

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 Jofaz Transportation, Inc. and Related Companies
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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 Jofaz Transportation, Inc. (Jofaz Transportation) and Boro Wide Buses, Inc. (Boro Wide) of applicable restrictions on the idling of heavy duty vehicle engines set forth in 6 New York Code Rules and Regulations (NYCRR) § 217-3.2 (the State Idling Regulation) and New York City Administrative Code § 24-163 (the City Idling Regulation);

WHEREAS, Jofaz Transportation and Boro Wide have denied any intentional breach of the Idling Regulations, and have cooperated with the Attorney General in this investigation;

WHEREAS, Jofaz Transportation, Boro Wide 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 limitations under the State Idling Regulation and the City 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.

. . . [or]

(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. 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.

5. 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 violation, or more, 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.

6. Within the New York 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.

7. Respondent Jofaz Transportation is a corporation organized under the laws of the State of New York and has a principal place of business at 1 Coffey Street, Brooklyn, New York 11231. Jofaz Transportation operates school bus services in New York City and on occasion, charter bus services for private entities in New York City and throughout New York State. The

buses that Jofaz Transportation uses to provide these services are heavy duty vehicles powered by diesel engines.

8. Boro Wide is a corporation organized under the laws of the State of New York and has a principal place of business at 1 Coffey Street, Brooklyn, New York 11231. Boro Wide operates school bus services in New York City and on occasion, charter bus services for private entities in New York City and throughout New York State. The buses that Boro Wide uses to provide these services are heavy duty vehicles powered by diesel engines.

9. LaSalle Bus Service, Inc. (LaSalle), Cosmopolitan Transit, Inc. (Cosmopolitan), 3rd Avenue Transit, Inc. (3rd Avenue) and Regents Bus Co., Inc. (Regents) are corporations organized under the laws of the State of New York and have a principal place of business at 1 Coffey Street, Brooklyn, New York 11231. The same management that directs the operations of Jofaz Transportation and Boro Wide also directs the operations of LaSalle and Cosmopolitan. Joseph Fazzia owns and operates Jofaz Transportation, LaSalle, and Cosmopolitan. Boro Wide is owned by Toni Ann Fazzia, but is operated by Joseph Fazzia. 3rd Avenue and Regents are operated under separate management. Angelo Fazzia owns and operates 3rd Avenue and Regents.

10. LaSalle, Cosmopolitan, 3rd Avenue, and Regents operate school bus services in New York City and the buses used to provide these services are heavy duty vehicles powered by diesel engines.

11. Jofaz Transportation also operates bus depots and service facilities at locations in Brooklyn, New York. The bus depots and service facilities are utilized by Boro Wide, LaSalle, Cosmopolitan, 3rd Avenue, and Regents. Among other things, Jofaz Transportation, Boro Wide,

LaSalle, Cosmopolitan, 3rd Avenue, and Regents stage, clean, fuel, maintain, and park buses at those facilities.

12. Jofaz Transportation has repeatedly idled heavy duty vehicles powered by diesel engines in violation of the State and City Idling Regulations and has therefore engaged in repeated illegality with the meaning of Executive Law § 63(12). In particular, the Attorney General's office has documented four instances of illegal idling by Jofaz Transportation's buses in violation of the State Idling Regulation and two instances of illegal idling in violation of the City Idling Regulation.

13. Boro Wide has repeatedly idled heavy duty vehicles powered by diesel engines in violation of the State and City Idling Regulations and has therefore engaged in repeated illegality with the meaning of Executive Law § 63(12). In particular, the Attorney General's office has documented three instances of illegal idling by Boro Wide's buses in violation of the State Idling Regulation and one instance of illegal idling in violation of the City Idling Regulation.

II. ENTRY INTO ASSURANCE

14. Jofaz Transportation and Boro Wide have cooperated with the Attorney General's examination of the facts, and with his requests for remedial action. Jofaz Transportation and Boro Wide are willing to enter into this Assurance by their duly authorized officers for settlement purposes only. Jofaz Transportation and Boro Wide do not accept the Attorney General's findings of fact or legal conclusions, and do not admit that they violated the State and 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.

15. The Attorney General has not investigated instances of illegal idling by buses owned and operated by LaSalle, Cosmopolitan, 3rd Avenue, and Regents. LaSalle, Cosmopolitan, 3rd Avenue, and Regents are willing to enter into this Assurance, by their duly authorized officers, in lieu of the Attorney General commencing separate investigations regarding each of those company's compliance with the State and City Idling Regulations.

III. ASSURANCE

IT IS HEREBY STIPULATED AND AGREED as follows:

16. Jofaz Transportation, Boro Wide, LaSalle, Cosmopolitan, 3rd Avenue, and Regents (together the Jofaz Group) shall take all reasonable actions within their ability to ensure that their 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; No Idling Policy; Monitoring; and Compliance/Enforcement. All companies in the Jofaz Group may collaborate to develop one Anti-Idling Program to be implemented by all the companies in the group.

A. EDUCATION AND TRAINING: Management and Employees

17. Each company in the Jofaz Group must adopt and implement, within 60 days of the effective date of this Assurance, 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 the Jofaz Group's school bus service 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 No-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 Jofaz Group personnel regarding the health and environmental effects of diesel exhaust, the State and City Idling Regulations, the company's No-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 No-Idling Policy.

