of Attachment 1 to this CAFO;

- ii. implement the required measures in accordance with the provisions of Attachment 1 to this CAFO for the required period; or

- iii. submit complete and timely reports as required by Paragraph 20 of this CAFO.

b. Following EPA's determination that Respondent is liable for stipulated penalties pursuant to this Paragraph, EPA will send Respondent a written demand for the payment of the penalties. All penalties accruing under this Paragraph shall be due and payable to EPA within 30 days of Respondent's receipt of a demand for payment of stipulated penalties, unless Respondent invokes the dispute resolution procedures of this CAFO. All payments shall be made in accordance with the procedures in Paragraph 13 of this CAFO.

13. In light of the statutory factors of Section 113(e) of the Act, EPA has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of \$35,000. Respondent shall pay the penalty of \$35,000 as follows:

- a. Within thirty (30) days of the effective date of this CAFO, Respondent shall submit a bank, cashier's or certified check for \$12,000 as the initial payment of this penalty;
- b. Within one hundred eighty (180) days of the effective date of this CAFO, Respondent shall submit a bank, cashier's or certified check for the remaining \$23,000 of the penalty, plus interest to be paid from the effective date of the CAFO at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2). Nothing precludes Respondent from submitting the penalty payment referenced in this subparagraph b. in more than one payment so long as all payments are submitted prior to 180 days from the effective date of this CAFO, and all payments follow all other payment requirements, including the payment of interest from the effective date of the CAFO at the "underpayment rate" established pursuant to 26 U.S.C. § 6621(a)(2)..

14. Respondent shall make its payment(s) by submitting a check(s), to the order of the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the case name and docket number of this action on the check and in an accompanying cover letter, and shall simultaneously provide copies of the check and cover letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

Tim Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912

15. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due date established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer, at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States’ enforcement expenses, including attorneys’ fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent’s outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter. In addition to the above, if

Respondent fails to pay timely the initial payment in Paragraph 13(a) above, Respondent is required to immediately pay the entire \$35,000 penalty, pursuant to the procedures in Paragraph 14 above and any applicable provisions above in this Paragraph 15.

D. GENERAL PROVISIONS

16. All submissions required by this Order shall be sent to:

If by Respondent:

Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100 (OES04-2)
Boston, MA 02114
Attention: Abdi Mohamoud

If by EPA:

Charles Winitzer, President
Eastern Bus Company
14 Chestnut Street
Somerville, MA 02143

With a copy to:

Nicholas Rosenberg, Esq.
Jager & Smith, P.C.
One Financial Center
Boston, MA 02111

17. The stipulated penalties in this CAFO, the civil penalty under Paragraph 13, above, any interest, and the nonpayment penalties and/or charges as described in Paragraph 15, above, shall represent penalties assessed by EPA and shall not be deductible for purposes of federal taxes, and shall not be deductible for purposes of state, or local taxes unless allowed by law.

18. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section B of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced

pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

19. Each party shall bear its own costs and fees in this proceeding, including attorneys fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

F. REPORTING

20. For each requirement of this CAFO, including Attachment 1, Respondent shall maintain legible copies of the documentation and data, including but not limited to invoices, records of training and walk-throughs, and copies of posters or other signage, referenced by or supporting statements made in any documents or reports submitted to EPA pursuant to this CAFO until such time that EPA accepts the final report on implementation of the Attachment 1 measures, as provided in Paragraph 20(c). Respondent shall provide the documentation and data to EPA within 14 days of a request for such information. In all Attachment 1-related documents or reports submitted to EPA pursuant to this CAFO, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

21. Respondent shall submit to EPA the following periodic reports for the activities undertaken under this CAFO, including Attachment 1.

a. Within 120 days after the effective date of this CAFO, Respondent shall submit an initial report to EPA describing the actions taken to that date to implement the Attachment 1 measures;

b. Within 270 days after the effective date of this CAFO, Respondent shall submit a report to EPA describing the actions taken to that date to implement the Attachment 1 measures;

c. Within fourteen months of the effective date of the CAFO, Respondent shall submit to EPA a final report describing the implementation of the Attachment 1 measures during the period following the commencement of implementation of the Attachment 1 measures.

G. AUTHORIZATION

22. Each party certifies that at least one of their undersigned representatives is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind such party to this document.

In the Matter of Eastern Bus Company Docket No. CAA-01-2013-0025

Consent Agreement and Final Order

EASTERN BUS COMPANY

Name Charles Winitzer Date 5/23/13
Title President Charles Winitzer

In the Matter of Eastern Bus Company Docket No. CAA-01-2013-0025
Consent Agreement and Final Order

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

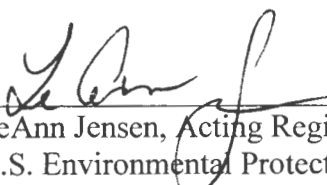
Susan Studlien 06/13/13
Susan Studlien, Director Date
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

Timothy M. Conway 6/3/13
Timothy M. Conway Date
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen, Acting Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

6/18/13
Date

Attachment 1:
Measures to Promote Compliance with Idling Restrictions

A. The provisions of this Attachment shall apply in Massachusetts and, to the extent that Respondent expands to operate beyond Massachusetts, in other jurisdictions with SIPs that limit excessive motor vehicle idling:

1. Respondent shall provide notification and training of at least 15 minutes in duration to all Eastern employees and contractors who operate Eastern school buses, including those employees and contractors who operate Eastern school buses only to prepare the motor vehicles for other personnel to drive, as follows:

- a. The notification and training shall describe Respondent's policy to prohibit excessive idling, describe state and local motor vehicle idling restrictions, and instruct school bus operators to comply with such idling policy and restrictions. For purposes of this Attachment 1 to the CAFO, "excessive" idling shall mean idling in violation of any terms or limitations contained in regulations that limit motor vehicle idling in the applicable jurisdiction.
- b. Respondent shall provide notification and training to operators and drivers of school buses by methods which may include compact disks, DVDs, web-based training, written communications, and new driver orientation sessions.
- c. Respondent shall commence the development of the training program within 60 days after the effective date of this CAFO, with an objective of training all or a large majority of its existing personnel by September 15, 2013. Respondent shall train all subsequently-hired personnel within 45 days of their hiring. Respondent shall complete all of the training requirements of Attachment 1 within one year of

the effective date of this CAFO.

