



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: 000808436K et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- BAGEL BITES USA INC Hearing Date: 01/06/2025 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
000808436K	Sustained	09/05/2023	64 Rd between 110 St and 108 St Queens

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

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 September 5, 2023 on 64 Road between 110 Street and 108 Street. The summons charges a third or subsequent violation, citing the summonses "000745174Z - 24-163" and "000778097K - 24-163."

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

Respondent submitted no evidence in opposition but contends that the truck was transporting food items that require refrigeration and that the truck's engine must be running for the refrigeration unit to operate.

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 note specifically that the redacted civilian complaint affirmed that the engine was not being used to run the refrigeration unit which was independently powered. Respondent failed to provide evidence that the refrigeration unit was mechanically connected to the engine. Respondent consequently failed to establish a defense that the truck engine was used to operate a loading, unloading or processing device. 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 and penalty for third violation imposed.

<i>Michael Gallagher</i>	01/15/2025
Michael Gallagher, Hearing Officer	Date