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REGION I

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BY HAND

September 26, 2011

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

Re: In the Matter of: Durham School Services, Limited Partnership,
EPA Docket No. CAA-01-2011-0127

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter are the original and one copy of a
Complaint and Notice of Opportunity for Hearing.

Thank you for your assistance in this matter.

Sincerely,

Timothy M. Conway
Senior Enforcement Counsel

Enclosures

cc: Colin Van Dyke, Esq., Mintz Levin Law Firm

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

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In the Matter of:)

DURHAM SCHOOL SERVICES,)
LIMITED PARTNERSHIP)
4300 Weaver Parkway)
Warrenville, Illinois 60555)

Respondent)

EPA ORC WS
OFFICE OF
REGIONAL HEARING CLERK

Docket No. CAA-01-2011-0127

COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING

The United States Environmental Protection Agency ("EPA") issues this administrative Complaint and Notice of Opportunity for Hearing under Section 113(d) of the Clean Air Act ("Act" or "Clean Air Act"), 42 U.S.C. § 7413(d), to Durham School Services, Limited Partnership ("Durham" or "Respondent"). The Complaint notifies Respondent that EPA intends to assess penalties for violations of federally-enforceable provisions of the Connecticut, Massachusetts and Rhode Island state implementation plans, at RCSA § 19-508-18(a)(5), 310 CMR § 7.11(1)(b) and Rhode Island Regulation No. 45.3. The Notice of Opportunity for Hearing describes Respondent's option to file an answer to the Complaint and to request a formal hearing.

STATUTORY and REGULATORY BASIS

1. Sections 113(a) and (d) of the Act provide for the assessment of penalties for violations of any provision of an applicable state implementation plan or permit.
2. Respondent is a limited partnership organized under the laws of the State of Delaware, with a principal place of business located in Warrenville, Illinois. Durham is a full service student transportation provider and operates over 13,000 school buses in 30 states across

the United States.

3. Respondent operates school buses and school bus yards in Storrs, Connecticut, Worcester, Massachusetts and Johnston, Rhode Island.

4. Respondent is a “person” as defined in Section 302(e) of the Act.

5. The State of Connecticut has adopted an “applicable implementation plan” within the meaning of Section 113(a)(1) of the Act. This plan, commonly known as a state implementation plan (“SIP”), has been approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410. The Connecticut SIP includes various federally-approved portions of the Regulations of Connecticut State Agencies (“RCSA”).

6. The Connecticut SIP includes the regulation at RCSA § 19-508-18(a)(5) (the “Connecticut idling regulation”), which provides that no mobile source engine shall be allowed to operate for more than three consecutive minutes when the mobile source is not in motion, unless such operation accords with a listed exception.¹

7. 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.*

8. 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

1. Note that certain provisions at RCSA § 22a-174-18(b)(3)(C) also regulate mobile source idling, but are not included in the SIP.

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. The State of Rhode Island 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 Rhode Island SIP includes various federally-approved portions of the Rhode Island Air Pollution Control Regulations.

10. The Rhode Island SIP includes Regulation No. 45.3 (the “Rhode Island idling regulation”), which provides that no person, entity, owner or operator shall cause, allowed or permit the unnecessary idling of the engine of a diesel motor vehicle while said vehicle is stopped for a period of time in excess of five (5) consecutive minutes in any sixty (60) minutes period, except as provided in the exemptions listed in Regulation No. 45.5.

FINDINGS

11. On several days in October, November and December 2010, EPA conducted unannounced observations of Durham’s school bus yards in Storrs, Connecticut, Worcester, Massachusetts, and Johnston, Rhode Island.

Storrs, Connecticut School Bus Yard

12. At Durham’s school bus yard in Storrs, Connecticut, Complainant observed that Respondent operated the engines of mobile sources that were not in motion, for periods in excess of three minutes, as described below in Table I.

