

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Timothy M. Conway 9/27/13
Name of Case Attorney Date

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

Case Docket Number 01A-01-2013-0051

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:

North Reading Transportation
55 Hampshire Rd
Methuen, MA 01844

Total Dollar Amount of Receivable \$ 33,000 Due Date: 10/27/13

^{SIP} SEP due? Yes No Date Due _____

Installment Method (if applicable)

INSTALLMENTS OF:

1st \$ _____ on _____

2nd \$ _____ on _____

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

RECEIVED
2013 SEP 27 A 9:22

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

September 27, 2013

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

Re: North Reading Transportation, Respondent
Docket No. CAA-01-2013-0051

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,


Timothy M. Conway
Senior Enforcement Counsel

Enclosures

cc:
Anthony Metaxas, Esquire

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

RECEIVED
2013 SEP 27 A 9:22
EPA ORG
OFFICE OF
REGIONAL HEARING CLERK

In the Matter of:)
)
North Reading Transportation)
55 Hampshire Rd)
Methuen, MA 01844)
)
Respondent)
_____)

Docket No. CAA 01-2013-0051

CONSENT AGREEMENT AND FINAL ORDER

The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that North Reading Transportation Company (“Respondent” or “North Reading Transportation”) 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 Methuen, Lowell, Lynn, and Wilmington, 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 14 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 \$33,000. Respondent shall pay the penalty of \$33,000 within thirty (30) days of the effective date of this CAFO by submittal of a bank, cashier's or certified check for \$33,000.

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 the 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.

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:

John McCarthy, President
North Reading Transportation Company
55 Hampshire Road
Methuen, MA 01844

With a copy to:

Anthony M. Metaxas, Esq.
Metaxas, Brown, Pidgeon, LLP
900 Cummings Center
Suite 207T
Beverly, MA 01915

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 North Reading Transportation, Docket No. CAA-01-2013-0051

Consent Agreement and Final Order

NORTH READING TRANSPORTATION

Name *July McCaus* Date *9/19/13*
Title *President*

In the Matter of North Reading Transportation, Docket No. CAA-01-2013-0051
Consent Agreement and Final Order

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Susan Studlien 09/26/13
Susan Studlien, Director Date
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

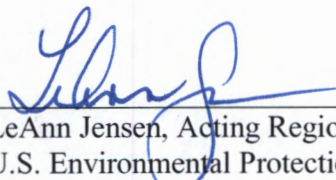
Timothy M. Conway 9/26/13
Timothy M. Conway Date
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I

In the Matter of North Reading Transportation, Docket No. CAA 01-2013-0051

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

9/26/13
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 North Reading Transportation employees and contractors who operate North Reading Transportation school buses, including those employees and contractors who operate North Reading Transportation 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 December 31, 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 North Reading Transportation Locations (for purposes of this CAFO and Attachment, “North Reading Transportation Locations” shall mean those North Reading Transportation-operated locations at which North Reading Transportation parks school buses for regular operation but does not include solely corporate North Reading Transportation facilities or facilities operated by other corporate affiliates of North Reading Transportation 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 North Reading Transportation Locations; and
- c. At each North Reading Transportation 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 North Reading Transportation policy to prohibit excessive idling.

4. Respondent shall ensure that at each North Reading Transportation Location, the following actions occur:

- a. A North Reading Transportation 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 North Reading Transportation 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 North Reading Transportation 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 North Reading Transportation 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 6 times per calendar month, with no more than 3 times in

any one calendar week, and no more than 3 times per calendar month on a particular day of the week.

d. The North Reading Transportation 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 North Reading Transportation's president, senior manager, director of human resources or designated idling enforcement officer; and

2. North Reading Transportation shall ensure that checks of buses in the field are conducted, as follows:

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

b. The North Reading Transportation 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 North Reading Transportation' president, senior manager, director of human resources, or designated idling enforcement officer.

5. Installation of Block Heaters

a. For purposes of this CAFO, a Block Heater is a commercially available device to warm the vehicle engine and minimize idling. As part of its obligations under this CAFO, Respondent shall complete the following:

i. by December 31, 2013, Respondent shall have Block Heaters installed in 116 of its buses, either through purchase of new buses with Block Heaters already installed, or through installation of Block Heaters in existing buses; and

ii. by December 31, 2014, Respondent shall have Block Heaters installed in an additional 75 of its buses, either through purchase of new buses with Block Heaters already installed, or through installation of Block Heaters in existing buses.

b. By January 31, 2014 for the actions in 5.a.i above for 2013, and by January 31, 2015 for the actions in 5.a.ii. above for 2014, Respondent shall certify to EPA in writing that the actions in 5.a above have been completed. Respondent's certification shall include receipts of purchase and identification of the buses on which Respondent has installed the Block Heaters.

c. All Block Heaters installed in buses pursuant to this CAFO shall be used seasonally in such buses for at least 24 months, unless determined to be not working. In such event, Respondent shall replace the Block Heater in the bus.

In the Matter of North Reading Transportation
Docket No. CAA-01-2013-0051

CERTIFICATE OF SERVICE

I hereby certify that, on September 27, 2013, the foregoing Consent Agreement and Final Order was delivered in the manner stated to the following addressees:

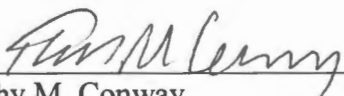
**Original and One Copy by
Hand Delivery to:**

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

**Copy by Mail
to Respondent:**

Anthony Metaxas, Esq.
Metaxas Brown Pidgeon LLP
900 Cummings Center
Suite 207T
Beverly, MA 01915

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