

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I - NEW ENGLAND**

IN THE MATTER OF:

Markings, Inc.
30 Riverside Drive
Pembroke, MA 02359

**ADMINISTRATIVE COMPLIANCE
ORDER ON CONSENT**

Proceeding under Section 113
of the Clean Air Act

INTRODUCTION

1. The United States Environmental Protection Agency (“EPA”), Region 1, issues this Administrative Compliance Order on Consent (“Order”) to Markings, Inc. (“Markings”), which owns and operates fleets of vehicles in Massachusetts, including at 30 Riverside Drive, Pembroke, Massachusetts.

2. On August 14, 2024, EPA issued a Notice of Violation under Section 113(a)(1) of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. § 7413(a)(1), finding that Markings violated federally enforceable motor vehicle idling limits contained in the Massachusetts state implementation plan (“SIP”). The Notice of Violation is attached and incorporated by reference into this Order.

3. This Order, to which Markings has consented and signed, requires Markings to comply with the motor vehicle idling limits of Massachusetts’s Regulations for the Control of Air Pollution, 310 CMR 7.11, which are contained in the Massachusetts SIP.

STATUTORY AND REGULATORY AUTHORITY

4. This Order is issued under the authority of Section 113 of the CAA, 42 U.S.C. § 7413, which provides that EPA may issue an order requiring compliance with certain rules issued under the Act. Upon execution, a copy of this Order must be sent to the relevant state air pollution control agency by the EPA.

5. Section 110(a) of the CAA, 42 U.S.C. § 7410(a), requires each state to incorporate regulations that attain and maintain healthy air quality in the state's SIP. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, it may enforce the SIP's requirements and prohibitions under Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).

6. EPA has approved the Commonwealth of Massachusetts's SIP under Section 110 of the CAA, 42 U.S.C. § 7410. The Massachusetts SIP includes various federally approved portions of the Massachusetts Code of Regulations, promulgated by Massachusetts Department of Environmental Protection. The Massachusetts SIP is accessible at <https://www.epa.gov/air-quality-implementation-plans/epa-approved-regulations-massachusetts-sip>.

7. The Massachusetts SIP includes regulation 310 CMR 7.11(1)(b), which provides that no person shall cause, suffer, allow, or permit the unnecessary operation of the engine of a motor vehicle while such vehicle is stopped for a foreseeable period of time in excess of five minutes, unless such operation is in accordance with a listed exception.

FACTUAL ALLEGATIONS

8. Markings is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

9. Markings owns and operates fleets of vehicles in Massachusetts.

10. On April 29, 2024, EPA sent Markings correspondence that described specific requirements of 310 CMR 7.11, and that a community member alleged that Markings had not been complying with those requirements.

11. On May 10, 2024, Markings responded to say that it does not engage in idling vehicle engines for more than five minutes.

12. On May 20 and 23, 2024, an EPA inspector conducted unannounced observations of Markings' vehicles located at 30 Riverside Drive, Pembroke, Massachusetts. On May 20, 2024, the inspector did not observe any violations of 310 CMR 7.11. On May 23, 2024, the inspector entered the site with Markings' consent to conduct an on-site inspection.

13. Based on the EPA inspector's observations of Markings' vehicles, as described in the attached Notice of Violation, EPA has determined that on May 23, 2024, Markings has caused, suffered, allowed, or permitted the unnecessary idling of a diesel motor vehicle in excess of the five minutes allowed by 310 CMR 7.11.

14. Accordingly, on May 23, 2024, Markings violated the Massachusetts anti-idling regulation found at 310 CMR 7.11, which is contained in the Massachusetts SIP. Markings neither admits nor denies for purposes of this AOC that Markings violated the anti-idling provision set forth in 310 CMR 7.11.

15. Representatives for EPA and Markings met to discuss the Notice of Violation on August 16, 2024.

16. During and after the meeting, Markings informed EPA that it had developed and begun implementation of a new protocol to ensure its compliance with the anti-idling requirements.

17. Subsequent to the meeting, Markings informed EPA that it had taken certain actions in furtherance of its new protocol to ensure such compliance.

18. At all times related hereto, Markings has been cooperative with EPA.

19. This is the first Notice of Violation that Markings has received related to 310 CMR 7.11, or any other regulation in the Massachusetts SIP, and from EPA within the past ten years.

ADMINISTRATIVE ORDER ON CONSENT

20. As of the Effective Date of this Order, Markings shall operate in compliance with all applicable SIP requirements in Massachusetts.

21. Specifically, within 60 days of the Effective Date of this Order, Markings will take or otherwise provide proof that it already has taken the following actions at each of its facilities where idling may occur and shall implement its enhanced anti-idling protocol for the duration of this Order (i.e., one year from the Effective Date of the Order):

- a. Administer idling training and education to drivers that incorporates the provisions of 310 CMR 7.11;
- b. Require drivers to sign an acknowledgement that they understand and will comply with 310 CMR 7.11;
- c. Implement and enforce the idling requirements of 310 CMR 7.11 and incorporate them into company rules;
- d. Post signs in the fleet yard(s) that indicate the five-minute idling limit and provide information about Markings' idling protocol;
- e. Require fleet yard supervisors and management to monitor vehicle idling daily, including by using installed cameras;

- f. Advise recalcitrant or neglectful drivers of their deviations from Markings' anti-idling policy and administer progressive discipline as warranted; and
- g. Submit to EPA at the address provided in Paragraph 22, documentation, including but not limited to photographs, showing that the measures in this paragraph have been put in place.

