



Office of Administrative Trials and Hearings

Hearings Division

Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592 PACIFIC STREET
BROOKLYN, NY 11217

Summons# : 000932874Z et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

CITYWIDE CONTAINER SERVICE CORP

Hearing Date : 12/15/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 0.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000932874Z	Dismissed	03/05/2025	99 CLAREMONT AVENUE, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	BA1I	24-163 (F)	Dismissed	0.00

Total Penalty for Summons: 0.00

Findings of Facts & Conclusions of Law

Summons 000932874Z alleges a violation of § 24-163(f) of the Administrative Code of the City of New York (Code), for idling of motor vehicle engine for more than one minute adjacent to a school. The violation is charged as a first offense.

Petitioner, Department of Environmental Protection, waived its appearance.

Respondent, Citywide Container, 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 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) photos showing the processing device being loaded

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 exemption 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.

	12/15/2025
Kevin Lawner, Judicial Hearing Officer	Date