

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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THE PEOPLE OF THE STATE OF NEW YORK, :
by LETITIA JAMES, Attorney General of the :
State of New York, :
Plaintiff, :
: Index No. 513822-2022
- against - :
JOFAZ TRANSPORTATION, INC., 3RD AVENUE : **COMPLAINT**
TRANSIT, INC., AND Y & M TRANSIT CORP., :
Defendants. :
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The People of the State of New York (the State), by their attorney, Letitia James, the Attorney General of the State of New York, respectfully allege upon information and belief:

PRELIMINARY STATEMENT

1. The Office of the Attorney General (OAG) brings this action under Executive Law § 63(12) against respondents Jofaz Transportation, Inc., 3rd Avenue Transit, Inc., and Y & M Transit Corp., (together, the “Jofaz Companies”), which are under contract to transport New York City public school students, to reduce emissions from the Jofaz Companies’ unlawfully idling school buses. The air pollutants emitted from these buses both harm public health and contribute to climate change. According to fleet management devices installed on its school buses, the Jofaz Companies’ buses idled for over five minutes repeatedly and

persistently from September to December 2019. New York State regulation prohibits idling over five minutes, and New York City regulation prohibits idling over three minutes generally and over one minute when adjacent to a school.

2. Idling school buses emit numerous air pollutants, including particulate matter 2.5 (PM2.5) so-called because it is 2.5 microns in diameter, commonly called soot, nitrogen oxides (NOx), sulfur oxides (SOx), and volatile organic compounds (VOCs), which interact with the environment to form smog. Diesel-powered buses are particularly “dirty” in that they emit significantly more PM2.5 than gasoline-fueled buses. Soot and smog cause and/or worsen cardiovascular disease and respiratory illness, such as asthma, and contribute to other health risks such as lung cancer. Children, because they are still developing, are especially vulnerable to these health risks.

3. The data show that a significant amount of the Jofaz Companies’ unlawful idling occurs at its three bus yards, two of which are located in or adjacent to communities that are low-income and/or where the residents are primarily people of color (environmental justice communities). Such communities already suffer from disproportionately high levels of air pollution and a correspondingly disproportionately high number of emergency room visits and hospital admissions for asthma and other respiratory illnesses.

4. The Jofaz Companies’ unlawful idling also unnecessarily emits carbon dioxide, the primary greenhouse gas driving climate change. Both gas and diesel-powered buses emit carbon dioxide. Diesel-powered school buses emit between 8.30

and 11.98 pounds of carbon dioxide per hour and gasoline-powered school buses emit approximately 9.69 to 9.80 pounds of carbon dioxide per hour.¹ Transportation is currently the largest source of greenhouse gas emissions in New York State, accounting for 36% of all energy-related emissions.

5. As set forth below, the Jofaz Companies have engaged in, and continue to engage in, repeated illegality under Executive Law § 63(12) by committing violations of Title 6 of the New York Code of Rules and Regulations (NYCRR), § 217-3.2, the New York State anti-idling regulation and Title 24 of the New York City Administrative Code (NYCAC) § 24-163(a), the New York City anti-idling regulation.

6. The State seeks statutory penalties and injunctive relief to reduce emissions of both criteria pollutants and greenhouse gases to protect the public health of all New Yorkers, including those who already suffer disproportionately from air pollution.

¹ Toback, A. T., Hearne, J.S., Kuritz, B., Marchese, A.J., Hesketh, R.P. The Effect of Ambient Temperature and Humidity on Measured Idling Emissions from Diesel School Buses. SAE International. (March 8, 2004). <https://doi.org/10.4271/2004-01-1087>, United States Energy Information Administration. Carbon Dioxide Emissions Coefficients. (February 2, 2016); https://www.eia.gov/environment/emissions/co2_vol_mass.php, Bhandari, K., Parida, P., and Singh, P. Estimation of Carbon Footprint of Fuel Loss Due to Idling of Vehicles at Signalised Intersection in Delhi. ScienceDirect. (2013); doi:10.1016/j.sbspro.2013.11.213, Michigan Department of Environmental Quality. No Idling at School. (September 30, 2008); https://www.michigan.gov/documents/deq/deq-aqd-IdleReductionFactSheet_251101_7.pdf.

