



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

TIFFANY IRIZARRY - NACMIAS LAW FIRM, PLLC 592 PACIFIC STREET BROOKLYN, NY 11217	Summons# : 001008970L et al. (1 summonses) DEPT OF ENVIRONMENTAL PROTECTION, -against- PANE EXTRAVAGANZA INC Hearing Date : 8/11/2026 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	350.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
001008970L	Sustained	12/15/2025	INTERSECTION OF 18 AVE AND 82 ST, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	BA1I	24-163 (F)	Sustained	350.00

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

The Petitioner the New York City Department of Environmental Protection, did not appear and waived their appearance at the hearing, which was held by telephone.

Tiffany Irizarry appeared under oath as the authorized representative of the respondent. She stated that the cited vehicle was loading bread products inside the truck and when loading the bread into the trucks. She further stated that the trucks must remain running so that interior lights can remain on for the drivers to bag and properly load the bread products into the trucks. She submits photographs in support showing a "No idling" sticker inside the vehicle, and an affidavit of Joseph Chinnici, the companies transportation manager, marked collectively as exhibit "A".

Respondent is charged with idling of a vehicle for more than 1 minute while parked, stopped, or standing adjacent to a playground, under Code 24-163, as a first offense.

I deny Ms. Irizarry's motion to defense.

Code § 24-163(f) provides, in pertinent part:

No person shall cause or permit the engine of a motor vehicle . . . to idle for longer than one minute if such motor vehicle is adjacent, as determined by rule, to any public school under the jurisdiction of the New York city department of education or to any non-public school that provided educational instruction to students in any grade from pre-kindergarten to the twelfth grade level . . . while parking as defined in section one hundred twenty-nine of the [New York State] vehicle and traffic law [VTL], standing as defined in section one hundred forty-five of the [VTL], or stopping as defined in section one hundred forty-seven of the [VTL], unless the engine is used to operate a loading, unloading or processing device, and provided that idling of an engine of a school bus may be permitted to the extent necessary: (1) for mechanical work; (2) to maintain an appropriate temperature for passenger comfort; or (3) in emergency evacuations where necessary to operate wheelchair lifts.

I find that the respondent has not established this affirmative defense.

A defense is only established when the vehicle's engine is being "used to operate" the processing device, i.e., the processing device exception to idling only applies if the vehicle is "actually engaged" in using such a device at the time the engine is running. See NYC v. Jenna Concrete Corp., Appeal No. 40554 (October 26, 2006); NYC v. Sergio Visquerras, Appeal No. 1400923 (November 20, 2014). In the case at hand, the law does not allow a vehicle to run its engine unless the running of the engine is necessary and proximate to the immediate consequent action of the processing device, and therefore an integral part of the active work being performed. See DEP v. Ferguson Hauling Corp., Appeal No. 2300546 (July 27, 2023)

I find Ms. Irizarry's defense and evidence, that the trucks were required to be idling to engage the lighting while loading and packaging the bread products to not be credible. There is no evidence of a processing devise in use at the time of issuance.

I further find that petitioner, through the sworn summons has credibly established that the cited vehicle was idling for more than 1 minute while parked, stopped adjacent to a park, as a first offense.

Based upon the above, I sustain this summons and impose the statutory first offense penalty.

 08/12/2026	08/12/2026
Keith J. Ludwiczak, Hearing Officer	Date