



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Nacmias Law Firm - Chia Han Lin
592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 000818972N et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

CERTIFIED LUMBER CORPORATION

Hearing Date : 11/6/2024

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
000818972N	Sustained	07/24/2023	218 FRONT STREET, Brooklyn

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	600.00

Total Penalty for Summons: 600.00

Findings of Facts & Conclusions of Law

Petitioner, the New York City Department of Environmental Protection, charges Respondent, CERTIFIED LUMBER CORPORATION, with a third-offense violation of Section 24-163 of the New York City Administrative Code for idling of a motor vehicle engine for longer than three minutes. The summons states that there are two prior violations.

Both parties attended a telephonic hearing on Wednesday, November 6, 2024. Dantney Parks appeared for Petitioner. Chia Han Lin appeared for Respondent and waived the presence of the Issuing Officer.

For the following reasons, the summons is SUSTAINED.

Evidence and Arguments

Petitioner presented a redacted NYC Citizen Idling Complaint, a set of combined photos depicting various portions of the cited vehicle, (collectively, "P1"), and a video in support.

Respondent contested the summons and argued as follows. There was an engine sound in the background, but there were also two trucks in the video. The alleged truck's headlights were off and the other truck was loading cargo, all of which indicated the idling engine sound was coming from the other truck instead of the alleged truck here.

Petitioner argued that the citizen stood directly in front of the hood of the vehicle, and there was clearly audible engine sound coming from the cited vehicle.

Discussion

Code § 24-163 prohibits idling a motor vehicle engine for longer than three minutes while parking, standing, or stopping unless the engine is used to operate a loading, unloading, or processing device.

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons details, affirmed by the Officer under penalty of perjury that the Officer verified Respondent's vehicle idled for longer than the statutorily allowed period at the cited date, time, and location based on a review of DEP records, was sufficient to establish Petitioner's prima facie case. See DEP v. Edge Auto, Appeal No. 2301007 (October 26, 2023), see also DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019). While Petitioner is not required to submit the citizen 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. See DEP v. Edge Auto. See also DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021). Rather, per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry became whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense "by a preponderance of the evidence." See DEP v. Edge Auto. See also DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023). No such evidence was presented here. I'm not convinced by Respondent's arguments.

I credit the summons details and Petitioner's evidence. Petitioner stated a prima facie case. In the absence of probative evidence to contest Petitioner's case, Respondent failed to refute the allegation or establish a defense.

Conclusion

Accordingly, the summons is sustained, and a statutory penalty of \$600 for the third-offense violation is imposed upon Respondent.



11/06/2024

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Geoffrey Luan, Hearing Officer

Date

