

Client Alert

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Sitting Still (or How State Anti-Idling Laws are Landing Transit and Transportation Companies in Federal Court)

How can sitting still in the Northeast potentially land you in a world of trouble under the Federal Clean Air Act (CAA) and corresponding state laws? Quite easily, if you happen to be in or leave a vehicle with its engine on and the vehicle itself is not in motion for more than a few minutes. That is the definition of “unnecessary vehicle idling” in many jurisdictions.

Across the Northeast and elsewhere, unnecessary vehicle idling is, subject to certain nuances and exceptions, generally prohibited. Recently, violators have come under attack by non-governmental organizations. State penalties vary, but the potential exposure can be severe, especially when the statutory maximum available penalties are calculated pursuant to the federal CAA and compounded on a per-violation/per-day basis. Accordingly, owners and operators of all forms of trucking and transit companies should not sit still and should take proactive measures to educate or reeducate vehicle schedulers and operators alike on these anti-idling requirements.

Background

Anti-idling campaigns by the US Environmental Protection Agency (EPA) and state environmental regulators are nothing new.¹ Developments in vehicle technology, idling reduction technology installed at fixed locations, and the fuel and other cost savings realized have also worked to make unnecessary idling less likely and less harmful in the intervening years.² Nevertheless, non-governmental organizations (NGO) are taking up the charge anew and are literally “making a federal case” out of the matter, ensnaring owners and operators of vehicles that were allegedly left idling for too long.³

This most recent crop of federal cases in Massachusetts all target bus company entities, with a trend that seems to be spreading into Connecticut.⁴ To date, the NGOs’ strategy appears to target transit and trucking companies with: (a) advertised and fixed routes; (b) known locations for people and cargo transfer; and (c) fixed overnight vehicle parking areas. This approach may provide certain investigative

¹ See EPA, *Compilation of State, County, and Local Anti-Idling Regulations*, EPA420-B-06-004 (April 2006), <https://www.epa.gov/sites/production/files/documents/CompilationofStateIdlingRegulations.pdf>.

² See e.g., DOE, *Idle Reduction*, https://afdc.energy.gov/conserves/idle_reduction_basics.html (last visited Jan. 23, 2020); EPA, *Learn About Idling Reduction Technologies (IRTs) for Trucks and School Buses*, <https://www.epa.gov/verified-diesel-tech/learn-about-idling-reduction-technologies-irts-trucks-and-school-buses> (last visited Jan. 23, 2020).

³ See e.g., *Conservationists sue to curb Boston school bus idling*, wbur (July 11, 2019), <https://www.wbur.org/earthwhile/2019/07/10/conservation-law-foundation-transdev-air-pollution>; *Conservation Law Foundation sues Wynn Resorts over idling of shuttle buses at casino*, The Boston Globe (January 9, 2020), <https://www.bostonglobe.com/business/2020/01/09/conservation-law-foundation-sues-wynn-resorts-over-idling-shuttle-buses-casino/kjUPCM1I0ZnZmdBZP0EsiM/story.html>.

⁴ See e.g., *Conservation Law Found., Inc. v. Wynn Resorts, Ltd, et al.*, 20-cv-10033-DPW (D. Mass, filed Jan. 8, 2020); *Conservation Law Found., Inc. v. Academy Bus, LLC et al*, 20-cv-10032-DPW (D. Mass., filed Jan. 8, 2020); and Press Release, Conservation Law Foundation (December 17, 2019), <https://www.clf.org/newsroom/connecticut-school-bus-provider-polluting-neighborhoods/>.

efficiencies for environmental regulators and NGO plaintiffs alike, but it should by no means be viewed as a limitation on the types of entities that could be targeted for enforcement. Accordingly, it is critical that transit and trucking companies, both large and small, understand how this reinvigorated form of environmental enforcement works.

Most heavily regulated industries are aware that certain federal environmental statutes like the Clean Water Act, the Resource Conservation and Recovery Act, the Emergency Planning and Community Right-to-Know Act and the CAA each include provisions for “citizen suit” enforcement. In essence, private citizen suits are a supplement to the more traditional federal executive branch (i.e., EPA) enforcement under these federal statutes. Similar to EPA enforcement, should a private citizen substantially prevail in its environmental suit, all civil penalties are paid to the federal Treasury, and the private citizen may be able to collect reasonable attorney’s fees and other costs associated with bringing the suit to its conclusion.⁵ Universally, citizen suit provisions require 60-days advance notice to the alleged violator, the EPA and the applicable state regulator before a suit can be commenced in federal district court.

