

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL PROTECTION BUREAU

In the Matter of

Assurance No. 22-049

**Investigation by LETITIA JAMES,
Attorney General of the State of New York, of**

HOYT TRANSPORTATION CORP.,

Respondent.

ASSURANCE OF DISCONTINUANCE

The Office of the Attorney General of the State of New York (OAG) commenced an investigation pursuant to N.Y. Executive Law § 63(12), N.Y. Environmental Conservation Law (ECL) § 71-2103, and 6 N.Y. Code of Rules and Regs. (NYCRR) § 217-3 into what OAG alleges to be repeated, persistent unlawful idling by Hoyt Transportation Corp. (Hoyt) school buses. This Assurance of Discontinuance (Assurance) contains the findings of the OAG's investigation and the relief agreed to by the OAG and Hoyt, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the Parties).

FACTUAL BACKGROUND *

1. Unnecessary engine idling needlessly emits air pollutants. Motor vehicles, especially buses and trucks that run on diesel fuel, are a major source of air pollutants, including particulate matter of 2.5 microns or less (PM 2.5). PM 2.5, a microscopic particle that can penetrate deep into the lungs and enter the blood stream, is one of the most harmful of urban air pollutants, causing respiratory illness such as asthma and bronchitis; cardiovascular health issues; and potentially cancer, all of which can lower life expectancy and increase the risk of death. Each year in New York City, PM 2.5 emissions cause 2,300 premature deaths and 6,300 emergency room visits and hospitalizations. Recent data shows that people who suffer from respiratory illness are more likely to suffer adverse consequences from COVID-19. In addition, there is growing evidence linking higher rates of particulate matter pollution and COVID-19 infections.

2. Groups of people that are especially vulnerable to the health consequences of vehicle emissions are children, low-income communities, and communities of color. Children are more vulnerable because of their activity levels and developmental stage. New York City's poorest communities, which overlap to a large extent with the City's communities of color, suffer from the highest level of vehicular emissions for a variety of reasons, including their proximity to major

* The statements made in the Factual Background section contain the statements and research of the OAG. Hoyt has not ascertained the accuracy of these statements and accepts them only for purposes of entering this Assurance.

sources of vehicle emissions such as highways, vehicle depots, and facilities that generate high volume truck and bus traffic.

3. Two of Hoyt's four current Bronx bus yards are located in areas that have been mapped by the New York State Department of Environmental Conservation as potential environmental justice areas, and the other two yards are located in close proximity to such areas. Many of the children who ride Hoyt's buses reside in communities in potential environmental justice areas, which are disproportionately low-income communities of color. 72% of New York City public school children were eligible for free lunch before it became universal, and about 85% of New York City public school children are children of color.

4. Idling also wastes fuel, thereby increasing costs for vehicle owners.

STATUTORY BACKGROUND

5. New York State air pollution laws limit engine idling, which is defined as operating a motor vehicle engine when the vehicle is not in motion. Under New York State law, heavy duty vehicles, including buses, may not idle for longer than five minutes. 6 NYCRR § 217-3.2.[†] This proscription applies to both diesel and gasoline-powered vehicles. *Id.* The exceptions to these prohibitions are limited and

[†] New York City law is more stringent. Subject to exceptions similar to those under State law pertaining to weather, equipment use, and traffic, idling for more than three minutes is prohibited. NYC Admin. Code § 24-163(a). When adjacent to a school providing instruction from the pre-kindergarten to twelfth grade, idling for more than one minute is prohibited. *Id.* at § 24-163(f).

relate to, for example, temperature and operations that are powered by the engine, such as the use of a lift. *Id.* at § 217-3.3.

6. The OAG has authority pursuant to the Environmental Conservation Law to enforce these regulations and collect penalties, in the case of a first violation, of not less than \$500, and not more than \$18,000. For further violations, the OAG can collect penalties of not more than \$26,000 for each violation. ECL § 71-2103.

7. Executive Law § 63(12) authorizes the Attorney General to bring a proceeding to enjoin repeated fraudulent or illegal acts in the carrying on, conducting, or transaction of business. Illegal acts under Executive Law § 63(12) include the violation of any state, federal, or local law or regulation.