Table I – Storrs, Connecticut School Bus Yard

Date	Durham Vehicle Number	Idling Start	Idling End	Duration of Idling (hours/minutes)
10/29/2010	1730	5:40 AM	5:59 AM	0:19
10/29/2010	1735	5:40 AM	6:07 AM	0:27
10/29/2010	1795	5:42 AM	5:57 AM	0:15
10/29/2010	346	5:42 AM	6:03 AM	0:21
10/29/2010	1796	5:44 AM	6:03 AM	0:19
10/29/2010	2437	5:50 AM	6:04 AM	0:14
10/29/2010	3 (81460)	5:50 AM	6:03 AM	0:13
10/29/2010	345	5:51 AM	6:03 AM	0:12
10/29/2010	384	5:55 AM	6:07 AM	0:12
10/29/2010	301	5:56 AM	6:08 AM	0:12
10/29/2010	342	5:56 AM	6:04 AM	0:08
10/29/2010	2450	6:30 AM	6:47 AM	0:17
11/03/2010	16 (341)	5:36 AM	5:51 AM	0:15
11/03/2010	15 (345)	5:41 AM	6:06 AM	0:25
11/03/2010	14 (346)	5:44 AM	6:08 AM	0:24
11/03/2010	12 (342)	5:50 AM	6:05 AM	0:15
11/03/2010	13 (13840)	5:50 AM	6:15 AM	0:25
11/03/2010	1795	5:50 AM	6:10 AM	0:20
11/03/2010	1730	5:55 AM	6:14 AM	0:19
11/03/2010	2 (2437)	5:56 AM	6:07 AM	0:11
11/03/2010	1731	5:56 AM	6:23 AM	0:27
11/03/2010	384	5:56 AM	6:11 AM	0:15
11/03/2010	1738	5:56 AM	6:11 AM	0:15
11/03/2010	301	5:59 AM	6:19 AM	0:20

9. Respondent allowed the mobile source engines to operate as described above in Table I. Such operation did not accord with any exception in §§19-508-18(a)(5)(i) through (v).

10. Accordingly, Complainant finds that the Respondent violated the Connecticut idling regulation at § 19-508-18(a)(5), on the days described above.

Worcester, Massachusetts School Bus Yard

11. At Durham's school bus yard in Worcester, Massachusetts, Complainant observed that Respondent caused, suffered, allowed, or permitted the unnecessary operation of the engines of motor vehicles while such vehicles were stopped for a foreseeable period in excess of five minutes, as described below in Table II.

Table II – Worcester, Massachusetts School Bus Yard

Date	Durham Vehicle Number	Idling Start	Idling End	Duration of Idling (hours/minutes)
11/19/2010	20056	6:18 AM	6:32 AM	0:14
11/19/2010	20044	6:18 AM	6:33 AM	0:15
11/19/2010	20064	6:30 AM	6:54 AM	0:24
11/19/2010	20018	6:30 AM	6:55 AM	0:25
11/19/2010	20048	6:30 AM	6:55 AM	0:25

12. Respondent caused, suffered, allowed or permitted the operation of the motor vehicle engines as described above in Table II. The operation of such motor vehicle engines was not in accord with any exception listed in 310 CMR §§ 7.11(1)(b)(1), (2) or (3).

13. Accordingly, Complainant finds that Respondent violated the Massachusetts idling regulation at 310 CMR § 7.11(1)(b), on the days described above in Table II.

Johnston, Rhode Island School Bus Yard

14. At Durham's school bus yard in Johnston, Rhode Island, Complainant observed that Respondent caused, allowed or permitted the unnecessary idling of the engines of diesel motor vehicles while said vehicles were stopped for a period of time in excess of five consecutive minutes in any sixty minute period, as described below in Table III.

Table III – Johnston, Rhode Island School Bus Yard

Date	Durham Vehicle Number	Idling Start	Idling End	Duration of Idling (hours/minutes)
12/14/2010	124	5:12 AM	6:55 AM	1:43
12/14/2010	120	5:12 AM	7:08 AM	1:56
12/14/2010	No vehicle number, license plate 6907	5:12 AM	6:34 AM	1:22
12/14/2010	127	5:14 AM	7:08 AM	1:54
12/14/2010	141	5:14 AM	7:08 AM	1:54
12/14/2010	137	5:14 AM	7:08 AM	1:54
12/14/2010	123	5:15 AM	6:53 AM	1:38
12/17/2010	123	5:29 AM	6:30 AM	1:01
12/17/2010	126	5:30 AM	6:23 AM	0:53
12/17/2010	107	5:30 AM	6:30 AM	1:00
12/17/2010	113	5:30 AM	6:14 AM	0:44
12/17/2010	110	5:30 AM	6:32 AM	1:02
12/17/2010	120	5:31 AM	6:20 AM	0:49
12/17/2010	133	5:48 AM	6:35 AM	0:47
12/17/2010	128	5:32 AM	6:35 AM	1:03
12/17/2010	124	5:32 AM	6:50 AM	1:18
12/17/2010	111	5:32 AM	6:07 AM	0:35
12/17/2010	119	5:53 AM	6:31 AM	0:38
12/17/2010	134	5:53 AM	6:20 AM	0:27
12/17/2010	116	5:38 AM	6:10 AM	0:32
12/17/2010	109	5:38 AM	6:26 AM	0:48
12/17/2010	114	5:38 AM	6:22 AM	0:44
12/17/2010	121	5:30 AM	6:12 AM	0:42
12/17/2010	122	5:39 AM	6:25 AM	0:46
12/17/2010	104	5:39 AM	6:31 AM	0:52
12/17/2010	102	6:25 AM	6:30 AM	0:05

