



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

NACMIAS LAW FIRM PLLC - MABEL OGHOJA FOR 592 Pacific Street Brooklyn, NY 11217	Summons# : 000795183L et al. (1 summonses) DEPT OF ENVIRONMENTAL PROTECTION, -against- ON PENSKE TRUCK LEASING CORPORATI Hearing Date : 1/28/2025 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount : 350.00	Community Service(Hr): Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000795183L	Sustained	07/23/2023	On W 31 St btw 8 Av & 9 Av, Manhattan

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

Introduction

Petitioner, the New York City Department of Environmental Protection, charges Respondent, PENSKE TRUCK LEASING CORPORATION, with a violation of Section 24-163 of the New York City Administrative Code for idling of a motor vehicle engine for longer than three minutes.

Both parties attended a telephonic hearing on Tuesday, January 28, 2025. Dantney Parks appeared for Petitioner. Mabel Oghojafor appeared for Respondent, and waived an Issuing Officer's appearance.

For the following reasons, the summons is SUSTAINED.

Evidence and Arguments

Petitioner presented a redacted NYC Citizen Idling Complaint, two printouts of webpages indicating the vehicle's ownership information, two photos depicting various portions of the cited vehicle, (collectively, "P1"), and a video in support.

After reviewing Petitioner's evidence and video, Ms. Oghojafor argued as follows. The lift gate was down, and an individual was loading and unloading items from the truck near the end of the video.

In rebuttal, Ms. Parks argued that the lift gate was not actually in use, or operable, mechanically connected to the engine.

Discussion

Code § 24-163 prohibits idling a motor vehicle engine for longer than three minutes while parking, standing, or stopping unless the engine is used to operate a loading, unloading, or processing device.

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons details, affirmed by the Officer under penalty of perjury that the Officer verified Respondent's vehicle idled for longer than the statutorily allowed period at the cited date, time, and location based on a review of DEP records, was sufficient to establish Petitioner's prima facie case. See DEP v. Edge Auto, Appeal No. 2301007 (October 26, 2023), see also DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019).

I credit the summons details and Petitioner's evidence. Petitioner stated a prima facie case. In the absence of probative evidence to contest Petitioner's case, Respondent failed to refute the allegation or establish a defense. I am not convinced by Respondent's argument, as the fact that the lift gate was down is not sufficient to establish that the lift gate was actually in use as a processing device during the video. The video shows a clear view of the liftgate was down until it reached the 3 minutes and 5 seconds mark, and it was not moving.

Conclusion

Accordingly, the summons is sustained, and a statutory penalty of \$350 is imposed upon Respondent.



01/31/2025

01/31/2025

Geoffrey Luan, Hearing Officer

Date