OAG'S INVESTIGATION AND FINDINGS

8. In this section, the OAG sets forth its findings and conclusions from its investigation of Hoyt's engine idling. Hoyt disputes the OAG's findings because, among other things, Hoyt contends that the OAG's analysis does not entirely account for permissible idling such as when a bus is stopped in traffic or undergoing emissions inspections. Nonetheless, Hoyt accepts these findings for purposes of entering this Assurance and completely resolving the alleged idling of Hoyt prior to the date of this Assurance.

9. Since 2019, OAG has been investigating what it alleges to be unlawful engine idling by Hoyt's school buses. The OAG alleges that its investigation found that during the first four months of the 2019-2020 school year, based on, among

other evidence, Geotab information, the approximately 333 buses then operated by Hoyt repeatedly and persistently idled throughout New York City. The OAG alleges that this idling has resulted in significant emissions of carbon dioxide and particulate matter air pollutants—and cost Hoyt thousands of dollars in wasted fuel.

10. During the 2019-2020 school year, school bus companies that operated under contract with the New York City Department of Education (DOE), including Hoyt, had their buses equipped with a telematic device from Geotab that continuously recorded engine operation data and bus location when the buses were operating. The Geotab data was transmitted to a New York City agency. Bus companies under contract with the DOE could also access some of that data from their buses through a web portal.

11. The OAG obtained and analyzed the Geotab system data recorded by all of Hoyt's school buses between September 4, 2019, and December 31, 2019. The OAG alleges that the data revealed that on 59,990 occasions, Hoyt school buses idled for more than the five-minute NYS limit. Over 5,800 of these instances were engine idling for more than 30 minutes. The total amount of time buses idled over five minutes during that period totaled at least 15,579 hours.

12. The amount of time Hoyt buses idled between September and December 2019 translates into significant emissions of CO₂ and PM 2.5. Based on information provided by the company, OAG estimated Hoyt's 2019 fleet to be approximately 25% diesel and 75% gasoline fueled. Using this ratio, 15,579 hours of

engine idling translates into approximately 153,356 pounds of CO₂ and over 18.5 pounds of PM 2.5 emitted from the idling school buses during that four-month period in 2019.

13. The OAG alleges that Hoyt's idling also has a direct economic cost. One hour of idling a heavy-duty diesel engine burns approximately one-half of a gallon of diesel fuel. Accordingly, Hoyt's presumed 3,895 hours of diesel engine idling (25% of total idling hours) represents approximately 1,948 gallons of wasted diesel fuel.

14. Hoyt asserts that these instances of engine idling did not violate any ordinance because they fall within exceptions listed at 6 NYCRR § 217-3.3 and NYC Admin. Code § 24-163(f). While OAG believes that a large number of the instances of engine idling for more than five minutes are likely unlawful, OAG recognizes that using this category of idling instances as a basis for assessing civil penalties would result in a high penalty number. Accordingly, for purposes of resolving this matter, OAG identified idling instances it believes have a high impact on public health and which the OAG believes far exceed the State limits on idling: instances of idling for more than two hours at or around Hoyt's bus yards.

15. Specifically, OAG used Geotab data to identify all individual instances of idling for more than two hours when a Hoyt bus was at or around an active Hoyt bus yard between September 4 and December 31, 2019.

16. Based on its analysis, the OAG alleges that these instances of idling over two hours violate New York law. *See* New York Executive Law § 63; 6 NYCRR 217-3, *et seq.*; New York Environmental Conservation Law § 71-2103.

17. While Hoyt contests the OAG's assertion that the actions described in paragraph 15 violated the statutory provisions cited above, Hoyt has agreed to this Assurance in settlement of the alleged violations described above and to avoid the time, expense, and distraction of litigation.

18. OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of 6 NYCRR 217-3, *et seq.* and N.Y. ECL § 71-2103, or any other idling law, based on the conduct described above from September 4, 2019 to the date of execution this Assurance.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the Parties:

RELIEF

19. **Programmatic Relief:**

- a. **Training:** Hoyt's drivers will receive an anti-idling training program as part of their fall and spring refresher courses. Such anti-idling training will include, at the minimum, the information contained in Schedule A.

