



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592PACIFIC STREET Brooklyn,NY 11217	Summons No: 000952073R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ANY PENSKE LEASING AND RENTAL COMP Hearing Date: 03/04/2026 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
000952073R	Sustained	08/20/2024	ON WEST 48TH STREET BETWEEN 8TH 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 via telephone conference call on March 4, 2026.

Penske Leasing & Rental Company appeared by their authorized representative Ilma Babu for the telephone hearing . Martin Joyce appeared on behalf of Petitioner, DEP.

The Respondent was charged with code section 24-163 for vehicle idling for more than 3 minutes 1st offense. Mr. Joyce submitted with attachments, including vehicle registration the citizen complaint form and a link to the video. See Petitioner's Exhibit. Mr. Joyce stated there was no evidence or loading or unloading or the use of a processing device and relied on the

summons and evidence. Ms. Babu argued that the liftgate was out and you could see dollies and boxes and at 3:45 evidence of moving boxes. Respondent did not dispute the idling but argued that they were getting ready to use the processing device.

Code § 24-163(a) provides an exception where the "engine is used to operate a loading, unloading or processing device." However, this limited exception 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). The law does not allow vehicles to run their engines more than three minutes in anticipation of activities that are exempt from the idling restrictions, see *Cody Construction Corp.*, Appeal No. 2100222 (July 22, 2021); *John P. Picone Inc.*, Appeal No. 1600120 (March 31, 2016); *CNB Crane Rental Inc.*, Appeal No. 2201043 (December 15, 2022), unless the running of the engine is necessary and proximate to the immediately consequent action of the processing device, and therefore an integral part of the active work being performed. See *DEP v. Ferguson Hauling Corp.*, Appeal No. 2300546 (July 27, 2023) (finding processing device exemption was applicable where the cited idling was required to maintain the temperature of hydraulic fluid used by the truck's boom to offload pallets of cement blocks and such offloading was imminent); *DEP v. Garden State Asphalt Materials Inc.*, Appeal No. 2300890 (September 28, 2023) (finding processing device exemption was applicable where the cited idling was required to heat and recirculate asphalt in truck's tank prior to the spraying of asphalt).

I credit the summons details, and the sworn statements contained in the citizen's complaint 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. 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). After review of all the evidence and testimony, I find no affirmative defense nor did the Respondent refute the charge.

I find Respondent in violation and impose the first offense penalty of \$350.

Melissa Petrozza

03/19/2026

03/19/2026

Melissa Petrozza, Judicial Hearing Officer

Date