PARTIES

7. Petitioners are the People of the State of New York, by their attorney, Letitia James, Attorney General of the State of New York.

8. Respondent Jofaz Transportation, Inc. (Jofaz) is a corporation incorporated in the State of New York. Joseph Fazzia is the Chief Executive Officer of Jofaz. During the 2019-2020 school year, the company transported public school students throughout the five boroughs of New York City.

9. Respondent 3rd Avenue Transit, Inc. (3rd Avenue) is a corporation incorporated in the State of New York. Joseph Fazzia, Jr. is the Chief Executive Officer of 3rd Avenue. During the 2019-2020 school year, the company transported public school students in the Bronx.

10. Respondent Y & M Transit Corp. (Y&M) is a corporation incorporated in the State of New York. Y&M operates vans, mini-wagons and small school buses. During the 2019-2020 school year, the company transported transports public students in the borough of Brooklyn. Joseph Fazzia is the Chief Executive Officer of Y&M.

11. All three bus companies (collectively, the Jofaz Companies) share a main office at 1 Coffey Street in Brooklyn and operate three bus yards in Brooklyn. The three companies also share mechanics, maintenance workers, dispatchers and administrative staff.

JURISDICTION and VENUE

12. This Court has jurisdiction over this action pursuant to Executive Law § 63(12), which authorizes the OAG to commence an action for injunctive relief, damages, and other relief, including statutory penalties, against any person or business entity that has engaged in repeated or persistent illegality in the conduct of business.

13. This Court also has jurisdiction pursuant to Environmental Conservation Law (ECL) § 71-2103(2), which allows the OAG to recover penalties from anyone who violates any regulation promulgated pursuant to Article 19 of the ECL, “Air Pollution Control.” 6 NYCRR § 217-3.2, the State’s anti-idling regulation, was promulgated pursuant to ECL Article 19.

14. ECL § 71-2103(2) provides that the penalties provided for in ECL Article 19, or a regulation promulgated pursuant to Article 19, shall be recoverable in an action brought by the Attorney General.

15. Venue is proper in Kings County pursuant to CPLR §§ 503(a) and 506(a) because the State has offices in Kings County and because a substantial number of the events giving rise to the claim occurred in Kings County.

STATUTORY AND REGULATORY BACKGROUND

New York State Prohibition Against Idling

16. Title 6 of the New York Code of Rules and Regulations (NYCRR), § 217-3.2 prohibits idling by a diesel or non-diesel fueled heavy-duty vehicle,

including a bus or truck, for more than five consecutive minutes when the vehicle is not in motion, except as otherwise permitted by 6 NYCRR § 217-3.3.

17. 6 NYCRR § 217-3.3 provides for the following relevant exceptions:

- (a) traffic conditions over which the operator has no control;
- (b) federal, state, or local agencies require the maintenance of a specific temperature for passenger comfort; however, the vehicle may idle only to the extent of complying with such regulations;
- (c) the engine is being used to provide power for an auxiliary purpose, or when the operation of the engine is required for maintenance purposes ;
- (d) the vehicle is queued for, or is undergoing, a State-authorized periodic or roadside test.

18. Violators are subject to fines ranging from “not less” than \$500 to “no more” than \$18,000 per violation. ECL § 71-2103(1).

New York City Prohibition Against Idling

19. New York City Administrative Code (NYCAC) § 24-163(a) prohibits idling by any motor vehicle other than a legally authorized emergency vehicle for more than three minutes when the vehicle is parking, standing, or stopping, except when the engine is being used to operate a loading, unloading, or processing device.

