



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592 PACIFIC STREET
BROOKLYN, NY 11217

Summons# : 000894716Z et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CORPORATION

Hearing Date : 11/25/2025

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
000894716Z	Sustained	08/20/2024	1356 BROADWAY, 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

Summons 000894716Z alleges a violation of § 24-163 of the Administrative Code of the City of New York (Code), for idling of a motor vehicle engine for more than three minutes. The violation is charged as a first offense.

Petitioner, Department of Environmental Protection, waived its appearance.

Respondent, Penske Truck Leasing Co., LP, appeared by ILMA BABU, authorized representative.

Respondent's representative did not dispute the IO's statements but challenged Petitioner's prima facie case for the violation, contending the complainant's video failed to show the back of the truck where active loading/unloading was taking place.

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons, affirmed under penalty of perjury, was sufficient to establish Petitioner's prima facie case that Respondent's vehicle idled for longer than three minutes at the cited date, time, and location. See DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019). Petitioner was not required to submit video evidence to prove its case. That the complainant's video does not depict the cited vehicle vibrating, producing visible emissions, or making audible engine noise does not establish a defense. See DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021). 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). One such defense is that the cited vehicle was actively loading or unloading at the time of the alleged offense. However, a lift gate must be actively in use in order to meet the exception of loading or unloading a vehicle. See DEP v. Approved Storage & Waste Hauling Inc., Appeal No. 2001382 (January 14, 2021); DEP v. Metroexpress Services LLC, Appeal No. 2201113 (December 15, 2022) (violation sustained where lift gate not in active use at time of issuance); DEP v. Utopia Leasing Inc., Appeal No. 2200383 (June 30, 2022) (same); DEP v. La Rabia Cargo Transport LLC, Appeal No. 2300661 (September 28, 2023) (same). Although the complainant's video appears to show the lift gate up in the back, the Board has ruled that a lift gate must be actively in use in order to meet the exception of loading or unloading a vehicle. On this record, I find no evidence that the lift gate was in active use at the time of the violation. Here, the video never shows the lift gate in use, and Respondent's representative failed to offer any evidence, such as a statement from the vehicle's driver, that the lift gate was in use during the time of the idling.

I credit the IO's statements on the summons.

I find that the summons establishes the violation as charged and that Respondent's representative did not present sufficient evidence to refute the charge or establish a defense.

Accordingly, the summons is sustained and the first-offense civil penalty of \$350 is imposed.



11/25/2025

11/25/2025

Kevin Lawner, Judicial 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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