



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET Brooklyn, NY 11217	Summons No: 000818522X et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- CORPORATE EXPRESS INC Hearing Date: 12/30/2024 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000818522X	Sustained	10/26/2023	469 WEST 39 STREET Manhattan

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

Findings of Fact & Conclusions of Law

This telephone hearing was held on December 30, 2024. Petitioner, NYCDEP, appeared by Representative Leah Smith. Respondent, Corporate Express, appeared by Lance Chebin, Authorized Representative. He waived translation services, counsel and the appearance of the Issuing Officer (IO).

This summons alleges a violation of NYC Administrative Code 24-163 (Idling of motor vehicle). In the summons, the Issuing Officer (IO) affirmed, as verified by a review of DEP records, that on 10/26/2023, a citizen-complainant observed a bus with NJ License Plate #OYB8025 idling for longer than three minutes from 12:32:31 pm to 12:36:21 pm, at 469 W. 39th Street.

Ms. Smith relied on the sworn statements of the IO in the summons, and she submitted a copy of the citizen complaint (P-1), two photos depicting the bus, its name DOT number and its license plate taken by the citizen-complainant (P-2 & 3), and documentation of the weather conditions when this violation was issued ((P-4). He also submitted a video in excess of three minutes which could not be uploaded as evidence due to the size of the file. The video was taken by the citizen-complainant at the time of the alleged violation, and it depicts audible engine noise emanating from Respondent's bus. Ms. Smith stated that there was no processing device in use and that there was a person behind the driver's seat, but no one was sitting in the driver's seat.

Mr. Chebin reviewed Petitioner's evidence and stated that he had no objection to said evidence. He argued there was a person on the bus and since the temperature was in the 70's, the air conditioning had to be on and the engine had to be running to keep the air conditioning on.

Ms. Smith argued that the Respondent was not permitted to keep the engine on because the maintenance of an appropriate temperature for passenger comfort only applies to school buses.

NYC Administrative Code § 24-163 states in relevant part that "No person shall cause or permit the engine of a motor vehicle to idle for longer than three minutes, unless the engine is used to operate a loading, unloading or processing device ... (f)...engine of a school bus may be permitted to the extent necessary: (1) for mechanical work; (2) to maintain an appropriate temperature for passenger comfort;..."

I credit the Petitioner's evidence and the Issuing Officer's affirmed statements in the summons regarding the citizen's complaint concerning the idling of Respondent's bus's engine. I find that Respondent permitted the idling of its engine for more than three minutes while parked. I further find that Respondent failed to produce any evidence such as testimony or affidavits from the vehicle's driver to establish an affirmative defense "by a preponderance of the evidence." (See DEP v. G & F Design Appeal No. 2301482 (December 21, 2023). Citing to DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019); DEP v. Hub Truck Rental Corp., Appeal No. 2001344 (February 11, 2021); DEP v. Citnalta Construction Corp., Appeal No. 2201191 (February 23, 2023.)). I also find that Respondent did not establish a valid defense to this charge. This violation is sustained and a penalty of \$350 is imposed.

Barbara Halper

01/02/2025

01/02/2025

Barbara Halper, Hearing Officer

Date