20. NYCAC § 24-163(a) also prohibits all idling by buses while parking, standing, or stopping at any terminal point, provided that the temperature is over forty degrees Fahrenheit.

21. NYCAC § 24-163(f) prohibits idling by any motor vehicle other than a legally authorized emergency vehicle for more than one minute if the vehicle is adjacent to any elementary, middle, or high school while parking, standing, or stopping, unless the vehicle is using the engine to operate a loading, unloading, or processing device. Idling in excess of one minute is also permitted as necessary for mechanical work, to maintain an appropriate temperature for passenger comfort, and if there is an emergency evacuation requiring the operation of the vehicle's wheelchair lift.

Executive Law § 63(12) Authorizes the Attorney General to Bring Suit to Enjoin Repeated or Persistent Illegality.

22. Executive Law § 63(12) authorizes the OAG apply to the supreme court of the State New York to enjoin “repeated fraudulent or illegal acts” and “persistent fraud or illegality” in “the carrying on, conducting or transaction of business.”

23. “Illegal” conduct under Executive Law § 63(12) includes the violation of any state, federal, or local law or regulation.

24. “Repeated” fraud or illegality under Executive Law § 63(12) includes the “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person,” and “persistent” fraud or illegality includes “continuance or carrying on of any fraudulent or illegal act or conduct.”

25. In an action or proceeding pursuant to Executive Law § 63(12) to enjoin repeated or persistent illegality, the OAG may also seek penalties for underlying statutory violations.

**Environmental Conservation Law § 71-2103 Authorizes the Attorney
General to Collect Penalties for Violations of Article 19**

26. ECL § 71-2103(2) provides that the penalties provided for in ECL Article 19, or a regulation promulgated pursuant to Article 19, shall be recoverable in an action brought by the Attorney General.

27. 6 NYCRR § 217-3.2, the State’s anti-idling regulation, was promulgated pursuant to ECL Article 19.

28. Violators of Article 19 are subject to fines ranging from “not less” than \$500 to “no more” than \$18,000 per violation. ECL § 71-2103(1).

BACKGROUND

**Bus Emissions are a Source of Air Pollution and
the Health Issues Caused or Worsened by Air Pollution**

29. Idling motor vehicles, especially those powered by diesel fuel, emit particulate matter 2.5 (PM 2.5), which is smaller than the width of a human hair. [*Particulate Matter Basics*](#), EPA; [*Table: Estimated U.S. Average Vehicle Emissions Rates Per Vehicle*](#), Bureau of Transportation Statistics; [*Reduction of Atmospheric Fine Particle Level by Restricting the Idling Vehicles Around a Sensitive Area*](#), Yen-Yi Lee, JOURNAL OF THE AIR & WASTE MGMT. ASSOC., 2018. Because of its size, PM 2.5 can penetrate deep into human lungs and enter our bloodstreams, causing or worsening cardiovascular disease and respiratory illness, such as asthma. [*Particle Pollution and Your Health*](#), EPA. 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.

30. In New York City, traffic is a major source of PM 2.5 emissions, and each year vehicle pollution causes thousands of hospitalizations and emergency room visits—and hundreds of deaths. [*The Public Impacts of PM2.5 from Traffic Air Pollution*](#), New York City Department of Health (DOH). However, air pollution is not evenly distributed throughout the City. 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, at 4-7.

31. Children are especially vulnerable to PM 2.5's health harms. This is because their lungs are still developing, and they are particularly active. In addition, compared to adults, children have relatively high rates of asthma and other acute respiratory diseases, and such preexisting conditions make people particularly vulnerable to the harms of the particle pollution. See [*Particle Pollution and Your Health*](#), EPA.

32. Residents of the City's poorest neighborhoods also suffer from disproportionately high levels of asthma and other respiratory illnesses. See [*New York City Community Health Profiles 2018 Map Atlas*](#), at 39, DOH. Thus, children living in the City's poorest neighborhoods suffer doubly as a result of their age and socio-economic status.

