UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAY - 6 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

7005 3110 0000 5947 3276

Port Newark Container Terminal LLC
Attn: Mr. Scott Schoenfeld
241 Calcutta Street, 4th Floor
Newark, NJ 07114

Re: Notice of Violation: EPA Docket No. CAA-02-2015-1303

Dear Mr. Schoenfeld:

Enclosed please find a Notice of Violation ("NOV") issued by the U.S. Environmental Protection Agency pursuant to Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. § 7413. The NOV identifies violations of New Jersey Administrative Code 7:27-14.3(a), which is part of the federally enforceable CAA state implementation plan for the State of New Jersey. The violations involve causing, allowing and/or permitting the idling of diesel-powered trucks for more than three minutes at a time at the Port Newark-Port Authority Marine Terminal.

If Port Newark Container Terminals LLC would like to schedule a face-to-face conference to discuss the NOV, please contact Phillip Ritz, at ritz.phillip@epa.gov, or have your legal counsel contact Denise Leong, Assistant Regional Counsel, at leong.denise@epa.gov, within ten days of your receipt of this letter and the enclosed NOV.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosure

cc: Richelle Wormley, Director
Air and Hazardous Materials Enforcement
New Jersey Department of Environmental Protection

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of: Port Newark Container Terminals LLC Newark, New Jersey Respondent In a proceeding under Section 113(a) of the Clean Air Act, 42 U.S.C. § 7413(a)	**NOTICE OF VIOLATION** CAA-02-2015-1303

Summary

This Notice of Violation (NOV) is issued to Port Newark Container Terminals LLC (PNCT or Respondent) by the Director of the Division of Enforcement and Compliance Assistance for the United States Environmental Protection Agency (EPA) Region 2, pursuant to Section 113(a)(1) of the Clean Air Act (CAA or the Act), 42 U.S.C. § 7413(a)(1). The NOV identifies violations of New Jersey Administrative Code (NJAC) 7:27-14.3(a), which is part of the federally enforceable CAA state implementation plan, or SIP, for the State of New Jersey. The violations involve causing, allowing and/or permitting the idling of diesel-powered trucks for more than three minutes at a time at the Port Newark-Port Authority Marine Terminal.

Statutory and Regulatory Background

State of New Jersey SIP Requirements

1. Section 109 of the CAA directs the EPA Administrator to promulgate regulations establishing national ambient air quality standards (NAAQS) for each air pollutant for which air quality criteria have been issued pursuant to Section 108 of the Act.

2. Section 110(a)(1) of the CAA requires each state to adopt and submit to EPA for approval, a plan that provides for the implementation, maintenance, and enforcement of each NAAQS. Such plans, once approved by EPA, are known as State Implementation Plans, or SIPs.

3. At all times relevant to this NOV, the federally approved ozone SIP for the State of New Jersey has included NJAC 7:27-14.3(a), and that provision has provided that: "No person shall cause, suffer, allow, or permit the engine of a diesel-powered motor vehicle to idle for more than three consecutive minutes if the vehicle is not in motion…"

4. At all times relevant to this NOV, NJAC 7:27-14.1, as approved into the ozone SIP for the State of New Jersey, has defined "person" as "any individual or entity and shall include, without limitation, corporations, companies, associations, societies, firms, partnerships, and joint stock companies, and shall also include, without limitation, all political subdivisions of any states, and any agencies or instrumentalities thereof."

EPA's Authority to Issue NOVs and Enforce SIPs

5. Section 113(a)(1) of the CAA provides, in pertinent part, that whenever the EPA Administrator finds, on the basis of any information available to the Administrator, that any person has violated or is in violation of any requirement or prohibition of a SIP, the Administrator shall notify the person and the State in which the SIP applies of such finding. Section 113(a)(1) further provides that after 30 days of providing such notice, the EPA Administrator may take various actions to address the violation(s).

6. Pursuant to EPA Delegation of Authority 7-6-A and EPA Region 2 Delegation of Authority 7-6-A, the authority to make findings of violation and to issue notices of violation under Section 113 of the CAA has been delegated to the Director by the EPA Administrator through the Region 2 Regional Administrator.

Findings of Fact

7. The following findings of fact are based on an investigation conducted by EPA Region 2 pursuant to Section 114 of the CAA, 42 U.S.C. § 7414. The investigation included, among other actions, inspecting the Port Newark-Port Authority Marine Terminal and reviewing Respondent's responses to EPA's March 29, 2012 Section 114 information request letter.

8. The Port Authority of New York and New Jersey owns the Port Newark-Port Authority Marine Terminal (the Terminal), a marine cargo terminal located in Newark, New Jersey as indicated in the May 11, 2012 PNCT Section 114 Response Letter, Answer No. 2 and Lease Attachment.

9. Respondent leases a portion of the Terminal from the Port Authority of New York and New Jersey as indicated in the May 11, 2012 PNCT Section 114 Response Letter, Answer No. 2 and Lease Attachment. For the purposes of this NOV, the portion of the Terminal leased is referred to as the PNCT Terminal Facility.

10. Trucks enter the PNCT Terminal Facility from Calcutta Street and pull up to an intercom to give a PNCT employee information about the truck. The information is entered into an operating system and the driver is given a ticket with information about where to proceed. The truck driver then proceeds to lanes where a physical check of the container and chassis is performed for damage and for security seals. The truck driver is directed to proceed to the "Grid Assignment" area. At the Grid Assignment area, the truck drivers will park in line, exit the vehicle and proceed to a window where a clerk will assign a location to interchange the container. The truck driver is then directed to the grid location at which point the truck driver must exit his vehicle before his container will be removed or loaded to the chassis. *See* May 11, 2012 PNCT Section 114 Response Letter in Answer No. 3.

