

STATE OF NEW YORK
DEPARTMENT OF LAW

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In the Matter of an Investigation by the
Attorney General of the State of New York
of Illegal Heavy Duty Vehicle Engine Idling
by Hendrickson Bus. Corp.
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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

WHEREAS, pursuant to provisions of Executive Law § 63, Eliot Spitzer, Attorney General of the State of New York, investigated alleged repeated violations by respondent Hendrickson Bus Corp. (Hendrickson) of applicable restrictions on the idling of heavy duty vehicle engines set forth in 6 New York Code Rules and Regulation (NYCRR) § 217-3.2 (the State Idling Regulation);

WHEREAS, Hendrickson has denied any intentional breach of the Idling Regulations, and has cooperated with the Attorney General in this investigation; and

WHEREAS, Hendrickson and the Attorney General have agreed to resolve the investigation and to settle the violations alleged by the Attorney General, without litigation and without any admission of liability, in accordance with the terms and conditions of this Assurance of Discontinuance (Assurance).

I. INVESTIGATIVE FINDINGS

The Attorney General makes the following findings:

1. Engine idling is running a motor vehicle engine when the motor vehicle is not operating in traffic. The idling of heavy duty motor vehicle engines is subject to limitation under the State Idling Regulation.

2. The State Idling Regulation provides that:

No person who owns, operates, or leases a heavy duty vehicle including a bus or truck, the motive power for which is provided by a diesel or non-diesel fueled engine or who owns, leases, or occupies land and has the actual or apparent dominion or control over the operation of a heavy duty vehicle including a bus or truck present on such land, the motive power for which said heavy duty vehicle is provided by a diesel or non-diesel fueled engine, shall allow or permit the engine of such heavy duty vehicle to idle for more than five consecutive minutes when the heavy duty vehicle is not in motion, except as otherwise permitted by section 217-3.3 of this Subpart.

6 NYCRR § 217-3.2. The exceptions include, among others, when:

(a) A diesel or non-diesel 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 non-diesel 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.

(g) A heavy duty vehicle 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(a)-(c),(g).

3. The State Idling Regulation was promulgated under authority granted by Article 19 of the New York State Environmental Conservation Law (ECL). Any person who violates such

rule or regulation “shall be liable, in the case of a first violation, for a penalty not less than three hundred seventy-five dollars nor more than fifteen thousand dollars.... In the case of a second or any further violation, the liability shall be for a penalty not to exceed twenty-two thousand dollars....” ECL § 71-2103(1). As part of its duties and responsibilities under the ECL, the New York State Department of Environmental Conservation (DEC) issues tickets for violations of the State Idling Regulation.

4. In addition to the State Idling Regulation, New York City has an idling restriction (the City Idling Regulation) applicable to motor vehicles operated within the City of New York.

5. The City Idling Regulation provides that:

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 while parking ... standing ... or stopping ... unless the engine is used to operate a loading, unloading, or processing device.

NYC Admin. Code § 24-163.

6. Violation of the City Idling Regulation is subject, in the first instance, to a minimum civil penalty of \$220 and a maximum penalty of \$1,000. NYC Admin. Code § 24-178(b)(5)(Table of Civil Penalties). A second violation by the same party within two years of the first carries a minimum penalty of \$330 and a maximum of \$1,500. A third or more violations within the two year period each has a minimum penalty of \$440 and a maximum of \$2,000. As part of their duties and responsibilities under New York City law, various New York City departments and agencies issue tickets for violations of the City Idling Regulation.

7. Within the New York City metropolitan area, illegal diesel engine idling by heavy duty vehicles degrades air quality and creates noise pollution, thereby impairing the quality of life. Illegal engine idling also wastes fuel.

8. Respondent Hendrickson is a corporation organized under the laws of the State of New York and has a principal place of business at 64 Bayville Avenue, Bayville New York 11709. Hendrickson operates school bus and charter bus services in New York City and New York State. Hendrickson buses that provide these services are heavy duty vehicles powered by diesel engines.

9. Huntington Coach Corporation, Huntington Coach Corporation, d/b/a Roy K. Davis Bus, Inc., and Huntington Coach, L.L.C. (together the Affiliated Fleets) are corporations organized under the laws of the State of New York and have a place of business at 64 Bayville Avenue, Bayville, New York 11709. The Affiliated Fleets operate school bus and charter bus services in New York City and New York State and the buses that provide these services are powered by diesel engines.

