



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: 000809045H et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- DESANTIS DESPATCH CORP Hearing Date: 01/06/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: **\$600.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000809045H	Sustained	09/05/2023	West 29th Street between 6th Avenue and Broadway Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	\$600.00

Findings of Fact & Conclusions of Law

The hearing was conducted by telephone via Court Call on January 6, 2025. Dantney Parks represented Petitioner. Respondent appeared through authorized representative Lance Chebin.

The summons charges a violation of Administrative Code (Code) § 24-163 for idling of a motor vehicle engine for more than three minutes. The issuing officer (IO) affirmed per Department of Environment Protection Records that a citizen observed the truck identified in the summons idling for longer than three minutes on September 5, 2023 at West 29th Street between 6th Avenue and Broadway. The summons charges a third or subsequent violation, citing the prior summonses 000762383P and 000779078J charging violations of § 24-163. Petitioner relied on the summons. Respondent submitted no evidence in

opposition.

Code § 24-163(a) prohibits the idling of a motor vehicle engine in excess of three minutes while parked, standing, or stopped. 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 therein. See DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023); DEP v. TM & T Service Station Inc., Appeal No. 1901827 (March 19, 2020). Here, the IO affirmed on the summons that the IO verified the idling of Respondent's truck for more than three minutes at the cited date, time, and location based on review of DEP records. I credit the IO's affirmed statements and find that the summons was sufficient to establish Petitioner's prima facie case. See DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023); DEP v. TM & T Service Station Inc., Appeal No. 1901827 (March 19, 2020). Respondent provided a denial, which is insufficient to rebut Petitioner's prima facie case, and offered no rebuttal. Respondent did not contest the existence of the prior summonses. See DEP v. Prime Electric Motor Repairs Inc. Appeal No. 2201354 (February 23, 2023).

The summons therefore is sustained as a third or subsequent violation.

<i>Michael Gallagher</i>	
01/06/2025	01/06/2025
Michael Gallagher, Hearing Officer	Date