



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: 000936880N et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- ORP EMILIO'S AUTOMOTIVE SERVICES C Hearing Date: 01/05/2026 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
000936880N	Sustained	12/18/2024	ON VIELE AVENUE BETWEEN BRYANT Ave and Faile Street Bronx

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

Findings of Fact & Conclusions of Law

The summons alleges violation of Title 24 Chapter 1 of the NYC Administrative Code in that respondent caused or permitted idling of a motor vehicle while parked standing or stopped for longer than 3 minutes.

Inspector Andy Guzman appeared for the petitioner, NYC Department of Environmental Protection.

Ilma Babu appeared as an authorized representative for the respondent, Emilio's Automotive Services Corp., and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted supporting documentation.

Respondent contended that the video did not conclusively prove the vehicle was idling for three minutes without processing equipment in use. Respondent stated that the active work was going on and that the engine was possible needed for a mechanism on the vehicle to operate at the time.

Petitioner stated that no processing equipment was seen in use. Respondent stated the work was being done by a forklift and there was no need for the engine to be on in the flatbed truck.

[A]n idling charge does not fail if the video does not clearly show the truck making an audible engine noise, vibrating, or producing visible emissions. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021) (finding respondent in violation of Code § 24-163 even though other vehicles may have produced the noise and the truck was not vibrating in the video). See *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023)

"[W]hile Code § 24-163(a) contains an exception to excessive idling when "the engine is used to operate a loading, unloading, or processing device," the limited exception to a Code § 24-163(a) violation 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). Activity performed in preparation or anticipation of loading or unloading is not sufficient, see *DEP v. Mobile Lifts LLC*, Appeal No. 210861 (March 31, 2016); *DEP v. CNB Crane Rental Inc*, Appeal No. 2201043 (December 15, 2022)" *DEP v. Target Express Courier LLC*, Appeal No. 2400043 (March 28, 2024)

"Per 48 RCNY § 6-12(b), a summons affirmed under penalty of perjury will be admitted as prima facie evidence of the facts stated therein. Here, the IO affirmed on the summons that he verified Respondent's van idled for longer than three minutes at the cited date, time, and location based on his review of departmental records, which included the documents and video submitted by the citizen-complainant, most of which were submitted at the hearing. Moreover, per 48 RCNY § 6-12(c) "[r]elevant and reliable evidence may be admitted without regard to technical or formal rules or laws of evidence applicable in the courts of the State of New York." See *DEP v. HUB Truck Rental Corp.*, Appeal No. 2200261 (June 30, 2022).

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons affirming under penalty of perjury that the IO verified Respondent's vehicle idled for longer than three minutes at the cited date, time, and location "through a review of departmental records," was sufficient to establish Petitioner's prima facie case. See *DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019)

Per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry became whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense by a "preponderance of the evidence." See *DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023).

Here, respondent challenged petitioner's case but did not submit any evidence of their defense nor was testimony proffered by the driver of the vehicle or worker present at the location to establish that the vehicle was not idling or idling under an exception.

I credit the factual allegations in the summons and petitioner's evidence which support a violation of the cited code section and find that the respondent did not establish a defense to the violation. Accordingly, the summons is sustained, and the mandatory penalty is imposed.

Ilene Sussman

01/07/2026

01/07/2026

Ilene Sussman, Judicial Hearing Officer

Date



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division
Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592PACIFIC STREET
Brooklyn, NY 11217

Summons# : 000936297X et al. (2 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CO L P

Hearing Date : 1/2/2026

Hearing Location : Remote

Type of Hearing : By Telephone

Total Penalty Amount : 700.00

Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000936085Y	Sustained	02/10/2025	ON 5TH AVENUE BETWEEN WEST 47TH ST

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

Total Penalty for Summons: 350.00

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000936297X	Sustained	01/03/2025	ON W 70TH ST BETWEEN WEST END AVE AND

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

000936297X

Respondent, PENSKE TRUCK LEASING CO L P, appeared via telephone in response to the above issued summons. Respondent was represented by authorized representative, Ilma Babu. Petitioner, Department of Environmental Protection, was represented by Leah Smith. The summons alleges a violation of NYC Administrative Code 24-163.

