



# OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

## Decision

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

Summons# : 000778487X et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

HUGH O'KANE ELECTRIC CO INC

Hearing Date : 2/24/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 440.00

Community Service(Hr): Not Applicable

| SUMMONS #  | SUMMARY<br>DISPOSITION | DATE OF OCCURRENCE | PLACE OF OCCURRENCE                                   |
|------------|------------------------|--------------------|-------------------------------------------------------|
| 000778487X | Sustained              | 03/28/2023         | at the intersection of Smith<br>and Douglass Streets, |

| LINE ITEM | OATH CODE | CODE SECTION / RULE | RESULT    | PENALTY |
|-----------|-----------|---------------------|-----------|---------|
| 1         | BA1E      | 24 -163             | Sustained | 440.00  |

Total Penalty for Summons: 440.00

### Findings of Facts & Conclusions of Law

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

Respondent HUGH OKANE ELECTRIC CO INC 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 motor vehicle 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 March 28, 2023, at the intersection of Smith and Douglass Streets, 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 NY License Plate #70937MH idling for longer than three minutes from 5:18:00AM to 5:21:28AM. This was charged as a second offense.

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 video evidence previously provided to him and denied the violation without further rebuttal.

Code § 24-163 (f) prohibits idling a motor vehicle engine for longer than one minute while parking, standing or stopping adjacent to a school. 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).

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 second offense penalty of \$440.

|                                                                                     |            |
|-------------------------------------------------------------------------------------|------------|
|  |            |
| 02/25/2025                                                                          | 02/25/2025 |
| Mark Goichman, Hearing Officer                                                      | Date       |

