



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000757844M et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- K & B EQUIPMENT SERVICE LLC Hearing Date: 01/14/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$440.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000757844M	Sustained	01/24/2023	ON ALBEE SQUARE WEST BETWEEN FUL Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1J	24-163(F)	Sustained	\$440.00

Findings of Fact & Conclusions of Law

Lance Chebin appeared as the authorized representative of the named respondent, and Antwan Gibbs appeared for the petitioner.

The summons cites a violation of 24-163f as a second offense. There was no dispute as to the prior.

The petitioner submitted the idling summons affidavit and complaint, and photos.

A video which exceeded one minute was played into the record and described.

The respondent contended that that on the summons, the school is called "Basic Independence School, but on the photo, the name is "Basis Independent School."

The respondent further contended that the video fails to show the school..

The Petitioner acknowledged that the video ends at 7:39:55, but that the time stamp on the photo of the school itself is 7:42:49.

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.

First, I find the difference in the name of the school to be de minimus.

Second, although it does not appear that the video actually shows the school, this is not necessary to establish a prima facie case. In Appeal No. 2401408 DEP v. Allegiance Trucks West Babylon October 31, 2024, it was held that "Respondent does dispute that its vehicle was idling at E. 12th Street between Avenue A and 1st Avenue. Rather, Respondent claims that the citizen complaint alleged that the vehicle was in front of the school, not adjacent to it, and that the video does not show the school at all. However, per 15 RCNY § 39-02, "adjacent" is defined, in relevant part, as "each and every street on which the school is located and has entrances and/or exits to such street." Petitioner provided a Google Maps image showing the school with an entrance on E. 12th Street. Further, while the video was not necessary to establish Petitioner's case, the school is shown in the video, contrary to Respondent's assertion. Because Respondent did not deny that the idling occurred on the street and block where the school is located nor deny that the school's entrance faced E. 12th Street, Respondent violated Code § 24-163(f)."

Furthermore, in Appeal No. 2400642 DEP v. Trixie's Delivery Service Inc June 27, 2024, it was held that "Petitioner established the charge through the IO's affirmed statements on the summons. See § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY). It was not required to submit a video of the incident as evidence at the hearing, although it was required to submit a video to DEP. See DEP v. Academy Lines LLC, Appeal No. 1900379 (May16, 2019). Once Petitioner established its prima facie case, the burden shifted to Respondent to present evidence refuting Petitioner's case or otherwise establishing a defense. See DEP v. Citnalta Construction Corp., Appeal No.2201191 (February 23, 2023). Respondent's representative did not dispute that its truck was idling at 29 W. 17th Street. But it asserted that the truck was not adjacent to the Sixth Avenue Elementary School because the school is located at 64 W. 17th Street, which is "several large buildings down" from the idling location. However, per 15 RCNY § 39-02, "adjacent" is defined, in relevant part, as "each and every street on which the school is located and has entrances and/or exits to such street." Because Respondent's representative admitted that the idling occurred on the street and block where the school is located and did not deny that the school's entrance faced W. 17th Street, Respondent violated Code § 24-163(f). See DEP v. Spectrum, Appeal No. 2200873 (September 29, 2022)."

As such, the only issue that needs to be determined is if Basis Independent School is located anywhere on the on the entire block of Albee Square West between Fulton Street and Willoughby Street, and if the vehicle was observed idling that same block. Even if th e video does not show the entire block, I find that this was already established in the sworn to narrative, and the citizen affidavits. Accordingly, the summons is sustained as a second violation.

Amy Baranoff

01/17/2025

01/17/2025

Amy Baranoff, Hearing Officer

Date