10. The Affiliated Fleets are owned and operated by Hendrickson's owner and operator, and they are under the same management as Hendrickson.

11. Hendrickson operates a bus depot on Long Island, New York, at 64 Bayville Avenue, Bayville, New York. Three other bus depots are utilized by Hendrickson and by the Affiliated Fleets. Among other things, Hendrickson and the Affiliated Fleets stage, clean, fuel, maintain, and park buses at those facilities.

12. Hendrickson has repeatedly idled heavy duty vehicles powered by diesel engines in violation of the State Idling Regulation and has therefore engaged in repeated illegality with

the meaning of Executive Law § 63(12). In particular, the Attorney General’s office has documented seven instances of idling by Hendrickson’s buses in violation of the State Idling Regulation during May and June 2004.

II. ENTRY INTO ASSURANCE

13. Hendrickson has cooperated with the Attorney General’s examination of the facts, and with his requests for remedial action. Hendrickson is willing to enter into this Assurance by its duly authorized officer for settlement purposes only. Hendrickson does not accept the Attorney General’s findings of fact or legal conclusions, and does not admit that it violated the State or City Idling Regulations. The Attorney General is willing to accept the Assurance pursuant to Executive Law § 63(15) in lieu of commencing a statutory proceeding.

14. Additionally, Hendrickson’s owner and operator has committed to voluntarily adopting and implementing an “Anti-Idling Program,” comprised of the same elements and under the same time table as the program prescribed below for Hendrickson, in the Affiliated Fleets.

III. ASSURANCE

IT IS HEREBY STIPULATED AND AGREED as follows:

15. Hendrickson shall take reasonable actions to ensure that its school bus operators, maintenance and other personnel comply with the City Idling Regulation in all of their operations in New York City and State Idling Regulation in all of their operations in New York State. These actions shall include developing a comprehensive “Anti-Idling Program” that includes the following components: Education/Training; Anti-Idling Policy; Monitoring; and Compliance/Enforcement.

A. EDUCATION AND TRAINING: Management and Employees

16. Hendrickson must adopt and implement, by August 31, 2005, a written education and training program that includes, at a minimum, the following elements:

(i) Training of all executive, supervisory and/or managerial personnel (existing and thereafter hired) with responsibility for overseeing any aspect of Hendrickson's school bus operations in New York City and New York State regarding the health and environmental effects of diesel exhaust, the State and City Idling Regulations, the company's Anti-Idling Policy, and this Assurance.

(ii) Training of all executive, supervisory and/or managerial personnel (existing and thereafter hired) with oversight responsibilities for mechanical or technical operations at any bus depot utilized by Hendrickson regarding the health and environmental effects of diesel exhaust, relevant State and City Idling Regulations, the company's Anti-Idling Policy, and this Assurance.

(iii) Training of all school bus operators (existing and thereafter hired) and bus depot personnel that operate a heavy duty vehicle or may cause the operation of a heavy duty vehicle in New York State and/or New York City regarding the health and environmental effects of diesel exhaust, the State and City Idling Regulations, and the company's Anti-Idling Policy.

(iv) Bi-annual distribution to all employees of Hendrickson information regarding the health and environmental effects of diesel exhaust, the State and City Idling Regulations, and the company's Anti-Idling Policy.¹ Materials distributed to all employees must include a brochure prepared by the New York State Attorney General about the health and

¹ Distribution of such materials may occur as part of a training session.

environmental effects of diesel exhaust, attached hereto as Exhibit A, or other similar written material prepared by the U.S. Environmental Protection Agency or other governmental regulatory agency, and approved by the Attorney General's office for that purpose. Hendrickson must present proof of such distribution to the Attorney General's office within 30 days of such distribution.

B. ANTI-IDLING POLICY: Improved Operations

17. Hendrickson must adopt and implement, by August 31, 2005, a written Anti-Idling Policy that addresses all aspects of operations in New York City and New York State where Hendrickson may contribute to the emission of diesel exhaust. The policy must include, at a minimum, the following elements:

(i) Except for Non-Covered Idling,² no idling of school buses when loading or discharging students, or waiting to load or discharge students, at or near (within one block) a school or any other facility with students (including any destination of a school field trip);

(ii) Except for Non-Covered Idling, no idling of school buses or any other heavy duty vehicle being used for charter services at or near (within one block) of the point of pick-up or discharge;

