



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000898492R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- WESTMORELAND CONSTRUCTION INC. Hearing Date: 12/09/2025 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
000898492R	Sustained	06/11/2024	467 WEST 28 STREET Manhattan

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

Findings of Fact & Conclusions of Law

The summons is sustained.

The Respondent, WESTMORELAND CONSTRUCTION INC., appeared by its authorized representative, Ilma Babu, NACMIAS LAW FIRM PLLC. The Petitioner, NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION, appeared by its representative, Inspector, Dantney Parks.

The summons alleges a violation of NYC Air Pollution Control Code Section 24-163, Idling of a Motor Vehicle engine over three (3) minutes. The Issuing Officer specifically alleges in details of the violation that the charge was based on a Citizen Complaint

alleging that Respondent's truck with NY license plate #14685ND was idling for longer than three (3) minutes on April 10, 2024 beginning at 1:17:11 PM at 665 St. Mark's Avenue in Brooklyn.

Petitioner's representative relied on the summons for Petitioner's main case and produced the following evidence in support of the summons: 1) a redacted idling complaint form (Px1), 2) a photograph of the subject vehicle's license plate (Px2); 3) a photograph of the passenger side of the subject vehicle including the name of the company (Px3); and 4) a video taken by the complaining citizen of the violating condition including what appears to be the sound of an idling vehicle (Px4). Petitioner's representative stated that while the vehicle did not appear to be using any of its equipment for loading or unloading items during the video.

Respondent's representative denied the existence of the violating condition and noted the following: 1) the subject vehicle contains a processing device, a "boom arm" and 2) it was unclear whether or not the idling was coming from the subject vehicle

Petitioner's representative stated that at the 4:27 mark, the citizen-complainant approaches the vehicle and it is clear that the idling noise is coming from it. Additionally, no evidence was produced by the Respondent to prove that the processing device was in use at the time of observation.

I note that even "even where a video is presented, the charge does not fail if the video does not clearly show the truck vibrating, producing visible emissions, or making audible engine noise. See DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021); DEP v. American Alternative Energy, Appeal No. 1901744 (March 19, 2020); DEP v. SMC Stone International Inc., Appeal No. 1901308 (October 10, 2019). In such cases, the critical inquiry is whether the respondent has sustained its burden to refute Petitioner 's evidence or otherwise establish a defense. See § 6-12(a) of Title 48 of the Rules of the City of New York. Although Respondent's representative argued that the video was inconclusive, he failed to provide any evidence to show that the vehicle 's engine was turned off during the cited time period. See DEP v. American Alternative Energy, Appeal No. 1901744 (March 19, 2020).

I find on the Petitioner's credible case that the violating condition described in the summons existed and the standard penalty is imposed.

The summons is sustained.

Jamin Sewell

12/12/2025

12/12/2025

Jamin Sewell, Judicial Hearing Officer

Date