



For a thriving New England

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November 8, 2019

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Roxane Peper, Registered Agent
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Wynn MA, LLC
Wynn Resorts Holdings, LLC
Wynn America Group, LLC
Wynn Resorts Finance, LLC
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Jacqui Krum, SOC Signatory
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Medford, MA 02155

C T Corporation System
Registered Agent for Wynn Resorts, Ltd.,
Wynn MA, LLC, and Everett Property, LLC
155 Federal St., Ste 700
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Francis Tedesco
Academy Bus, LLC, President
Academy Express, LLC, Manager
111 Paterson Avenue
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Michael J. Mazurczak
Registered Agent for Academy Express, LLC
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Boston, MA 02109

Daniel E. Perez
DPV Transportation, Inc., President
Boston Charter Bus, LLC, Manager
383 Second Street
Everett, MA 02149

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit Under the Clean Air Act

Dear Messrs. and Meses. Maddox, Tedesco, Perez, Peper, Krum, C T Corporation System, and Mazurczak:

Conservation Law Foundation (“CLF”)¹ hereby gives notice to Wynn Resorts, Ltd., Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC, Wynn Resorts Finance,

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment. Its mission includes safeguarding the health and quality of life of New England communities facing the adverse effects of air pollution. CLF’s membership includes individuals who live near the locations at which Wynn Resorts, Academy Express, DPV, and BCB cause, suffer, allow, or permit the unnecessary idling of vehicles owned and/or operated by Academy Express, DPV, and BCB in excess of five minutes. CLF’s members, their health and their well-being are harmed by violations of the CAA by Wynn Resorts, Academy Express, DPV, and BCB.

LLC, Everett Property, LLC, their agents, and directors (collectively, “Wynn Resorts”); to Academy Express, LLC, Academy Bus, LLC, their agents, and directors (collectively, “Academy” or “the Academy companies”); to DPV Transportation, Inc., its agents, and directors (collectively, “DPV”); and to Boston Charter Bus, LLC, its agents, and directors (collectively, “BCB”) of its intent to file suit pursuant to Section 304(a) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(a).

Idling engines emit harmful chemicals, gases, and particle pollution (commonly known as soot) that can cause or aggravate a variety of health problems, including asthma and other respiratory diseases. Drivers, passengers, and bystanders are all vulnerable to these effects. In addition, pollution from idling vehicles contributes to the generation of ground-level ozone, regional haze, and global climate change.

CLF has evidence that Wynn Resorts, Academy, DPV, and BCB have repeatedly violated, are violating, and will continue to violate the Clean Air Act and the Massachusetts State Implementation Plan (“SIP”), specifically the motor-vehicle idling limits contained in the federally enforceable Massachusetts SIP. This letter constitutes notice pursuant to Section 304(b) of the Clean Air Act and 40 C.F.R., Part 54 (the “Notice”) to Wynn Resorts, Academy, DPV, and BCB of CLF’s intention to file suit against them in the United States District Court for the District of Massachusetts seeking appropriate civil penalties, equitable relief, and CLF’s costs of litigation, including reasonable attorney and expert witness fees, no earlier than 60 days from the postmark of this Notice letter.

REGULATORY BACKGROUND

The Commonwealth of Massachusetts has adopted a SIP within the meaning of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), which has been approved by the Environmental Protection Agency under Section 110 of the Act, 42 U.S.C. § 7410. 40 C.F.R. § 52; 37 Fed. Reg. 23,085. The Massachusetts SIP includes the regulation at 310 C.M.R. § 7.11(1)(b) (the “Massachusetts idling regulation”), which provides that “[n]o person shall cause, suffer, allow, or permit the unnecessary operation of the engine of a motor vehicle while said vehicle is stopped for a foreseeable period of time in excess of five minutes,” unless such operation is in accordance with a listed exception. Violations by Wynn Resorts, Academy, DPV, and BCB do not fall within any of the listed exceptions.

FACTUAL BASIS

Idling releases harmful exhaust filled with fine particulate matter and toxic emissions including benzene, sulfur dioxide, and nitrogen oxides. Exhaust fumes from idling vehicles can accumulate to create hotspots of dangerously contaminated air. Inhaling exhaust can cause lung damage, aggravate conditions like asthma and bronchitis, and has been linked to increased

incidence of heart disease, multiple kinds of cancer, and premature death.² Children are particularly susceptible to harms from inhaling exhaust, as they breathe 50 percent more air per pound of body weight than adults.

Prolonged exposure to exhaust fumes can also cause asthma, and exposure before birth can create a propensity for asthma in infants. Idling is therefore a particularly important problem in the Boston area, as asthma rates in Massachusetts are high compared with national averages: 10.5 percent of people in Massachusetts and 12.9 percent of Massachusetts children suffer from asthma, compared with 8.2 percent of all Americans.³

Tailpipe emissions from vehicles owned and/or operated by Academy, DPV, and BCB together with and/or on behalf of Wynn Resorts were released and continue to be released in high-density areas in Massachusetts, in close proximity to homes, schools, businesses, and parks where children live, learn, and play.

RESPONSIBLE ENTITIES

The Wynn Resorts entities are developers, owners, and operators of destination casino resorts and hotels, including the Encore Boston Harbor resort, located in Everett, Massachusetts. The resort began operating in June 2019, and includes a casino, a hotel, food and beverage outlets, retail offerings, and a spa, as well as meeting and convention space.⁴

The Academy companies are transportation companies based in Hoboken, NJ. Academy owns and/or operates more than 500 vehicles and employs more than 500 drivers. Academy owns and/or operates Encore Boston Harbor employee shuttles together with and on behalf of Wynn Resorts. Their shuttles transport Wynn Resorts employees between the Wellington and Malden Center MBTA Orange Line stops and the Encore Boston Harbor casino. Academy also owns and/or operates many other shuttles in Massachusetts, including shuttles at Boston University and at Babson College and the long distance Go Bus coaches.

