



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 000936823R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- SKN CABINET INC Hearing Date: 01/05/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000936823R	Sustained	12/17/2024	ON 37TH AVENUE BETWEEN 48TH STREET and 43rd Street Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA51	24 -163	Sustained	\$350.00

Findings of Fact & Conclusions of Law

The summons alleges violation of Title 24 Chapter 1 of the NYC Administrative Code in that respondent caused or permitted idling of a motor vehicle while parked standing or stopped for longer than 3 minutes.

Inspector Andy Guzman appeared for the petitioner, NYC Department of Environmental Protection.

Ilma Babu appeared as an authorized representative for the respondent, SKN Cabinet Inc., and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted supporting documentation.

Respondent contended that the video did not conclusively prove the vehicle was idling for three minutes without processing equipment in use. Respondent stated that the active work was going on and that the vehicle was on a loading dock.

Petitioner stated that was audible engine noises and no processing equipment was seen in use. Petitioner stated that the vehicle was in a location open to pedestrians and was in the open air.

[A]n idling charge does not fail if the video does not clearly show the truck making an audible engine noise, vibrating, or producing visible emissions. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021) (finding respondent in violation of Code § 24-163 even though other vehicles may have produced the noise and the truck was not vibrating in the video). See *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023)

"[W]hile Code § 24-163(a) contains an exception to excessive idling when "the engine is used to operate a loading, unloading, or processing device," the limited exception to a Code § 24-163(a) violation 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). Activity performed in preparation or anticipation of loading or unloading is not sufficient, see *DEP v. Mobile Lifts LLC*, Appeal No. 210861 (March 31, 2016); *DEP v. CNB Crane Rental Inc*, Appeal No. 2201043 (December 15, 2022)" *DEP v. Target Express Courier LLC*, Appeal No. 2400043 (March 28, 2024)

"Per 48 RCNY § 6-12(b), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein. Here, the IO affirmed on the summons that he verified Respondent's van idled for longer than three minutes at the cited date, time, and location based on his review of departmental records, which included the documents and video submitted by the citizen-complainant, most of which were submitted at the hearing. Moreover, per 48 RCNY § 6-12(c) "[r]elevant and reliable evidence may be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York." See *DEP v. HUB Truck Rental Corp.*, Appeal No. 2200261 (June 30, 2022).

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons affirming under penalty of perjury that the IO verified Respondent's vehicle idled for longer than three minutes at the cited date, time, and location "through a review of departmental records," was sufficient to establish Petitioner's prima facie case. See *DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019)

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. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023).

Here, respondent challenged petitioner's case but did not submit any evidence of their defense nor was testimony proffered by the driver of the vehicle or worker present at the location to establish that the vehicle was not idling or idling under an exception.

I credit the factual allegations in the summons and petitioner's evidence which support a violation of the cited code section and find that the respondent did not establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty is imposed.

Ilene Sussman

01/07/2026

01/07/2026

Ilene Sussman, Judicial Hearing Officer

Date