



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000805716L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- VELI TOSKU Hearing Date: 06/10/2025 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
000805716L	Sustained	08/15/2023	on West 21st Street between 5th Avenue and 6th Avenue Manhattan

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

Findings of Fact & Conclusions of Law

Petitioner New York City Department of Environmental Protection (DEP) was represented by DEP court representative LEAH SMITH.

Respondent VELI TOSKU was represented by authorized representative LANCE CHEBIN of the Nacmias Law Firm, PLLC.

Respondent was charged with a violation of § 24-163 of the Administrative Code of the City of New York (Code) for idling a motor vehicle engine for longer than three minutes.

In the summons, the Issuing Officer (IO) affirmed observing, based on information submitted by a citizen complainant (CC), that on August 15, 2023, on West 21st Street between 5th Avenue and 6th Avenue in Manhattan, respondent caused or permitted the idling of a motor vehicle while parked, standing or stopped. The IO noted that as per DEP records, citizen observed TRUCK with NY License Plate #94824MJ idling for longer than three minutes from 2:39:20PM to 2:42:40PM.

Petitioner submitted into evidence (1) a photograph of the respondent's vehicle with the name of the respondent emblazoned on its side; (2) a photograph of the respondent's vehicle showing the vehicle's license plate; (3) a screenshot of the respondent's NYS DMV license plate information showing ownership; (4) the Redacted Idling Complaint; and (5) a video submitted by the Citizen Complainant detailing the violating conditions of the engine on, visible exhaust, engine noise and no loading or unloading, no liftgate in operation, 3 minutes and 38 seconds long.

I find the Issuing Officer's sworn-to summons narrative and submitted documentary evidence to be credible and persuasive.

Respondent denied the violation without rebuttal.

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. Petitioner is therefore not required to submit a video at the hearing to establish its case though citizen-complainants must supply one to DEP along with their complaint. Once Petitioner has established its prima facie case, the critical inquiry is whether the respondent has sustained its burden to refute Petitioner's evidence or otherwise establish a defense. See 48 RCNY § 6-12(a).

In the present case, the IO affirmed on the summons that they verified the idling of Respondent's truck for more than three minutes at the cited date, time, and location based on his review of DEP records, which included the documents, affidavits and video submitted by the citizen-complainant. This was sufficient to establish Petitioner's prima facie case.

The burden then shifted to Respondent to refute Petitioner's evidence. It was therefore incumbent on Respondent to establish through credible evidence such as testimony or affidavits from the truck's driver, that the engine was not idling. Respondent, however, did not present any evidence to contest Petitioner's case.

Code § 24-163(a) provides that no one shall permit the idling of a motor vehicle engine for longer than three minutes unless the engine is used to operate a loading, unloading, or processing device.

The credible evidence, here the sworn-to summons narrative of the Issuing Officer, is sufficient to establish, and I find, that respondent was in violation on the date of the offense. The violation is SUSTAINED, and I impose the penalty of **\$350**.

Mark Goichman

06/11/2025

06/11/2025

Mark Goichman, Hearing Officer

Date