



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: 000861930Z et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ALL CLEANER & MORE LLC Hearing Date: 09/18/2025 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
000861930Z	Sustained	04/11/2024	238 1 AVENUE Manhattan

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

Findings of Fact & Conclusions of Law

Petitioner appeared through Inspector Andy Guzman. Respondent appeared through authorized representative Nicole Brown.

Summons 000861930Z charged a violation of Administrative Code 24-163, prohibiting the idling of a motor vehicle engine for longer than 3 minutes. A citizen observed a truck with NJ license plate XP729D idling from 3:16:04 PM TO 3:19:16 PM on 4/11/2024 at 238 1st Avenue.

This was charged as a first offense.

In support of the summons, Petitioner played a video that was viewed during the hearing, and submitted the summons with service (Exhibit 1), the citizen complaint (Exhibit 2), and photographs (Exhibit 3). The video shows a truck with its lift gate down. At the three minute mark, a piece of equipment is pulled onto the lift gate. The lift gate starts lifting at 3 minutes 12 seconds.

Respondent denied the charge and argued that the video shows loading happening at the rear of the vehicle. The lift gate is down and a piece of equipment is being loaded.

Petitioner argues that the lift gate does not start moving until 3 minutes 12 seconds mark of the video and cites Appeal No. 2201595 DEP v. Ryder Truck Rental Inc (March 23, 2023). This appeal states: "Code § 24-163 prohibits idling a motor vehicle engine for longer than three minutes while parking "unless the engine is used to operate a lift gate." This exemption only applies to the time that the vehicle is actually using its engine to load or unload material. See NYC v. Jenna Concrete Corp., Appeal No. 40554 (October 26, 2006); NYC v. Sergio Visquerras, Appeal No. 1400923 (November 20, 2014). It was Respondent's burden to establish that the exemption applied. See DEP v. Utopia Leasing Inc., Appeal No. 2200383 (June 30, 2022). To do so requires evidence, such as credible testimony or affidavits from the driver or other individual with knowledge. See DEP v. Independence Carting Inc., Appeal No. 2201054 (October 27, 2022). Here, however, there was no such evidence: that the lift gate was in use at the time was an assertion made by Respondent's attorney solely after viewing the citizen's video at the hearing rather than on the basis of information from anybody with personal knowledge. Therefore, because Respondent's attorney's assertion was mere speculation, it was insufficient to establish the defense, and the hearing officer's dismissal of the summons on that basis is not supported by the hearing record."

The same logic applies here. The video captures a full three minutes of idling in which the lift gate was not in motion, requiring the engine to be on.

Accordingly, the summons is sustained as a first offense.



09/22/2025

09/22/2025

Theresa Leary, Hearing Officer

Date