

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL PROTECTION BUREAU

In the Matter of

Assurance
No. 24-036

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

CONSOLIDATED BUS, INC. and its affiliates,
BORO TRANSIT, INC., and SNT BUS, INC.,

Respondents.

ASSURANCE OF DISCONTINUANCE

1. The Office of the Attorney General of the State of New York (OAG) commenced an investigation pursuant to under 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, and unlawful” idling within the meaning of Executive Law § 63(12) by school buses owned and operated by Consolidated Bus, Inc. and its affiliates, Boro Transit, Inc., and SNT Bus, Inc. (collectively, Consolidated, unless otherwise indicated). This Assurance of Discontinuance (Assurance) contains the findings of the OAG’s investigation, and the relief agreed to by the OAG and Consolidated, whether acting through their respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the Parties).

2. Although Consolidated disputes all allegations of unlawful idling, it has cooperated with the OAG's investigation. This Assurance of Discontinuance (Assurance) is the result of extended negotiations between the OAG and Consolidated, and the parties enter into the Assurance in order to avoid the expense and exposure of litigation.

STATUTORY BACKGROUND

3. 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 § 217-3.2.¹ This proscription applies to both diesel and gasoline-powered vehicles. *Id.* The exceptions to these prohibitions are limited and relate to, for example, temperature and operations that are powered by the engine, such as the use of a lift, and other conditions. *Id.* at § 217-3.3.

4. The OAG has authority pursuant to the Environmental Conservation Law (ECL) to enforce these regulations and collect penalties. In the case of a first violation, the ECL authorizes a penalty of not less than \$500 and no more than \$18,000. ECL § 71-2103. For subsequent violations, the OAG can collect penalties of no more than \$26,000 for each violation. *Id.*

¹ 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).

5. 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.” Exec. Law § 63(12). Illegal acts under Executive Law § 63(12) include the violation of any state, federal, or local law or regulation.

6. In 2022, the New York State legislature passed a statewide mandate requiring all new school bus purchases to be electric starting in 2027 and the entire state’s school bus fleet to be electric by 2035.

THE PUBLIC HEALTH CONSEQUENCES OF IDLING

7. 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 (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.

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

9. All of Consolidated's Bronx bus yards and all but two of its Brooklyn bus yards are located in areas that have been mapped by the New York State Department of Environmental Conservation as environmental justice areas. Such areas are already disproportionately burdened by environmental harms such as air pollution.

OAG'S INVESTIGATION AND FINDINGS

10. In 2018, OAG began investigating what it alleges to be unlawful engine idling by school buses owned and operated by Consolidated. In 2019, the New York City Department of Education (DOE) required a telematic device to be installed in all school buses that transport New York City public school pupils. The devices continuously record engine operation data and bus location when the buses were operating, including when the engine is on, but the bus is not moving. Consolidated disputes the accuracy and reliability of the data recorded by the telematic devices.

11. The OAG obtained and analyzed the data recorded by the DOE-required telematic devices on Consolidated's school buses for the time period between September 4, 2019, and December 31, 2019. The OAG then analyzed a subset of this data, focusing specifically on those instances where the buses' engines were running, but the buses were not moving, during the early morning hours, in a bus yard. Those instances numbered in the thousands. The OAG alleges that the majority of these instances represent unlawful idling. Consolidated disputes the accuracy and reliability of the telematic devices.

12. Consolidated asserts that these instances of engine idling did not violate any ordinance because they fall within one or more of the exceptions listed at 6 NYCRR § 217-3.3 and NYC Admin. Code § 24-163(f).

13. While Consolidated also contests the OAG's assertions that its buses were unlawfully idling, it has agreed to this Assurance in settlement of the alleged violations described above and to avoid the time, expense, and distraction of litigation.

14. 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 ECL § 71-2103, or any other idling law, based on the conduct described above from September 4, 2019, to the to the effective date of this

Assurance, which shall be the day the last signatory signs this Assurance (Effective Date).

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

RELIEF

15. Payment of Expenses Not Covered By EPA Clean Bus Grants

Consolidated states that it has received a Clean Bus grant from EPA to offset the cost of purchasing twenty-five (25) electric school buses and related electrical/charging infrastructure.

a. Consolidated states that after the EPA Clean Bus grant, its out-of-pocket costs for the ESBs are \$836,781.25 in NYS sales tax and the NYS tire tax and document fee.

b. Consolidated states that after the EPA Clean Bus Grant for related electrical/charging infrastructure is deducted from the total, its out-of-pocket costs are \$214,573.

c. Consolidated states that it will pay out-of-pocket expenses for both the buses and related electrical/charging infrastructure so that it can acquire the 25 electric school bus.

d. Consolidated states that it will comply with all of the EPA Clean Bus grant conditions.

e. Consolidated will send OAG a copy of any reports it sends to EPA. This requirement will begin July 1, 2024, and continue through the Term of this Assurance, as set forth in Paragraph 18.

16. Anti-Idling Automatic Shut-off

Consolidated will either install anti-idling devices or re-program the telematic devices on all of its school buses powered by an internal combustion engine to cause the engine to automatically shut off after three minutes.

Consolidated will complete the installation of the devices and/or re-programming of its buses on the following schedule:

a. Fifty percent (50%) of Consolidated's non-electric buses within 90 days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Consolidated or its counsel shall send OAG a written statement attesting to such completion.

b. The remaining fifty percent (50%) of Consolidated's non-electric fleet within 180 days of this Assurance Effective Date. Within thirty (30) days after the completion of this work, Consolidated or its counsel shall send OAG a written statement attesting to such completion.

c. Consolidated will provide annual confirmation that the automatic shut-off devices on its internal combustion engine powered buses are functioning. Such confirmation will be provided to the OAG on or before August 31 each year, beginning with August 31, 2024.

17. Additional Idling Reduction Measures

Consolidated agrees to implement the idling reduction measures set forth below:

a. Conduct daily inspections of its bus yards to limit idling that is not required for maintenance or warming up or cooling down the bus. Pursuant to 6 N.Y.C.R.R. § 217.3-3(b), idling for the purpose of adjusting the temperature of the bus will be for no longer than is necessary to achieve the temperature.

b. Driver Education: Consolidated's bus drivers will receive an anti-idling training at least once a year as part of a refresher course. Such anti-idling training will include, at the minimum, the information contained in Schedule A. All drivers employed by Consolidated as of the Execution Date of this Assurance shall receive the anti-idling training within six months of the Execution Date of this Assurance. Within thirty (30) days after the completion of this driver training, Consolidated shall send OAG a written statement attesting to such completion. Drivers hired after the date of execution of this Assurance will receive the anti-idling training within 6 months of their hire date.

c. Signage: Consolidated states that it posts signs in all of its bus yards reminding drivers not to idle and posts stickers inside its buses reminding drivers not to idle. Consolidated agrees to maintain these measures subject to any changes necessary to best meet its operational needs but will continue to stress the environmental and public health importance of reducing unnecessary idling.

MISCELLANEOUS

18. **Term:** The Term of this Assurance is from its Effective Date through thirty days after the final report Consolidated is required to submit to EPA under the Clean Bus Grant, or five years, whichever is shorter.

