



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 000991513N et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- METAL LOGISTICS NYC INC Hearing Date: 06/25/2026 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000991513N	Sustained	02/12/2025	INTERSECTION OF LEXINGTON AVE AND EAST 55th STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA51	24 -163	Sustained	\$350.00

Findings of Fact & Conclusions of Law

Summons # 000991513N was issued to respondent Metal Logistic NYC Inc. for violation of section 24-163; idling of a moto vehicle engine for more than three minutes, or when at a terminal point, for any period of time, 1st offense.

Alexander Stratis appeared for the respondent.

Edward Sferrazza appeared for the Petitioner, DEP.

The Petitioner submitted a video, USDOT information, complaint, photograph of the vehicle with the company name, address

and license plate. See Petitioner's Exhibit 1.

The Petitioner stated that the video lasted 3 minutes and 8 seconds.

The Petitioner stated that there was audible engine noise throughout the video. There was no processing device in use that required the engine to be on.

The respondent stated that the video did not show a clear view of the back of the vehicle; the video was mostly of the front of the vehicle. Potentially if a processing device may have been used, it would not be shown in the video. Workers could have used some sort of processing unit that was not shown in the video.

The Petitioner stated that the video showed a pretty good view of the vehicle; the video goes back and forth. You see two men manually moving materials.

The summons and evidence submitted by the Petitioner are credited.

The respondent did not rebut the charge or provide a legally valid or meritorious defense.

The respondent did not provide any evidence to prove that the men were using a processing device at the time of incident.

The respondent's arguments were hypothetical and speculative.

The video did show the front and back of the vehicle.

A video is not essential to establish the Petitioner's case.

In *DEP v. Target Express Carrier LLC*, Appeal No. 2400043 (March 28, 2024), the Board held that the Petitioner's evidence that the citizen complainant observed respondent's truck engine for more than three minutes was sufficient to establish a prima facie case. "A summons offered under penalty of perjury is prima facie evidence of the facts stated". "While Petitioner is not required to submit the citizen's complainant's video at the hearing even where a video has been presented, it is not fatal to the summons that it does not clearly show the vehicle vibrating, producing visible emissions, or making audible engine noise".

The I/O affirmed in the summons that he verified the existence of the violation through a review of the DEP records, which includes the evidence submitted by the complainant. This is sufficient to establish a prima facie case. The burden then shifts to the respondent to refute the charge or provide a defense. See *DEP v. Federal Express dba FedEx Express*, Appeal No. 2101051 (October 21, 2021) and *DEP v. Matthew Marks Gallery LLC*, Appeal No. 2301738 (January 25, 2024).

In *DEP v. Ferguson Hauling Corp.*, Appeal No. 2300806 (September 28, 2023), the respondent argued that the video did not capture the entire truck, and if it had done so, they would have seen that the truck was a boom truck, and the boom truck could only be operated with the engine on. Also, the respondent argued that the truck was next to another truck that could have emitted the idling noise.

In *Ferguson*, the Board held that a video is not essential for establishing the Petitioner's case, though the citizen complainant must supply one to the DEP. Also, the Board held that since the respondent did not offer any evidence that a lift was in operation from the driver of the truck, or from another person with first-hand knowledge, and the respondent himself did not even assert that the boom/equipment was in operation, the respondent did not establish a defense.

In the instant case, the respondent stated that the video did not show a clear view of the rear of the vehicle, but the respondent did not submit any evidence that the rear of the vehicle had a lift gate or equipment in operation that required the engine to be idling.

I find that there was no evidence or testimony submitted by the respondent to rebut the charge.

I find that the Petitioner established a prima facie case.

There was idling of a vehicle for more than three minutes with no loading, unloading or processing taking place.

Accordingly, the summons is sustained and a first offense penalty in the amount of \$350.00 is imposed.

Michelle Mason

06/25/2026

06/25/2026

Michelle Mason, Judicial Hearing Officer

Date