



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

LANCE CHEBIN - NACMIAS LAW FIRM
592 PACIFIC STREET
Brooklyn ,NY 11217

Summons# : 000806376Z et al. (3 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

BAGEL BITES USA INC

Hearing Date : 5/27/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 1,640.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000806376Z	Sustained	08/28/2023	104 West 17th street, Manhattan

LINE ITEM	OATH CODE	CODE SECTION / RULE	RESULT	PENALTY
1	BA1J	24-163 (F)	Sustained	440.00

Total Penalty for Summons: 440.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000838082J	Sustained	02/07/2024	201 WEST 17 STREET, Manhattan

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

Total Penalty for Summons: 600.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000869143X	Sustained	01/31/2024	West 17th street between 6th avenue and 7th avenue.

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

Total Penalty for Summons: 600.00

Findings of Facts & Conclusions of Law

Lance Chebin, Esq. appeared for respondent. DEP supervisor, Michael Gross appeared for petitioner.

000806376Z

This summons was issued for an alleged violation of 24-163(f); Idling of a motor vehicle engine for more than one minute while adjacent to a school as a second offense

Petitioner rested on the summons.

Respondent asserted a defense that petitioner failed to establish that the vehicle was adjacent to a school and claimed there is nothing in petitioner's video evidence that indicates a school nearby.

Mr. Grosso cited to appeal No. 2400800 and claimed the burden is on respondent to show the vehicle was not adjacent to a school.

Mr. Chebin offered no additional evidence and entered a denial with no rebuttal.

I credit the summons and find respondent in violation.

000869143X AND 000838082J-

These summonses were issued for an alleged violation of NYC Admin Code 24-163, Idling of a motor vehicle engine for more than three minutes as a third and subsequent offense.

Petitioner supported the summonses with a screenshot from ticket finder indicating the two prior summonses in default, photos from the observation including the cited plate, the idling complaint, and video link. Mr. Grosso recommended the increased penalty as a third violation.

Mr. Chebin asserted a defense that a processing device was being used and therefore the vehicle was required to idle to keep the refrigeration unit powered.

Mr. Grosso responded that the main engine should not be on for a refrigeration unit which likely had its own motor.

Mr. Chebin claimed there was no independent motor for the refrigeration unit and supported respondent's defense pointing to petitioner's video. Mr. Chebin argued it is clear in the video that there is a refrigeration processing device.

I credit the summons and find respondent failed to establish a credible defense that the engine was required for a processing device.

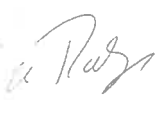
The IO's summons, affirmed under penalty of perjury that the IO verified Respondent's vehicle idling for longer than three minutes at the cited date, time, and location, based on a review of DEP records, was sufficient to establish Petitioner's prima facie case. See DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019). Per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry became whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense "by a preponderance of the evidence." See DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023). The Board concludes that no such evidence was presented here.

Here, a review of petitioner's video shows that the rear portion of the truck has a door which appears to be for refrigeration but there is no specific indication in the video that shows the engine is required to operate the refrigeration part of the truck.

Respondent did not offer any detailed first hand testimony or evidence in this regard. No model information for the refrigeration unit or other specifications were submitted to show the refrigeration unit requires the engine to run to stay on, nor were any operator's statement's submitted indicating that the refrigeration unit was in operation at the time of offense.

Additionally, the idling complaint specifically notes in the observation section that the engine was not being used for a refrigeration device.

As respondent failed to credibly establish a processing device defense, the summonses are each sustained as a third.

 06/04/2025	06/04/2025
Christine Polychroniades, Hearing Officer	Date

IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

CAN I DO COMMUNITY SERVICE?

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

COMPLETION OF COMMUNITY SERVICE

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
 Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
 Queens: (718) 393-6044 CSqueens@oath.nyc.gov
 Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
 Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you do not complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
 visit OATH's website www.nyc.gov/oath
 or call 1-844-OATH-NYC

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