22. All notices and submission shall be considered effective upon receipt. Markings shall submit all documentation required by this Order by electronic mail to Abdi Mohamoud, Environmental Engineer, at mohamoud.abdi@epa.gov, and Lindsey Short, Enforcement Counsel, at short.lindsey@epa.gov.

GENERAL PROVISIONS

23. EPA reserves its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to Markings' failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers and/or authorities, civil or criminal, which EPA has under any other statutory, regulatory, or common law authority of the United States.

24. If EPA should determine that Markings has violated the provisions of this Order by violating the Massachusetts anti-idling regulation found at 310 CMR 7.11, or any other violation under the Massachusetts SIP, EPA may commence any or all of the following actions after providing notice of such violation to Markings: a CAA administrative penalty order for up to \$55,808 per day for each violation; or a civil judicial action seeking an injunction and civil penalties. *See* Sections 113(a), (b), and (d) of the CAA, 42 U.S.C. §§ 7413(a), (b), and (d); and 40 C.F.R. Part 19. Violations of this Order may also result in criminal sanctions as provided in

Section 113(c) of the CAA, 42 U.S.C. § 7413(c). EPA may seek to use information submitted under this Order in any subsequent administrative, civil judicial, or criminal action.

25. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation. *See* CAA Section 113(a)(4), 42 U.S.C. § 7413(a)(4). Nothing herein shall be construed to limit the power of EPA to undertake any action against Markings or any person in response to conditions observed after the execution of this Order that may present an imminent and substantial endangerment to the public health, welfare, or the environment.

26. This Order is not intended to be nor shall it be construed to be a permit. Further, the Parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Massachusetts Code of Regulations, 310 CMR 7.11(1)(b). Compliance by Markings with the terms of this Order shall not relieve Markings of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations. Nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations or be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

27. Markings has entered into this Order in good faith without any trial or adjudication of any issue of fact or law.

28. Markings reserves all rights and defenses it may have regarding liability or conditions at its facility located at 30 Riverside Drive, Pembroke, Massachusetts, except that, for the purpose of this proceeding, Markings admits the jurisdictional allegations in this Order; neither

admits nor denies specific factual allegations made in the Order; consents to compliance actions and conditions specified in the Order; and waives any rights to contest the allegations or to appeal this Order.

29. Markings waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Markings may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

30. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to Markings' facility at 30 Riverside Drive, Pembroke, Massachusetts, Markings shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

31. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Markings or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall the EPA or the United States be held as a party to any contract entered into by Markings or by its employees, agents, contractors, or consultants.

32. The Parties shall bear their own costs and fees in this action, including attorneys' fees.

SEVERABILITY

33. If any provision or authority of this Order or the application of this Order to any Party or circumstance is held by any judicial or administrative authority to be invalid, the remainder of the Order shall remain in force and shall not be affected thereby.

EFFECTIVE DATE AND APPLICABILITY

34. Pursuant to Section 113(a)(4) of the CAA, an order does not take effect until the person to whom it has been issued has had an opportunity to confer with EPA concerning the alleged violations. By signing this Order, Markings acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, this Order will take effect immediately upon signature by the latter of Markings or EPA.

35. The provisions of this Order apply to Markings, its officers, agents, servants, employees, successors, and assigns, and to all persons, firms, and corporations acting under, through or for Markings.

36. Each undersigned representative of the Parties certifies that he or she is authorized to enter into the terms and conditions of this Order to execute and bind legally the Parties to this document.

37. The Parties agree that Markings and EPA may execute this Order by electronic signature. EPA and Markings acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. The parties also agree to electronic service of documents related to this Order.

MODIFICATION

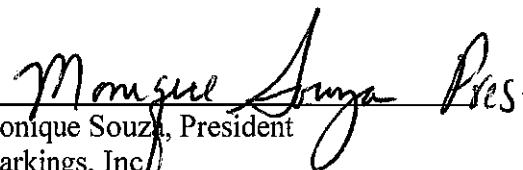
38. This Order may only be modified by mutual agreement of the Parties. Any agreed-upon modifications shall be in writing, be signed by both Parties, shall have as their effective date the date on which they are signed by EPA, and shall be incorporated into this Order. Changes to scheduling in the Order may be approved by the Manager of EPA Region 1's Air Compliance Section, Enforcement and Compliance Assurance Division.

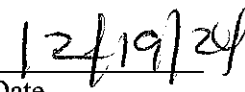
TERMINATION

39. This Order shall terminate on the earlier of the following:

- a. One (1) year after the Effective Date of this Order; or
- b. Immediately upon receipt by Markings of notice from the EPA finding that an imminent and substantial endangerment to public health, welfare, or the environment has occurred.

FOR MARKINGS, INC.:


Monique Souza, President
Markings, Inc.


Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 1:

JAMES CHOW Digitally signed by JAMES CHOW
Date: 2025.01.18 08:40:23 -05'00'

James Chow, Director
Enforcement and Compliance Assurance Division

Attachment 1 – Notice of Violation