Vehicle Emissions are Also a Major Source of Greenhouse Gases

33. Idling also emits carbon dioxide, the primary greenhouse gas that causes climate change. Transportation is currently the largest source of greenhouse gas emissions in New York State. [Reducing Greenhouse Gas Emissions](#), Department of Environmental Conservation (DEC). In New York City, climate change will continue to increase the severity and occurrence of heat waves and flooding and will also cause sea levels to continue rising, thus worsening flooding from extreme weather events such as Sandy and Ida. [New York City Panel on Climate Change 2019 Report Executive Summary](#), Annals of the New York Academy of Science, 2019. Both gasoline and diesel-powered vehicles emit greenhouse gases, which drive climate change and its increasingly destructive impacts.

34. The most recent report from the Intergovernmental Panel on Climate Change (IPCC), issued in February 2022, warned that “climate change is a grave and mounting threat to our wellbeing and a healthy planet.” [February 28 Press Release](#), IPCC; [Working Group II Contribution to the Sixth Assessment Report: Climate Change 2022: Impacts, Adaptation, and Vulnerability](#), IPCC. Moreover, some of the effects of climate change that have already been set in motion, such as rising sea levels, are irreversible over hundreds to thousands of years. *Id.* Scientists warn that without immediate, rapid, and large-scale reductions in greenhouse gas emissions, limiting warming to an average increase of 1.5 to 2 degrees Celsius—the point at which the effects of climate change become not just devastating but catastrophic—will be out of reach. *Id.*

35. In New York State, the effects of climate change include:
- Increased average temperature: heat is the leading cause of weather-related deaths in the country, [Extreme Heat Advice](#), NYS DOH, and both the occurrence and severity of heat waves will continue to increase;
 - Sea level rise: New York City has experienced twelve inches of sea level rise in the last century, which exacerbates the flooding caused by extreme weather events, [Impacts of Climate Change in New York](#), NYS DEC;
 - More extreme rainfall: the occurrence and severity of flooding will increase, *id.*;
36. All of these changes will intensify as the climate continues to warm.

THE ATTORNEY GENERAL’S INVESTIGATION OF UNLAWFUL IDLING BY THE JOFAZ COMPANIES

37. Given the impact of vehicle emissions, particularly diesel emissions, on public health and the environment, the OAG launched an investigation into unlawful idling by the Jofaz Companies.

38. The Jofaz Companies have contracts with the New York City Department of Education (DOE) to provide bus service for K-12 school children.

39. In June 2018, staff from the OAG observed buses operated by the Jofaz Companies idling for more than one and a half minutes outside of public schools during morning drop-off and afternoon pick-up on at least ten occasions.

40. Based on these observations, OAG subpoenaed documents from the Jofaz Companies and conducted a 63(12) hearing of a Jofaz employee.

41. In 2019, New York City law required all buses that transport public school children to be equipped with a GPS device beginning with the 2019-2020 school year.

42. The New York City DOE installed telemetric devices from the Geotab company that records buses' location based on GPS as well as engine data, including whether the bus is idling.

43. Bus companies such as Jofaz that have a contract with the New York City DOE to transport children can access the Geotab data for their buses through an individualized portal.

44. Jofaz's general manager, testifying on behalf of the Jofaz Companies, stated that no one at the Jofaz Companies looked at the Companies' Geotab idling data despite having access to it. The general manager also testified that he believed that if the temperature was below twenty-five degrees Fahrenheit, then drivers could idle the bus for up to an hour. As stated above, New York State law allows idling for no more than five minutes, and New York City law allows idling for up to three minutes, or only one minute when the bus is adjacent to a school.

45. The general manager admitted that the Jofaz Companies do not adhere to their own anti-idling policies. He further stated that the Jofaz companies do not make drivers pay any idling tickets they receive, and drivers are not suspended for repeated idling offenses.

