



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592 PACIFIC STREET
Brooklyn, NY 11217

Summons# : 000893532J et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

EMPIRE STATE TOWING INC

Hearing Date : 11/10/2025

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
000893532J	Sustained	05/09/2024	INTERSECTION OF FLATBUSH AVENUE AND

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

The hearing was conducted via telephone conference call on November 10, 2025.

Respondent EMPIRE STATE TOWING INC was represented by ILMA BABU.

Senior Insp. John McLaughlin appeared on behalf of petitioner DEP.

The summons charges: 24 -163 - IDLING OF MOTOR VEHICLE ENGINE MORE THAN THREE MINUTES

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Petitioner stated that they stand on the summons and citizen complaint as written. Further, petitioner submitted a video, documents, and photos as evidence of the facts of the violation.

Respondent reviewed the evidence presented by petitioner including the video. Respondent argues that the video shows that there was some operation taking place where the worker was using the engine to charge a battery due to some form of mechanical failure.

Petitioner argued that mechanical issues are not a defense.

While Code § 24-163 provides an exemption when the vehicle's engine "is used to operate a loading, unloading or processing device," this is an affirmative defense that respondent had the burden to prove. See 48 RCNY § 6-12(a). See also: DEP v. Highway Safety Protection Corporation, Appeal No. 2301788 (January 25, 2024).

I credit that the summons makes out a valid charge and that the preponderance of the evidence establish the facts of the charge. And establishes that the cited vehicle was idling. I also find that the respondent did not establish a valid defense in that the respondent submitted no evidence in the record that would establish the affirmative defense that the operation that was taking place during the video constituted the use of a "processing device" with the meaning of the cited code.

The summons is sustained.

James B Klein

11/10/2025

11/10/2025

James Klein, Judicial Hearing Officer

Date