

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR**

Received by  
EPA Region 1  
Hearing Clerk

_____	)	
In the Matter of:	)	
	)	<b>CONSENT AGREEMENT AND</b>
Michael J. Connolly & Sons, Inc.	)	<b>FINAL ORDER</b>
609 Main Street	)	
Walpole, Massachusetts 02081	)	Docket No. CAA-01-2022-0051
	)	
Respondent	)	
_____	)	

**CONSENT AGREEMENT**

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative penalty assessment proceeding instituted under Section 113(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7413(d), and Section 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), set out at 40 C.F.R. Part 22.

2. The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that Michael J. Connolly & Sons, Inc. (“Respondent”) violated certain provisions of the federally approved 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 (“CAA”), 42 U.S.C. § 7413.

3. Complainant and Respondent (together, the “Parties”) 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.

4. This CAFO is entered into pursuant to Section 113(d) of the CAA, 42 U.S.C. § 7413(d). As allowed by 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules, this CAFO simultaneously commences and concludes this enforcement action.

5. 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, Complainant and Respondent agree to comply with the terms of this CAFO.

## II. GOVERNING LAW

6. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to prepare a SIP incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any revisions thereto to EPA for approval.

7. The Commonwealth of Massachusetts has adopted a SIP within the meaning of Section 113(a)(1) of the CAA, which has been approved by EPA under Section 110 of the CAA, 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.*<sup>1</sup>

8. The Massachusetts SIP includes the regulation at 310 CMR § 7.11(1)(b) (the “Massachusetts Anti-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.

9. Sections 113(a)(1) and 113(d)(1) of the CAA, 42 U.S.C. §§ 7413(a)(1) and 7413(d)(1), provide, among other things, that EPA may commence an administrative penalty action against any person found in violation of any requirement or prohibition of a SIP.

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<sup>1</sup> A version of the SIP, which consists of federally enforceable provisions of the Massachusetts Air Pollution Control regulations, can be found on EPA’s Region 1 website at <https://www.epa.gov/sips-ma>.

10. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), the Debt Collection Improvement Act of 1996 (as amended in 2015 by Section 701 of Pub. L. 114-74, 31 U.S.C. § 3701), and EPA regulations set out at 40 C.F.R. Part 19, EPA currently may assess administrative penalties of up to \$51,796 per day for each violation of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1).

### **III. FACTUAL AND LEGAL BACKGROUND**

11. Respondent is a Massachusetts corporation and is therefore a “person” as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

12. Respondent owns and operates fleets of school buses in Massachusetts. Respondent parks and stores its buses in various locations, including but not limited to locations in Sharon and Natick, Massachusetts.

13. On two days in February and one day in March 2022, an EPA Region 1 inspector conducted unannounced observations of Respondent’s school buses in Sharon and Natick, Massachusetts.

14. On April 1, 2022, EPA Region 1 issued a CAA Notice of Violation (“NOV”) to Respondent alleging violations of the Massachusetts Anti-idling Regulation at 310 CMR § 7.11(1)(b).

15. On May 5, 2022, the Parties conferred concerning the NOV and the findings upon which it is based.

### **IV. ALLEGED VIOLATIONS OF LAW**

16. At school bus facilities operated by Respondent in Sharon and Natick, Massachusetts, Complainant EPA Region 1 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,

as detailed in Table 1 of the NOV. Complainant also alleges that the observed idling did not accord with any exception listed in 310 CMR §§ 7.11(1)(b)(1), (2), or (3).

17. Accordingly, Complainant alleges that Respondent violated the Massachusetts Anti-idling Regulation at 310 CMR § 7.11(1)(b), rendering Respondent liable for penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

## **V. TERMS OF AGREEMENT**

18. Respondent certifies that to its knowledge it is presently operating, and shall continue to operate, in compliance with all applicable Massachusetts SIP regulations. In addition, if in the future, Respondent expands its bus fleet 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.

19. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- (a) admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- (b) neither admits nor denies the specific factual allegations set out in this CAFO;
- (c) consents to the assessment of a civil penalty as stated below;
- (d) consents to the issuance of any specified compliance or corrective action order;
- (e) consents to the conditions specified in this CAFO;
- (f) consents to any stated permit action;
- (g) waives any right to contest the alleged violations of law set forth in this CAFO; and
- (h) waives its rights to appeal the Order accompanying this CAFO.

20. For the purpose of this proceeding, Respondent:

- (a) agrees that this CAFO states a claim upon which relief may be granted against Respondent;

- (b) acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;
- (c) waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1);
- (d) consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Massachusetts; and
- (e) waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO and to seek an additional penalty for such noncompliance and agrees that federal law shall govern in any such civil action.

