



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000835682J et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- BAGEL BITES USA INC Hearing Date: 03/04/2025 Hearing Location: Remote Type of Hearing: By Telephone
--	--

Total Penalty Amount: \$600.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000835682J	Sustained	01/31/2024	Broome St between Mott St and Mulberry St Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	\$600.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on March 4, 2025. Petitioner was represented by Dantney Parks. Respondent was represented by Lance Chebin, its authorized representative.

The summons charged a third offense violation of Administrative Code 24-163 and alleged per DEP records a citizen observed a vehicle idling for longer than three minutes.

Petitioner submitted several items into evidence – photographs of the vehicle and its license plate; a redacted idling complaint; screenshots from OATH ticket finder showing the prior violations were sustained and paid in full; and a video of the vehicle

allegedly idling. See Petitioner Ex 1.

Petitioner's representative argued that refrigeration unit has its own power and does not need the engine to run.

Respondent's representative stated that the vehicle was carrying perishable goods that needed to be refrigerated at the time of the offense, and that the refrigeration unit needs the engine on in order to run. Petitioner's representative requested proof that the vehicle's refrigeration unit cannot run independently from the engine, and Respondent's representative stated that he did not have any.

I credit the testimony and evidence of both parties. I find Petitioner established a prima facie case. I find Respondent did not refute the allegations nor establish a valid defense. The critical inquiry is whether any evidence in the record refutes Petitioner's evidence or otherwise establishes an affirmative defense "by a preponderance of the evidence." See DEP v. L. Glashow, Inc., Appeal No. 2100641 (August 19, 2021). Here, I do not find Respondent's assertion that the refrigeration unit is powered independently is sufficient, without more, to establish an affirmative processing device defense. See DEP v. Mr. Pickle Inc., Appeal No. 2100178 (April 22, 2021)(finding that a respondent's submission of a letter from the driver stating the engine was necessary to run a refrigeration unit, without further substantiation, was insufficient to refute petitioner's case).

Accordingly, the summons is sustained.

 03/04/2025	03/04/2025
Hannah Pinto, Hearing Officer	Date