



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

LANCE CHEBIN - NACMIAS LAW FIRM
592 PACIFIC STREET
BROOKLYN, NY 11217

Summons# : 000824648M et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

UNFI TRANSPORT LLC

Hearing Date : 12/16/2024

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 350.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000824648M	Sustained	12/27/2023	ON ALLEN STBETWEEN GRAND ST, 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

I sustain the summons and impose the \$350.00 statutory first offense penalty.

Lance Chebin (Representative) appeared at the teleconference hearing for respondent UNFI TRANSPORT LLC (Respondent) and waived his rights to translation services, an attorney and the presence of the issuing officer. Michael Grosso appeared for petitioner Department of Environmental Protection (DEP).

Respondent was cited for a first offense violation of Section 24-163 of the Administrative Code of the City of New York (Code) for a motor vehicle's engine idling longer than three minutes.

Code Section 24-163(a) provides, in pertinent part, that "No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes." Petitioner may issue a summons based on a complaint filed by a citizen together with evidence of such violation. See Code Section 24-182(a)-(b); Academy Lines LLC, 1900531.

Code Section 24-163(a) provides, in pertinent part, that:

"No person shall cause or permit the engine of a motor vehicle, other than a legally authorized emergency motor vehicle, to idle for longer than three minutes . . . unless the engine is used to operate a loading, unloading or processing device."

Code Section 24-104 defines "process" as:

"any industrial, commercial, agricultural or other activity, operation, manufacture or treatment in which chemical, biological and/or physical properties of the material or materials are changed, or in which the material(s) is conveyed or stored without changing the material(s) (where such conveyance or storage system is equipped with a vent(s) and is non-mobile), and which emits air contaminants to the outdoor atmosphere. A process does not include an open fire, operation of a combustion installation, or incineration of refuse other than by-products or wastes from processes."

Code Section 24-182(a) provides:

"Any natural person, other than personnel of the department and other employees of the city of New York authorized by law to serve summonses for violations of the code, may serve upon the department a complaint, in a form prescribed by the department, alleging that a person has violated any provision of this code or order or regulation promulgated by the commissioner or the board, except with respect to sections 24-143 and 24-163 of this code, but still applicable . . . trucks as defined in section one hundred fifty eight of the vehicle and traffic law, together with evidence of such violation." See also Academy Lines LLC, 1900531 (petitioner may issue a summons based on a complaint filed by a citizen together with evidence of such violation).

In addition to the summons, Petitioner submitted (i) two photos of the cited vehicle; (ii) the redacted complaint; and (iii) a 3min45sec video of the purportedly idling vehicle (the video was not uploaded into ATAS due to technological and storage limitations). Representative testified that the truck was idling to power the vehicle's

refrigerator unit. Petitioner stated that the refrigerator unit for the cited vehicle can run independent of the engine and engine idling is not required. I find Representative's testimony is not credible and fails to rebut the summons or establish a meritorious defense to the alleged violation. I credit the summons and Petitioner's documentary, photographic and videographic evidence and find that Petitioner has established a first offense violation of Code Section 24-163 by a preponderance of the evidence. Accordingly, I sustain the summons and impose the \$350.00 first offense statutory penalty.



12/19/2024

12/19/2024

Thomas Finn, Hearing Officer

Date

