



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

Michael Nacmias, Esq. - Nacmias Law Firm
592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 000887382M et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSK LEASING and Truck Rental Inc

Hearing Date : 1/15/2026

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
000887382M	Sustained	11/05/2024	516 WEST 34 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.

Inspector Andy Guzman appeared for the petitioner, NYC Department of Environmental Protection.

Ilma Babu appeared as an authorized representative for the respondent, Penske Leasing and Truck Rental Inc, and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted supporting documentation.

Respondent contended that the entire vehicle was not visible during the whole of the video and that the video did not conclusively prove the vehicle was idling for three minutes without processing equipment in use. Respondent contended that active work may have been occurring. Respondent noted that the worker can be seen talking to the driver of the truck.

Petitioner contended that no processing equipment was seen in use and noted that the lift gate was tucked under.

[A]n idling charge does not fail if the video does not clearly show the truck making an audible engine noise, vibrating, or producing visible emissions. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021) (finding respondent in violation of Code § 24-163 even though other vehicles may have produced the noise and the truck was not vibrating in the video). See *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023)

"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).

"Per 48 RCNY § 6-12(b), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein. Here, the IO affirmed on the summons that he verified Respondent's van idled for longer than three minutes at the cited date, time, and location based on his review of departmental records, which included the documents and video submitted by the citizen-complainant, most of which were submitted at the hearing. Moreover, per 48 RCNY § 6-12(c) "[r]elevant and reliable evidence may be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York." See *DEP v. HUB Truck Rental Corp.*, Appeal No. 2200261 (June 30, 2022).

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, respondent challenged petitioner's case but did not submit any evidence of their defense nor was testimony proffered from the driver of the vehicle or someone with personal knowledge to establish that the vehicle was not idling or idling under an exception.

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

Ilene Sussman

01/20/2026

01/20/2026

Ilene Sussman, Judicial Hearing Officer

Date