



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: 000886841H et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ON PENSKE TRUCK LEASING CORPORATI Hearing Date: 01/14/2026 Hearing Location: Remote Type of Hearing: By Telephone
---	--

Total Penalty Amount: \$440.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000886841H	Sustained	10/17/2024	ON WOOSTER ST BETWEEN GRAND ST AND BROOME ST Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1E	24 -163	Sustained	\$440.00

Findings of Fact & Conclusions of Law

The hearing was conducted via telephone conference call on January 14, 2006.

Ilma Babu, authorized representative, appeared on behalf of Respondent at the hearing. Antwan Gibbs appeared on behalf of petitioner DEP.

The Respondent is charged with code section 24-163 for vehicle idling for more than 3 minutes, second offense. Petitioner's representative submitted an evidence packet including redacted idling complaint, a summons affidavit, photos of the vehicle, and a video recording. See Petitioner's Exhibits. Petitioner's representative stated that the engine was audible throughout the

video and at no time during the video was any unloading or processing equipment being used, such that would warrant a statutory exception. Respondent's representative argued there is insufficient evidence to support the charge. Respondent's representative argued there appears to be a lift gate on back of subject vehicle so processing device exception applies. Respondent's representative did not challenge second offense charge. In rebuttal, Petitioner's representative argues there is no proof of a processing device as it appears the lift gate is tucked and not in use. The only visible movement is an individual manually picking up and manually moving garbage bins with no use of a lift gate or any processing device. See Petitioner's Evidence.

I credit the summons details and find that the Petitioner has established a valid charge against the Respondent. Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated. Code § 24-163 provides an exemption when idling occurs because the vehicle's engine was being "used to operate a loading, unloading or processing device." Once Petitioner established its case it became Respondent's burden to disprove the violation or establish an affirmative defense. See 48 RCNY § 6-12(a). Respondent has not offered any credible evidence such as testimony or affidavit from the vehicle's driver to refute that the vehicle was idling for more than 3 minutes. Even where a video is presented, the charge does not fail if the video does not clearly show vibrating, producing visible emissions or making audible engine noise. See DEP v Hub Truck Rental Corp, Appeal No 2001344 (February 11, 2021); DEP v SMC Stone International Inc Appeal No 1901308 (October 10, 2019) I find Respondent has not presented credible evidence of the presence of a loading, unloading or processing device to warrant a statutory exception to the rule. I find Respondent's arguments insufficient to refute the charge nor establish an affirmative defense. In addition, Respondent has not challenged the second offense charge. Therefore, I find Respondent in violation and impose the second offense penalty of \$440. The Summons is upheld.



01/21/2026

01/21/2026

Randee Rubenstein, Judicial Hearing Officer

Date