

Michael Sargo appeared as the authorized representative of the named respondent, and Inspector Singh appeared for the Petitioner. The summonses cite violations of 24-163f

The Petitioner submitted photos, DMV vehicle information look up, and the idling summons affidavit and complaint.

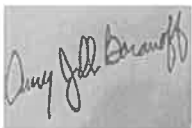
Videos which exceeded one minute were played into the record and described.

The respondent's representative submitted an affidavit from the manager which stated that "the drivers pack our bread orders inside our trucks and they require that the lights be on so that our employees can see which packaging is needed to be used for packaging the orders."

The respondent also contended that since the issuance of the summonses, they have adjusted their equipment so that the engine no longer needed to provide electricity for the workers to deal with their orders. He submitted photos in support of this claim.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. The fact that electricity is needed for the workers to see how to package their orders is not included in any exceptions to the rule. In Appeal No. 2100884 DEP v. Amazon Com Inc, Sept 23, 2021, there was a factually similar issue. In that matter, it was held that "The Board further finds that it is not a defense that Respondent's employees were using an interior van light while preparing merchandise for delivery. Code § 24-163 includes an exemption when "the engine is used to operate a loading, unloading or processing device." This limited exception only applies if Respondent shows that the vehicle was actually engaged in using a device to load or unload merchandise for the entire time the engine is observed running. See NYC v. Jenna Concrete Corp. Appeal No.40554 (October 26, 2006) ; NYC v. Sergio Visquerras , Appeal No. 1400923 (November 20, 2014) ;DEP v. Academy Express, LLC, Appeal No. 1901519 (March 3, 2020); § 6-12(a) of Title 48 of the Rules of the City of New York. Here, Respondent's employee never asserted that she was using a device, such as a lift gate or a hydraulic mechanism, to remove the packages from the van. Instead, she asserted that she needed the engine on to run the interior lights to see the numbers on packages to be delivered. The Board finds that an interior van light is not a device used to actively remove or take merchandise off of a vehicle and is therefore not an unloading device. Consequently, the exemption in Code § 24-163 for using an engine to operate a loading, unloading, or processing device does not apply. See DEP v. R & R Bread LLC, Appeal No. 2100685 (June 24, 2021) (violation sustained where driver inside van was preparing a delivery); DEP v. Vertical Hold Productions LLC , Appeal No. 2100580(July 22, 2021. NYC v. New York Bus Service ,Appeal No. 39612 (January 18, 2007) (violation upheld since mandated red and warning lights in a school bus did not apply while waiting for students to arrive)."

Accordingly, the summonses are sustained.



08/11/2026

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Amy Jill Baranoff, Hearing Officer

Date