



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

Decision

Michael Nacmias, Esq. - Nacmias Law Firm
592 Pacific Street, 1st fl Attn: Lance Chebin
Brooklyn, NY 11217

Summons# : 000900288J et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CO LP

Hearing Date : 4/10/2025

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
000900288J	Sustained	04/10/2025	Intersection of Broadway and West 68th Street, 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

The summons alleges violation of Title 24 Chapter 1 of the NYC Administrative Code in that respondent caused or permitted idling of a motor vehicle while parked standing or stopped for longer than 3 minutes.

Petitioner, The Department of Environmental Protection, appeared and was represented by Inspector Datney Parks.

Lance Chebin appeared as an authorized representative for the respondent, Penske Leasing and Rental Company, and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted photographs of the motor vehicle at issue in support of that statement. Petitioner also submitted a copy of the idling complaint, and video.

Respondent moved to dismiss contending that an improper party was named as the name on the truck in the video was different than the name alleged on the summons. Respondent stated there was nothing in the video identifying the truck as Penske. Respondent stated the vehicle also contained a lift gate that may have been in use. Respondent did not refute that the vehicle may have been idling.

Petitioner contended that the registered owner of the vehicle is a responsible party and submitted a printout of the DMV registration.

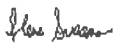
The owner is responsible even when the vehicle is rented to a third party and is not relieved of responsibility by a private agreement with a lessee. See *DEP v. U-Haul Co of Arizona Inc.*, Appeal No. 2000C10 (April 23, 2020) (Board is not bound by private agreements between parties).

"It was not fatal that the video did not show the entire vehicle. It was then Respondent's burden to either refute the charge or establish an affirmative defense. See 48 RCNY § 6-12(a). Here, Respondent merely contested the sufficiency of the video and failed to present evidence to refute the summons or establish an affirmative defense." See *DEP v. Aquifer Drilling & Testing Inc*, Appeal No. 2300348 (June 29, 2023).

"[W]hile Code § 24-163(a) contains an exception to excessive idling when "the engine is used to operate a loading, unloading, or processing device," the limited exception to a Code § 24-163(a) violation only applies if the vehicle is actually engaged in using such a device at the time the engine is running. See *NYC v. Jenna Concrete Corp.*, Appeal No. 40554 (October 26, 2006); *NYC v. Sergio Visquerras*, Appeal No. 1400923 (November 20, 2014). Activity performed in preparation or anticipation of loading or unloading is not sufficient, see *DEP v. Mobile Lifts LLC*, Appeal No. 210861 (March 31, 2016); *DEP v. CNB Crane Rental Inc*, Appeal No. 2201043 (December 15, 2022)" *DEP v. Target Express Courier LLC*, Appeal No. 2400043 (March 28, 2024)

Here, while the respondent contended the lift gate was in use he did not submit an affidavit from the driver or any other evidence in support of that contention.

I credit the factual allegations in the summons and petitioner's evidence which support a violation of the cited code section. I find the respondent did not establish a defense to the violation. Accordingly, respondent's motion to dismiss is denied, the summons is sustained, and the mandatory penalty is imposed.



04/14/2025

04/14/2025

Ilene Sussman, Hearing Officer

Date

IF YOU ARE FOUND IN VIOLATION, AND ARE NOT ELIGIBLE OR DO NOT CHOOSE COMMUNITY SERVICE, YOU MUST PAY THE PENALTY WITHIN 30 DAYS OF THE DECISION DATE OR 35 DAYS IF MAILED.

- To pay by mail, send a check or money order to the Dept. of Finance Commissioner, P.O. Box 2307, Peck Slip Station, New York, NY 10272. The check or money order should be made out to "Finance Commissioner, City of New York." Write the summons number on the check or money order.
- To pay in person, bring a check, money order or credit card and this decision to any OATH Hearings Division location between 8:30 a.m. to 4:30 p.m.
- To pay online using a credit or debit card, go to www.nyc.gov/citypay/oath

If you do not pay the penalty, the City may: (1) file papers with the Civil Court ("docket a judgment"), (2) charge you a late fee, and (3) continue attempts to collect the debt.

CAN I DO COMMUNITY SERVICE?

If your summons is for the type of offense that gives you a Community Service option you can choose to complete Community Service instead of paying a penalty. Your decision will give you that option. You have to complete your Community Service by the deadline in the decision or else you will end up owing the penalty. You can even do your Community Service on the day you receive your decision.

COMPLETION OF COMMUNITY SERVICE

The Help Center will arrange for you to complete your Community Service. The Help Center is run by the Ombudsperson/*Pro Se* Clerk at OATH and is located at each Hearing Division in all five boroughs. To schedule your Community Service, call, email or visit a Help Center location.

How to Contact the Help Center to Schedule Community Service:

Manhattan: (212) 436-0845 CSmanhattan@oath.nyc.gov
Brooklyn: (718) 923-6216 CSbrooklyn@oath.nyc.gov
Queens: (718) 393-6044 CSqueens@oath.nyc.gov
Bronx: (718) 503-5565 CSbronx@oath.nyc.gov
Staten Island: (718) 876-2314 CSstatenisland@oath.nyc.gov

If you complete your Community Service by the deadline in the decision, you will receive a Certificate of Completion and will not have to pay a penalty. If you need an extension to complete your Community Service, please contact the Help Center.

If you do not complete your Community Service by the deadline, you will have to pay the penalty.

NON-DISCLOSURE FOR SUMMONSES ELIGIBLE FOR COMMUNITY SERVICE

If you either completed the Community Service or paid the penalty, OATH will remove your identifying information from public records related to your case.

If you **do not** complete the Community Service or pay the penalty, your identifying information may remain on public records related to your case.

IF YOU DISAGREE WITH THE DECISION, YOU MAY APPEAL IT

To submit your appeal, you **MUST** use OATH's online or mail-in appeal forms available on OATH's website at www.nyc.gov/oath/appeal. Instructions for filing an appeal may be found on the form and OATH's website.

Your appeal **MUST** be received by the OATH Hearings Division **within 30 days** of the decision date, or 35 days if the decision was mailed to you.

To appeal you **may need** to pay the full penalty stated in this decision.

- If you cannot pay because of financial hardship, you may ask to not pre-pay by submitting with your appeal a Financial Hardship Application, available on OATH's website.
- If you are eligible and choose to perform Community Service instead of paying the penalty, you do not have to pay the penalty or complete the Community Service to appeal.

APPEAL BY ENFORCEMENT AGENCY

If you wish to answer an appeal filed by an enforcement agency, you **MUST** use OATH's Response To Appeal form. Instructions for filing an answer may be found on the form and OATH's website.

Your answer must be received **within 30 days** of the date of the enforcement agency's appeal, or 35 days if it was mailed to you.

If the enforcement agency wins the appeal, you may have to pay a penalty or, if eligible, complete Community Service even if your case was originally dismissed after the hearing.

For more information,
visit OATH's website www.nyc.gov/oath
or call 1-844-OATH-NYC

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