19. **Covenant Not to Sue:** In consideration of Consolidated's agreement to undertake the actions in Paragraphs 15 (Payment of Expenses Not Covered By EPA Clean Bus Grants), 16 (Anti-Idling Automatic Shut-off) and 17 (Idling Reduction Measures) above, the OAG agrees that it will not institute an enforcement action against Consolidated regarding alleged violations of 6 N.Y.C.R.R. § 217.3.2 and N.Y.C. Admin. Code § 24-163(a) from the period September 1, 2019 through this Assurance's Execution Date as long as Consolidated substantially complies with all of its obligations under Paragraphs 15 through 17.

20. **Non-Compliance:** If OAG believes that Consolidated has not complied with any of the provisions of this agreement, OAG will give Consolidated written notice of the particular provision(s) with which it believes Consolidated is in non-compliance. Consolidated shall have 30 days from its actual receipt of the notice to remedy any non-compliance before the OAG may take any further action against Consolidated.

a. Notice must be given by United States mail by any method which provides delivery confirmation and by email to all of the addresses below:

Consolidated Bus Transit Inc.
50 Snediker Avenue
Brooklyn, NY 11207
Attn: Stephen Genovese
E-Mail: sgenovese@cbttrans.com

With a cc to:
Silverman Shin & Schneider PLLC
88 Pine Street, 22nd Floor
New York, NY 10005
Attn: Peter R. Silverman
E-Mail: psilver@silverfirm.com

21. **Enforcement:** If Consolidated receives a Notice of Non-compliance which states that the OAG believes that Consolidated has not substantially complied with a provision(s) of this agreement, and the OAG does not believe that Consolidated has demonstrated sufficient compliance with the provision(s) at issue within 30 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 and of Paragraphs 15, 16 and 17, the OAG may seek penalties for any idling violations that have taken place during the period of non-compliance, which shall begin with Consolidated's receipt of the Notice of Non-compliance.

22. **Court Action:** 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. Consolidated waives any objection based upon personal jurisdiction, inconvenient forum, or venue for purposes of disputes concerning or enforcement of this agreement only.

a. If a court of competent jurisdiction determines that the Consolidated 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.

23. **Effects of Assurance:** All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Consolidated. Consolidated 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.

24. Nothing contained herein shall be construed as to deprive any person or legal entity of any private right under the law.

25. **Communications:** 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. 24-036 and shall be in writing and shall be given by electronic mail only:

If to the Consolidated, to:

Consolidated Bus Transit Inc.
Attn: Stephen Genovese
E-Mail: sgenovese@cbttrans.com

or in his absence, to the person holding the title of Owner of Consolidated Transportation Corp, with a cc to:

Silverman Shin & Schneider PLLC
Attn: Peter R. Silverman
E-Mail: psilver@silverfirm.com

If to the OAG, to:

Yueh-ru Chu, Section Chief, Affirmative Litigation,
Environmental Protection Bureau,
28 Liberty Street, 19th floor
New York, New York 10005

or in her absence, to the person holding the title of Section Chief, Affirmative Litigation,

26. **Representations and Warranties:** The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Consolidated and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 14 above. Consolidated represents and warrants that neither it nor its counsel has made any material representations to the OAG that are false or misleading. If any material representations by Consolidated or its counsel are later found to be false or misleading, this Assurance is voidable by the OAG in its sole discretion.

27. Other than those explicitly set forth in this Assurance, Consolidated and the OAG have not made or relied upon any other representations, inducements, promises, understandings, conditions, and warranties in agreeing to this Assurance.

28. Consolidated represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Consolidated further represents and warrants that Consolidated, by Stephen Genovese, as the signatory to this Assurance, is a duly authorized representative of Consolidated Transportation and is acting at the direction of Consolidated.

General Principles:

29. Consolidated 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).

30. Nothing in this Assurance shall relieve Consolidated of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

31. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Consolidated violates the Assurance after its Effective Date.

32. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

33. 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.

34. Consolidated acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

35. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

36. 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.

37. 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.

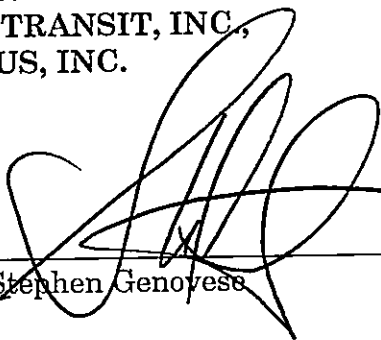
38. The effective date of this Assurance shall be the date the last signatory signs.

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

Dated: July 8, 2024

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

CONSOLIDATED TRANSPORATION, INC.
BORO TRANSIT, INC.,
SNT BUS, INC.

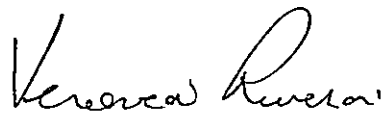
By: 
Stephen Genovese

STATE OF YORK)
) ss.:
COUNTY OF KINGS)

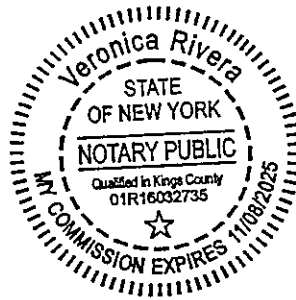
On the 28th day of May in the year 2024 before me personally came Stephen Genovese to me known, who, being by me duly sworn, did depose and say that he has a business address at: Consolidated Transportation Corp., 50 Snediker Avenue, Brooklyn, NY 11207, that he a representative of Consolidated Transportation Corp., Boro Transit, Inc., and SNT Bus, Inc., the corporations described herein and which executed the above instrument; that he knows the seal of said corporations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporations, and that he signed his name thereto by like authority.

Sworn to before me this

28th day of May, 2024



NOTARY



SCHEDULE A

Information Required to Be Included in 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 (NOx), sulfur oxides (SOx), 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. “Myth busting” 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.

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL PROTECTION BUREAU

In the Matter of

Assurance No. 24-034

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

LOGAN BUS COMPANY, INC. and its affiliated companies, LOGAN TRANSPORTATION SYSTEM, INC., BOBBY'S BUS COMPANY, GRANDPA BUS COMPANY, LITTLE LISA BUS COMPANY, LITTLE RICHIE BUS SERVICE, LORINDA ENTERPRISE, LORISSA BUS SERVICE, and LITTLE LINDA BUS COMPANY,

Respondents.

ASSURANCE OF DISCONTINUANCE

1. In 2018, the Office of the Attorney General of the State of New York (OAG) commenced an investigation pursuant to N.Y. Executive Law § 63(12), New York Environmental Conservation Law (ECL) § 71-2103, and 6 N.Y. Code of Rules and Regs. (NYCRR) § 217-3 into what the OAG alleged to be “repeated, persistent, and unlawful” idling within the meaning of Executive Law § 63(12) by school buses owned and operated by Logan Bus Company, Inc. and its affiliated companies Logan Transportation System, Inc., Bobby’s Bus Company, Grandpa Bus Company, Little Lisa Bus Company, Little Richie Bus Service, Lorinda Enterprise, Lorissa Bus Service, and Little Linda Bus Company (collectively, “Logan” unless otherwise indicated).