- i. Hoyt will provide the training materials to be used in the training program to the OAG within sixty (60) days of execution of this assurance and will implement the materials within forty-five (45) days of OAG confirming that that the materials contain the required information. Although no approval of the training materials from the OAG is required, Hoyt welcomes feedback and recommended additions from the OAG.
- ii. All Hoyt drivers who are employed by Hoyt as of the date of execution of this Assurance will receive the anti-idling training at first fall or spring training that that driver is scheduled to attend and which takes place after the forty-five (45) day implementation period in Paragraph 19(a)(i). All drivers will continue to receive the anti-idling training at all trainings Hoyt provides as long as Hoyt operates diesel or gasoline-powered school buses.
- iii. Hoyt drivers hired after the date of execution of this Assurance will receive the anti-idling training at the first fall or spring refresher course that they are scheduled to attend that falls after the forty-five (45) day implementation period in Paragraph 19(a)(i).
- iv. Within seven (7) months of the forty-five (45) day implementation period in Paragraph 19(a)(i), Hoyt will confirm

in writing to the OAG that all drivers employed by Hoyt as of the date of execution of this Assurance and who are still employed by Hoyt have received the anti-idling training.

b. Idling Manager:

Hoyt agrees to employ an idling manager for the remainder of its current contract with the DOE, which runs through June 30, 2025. The Idling Manager's duties shall include:

i. Yard Visits

1. On nine out of ten school days, on average, the idling manager will perform in-person yard visits during the morning yard hours, approximately 5:00 am to 7:00 am.
2. The idling manager will cycle between Hoyt's four active Bronx yards. The idling manager shall have discretion to decide which yard(s) to visit on any particular day. The four current active Bronx yards are:
 - a. 1271 Randall Ave Bronx 10474
 - b. 1380 Spofford Ave Bronx 10474
 - c. 1111 Longwood Ave Bronx 10474
 - d. 443 Coster Ave Bronx 10474.
3. In recognition of the fact that yard locations may change during the duration of Hoyt's contract with the DOE, but those changes are not yet known or foreseeable, Hoyt agrees to use its discretion to monitor the primary

operational yards from which a significant number of bus routes depart daily including, for example, Hoyt's three Brooklyn yards (currently located at 2602 Stillwell Avenue; 2432 Stillwell Avenue; and 1908 Neptune Avenue) that are currently used primarily for storage.

4. During the yard visits, the idling manager will approach vehicles he/she observes idling and remind the driver/maintenance worker not to idle.

c. Review of Telematic Data

- i. The idling manager will review the data from the Geotab, or any other telematic system the DOE requires bus companies to use, at least every nine out of every ten school days.
- ii. For every day of monitoring, the idling manager will identify the 20 longest instances of idling on that given day which occurred:
 1. in the Hoyt yards between 5:00 am-7:30 am, or
 2. anywhere between 9:00 am-1:45 pm.
- iii. For purposes of identifying the 20 longest instances of idling on a daily basis, the Hoyt yards included in the morning yard analysis are the primary operational yards from which a significant number of routes depart daily. Those primary operational yards are currently the four Bronx yards identified above. Hoyt shall include in this analysis any other yards from

which a significant number of daily routes may depart in the future.

- iv. The idling manager will cross reference the daily bus routes with the bus identification numbers and identify the drivers who were responsible for the 20 longest instances of idling.
- v. Those drivers who were responsible for those 20 longest instances of idling will be called or sent a text message/email/voicemail/memo indicating that they were one of the 20 longest instances of idling that day with a reminder not to idle. If the driver believes there was a permissible reason for the idling, the reason will be noted in the spreadsheet.
- vi. After a driver has been provided one of the above warnings five (5) times in one month, and the reason given does not fall within one the exceptions in either New York State or City law, he/she will be asked to review the idling training presentation again during the work hours, for example, between the morning and afternoon routes.
- vii. If a bus is running while undergoing maintenance or a Department of Transportation inspection is being conducted, it will be deemed permissible idling and not attributed to any single driver. Yard workers will be reminded not to idle if they

are seen by the idling manager idling a bus in violation of the idling laws.

- viii. The idling manager will compile a daily report which shall include, for the 20 longest instances of idling described above:
1. the time/location/duration of each instance of idling;
 2. the name of the driver and bus number (although the driver's name will not be provided to the OAG);
 3. identifying the method by which the driver was informed of his/her idling, and any note that, after a conversation with the driver, whether or not the idling was permissible (*e.g.*, driver was in traffic, maintenance was being conducted on the bus and it was required to be running, etc.);
 4. the total number of warnings the driver has been given in that same month.
- d. Other Anti-Idling measures Hoyt will implement:
- i. Hoyt will post signs in all of its bus yards reminding drivers not to idle.
 - ii. By October 15, 2022, Hoyt will post stickers inside the buses in what Hoyt determines to be the best location possible considering visibility of both the sticker and the road and longevity of the sticker reminding drivers not to idle.

