



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street, 1st fl Attn: Lance Chebin Brooklyn, NY 11217	Summons No: 000847669N et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- FAST AND SECURE TRANSPORT INC Hearing Date: 04/10/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000847669N	Sustained	12/13/2023	257 1 AVENUE Manhattan

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

Findings of Fact & Conclusions of Law

The summons alleges violation of Title 24 Chapter 1 of the NYC Administrative Code in that respondent caused or permitted idling of a motor vehicle while parked standing or stopped for longer than 3 minutes.

Petitioner, The Department of Environmental Protection, appeared by Inspector Leah Smith

Lance Chebin appeared as an authorized representative for the respondent, Fast and Secure Transport Inc, and denied the violation.

Petitioner relied on the sworn statement in the summons and submitted supporting documentation.

Respondent stated the lift gate was down and as such the engine would need to be on.

Petitioner contended that the lift gate was not utilized during the course of the video.

[A]n idling charge does not fail if the video does not clearly show the truck making an audible engine noise, vibrating, or producing visible emissions. See DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021) (finding respondent in violation of Code § 24-163 even though other vehicles may have produced the noise and the truck was not vibrating in the video). See DEP v. Bartlett Dairy, Appeal No. 2201546 (March 23, 2023)

"It was not fatal that the video did not show the entire vehicle. It was then Respondent's burden to either refute the charge or establish an affirmative defense. See 48 RCNY § 6-12(a). Here, Respondent merely contested the sufficiency of the video and failed to present evidence to refute the summons or establish an affirmative defense." See DEP v. Aquifer Drilling & Testing Inc, Appeal No. 2300348 (June 29, 2023).

"[W]hile Code § 24-163(a) contains an exception to excessive idling when "the engine is used to operate a loading, unloading, or processing device," the limited exception to a Code § 24-163(a) violation only applies if the vehicle is actually engaged in using such a device at the time the engine is running. See NYC v. Jenna Concrete Corp., Appeal No. 40554 (October 26, 2006); NYC v. Sergio Visquerras, Appeal No. 1400923 (November 20, 2014). Activity performed in preparation or anticipation of loading or unloading is not sufficient, see DEP v. Mobile Lifts LLC, Appeal No. 210861 (March 31, 2016); DEP v. CCR Crane Rental Inc, Appeal No. 2201043 (December 15, 2022)" DEP v. Target Express Courier LLC, Appeal No. 2400043 (March 28, 2024)

Here, while the respondent contended the lift gate was in use he did not submit an affidavit from the driver or any other evidence in support of that contention. Further, the video submitted by petitioner does not show the lift gate in use.

I credit the factual allegations in the summons and petitioner's evidence which support a violation of the cited code section and find the respondent did not establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty as is imposed.

Hlene Sussman

04/14/2025

04/14/2025

Hlene Sussman, Hearing Officer

Date