



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

Michael Nacmias, Esq. - Nacmias Law Firm 592 Pacific Street 1st Floor Brooklyn, NY 11217	Summons No: 000825476J et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- NATIONAL DCP LLC Hearing Date: 02/20/2025 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
000825476J	Sustained	01/05/2024	154 EAST 14 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 hearing was conducted by telephone via Court Call on February 20, 2025. John McLaughlin represented Petitioner. Respondent appeared through authorized representative Lance Chebin.

The summons charges a violation of Administrative Code (Code) § 24-163 for idling of a motor vehicle engine for more than three minutes as a first offense. The issuing officer (IO) affirmed per Department of Environment Protection Records that a citizen observed the vehicle identified in the summons idling for longer than three minutes at the date, time, and location specified in the summons.

Petitioner relied on the summons, argued that the video evidence showed the vehicle idling with no active work, and supplemented the summons with: affidavit of service (PX 1); citizen complaint (PX 2); identifying photos (PX 3); Department of State identifying information (PX4); and 4m 2s video showing the truck.

Respondent conceded that the truck was idling but argued that based on the video the refrigeration unit on the vehicle was in use. Respondent pointed out that the truck trailer bore the Dunkin logo and contended that the refrigeration unit was running to manage perishables. Respondent also argued that the engine was required to run the refrigeration unit, pointing to the 12s mark in the video which shows certain connections between the cab and trailer. See Ex A (screenshot from video). The video also showed the unit to be a Thermo King 48, but Respondent provided no evidence regarding the unit or whether it runs independently or off the engine. In response, Petitioner argued that it is Respondent's burden to establish that the refrigeration equipment solely depends on the engine, citing *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023).

Code § 24-163(a) prohibits the idling of a motor vehicle engine in excess of three minutes while parked, standing, or stopped, "unless the engine is used to operate a loading, unloading or processing device." Per § 39-01 of Title 15 of the Rules of the City of New York (RCNY), as used in Code § 24-163 "processing device" is defined as a "system that controls the environment of temperature-sensitive cargo or substances, including but not limited to food, provided that such cargo or substances are being transported in a vehicle designed for the transportation of such cargo or substances." Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein. See *DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023); *DEP v. TM & T Service Station Inc.*, Appeal No. 1901827 (March 19, 2020).

Here, the IO affirmed on the summons that he verified the idling of Respondent's truck for more than three minutes at the cited date, time, and location based on his review of DEP records. I credit the IO's affirmed statements as well as Petitioner's other evidence and find such evidence sufficient to establish Petitioner's prima facie case.

Respondent's representative contended that the exception in Code § 24-163 applies because the truck's engine was "used to operate...a processing device," but failed to provide any evidence in support of that contention. Respondent provided no information regarding the refrigeration unit, and the video does not supply factual proof regarding the operation of the refrigeration unit by the truck's engine. Respondent consequently failed to refute Petitioner's evidence or otherwise establish a defense. See *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023).

The summons is sustained.

	02/20/2025
02/20/2025	02/20/2025
Michael Gallagher, Hearing Officer	Date