² State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials, “Cancer Risk from Diesel Particulate: National and Metropolitan Area Estimates for the United States,” March 15, 2000 (finding that diesel exhaust is responsible for 125,000 additional cancer cases in the U.S. each year).

³ *Statistics About Asthma*, MASS.GOV (last visited Oct. 30, 2019), <https://www.mass.gov/service-details/statistics-about-asthma>.

⁴ Wynn Resorts, Ltd., Annual Report (Form 10-K) (Feb. 28, 2019), <https://wynnresortslimited.gcs-web.com/static-files/82b07eb5-47fd-4fc5-b0d8-865e65b5bc21>.

DPV is a transportation company based in Everett, MA.⁵ The company owns and/or operates a fleet of at least 42 vehicles, including shuttle buses and vans.⁶ BCB is a transportation company also headquartered in Everett, MA. It has 8 registered vehicles. BCB operates vehicles owned by DPV.

DPV owns and/or operates shuttle buses together with and/or on behalf of Wynn Resorts connecting the Encore Boston Harbor resort with the Wellington and Malden Center MBTA Orange Line stops, and running between the resort and multiple other locations, including in Chelsea, Everett, and Chinatown.⁷

BCB owns and/or operates together with and/or on behalf of Wynn Resorts a motor coach service running between Encore Boston Harbor and Millbury, MA; Rockland, MA; Foxborough, MA; and Londonderry, NH.⁸

VIOLATIONS OF FEDERAL LAW

Based on CLF's observations of vehicle activity between September 1, 2019 and November 8, 2019 at locations including on Mystic Street near the Encore Boston Harbor Resort; the Wellington MBTA Orange Line Stop in Medford, MA; near the Chelsea MBTA Silver Line Stop in Chelsea, MA; the Academy Express lot in Braintree, MA; and the Boston University Medical School Shuttle Student Village II Stop, CLF belief that Wynn Resorts, Academy, DPV, and BCB have on many occasions caused, suffered, allowed, or permitted the idling of motor vehicles in excess of the five-minute time period allowed by 310 C.M.R. § 7.11(1)(b) and not in accordance with any exceptions listed in 310 C.M.R. § 7.11(1)(b)(1), (2), or (3), and continue to cause, suffer, allow, or permit such violations. Additional information, including information in the possession of Wynn Resorts, Academy, DPV, and BCB, may reveal additional details about the violations described above and may reveal additional violations of the Clean Air Act and the Massachusetts idling-regulation. This letter covers all such violations. Wynn Resorts, Academy, DPV, and BCB have violated, are violating, and will continue to violate the Massachusetts idling regulation found at 310 C.M.R. § 7.11(1)(b).. § 7.11(1)(b).

⁵ Karen Morales, *DPV Transportation Worldwide sees worldwide growth*, THE BAY STATE BANNER (Sept. 26, 2016), <https://www.baystatebanner.com/2016/09/28/dpv-transportation-worldwide-sees-worldwide-growth/>.

⁶ See *Company Snapshot*, FMCSA Safety and Fitness Electronic Records (last visited Oct. 16, 2019) https://safer.fmcsa.dot.gov/query.asp?searchtype=ANY&query_type=queryCarrierSnapshot&query_param=USDOT&query_string=1672926.

⁷ *Transportation Options by Region*, ENCORE BOSTON HARBOR (last visited Oct. 28, 2019), <https://www.encorebostonharbor.com/transportation/transportation-options-by-region>.

⁸ *Encore Premium Motor Coach Schedule*, ENCORE BOSTON HARBOR (last visited Oct. 28, 2019), https://cdn.wynnlasvegas.com/-/media/files/encore-boston-harbor/transportation/ebh0852_motorcoachschedules_flyer_081319.ashx?la=en.

RELIEF REQUESTED

Wynn Resorts, Academy, DPV, and BCB are liable for the above-described violations of the Massachusetts anti-idling regulation, 310 C.M.R. 7.11(1)(b), and the Clean Air Act, as well as for violations occurring prior to the date of this letter and for violations that continue afterwards. As violations of a federally enforceable SIP under Section 113(b) of the Clean Air Act, for violations of the Massachusetts anti-idling regulation by Wynn Resorts, Academy, DPV, and BCB, CLF will seek civil monetary penalties up to \$99,681 per day for each Clean Air Act violation occurring after November 2, 2015. 42 U.S.C. § 7413(b); *see also* 40 C.F.R. §§ 19.2, 19.4.

In addition to civil penalties, CLF will seek declaratory relief, injunctive relief to prevent further violations of the Massachusetts SIP and the Clean Air Act, and such other relief as permitted by law, including direct implementation of control measures and demonstration of regulatory compliance. CLF will also seek recovery of reasonable attorney and expert witness fees pursuant to Section 304(d) of the Act, 42 U.S.C. § 7604(d). CLF intends to secure appropriate relief for violations described in this notice letter occurring within the five years immediately preceding the mailing of this letter, as well as for violations that occur after the date of this notice letter.

CONCLUSION

To prevent the further release of air pollutants that are detrimental to health, it is important that Wynn Resorts, Academy, DPV, and BCB take immediate steps to ensure that vehicles they own, operate, and/or control comply with the anti-idling regulation.

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please contact me as soon as possible so that negotiations may be completed before the end of the 60-day notice period.

Sincerely,



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