- iii. By October 15, 2022, Hoyt must post stickers on the backs of all non-electric buses directing the public to a number they can call if they observe the bus unlawfully idling.

e. **Reports**

Hoyt will provide quarterly reports to OAG for the duration of its current contract with the DOE, that is, through the end of the 2024-2025 school year. Hoyt will produce its reports to the OAG on or before the end of month following the last day of the quarter (e.g., the report for the first quarter of 2023 shall be provided to the OAG on or before April 30, 2023). Hoyt will produce its first report, which covers only September 2022, to the OAG on or before October 31, 2022. Hoyt will submit its last report, which will cover April 1, to June 30, 2025, by July 31, 2025. The reports will contain the following information:

- i. the idling manager's daily report of the 20 longest incidences of idling, including the time, location, duration of idling, and reason, if any given; whether the reason was deemed permissible by the idling manager;
- ii. on a monthly basis, the total number of instances of idling over three minutes, on school days between 5:00 am to 7:30 am at only the primarily operational Hoyt bus yards (currently the four Bronx yards); and the total number of instances of idling over three minutes from 9:00 am to 1:45 pm at any location;

- iii. on a monthly basis, the total amount of time spent idling on school days over three minutes at the primary operational Hoyt yards between 5:00 am to 7:30 am and anywhere between 9:00 am to 1:45 pm, *i.e.*, the sum of the minutes of idling, less the 3 minutes of permissible idling;
 - iv. whether the instances of idling over three minutes by Hoyt drivers decreased for the months of September 2022-February 2023 by at least 50% relative to the applicable month from the Baseline number of idling incidents set forth at Schedule B.
 - v. Hoyt will produce its reports in Excel;
 - vi. All quarterly reports due to the OAG from Hoyt pursuant to this Assurance shall be produced to the OAG by electronic mail only to: Yueh-ru.Chu@ag.ny.gov, or, in her absence, to the person with the title Section Chief, Affirmative Litigation, Environmental Protection Bureau, 28 Liberty Street, New York, NY 10005, or any other person as the OAG designates by giving written notice to Hoyt.
- f. **Geotab (or other telematic data)**

In the event that New York City denies Hoyt access to Geotab data, or data from any other telematic device required by the New York City Department of Education, the parties to this Assurance will

negotiate in good faith to resolve the issue and revise this Assurance as necessary.

20. **Penalties:**

For the reasons set forth in its demand letter dated September 3, 2021, the OAG has assessed \$111,000 in civil penalties against Hoyt to the State of New York, payable as described below:

- a. \$66,600 (60% of the \$111,000 penalty) will be suspended on the condition that, by May 31, 2025, Hoyt enters into a binding agreement to purchase an electric school bus. If Hoyt fails to enter into a binding agreement to purchase an electric school bus by that date, it shall instead pay that same amount of \$66,600 to OAG by July 31, 2025;
- b. \$5,550 (5% of the \$111,000 penalty) will be suspended on the condition that Hoyt reduces its average monthly idling instances of more than three minutes, on a per bus per day basis, to 50% of the average number of such incidents from September to December 2019 (Baseline Number) (annexed hereto as Schedule B), for at least six consecutive months within one year of entering into the agreement. Each month's number of idling instances shall be compared to that same month from 2019. Hoyt agrees that for the months January and February, it will use December's Baseline Number. If Hoyt fails to meet this 50% reduction goal, it shall pay the OAG \$5,550 within

thirty (30) days of the report which contains the data for the sixth month.

- c. \$38,850 (35% of the \$110,000) will be payable to OAG within twenty days (20) of this settlement being fully executed.
- d. Payments shall be made by attorney check, corporate or certified check, or bank draft, payable to the "State of New York", and shall reference Assurance No. 22-049; payments shall be addressed to the attention of Yueh-ru Chu, Section Chief, State of New York, Office of the Attorney General, Environmental Protection Bureau, 28 Liberty Street, 19th floor, New York, New York 10005.
- e. Hoyt may also pay by wire transfer, in which case instructions will be provided upon execution of this Assurance.

