



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592PACIFIC STREET Brooklyn,NY 11217	Summons No: 000960310L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- EMPIRE STATE TOWING INC Hearing Date: 03/30/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount:\$600.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000960310L	Sustained	05/30/2025	INTERSECTION OF PARK AVENUE SOUTH and E21 Street Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	\$600.00

Findings of Fact & Conclusions of Law

Ilma Babu appeared as the authorized representative of the named respondent. Martin Joyce for the Department.

The summons cites a violation of 24-163 as a third offense.

The Petitioner submitted priors, photos, vehicle information, and the idling summons affidavit and complaint.

A video which exceeded three minutes was played into the record and described.

The respondent contended that the workers were engaged in actual towing in the process of their work, and they could not turn the engine on and off.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. As was stated by the Petitioner, the flatbed portion of the truck was tilted, but it remained in position and the lift gate was not in active operation.

This is verified by the statements of the videographer, who was present at the scene, and who notes, on several occasions, that the platform is not moving and that the vehicle is being secured manually. This is verified by the video itself. In Appeal No. 2201015 DEP v. East Towing Inc. December 15, 2022, it was held that "Even if Respondent was "commencing the loading process," the law does not allow vehicles to run their engines in excess of three minutes in anticipation of, or preparatory to, activities that might be exempt from the idling restrictions. See Code § 24-163 (a) (permitting idling in excess of three minutes where an engine is being "used to operate a loading, unloading or processing device"). See DEP v. Mobile Lifts LLC, Appeal No. 2101861 (March 24, 2022) (no defense that truck needed to idle over three minutes to use bucket lift, where workers were away getting equipment for job); DEP v. Cody Construction Corp., Appeal No. 2100222 (July 22, 2021) (rejecting argument that idling was necessary to lubricate the vehicle's hydraulic lift and allow operation of an unloading device). Rather, the vehicle must be "actually engaged" in the exempted activity during the idling period, in order to fall into one of the exceptions. See DEP v. Academy Express LLC, Appeal No. 2001409 (January 14, 2021); NYC v. New York Bus Service, Appeal No. 39612 (January 18, 2007). In the absence of any evidence establishing that the truck was actively engaged in loading or unloading during the specific period that the idling was observed, the Board finds that Respondent failed to refute the charge or establish a defense, and the violation should have been sustained.

Similarly, here the lift/platform is stationary while workers are manually securing the vehicle, and as such, this activity is not exempted by the liftgate exception.

Accordingly, the summons is sustained as a third offense.