



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000824268K et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- NATIONAL DCP LLC Hearing Date: 05/13/2025 Hearing Location: Remote Type of Hearing: By Telephone
--	---

Total Penalty Amount: **\$0.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000824268K	Dismissed	11/27/2023	WEST 30TH BTWN BWDAY AND 6TH AVE Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1E	24 -163	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone on May 13, 2025. Petitioner was represented by Dantney Parks. Respondent was represented by Lance Chebin, its authorized representative.

The summons charged a second offense violation of Administrative Code 24-163 and alleged that per DEP records a citizen observed a truck idling for longer than three minutes.

Petitioner submitted several items into evidence – photographs of the vehicle and its license plate; a DOT lookup; a redacted idling complaint; two videos of the truck allegedly idling; and a screenshot from OATH TicketFinder showing the prior was

found in violation. See Petitioner Ex 1. Petitioner noted that though the liftgate is down, it does not move during the course of the video. Petitioner also argued that the truck has a refrigeration unit that can run independently from the engine.

Respondent's representative argued that a processing device exception should apply as the liftgate was in use. Respondent's representative also stated that the truck's refrigeration unit cannot run independently from the engine and argued that a processing device exception should apply for the refrigeration unit as well.

I credit the testimony and evidence of both parties. I find Petitioner established a prima facie case. I find Respondent did not refute the allegations. However, I find that Respondent established a processing device exemption for the refrigeration unit.

In *DEP v. Blue Star Meat Corp*, Appeal No. 2400569 (June 27, 2024), the Board found Respondent's testimony that the truck was holding meat which must be refrigerated and had a Model 30 refrigeration unit powered by the truck's engine was sufficient to shift the burden back to Petitioner to show the refrigeration unit was operating on an independent power source, and that Petitioner's submission of the owner's manual for a T-80 device was not sufficient to show the unit was operating on an independent power source. Here, Petitioner did not provide any evidence to establish that the vehicle's refrigeration unit was capable of running without the engine. I credit Respondent's testimony that the engine was needed and in use to power the refrigeration unit. I find Respondent established an affirmative defense.

Accordingly, the summons is dismissed.



05/13/2025

05/13/2025

Hannah Pinto, Hearing Officer

Date