



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000898840Y et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- E&M ESR INC Hearing Date: 12/22/2025 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
000898840Y	Sustained	09/17/2024	142 FULTON 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 22, 2025. Petitioner, NYCDEP, appeared by Representative Antwan Gibbs. Respondent, E&M ESR INC, appeared by Ilma Babu, Authorized Representative.

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 9/17/2024, a citizen-complainant observed a truck with NY License Plate # 81182NE, idling for longer than three minutes.

Mr. Gibbs relied on the sworn statements of the IO in the summons and he submitted a 4 minute 42 second video 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 Inspector Gibbs stated that it depicts the Respondent's engine idling with audible engine noise with no processing equipment in use.

Ms. Babu denied the charges set forth in the summons. She testified that when the video was taken there were many other cars around and she was unable to determine if the noise in the video was from Respondent's engine. She also testified that the sound in the video could have come from other vehicles. She did not submit any evidence from Respondent to rebut the charge.

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..."

I credit Petitioner's evidence and I find that IO's affirmed statement in the summons was sufficient to establish a prima facie case of this violation. (See DEP v. Academy Lines LLC, Appeal No. 1900379 (May 16, 2019) and any insufficiency of the video was not fatal to the charge. (See Appeal No. 2300316, DEP v. Todd Harris Co., July 27, 2023.) I do not credit Ms. Bamu's testimony regarding the inability to determine if the Respondent's engine was idling. I further find that Respondent permitted the idling of its engine for more than three minutes while parked. Respondent did not submit any documentation from the driver of the truck or any other evidence. To refute the idling charge, it was incumbent on Respondent to provide affirmative evidence, such as credible testimony or affidavits from the driver or other cognizant individuals, that the engine was not idling. (See Appeal No. 2300316. DEP v. Todd Harris Co., July 27, 2023.) I find that Respondent failed to prove that the engine was not idling, and that Respondent did not establish a valid defense to this charge. This violation is sustained and a penalty of \$ 350 is imposed.

Barbara Halper

12/22/2025

12/22/2025

Barbara Halper, Judicial Hearing Officer

Date