



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592PACIFIC STREET Brooklyn,NY 11217	Summons No: 000936946R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- PENSKE TRUCK LEASING CO LP Hearing Date: 01/06/2026 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
000936946R	Sustained	02/12/2025	ON AVE A BETWEEN E 12TH ST AND E 13TH ST Manhattan

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

Findings of Fact & Conclusions of Law

The hearing was conducted on January 6, 2026, by Court Call. Petitioner appeared through Leah Smith. Respondent, Penske Truck Leasing Co LP, appeared through their authorized representative, Ilma Babu.

The summons charges a violation of 24-163 of the Administrative Code in that Respondent caused or permitted the idling of a motor vehicle while parked, standing, or stopped for more than three minutes. The issuing officer states that, as per DEP records, a citizen observed a TRUCK with IN license plate no 3136526 idling for longer than three minutes from 2/12/2025 11:02:57 AM to 2/12/2025 11:06:26 AM On Avenue A between East12th St and East 13th St in Manhattan.

Petitioner submits a redacted idling complaint form, an image of the registration information for the cited vehicle, two images of the cited vehicle, an image of the summons and affidavit of service, a screenshot of a web page describing the operation of a Thermo King Refrigeration system, and a video in support of the summons, which have been marked as Exhibits 1 through 7. Petitioner states that the cited vehicle was audibly idling throughout the submitted video, that the cited vehicle was equipped with a Thermo King refrigeration system capable of operating independently from the vehicle's engine and that there was no evidence of the use of the vehicle's integrated lift gate observed during the course of the video. Petitioner states that, as such, the vehicle was idling in violation of the code for more than three minutes, and the summons should be sustained.

Respondent argues that workers can clearly be seen unloading the cited vehicle during the course of the cited video. Respondent argues that, as such, the engine of the cited vehicle was idling to power power the liftgate of the vehicle, which could have been used later in the unloading process, and that this serves as a defense to the cited violation.

I credit the evidence submitted by the Petitioner. Petitioner has established its prima facie case through the evidence presented. I do not credit the Respondent's arguments.

Administrative Code § 24-163 prohibits idling a motor vehicle engine for more than three minutes, "unless the engine is used to operate a loading, unloading or processing device." There appears to be no dispute that the Thermo King system clearly seen on the vehicle does not require the vehicle's engine to be running for use. This means there is no need to run the vehicle's engine to power the refrigeration system on the vehicle.

However, Respondent has failed to present sufficient evidence in support of its contention that the cited vehicle needed to idle in order to prime the liftgate for potential use. The Board has previously ruled that idling to warm up a hydraulic system is permitted only when there is evidence that the use of the system is imminent. See *DEP v. Trinchese Boom Service*, Appeal No. 2301457 (December 21, 2023). However, insufficient evidence of imminent use has been presented here. In the video, the workers mentioned by Ms. Babu were unloading the vehicle without using the lift gate. In fact, the liftgate was folded away below the trailer and not in position to be used by those workers. As such, even if those workers intended to use the lift gate – such use was in no way "imminent."

Accordingly, the summons is sustained.



01/15/2026

01/15/2026

Antonio Cavallaro, Judicial Hearing Officer

Date