2. Although Logan disputes all allegations of unlawful idling, it has cooperated with the OAG’s investigation. This Assurance of Discontinuance

(Assurance) is the result of extended negotiations between the OAG and Logan, and the parties enter into the Assurance in order to avoid the expense and exposure of litigation. Logan has already begun to implement some of the provisions described in the “Relief” section below, and the OAG has considered this factor, as well as Logan’s cooperation, in determining that the relief contained in this Assurance is appropriate.

STATUTORY BACKGROUND

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

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THE PUBLIC HEALTH CONSEQUENCES OF IDLING

7. 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 (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.

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

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11. The OAG obtained and analyzed the data recorded by the DOE-required telematic devices on Logan's school buses for the time period between

September 4, 2019, and December 31, 2019. The OAG analyzed a subset of this data, focusing specifically on those instances where the buses' engines were running, but the buses were not moving, during the early morning hours, in a bus yard. Those instances numbered in the thousands. The OAG alleges that the majority of these instances represent unlawful idling. Logan disputes the accuracy and reliability of the telematic data.

12. Logan asserts that these instances of engine idling did not violate any ordinance because they fall within one or more of the exceptions listed at 6 NYCRR § 217-3.3 and NYC Admin. Code § 24-163(f).

13. While Logan also contests the OAG's assertions that its buses were unlawfully idling, it has agreed to this Assurance in settlement of the alleged violations described above and to avoid the time, expense, and distraction of litigation.

14. 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 effective date of this Assurance, which shall be the day the last signatory signs this Assurance (Effective Date).

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

RELIEF

15. **Payment of Costs Not Covered By EPA Clean Bus Grants**

Logan has received a Clean Bus grant from EPA to purchase twenty-five (25) Type C electric school buses and twenty-five (25) Type A electric school buses as well as related electrical/charging infrastructure.

a. After the rebates provided by the EPA Clean Bus grant for the Type A and C buses and their related electrical/charging infrastructure, Logan will still owe excess costs for the ESBs, consisting of NYS sales tax, NYS tire tax, document fees and other fees (Excess Costs).

b. Logan will fund the Excess Costs for the Type A and C buses and their related electrical/charging infrastructure so that it can take ownership of the electric school buses.

c. Logan will comply with all of the EPA Clean Bus grant conditions.

d. Logan will send OAG a copy of any reports it sends to EPA. This requirement will begin July 1, 2024, and continue through the Term of this Assurance, as set forth in Paragraph 19, for the purpose of demonstrating that it has complied with the requirements of this paragraph.

e. Logan will make its best efforts to take all necessary steps required by the relevant utility and municipal agencies to ensure that all electrical and

infrastructure improvements are made to its bus yards so that they can support the requirements of the electric school buses.

16. **Failure to Obtain Grants and Rebates**

a. In the event that Logan fails to purchase at least 12 Type C ESBs by December 31, 2026, Logan shall pay for the repowering of four (4) Type C or D internal combustion engine buses.

b. If Logan has substantially complied with all of the requirements of Paragraph 15, but the utility cannot provide adequate electricity to support some or all of the ESBs by December 31, 2026, Logan and OAG will meet and confer as to a reasonable extension of time for Logan to complete the purchase of the ESBs.

c. If Logan has substantially complied with all of the requirements of Paragraph 15, but delivery of the ESBs is delayed, Logan and OAG will meet and confer as to a reasonable extension of time for Logan to complete the purchase of the ESBs.

17. **Installation of Automatic Shut-off Devices**

a. Subject to the exception set forth in subparagraph 18(c) below, Logan will install automatic shut-off devices on all of its Type C and D school buses powered by an internal combustion engine and set the shut-off time to three (3) minutes, except when a school bus is engaged in a Diesel Particulate Filter (DPF) re-generation self-cleaning process. This provision does not apply to any vehicles other than Type C and D internal combustion engine school buses.

b. Logan will complete the installation of the automatic shut-off devices on the following schedule:

i. Fifty (50%) percent of Logan's internal combustion engine fleet within 180 days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Logan or its counsel shall send OAG a written statement attesting to such completion.

ii. One Hundred (100%) of Logan's internal combustion engine fleet within 360 days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Logan or its counsel shall send OAG a written statement attesting to such completion.

c. The requirement to install automatic shut-off devices does not apply to any school buses that Logan will retire at the end of the following school years: 2023-2024, 2024-2025, 2025-2026 and 2026-2027.

18. **Idling Reduction Measures**

a. Logan states that it has and continues to implement its Anti-Idling Plan (Plan), a copy of which is annexed hereto as Exhibit A. The Plan contains guidance for school bus drivers, safety officers/yard men, and facility and operations managers on how to minimize unnecessary idling based on information from the Environmental Protection Agency's School Bus Idle Reduction website.

b. Logan agrees to continue implementing its Anti-Idling Plan to the best of its ability as long as it operates diesel and gasoline fueled buses. Logan maintains the discretion to make changes to the policy to best meet its operational

needs but will continue to stress the environmental and public health importance of reducing unnecessary idling.

c. **Driver Education:** Logan's bus drivers will receive an anti-idling training at least once a year, as part of a refresher course or as a stand-alone course, depending on whether the driver is already employed or a new hire. Such anti-idling training will include, at the minimum, the information contained in Exhibit B. All drivers employed by Logan as of the Assurance's Effective Date shall receive the anti-idling training within six (6) months of the Effective Date. Within thirty (30) days after the completion of this anti-idling training by all drivers, Logan shall send OAG a written statement attesting to such completion. Drivers hired after the Effective date of this Assurance will receive the anti-idling training within six (6) months of their hire date.

MISCELLANEOUS

19. **Term**

The Term of this Assurance begins on its Effective Date and shall extend through the later of : (1) five (5) years, or (2) the longest of Logan's reporting obligations, not to exceed five (5) years from the date Logan receives the grant from one of the Federal, State local and utility agencies to which Logan has applied.

20. **Covenant Not to Sue**

In consideration of Logan's agreement to undertake the actions above (Purchasing/Repowering of Electric School Buses; Installation of Automatic Shut-off Devices; and Idling Reduction Measures), the OAG agrees that it will not institute

an enforcement action against Logan regarding the allegations stated above for the period September 4, 2019, through this Assurance's Effective Date as long as Logan substantially complies with all of its obligations in this Assurance.

21. **Non-Compliance**

If OAG believes that Logan has not complied with any of the provisions of this Assurance, OAG will send Logan a written Notice of Non-Compliance setting forth the specific provision(s) with which the OAG believes Logan is in non-compliance. Logan shall have thirty (30) days from its actual receipt of the Notice of Non-compliance to remedy any non-compliance ("Cure Period") before the OAG may take any further action against Logan.

d. Notice must be given by United States mail or by any method which provides delivery confirmation, and by email, to all of the addresses below:

i. Logan Bus Company

Corey Muirhead
Logan Bus Company
cmuirhead@loganbus.com
97-14 Atlantic Avenue
Ozone Park, NY 11416

ii. with a copy to:

Davidoff Hutcher & Citron LLP
Attn: Charles Capetanakis, Esq.,
605 Third Avenue, New York 10158
cc@dhclegal.com

22. **Enforcement**

a. If Logan receives a Notice of Non-Compliance which states that the OAG believes that Logan has not substantially complied with a provision(s) of this

agreement, and after Logan has been given a thirty-day Cure Period to substantially comply, and if the OAG believes that Logan has not demonstrated substantial compliance with the provision(s) at issue within the Cure Period, then Logan and the OAG will meet and confer as to an acceptable resolution. Such meet and confer shall take place within 30 days of the conclusion of Logan's Cure Period.

b. If the parties are not able to resolve the issue after the meet and confer in subparagraph (a) above, 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(s) above, the OAG may seek penalties for any idling violations that have taken place during the period of non-compliance, which shall begin with Logan's receipt of the Notice of Non-Compliance.