² For purposes of this Assurance, the term "Non-Covered Idling" shall have the following meaning: idling to the extent, but only to the extent allowed by 6 NYCRR § 217-3.3 and/or when the idling is necessary to (i) comply with applicable federal or state law or regulations concerning the operation of a motor vehicle, including conducting pre-trip and post-trip inspections, (ii) build air pressure to the level required to operate the motor vehicle, (iii) maintain or repair the motor vehicle, (iv) operate an auxiliary loading or unloading device or in the unusual circumstance when the loading or unloading passengers has taken so much time that there is a risk of draining the battery of sufficient power to operate the various safety devices, such as flashing lights or stair defrosters, or to restart the bus or (iv) maintain an interior temperature of 50 degrees Fahrenheit when the outside temperature is less than 50 degrees or of 70 degrees Fahrenheit when the temperature outside is more than 80 degrees.

(iii) An operations plan to eliminate excessive idling at and around all bus depots utilized by Hendrickson. The operations plan must include procedures for limiting engine idling during pre-trip and post-trip inspections, procedures for limiting idling during routine maintenance activities, designating one or more persons in charge of implementing the plan at each depot and designating one or more persons to monitor compliance with the plan during the bus depots' hours of operation; and

(iv) Posting visual reminders of the company's Anti-Idling Policy and other written materials obtained from governmental agencies on school buses and around all of the bus depots utilized by Hendrickson. Such materials may include, but are not limited to, any materials distributed in satisfaction of paragraph 16(iv).

C. MONITORING

18. Hendrickson must adopt and implement, by August 31, 2005, a written Monitoring Program that ensures compliance with the State and City Idling Regulations, the company's Anti-Idling Policy, and this Assurance. The monitoring shall include the following elements:

(i) Designation of one or more persons to monitor compliance at each of the bus depots used by Hendrickson.

(ii) Monthly monitoring at each of the bus depots used by Hendrickson in New York State. Such monitoring shall be performed on random days and shall include, on the day of monitoring, two complete examinations of the facility and any surrounding streets where Hendrickson buses are located at that time. One examination shall be performed between the hours of 6:00 A.M. and 8:30 A.M., and one between the hours of 12 noon and 3:00 P.M.

(iii) Monthly monitoring at and within one block of four randomly chosen schools serviced by Hendrickson. The monitoring shall take place at times when Hendrickson's school buses are loading or discharging or waiting to load or discharge students and at other times during the school day to determine whether buses remain within one block of the school after discharging the students and idle their engines.

(iv) All monitoring shall be unannounced to any bus operator employed by Hendrickson and, except at bus depots, shall be performed in a clandestine manner. Upon observing an idling bus, the monitor shall record the identity of the bus and the Hendrickson operator or other employee responsible for the bus at the time of the observation, and shall ascertain, if possible, whether the idling constitutes Non-Covered Idling under this Assurance. Unless the monitor specifically determines that the observed idling constitutes Non-Covered Idling and records the basis for that determination, the idling shall be considered a violation of the company's Anti-Idling Policy and shall be addressed as a Compliance and Enforcement matter pursuant to the policy required to be adopted under the paragraph 19 of this Assurance.

(v) For one year, Hendrickson shall submit quarterly reports to the Attorney General's office describing the (1) date, time and location of all monitoring and (2) the date, time and location of each bus observed idling in violation of the company's Anti-Idling Policy. The first report shall cover the three month period beginning on September 1, 2005, and shall be submitted to the Attorney General's office by December 30, 2005. The remaining reports shall cover the next three month period and shall be submitted to the Attorney General's office before the end of the month following the end of the three month period. After the first year, Hendrickson shall submit such reports on an annual basis, with the report for the preceding 12

months due before the end of the 13th month. The reporting of idling pursuant to this provision shall not constitute an admission by Hendrickson of violating either the State or City Idling Regulation and shall not be admissible in an action or proceeding as evidence of an idling violation. Such reporting, however, shall not prejudice the Attorney General's office or other law enforcement agency with jurisdiction from establishing a violation of the applicable Idling Regulation for the same or similar conduct through other means.

(vi) The Hendrickson Group shall maintain all documents that it generates in performing the compliance monitoring pursuant to paragraphs 18(i)-(v) of this Assurance during, and for 2 years following, its performance of the monitoring.

D. COMPLIANCE/ENFORCEMENT

19. By August 31, 2005, Hendrickson shall adopt and implement a written Compliance and Policy Enforcement component to the Anti-Idling Program that includes the following elements:

(i) Specific measures that executive, supervisory and/or managerial personnel must implement to ensure compliance with the company's Anti-Idling Policy by drivers and other relevant personnel.

