



January 24, 2022

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Brad Thomas, President
First Transit, Inc.
600 Vine Street, Suite 1400
Cincinnati, OH 45202

CT Corporation System
Agent for First Transit, Inc.
67 Burnside Ave
East Hartford, CT, 06108-3408

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

Dear Mr. Thomas:

Conservation Law Foundation, Inc. (“CLF”)¹ hereby gives notice to First Transit, Inc. and its agents and directors (collectively, “First Transit”) of CLF’s intent to file suit pursuant to Section 304(a) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7604(a). CLF has evidence that First Transit has repeatedly violated, is violating, and will continue to violate the CAA and the Connecticut State Implementation Plan (“SIP”), specifically by violating the motor vehicle idling limits contained in the federally enforceable Connecticut SIP. This letter constitutes notice pursuant to 40 C.F.R., Part 54 (“Notice”) to First Transit of CLF’s intention to file suit in the United States District Court for the District of Connecticut seeking appropriate civil penalties, equitable relief, and CLF’s reasonable litigation costs, including attorney fees and expert witness fees and costs, no earlier than 60 days from the postmark of this Notice.

REGULATORY BACKGROUND

The State of Connecticut has adopted a state implementation plan or “SIP” within the meaning of Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), which the Environmental Protection Agency has approved under Section 110 of the Act, 42 U.S.C. § 7410. 40 C.F.R. § 52.370 (State of Connecticut Air Implementation Plan); 79 Fed. Reg. 41,427; *see also* 40 C.F.R. § 52.385 (EPA-approved Connecticut regulations). The Connecticut SIP includes the regulation

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 lots at which vehicles owned and/or operated by First Transit were idling in excess of the three minutes allowed under the Connecticut SIP. CLF’s members, their health, and their well-being are harmed by First Transit’s violations of the CAA.

at Regs. Conn. State Agencies § 22a-174-18(b)(3)(C) (“Connecticut idling regulation”), which provides that “no person shall cause or allow: . . . [a] mobile source to operate for more than three (3) consecutive minutes when such mobile source is not in motion” unless such operation is in accordance with a listed exception. The violations by First Transit do not fall within any of the listed exceptions.

RESPONSIBLE ENTITY

First Transit is a transportation company headquartered in Cincinnati, Ohio that owns and/or operates buses, shuttles, paratransit vehicles, and other vehicles. The company operates a fleet of about 12,000 vehicles and employs approximately 19,000 employees. First Transit operates in 335 locations and carries over 350 million passengers each year in 39 states, as well as Puerto Rico and Canada. The vehicles owned and/or operated by First Transit are housed at locations across the United States, Puerto Rico, and Canada. First Transit is the largest privately owned passenger transportation company in North America. First Transit is a subsidiary of EQT Infrastructure.

VIOLATIONS OF FEDERAL LAW

Based on CLF’s observations of activity by First Transit vehicles, including Yale University shuttle buses and CT Transit/HNS Management buses, between November 19, 2019 and January 11, 2022 at locations in Connecticut, including Union Station and the Yale School of Medicine in New Haven and Wolcott Hill Park and Ride in Wethersfield, CT, CLF has a good-faith belief that First Transit has, on numerous occasions, caused or allowed the idling of motor vehicles in excess of the three-minute time period allowed by Regs. Conn. State Agencies § 22a-174-18(b)(3)(C) and not in accordance with any exceptions listed in Regs. Conn. State Agencies § 22a-174-18(b)(3)(C)(i) through (vii) or at § 22a-174-18(j). First Transit has violated, is violating, and will continue to violate the Connecticut idling regulation found at Regs. Conn. State Agencies § 22a-174-18(b)(3)(C).

FACTUAL BASIS OF HARM

Idling releases harmful exhaust containing 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.² Exposure to polluted air, particularly the pollutants in vehicle exhaust, is associated with impaired cognitive functions at

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).

all ages and increased risk of dementia in later life.³ Children are particularly susceptible to the harms of inhaling exhaust, as they breathe 50% more air per pound of body weight than adults.⁴

Prolonged exposure to exhaust fumes can also cause asthma, while exposure before birth can create a propensity for asthma in infants.⁵ Idling is therefore a particularly serious problem in Connecticut because asthma rates in Connecticut are significantly higher than national averages: 10.3% of adults and 9.7% of children in Connecticut currently suffer from asthma,⁶ compared to 7.6% of adults and 7.5% of children nationwide.⁷ New Haven and Hartford are among the top twenty “asthma capitals” in the United States based on the prevalence of asthma, asthma-related emergency room visits, and deaths due to asthma.⁸ Rates of asthma are particularly high among children in low-income households: over 18% of children in families making less than \$25,000 per year have asthma, according to Connecticut’s most recent data.⁹

In addition to the cardiovascular and respiratory diseases mentioned above, studies have shown that even a small increase in long-term exposure to fine particulates can increase the severity of COVID-19 health outcomes.¹⁰

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 First Transit were released and continue to be released in close proximity to homes, schools, and parks where adults and children live, learn, and play.

