



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000602400P et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- CITYWIDE CONTAINER SERVICE Hearing Date: 12/30/2024 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
000602400P	Sustained	01/10/2024	204 EAST 43 STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA31	24-146 (B)	Sustained	\$400.00

Findings of Fact & Conclusions of Law

This telephone hearing was held on December 30, 2024. Petitioner, NYCDEP, appeared by Martin Joyce, Representative. Respondent, Citiwide Container Service, appeared by Javier Aguilar, Lance Chebin, Authorized Representative. He waived translation services, counsel and the appearance of the Issuing Officer (IO).

This summons alleges violation of NYC Administrative Code §24-146(c)(Preventing particulate matter from becoming air-borne). The summons states that as per citizen's complaint, Respondent allowed or permitted dust to become airborne without taking precautions, causing construction materials to generate dust into the public right of way while transporting such materials into a garbage truck (Lic. NY #98976JZ, in violation of 24-146(b) of the NYC air code; source of particulate emissions (dust) from

workers dumping construction materials without any mitigation allowing dust to become airborne, causing an annoyance and discomfort to pedestrians in the public right of way.

Ms. Smith relied on the sworn statements of the IO in the summons and she submitted a copy of the Citizen's Redacted Air Complaint describing airborne dust (P-1) and 2 photos taken by the citizen when the violation was issued (P-2 & 3) The photos depict the front and side of the truck which was receiving the construction materials. Ms. Smith also submitted a copy of the Rules pertaining to the emission of dust ((P-4). She stated that Respondent did not take proper precautions at the worksite.

Mr. Chebin denied the allegations in the summons. He testified that Respondent had a dust mitigation plan (R-A). He did not submit any other documents from Respondent.

Ms. Smith argued that although Respondent had a plan, the proper water mitigation system was not in place at the time of the inspection.

NYC Administrative Code § 24-146(c) states that "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 to prevent particulate matter from becoming air-borne.

I credit the IO's affirmed statements in the summons and Petitioner's evidence regarding Respondent's failure to take precautions to prevent dust/particulate matter from becoming airborne. I find that Respondent's evidence was insufficient to establish a defense and I further find that Respondent is in violation of NYC Administrative Code §24-146 (c). This violation is sustained and a penalty of \$400 is imposed.

Barbara Halper

01/02/2025

01/02/2025

Barbara Halper, Hearing Officer

Date