



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Matthew Whitening - NACMIAS LAW FIRM PLLC
592 Pacific Street - 1st Floor
Brooklyn, NY 11217

Summons# : 000727195Y et al. (5 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CORPORATION

Hearing Date : 1/6/2025

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 1,750.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000727195Y	Sustained	06/11/2022	1172 , Manhattan

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000728224Z	Sustained	08/11/2022	, Manhattan

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000797731M	Sustained	06/06/2023	ON 48 STREETBETWEEN 10 AVENUE A, Manhattan

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000819441Z	Sustained	10/26/2023	40 WASHINGTON SQUARE SOUTH, Manhattan

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000819442K	Sustained	10/26/2023	ON LAGUARDIA PLACEBETWEEN WASHI,

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

Findings of Facts & Conclusions of Law

Five summonses were issued by the NYC Department of Environmental Protection for idling of motor vehicle engine for more than three minutes as a first offense.

Petitioner, DEP, appeared by Dayntey Parks.

Respondent appeared by Matthew Whitening.

Petitioner submitted into evidence photographs, redacted citizen complaint report and video of the cited violation, without objection.

1) As to 000727195 Y:

Petitioner relied on the evidence in the record.

Respondent argued that the wrong party was cited on the violation since the photographs of the truck indicate a different named entity

Petitioner stated that the owner is the named Respondent and submitted an owner search in the record.

As such, based on the record before me, the summons is hereby sustained and the standard penalty is imposed.

2) As to 000797731M;

Petitioner relied on the evidence in the record.

Respondent argued that the wrong party was cited on the violation since the photographs of the truck indicate a different named entity

Petitioner stated that the owner is the named Respondent and submitted an owner search in the record.

As such, based on the record before me, the summons is hereby sustained and the standard penalty is imposed.

3) As to 000728224Z:

Petitioner relied on the evidence in the record.

Respondent argued that the wrong party was cited on the violation since the photographs of the truck indicate a different named entity

Petitioner stated that the owner is the named Respondent and submitted an owner search in the record.

Respondent argued that loading and unloading was occurring at the time of violation.

Petitioner argued that there is no evidence of active loading and unloading.

A review of the evidence does not show loading or unloading in the video.

As such, based on the record before me, the summons is hereby sustained and the standard penalty is imposed.

4) As to Summons 000819441Z:

Petitioner relied on the evidence in the record.

Respondent argued that the wrong party was cited on the violation since the photographs of the truck indicate a different named entity

Petitioner stated that the owner is the named Respondent and submitted an owner search in the record.

Respondent argued that the lift gate was down so that at the time of violation, Respondent was in the process of working and would not be in violation of the law.

Petitioner argued that there is no evidence of loading and unloading and that the truck has a separate power device that would not require the engine to idle.

Petitioner argued that although the lift gate was down, the lift gate must be in active use and not in anticipation of use and thus, the Respondent was in violation.

A review of the evidence does not show any activity on the lift gate as viewed in the video.

As such, based on the record before me, the summons is hereby sustained and the standard penalty is imposed.

5) As to Summons 000819442K

Petitioner relied on the evidence in the record.

Petitioner argued that there is no evidence of loading and unloading and that the truck has a separate power device that would not require the engine to idle.

Petitioner argued that although the lift gate was down, the lift gate must be in active use and not in anticipation of use and thus, the Respondent was in violation.

A review of the evidence does not show any activity on the lift gate as viewed in the video.

As such, based on the record before me, the summons is hereby sustained and the standard penalty is imposed



01/17/2025

01/17/2025

John Ciafone, Hearing Officer

Date