23. **Court Action**

a. Any civil action or proceeding must be adjudicated by the courts of the State of New York in either New York, Kings or Queens Counties. Logan waives any objection based upon personal jurisdiction, inconvenient forum, or venue for purposes of disputes concerning or enforcement of this agreement only.

b. If a court of competent jurisdiction determines that Logan 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. For purposes of making this determination, the court shall not consider actions taken by Logan

employees outside of the scope of their employment duties at Logan to constitute bad faith by Logan.

24. **Effects of Assurance**

All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Logan. Logan 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.

25. **Communications**

All notices, reports, requests, and other communications pursuant to this Assurance, other than issues related to Compliance pursuant to the provisions above, must reference Assurance No. 24-033, shall be in writing and shall be given by electronic mail only:

If to the Logan, to:
Logan Bus Company
Corey Muirhead
97-14 Atlantic Avenue
Ozone Park, NY 11416
cmuirhead@loganbus.com

or in his/her absence, to the person holding the title of Owner of Logan Bus Company,

with a copy to:
Davidoff Hutcher & Citron LLP
Attn: Charles Capetanakis, Esq.
605 Third Avenue, New York 10158
cc@dhclegal.com

If to the OAG, to:
Yueh-ru Chu
Section Chief, Affirmative Litigation
Environmental Protection Bureau

28 Liberty Street, 19th floor
New York, New York 10005
e-mail: Yueh-ru.Chu@ag.ny.gov

or in her absence, to the person holding the title of Section Chief, Affirmative Litigation.

26. **Representations and Warranties**

The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Logan and the OAG's own factual investigation as set forth in Findings, above. Logan represents and warrants that it has not made any material representations to the OAG that are false or misleading. If any material representations by Logan are later found to be false or misleading, this Assurance is voidable by the OAG in its sole discretion.

27. Other than those explicitly set forth in this Assurance, Logan and the OAG have not made or relied upon any other representations, inducements, promises, understandings, conditions, and warranties in agreeing to this Assurance.

28. Logan represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Logan further represents and warrants that Logan, by Lorinda Logan, Richard Logan, Jr., and Michael Tornabe, as the signatories to this Assurance, are duly authorized officers of the companies set forth below and are acting at the direction of those companies.

General Principles

29. Logan shall make all commercially reasonable 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).

30. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

31. 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.

32. Logan acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

33. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

34. 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.

35. 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.

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

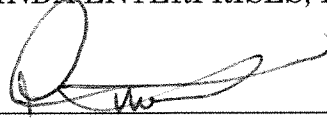
LETITIA JAMES
Attorney General of the
State of New York
28 Liberty Street
New York, NY 10005

Dated: July 8, 2024

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

LORISSA BUS SERVICE INC.
LITTLE LISA BUS CO., INC.
BOBBY'S BUS CO., INC.
LORINDA ENTERPRISES, Ltd.

By: _____



Michael Tornabe, President
Lorissa Bus Service Inc.
Little Lisa Bus Co., Inc.
Bobby's Bus Co., Inc.
Lorinda Enterprises, Ltd.

STATE OF NEW YORK) ss.:

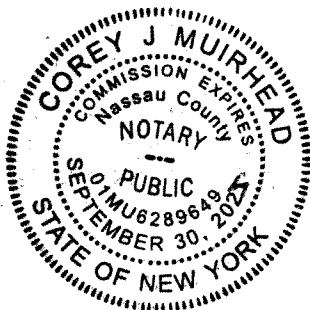
COUNTY OF Queens)

On the 17th day of June in the year 2024 before me personally came Michael Tornabe to me known, who, being by me duly sworn, did depose and say that he has a business address at Lorissa Bus Service Inc., 97-14 Atlantic Avenue, Ozone Park, NY 11416; that he is the President of Lorissa Bus Service Inc., Little Lisa Bus Co., Inc., Bobby's Bus Co., Inc. and Lorinda Enterprises, Ltd., four of the corporations described in and which executed the above instrument; that he knows the seals of said corporations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

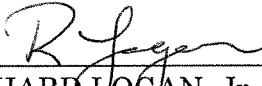
Sworn to before me this
17th day of June, 2024



NOTARY PUBLIC



GRANDPA'S BUS CO., INC.
LITTLE RICHIE BUS SERVICE, INC.

By: 
RICHARD LOGAN, Jr., President
Grandpa's Bus Co., Inc.
Little Richie Bus Service, Inc.

STATE OF NEW YORK) ss.:

COUNTY OF Queens)

On the 1st day of June in the year 2024 before me personally came Richard Logan, Jr., to me known, who, being by me duly sworn, did depose and say that he has a business address at Grandpa's Bus Co., Inc., 97-14 Atlantic Avenue, Ozone Park, NY 11416; that he is the President of Grandpa's Bus Co., Inc. and Little Richie Bus Service, Inc., two of the corporations described herein and which executed the above instrument; that he knows the seals of said corporations; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this
1st day of June, 2024

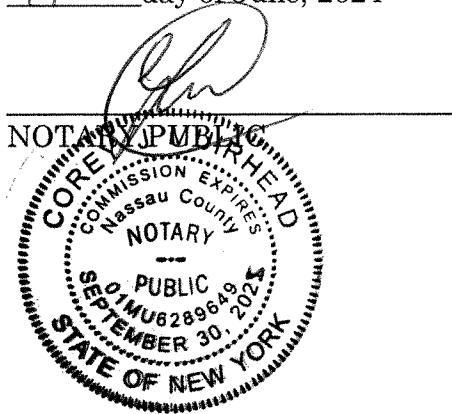


EXHIBIT A

97-14 Atlantic Avenue
Ozone Park, N.Y. 11416
Phone: 718 738 7373
Fax: 718 848 7953
www.Loganbus.com

Anti Idling Plan

Logan Bus & Affiliates wish to reinforce our 2004 "NO IDLING OPERATION PLAN" for all school bus drivers. Our policy objectives and guidance are directly taken from the United States Environmental Protection Agency *Clean School Bus National Idle Reduction Campaign.* <https://www.epa.gov/dera/school-bus-idle-reduction>

Rationale: Diesel exhaust from idling school buses can accumulate in and around the bus and pose a health risk, both to children and drivers. Exposure to diesel exhaust can cause lung damage and respiratory problems. Diesel exhaust also exacerbates asthma and existing allergies, and long-term exposure is thought to increase the risk of lung cancer. Idling buses also waste fuel and financial resources.

Purpose: Eliminate all unnecessary idling by Logan Bus & Affiliates school buses such that idling time is minimized in all aspects of school bus operation.