21. **Non-Compliance**

- a. If OAG believes that Hoyt has not complied with any of the provisions of this agreement, OAG will give Hoyt written notice of the particular provision(s) with which it believes Hoyt is in non-compliance. Hoyt shall have 45 days from its actual receipt of the notice to remedy any non-compliance before the OAG may take any further action against Hoyt.
- b. Notice must be given by United States mail by any method which provides delivery confirmation and by email to all of the addresses below:

Chris Termini
Hoyt Transportation
2620 West 13th Street
Brooklyn, NY 11223
cjt@hoyttransportation.net
joejr@hoyttransportation.net
janet@hoyttransportation.net

With cc by United States mail and email to:

Joanna Garelick Goldstein, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
1133 Westchester Avenue
White Plains, NY 10604
joanna.garelickgoldstein@wilsonelser.com
rory.lubin@wilsonelser.com

- c. “Actual receipt” of the notice is the date on which the United States Postal Service shows delivery of the notice to Hoyt.
- d. Upon receipt of a Notice of Non-Compliance, Hoyt may cease providing the OAG with the reports in Paragraph 19(e). However, Hoyt may continue to demonstrate that it is complying with its obligations under Paragraph 19, other than those in 19(e), by providing a narrative report which does not need to contain any idling data.
- e. After the OAG confirms in writing that Hoyt has demonstrated that it is in sufficient compliance with the provision(s) identified in the Notice of Non-Compliance, Hoyt shall resume providing the reports in Paragraph 19(e).

MISCELLANEOUS

22. **Term.** The Term of this Assurance is from the date of execution and up to and including June 30, 2025.
23. **Covenant Not to Sue:** In consideration of Hoyt's implementation of the programmatic relief set forth in Paragraph 19, and payment of penalties set forth in Paragraph 20, the OAG agrees that it will not institute an enforcement action against Hoyt regarding alleged violations of 6 N.Y.C.R.R. § 217.3.2 and N.Y.C. Admin. Code § 24-163(a), or any other idling law, for any idling violations that occur during the term of this Assurance, as defined in Paragraph 22, as long as Hoyt substantially complies with all of its obligations under Paragraphs 19 (Programmatic Relief) and 20 (Penalties).
24. **Enforcement Action:** If Hoyt receives a Notice of Non-compliance which states that the OAG believes that Hoyt has not substantially complied with a provision(s) of this agreement, and the OAG does not believe that Hoyt has demonstrated substantial compliance with the provision(s) at issue within 45 days, the OAG may then institute an enforcement action to enforce the terms of this agreement. If the OAG institutes an action to enforce any provision of Paragraphs 19 and 20, the OAG may seek penalties for any idling violations, but only for the period of time starting from when Hoyt actually received the Notice of Non-compliance through the date Hoyt comes into substantial

compliance with the provision(s) set forth in the Notice of Non-Compliance, with such compliance date to be determined by the OAG.

- a. In such an enforcement action, the OAG may not seek any penalties for any idling instances that occurred before Hoyt's receipt of the Notice of Non-Compliance. In addition, the OAG may not use any Geotab data (or other data from a telematic device required by the DOE) or report provided by Hoyt as evidence to support a claim for unlawful idling. However, the OAG may use telematic evidence, as well as any other evidence, obtained from sources other than Hoyt, to support a claim for unlawful idling but only for idling instances which occurred after the receipt of the Notice of Non-Compliance.

25. Court Action:

- a. Any civil action or proceeding must be adjudicated by the courts of the State of New York in one of the boroughs of the City of New York. Hoyt irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue for purposes of disputes concerning or enforcement of this agreement only.
- b. Hoyt's failure to reduce its idling instances by 50% of the Baseline number as set forth in Paragraph 19(b) shall not constitute a violation of this Assurance.
- c. If a court of competent jurisdiction determines that the Hoyt has violated the Assurance in bad faith, the court shall award the OAG the

reasonable costs, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs up to \$4,000 maximum.

Effects of Assurance:

26. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Hoyt. Hoyt shall include in any such successor, assignment, or transfer agreement a provision that binds the successor, assignee, or transferee to the terms of the Assurance. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.
27. Nothing contained herein shall be construed as to deprive any person or legal entity of any private right under the law.