Ms. Babu denied the charge with no rebuttal.

I credit the issuing officer's statement and find that Petitioner proved this violation by a preponderance of the evidence. Respondent has not established a valid defense.

Accordingly, this summons is sustained.

000936085Y

Respondent, PENSKE TRUCK LEASING CO L P, appeared via telephone in response to the above issued summons. Respondent was represented by authorized representative, Ilma Babu. Petitioner, Department of Environmental Protection, was represented by Leah Smith. The summons alleges a violation of NYC Administrative Code 24-163.

Ms. Babu denied the charge with no rebuttal.

I credit the issuing officer's statement and find that Petitioner proved this violation by a preponderance of the evidence. Respondent has not established a valid defense.

Accordingly, this summons is sustained.

	01/02/2026		
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%; border: none;">Trishawn Raffington, Judicial Hearing Officer</td> <td style="width: 30%; border: none; text-align: right;">Date</td> </tr> </table>		Trishawn Raffington, Judicial Hearing Officer	Date
Trishawn Raffington, Judicial Hearing Officer	Date		



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: 039145453N et al. (1 Summons) DEPT OF BUILDINGS, -against- 16 Christopher Street LLC Hearing Date: 01/05/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$2,500.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039145453N	Sustained	04/18/2025	18 GAY STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B102	28-301.1	Sustained	\$2,500.00

Findings of Fact & Conclusions of Law

A hearing was held telephonically on January 5, 2026 in connection with summons number 039145453N ("the summons") which was issued based on the failure to maintain the building at the premises in a code compliant manner.

Representative Cassie Rene appeared on behalf of the Petitioner.

Attorney Frank Tamberino appeared on behalf of the Respondent.

The Petitioner submitted an evidence package consisting of photos of the cited conditions, the summons, and the affirmation of service.

The Petitioner indicated that there has been no compliance and recommended the assessment of a standard penalty.

The Respondent made a motion to dismiss the summons contending that the applicable law only requires buildings that exceed 6 stories to be fireproofed, and that its building is only 4 stories. In support of dismissal, the Respondent submitted evidence consisting of information regarding the amount of stories at the building and also relied upon Article 4, Title 1, Section 101 of the N.Y.S. Multiple Dwelling Law.

Judicial notice shall be taken of the N.Y.S. Multiple Dwelling Law.

The documents submitted by the respective parties at the hearing bear relevancy to the summons and accordingly shall be admitted into the record.

The summons was not just issued based on the lack of fire protection, i.e. missed fire stoppings at the ceilings at the premises, but also due to the observation of exposed floor joints and inadequate repair to joists at cellar on the 1st, 2nd and 3rd floors. As such, while I will credit the Respondent that N.Y.S. Multiple Dwelling Law would not apply to its building as it only consists of 4 stories, this would only relate to one of the three bases for which the instant summons was issued. Therefore, the summons which was issued in part due to the failure to maintain the building in a code compliant manner resulting from the observation of exposed floor joints and inadequate repair to joists at the cellar on the 1st, 2nd and 3rd floors of the premises shall be sustained.

Since the summons shall be sustained, the standard applicable penalty shall be imposed.

April Forbes

01/05/2026

01/05/2026

April Forbes, Judicial Hearing Officer

Date



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: 039145376Z et al. (1 Summons) DEPT OF BUILDINGS, -against- 16 Christopher Street LLC Hearing Date: 01/05/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$625.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
039145376Z	Sustained	04/18/2025	18 GAY STREET Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	B201	28-105.1	Sustained	\$625.00

Findings of Fact & Conclusions of Law

A hearing was held telephonically on January 5, 2026 in connection with summons number 039145376Z ("the summons").

Representative Cassie Rene appeared on behalf of the Petitioner, and Attorney Frank Tamberino appeared on behalf of the Respondent.

