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Appeal No. 2501526 **DSNY v. MRT BWR Corp.** **January 29, 2026**

Appeal Decision

The appeal of Respondent, commercial waste carter, is **denied.**

Respondent appeals from a recommended decision by Judicial Hearing Officer (JHO) J. Klein, dated November 7, 2025, sustaining a charge of § 20-51 of Title 16 of the Rules of the City of New York (RCNY), for failure to operate a vehicle in a safe manner. Having fully reviewed the record, the Board finds that the JHO's decision is supported by the law and a preponderance of the evidence. Therefore, the Board finds as follows:

Summons	Law Charged	Hearing Determination	Appeal Determination	Penalty
48750004J	16 RCNY § 20-51	In Violation	Affirmed – In Violation	$ 2,500

Background

In the summons, the issuing officer (IO) affirmed on May 6, 2025, with respect to Respondent's place of business at 7310 Edsall Avenue, Queens, "CWZ Awardee has engaged in a pattern of unsafe practices by committing 4 violations [of 16 RCNY] § 20-51(b)(3) . . . within a six month [p]eriod."

At a telephonic hearing, held on October 22, 2025, Petitioner, Department of Sanitation (DSNY), relied on the allegations as written in the summons and the testimony of four DSNY environmental police officers (DEPO), each of whom witnessed one of Respondent's commercial waste vehicles either fail to stop at a red light or drive against the designated flow of traffic during a three-month period.[1] Each DEPO testified that they issued traffic summonses for violations of the New York State Vehicle and Traffic Law (VTL) to the vehicle driver present for each incident.[2] In support of their testimony, the DEPOs submitted undated photographs of the five locations where the alleged incidents occurred. Petitioner's other witness, its manager

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[1] For each of four instances of prohibited conduct involving a red-light, the respective DEPO testified as to witnessing Respondent's commercial waste vehicle run a "steady red light" (a light that was red before the vehicle approached the intersection).

[2] The VTL violations were issued on February 25, 2025, March 3, 2025, April 10, 2025, April 24, 2025, and May 5, 2025.

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for regulatory and administrative code compliance, testified that she issued three warnings following the first four observed instances involving Respondent's commercial waste vehicles.

Respondent's attorney acknowledged receipt of the warnings and asserted that none of the VTL violations issued by the DEPOs were adjudicated as of the instant hearing, Petitioner's photographs were not clear and convincing evidence of the VTL violations as they did not establish the location of the cited vehicles in relation to the crosswalk when the light turned red or that the traffic signs were unobstructed and legible at the times indicated on the VTL violations. He added that there was no evidence or testimony that the traffic lights functioned correctly. Finally, Respondent's attorney argued that the summons should be dismissed as Petitioner required four convictions of the underlying VTL violations to establish a pattern of unsafe practices and reliance on conclusory statements from the DEPOs was not sufficient to establish a prima facie case.

In response, Petitioner's representative argued that the clear and convincing evidence standard required for VTL violations did not apply to the instant summons and OATH Hearings Division requires proof of the factual allegations contained in the summons by a preponderance of the evidence.[3] She further argued that 16 RCNY § 20-51 does not refer to the VTL or require adjudicated VTL violations to establish a pattern of unsafe practices. She added that the DEPOs are trained to enforce provisions of the VTL and issued traffic summonses for the conduct they observed, and pursuant to 48 RCNY § 6-17(a), the JHO is charged with making findings of fact. In support, she cited *TLC v. Abdou Mbaye,* Appeal No. 10139328C (September 17, 2019), and *TLC v. D Didar Hossain,* Appeal No. 10113220C (January 3, 2019).

In the decision, the JHO found that Petitioner established a prima facie case by the IO's affirmed statements in the summons supplemented by witness testimony and evidence. He further found that Respondent's arguments were speculative, primarily pertained to matters not before OATH, and did not refute the allegations in the summons.

On appeal, Respondent reiterates the hearing arguments that Petitioner did not prove any of the underlying allegations required to establish a pattern of unsafe practices, Petitioner's photographs do not provide reference points that establish the position of the cited vehicles when the lights turned red, and Petitioner failed to establish at least four instances of unsafe driving practices. He adds that the JHO's decision should be reversed because the JHO erred and unfairly shifted the burden to Respondent to disprove Petitioner's conclusory allegations. In support, Respondent cites to *DOHMH v. Efthimioiu,* Appeal No. 2400443 (May 30, 2024).