Communications:

28. All notices, reports, requests, and other communications pursuant to this Assurance, other than issues related to Compliance pursuant to Paragraph 21, must reference Assurance No. 22-049, and shall be in writing and shall, unless expressly provided otherwise herein, be given by electronic mail only:

If to the Hoyt, to: Chris J. Termini (cjt@hoyttransportation.net) and with mandatory cc: to joejr@hoyttransportation.net,

janet@hoyttransportation.net,

joanna.garelickgoldstein@wilsonelser.com, rory.lubin@wilsonelser.com)

or in his/her absence, to the person holding the title of Owner of Hoyt Transportation Corp.

If to the OAG, to: Yueh-ru Chu, Section Chief, Affirmative Litigation, or in her absence, to the person holding the title of Section Chief, Affirmative Litigation, Environmental Protection Bureau, 28 Liberty Street, New York, New York 10005.

Representations and Warranties:

29. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Hoyt and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 16 above. Hoyt represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Hoyt or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.
30. Other than those explicitly set forth in this Assurance, Hoyt and the OAG have not made or relied upon any other representations, inducements, promises, understandings, conditions, and warranties in agreeing to this Assurance.

31. Hoyt represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Hoyt further represents and warrants that Hoyt, by Chris J. Termini, as the signatory to this Assurance, is a duly authorized owner of Hoyt Transportation and is acting at the direction of Hoyt.

General Principles:

32. Hoyt shall make its best efforts to stop the school bus drivers it employs from violating applicable engine idling laws, including but not limited to, State and City idling prohibitions, unless such idling falls within one of the exceptions set forth in 6 NYCRR § 217-3.3 or NYC Admin. Code § 24-163(f).
33. Nothing in this Agreement shall relieve Hoyt of other obligations imposed by any applicable state or federal law or regulation or other applicable law.
34. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Hoyt violates the Assurance after its effective date.
35. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.
36. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such

invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

37. Hoyt acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.
38. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
39. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.
40. This Assurance may be executed in multiple counterparts by the parties hereto. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the effective date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned, and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

41. The effective date of this Assurance shall be the date the last signatory signs.

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

Dated: September 23, 2022

By: Yueh-ru Chu
Yueh-ru Chu
Section Chief, Affirmative Litigation
Environmental Protection Bureau
Office of the Attorney General
28 Liberty Street, 19th floor
New York, New York 10005

SCHEDULE A

Information Required to Be Included in Hoyt Anti-Idling Driver Training

1. New York State and City anti-idling laws and applicable exceptions:
 - a. The New York Code of Rules and Regulations (NYCRR), 6 NYCRR § 217-3.3 permits idling, in relevant part, when:

(a) A diesel or nondiesel fueled heavy duty vehicle including a bus or truck is forced to remain motionless because of the traffic conditions over which the operator thereof has no control.

(b) Regulations adopted by Federal, State or local agencies having jurisdiction require the maintenance of a specific temperature for passenger comfort. The idling time specified in section 217-3.2 of this Subpart may be increased, but only to the extent necessary to comply with such regulations.

(c) A diesel or nondiesel fueled engine is being used to provide power for an auxiliary purpose, such as loading, discharging, mixing or processing cargo; controlling cargo temperature; construction; lumbering; oil or gas well servicing; farming; or when operation of the engine is required for the purpose of maintenance.

...

(f) A diesel fueled truck is to remain motionless for a period exceeding two hours, and during which period the ambient temperature is continuously below 25°F.

(g) A heavy duty diesel vehicle, as defined in section 217-5.1(o) of this Part, that is queued for or is undergoing a State authorized periodic or roadside diesel emissions inspection pursuant to Subpart 217-5 of this Part.

6 NYCRR § 217-3.3.

- b. New York City Administrative Code (NYCAC) § 24-163(a) states:

“No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes, except as provided in subdivision (f) of this section, while parking as defined in section one hundred twenty-nine of the vehicle and traffic law, standing as defined in section one hundred forty-five of the vehicle and traffic law, or stopping as defined in section one hundred forty-

seven of the vehicle and traffic law, unless the engine is used to operate a loading, unloading or processing device. When the ambient temperature is in excess of forty degrees Fahrenheit, no person shall cause or permit the engine of a bus as defined in section one hundred four of the vehicle and traffic law to idle while parking, standing, or stopping (as defined above) at any terminal point, whether or not enclosed, along an established route.”

NYCAC § 24-163(a).

