



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET BROOKLYN,NY 11217	Summons No: 000932835X et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- CITYWIDE CONTAINER SERVICE CORP Hearing Date: 12/12/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount:\$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000932835X	Dismissed	02/28/2025	399 PARK AVENUE Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA51	24 -163	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

Summons 000932835X alleges a violation of § 24-163 of the Administrative Code of the City of New York (Code), for idling of motor vehicle engine for more than three minutes. The violation is charged as a first offense.

Petitioner, Department of Environmental Protection, waived its appearance.

Respondent, CONTAINER SERVICE CORP , appeared by ILMA BABU, authorized representative.

Respondent's representative did not dispute the IO's statements but argued that the idling was necessary to operate the

truck's processing device, which, was active at the time of the alleged violation. She testified that the cited vehicle is a trash compactor, which, needs the engine to run to operate the compactor device. She noted that, although the video did not show active loading, the compactor/processing device was still running after the materials were loaded. In support, she submitted (1) a notarized statement from the vehicle's driver, dated December 10, 2025, stating that he was the operator of the vehicle; he denies the engine was idling for no reason; he was carrying out a work order; he was using the trash compactor at the time of the alleged violation; the compactor requires the engine to be on for usage and we were utilizing the compactor to finish our job at the job location at that time; he was actively loading and unloading trash orders; he needs to keep the engine on because the trash compactor has unseen portions that would still compress garbage while nothing is being loaded; and (2) a listing of jobsites/drivers.

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons, affirmed under penalty of perjury, was sufficient to establish Petitioner's prima facie case that Respondent's vehicle idled for longer than three minutes at the cited date, time, and location. See *DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019). Petitioner was not required to submit video evidence to prove its case. That the complainant's video does not depict the cited vehicle vibrating, producing visible emissions, or making audible engine noise does not establish a defense. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021). 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). One such affirmative defense to idling is when "the engine is used to operate a loading, unloading, or processing device," which, applies only 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).

I credit the IO's statements on the summons. I also credit Respondent's evidence, including the affiant driver's assertion he was using the trash compactor at the time of the alleged violation, which, required the vehicle's engine to be running. I find Respondent's credible evidence established a defense to the charge.

Accordingly, the violation is dismissed.

KLawner

12/15/2025

12/15/2025

Kevin Lawner, Judicial Hearing Officer

Date