A Recent Example for Massachusetts

The anti-idling statute in Massachusetts is a state prohibition (subject to exceptions) against unnecessary vehicle idling for more than five minutes, with corresponding penalties for non-compliance ranging up to \$100 for a first offence to not more than \$500 for a succeeding offence.⁶ The same substantive anti-idling prohibition and exceptions also appear in Massachusetts’ air pollution control regulations.⁷ The enforcement authority and fine structures at the state level differ between the anti-idling statute and the air pollution control regulation.

In *Conservation Law Found., Inc. v. Academy Bus, LLC, et al.*, 20-cv-10032-DPW (D. Mass., filed Jan. 8, 2020), the plaintiff’s 60-day notice of intent to sue and subsequent complaint seek civil penalties in amounts just shy of \$100,000 per-violation/per-day, the maximum penalty civil penalty allowed under the CAA for this category of violation.⁸ The intuitive question one must ask is how a potential state law violation (wherein the Massachusetts legislature found a \$100-500 penalty appropriate) has escalated to a scenario where a private plaintiff is now demanding penalties one thousand times that amount. According to the plaintiff’s complaint, the magic lies in the CAA and, more particularly, provisions included in the Massachusetts State Implementation Plan (SIP) approved by EPA. For this case, the plaintiff alleges that the penalty provisions of the CAA apply; it maintains that Massachusetts’ EPA-approved SIP includes the state’s anti-idling regulation and that, on numerous occasions, the defendants had vehicles idling for longer than five minutes.

Voila! According to the plaintiff’s logic, the defendants have violated the federal CAA each-and-every time a bus sat idling for more than five minutes.

Of course, it remains to be seen: (1) whether the plaintiff’s legal rationale survives scrutiny; and (2) whether the fact finder will ultimately agree with the plaintiff’s offered version of the facts. As the newest round of cases is sorted, three additional points of caution should be noted in the interim: (1) these cases raise the specter of federal and state regulators’ taking a renewed interest in anti-idling efforts; (2) this may be just the beginning, as other non-governmental organizations may come out of the woodwork to use the CAA and state-specific idling statutes to go after a wide range of entities, such as delivery companies, ride-hailing companies, etc.; and (3) class actions and similar suits could be looming on the horizon. Transit and trucking companies looking to steer clear of enforcement should proactively take steps now to help avoid sorting these things out later in court or in the context of an enforcement action. A few things for companies to consider:

⁵ See, e.g., 42 U.S.C. § 7604(d), (g) (relevant CAA citizen suit provisions).

⁶ M.G.L. c. 90, § 16.

⁷ 310 CMR § 7.11(1)(b).

⁸ 42 U.S.C. § 7413; 40 C.F.R. §§ 19.2 & 19.4 (civil penalties as adjusted for inflation).

First, companies should be aware, educate and/or reeducate themselves on state and local vehicle anti-idling restrictions. In the Northeast, anti-idling restrictions and applicable exceptions will differ from state-to-state and even within states at the municipal level. For example, where vehicle idling is prohibited in Massachusetts for periods in excess of five minutes, this prohibition steps down to three minutes in Connecticut, albeit with different exceptions.⁹

Second, most anti-idling programs in the Northeast are not new. In some instances, however, what once may have been part of extensive outreach and training programs by regulators long ago may no longer be available or difficult to find.

Third, unnecessary vehicle idling wastes fuel and increases costs. Many tools, calculators and other resources are available to perform a benefit-cost analysis in order to justify a company's change in equipment and/or other operational changes to help avoid unnecessary idling.

Finally, environmental enforcement is sometimes unavoidable. Transit and trucking companies that are new to the Northeast or who have been subject to anti-idling enforcement in the past may want to develop more sophisticated complaint and enforcement response mechanisms. In particular, companies should have set procedures in place in the event that it receives an NGO citizen suit 60-day notice-of-intent-to-sue-letter or other enforcement correspondence from the EPA or applicable state regulatory body.

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⁹ See, 310 CMR § 7.11(1)(b) compared to RCSA § 22a-174-18(b)(3).