1. Guidance for School Bus Drivers:

- 1) When school bus drivers arrive at loading or unloading areas to drop off or pick up passengers, they should turn off their buses as soon as possible to eliminate idling time and reduce harmful emissions. The school bus should not be restarted until it is ready to depart and there is a clear path to exit the pick-up area. Exceptions include conditions that would compromise passenger safety, such as: Extreme weather conditions and idling in traffic.
- 2) Within our facilities, we wish to limit the idling time during early morning warm-up to what is recommended by the manufacturer (generally 3-5 minutes) in all but the coldest weather.
- 3) Buses should not idle while waiting for students during field trips, extracurricular activities or other events where students are transported off school grounds.
- 4) In colder weather, schools are directed to provide a space inside the school where bus drivers who arrive early can wait.
- 5) In colder weather, if the warmth of the bus is an issue, idling is to be at a very minimum and occur outside the school zone the "warmed" bus is to enter the school zone as close to pick-up time as possible to maintain warmth and then shut down.
- 6) All drivers shall receive a copy of this bulletin at the beginning of every school year

2. Guidance for Safety Officers / Yard Men:

- 1) At the start of every operational day, our Safety Officers/Yard Men are monitoring their respective yards for any idling that is occurring and the following preventive and instructive measures are being taken:
- 2) Any buses that are on and visually there is no pre-trip being conducted at the very moment, the safety officer will ensure that the vehicle is immediately turned off.
- 3) The driver of the vehicle will be immediately reinstructed on the NYC Idling Law and our enforcement and adherence by the safety officer.
- 4) Safety officers report to the Safety Department all vehicles/drivers that continue to not adhere to the idling laws in the yards.
- 5) Drivers are brought in to see management and issued reinstruction and re-training in which all these are documented.
- 6) Idling memos are attached to driver trip cards reminding them of the health and monetary impact that failing to follow the idling laws have.

3. Guidance for Facility and Operations Managers:

- 1) Place Anti Idling Stickers in every school bus stating “State Law requires buses must not idle more than 3 minutes. Minimum Fine \$350. Driver Must Pay”.
- 2) All school bus keychains must have the red key tag stated “State Law requires buses must not idle more than 3 minutes. Minimum Fine \$350. Driver Must Pay”
- 3) Post Anti Idling “State Law requires buses must not idle more than 3 minutes. Minimum Fine \$350. Driver Must Pay” at every facility near dispatch.
- 4) Post “Reduced Idling = Cleaner Air EPA April 2006 Poster in every drivers’ room at every year.
- 5) Send electronic memos to all drivers further reminding them of the idling laws.
- 6) Hand out the Idling Acknowledgement with every new hire.

4. Guidance for Training / Safety School

- 1) Add anti Idling curriculum to employee on board training.
- 2) Add a portion of anti-idling training at the twice a year Fall and Spring Refresher courses.

**ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL PROTECTION BUREAU**

In the Matter of

Assurance No. 24-035

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

PIONEER TRANSPORTATION CORP.,

Respondents.

ASSURANCE OF DISCONTINUANCE

1. The Office of the Attorney General of the State of New York (OAG) commenced an investigation pursuant to under 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, and unlawful” idling within the meaning of Executive Law § 63(12) by school buses owned and operated by Pioneer Bus, Inc. (Pioneer). This Assurance of Discontinuance (Assurance) contains the findings of the OAG’s investigation, and the relief agreed to by the OAG and Pioneer, whether acting through their respective directors, officers, employees, representatives, agents, or affiliates (collectively, the Parties).

2. Although Pioneer disputes all allegations of unlawful idling, it has cooperated with the OAG’s investigation. This Assurance of Discontinuance (Assurance) is the result of extended negotiations between the OAG and Pioneer,

and the parties enter into the Assurance in order to avoid the expense and exposure of litigation.

STATUTORY BACKGROUND

3. 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 § 217-3.2.¹ This proscription applies to both diesel and gasoline-powered vehicles. *Id.* The exceptions to these prohibitions are limited and relate to, for example, temperature and operations that are powered by the engine, such as the use of a lift, and other conditions. *Id.* at § 217-3.3.

4. The OAG has authority pursuant to the Environmental Conservation Law (ECL) to enforce these regulations and collect penalties. In the case of a first violation, the ECL authorizes a penalty of not less than \$500 and no more than \$18,000. ECL § 71-2103. For subsequent violations, the OAG can collect penalties of no more than \$26,000 for each violation. *Id.*

5. 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.” Exec. Law § 63(12). Illegal acts under

¹ 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).

Executive Law § 63(12) include the violation of any state, federal, or local law or regulation.

6. In 2022, the New York State legislature passed a statewide mandate requiring all new school bus purchases to be electric starting in 2027 and the entire state's school bus fleet to be electric by 2035.

THE PUBLIC HEALTH CONSEQUENCES OF IDLING

7. 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 (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.

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

9. Pioneer's Bronx bus yard is located in an area that has been mapped by the New York State Department of Environmental Conservation as environmental justice areas. Such areas are already disproportionately burdened by environmental harms such as air pollution.

OAG'S INVESTIGATION AND FINDINGS

10. In 2018, OAG began investigating what it alleges to be unlawful engine idling by school buses owned and operated by Pioneer. In 2019, the New York City Department of Education (DOE) required a telematic device to be installed in all school buses that transport New York City public school pupils. The devices continuously record engine operation data and bus location when the buses were operating, including when the engine is on, but the bus is not moving. Pioneer disputes the accuracy and reliability of the data recorded by the telematic devices.

11. The OAG obtained and analyzed the data recorded by the DOE-required telematic devices on Pioneer's school buses for the time period between September 4, 2019, and December 31, 2019. The OAG then analyzed a subset of this data, focusing specifically on those instances where the buses' engines were running, but the buses were not moving, during the early morning hours, in a bus yard. Those instances numbered in the thousands. The OAG alleges that the

majority of these instances represent unlawful idling. Pioneer disputes the accuracy and reliability of the telematic devices.

12. Pioneer asserts that these instances of engine idling did not violate any ordinance because they fall within one or more of the exceptions listed at 6 NYCRR § 217-3.3 and NYC Admin. Code § 24-163(f).

13. While Pioneer contests the OAG's assertions that its buses were unlawfully idling, it has agreed to this Assurance in settlement of the alleged violations described above and to avoid the time, expense, and distraction of litigation.

14. 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 ECL § 71-2103, or any other idling law, based on the conduct described above from September 4, 2019 to the to the effective date of this Assurance, which shall be the day the last signatory signs this Assurance (Effective Date).

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

RELIEF

15. Payment of Expenses Not Covered By EPA Clean Bus Grants

Pioneer has been awarded a Clean School Bus rebate from EPA to offset the cost of purchasing twenty-five (25) electric school buses and related electrical/charging infrastructure.

a. After the EPA Clean School Bus rebate for the electric school buses, Pioneer will still owe excess costs consisting of New York State sales tax, tire tax, document fees and other fees (Excess Costs).

b. Pioneer will pay the Excess Costs for the ESBs and so that it can acquire the electric school buses.

c. Pioneer will comply with all of the EPA Clean Bus grant conditions.

d. Pioneer will, in a timely manner, take all steps required by the relevant utility and municipal agencies to ensure that all necessary electrical and infrastructure upgrades are made to Pioneer's bus yard(s) so that the yard(s) can support the power requirements of the electric school buses.

e. Pioneer will send OAG a copy of any report it is required to submit to EPA within thirty days (30) of submission to EPA. This requirement will continue through the Term of this Assurance, as defined in Paragraph 19 below.

