



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

GARY CHEN - NACMIAS LAW FIRM PLLC 592 Pacific Street - 1st Floor Brooklyn, NY 11217	Summons No: 000601119Z et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- BRUKLYN BUILDERS Hearing Date: 10/08/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$400.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000601119Z	Sustained	06/06/2023	131 CONCORD STREET Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA32	24-146 (C)	Sustained	\$400.00

Findings of Fact & Conclusions of Law

Respondent Brooklyn Builders is charged with a violation of NYC Administrative Code 24-146(c) for failing to take precautions to prevent dust (Styrofoam) from becoming airborne during building construction.

In the summons the issuing officer alleged that Respondent failed to take precautions to prevent dust (Styrofoam) from becoming airborne during building construction at 131 Concord St, Brooklyn, on June 6, 2023, at 3:00 pm. The IO further stated that he observed "Styrofoam particles in the open air from construction site."

Respondent appeared at a hearing on October 8, 2024, by its authorized representative, Gary Chen, Esq. Petitioner DEP

appeared by Dantney Parks, Esq.

At the hearing, Petitioner testified that the inspection was the result of a 311 call, with the inspector sent out to the property around 2:45 pm to examine the situation giving rise to the complaint. In the inspection report (Pet. Ex. B), the inspector noted that he observed Styrofoam particles in the open air, showering the public street and sidewalks surrounding the construction site, as well as workers doing EIF walkway work, causing foam particles to enter into the open air and to fall onto the streets and areas surrounding the site. Petitioner submitted into evidence photographs that accompanied the inspection report (Pet. Ex. A), which show the construction site and Styrofoam spread around the perimeter of the construction site. Petitioner argued that loose Styrofoam tends to become airborne and go into people's apartments through open windows. Petitioner also noted that one of the photographs shows a posting with the name of the general contractor to establish that Petitioner named the correct party as Respondent.

Respondent testified that there was a dust mitigation plan in place and submitted a copy of same into evidence. (Resp. Ex. A). Respondent cited the applicable section of law and argued that Respondent took the necessary precautions to prevent dust from becoming airborne including hosing down dust/Styrofoam to prevent it from becoming airborne. Respondent noted that Petitioner's photos show the Styrofoam particles on the ground, in the water, and inside the construction site. Respondent argued that the law looks at whether there were adequate precautions taken, not whether there was any dust that did in fact become airborne. Respondent argued that its general practice was to wet everything down for dust mitigation and that this complied with the statute in that precautionary measures were taken to prevent dust from becoming airborne.

In rebuttal, Petitioner argued that on construction sites there are many forms of particles flying in the air with dust being only one of them and for this particular violation Respondent was cited for Styrofoam particles, which cannot be watered down like dust to prevent it from becoming airborne. Petitioner argued that Styrofoam requires implementation of a netting or vacuum system to prevent it from becoming airborne in order to comply with the statute.

Per Code § 24-102, the Air Code is to be interpreted broadly to protect the public's health by preventing "the emission into the open air of harmful or objectionable substance, including but not limited to smoke, soot, fly ash, dust, fumes" NYC Administrative Code 24-146(c) provides, "No person shall cause or permit a building or its appurtenances or a road to be constructed, altered or repaired without taking such precautions as may be ordered by the commissioner or as established by the rules of the department to prevent dust from becoming air-borne." Here, the photographs submitted by Petitioner show Styrofoam particulate matter scattered on the ground both outside and inside the construction site (Pet. Ex. A), consistent with the inspection report (Pet. Ex. B), which describes Styrofoam particles in the open air, showering the public street and sidewalks surrounding the construction site. Although Respondent submitted a dust mitigation plan into evidence (Resp. Ex. A), the dust mitigation plan describes only sweeping dust daily and using a handheld hose to washdown any dust; it does not describe any precautions taken to prevent Styrofoam particulate matter such as that cited and observed from becoming airborne. Therefore, I find that the dust mitigation plan submitted by Respondent is inadequate to establish that Respondent took the necessary precautions to prevent the observed Styrofoam particulate matter from becoming airborne. Moreover, I find that the dust mitigation plan was not adequately followed in that Styrofoam particulate matter was observed on the public sidewalk and street outside of the construction site, which indicates any precautions taken were inadequate to prevent the Styrofoam from becoming airborne and escaping the construction site. I find that Petitioner's evidence including the summons, inspection report, and photographs establish that Respondent was in violation of NYC Administrative Code 24-146(c) insofar as Respondent failed to take the necessary precautions to prevent the Styrofoam particulate matter from becoming airborne.

Accordingly, I sustain the summons and impose a civil penalty of \$400.

A handwritten signature in black ink, appearing to read "Brian Dolan", is written over a light gray background. The signature is fluid and cursive. In the bottom left corner of the signature area, the date "11/07/2024" is printed in small black text.

11/07/2024

Brian Dolan, Hearing Officer

Date