OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

DECISION

TIFFANY IRIZARRY - NACMIAS LAW FIRM, PLLC 592 PACIFIC STREET BROOKLYN,NY 11217	**Summons No:** 0218049426 et al. (1 Summons) Mr. Michael McFadden -against- CERTIFIED LUMBER LLC **Hearing Date:** 09/16/2026 **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
0218049426	Sustained	11/12/2025	Jamaica Ave & 222 St- 224 St Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	AE93	A.C. 24-163	Sustained	$600.00

Findings of Fact & Conclusions of Law

Respondent's authorized representative, Tiffany Irizzary, appeared by telephone to answer the charge of 24-163 of the Administrative Code for idling of motor vehicle engine for more than three minutes, third offense. Citizen Petitioner Michael McFadden appeared by telephone.

Petitioner submitted into evidence: a 4:04 minute idling video, pictures of the company name, address, and license plate, two snapshot of the prior offenses, and a screenshot of the USDOT information for the vehicle. In the video, he said there was a school building for PS295 opposite the vehicle.

Respondent's representative argued that the summons did not allege the vehicle was idling next to a school, the summons said one thing while the video said another, and argued the summons was defective. In support, she referenced VTL § 238(2).

Petitioner replied that he did not file under Code § 24-163(f) for idling adjacent to a school because he had a three minute idling video, so he filed under Code § 24-163(a). He also argued VTL § 238(2) does not apply here.

Code § 24-163(a) provides, in pertinent part, that "[n]o person shall cause or permit the engine of a motor vehicle . . . to idle for longer than three minutes . . . while parking as defined in section one hundred twenty-nine of the [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]."

Code § 24-163(f) states, 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 provides educational instruction to students in any grade from pre-kindergarten to the twelfth grade level."

I credit the IO's statements on the summons and Petitioner's evidence. A summons establishes a prima facie case, and it is Respondent's burden to refute the charge or establish a defense. Respondent's representative's assertions do not contradict Petitioner's evidence. Respondent cited to 24-163(a), not 24-163(f). Petitioner's statement, in the video, that the idling vehicle was next to a school is not fatal to the summons, as he met the requirements under Code § 24-163(a), since the idling video was over three minutes long.

Furthermore, a video is not required at the hearing for Petitioner to establish its case. See *DEP v. US Crane Rigging LLC*, Appeal No. 1901330 (October 24, 2019); *DEP v. Liberty Contracting Corp.* Appeal No. 2000742 (September 10, 2020).

Accordingly, the violation is sustained.

09/17/2026

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Anna Stebbins, Judicial Hearing Officer | Date