21. **Penalty Payment:**

- (a) Complainant has compromised the maximum CAA civil penalties authorized in this matter, applying Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), and the factors set forth in Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the 1991 Clean Air Act Stationary Source Civil Penalty Policy, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Attachment 1 to this CAFO.
- (b) In light of the particular facts and circumstances of this matter, with specific reference to Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), and the relevant penalty factors of Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and considering Respondent's significant cooperation in agreeing to perform the non-penalty

obligations in Attachment 1, Complainant has determined that it is fair and proper to assess a civil penalty for the violations alleged in this CAFO in the amount of \$28,500.

- (c) Respondent agrees to pay the penalty of \$28,500 within thirty (30) days of the CAFO's Effective Date, as defined in Paragraph 38 below.
- (d) To pay the penalty, Respondent shall submit the full amount of \$28,500 via a company, bank, cashier's, or certified check payable to the order of the "Treasurer, United States of America." Respondent shall send the check via express or certified mail to the address below for signed receipt confirmation:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Craig Steffen  
(513) 487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

In the alternative, Respondent may pay the full amount of the penalty via electronic payment (automated clearing house or wire transfer) in accordance with directions on the following EPA websites: <https://www.epa.gov/financial/makepayment> and <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.

Respondent shall include the case name and docket number ("In the Matter of Michael J. Connolly & Sons, Inc., Docket No. CAA-01-2022-0051") on the face of the check or electronic transfer confirmation.

In addition, at the time of payment, Respondent shall send a notice of the penalty payment and a copy of the check or electronic transfer confirmation to:

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORC 4-6  
Boston, Massachusetts 02109-3912  
[santiago.wanda@epa.gov](mailto:santiago.wanda@epa.gov)

and

Steven J. Viggiani  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORC 4-3  
Boston, Massachusetts 02109-3912  
[viggiani.steven@epa.gov](mailto:viggiani.steven@epa.gov)

22. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. In the event that Respondent does not fully pay the civil penalty required by Paragraph 21 of this CAFO when due, Respondent may be subject to an action pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. Interest on any unpaid portion of the civil penalty shall accrue at the “underpayment rate” established pursuant to 26 U.S.C. § 6621(a)(2) beginning from the penalty’s original due date. An additional charge will be assessed to cover the United States’ enforcement expenses, including attorney’s fees and collection costs. In addition, 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 civil penalties and nonpayment penalties hereunder accrued as of the beginning of

such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

23. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

- (a) request the Attorney General to bring a civil action in an appropriate district court to recover: the amount assessed; interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); the United States' enforcement expenses; and a 10 percent quarterly nonpayment penalty, 42 U.S.C. § 7413(d)(5);
- (b) refer the debt to a credit reporting agency or a collection agency, 42 U.S.C. § 7413(d)(5), 40 C.F.R. §§ 13.13, 13.14, and 13.33;
- (c) collect the debt by administrative offset (*i.e.*, the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, 40 C.F.R. Part 13, Subparts C and H; and
- (d) suspend or revoke Respondent's licenses or other privileges; or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, 40 C.F.R. § 13.17.

24. **Conditions.** As a condition of settlement, Respondent agrees to comply with the non-penalty provisions of Attachment 1 (Measures to Promote Compliance with Idling Restrictions), which is appended to this CAFO and incorporated herein by reference. Respondent shall comply with Attachment 1 beginning on the CAFO's Effective Date.



- (a) Respondent shall be liable for stipulated penalties in the amount of \$1,000 for each day for the first through thirtieth day for each failure to perform any action required by Attachment 1, and \$2,000 for each day thereafter for each failure to perform such action.
- (b) Respondent shall pay stipulated penalties plus any interest due thereupon within fifteen (15) days of receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 21(d) above. EPA may, in its sole discretion, elect not to seek stipulated penalties or to compromise any portion of stipulated penalties that accrue pursuant to this CAFO.

25. Respondent agrees that the time period from the Effective Date of this CAFO until all of the conditions specified in Paragraph 24 and Attachment 1 are completed (the “Tolling Period”) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by Complainant on any claims (the “Tolled Claims”) set forth in Section IV of this CAFO. Respondent shall not assert, plead, or raise in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, or waiver, or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.

26. The provisions of this CAFO shall apply to and be binding upon Respondent and its successors and assigns.

27. By signing this Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this Agreement does not contain any confidential business information or personally identifiable information.

28. By signing this Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this Agreement and has the legal capacity to bind their respective party to this Agreement.

