



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000929986X et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- CITYWIDE CONTAINER SERVICE CORP Hearing Date: 11/21/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000929986X	Sustained	10/21/2024	INTERSECTION OF SACKETT ST & 3 AVE Brooklyn

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

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on November 21, 2025. Petitioner waived its appearance through Michael Grosso, Esq. via email. Respondent appeared through Ilma Babu, authorized representative.

Respondent was charged with a violation of AC 24-163 after the IO alleged Petitioner's records reflected a citizen-complainant's observation of the Respondent's truck idling for longer than three minutes while parked, standing or stopped.

Ms. Babu submitted an affidavit from Kevin Wright, one of the main drivers for Respondent. See Resp. Ex. A. Mr. Wright

stated therein that he was the driver at the time of occurrence and that he was using the trash compactor at that time, actively loading and unloading trash order. He also stated that the engine is required to be on so that the compactor may compress unseen portions of garbage while not being actively loaded.

Thus, Mr. Wright did not deny idling but asserted that it was permitted to idle to operate a processing device, a compactor at the rear of the truck. While Code § 24-163 contains an exemption when "the engine is used to operate a . . . processing device," this limited exemption only applies if the vehicle is actually engaged in using the processing device during the alleged idling. See *NYC v. Jenna Concrete Corp.*, Appeal No.40554 (October 26, 2006). Further, the law does not allow vehicles to run their engines more than three minutes in anticipation of activities that are exempt from the idling restrictions, see *DEP v. Cody Construction Corp.*, Appeal No. 2100222 (July 22, 2021), unless the running of the engine is necessary and proximate to the immediately consequent action of the processing device, and therefore an integral part of the active work being performed. See *DEP v. Ferguson Hauling Corp.*, Appeal No. 2300546 (July 27, 2023) (finding processing device exemption was applicable where the cited idling was required to maintain the temperature of hydraulic fluid used by the truck's boom to offload pallets of cement blocks and such offloading was imminent); *DEP v. Garden State Asphalt Materials Inc.*, Appeal No. 2300890 (September 28, 2023) (finding processing device exemption was applicable where the cited idling was required to heat and recirculate asphalt in truck's tank prior to the spraying of asphalt).

I do not credit Mr. Wright's form affidavit as I do not find it specific enough to the allegations of the summons to establish during which portions of the observed idling the trash compactor was in use.

I therefore find Respondent in violation and impose the standard penalty.



11/25/2025

11/25/2025

Charles Simpkins, Judicial Hearing Officer

Date