Date	Durham Vehicle Number	Idling Start	Idling End	Duration of Idling (hours/minutes)
12/17/2010	127	5:40 AM	6:26 AM	0:46
12/17/2010	120	5:31 AM	6:20 AM	0:49
12/17/2010	100	5:24 AM	6:37 AM	1:13
12/17/2010	108	5:24 AM	6:18 AM	0:54
12/17/2010	103	5:24 AM	6:24 AM	1:00
12/17/2010	101	5:24 AM	6:25 AM	1:01
12/17/2010	115	5:40 AM	6:20 AM	0:40
12/17/2010	105	5:40 AM	6:14 AM	0:34
12/17/2010	118	5:40 AM	6:06AM	0:26
12/17/2010	138	5:40 AM	6:13 AM	0:33
12/17/2010	137	5:40 AM	6:57 AM	1:17
12/17/2010	149	5:40 AM	6:57 AM	1:17
12/17/2010	142	5:48 AM	6:41 AM	0:53
12/17/2010	147	5:48 AM	6:30 AM	0:42
12/17/2010	139	5:48 AM	6:18 AM	0:30
12/17/2010	141	5:45 AM	6:56 AM	1:11
12/17/2010	140	5:45 AM	6:22 AM	0:37
12/17/2010	151	5:45 AM	6:14 AM	0:29
12/21/2010	123	5:18 AM	6:54 AM	1:36
12/21/2010	126	5:17 AM	6:53 AM	1:36
12/21/2010	107	5:17 AM	6:31 AM	1:14
12/21/2010	110	5:17 AM	6:24 AM	1:07
12/21/2010	127	5:17 AM	6:53 AM	1:36
12/21/2010	118	5:15 AM	6:04 AM	0:49
12/21/2010	119	5:14 AM	6:13 AM	0:59
12/21/2010	111	5:14 AM	6:14 AM	1:00
12/21/2010	105	5:12 AM	6:21 AM	1:09
12/21/2010	114	5:12 AM	6:22 AM	1:10
12/21/2010	116	5:13 AM	6:11 AM	0:58
12/21/2010	120	5:09 AM	6:19 AM	1:10
12/21/2010	134	5:09 AM	6:53 AM	1:44
12/21/2010	100	5:10 AM	6:39 AM	1:29
12/21/2010	115	5:07 AM	6:21 AM	1:14
12/21/2010	104	5:08 AM	6:28 AM	1:20
12/21/2010	109	5:08 AM	6:30 AM	1:22
12/21/2010	122	5:06 AM	6:39 AM	1:33
12/21/2010	121	5:06 AM	6:53 AM	1:47

Date	Durham Vehicle Number	Idling Start	Idling End	Duration of Idling (hours/minutes)
12/21/2010	101	5:06 AM	5:55 AM	0:49
12/21/2010	102	5:04 AM	6:35 AM	1:31
12/21/2010	112	5:03 AM	6:26 AM	1:23
12/21/2010	108	5:03 AM	6:17 AM	1:14
12/21/2010	117	5:02 AM	6:08 AM	1:06
12/21/2010	103	5:02 AM	6:23 AM	1:21
12/21/2010	113	5:02 AM	6:14 AM	1:12
12/21/2010	128	4:58 AM	6:53 AM	1:55
12/21/2010	133	4:58 AM	6:30 AM	1:32
12/21/2010	138	4:59 AM	6:15 AM	1:16
12/21/2010	147	4:57 AM	6:16 AM	1:19
12/21/2010	139	4:56 AM	6:13 AM	1:17
12/21/2010	140	4:55 AM	6:37 AM	1:42
12/21/2010	141	4:55 AM	6:53 AM	1:58
12/21/2010	142	4:55 AM	6:45 AM	1:50
12/21/2010	137	4:55 AM	6:53 AM	1:58
12/21/2010	151	4:55 AM	6:15 AM	1:20

