



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 000815998H et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ANT'S TOWING CORP Hearing Date: 01/06/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$440.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000815998H	Sustained	10/03/2023	INTERSECTION OF MCGUINNESS BLVD AND INDIA ST Brooklyn

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1E	24 -163	Sustained	\$440.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone via Court Call on January 6, 2025. Dantney Parks represented Petitioner. Respondent appeared through authorized representative Lance Chebin.

The summons charges a violation of Administrative Code (Code) § 24-163 for idling of a motor vehicle engine for more than three minutes. The issuing officer (IO) affirmed per Department of Environmental Protection records that a citizen observed the truck identified in the summons idling for longer than three minutes on October 3, 2023 at the intersection of McGuinness Blvd and India St. The summons charges a second violation, citing the prior summons "000706018K - 24 -163."

Petitioner supplemented the summons with the following evidence: photos showing the company name on the vehicle and its license plate (PX 1); screenshot from the OATH website showing the prior summons and in violation disposition (PX 2); the redacted civilian complaint (PX 3); the summons and certificate of service (PX 4); and a three minute forty second video showing the truck idling.

Respondent submitted no evidence in opposition but contends that the truck's ramp was in use, relying on Petitioner's evidence which shows that the truck in question is a flat-bed tow truck and its ramp was in the angled down position. In response, Petitioner argued that the evidence does not show the tow bed in use. Rather, the tow bed was angled down, at rest, and never in motion at any point during the entire time of the video and such anticipation or preparation for actual use does not qualify as an exception for unloading or loading.

Code § 24-163(a) prohibits the idling of a motor vehicle engine in excess of three minutes while parked, standing, or stopped, "unless the engine is used to operate a loading, unloading or processing device." Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein. See DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023); DEP v. TM & T Service Station Inc., Appeal No. 1901827 (March 19, 2020).

I credit the IO's affirmed statements and Petitioner's evidence and find such evidence sufficient to establish Petitioner's prima facie case. I further find that the evidence fails to show that the truck was used to operate a loading, unloading or processing device because the truck bed did not move in the video. The video thus confirmed no such operating activity was taking place. Respondent consequently failed to establish a defense. Further, Respondent did not contest the existence of the prior summonses. See DEP v. Prime Electric Motor Repairs Inc. Appeal No. 2201354 (February 23, 2023).

The summons is sustained as a second violation.

Michael Gallagher

01/15/2025

01/15/2025

Michael Gallagher, Hearing Officer

Date