The Petitioner submitted an evidence package consisting of the summons, affirmation of service, and photos of the cited

conditions. Also, the Petitioner indicated that it has not yet received any evidence of correction and is seeking standard penalty.

The Respondent submitted a work permit as evidence of correction and is seeking mitigation.

Also, the Respondent made a motion to dismiss the summons as duplicative with summons number 39079306K ("prior summons"). The Respondent indicated that the Respondent was found in violation as it relates to the prior summons. The Respondent relied upon an appeals case: Appeal No. 1100353 *NYC v. Eyda Galeano* (July 21, 2011) in support of dismissal based on the defense of duplication.

In rebuttal, the Petitioner recommended the assessment of a mitigated penalty since the work permit was obtained by the Respondent prior to the first hearing date. However, the Petitioner opposed the Respondent's motion to dismiss contending that there is no duplication between the instant summons and the prior summons. The Petitioner relied upon photos taken of the prior summons.

The Respondent submitted a copy of the prior summons as evidence in further support of duplication.

Regarding the respective document submissions by the parties, all of the submissions bear some relevancy to the summons and accordingly shall all be admitted into the record as evidence.

It is hereby determined that the summons are not duplicative since the summons were issued years apart and do not appear on their face to relate to the same work without a permit being performed at the premises. To that end, the instant summons was issued as a Class 2 violation of Section 28-105.1 based on the observation of shoring erected on the second floor bathroom to support the third floor joist without any permit on file with the Department of Buildings. The prior summons ending in 306K was issued as a Class 1 violation of Section 28-105.1 based on the observation of structural shoring installed on the second floor rear apartment providing support to a 3rd floor bathroom at the premises without any permit and with the work being 100 percent completed. As such, the Respondent's motion to dismiss is denied.

However, the Respondent has submitted evidence supporting mitigation and for which the Petitioner concurs that mitigation should be considered. Therefore, the summons will be sustained and a mitigated penalty in the amount of \$625.00 shall be imposed.

April Forbes

01/05/2026

01/05/2026

April Forbes, Judicial Hearing Officer

Date



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division
Decision

ILMA BABU - NACMIAS LAW FIRM PLLC 592 PACIFIC STREET Brooklyn, NY 11217	Summons# : 000937218N et al. (1 summonses) DEPT OF ENVIRONMENTAL PROTECTION, -against- PENSKE TRUCK LEASING CO LP Hearing Date : 1/7/2026 Hearing Location : Remote Type of Hearing : By Telephone
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Total Penalty Amount :	350.00	Community Service(Hr):	Not Applicable
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SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000937218N	Sustained	03/03/2025	ON WOOSTER ST BETWEEN BROOME ST

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

Respondent appeared by I. Babu. Petitioner did not appear. Petitioner charges Respondent with a violation of NYC AC 24-163. Ms. Babu denied the violation but offered no rebuttal. No further defense or evidence was presented. I credit the allegations in the summons and find Respondent was in violation on the cited date. I uphold the violation and impose the standard penalty.



01/07/2026

01/07/2026

Kristina Ross, Judicial Hearing Officer

Date



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: 000811665L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- NATIONAL DCP LLC Hearing Date: 01/05/2026 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$0.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000811665L	Dismissed	07/13/2023	542 E 14 ST Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1I	24-163 (F)	Dismissed	\$0.00

Findings of Fact & Conclusions of Law

The summons alleges violation of Title 24 Chapter 1 of the NYC Administrative Code in that respondent caused or permitted idling of a motor vehicle while parked standing or stopped for longer than 1 minute while adjacent to a school.

Inspector Andy Guzman appeared for the petitioner, The Department of Environmental Protection.

Ilma Babu appeared as an authorized representative for the respondent, National DCP LLC, and denied the violation.

Petitioner relied on the sworn statement of the issuing officer and submitted photographs of the vehicle in support of that

statement. Petitioner also submitted a copy of the idling complaint, a video.

Respondent moved to dismiss the violation contending that it would not have been clear to the driver that a school was the location and stated that the school was not observed in the video. Respondent also noted that this type of vehicle usually has a refrigeration unit that requires the truck to idle.