15. Respondent caused, allowed or permitted the unnecessary idling of the engines of diesel motor vehicles as described above in Table III. The operation of such motor vehicle engines was not in accord with any exceptions listed in Regulation No. 45.5.

16. Accordingly, Complainant finds that Respondent violated the Rhode Island idling regulation on the days described above.

17. Respondent's violations of the Connecticut, Massachusetts and Rhode Island idling regulations render Respondent liable for penalties under Section 113(d) of the Act.

18. Complainant provided notice to Respondent of EPA's findings of violations described in this section on or about April 20, 2011, which was at least 30 days prior to issuance of this administrative Complaint under Section 113(d) of the Act.

PROPOSED CIVIL PENALTY

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, authorize the assessment of a civil administrative penalty of up to \$37,500 per day for each violation of the Clean Air Act occurring after January 12, 2009. Based on the allegations above, and taking into consideration the penalty assessment criteria of Section 113(e), EPA proposes to assess Respondent a civil penalty in an amount up to but not exceeding the maximum amount authorized.

The penalty assessment criteria of Section 113(e) include, in addition to such other factors as justice may require, the size of the business, the economic impact of the penalty on the business, the violator’s full compliance history and good faith efforts to comply, the duration of the violation, payment of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. EPA proposes to apply these criteria as follows.

The violations occurred in populated, ozone nonattainment areas. The violations caused actual harm: diesel emissions are probable human carcinogens, affect respiratory health in the community, and contribute to ozone formation. Respondent’s disregard of the idling regulations also caused harm to the regulatory scheme of the Connecticut, Massachusetts and Rhode Island SIPs.

Many of the alleged violations were of long duration. It was Respondent’s practice to allow bus drivers to idle the company’s school buses for long periods of time. Although EPA inspectors observed violations on several specific days described above, EPA will demonstrate

that the violations are likely to have occurred daily for a period that includes the past five years. Accordingly, the penalty will reflect the long duration and seriousness of the violations.

The penalty will be adjusted to reflect the large size of Respondent's business (see, e.g., the size of business criteria in the Clean Air Act Stationary Source Civil Penalty Policy, at p. 14). The penalty will also reflect the quantifiable economic benefit that Respondent derived from the violations.

In accordance with 40 C.F.R. § 22.19(a)(4), Complainant will propose a specific penalty amount at a later stage in this proceeding.

OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER

As provided by Section 113(d) of the Act, 42 U.S.C. § 7413(d), Respondent has a right to request a hearing on issues raised in this Complaint. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 ("Consolidated Rules of Practice"), a copy of which is enclosed. In the event that Respondent intends to request a hearing to contest any material fact set forth in the Complaint, or contends that the amount of the proposed penalty is inappropriate, or contends that it is entitled to a judgment as a matter of law, Respondent must file a written Answer to this Complaint with the Regional Hearing Clerk and serve a copy on EPA at the following addresses:

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

and

Timothy M. Conway, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-3
Boston, MA 02109-3912

An Answer must be filed within thirty (30) days of receipt of the Complaint. *See* 40 C.F.R. § 22.15 for the required contents of an Answer.

The failure to file an Answer will constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). In that event, the proposed penalty would become due and payable by Respondent sixty (60) days after EPA issues a final order finding Respondent in default.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, it may confer informally with EPA concerning the violations or amount of the proposed penalty. Respondent may wish to be represented by counsel at the informal conference. If settlement is reached, it will be finalized by a written Consent Agreement and Final Order. To explore the possibility of settlement in this matter, please have your attorney contact EPA attorney Timothy M. Conway, at 617-918-1705. Under Section 22.5(c)(4) of the Consolidated Rules of Practice, Mr. Conway is authorized to receive service on behalf of EPA. Please note that a request for an informal settlement conference does not enlarge the thirty-day period for submission of a written Answer.

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
EPA-Region 1 – New England

Date: 09/23/11

