



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000952985J et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- P CITYWIDE CONTAINER SERVICE COR Hearing Date: 03/11/2026 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
000952985J	Sustained	09/05/2024	ON SCHERMERHORN ST BETWEEN BOND ST & NEVINS ST Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1I	24-163 (F)	Sustained	\$350.00

Findings of Fact & Conclusions of Law

Summons 000952985J alleges a repeat 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 while 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 for dismissal as follows. The complaint's video

shows active work and shows the driver of the cited vehicle waiting for another vehicle in front of it to move out of the way.

Petitioner established the Code § 24-163 charge through the IO's affirmed statements on the summons. See 48 RCNY § 6-12(b) (a summons affirmed under penalty of perjury is prima facie evidence of the facts stated therein). While Petitioner is not required to submit the citizen complainant's video at the hearing, even where one has been presented, it is not fatal to the summons that it does not clearly show the vehicle vibrating, producing visible emissions, or making audible engine noise. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021). Rather, per 48 RCNY § 6-12(a), once Petitioner established its *prima facie* case, the critical inquiry became whether any credible evidence in the record refuted its case or otherwise established an affirmative defense for Respondent "by a preponderance of the evidence." See *DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023).

Here, the video footage sufficiently demonstrates the cited vehicle's engine was idling for more than three minutes with no active loading or unloading/processing device being used. Here, I find no evidence in the record that either refutes Petitioner's case or otherwise establishes an affirmative defense. The law does not allow a vehicle to run its engine in excess of three minutes in anticipation of, or preparatory to, activities that might be exempt from the idling restrictions. See *DEP v. Mobile Lifts LLC*, Appeal No. 2101861 (March 24, 2022). Rather, the vehicle must be "actually engaged" in the exempted activity in order to fall into one of the exceptions. See *DEP v. Academy Express LLC*, Appeal No. 2001409 (January 14, 2021); *NYC v. Jenna Concrete Corp.*, Appeal No. 40554 (October 26, 2006).

I credit the IO's statements on the summons.

Accordingly, the violation is sustained, and the first offense civil penalty is imposed.

K Lawner

03/13/2026

03/13/2026

Kevin Lawner, Judicial Hearing Officer

Date