29. By signing this Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

30. Except as qualified by Paragraph 22 above, each party shall bear its own attorney's fees, costs, and disbursements incurred in this proceeding, 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.

#### **VI. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER**

31. In accordance with 40 C.F.R. § 22.18(c), completion of the terms of this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts specifically alleged in this CAFO.

32. Penalties paid pursuant to this CAFO shall not be deductible for purposes of federal taxes.

33. This CAFO constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understandings, whether written or oral, among the Parties with respect to the subject matter herein. Upon the CAFO's Effective Date, the measures previously agreed to by Respondent in Attachment 1 to the settlement CAFO captioned In the Matter of Michael J. Connolly & Sons, Inc., Docket No. CAA-01-2014-0021, shall be superseded by the measures set out in Attachment 1 of this CAFO.

34. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

35. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$109,024 per day per violation as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2), the Debt Collection Improvement Act (as amended in 2015), and 40 C.F.R. Part 19, and also may result in criminal sanctions as provided in Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may use any information submitted under this CAFO in an administrative, civil judicial, or criminal action.

36. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CAA and other federal, state, or local laws or statutes, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

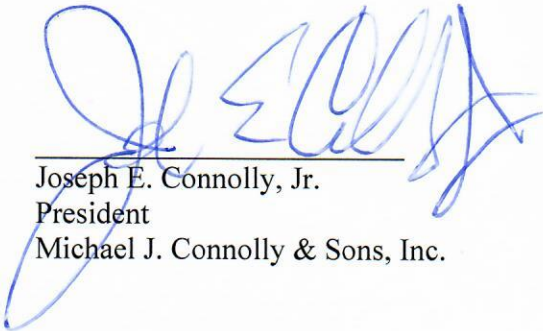
37. Nothing herein shall be construed to limit the power of EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

#### **VII. EFFECTIVE DATE**

38. Respondent and Complainant agree to issuance of the attached Final Order. Upon filing, Complainant will transmit a copy of the filed CAFO to Respondent. This CAFO shall become effective after execution of the Final Order by the Regional Judicial Officer, on the date of filing with the Regional Hearing Clerk ("CAFO's Effective Date").

In the Matter of Michael J. Connolly & Sons, Inc., Docket No. CAA-01-2022-0051  
Consent Agreement and Final Order

FOR RESPONDENT:



\_\_\_\_\_  
Joseph E. Connolly, Jr.  
President  
Michael J. Connolly & Sons, Inc.

08/25/2022  
Date

In the Matter of Michael J. Connolly & Sons, Inc., Docket No. CAA-01-2022-0051  
Consent Agreement and Final Order

FOR COMPLAINANT:

\_\_\_\_\_  
Karen McGuire, Director  
Enforcement and Compliance Assurance Division  
EPA Region 1

\_\_\_\_\_  
Date

**FINAL ORDER**

In accordance with 40 C.F.R. § 22.18(b) of the Consolidated Rules, the Parties to this matter have forwarded the foregoing executed Consent Agreement for final approval. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to issue an administrative penalty to address violations of the CAA, with penalties assessed after consideration of the penalty factors set forth in Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1). In addition, Section 113(d)(2)(B) of the CAA, 42 U.S.C. § 7413(d)(2)(B), authorizes EPA to compromise CAA penalties in an administrative penalty case. Pursuant to these provisions, and in light of the facts and circumstances of this case, including Respondent’s significant cooperation to date and agreement to perform non-penalty conditions, Complainant EPA Region 1 has modified the CAA administrative penalty and imposed the conditions described in Section V and Attachment 1 of the CAFO. Respondent has consented to the terms of this CAFO.

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of the Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent Michael J. Connolly & Sons, Inc., is ordered to comply with the terms of this CAFO and to pay the civil penalty specified therein. The terms of the Consent Agreement shall become effective on the date that the CAFO is filed with the Regional Hearing Clerk.