16. Failure to Purchase Electric School Buses

a. In the event that Pioneer fails to take all necessary steps to purchase at least four (4) ESBs through the Clean Bus grant by December 31, 2025, Pioneer will

pay out-of-pocket for the cost of repowering of two (2) type C or D internal combustion engine buses. Pioneer will pay for the repowered school bus by December 31, 2025 and provide OAG with proof of repowering within thirty (30) days of completion.

b. If Pioneer has complied with all requirements in Paragraph 15, but the utility cannot supply adequate electricity for some or all of the ESBs by December 31, 2025, Pioneer and OAG will meet and confer as to a reasonable extension of time for Pioneer to complete the purchase of the ESBs.

c. If Pioneer has complied with all requirements in Paragraph 15, but the delivery of the ESBs is delayed, Pioneer and OAG will meet and confer as to a reasonable extension of time for Logan to complete the purchase of the ESBs.

17. Anti-Idling Automatic Shut-off

Pioneer will either install anti-idling timers or re-program the telematic devices on all of its Type C and D school buses powered by an internal combustion engine to cause the engine to automatically shut off after three minutes. This requirement will not apply to any vehicles other than Type C and D school buses. Pioneer will complete the installation of the devices and/or re-programming of its buses on the following schedule:

a. Fifty percent (50%) of Pioneer's non-electric buses within 90 days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Pioneer or its counsel shall send OAG a written statement attesting to such completion.

b. The remaining fifty percent (50%) of Pioneer's non-electric fleet within 180 days of this Assurance Effective Date. Within thirty (30) days after the completion of this work, Pioneer or its counsel shall send OAG a written statement attesting to such completion.

c. Pioneer will provide annual confirmation that the automatic shut-off devices on its internal combustion engine powered buses are functioning. Such confirmation will be provided to the OAG on or before August 31 each year, beginning with August 31, 2025.

18. **Additional Idling Reduction Measures**

Pioneer agrees to implement the idling reduction measures set forth below:

a. Conduct daily inspections of its bus yards to limit idling that is not required for maintenance or warming up or cooling down the bus. Pursuant to 6 N.Y.C.R.R. § 217.3-3(b), idling for the purpose of adjusting the temperature of the bus will be for no longer than is necessary to achieve the temperature.

b. Driver Education: Pioneer's bus drivers will receive an anti-idling training at least once a year as part of a refresher course. Such anti-idling training will include, at a minimum, the information contained in Schedule A. All drivers employed by Pioneer as of the Effective Date of this Assurance shall receive the anti-idling training within six months of the Effective Date of this Assurance. Within thirty (30) days after the completion of this driver training, Pioneer shall send OAG a written statement attesting to such completion. Drivers hired after the

Effective Date of this Assurance will receive the anti-idling training within six (6) months of their hire date.

c. **Signage:** Pioneer states that it posts signs in all of its bus yards reminding drivers not to idle and posts stickers inside its buses reminding drivers not to idle. Pioneer agrees to maintain these measures subject to any changes necessary to best meet its operational needs but will continue to stress the environmental and public health importance of reducing unnecessary idling.

MISCELLANEOUS

19. **Term:** The Term of this Assurance is from its Effective Date through thirty days after the final report Pioneer is required to submit to EPA under the Clean Bus Grant, or five years, whichever period of time is shorter. If Pioneer does not receive or accept a Clean Bus Grant, the term of this Assurance shall extend through Pioneer's provision of proof to OAG that it paid for the repowering of a type C or D internal combustion engine school bus.

20. **Covenant Not to Sue:** In consideration of Pioneer's agreement to undertake the actions in Paragraphs 15 (Payment of Expenses Not Covered By EPA Clean Bus Grants), 17 (Anti-Idling Automatic Shut-off) and 18 (Idling Reduction Measures) above, the OAG agrees that it will not institute an enforcement action against Pioneer regarding alleged violations of 6 N.Y.C.R.R. § 217.3.2 and N.Y.C. Admin. Code § 24-163(a) from the period September 1, 2019 through this Assurance's Execution Date as long as Pioneer substantially complies with all of its obligations under Paragraphs 15, 17 and 18.

21. **Non-Compliance:** If OAG believes that Pioneer has not complied with any of the provisions of this agreement, OAG will give Pioneer written notice of the particular provision(s) with which it believes Pioneer is in non-compliance. Pioneer shall have 30 days from its actual receipt of the notice to remedy any non-compliance before the OAG may take any further action against Pioneer.

a. Notice must be given by United States mail by any method which provides delivery confirmation and by email to all of the addresses below:

Pioneer Transportation Corp.
Attn: Graham Kadar
2890 Arthur Kill Road
Staten Island, NY 10309
E-Mail: gkadar@pioneerbus.com

With a cc to:

Silverman Shin & Schneider PLLC
88 Pine Street, 22nd Floor
New York, NY 10005
Attn: Peter R. Silverman
E-Mail: psilver@silverfirm.com

22. **Enforcement:** If Pioneer receives a Notice of Non-compliance which states that the OAG believes that Pioneer has not substantially complied with a provision(s) of this agreement, and the OAG does not believe that Pioneer has demonstrated sufficient compliance with the provision(s) at issue within 30 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 15, 17 or 18, the OAG may seek penalties for any idling violations that have taken

place during the period of non-compliance, which shall begin with Pioneer's receipt of the Notice of Non-compliance.

23. **Court Action:** 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. Pioneer waives any objection based upon personal jurisdiction, inconvenient forum, or venue for purposes of disputes concerning or enforcement of this agreement only.

a. If a court of competent jurisdiction determines that the Pioneer 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.

24. **Effects of Assurance:** All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Pioneer. Pioneer 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.

25. Nothing contained herein shall be construed as to deprive any person or legal entity of any private right under the law.

26. **Communications:** 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. 24-036 and shall be in writing and shall be given by electronic mail only:

If to the Pioneer, to:

Pioneer Transportation Corp.
Attn: Graham Kadar
E-Mail: gkadar@pioneerbus.com

or in his absence, to the person holding the title of Owner of Pioneer Transportation Corp., with a cc to:

Silverman Shin & Schneider PLLC
Attn: Peter R. Silverman
E-Mail: psilver@silverfirm.com

If to the OAG, to:

Yueh-ru Chu, Section Chief, Affirmative Litigation,
Environmental Protection Bureau,
28 Liberty Street, 19th flr.
New York, New York 10005
e-mail: Yueh-ru.Chu@ag.ny.gov

or in her absence, to the person holding the title of Section Chief, Affirmative Litigation.

27. **Representations and Warranties:** The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Pioneer and its counsel and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 14 above. Pioneer represents and warrants that neither it nor its counsel has made any material representations to the OAG that

are false or misleading. If any material representations by Pioneer or its counsel are later found to be false or misleading, this Assurance is voidable by the OAG in its sole discretion.

28. Other than those explicitly set forth in this Assurance, Pioneer and the OAG have not made or relied upon any other representations, inducements, promises, understandings, conditions, and warranties in agreeing to this Assurance.

