



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000778666L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- HUGH OKANE ELECTRIC CO INC Hearing Date: 02/24/2025 Hearing Location: Remote Type of Hearing: By Telephone
--	---

Total Penalty Amount: \$440.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000778666L	Sustained	03/30/2023	INTERSECTION OF 5TH AVE & EAST 56TH STREET Manhattan

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

Findings of Fact & Conclusions of Law

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

Respondent 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 30, 2023, at the intersection of Fifth Avenue and East 56th Street 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 NY License Plate #61054MJ idling for longer than three minutes from 2:16:17PM to 2:19:43PM. This was charged as a third or subsequent offense, citing summonses 00740265R and 00673902N as prior violations.

Petitioner submitted into evidence (1) a photograph of the respondent's vehicle with the name of the respondent emblazoned on its side; (2) a photograph of the respondent's vehicle license plate; (3) a Redacted Idling Complaint; (4) a document called ReportViewer containing the Affidavit of Service; and (5) a video submitted by the Citizen Complainant detailing the violating conditions of the engine on, visible exhaust, engine noise and no loading or unloading, no liftgate in operation, 3 minutes and 31 seconds long.

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

Petitioner noted that he did not have support for this violation to be charged as a third or subsequent offense since prior summons #00673902N was out-of-range, and moved that the instant summons be charged as a second offense. GRANTED.

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 prohibits idling a motor vehicle engine for longer than three minutes while parking, 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).

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.

 02/26/2025	02/26/2025
Mark Goichman, Hearing Officer	Date