



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000838522Y et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ACCURATE TRANSPORT Hearing Date: 02/24/2025 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
000838522Y	Sustained	02/19/2024	Sixth Avenue between West 46th and West 47th Streets Manhattan

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

Findings of Fact & Conclusions of Law

Petitioner New York City Department of Environmental Protection (DEP) was represented by DEP court representative LEAH SMITH.

Respondent ACCURATE TRANSPORT was represented by authorized representative LANCE CHEBIN of the Nacmias Law Firm, PLLC.

Respondent was charged with a violation of § 24-163 of the Administrative Code of the City of New York (Code) for idling a motor vehicle engine for longer than three minutes.

In the summons, the Issuing Officer (IO) affirmed observing, based on information submitted by a citizen complainant (CC), that on February 19, 2024, on Sixth Avenue between West 46th and West 47th Streets in Manhattan, respondent caused or permitted the idling of a motor vehicle while parked, standing or stopped. The IO noted that as per DEP records, citizen observed TRUCK with NJ License Plate #XNMC53 idling for longer than three minutes from 10:37:51AM to 10:42:19AM.

I find the Issuing Officer's sworn-to summons narrative to be credible and persuasive.

Respondent's representative stated that he had reviewed the evidence packet and the video evidence previously provided to him and denied the violation without further rebuttal.

Code § 24-163(a) prohibits the idling of a motor vehicle engine in excess of three minutes while parked, standing, or stopped. 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. Petitioner is therefore not required to submit a video at the hearing to establish its case. See DEP v. TM & T Service Station Inc., Appeal No. 1901827 (March 19, 2020), though citizen-complainants must supply one to DEP along with their complaint. See DEP v. U-Haul Co. of Arizona Inc., Appeal No.2001342 (January 14, 2021). Even where a video is presented, the charge does not fail if the video 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). In such cases, once Petitioner has established its prima facie case, the critical inquiry is whether the respondent has sustained its burden to refute Petitioner's evidence or otherwise establish a defense. See 48 RCNY § 6-12(a).

Code § 24-163(a) provides that no one shall permit the idling of a motor vehicle engine for longer than three minutes unless the engine is used to operate a loading, unloading, or processing device.

The credible evidence, here the sworn-to summons narrative of the Issuing Officer, is sufficient to establish, and I find, that respondent was in violation on the date of the offense. The violation is SUSTAINED, and I impose the penalty of \$350.



02/26/2025

02/26/2025

Mark Goichman, Hearing Officer

Date