11. Respondent does not issue idling citations, tickets or other similar types of documents for idling at the PNCT Terminal Facility, and is not aware of any other entities that do so, as indicated by the subsequent May 29, 2012 PNCT Section 114 Response Letter in Answer No. 6.

12. EPA Region 2 compliance inspectors inspected the PNCT Terminal Facility on the dates listed in the table below. On each of those dates, the inspectors observed idling diesel-powered motor vehicles at the PNCT Terminal Facility. The table below lists the number of times, on each date, when the inspectors observed a truck idling for more than three minutes while going through the check-in process described above in Paragraph 10.

Date	Check-in idling events lasting more than 3 minutes
12/1/2011	3
12/7/2011	1
4/11/2012	10
4/12/2012	68
4/13/2012	17
4/17/2012	42
4/18/2012	4
4/19/2012	52
4/20/2012	83
Total	**280**

13. In addition to observing the truck check-in process, EPA inspectors also observed the container loading process on the dates listed in the table below. On each of those dates, the inspectors observed idling diesel-powered motor vehicles at the PNCT Terminal Facility. The table below lists the number of times, on each date, when the inspectors observed a truck idling for more than three minutes while the trucks were parked at their assigned grid location.

Date	Container loading idling events lasting more than 3 minutes
12/1/2011	1
12/14/2011	6
12/22/2011	5
2/16/12	1
Total	**13**

14. On none of the dates listed above did EPA inspectors observe any Respondent's employees advising the idling truckers to turn off their engines.

Conclusions of Law

Based on the Findings of Fact set forth above, EPA reaches the following conclusions of law:

15. Respondent is a "person" within the meaning of NJAC 17-27-14.1.

16. Respondent has caused, allowed and/or permitted diesel-powered motor vehicles to idle for more than three minutes at a time in violation of NJAC 7:27-14.3(a).

Enforcement

Section 113(a)(1) of the CAA authorizes EPA to take any of the following actions in response to a respondent's violation(s) of a SIP, after the expiration of 30 days following the issuance of a notice of violation:

- issue an order requiring compliance with the requirements or prohibitions of the SIP;
- issue an administrative penalty order in accordance with CAA Section 113(d); or
- bring a civil action in accordance with CAA Section 113(b) for civil penalties and/or injunctive relief.

The amount of civil penalties that may be recovered for violations of the CAA and its implementing regulations is set by statute at not more than $25,000 per day per violation, but has been adjusted pursuant to the Debt Collection Improvement Act, 31 U.S.C. 3701 et seq., to up to $27,500 per day for each violation that occurs from January 30, 1997 through March 15, 2004, up to $32,500 per day for each violation that occurs after March 15, 2004 through January 12, 2009, and up to $37,500 per day for each violation that occurs after January 12, 2009. *See* 40 C.F.R. Part 19.

Furthermore, for any person who knowingly violates any requirement or prohibition of an applicable implementation plan for more than thirty (30) days after the date of the issuance of an NOV, Section 113(c) of the Act provides for criminal penalties or imprisonment, or both. In addition, under Section 306 of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11,738, facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant thereto. Violation of the Act may result in the subject

facility, or other facilities owned or operated by Respondent, being declared ineligible for participation in any federal contract, grant, or loan program.

Penalty Assessment Criteria

Section 113(e)(1) of the Act provides that if a penalty is assessed pursuant to Section 113 of the Act, EPA or the court, as appropriate, shall, in determining the amount of the penalty to be assessed, take into consideration the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, the seriousness of the violation, and other factors as justice may require.
Section 113(e)(2) of the Act allows EPA or the court, as appropriate, to assess a penalty for each day of violation. In accordance with Section 113(e)(2) of the Act, EPA will consider a violation to continue from the date the violation began until the date Respondent establishes that it has achieved continuous compliance. If Respondent proves that there was an intermittent day of compliance or that the violation was not continuous in nature, EPA will reduce the penalty accordingly.

Opportunity for a Conference

Respondent may request a conference with EPA concerning the violation(s) alleged in this NOV. This conference will enable Respondent to present evidence regarding the findings of violation, the nature of the violation, and any efforts it may have taken or it proposes to take to achieve compliance. Respondent's request for a conference must be confirmed in writing within ten (10) days of receipt of this NOV. The request for a conference, or other inquiries concerning this NOV, should be made by email to leong.denise@epa.gov or in writing to:

Denise Leong
U.S. Environmental Protection Agency – Region 2
Office of Regional Counsel – Air Branch
290 Broadway – 16th Floor
New York, NY 10007-1866

Notwithstanding this NOV and the opportunity for conference, Respondent must comply with all applicable requirements of the CAA.

Issued: MAY 6, 2015

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2

To: Port Newark Container Terminals LLC
Attn: Mr. Scott Schoenfeld
241 Calcutta Street, 4th Floor
Newark, NJ 07114

cc: Richelle Wormley, Director
Air and Hazardous Materials Enforcement
New Jersey Department of Environmental Protection

bcc: R. Buettner, DECA-ACB
G.LaVigna, DECA-ACB
P. Ritz, DECA-ACB
J. Siegel, ORC-AIR
D. Leong, ORC-AIR
ACB Facility File
ORC Air Chron File
Brian Donohue, DOJ
Bradley Levine, DOJ
Allan Urgent, AUSA, DNJ