



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
*Hearings Division*

**DECISION**

|                                                                                                       |                                                                                                                                                                                                                                                                                                  |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Michael Nacmias, Esq. - Nacmias Law Firm</b><br>592 Pacific Street 1st Floor<br>Brooklyn, NY 11217 | <b>Summons No: 000604593J et al. (1 Summons)</b><br><br><b>DEPT OF ENVIRONMENTAL PROTECTION,</b><br><br><b>-against-</b><br><br><b>CITYWIDE CONTAINER SERVICE CORP</b><br><br><b>Hearing Date: 01/05/2026</b><br><br><b>Hearing Location: Remote</b><br><br><b>Type of Hearing: By Telephone</b> |
|-------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

|                                              |
|----------------------------------------------|
| <b>Total Penalty Amount: \$400.00</b>        |
| <b>Community Service(Hr): Not Applicable</b> |

| <b>SUMMONS #</b> | <b>SUMMARY DISPOSITION</b> | <b>DATE OF OCCURRENCE</b> | <b>PLACE OF OCCURRENCE</b>                         |
|------------------|----------------------------|---------------------------|----------------------------------------------------|
| 000604593J       | Sustained                  | 07/03/2024                | 6th Avenue between West 3rd and West 4th Manhattan |

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

**Findings of Fact & Conclusions of Law**

The summons alleges violation of NYC Administrative Code 24-146 (B) in that the 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 in a garbage truck.

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

Ilma Babu appeared as an authorized representative for the respondent, Citywide Container Service Corp

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

Respondent acknowledged that some dust but stated that at a point in the video water can be heard running and the workers were moving a pipe. Respondent surmised they were attempting to mitigate any dust that may have been emanating from the back of the vehicle.

Petitioner maintained the violation and contended that the provision of law required the precautions taken be sufficient to prevent the dust from becoming airborne.

NYC Administrative Code 24-146(b) provides " No person shall cause or permit any material that may generate dust to be transported or stored 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."

NYC Administrative Code 24-146(f) sets forth precautions to be used to prevent dust from becoming airborne and states, in pertinent part, "All debris shall be thoroughly wetted before loading and while dumping into trucks, other vehicles or containers . In all cases and at all stages of demolition, wetting procedures shall be adequate to lay the dust."

Code § 24-146(b) provides no minimum amount of dust that must be observed becoming airborne without taking precautions before a violation may be issued. Once Petitioner established its case, the burden shifted to Respondent to either refute the allegations or establish a defense. See 48 RCNY § 6-12(a). DEP v. Worldwide Environmental, Appeal no.2301405(November 30, 2023)

NYC Administrative Code 24-102 provides, in pertinent part, "For the purpose of controlling and reducing air pollution, it is hereby declared to be the policy of the city to actively regulate and eliminate such emissions ....This code shall be liberally construed so as to effectuate the purposes described in this section."

NYC Administrative Code 24-163(f) provides the debris shall be wetted **before** and while dumping into trucks. Respondent provides no testimony or evidence that same occurred but rather only stated that it appears that may have been wetting the debris at points in the process.

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

*Ilene Sussman*

01/05/2026

01/05/2026

**Ilene Sussman, Judicial Hearing Officer**

**Date**