46. The general manager also admitted that the Jofaz Companies do not check to see if drivers are idling; the Jofaz Companies measure compliance with idling laws by whether or not they receive violations in the mail from the City.

47. The Jofaz Companies have failed to implement reasonable measures to reduce idling within their fleet. For example, the Jofaz Companies do not review their drivers' idling on their Geotab portal; they have not increased anti-idling training for their drivers; nor have they installed automatic shut-off devices on their buses.

48. The OAG obtained the Geotab data for the Jofaz Companies for the period September 4, 2019 through December 31, 2019. That data show that the Jofaz Companies' buses idled repeatedly and persistently in excess of New York City's and New York State's legal limits.

49. The Jofaz Companies also repeatedly and persistently idled in or around their own bus yards, where the Jofaz Companies have direct control over their drivers' behavior.

50. The Jofaz Companies have three bus yards in Brooklyn, located at 1 Coffey Street, which is located two blocks from an environmental justice community; 2037 Eastern Parkway, which is located in an environmental justice community, and 6093 Strickland Avenue.

51. Between September 4 and December 31, 2019, one Jofaz bus idled for at least 10 minutes at 1 Coffey Street on 82 different occasions on 42 different days, which means that the bus often idled multiple times a day at the yard.

52. The Jofaz Companies' buses also repeatedly and persistently idled adjacent to schools, where New York City law limits idling to one minute.

53. For example, between September 4 and December 31, 2019, 30 different buses idled near 141 Macon Street, Brooklyn for at least 10 minutes each, for a total of 285 different times over 65 different days. 141 Macon Street is located in an environmental justice community and houses P.S. K140 as well as a charter school. 141 Macon Street is in an area in the 92nd percentile in the United States for diesel particulate matter and has asthma rates in the 70-80th percentile according to the U.S. EPA's Environmental Justice Screening and Mapping Tool.

54. The Jofaz Companies' unlawful idling also results in unnecessary fuel costs for the company. According to records produced by the Jofaz Companies, approximately 100 percent of their buses run on diesel. One hour of idling by a diesel-powered heavy-duty vehicle uses approximately one-half gallon of diesel fuel, and diesel fuel costs approximately \$3.66 per gallon as of April 12, 2022. Therefore, every hour of idling by a single Jofaz Companies' bus costs \$1.83. If every one of the Jofaz Companies' 614 buses unlawfully idled for one hour over the course of a month, that unlawful idling would cost the companies \$1,123.62.

The Attorney General's Earlier Investigation of Jofaz and 3rd Avenue

55. The OAG has previously investigated Jofaz and 3rd Avenue for idling. In 2005, OAG found that Jofaz and 3rd Avenue repeatedly idled their school buses in violation of city and state idling regulations.²

56. The OAG, Jofaz, and 3rd Avenue resolved the first investigation by entering into an Assurance of Discontinuance (AOD) dated September 16, 2005.

Jofaz and 3rd Avenue committed to:

- a. Comply with State and City idling laws, the company's anti-idling policies, and the requirements in the AOD;
- b. Provide education and training for its management and employees regarding the health and environmental effects of diesel exhaust, the state and city idling regulations, Jofaz's and 3rd Avenue's anti-idling policy, and the AOD itself;
- c. Improve its then-current operations to eliminate unlawful idling;
- d. Monitor its employees to ensure compliance with the above.

57. During OAG's questioning of the Jofaz Companies' general manager in the current investigation, the general manager did not have any specific knowledge of the AOD Jofaz and 3rd Avenue entered into with OAG beyond the fact of its existence.

² In 2005, Y&M had not yet become one of the Jofaz Companies and therefore was not part of OAG's first investigation or party to the 2005 AOD.