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[3] The New York State Department of Motor Vehicles' Traffic Violations Bureau adjudicates the VTL summonses issued by the DEPOs.

Alternatively, Respondent requests a remand with instructions that Petitioner prove each underlying allegation of unsafe practices.

In its answer, Petitioner's representative reiterates the hearing assertions that Respondent is a Commercial Waste Zone (CWZ) program awardee, its vehicles were observed engaging in five instances of unsafe practices under 16 RCNY § 20-51(b) by specially trained DEPOs who testified at the hearing, and Petitioner alleged sufficient credited facts to establish its prima facie case. She adds that Respondent's appeal assertion that the JHO erred in applying an over broad burden-shifting approach misunderstands the burden of proof in OATH hearings and that Respondent did not provide evidence to refute the allegations or establish a defense. Finally, she states that Respondent's reliance on *Efthimioiu*, 2400443, is misplaced.

Issue on Appeal

The issue on appeal is whether Petitioner established a prima facie case.

Applicable Law

Section 20-51 of 16 RCNY provides, in pertinent part:

> (b) An awardee is responsible for ensuring that the commercial waste vehicles used to perform commercial waste collection, transport and removal services under its agreement with the City are not engaging in a pattern of unsafe practices. Each such pattern of unsafe practices is a violation of this subdivision. For purposes of this subdivision, "a pattern of unsafe practices" shall be defined as four instances of prohibited conduct set forth in paragraphs (1) through (6) of this subdivision within a six month period by the awardee's commercial waste vehicles operators or the operators of the commercial waste vehicles of the awardee's designated carters, in the aggregate:
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> (3) A commercial waste vehicle must stop at all steady red lights until such light turns green. A trade waste vehicle must stop at all flashing red lights and stop signs before entering an intersection.
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> (4) A commercial waste vehicle must be driven only in the direction designated for the roadway.

Section 6-12(a) of 48 RCNY states: "[T]he petitioner bears the burden of proving the factual allegations contained in the summons by a preponderance of the evidence. The respondent bears the burden of proving an affirmative defense, if any, by a preponderance of the evidence."

Analysis

For the following reasons, the Board affirms the JHO's decision.

On this record, the Board finds that Petitioner established its case through the IO's affirmed observations in the summons, further supported by the testimony of the DEPOs and Petitioner's manager for regulatory and administrative code compliance, as well as photographs. *See* 48 RCNY § 6-12(b) (summons affirmed under penalty of perjury is prima facie evidence of facts stated therein). Respondent's attorney's arguments that the summons should be dismissed as none of the underlying VTO violations were adjudicated at the time of the hearing, Petitioner relied on conclusory statements from the DEPOs, and Petitioner did not establish a pattern of unsafe practices and did not provide clear and convincing evidence of the facts alleged in the VTL violations misinterprets the requirements of 16 RCNY § 20-51 and the Hearings Division rules.

A charge of 16 RCNY § 20-51 is established where Petitioner, per 48 RCNY § 6-12(a), proves by a preponderance of the evidence in the record that Respondent engaged in "a pattern of unsafe practices," which is further defined as four instances of prohibited conduct, including failing to stop at a steady red light and driving the wrong direction on a road, within a six month period. There is no requirement that a respondent be issued, much less be found in violation of, traffic summonses for violations of the VTL, and the clear and convincing evidence standard required to establish a VTL violation in the DMV Traffic Violations Bureau is not applicable. Here then, the charge was established by Petitioner's credited summons and supporting evidence. As the JHO credited the DEPOs as to their observations on February 25, 2025, March 3, 2025, April 10, 2025, April 24, 2025, and May 5, 2025, Petitioner established that Respondent engaged in a pattern of unsafe practices and was therefore was in violation of 6 RCNY § 20-51.

Finally, the Board notes that Respondent's reliance on *Efthimioiu*, 2400443, is also misplaced, as the dismissal there was fact specific. In that case, the Board found that the IO's statements on the summons were conclusory and did not include specific facts necessary to establish the elements of the charge. As the petitioner did not supplement the summons, the petitioner failed to establish the charge. Here, Petitioner supplemented the summons with detailed, credited testimony from the DEPOs who witnessed the traffic infractions.

Accordingly, the Board affirms the JHO's decision sustaining a violation of 16 RCNY §20-51 and imposing a civil penalty of $2,500.

By: OATH Appeals Division