29. Pioneer represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Pioneer further represents and warrants that Pioneer, by Neil Strahl, as the signatory to this Assurance, is a duly authorized representative of Pioneer Transportation and is acting at the direction of Pioneer.

General Principles:

30. Pioneer 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).

31. Nothing in this Assurance shall relieve Pioneer of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

32. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Pioneer violates the Assurance after its Effective Date.

33. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

34. 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.

35. Pioneer acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

36. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

37. 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.

38. 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.


39. 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: ~~June~~ ^{July 8}, 2024

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

PIONEER TRANSPORTATION, INC.

By: 
Neil Strahl, President
Pioneer Transportation Corp.

STATE OF YORK)
)
COUNTY OF) ss.:

On the 20th day of June in the year 2024 before me personally came Neil Strahl, to me known, who, being by me duly sworn, did depose and say that he has a business address at: Pioneer Transportation Corp., 2890 Arthur Kill Road, Staten Island, NY 10309, that he is the President of Pioneer Transportation Corp., the corporation described herein and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by authority of the board of directors of said corporation, and that he signed his name thereto by like authority.

Sworn to before me this

20th day of June, 2024



NOTARY

MARIA E GILSENAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GI6332587
Qualified in Richmond County
My Commission Expires 11-02-2023 7

SCHEDULE A

Information Required to Be Included in 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. “Myth busting” 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.

ATTORNEY GENERAL OF THE STATE OF NEW YORK
ENVIRONMENTAL PROTECTION BUREAU

In the Matter of

Assurance No. 24-033

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

TOTAL TRANSPORTATION CORP. and its
affiliates L&M Bus Company,
Quality Transportation Corp. and
Pride Transportation Services, Inc.,

Respondents.

ASSURANCE OF DISCONTINUANCE

1. In 2018, the Office of the Attorney General of the State of New York (OAG) commenced an investigation pursuant to N.Y. Executive Law § 63(12), New York Environmental Conservation Law (ECL) § 71-2103, and 6 N.Y. Code of Rules and Regs. (NYCRR) § 217-3 into what the OAG alleged to be “repeated, persistent, and unlawful” idling within the meaning of Executive Law § 63(12) by school buses owned and operated by Total Transportation Corp. and its affiliates L&M Bus Company, Quality Transportation Corp. and Pride Transportation Services, Inc. (collectively, Total, unless otherwise indicated).

2. Although Total disputes all allegations of unlawful idling, it has cooperated with the OAG’s investigation. This Assurance of Discontinuance (Assurance) is the result of extended negotiations between the OAG and Total, and the parties enter into the Assurance in order to avoid the expense and exposure of litigation. Total has already begun to implement some of the provisions described in

the “Relief” section below, and the OAG has considered this factor, as well as Total’s cooperation, in determining that the relief contained in this Assurance is appropriate.

STATUTORY BACKGROUND

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

4. The OAG has authority pursuant to the Environmental Conservation Law (ECL) to enforce these regulations and collect penalties. In the case of a first violation, the ECL authorizes a penalty of not less than \$500 and no more than \$18,000. ECL § 71-2103. For subsequent violations, the OAG can collect penalties of no more than \$26,000 for each violation. *Id.*

5. 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.” Exec. Law § 63(12). Illegal acts under

* 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).

Executive Law § 63(12) include the violation of any state, federal, or local law or regulation.

6. In 2022, the New York State legislature passed a statewide mandate requiring all new school bus purchases to be electric starting in 2027 and the entire state's school bus fleet to be electric by 2035.

THE PUBLIC HEALTH CONSEQUENCES OF IDLING

7. 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 (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.

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

9. All of Total's bus yards are located in areas that have been mapped by the New York State Department of Environmental Conservation as environmental justice areas. Such areas are already disproportionately burdened by environmental harms such as air pollution.

OAG'S INVESTIGATION AND FINDINGS

10. In 2018, OAG began investigating what it alleges to be unlawful engine idling by school buses owned and operated by Total. In 2019, the New York City Department of Education (DOE) required a telematic device to be installed in all school buses that transport New York City public school pupils. The devices continuously record engine operation data and bus location when the buses were operating, including when the engine is on, but the bus is not moving. Total disputes the accuracy and reliability of the data recorded by the telematic device.

11. The OAG obtained and analyzed the data recorded by the DOE-required telematic devices on Total's school buses for the time period between September 4, 2019, and December 31, 2019. The OAG analyzed a subset of this data, focusing specifically on those instances where the buses' engines were running, but the buses were not moving, during the early morning hours, in a bus yard. Those instances numbered in the thousands. The OAG alleges that the

majority of these instances represent unlawful idling. Total disputes the accuracy and reliability of the telematic data.

12. Total asserts that these instances of engine idling did not violate any ordinance because they fall within one or more of the exceptions listed at 6 NYCRR § 217-3.3 and NYC Admin. Code § 24-163(f).

13. While Total also contests the OAG's assertions that its buses were unlawfully idling, it has agreed to this Assurance in settlement of the alleged violations described above and to avoid the time, expense, and distraction of litigation.

14. 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 effective date of this Assurance, which shall be the day the last signatory signs this Assurance (Effective Date).

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the

Parties:

RELIEF

Purchasing/Repowering of Electric School Buses

15. Total agrees to acquire either new electric school buses or repower internal combustion engine (ICE) school buses in one of the following combinations:

- a. Purchase four (4) new electric school buses; or
- b. Purchase three (3) new electric school buses and repower one (1)

ICE bus; or

- c. Purchase two (2) new electric school buses and repower four (4)

ICE buses; or

- d. Purchase one (1) new electric school bus and repower seven (7)

ICE buses.

All new purchased school buses and/or repowered school buses will be Type C or D school buses. "Repowering" refers to removing the ICE from a school bus and replacing it with an electric motor and any other associated modifications to the school bus.

16. **Use of Grants and Rebates**

a. Total may pay for the purchase of new electric school buses and/or repowering of internal combustion engine school buses, in whole or in part, by applying for grants, rebates and/or incentives (Bus Grant(s)) from the New York State Bus Incentive Program (NYSBIP) run by the New York State Energy

Research and Development Agency (NYSERDA), or any other Federal, State, local or utility incentive program.

b. Total may pay for any charging infrastructure and/or electrical upgrades and/or modifications necessary to charge and run the new purpose-built electric school buses and/or repowered school buses in whole or in part by applying for grants, rebates and/or incentives (Charging Grant(s)) from NYSERDA, or any other Federal, State local or utility incentive program.

c. Total may apply for any additional grants, rebates and/or incentives for which it is eligible from any Federal, State, local or utility incentive program to offset the costs of purchasing or repowering its school buses and purchasing charging infrastructure and/or electrical upgrades. Total may make as many grant applications as necessary to fulfill its obligations under this Assurance.

d. Total has already begun the process of applying for Bus and Charging Grants and will begin the application process for any additional grants within ninety (90) days of Effective Date of this Assurance.

e. Every six (6) months, Total will send the OAG a report setting forth the Bus Grants and Charging Grant applications it has submitted, the decisions on those grants, and any supplemental reports required under the terms of any Bus or Charging Grant. The first report shall be due January 15, 2025.