RELIEF REQUESTED

First Transit is liable for the above-described violations of the Connecticut idling regulation, Regs. Conn. State Agencies § 22a-174-18(b)(3)(C) and the CAA, as well as for violations occurring prior to the date of this letter and violations that occur afterwards. As violations of a federally enforceable SIP under Section 113(b) of the Act, 42 U.S.C. § 7413(b),

³ Jason Kilian and Masashi Kitazawa, *The Emerging Risk of Exposure to Air Pollution on Cognitive Decline and Alzheimer’s Disease – Evidence from Epidemiological and Animal Studies*, 41 *Biomedical Journal* 141 (2018).

⁴ *What You Should Know About Diesel Exhaust and School Bus Idling*, U.S. ENVIRONMENTAL PROTECTION AGENCY (last visited Jan. 12, 2022), <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100304H.PDF?Dockey=P100304H.PDF>.

⁵ National Resource Defense Counsel, “New Medical Study Says Diesel Exhaust May Cause Asthma, Not Just Aggravate It,” February 13, 2002, <https://www.nrdc.org/media/2002/020213-1>.

⁶ *Asthma Statistics*, CONN. STATE DEP’T OF PUB. HEALTH (last visited Jan. 12, 2022), <https://portal.ct.gov/DPH/Health-Education-Management--Surveillance/Asthma/Asthma-Statistics> (adult current prevalence for 2018 and child current prevalence for 2018).

⁷ *Asthma*, NAT’L CTR. FOR HEALTH STATISTICS, CTR. FOR DISEASE CONTROL AND PREVENTION (last visited Jan. 12, 2022), <https://www.cdc.gov/nchs/fastats/asthma.htm>.

⁸ Asthma and Allergy Foundation of America, *Asthma Capitals 2021 – The Most Challenging Places to Live with Asthma*, 6 (2021), <https://www.aafa.org/media/3040/aafa-2021-asthma-capitals-report.pdf>.

⁹ *Asthma Statistics*, CONN. STATE DEP’T OF PUB. HEALTH (last visited Jan. 12, 2022), <https://portal.ct.gov/DPH/Health-Education-Management--Surveillance/Asthma/Asthma-Statistics> (Child Current Prevalence spreadsheet).

¹⁰ X. Wu *et al.*, *Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis*, 6 *Science Advances* eabd4049 (2020).

violations by First Transit of the Connecticut idling regulation may incur the maximum civil monetary penalties for violations of the CAA. CLF will seek penalties of up to \$101,439 per day for each CAA violation occurring after November 2, 2015. 42 U.S.C. § 7413(b); 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 Connecticut SIP and the CAA, and such other relief as permitted by law. CLF will seek an order from the Court requiring First Transit to remediate all identified violations 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.

CONCLUSION

Idling engines emit pollutants 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. It is important that First Transit takes immediate steps to ensure that the vehicles that they own and/or operate comply with the Connecticut 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 litigation. If you wish to pursue such discussions, please contact Heather A. Govern (hgovern@clf.org, (617) 850-1765) as soon as possible so that negotiations may be completed before the end of the 60-day notice period.

Sincerely,



Heather A. Govern, Esq.
Vice President
Conservation Law Foundation, Inc.
62 Summer Street
Boston, MA 02210
hgovern@clf.org
(617) 850-1765



Shannon Laun, Esq.
Staff Attorney
Conservation Law Foundation, Inc.
62 Summer Street
Boston, MA 02210
slaun@clf.org
(475) 261-9538

Enclosure

CC:

Michael S. Regan, Administrator
Environmental Protection Agency
Office of the Administrator, 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460-0001

Deborah Szaro, EPA Region 1 Acting and Deputy Administrator
Environmental Protection Agency
5 Post Office Square- Ste. 100
Boston, MA 02109-3912

Katie S. Dykes, Commissioner
Connecticut Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127

Citizen Suit Coordinator
Environmental & Natural Resources Division
Law and Policy Section
P.O. Box 7415
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001