

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

9/27/23

3:40 pm

IN THE MATTER OF:)
)
All-Star Transportation, LLC)
146 Huntingdon Avenue)
Waterbury, CT 06708)
)
Proceeding under Section 113(d))
of the Clean Air Act)
_____)

**CONSENT AGREEMENT AND
FINAL ORDER**

Received by
EPA Region 1
Hearing Clerk

Docket No. CAA-01-2023-0070

CONSENT AGREEMENT

A. 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 Complainant, United States Environmental Protection Agency, Region 1 (“EPA”), alleges that All-Star Transportation, LLC (“Respondent” or “All-Star”) violated certain provisions of the federally approved Connecticut 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). Pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b) of the Consolidated Rules, it simultaneously commences and concludes this 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, the Parties agree to comply with the terms of this CAFO.

B. 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 State of Connecticut has adopted a SIP within the meaning of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), which has been approved by EPA under Section 110 of the CAA, 42 U.S.C. § 7410. The Connecticut SIP includes various federally approved portions of the Connecticut air pollution abatement regulations found at Sections 22a-174-1 to 22a-174-200 of Title 22a of the Regulations of Connecticut State Agencies.¹

8. The Connecticut SIP includes a federally approved version of the regulation at Section 22a-174-18(b)(3) (“Connecticut Anti-Idling Regulation”), which provides that no person shall allow a mobile source engine to operate for more than three consecutive minutes when such mobile source is not in motion, 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

¹ A version of the SIP, which consists of federally enforceable provisions of the Connecticut air pollution abatement regulations, can be found on EPA’s Region 1 website at <https://www.epa.gov/sips-ct/epa-approved-regulations-connecticut-sip>.

person found in violation of any requirement or prohibition of a SIP. Pursuant to 113(a)(1) of the CAA, 42 U.S.C. §§ 7413(a)(1), EPA must notify the State and Respondent of the violations at least 30 days before bringing such an action.

10. EPA currently may assess penalties of up \$55,808 per day for each violation of Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), pursuant to Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1); the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016, 28 U.S.C. § 2461 note; the Debt Collection Improvements Act, 31 U.S.C. § 3701; and EPA's Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, which was updated at 88 Fed. Reg. 986, 989 (Jan. 6, 2023).

C. FACTUAL AND LEGAL BACKGROUND

11. Respondent is a Connecticut limited liability company 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 Connecticut. Respondent parks and stores its buses in various locations, including locations at 7 Dodd Road in New Milford, Connecticut and 25 Old Grays Bridge Road in Brookfield, Connecticut.

13. On multiple days in October 2022, EPA conducted unannounced observations of Respondent's school buses in New Milford and Brookfield, Connecticut.

14. On February 28, 2023, EPA Region 1 issued a CAA Notice of Violation ("NOV") to Respondent alleging violations of the Connecticut Anti-Idling Regulation. This CAA NOV was also provided to Connecticut state air pollution abatement authorities.

15. On March 30, 2023, the Parties conferred concerning the NOV and the findings upon which it is based.

D. ALLEGED VIOLATIONS OF LAW

16. At school bus facilities operated by Respondent in New Milford and Brookfield, Connecticut, EPA alleges to have observed the unnecessary operation of the engines of motor vehicles while such vehicles were not in motion for a period in excess of three minutes, as detailed in Table 1 of the NOV. EPA also alleges that the observed idling did not accord with any exception listed in the Connecticut Anti-Idling Regulation.

17. Accordingly, EPA alleges that Respondent violated the Connecticut Anti-Idling Regulation, rendering Respondent liable for penalties under Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

E. TERMS OF SETTLEMENT

18. Respondent certifies that to its knowledge it is presently operating, and shall continue to operate, in compliance with the Connecticut Anti-Idling Regulation and other applicable Connecticut SIP regulations.

19. Respondent also certifies that it has implemented the measures as detailed in Attachment 1, which are incorporated herein by reference, and which are intended to promote Respondent's compliance with motor vehicle idling regulations.

20. 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.
21. 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 Connecticut; 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.
22. 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 all applicable Clean Air Act penalty policies, including Respondent's significant cooperation in agreeing to perform the non-penalty obligations in Attachment 1 to this CAFO.

23. **Penalty.** 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, 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 \$64,833.

24. Within thirty (30) days of the Effective Date of this CAFO, Respondent shall submit a company, bank, cashier’s, or certified check in the amount of \$64,833, payable to the order of the “Treasurer, United States of America” via regular mail to:

U.S. Environmental Protection Agency Fines
and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

or, Respondent may make payment via express mail to:

U.S. Bank
Government Lockbox 979078
1005 Convention Plaza Mail
Station SL-MO-C2GL St.
Louis, MO 63101.

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 All-Star Transportation, LLC., Docket No. CAA-01-2023-0070*”) on the face of the check or electronic transfer confirmation. In addition, in an accompanying cover letter, Respondent shall simultaneously provide copies of the check and cover letter via mail or email to:

Wanda I. Santiago, Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100 Mail
Code ORC 4-6
Boston, MA 02109-3912
santiago.wanda@epa.gov and
R1_Hearing_Clerk_Filings@epa.gov

and

Christine M. Foot, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100 Mail
Code ORC 4-3
Boston, MA 02109-3912
foot.christine@epa.gov.

