



Office of Administrative Trials and Hearings
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000885130R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- WESTMORELAND CONSTRUCTION INC Hearing Date: 12/30/2025 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
000885130R	Sustained	09/03/2024	ON W 114TH ST btwn AMSTERDAM AVE / BROADWAY Manhattan

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

Findings of Fact & Conclusions of Law

Petitioner appeared through Inspector Antwan Gibbs. Respondent appeared through registered representative Ilma Babu.

Summons 000885130R charged a violation of Administrative Code 24-163, prohibiting the idling of a motor vehicle engine for longer than 3 minutes. A citizen observed a truck with NY license plate 14698NE idling on 9/3/2024 from 7:15:54 am to 7:19:41 am on West 114th Street between Amsterdam Avenue and Broadway.

This was charged as a first offense.

In support of the summons, Petitioner played a video that was viewed during the hearing, and submitted the summons with service (Exhibit 1), the citizen complaint (Exhibit 2), and photographs (Exhibit 3).

Respondent argued that there is equipment out next to the truck, and the engine might be on to run a processing device.

Petitioner acknowledged that there is activity happening around the truck, but the processing device must be in use to allow the engine to be on. No evidence was provided that there is a processing device in use.

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the issuing officer's summons, affirming under penalty of perjury that he verified Respondent's vehicle idled for longer than three minutes at the cited date, time and location, based on a review of DEP records, was sufficient to establish Petitioner's prima facie case. *See DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019). While Petitioner is not required to submit a video at the hearing, even where one is 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, such as testimony or an affidavit from the vehicle's driver, refuted Petitioner's case or otherwise established an affirmative defense. *See DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023). Respondent presented no such evidence here. Merely contesting the sufficiency of the video submitted by the citizen-complainant is insufficient to refute the violation. *See DEP v. TM & T Service Station, Inc.*, Appeal No. 1901827 (March 19, 2020).

Accordingly, the summons is sustained and the penalty for a first offense will be imposed.



12/31/2025

12/31/2025

Theresa Leary, Judicial Hearing Officer

Date