



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

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592 Pacific Street 1st Floor
Brooklyn, NY 11217

Summons# : 000726249X et al. (2 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CO LP

Hearing Date : 2/9/2026

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 700.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000726249X	Sustained	07/27/2022	34 Water Street, Manhattan

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000944236M	Sustained	05/22/2025	140 W 62nd St, 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

Respondent was issued two summonses, both of which, allege a 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 Leah Smith appeared for the petitioner, NYC Department of Environmental Protection.

Ilima Babu appeared as an authorized representative for the respondent, Penske Leasing Rental Co, and denied the violations.

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

Respondent contended that the videos did not conclusively prove the vehicle was idling for three minutes without processing equipment in use and did not show the back of the truck for the length of the video. Respondent contended that active work may have been occurring. Regarding the summons ending in 36M respondent stated that at the end of the video the lift gate can be seen going up and that earlier workers were observed using dollies to move items from the back of the truck.

Petitioner maintained the violations. Regarding the summons ending in 36M petitioner noted that the lift was not observed going up until after the 3 minute mark. Petitioner contended that if it were being used previously the sound of it going up and down would have been audible

[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).

"[W]hile Code § 24-163(a) contains an exception to excessive idling when "the engine is used to operate a loading, unloading, or processing device," the limited exception to a Code § 24-163(a) violation only applies if the vehicle is actually engaged in using such a device at the time the engine is running. See *NYC v. Jenna Concrete Corp.*, Appeal No. 40554 (October 26, 2006); *NYC v. Sergio Visquerras*, Appeal No. 1400923 (November 20, 2014). Activity performed in preparation or anticipation of loading or unloading is not sufficient, see *DEP v. Mobile Lifts LLC*, Appeal No. 210861 (March 31, 2016); *DEP v. CNB Crane Rental Inc*, Appeal No. 2201043 (December 15, 2022)" *DEP v. Target Express Courier LLC*, Appeal No. 2400043(March 28, 2024)

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. Regarding the summons ending in 36 /1 although workers can be observed moving materials they do not appear to be using the lift for the majority of the length of the video as they are observed walking away from the vehicle pushing dollies. The materials moved appeared to be already on the ground when the video commences.

I credit the factual allegations in the summonses 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 violations. Accordingly, the summons are sustained, and the mandatory penalties are imposed.

Ilene Sussman

02/09/2026

02/09/2026

Ilene Sussman, Judicial Hearing Officer

Date