



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: 000789162L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- CITYWIDE CONTAINER SERVICES Hearing Date: 01/10/2025 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000789162L	Sustained	05/31/2023	399 WEST 20 STREET Manhattan

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

Findings of Fact & Conclusions of Law

This matter was heard remotely, via telephonic conference, on January 10, 2025. Respondent appeared via Michael Nacmias, identified as the attorney for the named respondent. Petitioner appeared via Leah Smith.

The summons alleges a violation of NYC Adm. Code 24-163. The date of occurrence was May 31, 2023, at 12:41pm.

In the summons, the issuing officer (IO) details: "Respondent caused or permitted the idling of a motor vehicle while parked, standing or stopped. As per DEP records, citizen observed TRUCK with NY License Plate # 86149MN idling for longer than three minutes from 5/31/2023 12:51:20PM to 5/31/2023 12:54:43PM at 399 W 20TH ST."

Petitioner submits three documents, and a video, as evidence. P1 is a picture of the vehicle's license plate. P2 is a picture of the side of vehicle, with respondent's name and address visible. P3 is the redacted idling complaint. P4 is the citizen video of the incident; it is a 3:23 video, time-stamped in accordance with the summons. Petitioner testifies that the video shows the engine audible throughout the video, clearly idling for longer than three minutes, with no apparent loading or unloading, use of processing equipment, or other activity that would require the engine to run; petitioner notes that this is a container truck, at an active work site, but no active processing device is seen in use. As such, petitioner contends that the violation should be sustained.

Respondent testifies that the citizen moves away from the vehicle at various points in the video, so the sound is uncertain. Respondent further testifies that the truck may have been turned off and on, but does not provide a specific time stamp.

I credit respondent's testimony, but find it insufficient to warrant dismissal of the charges. While the citizen does move away from the vehicle at points in the video, and other sounds to supercede the vehicle's engine noise at points, it does remain consistent, and I observed no noise that seemed like the engine was being turned off, and more importantly, that it was being turned back on, which should have been distinctive.

As such, the summons is hereby sustained, and the statutory penalty imposed.

	01/10/2025
Craig Messing, Hearing Officer	Date