



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592PACIFIC STREET Brooklyn,NY 11217	Summons No: 000889775M et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ON PENSKE TRUCK LEASING CORPORATI Hearing Date: 02/03/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount:\$440.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000889775M	Sustained	08/14/2024	ON QUEENS BLVDBETWEEN 42ND ST And 43 Street Queens

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

Findings of Fact & Conclusions of Law

ILMA BABU appeared as the authorized representative of the named respondent. Inspector Gibbs for the Department. The summons cites a violation of 24-163 as a second offense.

The Petitioner submitted the idling summons affidavit and complaint, priors, and photos.

A video which exceeded three minutes was played into the record and described.

The respondent contended that the vehicle is in a gas station, and that he is taking a cord and is looking for a circuit to charge

it.

The Petitioner stated the video shows that respondent is in a 7-11 and that that there is no charging going on there. What was seen was a hose and it may be that the respondent is spraying concrete.

The respondent contended that it appears that work is going on that requires the engine.

The Petitioner contended that if the vehicle were electric there would be no idling issue and that no case would be filed.

I find the sworn account of the issuing officer to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. In Appeal No. 2201516 DEP v. L & S Mechanical Services LLC February 23, 2023, it was held that "Code § 24-163(a) provides, in pertinent part, that "[n]o person shall cause or permit the engine of a motor vehicle . . . to idle for longer than three minutes. . . ." Petitioner's summons, affirmed by the IO, was sufficient to establish its prima facie case that the citizen complainant observed Respondent's truck's engine idling for longer than three minutes. See DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019). The Board notes that a video is not essential for establishing Petitioner's case, though the citizen-complainant must supply one to DEP. See DEP v. US Crane Rigging LLC, Appeal No. 1901330 (October 24, 2019). Even where a video is presented, the charge does not fail if the video does not clearly show the truck vibrating, producing visible emissions, or making audible engine noise. See DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021); DEP v. American Alternative Energy, Appeal No. 1901744 (March 19, 2020); DEP v. SMC Stone International Inc., Appeal No. 1901308 (October 10, 2019). In such cases, the critical inquiry is whether the respondent has sustained its burden to refute Petitioner's evidence or otherwise establish a defense. See § 6-12(a) of Title 48 of the Rules of the City of New York. Although Respondent's representative argued that the video was inconclusive, he failed to provide any evidence to show that the vehicle's engine was turned off during the cited time period. See DEP v. American Alternative Energy, Appeal No. 1901744 (March 19, 2020)."

Here, respondent's contentions as to what is being shown in the video are speculative. Furthermore, the Petitioner's video need not prove or disprove any defense that might be raised by the respondent; rather, it is respondent's burden to establish such defense. Here, the respondent failed to do so.

For all the foregoing reasons, the summons is sustained as a second offense.