



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592PACIFIC STREET NEW YORK,NY 11217	Summons No: 000931385N et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- FQE ELECTRIC LLC Hearing Date: 12/04/2025 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
000931385N	Sustained	10/02/2024	ON LAWRENCE STBETWEEN FULTON ST AND WILLOUGHBY ST Brooklyn

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

Findings of Fact & Conclusions of Law

I find Respondent FQE ELECTRIC LLC in violation of NYC Administrative Code § 24-163 for idling motor vehicle engine for more than 3 minutes.

Ilma Babu appeared for Respondent at a telephone hearing held on December 4, 2025. Petitioner NYC Department of Environmental Protection (DEP) waived its appearance. Respondent's representative waived the use of an interpreter and agreed to proceed without counsel.

Petitioner DEP charged respondent with a violation of NYC Admin Code § 24-163 for idling of a motor vehicle engine for more than 3 minutes.

At the telephone hearing, Respondent's representative denied the allegation and submitted into evidence a video showing the cited vehicle, while it was parked at the cited location when the violation was issued. See Exhibit A. The video was obtained through DEP's database, and it appears to be the video taken by the citizen that was later used by DEP when issuing this summons. For the record, during the video, audible sound of what appears to be the vehicle's engine can be heard. The video does not show that the vehicle was using any processing equipment, such as loading or unloading equipment at the time.

As to the video, see Exhibit A, Respondent's representative argued that the video contains ambient noise and therefore, the vehicle's engine is not actually audible. Respondent's representative submitted no other evidence or testimony.

I find that the Respondent here failed to refute the allegation in the summons or to raise a valid defense. Petitioner may issue a summons based on a complaint filed by a citizen together with evidence of such violation. See *Code § 24-182(a)-(b)*; *DEP v. Academy Lines LLC*, Appeal No. 1900531 (June 6, 2019). The IO's review of the evidence submitted by the citizen complainant forms the basis for his affirmation on the summons that he personally observed the commission of the violation or verified its existence through a review of departmental records. See 48 RCNY § 6-12(b) (a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein); and 48 RCNY § 6-12(c) (hearsay evidence, where relevant, material, and reliable, is admissible in OATH hearings). Here, the IO affirmed under penalty of perjury that he reviewed departmental records and concluded that Respondent idled its vehicle for more than three minutes. Thus, the affirmed-to summons, which includes the time, date, location, and essential facts describing the violation, established Petitioner's prima facie case. See 48 RCNY § 6-12(a).

In addition, per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry becomes 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). Here, Respondent's representative denied the allegation and argued that the video relied upon by Petitioner, see Exhibit A, contains ambient noise and therefore, the vehicle's engine is not actually audible. However, during the video, see Exhibit A, the citizen approached the vehicle's engine, and audible sound that appears to be emanating from the vehicle's engine can be heard, while the same sound can also be heard throughout the recording. Moreover, Respondent here failed to provide any affirmative evidence, such as testimony or affidavits from the vehicle's driver, that would refute Petitioner's case or otherwise establish that an exemption applied.

Accordingly, the violation of NYC Administrative Code § 24-163 is sustained.



12/10/2025

12/10/2025

George Drakopoulos, Judicial Hearing Officer

Date