\_\_\_\_\_  
LeAnn Jensen  
Regional Judicial Officer  
EPA Region 1

\_\_\_\_\_  
Date

**ATTACHMENT 1**

**MEASURES TO PROMOTE COMPLIANCE WITH IDLING RESTRICTIONS**

1. The provisions of this Attachment shall apply to the operations of Michael J. Connolly & Sons, Inc. (“Respondent”) in Massachusetts and, to the extent that Respondent expands to operate beyond Massachusetts, in other jurisdictions that limit excessive motor vehicle idling. For purposes of this Attachment, “Excessive Motor Vehicle Idling” shall mean idling in violation of the Massachusetts Anti-idling Regulation or any other regulation that limits motor vehicle idling applicable in any such other jurisdiction in which the Respondent expands to operate beyond Massachusetts. These measures are intended to promote compliance with the subject anti-idling regulations and are not intended to establish new regulatory limits. Unless otherwise specified below, Respondent shall carry out these measures through December 31, 2024. For purposes of this Attachment, “School Bus” shall refer to a type B, C or D school bus.
2. Respondent shall implement the tracking of School Bus idling time by individual School Bus drivers and operators via telematics (currently provided by Zonar Fleet Management), as follows:
  - a. As of May 1, 2022, Respondent owned and operated approximately 90 School Buses equipped with an activated global positioning system (“GPS”). By no later than March 31, 2023, Respondent shall equip the balance of the School Buses (approximately 220) that it owns and operates with an active GPS. By this same date, Respondent shall upgrade or install GPS units on its older School Buses with converters as may be necessary to ensure continued GPS operation.
  - b. As of the CAFO’s Effective Date, Respondent shall conduct, at least once a week, a review of the telematics data available through the GPS units installed and activated on its School Buses to determine whether there have been instances of Excessive Motor Vehicle Idling by Respondent’s employees or contractors who operate Respondent’s School Buses with an active GPS.
  - c. Respondent shall provide a verbal or written warning to any such employee or contractor who has engaged in Excessive Motor Vehicle Idling. The warning shall be delivered by Respondent’s relevant facility manager or delegated facility supervisor. Each warning shall also be reported to Respondent’s president, senior manager, director of human resources, or designated idling enforcement officer.
3. By no later than September 1, 2022, with respect to all regular school route buses (approximately 276 School Buses) and October 1, 2022, with respect to sports/spare School Buses, Respondent shall modify the manufacturer installed software controlling the automatic shutoff mechanism available on each School Bus in Respondent’s fleet so that the bus engine will automatically shut off as controlled by the software after it has idled in neutral for five minutes, and shall similarly reprogram or disable any “high idle” feature on each School Bus,

except as necessary to permit the operation of any manufacturer installed Active or Forced Regeneration programs or features on the School Buses.

4. Respondent shall provide notification and training to all of Respondent's employees and contractors who operate Respondent's School Buses, including those employees and contractors who operate Respondent's School Buses only to prepare the motor vehicles for other personnel to drive, as follows:
  - a. The notification and training (the "Training") shall describe Respondent's policy to prohibit excessive idling, describe state and local motor vehicle idling restrictions, and instruct School Bus drivers and operators to comply with such idling policy and restrictions.
  - b. Respondent shall provide the Training to all of its School Bus drivers and operators (both employed and contracted for) between August 1, 2022 and November 1, 2022. Respondent shall provide the Training to all School Bus drivers and operators hired between November 1, 2022 and November 1, 2023 within thirty (30) days of their hiring. Each employee and contractor who receives the Training shall sign a written confirmation that they received the Training and that they understand that Excessive Motor Vehicle Idling of School Buses is prohibited.
5. Respondent shall post "no excessive idling" signs at all of Respondent's facilities where Respondent parks School Buses for regular operation, in places that are visible and accessible to School Bus drivers and operators.
6. Respondent shall provide written notifications on or before October 31, 2022, to each school district in which Respondent operates of Respondent's policy to prohibit Excessive Motor Vehicle Idling.
7. At each of Respondent's facilities where Respondent parks School Buses for regular operation (excluding solely corporate facilities), Respondent shall ensure that at least once during each calendar quarter, beginning with the quarter ending immediately following the CAFO's Effective Date, the following actions occur:
  - a. A Respondent 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 employees and contractors who operate Respondent's School Buses are not engaged in Excessive Motor Vehicle Idling.
  - b. Respondent shall provide a verbal or written warning to any employee or contractor who is engaged in Excessive Motor Vehicle Idling, and shall inform senior management of such warnings, in accordance with the requirements of Paragraph 2.c. above.
8. As of the CAFO's Effective Date, Respondent shall maintain the following written records for no less than three years and make them available upon request to EPA, state, or local personnel who have authority to enforce anti-idling regulations:
  - a. Documentation demonstrating that the weekly reviews of the School Bus telemetric data had been performed as required by Paragraph 2.b above;



- b. Documentation demonstrating that the quarterly walk-throughs of Respondent's facilities had been performed as required by Paragraph 7 above;
- c. Documentation of all verbal and written warnings issued as required by Paragraphs 2.c. and 7.b above;
- d. A list of all employees and contractors who attended each of the Trainings required by Paragraph 4 above; and
- e. The signed written confirmations required by Paragraph 4.b above.