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 24 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.

25. If Respondent fails to timely pay any portion of the penalty assessed under this Agreement, 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.

26. **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 within thirty (30) days of 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 24 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.

27. Respondent agrees that the time period from the CAFO's Effective Date until all of the conditions specified in Paragraph 26 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 D 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.

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

29. 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.

30. 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.

31. By signing this Agreement, Complainant and Respondent each give their respective consent to accept digital signatures hereupon. Respondent further consents to accept electronic service of the fully executed CAFO, by electronic mail, to the following address: leslie.sheldon@all-startransportation.com. Respondent understands that this e-mail address may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

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

33. Except as qualified by Paragraph 24 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.

F. EFFECT OF CONSENT AGREEMENT AND FINAL ORDER

34. 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 specifically alleged in this CAFO.

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

36. 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.

37. 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.

38. Any violation of this CAFO may result in a civil judicial action for an injunction or civil penalties of up to \$117,468 per day per violation, as provided in Section 113(b)(2) of the CAA, 42 U.S.C. § 7413(b)(2) (with penalties increased pursuant to inflation adjustment provisions), as well as 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.


39. 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.

40. 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.

G. EFFECTIVE DATE

41. After the execution of the CAFO's Final Order by the Regional Judicial Officer, the CAFO shall become effective, in accordance with 40 C.F.R. § 22.31(b), on the date that the CAFO is filed in person or electronically via email with the Regional Hearing Clerk.

FOR RESPONDENT:



Leslie Sheldon, Operations Manager
All-Star Transportation, LLC



Date

FOR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

James Chow, Acting Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region 1

Date

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

_____)
IN THE MATTER OF:)
)
All-Star Transportation, LLC)
146 Huntingdon Avenue)
Waterbury, CT 06708)
)
Proceeding under Section 113(d))
of the Clean Air Act)
_____)

FINAL ORDER

Docket No. CAA-01-2023-0070

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 E 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 All-Star Transportation, LLC 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

ATTACHMENT 1

MEASURES TO PROMOTE COMPLIANCE WITH IDLING RESTRICTIONS

1. The provisions of this Attachment shall apply to the operations of All-Star Transportation, LLC (“Respondent”) in Connecticut and, to the extent that Respondent expands to operate beyond Connecticut, 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 Connecticut 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 Connecticut. 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 September 30, 2024. For purposes of this Attachment, “School Bus” shall refer to a type B, C or D school bus.
2. Respondent shall post 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, alerting drivers not to exceed the three-minute limit on idling of the Connecticut Anti-Idling Regulation, including during trip pre-checks, unless pursuant to an exception to that limit authorized by the Connecticut Anti-Idling Regulation.
3. Respondent shall provide updated training to all of Respondent’s employees and any contractors who operate Respondent’s School Buses, including those who operate Respondent’s School Buses only to prepare the motor vehicles for other personnel to drive, as follows:
 - a. The training shall describe Respondent’s policy to prohibit excessive idling and the Connecticut Anti-Idling Regulation, including the limited regulatory exceptions that outline the circumstances under which idling beyond three minutes is authorized. The training shall instruct School Bus drivers and operators to comply with such idling policy and restrictions and to document the regulatory exception under which any instances of Excessive Motor Vehicle Idling occurred; and
 - b. Respondent shall provide the training to all of its School Bus drivers and operators (whether employees or contractors) between October 1, 2023, and December 1, 2023. Respondent shall also provide the training to all School Bus drivers and operators hired from December 1, 2023, through September 30, 2024, within thirty (30) days of 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.
4. Site supervisors shall remind drivers at each Monthly safety meeting of the Connecticut Anti-Idling Regulation and the Company’s policies.
5. 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 a week, a site supervisor reviews the Zonar (or equivalent) telemetric fleet tracking data to identify drivers who may have exceeded the three-minute idling limitation without an allowable basis for having done so, and follow-up with the driver. In the event that the site

supervisor identifies any Excessive Motor Vehicle Idling through this process, the site supervisor shall provide the employee or contractor with a verbal warning for the first instance of Excessive Motor Vehicle Idling, and written warnings and progressive discipline for subsequent instances of Excessive Motor Vehicle Idling. The site supervisor shall inform senior management of such warnings and discipline.

6. 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 month:
 - a. A site supervisor 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; and
 - b. To each employee or contractor who is observed to have engaged in Excessive Motor Vehicle Idling, Respondent shall provide a verbal warning for the first instance of Excessive Motor Vehicle Idling observed, and written warnings and progressive discipline for subsequent instances observed. The site supervisor shall inform senior management of such warnings and discipline.
7. 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. A list of all employees and contractors who received the training required by Paragraph 3 above;
 - b. The signed written confirmations required by Paragraph 3.b above;
 - c. Documentation demonstrating that the weekly reviews of the School Bus telemetric data had been performed as required by Paragraph 5 above; and
 - d. Documentation of all verbal and written warnings issued as required by Paragraphs 5 and 6.b above.