(iv) Bi-annual distribution to all employees of information regarding the health and environmental effects of diesel exhaust, the State and City Idling Regulations, and the company's No-Idling Policy. Distribution of such materials may occur as part of a training session. Materials distributed to all employees should include a brochure prepared by the New York State Attorney General about the health and 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 for that purpose. The Jofaz Group must present proof of such distribution to the Attorney General within 30 days of such distribution.

B. NO IDLING POLICY: Improved Operations

18. Each company in the Jofaz Group must adopt and implement, within 60 days of the effective date of this Assurance, a written No Idling Policy that addresses all aspects of operations in New York City and New York State where the company may contribute to the emission of diesel exhaust. The policy must include, at a minimum, the following elements:

(i) Except for Non-Covered Idling,¹ 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;

(iii) An operations plan to eliminate idling at and around all bus depots utilized by the Jofaz Group. 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

¹ 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 (v) 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.

(iv) Posting visual reminders of the company's No-Idling Policy and other written materials obtained from governmental agencies on school buses and around all of the bus depots utilized by the Jofaz Group. Such materials may include, but are not limited to, any materials distributed in satisfaction of paragraph 17(iv).

C. MONITORING

19. Each company in the Jofaz Group must adopt and implement, within 60 days of the effective date of this Assurance, a written Monitoring Program that ensures compliance with the State and City Idling Regulations, the company's No 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 the company.

(ii) Monthly monitoring at the Jofaz Group's bus depots 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 the Jofaz Group 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 the company. The monitoring shall take place at times when the company'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 in the vicinity of the school after discharging the students and idle their engines.

(iv) All monitoring shall be unannounced to any bus operator employed by any company in the Jofaz Group 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 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 20 of this Assurance.

(v) For one year, each company in the Jofaz Group shall submit quarterly reports to the Attorney General 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 No Idling Policy. The first report shall cover the 3-month period beginning on the 60th day following the effective date of this Assurance, and shall be submitted to the Attorney General's office by the 30th day thereafter. The remaining reports shall cover the next 3-month period and shall be submitted to the Attorney General's office before the end of the month following the end of the 3-month period. After the first year, each company 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 the reporting company 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) Each company in the Jofaz Group shall maintain all documents that it generates in performing the compliance monitoring pursuant to paragraph 19(i)-(v) of this Assurance during, and for 2 years following its performance of the monitoring required under that paragraph.

D. COMPLIANCE/ENFORCEMENT

20. Beginning within 60 days of the effective date of this Assurance, each company in the Jofaz Group 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 No Idling Policy by drivers and other relevant personnel.

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

(iii) Employee sanctions for violating the company's No Idling Policy and other enforcement measures.

(iv) Sanctions for supervisory and/or managerial personnel who fail to implement the company's No Idling Policy.

E. CIVIL PENALTY

21. Jofaz Transportation agrees to pay a civil penalty payable to the State of New York in the amount of \$9,700. Boro Wide agrees to pay a civil penalty payable to the State of

New York in the amount of \$6,850. Payment of these penalties 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. IDLING ABATEMENT TECHNOLOGY

22. In the event that one or more governmental or third-party grants become available to provide privately owned school bus fleets operating in New York City with anti-idling technology such as engine block or coolant heaters, each company in the Jofaz Group will make reasonable best efforts to obtain such funding and/or to implement an anti-idling technology 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 identified by or to the company and meeting all applicable deadlines, (2) providing the funder, its agent, or school district(s) seeking anti-idling equipment funding with all relevant information and all technical assistance which may be reasonably required to design and implement such a program in the company's school bus fleet, and (3) making its school buses and/or depots available for the technology. Reasonable best efforts shall not include the expenditure of money by the company for the purchase or mechanical installation of the anti-idling technology.

G. SETTLEMENT AND RESERVATION OF RIGHTS

23. The Attorney General agrees not to institute judicial or administrative actions or proceeding against a Jofaz Group company 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 the company fulfills all of their obligations under, and complies fully with, this Assurance. The Attorney General reserves his rights to commence and prosecute a judicial or administrative action or proceeding against any Jofaz Group company to enforce the provisions of this Assurance.

24. Nothing in this Assurance shall limit or prevent the Attorney General 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

25. 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, 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 Jofaz Group, to:

Norman Turk, Esq.
26 Court Street
Brooklyn, New York 11242
(718) 643-2690

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

26. Each company in the Jofaz Group shall make available to the Attorney General's office for inspection and copying within 20 days of a written request (i) all of the documents

required by this Assurance (including, without limitation the No-Idling Policy, training materials, and monitoring records described in paragraphs 17, 18 and 19 above), and (ii) all documents concerning implementation of the company's obligations under this Assurance.

27. 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.

28. 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.

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

30. 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 the parties. The obligations of each Jofaz Group company under this Assurance shall end upon the company's submission of a second annual report consistent with paragraph 19(v) above.

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

JOFAZ TRANSPORTATION, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

LASALLE BUS SERVICE, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

COSMOPOLITAN TRANSIT, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

BORO WIDE BUSES, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

3RD AVENUE TRANSIT, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

REGENTS BUS CO., INC.

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