



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET BROOKLYN, NY 11217	Summons No: 000822969Y et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- NATIONAL DCP LLC Hearing Date: 04/28/2025 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
000822969Y	Sustained	11/20/2023	ON 7TH AVE BETWEEN 26TH ST AND 27 ST Manhattan

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

Findings of Fact & Conclusions of Law

This matter was heard remotely, via telephonic conference, on April 28, 2025. Respondent appeared via Lance Chebin, identified as the authorized representative for the named respondent, authorized to appear on their behalf. Petitioner appeared via Leah Smith.

The summons alleges a violation of NYC AC 24-163. The date of occurrence was November 20, 2023, at 9:15am.

Petitioner submits five documents, and a video, as evidence. The documents include: a picture of the vehicle's license plate; a picture of the side of vehicle, with respondent's name and DOT number visible; a picture showing the place of occurrence;

the redacted idling complaint; and a copy of the instant summons, and proof of service. The citizen video of the incident; it is a 3:55 video, time-stamped in accordance with the summons. Petitioner testifies that the video shows the engine audible throughout the video, clearly idling for longer than three minutes, with no apparent loading or unloading, use of processing equipment, or other activity that would require the engine to run; petitioner testifies that the vehicle appears to possess both a refrigeration unit and a lift gate, as well as a side door for the refrigeration unit, but the refrigeration unit does not require the engine to run, and the lift gate does not appear to have been in use throughout the video. As such, petitioner contends that the violation should be sustained.

Respondent testifies that the lift gate was down, and in use, and further, that the refrigeration unit was in use at the time.

Petitioner testifies that the written statement of the citizen states that the engine as not being used to run the refrigeration unit. Further, the video shows that the "tractor" can disengage from the "trailer," and has its own power unit; petitioner testifies to three visible "tanks," one of which is for the refrigeration unit, showing that it is self powered. Petitioner also testifies to the vehicle's running lights being visibly on, at 2:55 of the video; the headlights are off, but the running lights (an "eyebrow" above the headlights) are lit. Petitioner does concede that the lift gate is on the ground, but testifies that it is not moving, and that a processing device being "engaged" means that it is "in use," whereas the lift gate here is not being lowered or lifted. (Petitioner does note that the back of the video is not shown until the end of the video, but the video does show a side door open, with a ladder, which indicates that this appears to be in use.)

I credit respondent's testimony, but find it insufficient to warrant dismissal of the charges. At the outset, respondent's testimony as to the refrigeration unit being self-powered is uncontested by respondent, so I credit this testimony, and find the use of the refrigeration unit is not an excuse to 24-163. As to the lift gate, there is ample case law holding that a vehicle's engine may not be running in "anticipation" of work to be performed, and instead, the work must be actively ongoing at the time, to qualify as an exception to 24-163. That does not appear to be the case here, as respondent does not submit testimony that the lift gate was in active use, instead only testifying that it was down, at the time of occurrence.

As such, the summons is hereby sustained, and the statutory penalty imposed.



04/28/2025

04/28/2025

Craig Messing, Hearing Officer

Date