17. Failure to Obtain Grants and Rebates

In the event that Total fails to obtain grants and rebates sufficient to cover one of the combinations of new and repowered buses set forth in Paragraph 15(a)-

(c), by June 30, 2027, Total shall pay for the repowering of four (4) Type C or D internal combustion engine buses, less any repowered buses it has obtained through any grants or rebates.

18. **Installation of Automatic Shut-off Devices**

a. Subject to the exception set forth in subparagraph 18(c) below, Total will install automatic shut-off devices on all of its school buses powered by an internal combustion engine and set the shut-off time to three (3) minutes, unless a school bus is engaged in a Diesel Particulate Filter (DPF) re-generation self-cleaning process.

b. Total will complete the installation of the automatic shut-off devices on the following schedule:

i. Fifty (50%) percent of Total's internal combustion engine fleet within one hundred eighty (180) days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Total or its counsel shall send OAG a written statement attesting to such completion.

ii. One Hundred (100%) of Total's internal combustion engine fleet within three hundred sixty (360) days of this Assurance's Effective Date. Within thirty (30) days after the completion of this work, Total or its counsel shall send OAG a written statement attesting to such completion.

c. The requirement to install automatic shut-off devices does not apply to any school buses that Total will retire at the end of the following school years: 2023-2024, 2024-2025 and 2025-2026.

19. **Idling Reduction Measures**

a. Total states that it already implements the idling reduction measures set forth below and agrees to make commercially reasonable efforts to maintain these measures:

i. Posts signs in all of its bus yards reminding drivers not to idle.

ii. Posts stickers or other notices inside its buses reminding drivers not to idle.

b. **Driver Education:** Total's bus drivers will receive an anti-idling training at least once a year, as part of a refresher course or as a stand-alone course, depending on whether the driver is already employed or a new hire. Such anti-idling training will include, at the minimum, the information contained in Schedule A. All drivers employed by Total as of the Assurance's Effective Date shall receive the anti-idling training within six (6) months of the Effective Date. Within thirty (30) days after the completion of this anti-idling training by all drivers, Total shall send OAG a written statement attesting to such completion. Drivers hired after the Effective Date of this Assurance will receive the anti-idling training within six (6) months of their hire date.

c. Total agrees to continue the implementing the idling reduction measures set forth above in subparagraphs (a) and (b) to the best of its ability as long as it operates diesel and gasoline fueled buses. Total maintains the discretion to make changes to the policy to best meet its operational needs but will continue to

make commercially reasonable efforts to stress the environmental and public health importance of reducing unnecessary idling.

MISCELLANEOUS

20. Term

The Term of this Assurance begins on its Effective Date and shall extend through the later of : (1) five (5) years, or (2) the longest of Total's reporting obligations, not to exceed five (5) years from the date Total receives the grant, under the various Federal, State local and utility grants for which Total has applied.

21. Covenant Not to Sue

In consideration of Total's agreement to undertake the actions above (Purchasing/Repowering of Electric School Buses; Installation of Automatic Shut-off Devices; and Idling Reduction Measures), the OAG agrees that it will not institute an enforcement action against Total regarding the allegations stated above for the period September 4, 2019 through this Assurance's Effective Date as long as Total substantially complies with all of its obligations in this Assurance.

22. Non-Compliance

If OAG believes that Total has not complied with any of the provisions of this Assurance, OAG will send Total a written Notice of Non-Compliance setting forth the specific provision(s) with which the OAG believes Total is in non-compliance. Total shall have thirty (30) days from its actual receipt of the Notice of Non-compliance to remedy any non-compliance ("Cure Period") before the OAG may take any further action against Total.

a. Notice must be given by United States mail or by any method which provides delivery confirmation and by email to all of the addresses below:

i. Total Transportation Corp.

Attn: Joseph Sgro, Regional Senior Vice-President
231 Malta Street
Brooklyn, New York 11207
Joseph.Sgro@FirstGroup.com

ii. with a copy to:

Davidoff Hutcher & Citron LLP
Attn: Charles Capetanakis, Esq.,
605 Third Avenue, New York 10158
cc@dhclegal.com

23. **Enforcement**

a. If Total receives a Notice of Non-Compliance which states that the OAG believes that Total has not substantially complied with a provision(s) of this agreement, and after Total has been given the opportunity to substantially comply, and if the OAG does not believe that Total has demonstrated substantial compliance with the provision(s) at issue within thirty-day Cure Period, then Total and the OAG will meet and confer as to an acceptable resolution. Such meet and confer shall take place within 30 days of the conclusion of Total's Cure Period.

b. If the parties are not able to resolve the issue after the meet and confer in subparagraph (a) above, 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(s) above, the OAG may seek penalties for any idling violations

that have taken place during the period of non-compliance, which shall begin with Total's receipt of the Notice of Non-Compliance.

24. **Court Action**

a. Any civil action or proceeding must be adjudicated by the courts of the State of New York in either New York, Kings or Queens Counties. Total waives any objection based upon personal jurisdiction, inconvenient forum, or venue for purposes of disputes concerning or enforcement of this agreement only.

b. If a court of competent jurisdiction determines that Total 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. For purposes of making this determination, the court shall not consider actions taken by Total employees outside of the scope of their employment duties at Total to constitute bad faith by Total.

25. **Effects of Assurance**

All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Total. Total 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.

26. **Communications**

All notices, reports, requests, and other communications pursuant to this Assurance, other than issues related to Compliance pursuant to the provisions above, must reference Assurance No. 24-033, shall be in writing and shall be given by electronic mail only:

If to the Total, to:

Total Transportation Corp,
Attn: Joseph Sgro, Regional Senior Vice-President
231 Malta Street
Brooklyn, New York 11207
Joseph.Sgro@FirstGroup.com

or in his absence, to the person holding the title of Owner of Total Transportation Corp.

with a copy to:

Davidoff Hutcher & Citron LLP
Attn: Charles Capetanakis, Esq.
605 Third Avenue, New York 10158
cc@dhclegal.com

If to the OAG, to:

Yueh-ru Chu
Section Chief, Affirmative Litigation
Environmental Protection Bureau
28 Liberty Street, 19th floor
New York, New York 10005

or in her absence, to the person holding the title of Section Chief, Affirmative Litigation.

27. **Representations and Warranties**

The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to the OAG by Total and the OAG's own factual

investigation as set forth in Findings above. Total represents and warrants that it has not made any material representations to the OAG that are false or misleading. If any material representations by Total are later found to be false or misleading, this Assurance is voidable by the OAG in its sole discretion.

28. Other than those explicitly set forth in this Assurance, Total and the OAG have not made or relied upon any other representations, inducements, promises, understandings, conditions, and warranties in agreeing to this Assurance.

29. Total represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved. Total further represents and warrants that Total, by Joseph Sgro, as the signatory to this Assurance, is a duly authorized officer of Total Transportation Corp. L&M Bus Company, Quality Transportation Corp., Pride Transportation Services, Inc. and is acting at the direction of those companies.

General Principles

30. Total shall make its commercially reasonable 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).

31. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

32. 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.

33. Total acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

34. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

35. 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.

36. 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.

37. 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: July 8, 2024

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 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 (NOx), sulfur oxides (SOx), 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. “Myth busting” 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.