2. Respondent shall post “no-excessive idling” signs at all Eastern Locations (for purposes of this CAFO and Attachment, “Eastern Locations” shall mean those Eastern-operated locations at which Eastern parks school buses for regular operation but does not include solely corporate Eastern facilities or facilities operated by other corporate affiliates of Eastern Bus Company), as follows:

- a. The signs shall notify all operators, drivers, and other employees or contractors who operate school buses that excessive idling is prohibited, and shall specify idling limitations at least as restrictive as those in effect for the applicable jurisdiction;
- b. The signs shall be designed and placed reasonably so as to be visible to all personnel at all Eastern Locations; and
- c. At each Eastern Location, a sign shall be posted at each central area where operators and/or drivers congregate.

3. Respondent shall provide written notifications to each school district in which Respondent operates of the Eastern policy to prohibit excessive idling.

4. Respondent shall ensure that at each Eastern Location, the following actions occur:

- a. An Eastern facility manager, or delegated supervisor with management authority shall walk through and check the facility parking lot(s) during periods when school buses are starting up in preparation for their morning routes, to ensure that drivers are complying with the relevant idling regulations (hereinafter, the “walk-through requirement”);

- b. Respondent shall ensure that managers or delegated supervisors with management authority of all facilities document the performance of the walk-through requirement set out in Paragraph A.4.a above. This documentation shall be retained at each Eastern Location, and shall be made available upon request by EPA inspectors or other enforcement personnel.
- c. As part of each of the periodic reports submitted by Respondent under Paragraph 21 of this CAFO, Respondent shall provide reports to EPA Region 1 regarding compliance with the walk-through requirement. Each report shall state whether Eastern was in full compliance with the walk-through requirement during the relevant time period, and any actions taken to correct or prevent excessive school bus idling during any walk-through. Each report shall identify any instances where Respondent failed to satisfy the walk-through requirement. For each such instance, the report shall identify the Eastern Location being reported on, and the estimated date and time that the walk-through requirement was not performed in accordance with Paragraph A.4.a, and shall provide an explanation for the nonperformance, and the steps taken to resolve the nonperformance.

For purposes of this Attachment 1, the “walk-through requirement” shall be performed no less than 10 times per calendar month, with no more than 4 times in any one calendar week, and no more than 5 times per calendar month on a particular day of the week.
- d. The Eastern Bus facility manager, or delegated supervisor with management authority for a particular facility shall provide a verbal warning to any operator, driver or other employee who is not complying with the applicable idling

regulations and shall report every such incident to Eastern Bus' president, senior manager, director of human resources or designated idling enforcement officer; and

2. Eastern Bus shall ensure that checks of buses in the field are conducted, as follows:

a. An Eastern Bus facility manager, or delegated supervisor with management authority, shall, no fewer than 5 times per month, observe Eastern Bus buses operated on their routes or at schools they service to ensure that drivers are complying with the relevant idling regulations; and

b. The Eastern Bus facility manager, or delegated supervisor with management authority observing buses in the field shall provide a verbal warning to any operator, driver or other employee who is not complying with the applicable idling regulations and shall report every such incident to Eastern Bus' president, senior manager, director of human resources, or designated idling enforcement officer.

5. Automatic Idle Shut Off Controls

a. For all the buses Respondent uses in its operations, no later than September 1, 2013, Eastern Bus shall have completed the following:

i. Eastern Bus shall service each bus with an existing idle shut off control (hereinafter "shutoff") so that such shutoff is set to shut off the engine after 5 minutes of running while the bus' transmission is in the neutral position; and

ii. Eastern Bus shall have a shutoff installed in each bus in which a shutoff is not already installed, and each shutoff shall be set to shut off the engine after 5 minutes of running while the bus' transmission is in the neutral position.

iii. Eastern Bus shall certify to EPA that the actions in 5.a.i and 5.a.ii above have been completed.

b. No fewer than once per year, Eastern Bus shall ensure that each shutoff is operating properly.

In the Matter of Eastern Bus Company
Docket No. CAA-01-2013-0025

CERTIFICATE OF SERVICE

I hereby certify that, on the date(s) referenced below, the foregoing Consent Agreement and Final Order was delivered in the manner stated to the following addressees:

Copy by Hand Delivery to:

LeAnn Jensen, Esq.
Acting Regional Judicial Officer
US EPA Region 1
Five Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Date Delivered: 6/24/13

**Original and One Copy by
Hand Delivery to:**


Wanda Santiago
Regional Hearing Clerk
US EPA Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109-3912

Date Delivered: 6/24/13

**Copy by Mail
to Respondent:**

Nicholas J. Rosenberg, Esq.
Jager Smith, P.C.
One Financial Center
Boston, MA 02111

Date Delivered: 6/24/13

Signed: 

Timothy M. Conway
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Five Post Office Square, Suite 100 (OES 4-03)
Boston, MA 02109-3912
Phone: 617-918-1705
Fax: 617-918-0705 or 617-918-1809