



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000819156J et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- PENSKE LEASING & RENTAL CO Hearing Date: 11/06/2024 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
000819156J	Sustained	10/05/2023	INTERSECTION OF 7TH AVENUE AND BARROW STREET Manhattan

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

Findings of Fact & Conclusions of Law

The NYC Department of Environmental Protection was represented by senior inspector Michael Grosso at a telephone hearing on November 6, 2024. Registered representative Lance Chebin appeared on behalf of Respondent PENSKE LEASING & RENTAL CO. Respondent's representative waived the use of a translator, the assistance of counsel, a formal reading of the summons and the presence of the Issuing Officer.

The summons alleges a violation of NYC Administrative Code 24-163: idling motor vehicle engine for more than 3 minutes in that a citizen observed a truck with NJ license plate # XMUR54 idling for more than three minutes on 10/05/23 from 1:14 PM – 1:18 PM at intersection of 7th Avenue S and Barrow Street. This is a first offense.

Inspector Grosso submitted two pictures of the truck, copy of the redacted citizen's complaint, copy of affidavit of service, screenshot from DOT and screenshot for registration details of the subject vehicle (marked Petitioner's Exhibits 1,2,3, and 4). Petitioner also submitted a 4:54-minute video of the idling incident including Respondent's vehicles engine sounds, views of the side of the vehicle, and front of the subject vehicle with the license plate. The video was too large to upload, but **the video was viewed during the hearing.**

Respondent's representative argued that they were not in violation because this is not their vehicle. The vehicle does not have Respondent's name or logo. There is no evidence showing this truck has any association with Respondent. The only thing that Petitioner has shown regarding ownership of the vehicle is their own internal database. Moreover, even if this was Respondent's vehicle, the vehicle is engaged in using a processing device since there is a refrigeration unit attached to the subject vehicle. No additional evidence was submitted.

In rebuttal, Petitioner that when a vehicle has plates from any state that is not NY, DEP's enforcement unit can look up to whom the vehicle is registered to. In addition, when the refrigeration is this big, the unit usually runs independently from the engine. Thus, the engine does not have to be running for the refrigeration unit to work.

Code § 24-163 provides that no person shall cause or permit the engine of a motor vehicle to idle for longer than three minutes while parked, standing, or stopped. I credit the sworn statement of the issuing officer and that they verified that the cited vehicle idled for longer than three minutes on the cited date, time, and location, based on a review of DEP records. This is sufficient to establish Petitioner's initial cases. See *DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019). The burden then shifted to Respondent to refute the charges or establish a defense. See § 6-12(a) of Title 48 of the Rules of the City of New York (RCNY).

While Petitioner is not required to submit the citizen complainant's video at the hearing, even where a video has been presented, it is not fatal to the summons that it 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). Rather, per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry becomes whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense "by a preponderance of the evidence." See *DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023).

Per Code § 24-180(b)(2), the "owner" of the equipment in violation is a responsible party that may be charged. An "owner" is broadly defined in Code § 24-104 to include a lessee of the equipment, an operator, or any other person who has regular control of equipment or apparatus. See *DEP v. Handle With Care Inc.*, Appeal No. 2400126 (March 28, 2024).

Respondent challenged the allegations by claiming the vehicle was using processing device and denied ownership of the subject vehicle. However, because Code § 24-180(b) "explicitly makes an owner a culpable party, regardless of whether it actually operates the [vehicle]," Respondent is a responsible party under Code § 24-163. See *DEP v. Penske Truck Leasing Co., L.P.*, Appeal No. 2001270 (April 22, 2021), citing *DEP v. U-Haul Co of Arizona Inc.*, Appeal 2000010 (April 23, 2020), quoting *Liberty Lines Express, Inc. v. New York City Env'tl. Control Bd.*, 160 A.D.2d 295, 296 (1st Dept. 1990).

Here, Respondent is the registered owner, thus they are the correct named party. Furthermore, Respondent failed to present any evidence to substantiate their claim that this vehicle was using a processing device.

Therefore, the summons is sustained, and the standard penalty as a first offense is imposed.



11/07/2024

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Raul Quezada, Hearing Officer

Date