



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: 000829033Z et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- FAST AND SECURE TRANSPORT INC Hearing Date: 01/16/2025 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
000829033Z	Sustained	01/12/2024	39-28 CRESCENT STREET Queens

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

Findings of Fact & Conclusions of Law

This hearing was held via Court Call on January 16, 2025.

Respondent Fast & Secure Transport Inc. was represented by Michael Sargo, Esq. of the law office of Michael Nacmias.

Petitioner NYC DEP appeared by Mr. John McLaughlin.

Respondent is charged with a violation of NYC AC 24-163 for idling of a motor vehicle for more than 3 minutes-1st offense.
Summons #000829033Z was issued to Respondent for an alleged violation on 1/12/24 at 39-28 Crescent St., Queens, NY.

The IO stated that a citizen observed a Truck with NJ license plate #XMHU73 idle for longer than 3 minutes on the above date from 1:17:44 PM to 1:20:52 PM at the above location.

Mr. McLaughlin submitted Petitioner's exhibits into evidence which included the summons and A/S, redacted idling complaint with acknowledgement, photos identifying the Respondent which included the company name and license plate, and a 3 minute 07 second video regarding the truck idling. Although the video could not be uploaded into the OATH file, all parties and the Hearing Officer had the opportunity to view it during the hearing.

Mr. McLaughlin stated there were audible sounds of the vehicle idling throughout the video, and no signs of active work, loading, unloading or processing equipment that would require the engine to be running. He added that there was a liftgate underneath the vehicle, but there was no processing device that was actively engaged at the time, so the violation should be sustained.

Mr. Sargo made a motion to dismiss as there was an exclusion in the code section here based on the definition of parking & standing-the code provides for parking, standing or stopping, but here, the vehicle should be excluded since it was unloading/loading. An Oath Appeals case was submitted regarding the code definition. He added that the forklift behind the truck was out at that time.

Mr. McLaughlin argued that the forklift had its own power source and is doing the work, so the truck engine is not required to be on-the truck engine is separate from the forklift.

Mr. Sargo stated that he was not making a processing device argument, but rather it was about the definition of loading and unloading.

Mr. McLaughlin argued there was no basis for the truck engine to be running at that time as the forklift was powered separately and the liftgate was not in use.

Mr. Sargo concluded by arguing that the definition in the code excludes this specific situation as per the foot note on the Appeals case submitted by him. (*See Appeal No. 2301128 DEP v. Trans-Bridge Lines Inc October 26, 2023* (Footnote: 1 The VTL's definitions of "standing" and "parking" each excludes situations where the vehicle is "actually engaged in loading or unloading merchandise or passengers," while the definition of "stopping" applies only "[w]hen prohibited." *See Vehicle & Traffic Law §§ 145, 129, and 147; DEP v. Astoria Transport Corp.*, Appeal No. 2201675 (April 27, 2023)

NYC Adm. Code § 24-163 provide, in part, that no person shall permit the engine of a motor vehicle to idle for longer than three minutes but includes an exemption when "the engine is used to operate a loading, unloading or processing device." This limited exception only applies if Respondent shows that the vehicle was actually engaged in using a device to load or unload merchandise for the entire time the engine is observed running. *See NYC v. Jenna Concrete Corp. Appeal No. 40554 (October 26, 2006); NYC v. Sergio Visquerras, Appeal No. 1400923 (November 20, 2014); DEP v. Academy Express, LLC, Appeal No. 1901519 (March 3, 2020).*

As noted in the Appeals case cited by Respondent in a footnote, Adm. Code § 24-163 prohibits idling only when a vehicle is parking, standing, or stopping, as those terms are defined by §§ 129, 145, and 147 of the NYS Vehicle and Traffic Law. The definitions have no exclusion for a vehicle loading or unloading merchandise. *See DEP v. Astoria Transport Corp.*, Appeal No. 2201675 (April 27, 2023). In the current matter, Respondent did not provide any specific evidence (no witness, affidavit or other documents) that the truck's liftgate, nor the forklift was loading or unloading and being operated or required to be operated throughout the use of the truck's engine at such time. *See Appeal No. 2400829 DEP v. Penske Truck Leasing Corporation July 25, 2024.*

Following review of the above, I find that Petitioner has established a prima facie case that Respondent idled a motor engine for longer than three minutes in violation of Code § 24-163. Respondent has not provided any sufficient defenses to refute the charge nor does it fit into any exception, so I do not credit Respondent.

I credit Petitioner.

The Summons is sustained and the standard penalty is imposed as noted.

Caryn S. Gartenberg

01/23/2025

01/23/2025

Caryn Gartenberg, Hearing Officer

Date