58. Under the AOD, Jofaz's and 3rd Avenue's training was supposed to include the biannual distribution of information regarding the health and environmental effects of diesel exhaust, the state and city idling regulations, and Jofaz's and 3rd Avenue's anti-idling policy. These materials were also supposed to include a brochure prepared by OAG about the health and environmental effects of diesel exhaust, or other similar written material prepared by another governmental regulatory agency and approved by OAG.

59. Despite entering into the AOD, which provided notice to the Jofaz Companies that their employees had a practice of unlawful idling, the OAG's findings in this current investigation demonstrate that the Jofaz Companies' buses have continued to idle and/or resumed idling persistently and repeatedly, including as recently as April 2022.

60. Pursuant to Executive Law § 63(12), the OAG provided the Jofaz Companies with at least five days' notice before filing this petition.

FIRST CAUSE OF ACTION

VIOLATIONS OF 6 NYCRR § 217-3.2 (State Prohibition Against Idling)

61. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

62. Under ECL § 71-2103(2), the Attorney General can recover the penalties provided for in ECL Article 19 or a regulation promulgated pursuant to Article 19.

63. 6 NYCRR § 217-3.2, the State’s anti-idling regulation, was promulgated pursuant to ECL Article 19.

64. Under 6 NYCRR § 217-3.2, a diesel or non-diesel fueled heavy-duty vehicle, including a bus or truck, is prohibited from keeping the engine on for more than five consecutive minutes when the vehicle is not in motion.

65. The Jofaz Companies’ buses violated 6 NYCRR § 217-3.2 by persistently and repeatedly idling for more than five minutes in the absence of an applicable exception.

SECOND CAUSE OF ACTION

**PERSISTENT AND REPEATED ILLEGALITY PURSUANT TO
EXECUTIVE LAW § 63(12)**

**(Violations of 6 NYCRR § 217-3.2 (State Prohibition Against Idling) and
NYCAC § 24-163(a) (City Prohibition Against Idling))**

66. The State repeats and realleges each of the foregoing paragraphs as if fully set forth herein.

67. Under Executive Law § 63(12), the OAG may bring an action pursuant to seek injunctive and monetary relief against any person “engage[d] in repeated . . . illegal acts . . . in the carrying on, conducting or transaction of business.”

68. Each Jofaz Company is a “person” engaged in carrying on, conducting, or transacting business for purposes of Executive Law § 63(12).

69. Under 6 NYCRR § 217-3.2, a diesel or non-diesel fueled heavy-duty vehicle, including a bus or truck, is prohibited from keeping the engine on for more

than five consecutive minutes when the vehicle is not in motion unless one of the listed exceptions applies.

70. The Jofaz Companies' buses violated 6 NYCRR § 217-3.2 by persistently and repeatedly idling for more than five minutes in the absence of an applicable exception.

71. NYCAC § 24-163(a) prohibits idling for more than three minutes generally and one minute if the vehicle is in front of a K-12 school unless one of the listed exceptions applies.

72. The Jofaz Companies' buses violated NYCAC § 24-163(a) by persistently and repeatedly idling in excess of three minutes in the absence of an applicable exception.

73. The Jofaz Companies' buses violated NYCAC § 24-163(a) by persistently and repeatedly idling in excess of one minute adjacent to K-12 schools in the absence of an applicable exception.

WHEREFORE, the State respectfully requests that a judgment and order be issued:

1. Directing the Jofaz Companies to ensure that their buses comply with legal limits on idling under both New York State and New York City law;
2. Directing the Jofaz Companies to implement education and training for their management and employees regarding the health and environmental effects of diesel exhaust and the State and City idling laws,

- and to monitor compliance with idling laws using Geotab or any subsequent program implemented by the DOE;
3. Directing the Jofaz Companies to pay civil penalties of an amount to be determined for each violation of 6 NYCRR § 217-3.2;
 4. Granting such other relief as is just and proper.

Dated: May 11, 2022
New York, New York

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