



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: 000828992J et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- PENSKE TRUCK LEASING CO LP Hearing Date: 01/16/2025 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
000828992J	Sustained	01/24/2024	Hillside Ave. between 260 & 261 Sts. 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 Penske Truck Leasing Co. 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 Adm. Code 24-163: idling of a motor vehicle for more than 3 minutes-1st offense. Summons #000828992J was issued to Respondent for an alleged violation on 1/24/24 at Hillside Ave. between 260th

& 261st Sts., Queens, NY. The IO stated that a citizen observed a Truck with IN license plate #3077442 idle for longer than 3 minutes on the above date from 1:14:26 PM to 1:18:07 AM at the above location.

Mr. McLaughlin submitted Petitioner's exhibits into evidence which included the summons and A/S, the redacted idling complaint and affirmation, photos identifying the Respondent vehicle with a company name and license plate on the truck, and a 3 minute 39 second video showing the truck idling. Although the video could not be uploaded into the OATH file, all parties and this JHO had the opportunity to view it during the hearing. Mr. McLaughlin stated there was audible engine noise throughout the video and no active work, processing equipment, loading or unloading observed to require the engine to be running.

Mr. Sargo made a motion to dismiss, arguing that the wrong Respondent was named-the photos show the company name of VDYAS LLC as well as their address and US DOT # on the side of the truck. Also, the redacted idling complaint states that the vehicle was being operated by VDYAS and a DOT search showed that the truck belonged to them and not to Penske (see evidence submitted- VDYAS company snapshot with DOT#).

Mr. McLaughlin submitted a copy of the registration for the truck, which showed Respondent Penske as the owner-it included the license plate number as noted above. Since Respondent is the owner of the truck, they are still liable for the violation and is a proper party.

Following review, I find that Petitioner has presented a prima facie case and Respondent has not presented sufficient defenses to refute the charge of idling of a motor vehicle for more than 3 minutes-1st offense. Respondent's motion to dismiss is denied.

The Oath Appeals Board has held that an owner of a vehicle can be held as a responsible party to be served with a violation under the cited code section. *See Appeal #2201052-1/26/23, DEP v. Ryder Truck Rental Inc. See also DEP v. U-Haul Co of Arizona Inc.*, Appeal No. 2001342 (January 14, 2021)-owner of vehicle in violation is a responsible party under Code § 24-163(a), even though the vehicle was rented to third party. Respondent in the current matter did not establish nor submit any appropriate documentation to indicate it was not the registered owner of the truck.

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