



Office of Administrative Trials and Hearings
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET NEW YORK,NY 11217	Summons No: 000880886Y et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- STERICYCLE INC Hearing Date: 12/03/2025 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
000880886Y	Sustained	08/29/2024	20 WEST 22 STREET Manhattan

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

Findings of Fact & Conclusions of Law

This hearing was conducted remotely by telephone. Ilma Babu appeared for Respondent. Insp. Michael Grosso appeared for Petitioner Department of Environmental Protection (DEP). Respondent is charged with a violation of section 24-163(f) of the New York City Administrative Code.

Through email Petitioner provided an evidence packet with information and pictures regarding the vehicle (P. Exs. 1-4); and a video of the vehicle, P. Ex. 5, which due to its size was not uploaded and will instead be uploaded into this tribunal's shared digital folder.

Petitioner stated that the video showed the engine was on, that the street was quiet, and one could tell the noise came from the vehicle, that the evidence established the necessary elements and that the summons should be sustained.

Respondent stated that in the video there were no visible signs of a school, that it showed no entrances or exits to a school.

Petitioner stated that Respondent has the burden of proving that this was not adjacent to a school, and that the summons was done based on a citizen's affirmation under penalty of perjury which was credible. To support this argument, Petitioner provided the text of DEP v. New York Paving Inc, Appeal No. 2400840 (2024) (P. Ex. 6).

Respondent did not which to adjourn the summons to be able to gather evidence and stated the video did not show entrances or exits to a school; that the video must show that there is a school.

Section 24-163(f) contains an affirmative defense, which Respondent raised. Concretely the subsection states: "It shall be an affirmative defense that any such school or park was not easily identifiable as a school or park by signage or otherwise at the time a violation of this subdivision occurred."

The summons was sworn under penalty of perjury and as such, per the OATH rules sets a prima facie case. Respondent can dispute the facts as stated in the summons and may prove the facts wrong by preponderance of the evidence. However, the summons does not state if there were signs or not.

This being an affirmative defense, Respondent must prove there were no signs. Respondent may rely on Petitioner's evidence to support Respondent's defense, and for purposes of questioning whether the signs were there use it as Respondent's own evidence. Respondent could also, of course, bring forth their own evidence.

The video does not show any signage, entrances or exits or other things that would indicate there was a school, but that does not mean necessarily they are not there. Respondent did not provide evidence to show there were no signs. I thus find that Respondent has not proven the school was not easily identifiable. Thus, even though it was invoked, the affirmative defense is not available.

With regards to whether there were exits or entrances, the Appeal Petitioner provided also deals with the meaning of "adjacent". Here Respondent did not explicitly dispute the vehicle was adjacent to a school. The same reasoning as above, regarding the affirmative defense would apply regarding whether the vehicle was adjacent to a school. That is, Respondent had to provide evidence, or perhaps find support within Petitioner's evidence, for a claim of the vehicle not being next to a school. But the video was not useful to prove there were exits or entrances, which are relevant to determine if a vehicle is adjacent to a school, and Respondent did not provide any additional evidence to prove there were none.

I find that Respondent did not refute Petitioner's case or establish a defense to the violation.

The summons accordingly is sustained, and the statutory penalty is imposed.

Daniela Vazquez

12/11/2025

12/11/2025

Daniel Vazquez-Diaz, Judicial Hearing Officer

Date