

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

<p>Conservation Law Foundation, Inc.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>First Transit, Inc.</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Case No. _____</p> <p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES</p> <p>(Clean Air Act, 42 U.S.C. §§ 7401, <i>et seq.</i>)</p>
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INTRODUCTION

1. This is a citizen enforcement suit brought by Plaintiff, Conservation Law Foundation, Inc. (“Plaintiff” or “CLF”), on behalf of its individual members, to redress and prevent Clean Air Act violations that negatively affect the health and lives of Connecticut residents by repeatedly exposing them to harmful pollutants.
2. Defendant First Transit, Inc. (“First Transit”) owns, operates, and/or manages a fleet of vehicles that travel and are housed in and around the State of Connecticut.
3. Defendant has repeatedly violated, is violating, and continues to violate the Clean Air Act (“CAA” or “Act”) and the Connecticut State Implementation Plan (“SIP”), specifically, the Connecticut motor vehicle idling limits contained within the federally enforceable Connecticut SIP.
4. Defendant has caused and/or allowed the operation of mobile sources when such mobile sources were not in motion in excess of the three-minute time period allowed by Regs. Conn. State Agencies § 22a-174-18(b)(3)(C), and not in accordance with any exceptions listed in Regs. Conn. State Agencies § 22a-174-18(b)(3)(C)(i) through (vii) or at § 22a-174-18(j).

5. Defendant's buses unlawfully pollute communities they are meant to serve. During a few hours' observation on a sample of nine (9) days in November of 2019, September and October of 2020, October and November of 2021, and January of 2022, an investigator observed fifty-three (53) violations of federal air pollution laws by First Transit at the company's bus stops in Wethersfield, and New Haven, Connecticut.

6. First Transit continues to violate the Clean Air Act and the Connecticut State Implementation Plan, even after receiving notification by CLF of the company's unlawful conduct and of CLF's intention to enforce the federal law through this citizen suit.

7. Upon information and belief, First Transit has not taken any actions sufficient to prevent future violations of the type alleged in this Complaint.

8. Absent an appropriate order from this Court, Defendant is likely to repeat its violations of the Act as described below.

9. CLF asks the Court to remedy the ongoing harm and to order First Transit to comply with federal law by immediately curtailing unlawful idling, redressing its past violations, and implementing practices to prevent unlawful excess idling and the resultant exhaust pollution in the future.

10. This action encompasses post-Complaint violations of the types alleged in the Complaint.

LEGAL BACKGROUND

The Citizen Suit Provision of the Clean Air Act

11. In 1970, Congress passed the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. § 7401(b)(1).

12. The Act directs the United States Environmental Protection Agency (“EPA”) to set National Ambient Air Quality Standards (“NAAQS”). *General Motors Corp. v. United States*, 496 U.S. 530, 533 (1990) (citing 42 U.S.C. §§ 7409–10).

13. The Act also directs each state or local air-pollution control agency to develop a State Implementation Plan (“SIP”) describing how it will achieve and maintain compliance with the NAAQS set by EPA to protect human health and the environment. 42 U.S.C. § 7407(a).

14. A standard or limitation established “under any applicable state implementation plan approved by the Administrator” qualifies as a federally enforceable “emission standard or limitation” under the Act. 42 U.S.C. § 7604(f)(4).

15. In the “citizen suit” provision of the Act, Congress authorizes “any person” to “commence a civil action . . . against any person . . . who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of . . . an emission standard or limitation under” the Act. 42 U.S.C. § 7604(a)(1).

16. The Act’s definition of an “emission standard or limitation” includes any standard or limitation established “under any applicable State Implementation Plan approved by the Administrator.” 42 U.S.C. § 7604(f)(4).

17. Accordingly, citizens may enforce standards or limitations established under any EPA-approved SIP in the federal courts. *See, e.g., Council of Commuter Orgs. v. Metro. Transp. Auth.*, 683 F.2d 663, 669 n.7 (2d Cir. 1982).

18. Each separate violation of the Act, its emission standards, or limitations subjects the violator to a penalty of up to \$101,439 per day per violation. 40 C.F.R. §§ 19.2(a), 19.4.

The Anti-Idling Regulation

19. The State of Connecticut has an EPA-approved SIP that includes Regs. Conn. State Agencies § 22a-174-18(b)(3)(C) (the “Connecticut Anti-Idling Regulation”).

20. The Connecticut Anti-Idling Regulation provides that “no person shall cause or allow. . . a mobile source to operate for more than three (3) consecutive minutes when such mobile source is not in motion.” 42 U.S.C. § 7410; 40 C.F.R. § 52.385; 79 Fed. Reg. 41,427.

21. The Connecticut Anti-Idling Regulation creates limited exceptions to the general prohibition on idling in excess of three minutes for instances in which:

- The vehicle “is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control,” Regs. Conn. State Agencies § 22a-174-18(b)(3)(C);
- Idling in excess of three minutes “is necessary to operate defrosting, heating or cooling equipment to ensure the safety or health of the driver or passengers,” *id.*;
- Idling in excess of three minutes “is necessary to operate auxiliary equipment that is in or on the mobile source to accomplish the intended use of the mobile source,” *id.*;
- Idling in excess of three minutes is necessary “to bring the mobile source to the manufacturer’s recommended operating temperature,” *id.*;
- The outdoor temperature is below twenty degrees Fahrenheit, *id.*;
- The vehicle is undergoing maintenance that requires its operation in excess of three minutes, *id.*; or
- The vehicle “is in queue to be inspected by U.S. military personnel prior to gaining access to a U.S. military installation,” *id.*

22. The Connecticut Anti-Idling Regulation exempts aircraft, trains, boats, commonly used residential garden and snow removal equipment, antique vehicles, racing vehicles, and vehicles undergoing mechanical repair or testing that affects the emission of visible air pollutants. Regs. Conn. State Agencies § 22a-174-18(j)(4).

23. Defendant has violated and is in violation of the Anti-Idling Regulation.

24. The Act's citizen suit provision provides the district courts of the United States with jurisdiction to "enforce" emission standards and limitations under the Act, and to impose an appropriate civil penalty on the violator of those emissions standards and limitations. 42 U.S.C. § 7604(a).

PARTIES

Conservation Law Foundation, Inc.

25. CLF is a nonprofit, member-supported organization dedicated to protecting New England's environment. CLF's mission includes safeguarding the health and quality of life of New England communities facing the adverse effects of air pollution.

26. CLF is incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street in Boston, Massachusetts.

27. As a corporation, CLF is a person as defined by the Clean Air Act. 42 U.S.C. § 7602(e).

28. CLF has over 5,100 members in New England.

29. CLF's members include individuals who live and recreate near the locations where vehicles owned, operated, and/or managed by First Transit idle in excess of three minutes.

30. The health, well-being, quality of life, and enjoyment of CLF members are harmed by Defendant's violations of the CAA.

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