Petitioner stated that while the school may not have been visible in the video the citizen's sworn statement says it there. Petitioner stated that refrigeration systems on trucks of this type usually have an independent power source. Petitioner contended that if same was not the case respondent would need to provide evidence otherwise.

[A]n idling charge does not fail if the video does not clearly show the truck making an audible engine noise, vibrating, or producing visible emissions. See *DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021) (finding respondent in violation of Code § 24-163 even though other vehicles may have produced the noise and the truck was not vibrating in the video). See *DEP v. Bartlett Dairy*, Appeal No. 2201546 (March 23, 2023)

Per § 6-12(b) of Title 48 of the Rules of the City of New York (RCNY), the summons affirming under penalty of perjury that the IO verified Respondent's vehicle idled for longer than three minutes at the cited date, time, and location "through a review of departmental records," was sufficient to establish Petitioner's prima facie case. See *DEP v. Academy Lines LLC*, Appeal No. 1900379 (May 16, 2019)

Per 48 RCNY § 6-12(a), once Petitioner established its prima facie case, the critical inquiry became whether any credible evidence in the record, such as testimony or affidavits from the vehicle's driver, refuted its case or otherwise established an affirmative defense by a "preponderance of the evidence." See *DEP v. Citnalta Construction Corp.*, Appeal No. 2201191 (February 23, 2023).

Here, respondent did not deny that the vehicle may have been idling in the vicinity of a school but rather only argued that the petitioner did not prove it and/or that a driver would not have known a school was at the cited location. Further, respondent offered no evidence that the refrigeration unit was in use or that it required the engine to idle in order to operate. Respondent did not provide a testimony or an affidavit from the driver of the vehicle. However for a violation of the cited provision of law to stand the school must be easily identifiable. The school is not observed in the whole of the video. The citizen complainant only refers to the school by its name and does not describe what may or may not have been visible. The violation was issued in July when schools are normally not in session so there would less likely to be school buses or children around to indicate a school was nearby.

I find the petitioner did not prove a violation of the cited code section by a preponderance of the evidence. Accordingly, the summons is dismissed.

Ilene Sussman

01/07/2026

01/07/2026

Ilene Sussman, Judicial Hearing Officer

Date



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592 PACIFIC STREET
Brooklyn, NY 11217

Summons# : 000885519P et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CO LP

Hearing Date : 1/7/2026

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
000885519P	Sustained	09/21/2024	ON W 31ST ST BETWEEN 7TH AND *TH AVE,

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

Respondent appeared by I. Babu. Petitioner did not appear. Petitioner charges Respondent with a violation of NYC AC 24-163. Ms. Babu denied the violation but offered no rebuttal. No further defense or evidence was presented. I credit the allegations in the summons and find Respondent was in violation on the cited date. I uphold the violation and impose the standard penalty.



01/07/2026

01/07/2026

Kristina Ross, Judicial Hearing Officer

Date



Office of Administrative Trials and Hearings

Hearings Division

Decision

ILMA BABU - NACMIAS LAW FIRM PLLC
592 PACIFIC STREET
Brooklyn, NY 11217

Summons# : 000937505X et al. (1 summonses)

DEPT OF ENVIRONMENTAL PROTECTION,

-against-

PENSKE TRUCK LEASING CO LP

Hearing Date : 1/7/2026

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
000937505X	Sustained	02/13/2025	ON BROADWAY BETWEEN SPRING ST AND PRINCE

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

Total Penalty for Summons: 350.00

Findings of Facts & Conclusions of Law

Respondent appeared by I. Babu. Petitioner did not appear. Petitioner charges Respondent with a violation of NYC AC 24-163. Ms. Babu denied the violation but offered no rebuttal. No further defense or evidence was presented. I credit the allegations in the summons and find Respondent was in violation on the cited date. I uphold the violation and impose the standard penalty.



01/07/2026

01/07/2026

Kristina Ross, Judicial Hearing Officer

Date