



For a thriving New England

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November 8, 2019

Richard J. Daley, Jr., General Manager  
Paul Revere Transportation, LLC  
100 Eastern Avenue  
Chelsea, MA 02150

James F. O'Leary, President  
Alternate Concepts, Inc.  
Managing Partner and Resident Agent for Paul Revere Transportation, LLC  
1 Liberty Square, Suite 430  
Boston, MA 02109

**VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

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

Dear Messrs. Daley and O'Leary:

The Conservation Law Foundation ("CLF")<sup>1</sup> hereby gives notice to Paul Revere Transportation, LLC, Alternate Concepts, Inc., and their agents and directors (collectively, "PRT") 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 PRT has repeatedly violated, is violating, and will continue to violate the CAA and the Massachusetts State Implementation Plan ("SIP"), specifically by violating the motor vehicle idling limits contained in the federally enforceable Massachusetts SIP. This letter constitutes notice pursuant to 40 C.F.R., Part 54 (the "Notice") to PRT of CLF's intention to file suit in the United States District Court for the District of Massachusetts seeking

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<sup>1</sup> 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 lots and shuttle bus stops at which vehicles operated by PRT were idling in excess of five minutes. CLF's members, their health and their well-being are harmed by PRT's violations of the CAA.



appropriate civil penalties, equitable relief, and CLF's reasonable litigation costs, including attorney and expert witness fees and costs, 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. PRT's violations 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. 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.<sup>2</sup> Children are particularly susceptible to the harms of inhaling exhaust, as they breathe 50 percent more air per pound of body weight than adults.

Prolonged exposure to exhaust fumes also can 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.<sup>3</sup>

Exhaust from idling vehicles is particularly harmful because the fumes accumulate to create hotspots of dangerously contaminated air. Tailpipe emissions from vehicles owned and/or operated by PRT were released and continue to be released in high-density areas, in close proximity to homes, schools, and parks where children live, learn, and play.

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<sup>2</sup> 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).

<sup>3</sup> *Statistics About Asthma*, MASS.GOV (last visited Nov. 4, 2019), <https://www.mass.gov/service-details/statistics-about-asthma>.



conservation law foundation

## **RESPONSIBLE ENTITY**

PRT is the 16th largest private bus operator in the United States and carries over 24 million passengers each year.<sup>4</sup> The company operates a fleet of at least 199 vehicles and employs over 550 personnel on nearly 20 public and private sector service contracts.<sup>5</sup> PRT owns and/or operates shuttles across Massachusetts including the EZRide shuttle, Massport Shuttles (including Logan Express and the Logan Airport On-Airport Shuttles), and Medical Area Scientific Community Organization (MASCO) shuttles.<sup>6</sup> The vehicles owned, operated, and/or managed by PRT under these contracts are housed at a number of locations across the Commonwealth.

## **VIOLATIONS OF FEDERAL LAW**

Based on CLF's observations of shuttle vehicle activity between September 4, 2019 and October 18, 2019 at locations in Boston, MA including PRT's lot at 59 Reading St., North Station, and the Ruggles MBTA Orange Line stop, CLF has a good-faith belief that PRT has, on numerous 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). Additional information, including information in the possession of PRT, 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. PRT has violated, is violating, and will continue to violate the Massachusetts idling regulation found at 310 C.M.R. § 7.11(1)(b).

## **RELIEF REQUESTED**

PRT is liable for the above-described violations of the Massachusetts anti-idling regulation, 310 C.M.R. 7.11(1)(b) and the CAA, as well as for violations occurring prior to the date of this letter and violations that continue afterwards. As violations of a federally enforceable SIP under Section 113(b) of the Act, 42 U.S.C. § 7413(b), PRT's violations of the Massachusetts anti-idling regulation may incur the maximum civil monetary penalties owed for violations of the CAA. CLF will seek penalties of up to \$99,681 per day for each CAA 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 and injunctive relief to prevent further violations of the Massachusetts SIP and the CAA, and such other relief as permitted by law. CLF will seek an order from the Court requiring PRT to remediate all identified violations

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<sup>4</sup> "Bus Services," ACI TRANSPORTATION, <http://acitransportation.com/services-bus.html> (last visited Nov. 4, 2019).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*



through direct implementation of control measures and demonstration of regulatory compliance. Lastly, pursuant to Section 304(d) of the Act, 42 U.S.C. § 7604(d), CLF will seek recovery of costs and fees associated with this matter. 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**

Due to the release of air pollutants that are detrimental to health, it is important that PRT take immediate steps to ensure that its vehicles 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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CC:

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