NYCAC § 24-163(f) states:

“No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than one minute if such motor vehicle is adjacent, as determined by rule, to any public school under the jurisdiction of the New York city department of education or to any non-public school that provides educational instruction to students in any grade from pre-kindergarten to the twelfth grade level, while parking as defined in section one hundred twenty-nine of the vehicle and traffic law, standing as defined in section one hundred forty-five of the vehicle and traffic law, or stopping as defined in section one hundred forty-seven of the vehicle and traffic law, unless the engine is used to operate a loading, unloading or processing device, and provided that idling of an engine of a school bus may be permitted to the extent necessary: (1) for mechanical work; (2) to maintain an appropriate temperature for passenger comfort; or (3) in emergency evacuations where necessary to operate wheelchair lifts. It shall be an affirmative defense that any such school was not easily identifiable as a school by signage or otherwise at the time a violation of this subdivision occurred.”

NYCAC § 24-163(f).

Note, however, that when a bus is idling “to maintain an appropriate temperature for passenger comfort” under § 24-163(f)(2), New York State regulations permit that idling “only to the extent of complying with such regulations.” 6 NYCRR § 217-3.3(b).

2. The environmental and public health harms caused by idling to students, drivers, and the general public, specifically:

a. Bus emissions contain numerous air pollutants, including particulate matter 2.5 (PM 2.5), commonly called soot, nitrogen oxides (NO_x), sulfur oxides (SO_x), and volatile organic compounds (VOCs), which interact with the environment to form smog. PM 2.5 are microscopic-sized particles that

penetrate into human lungs and enter the bloodstream.
<https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>.

b. Soot and smog cause or worsen cardiovascular disease and respiratory illness, such as asthma, and contribute to other health risks.
<https://www.epa.gov/pm-pollution/particulate-matter-pm-basics>. Multiple causes of death are associated with PM 2.5 exposure, including kidney disease, diabetes, and lung cancer. *Burden of Cause-Specific Mortality Associated with PM 2.5 Air Pollution in the United States*, Benjamin Bowe, JAMA NETWORK OPEN, 2019

c. Diesel-powered buses are particularly “dirty” in that they emit significantly more PM2.5 than gasoline-fueled buses.

d. Bus emissions also enter the cabin of the bus, especially when the windows are closed, affecting both the driver and children riding the bus. Behrentz, *et al.*, *Measuring Self-Pollution in School Buses Using a Tracer Gas Technique*, Atmospheric Environment 38 (2004) 3735–3746.

e. Children are especially vulnerable to PM 2.5’s health harms because their lungs are still developing, and they are particularly active. EPA, *Particle Pollution and Your Health* (annexed).

f. In New York City, low-income communities and communities of color suffer disproportionately from air pollution. PM 2.5 traffic pollution is 50 percent higher in high-poverty neighborhoods than in low-poverty neighborhoods. *Id.* Black and Hispanic New Yorkers are more likely than white New Yorkers to live in high poverty neighborhoods. *Poverty in New York City*, NYU Furman Center. Of Hoyt’s four Bronx yards, 1271 Randall Avenue and 443 Coster Avenue are in NYSDEC-identified potential environmental justice areas; 1380 Spofford Avenue borders such an area; and 1111 Longwood Avenue is a few blocks from such as area.

3. “Mythbusting” about purported reasons idling is “necessary,” including instructing that drivers that idling beyond the legal limit is not necessary to keep the bus “warmed up in the winter”; that drivers should not idle when loading or unloading students at schools or on field trips, unless idling is necessary to operate a wheelchair lift or other accessory device; and that drivers should not idle beyond the minimum amount of time necessary to maintain a temperature for passenger comfort.

SCHEDULE B

PER BUS PER DAY BASELINE NUMBER

The following time periods and locations will be used to calculate the number of idling instances: 5:00 a.m. to 7:30 a.m. **only in the bus yards**; and 9:00 a.m. to 1:45 p.m. **at any location**.

To calculate the per bus per day number of idling instances, divide the total number of idling instances by the number of school days in the month to get the number of daily idling instances. Divide the daily number by the number of bus routes to get the per bus per day average.

To receive the penalty reduction, the number of idling instances for each day must be 50% less than the baseline number of idling instances, as set forth below, for the comparator month for six months.

September	October	November	December	January	February
.33	0.78	1.04	1.93	use Dec. #	use Dec. #