

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

One Judiciary Square
441 Fourth Street, N.W.
Washington, DC 20001

DISTRICT OF COLUMBIA
DEPARTMENT OF THE ENVIRONMENT
Petitioner,

v.

FIRST PRIORITY TOURS, INC.
Respondent

Case No.: 2012-DDOE-A500010

NOI No.: DE-I-12-A500010

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (“NOI”) (No. DE-I-A500010) served on January 12, 2012, the District of Columbia Department of the Environment (the “Government”) charged First Priority Tours, Inc. (“Respondent”), with violating 20 DCMR 900.1, which prohibits, with certain exceptions, the idling of a motor vehicle’s engine for more than three minutes while the vehicle is parked, stopped or standing (the “Regulation”). The Government alleged that Respondent violated the Regulation on November 2, 2011, in front of 1400 F Street, N.W. (the “Site”), and sought a \$1,000 fine for a first offense.

On January 30, 2012, Respondent timely answered the NOI with a plea of Deny. Accordingly, an evidentiary hearing was scheduled for March 2, 2012.

On the date of the hearing, the Government appeared represented by Atakilti Tesfai, the charging inspector who issued the Notice of Infraction. Respondent's coach driver, Patricia Muhler, appeared and testified on behalf of Respondent.

After being advised of the three available pleas. Respondent sought to change its plea from Deny to Admit with Explanation. The Government did not oppose the change of plea. I construed Respondent's request as a motion to amend its plea, which I granted.

Based on the testimony of the witnesses and the entire record, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Based on its plea of Admit with Explanation, Respondent admits that on November 2, 2011, its coach bus was at the Site with its engine idling for more than three minutes.

Respondent accepts responsibility for its actions. Respondent had two coach buses at the Site at the time Inspector Tesfai observed the bus idling. The first bus was idling and had passengers on the bus. The second bus was not idling. Inspector Tesfair did not observe any passengers loading on the first bus at the time its engine was idling for at least seven minutes. Inspector Tesfai did not speak to the coach driver of the first bus at any time during his observations. There is no evidence in this record of previous violations.

III. Conclusions of Law

The controlling Regulation states in pertinent part:

20-900. ENGINE IDLING

900.1 The engine of a gasoline or diesel powered motor vehicle, the engine of a public vehicle for hire, including buses with a seating capacity of twelve (12) or more persons, on public or private space shall not idle for more than three (3) minutes while the motor vehicle is parked, stopped, or standing, including for the purpose of operating air conditioning equipment in those vehicles, except as follows:

- (a) To operate private passenger vehicles;
- (b) To operate power takeoff equipment including dumping, cement mixers, refrigeration systems, content delivery, winches, or shredders; or
- (c) To idle the engine for five (5) minutes to operate heating equipment when the ambient air temperature is thirty-two degrees Fahrenheit (32 °F) or below.

Based on its plea of Admit with Explanation, Respondent is liable for violating the Regulation as charged in the NOI. Respondent was clearly idling its vehicle more than three minutes. Respondent did not explain that its reasons for idling more than three minutes were within any of the exceptions identified above. Instead, Respondent's coach driver contends that she was loading passengers onto the bus, but they were coming out at a staggered pace. Some of the passengers required additional time to board the bus.

Inspector Tesfai denies the coach driver was loading any passengers at the time he observed the engine idling for more than three minutes. Respondent also asks the court to consider a U.S. Environmental Protection Agency (EPA) publication, "Motor Coach Idling Field Observation Study for Washington, DC, Metro Area." The EPA study states on page 38, that "the District reasonably enforces the engine idling regulation and does not issue citations when passengers are loading or unloading." I am not persuaded that Ms. Muhler was loading passengers at the time the coach bus engine was idling. I credit Inspector Tesfai's testimony that he did not see passengers loading at the time he clocked the engine idling for seven minutes. I

conclude that it is more likely so than not so that the passengers likely came on board a short while later.

A violation of 20 DCMR 900.1 is punishable by a fine of \$1,000 for a first offense. 16 DCMR 3637.3(y); 16 DCMR 3201.7. Respondent has accepted responsibility for its actions. There is no evidence that the violation occurred more than once within the past three years. These are all mitigating circumstances, which I am taking into account to reduce the authorized fine from \$1,000 to \$500. D.C. Official Code § 2-1801.03(b)(6).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 7th day of March, 2012:

ORDERED, that Respondent First Priority Tours, Inc. is **LIABLE** for violating 20 DCMR 900.1 as charged in the Notice of Infraction; and it is further

ORDERED, that Respondent First Priority Tours, Inc. shall pay a reduced fine in the amount of **FIVE HUNDRED DOLLARS (\$500)**, in accordance with the attached instructions within 20 calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month, or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that any party may move for reconsideration of this final order within 15 calendar days of the date of service of this order for any reasons set forth in OAH Rule 2828. The 15 calendar days consists of 10 calendar days (1 DCMR 2828), plus five days are added when service is made by mail. 1 DCMR 2812.5; and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

_____/s/_____
Claudia Barber
Administrative Law Judge

