

STATE OF NEW YORK
DEPARTMENT OF LAW

-----X
In the Matter of an Investigation by the
Attorney General of the State of New York
of Alleged Illegal Heavy Duty Vehicle Engine Idling
by USA United Fleet, Inc., and United Tom Tom
Transportation, Inc.
-----X

**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 respondents USA United Fleet, Inc. (United Fleet) and United Tom Tom Transportation, Inc. (United Tom Tom) (together Respondents) 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, Respondents have denied any intentional breach of the Idling Regulations, and have cooperated with the Attorney General in this investigation; and

WHEREAS, Respondents 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; and

(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 five hundred 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 United Fleet is a corporation organized under the laws of the State of New York and has a principal place of business at 2859 West 37th Street, Brooklyn, New York 11224. USA United Transit, Inc. (United Transit) is also a corporation organized under the laws

of the State of New York, with a principal place of business at the same location. Dennis Scialpi owns and operates both United Fleet and United Transit, and the two companies are under the same management. United Fleet and United Transit provide school bus transportation services in New York City. The buses they use to provide these services are heavy duty vehicles powered by diesel engines.

8. Respondent United Tom Tom is a corporation organized under the laws of the State of New York and has a principal place of business at 2859 West 37th Street, Brooklyn, New York 11224. Thomas Scialpi owns and operates United Tom Tom, which provides school bus transportation services in New York City and, on occasion, throughout New York State. The buses that United Tom Tom uses to provide these services are primarily heavy duty vehicles powered by diesel engines.

9. USA United Bus Express, Inc. (United Express) and Thomas Bus, Inc. (Thomas Bus) are corporations organized under the laws of the State of New York and have a principal place of business at 2866 West 15th Street, Brooklyn, New York 11224. Richard Castellano owns and operates both United Express and Thomas Bus, which provide school bus transportation services in New York City and New York State. The buses that United Express and Thomas Bus use to provide these services are heavy duty vehicles powered by diesel engines.

10. United Tom Tom operates a bus service facility in Brooklyn and several bus depots in Brooklyn and the Bronx. The service facility and bus depots are utilized by United Transit, United Fleet, and United Express. Among other things, United Tom Tom, United Transit, United Fleet, and United Express stage, clean, fuel, maintain, and park buses at the

service facility and bus depots. United Express also operates a bus depot in New Rochelle. United Express only parks buses at the bus depot in New Rochelle.

11. Respondent United Fleet has repeatedly idled heavy duty vehicles powered by diesel engines in violation of the State and City Idling Regulations and have therefore engaged in repeated illegality with the meaning of Executive Law § 63(12). In particular, the Attorney General's office has documented 14 instances of illegal idling by United Fleet's buses in violation of both the State and City Idling Regulations and 1 instance of illegal idling in violation of the City Idling Regulation.

12. Respondent United Tom Tom has repeatedly idled heavy duty vehicles powered by diesel engines in violation of the State and City Idling Regulations and have therefore engaged in repeated illegality with the meaning of Executive Law § 63(12). In particular, the Attorney General's office has documented 2 instances of illegal idling by United Tom Tom's buses in violation of both the State and City Idling Regulations.

II. ENTRY INTO ASSURANCE

13. Respondents have cooperated with the Attorney General's examination of the facts, and with his requests for remedial action. Respondents are willing to enter into this Assurance by their duly authorized officers for settlement purposes only. Respondents 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.

14. The Attorney General has documented 1 instance of illegal idling by a bus owned and operated by United Express but has not documented illegal idling by buses owned and

operated by United Transit or Thomas Bus (the three companies are together the Additional Companies). The Additional Companies 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 Additional Companies are willing to enter into this Assurance, by duly authorized officers, in lieu of the Attorney General continuing the investigation regarding their compliance with the State and City Idling Regulations.

III. ASSURANCE

IT IS HEREBY STIPULATED AND AGREED as follows:

15. Respondents and the Additional Companies (hereinafter collectively referred to as the Settling Companies) 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.¹

¹ The Settling Companies may collaborate to develop one Anti-Idling Program to be implemented by each of them.

A. EDUCATION AND TRAINING: Management and Employees

16. Each of the Settling Companies 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 company'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 company 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;
and

(iv) Bi-annual distribution to all company 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.² 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. Each of the Settling Companies must present proof of such distribution to the Attorney General within 30 days of such distribution.

B. NO IDLING POLICY: Improved Operations

17. Each of the Settling Companies 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 that 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,³ 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);

² Distribution of such materials may occur as part of a training session.

³ For purposes of this Assurance, the term "Non-Covered Idling" shall have the following meaning: idling to the extent, but only to the extent, the idling is necessary to (I) comply with applicable federal or state law or regulations concerning the operation of a motor vehicle, (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.

(ii) Except for Non-Covered Idling, no idling of school buses, or any other heavy duty vehicle, when used for charter services;

(iii) An operations plan to eliminate idling at and around all bus depots utilized by the company. 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 No-Idling Policy and other written materials obtained from governmental agencies on school buses and around all of the bus depots utilized by the company. Such materials may include, but are not limited to, any materials distributed in satisfaction of paragraph 16(iv).

C. MONITORING

18. Each of the Settling Companies 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, and each of the schools serviced, by the company;

(ii) Monthly monitoring at each of the company's bus depots in New York City and 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 surrounding

streets where the company's 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 of the Settling Companies 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 No 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, each of the Settling Companies 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 of the Settling Companies 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 of the Settling Companies shall maintain all documents that it generates in performing the compliance monitoring pursuant to paragraph 18(v) of this Assurance during, and for 2 years following its performance of the monitoring required under that paragraph.

D. COMPLIANCE/ENFORCEMENT

19. Each of the Settling Companies must adopt and implement, within sixty (60) days of the effective date of this Assurance, 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 at the company;

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

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

E. CIVIL PENALTY

20. Respondent United Fleet agrees to pay a civil penalty payable to the State of New York in the amount of \$28,875. Respondent United Tom Tom agrees to pay a civil penalty payable to the State of New York in the amount of \$4,000. 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. IDLING ABATEMENT TECHNOLOGY

21. 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 of the Settling Companies 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

22. The Attorney General agrees not to institute judicial or administrative actions or proceedings against any of the Settling Companies 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 its 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 of the Settling Companies to enforce the provisions of this Assurance.

23. 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

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, overnight courier, or Certified Mail return receipt requested (with a copy sent by First Class U.S. Mail) 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 the Settling Companies, as relevant, to:

USA United Fleet, Inc.
2859 West 37th Street
Brooklyn, New York 11224

United Tom Tom Transportation, Inc.
2859 West 37th Street
Brooklyn, New York 11224

USA United Transit, Inc.
2859 West 37th Street
Brooklyn, New York 11224

USA United Bus Express, Inc.
2866 West 15th Street
Brooklyn, New York 11224

Thomas Bus, Inc.
2866 West 15th Street
Brooklyn, New York 11224

with a copy to:

Anthony J. Cincotta, Esq.
621 Shrewsbury Avenue
Shrewsbury, New Jersey 07702
Fax: (732) 747-0789

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

25. Each of the Settling Companies 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 16, 17 and 18 above), and (ii) all documents concerning implementation of the company'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 the parties. The obligations of each of the Settling Companies under this Assurance shall end upon the company's 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.

USA UNITED FLEET, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

USA UNITED TRANSIT, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

UNITED TOM TOM TRANSPORTATION, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

USA UNITED BUS EXPRESS, INC.

By: _____

Date: _____

Print Name: _____

Title: _____

THOMAS BUS, 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