



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 No: 000900349Y et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- PENSKE TRUCK LEASING CO LP Hearing Date: 04/10/2025 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
000900349Y	Sustained	11/13/2024	7 Penn Plaza Manhattan

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

Findings of Fact & Conclusions of Law

The summons alleges a 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 by Inspector Datney Parks

Lance Chebin appeared as an authorized representative for the respondent, Penske Truck Leasing Co LP, and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted supporting documentation. Petitioner stated that although the vehicle contained a refrigeration unit the engine did not need to be running for it to be in use.

Respondent did not refute the factual allegations in the summons. However, respondent stated the refrigeration unit was in use and that nothing was submitted to substantiate that the refrigerator can run independently.

Petitioner maintained the violation and stated models like the one cited usually have their own generator.

"The Board finds that based on the definition of "process" found in Code § 24-104, a refrigeration unit is considered a "processing device" in that it is an activity or operation in which the material is conveyed or stored without changing the materials" DEP v. Dora's Naturals Inc, Appeal no. 2100203(June 24, 2021).

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons affirming under penalty of perjury that the IO verified Respondent's vehicle idled for longer than three minutes at the cited date, time, and location "through a review of departmental records," was sufficient to establish Petitioner's prima facie case. See DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019)

Per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry became whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense by a "preponderance of the evidence." See DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023).

Here, petitioner established its prima facie case. While the respondent claimed a refrigeration unit was running, he submitted no documentary evidence regarding the operation of the refrigeration unit, and that the exception for processing devices applied in this instance, which was his burden to do.

I credit the factual allegations in the summons and petitioner's evidence which supports a violation of the cited code section. I find that the respondent failed to establish a defense to the violation of the cited code section. Accordingly, the summons is sustained and the mandatory penalty is imposed.

Ilene Sussman

04/14/2025

04/14/2025

Ilene Sussman, Hearing Officer

Date