(ii) Employee responsibility to report idling tickets to their respective supervisory personnel at Hendrickson.

(iii) Employee sanctions for violating the company's Anti-Idling Policy and other enforcement measures.

(iv) Sanctions for supervisory and/or managerial personnel who fail to implement the company's Anti-Idling Policy.

E. CIVIL PENALTY

20. Hendrickson is assessed a civil penalty payable to the State of New York in the amount of \$10,000. Payment of the civil penalty shall be made within 30 days of the effective date of this Assurance by delivering to the Attorney General's office, at the address specified below, a certified or bank check in that amount payable to the "State of New York."

F. EMISSIONS ABATEMENT

_____21. In the event that one or more governmental or third-party grants become available to retrofit privately owned school bus fleets on Long Island with catalyzed diesel particulate matter filters (Filters), diesel oxidation catalysts (Catalysts) or engine replacements, Hendrickson will make reasonable best efforts to obtain such funding and/or to implement a retrofit program in its entire school bus fleet to the extent it may do so using the grant money that it receives. Reasonable best efforts may include, but are not limited to, (1) applying for such funding and meeting all applicable deadlines, (2) providing the funder, its agent, or school district(s) seeking retrofit funding with all relevant information and all technical assistance which may be reasonably required to design and implement such a retrofit program in the Hendrickson school bus fleet, (3) making its school buses available for retrofit, and (4) accepting and using ultra-low sulfur diesel fuel before it is mandated by law. Reasonable best efforts shall not include the expenditure of money by Hendrickson for any extra costs of purchasing or storing ultra low sulfur diesel fuel before it is mandated by law or for the purchase and installation of Filters, Catalysts or engine replacements.

G. SETTLEMENT AND RESERVATION OF RIGHTS

22. The Attorney General's office agrees not to institute judicial or administrative actions or proceeding against Hendrickson regarding any breach of the State or City Idling Regulations, or of other local idling regulations arising out of the matters investigated herein, preceding the date on which this Assurance is signed on behalf of the Attorney General, provided that Hendrickson fulfills all of its obligations under, and complies fully with, this Assurance. The Attorney General's office reserves its rights to commence and prosecute a judicial or administrative action or proceeding against Hendrickson to enforce the provisions of this Assurance.

23. Nothing in this Assurance shall limit or prevent the Attorney General's office from imposing penalties or taking other enforcement action for any violation of the ECL or other applicable laws that is not addressed and resolved by this Assurance.

H. OTHER PROVISIONS

24. All written communications, notices, reports, or other documents required to be submitted under this Assurance shall be served by facsimile transmission (with a confirmation copy sent by First Class U.S. Mail), hand delivery or overnight courier as follows:

If to the Attorney General's office, to:

Marie Chery-Sekhobo
Assistant Attorney General
New York State Attorney General's Office
Environmental Protection Bureau
120 Broadway
New York, New York 10271
Fax: (212) 416-6007

If to any member of the Hendrickson Group, to:

Kevin J. Clifford.
64 Bayville Avenue
Bayville, New York 11709
Fax: (516) 628-7329

Upon notice to the other party, each party may change the recipients of service identified above.

25. Hendrickson shall make available to the Attorney General's office for inspection and copying within 20 working days of a written request (i) all of the documents required by this Assurance (including, without limitation the Anti-Idling Policy, training materials, and monitoring records described in paragraphs 15 through 18 above), and (ii) all documents concerning implementation of Hendrickson's obligations under this Assurance.

26. This Assurance sets forth the entire agreement of the parties and may be modified only by the subsequent execution of a written agreement by the parties.

27. Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Assurance and to sign this Assurance on behalf of the party.

28. This Assurance shall be governed by, construed and enforced in accordance with the laws of the State of New York.

29. This Assurance may be signed in counterparts, each of which shall be deemed to be an original but all of which shall together constitute one instrument. The effective date of this Assurance is the date on which it is signed by both parties. Hendrickson's obligations under this

Assurance shall end upon its submission of a second annual report consistent with paragraph 18(v) above.

WHEREFORE, the parties have caused this Assurance to be signed by their duly authorized representatives.

HENDRICKSON BUS CORP.

By: _____

Date: _____

Print Name: _____

Title: _____

**ELIOT SPITZER
ATTORNEY GENERAL OF THE STATE OF NEW YORK**

By: _____

Date: _____

Lemuel M. Srolovic
Marie Chery-Sekhobo
Assistant Attorneys General
Environmental Protection Bureau