



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Appeals Division

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Appeal No. 2600268

DEP v. NJ Transit Corp.

April 30, 2026

Appeal Decision

The appeal of Petitioner, Department of Environmental Protection (DEP) is **granted**.

Petitioner appeals from three recommended decisions by Judicial Hearing Officer (JHO) J. Diperna, dated February 16, 2026, dismissing three charges of § 24-163 of the Administrative Code of the City of New York (Code) for causing or permitting a bus to idle at a terminal point. Having fully reviewed the record, the Board finds that the JHO's decisions are not supported by the law and a preponderance of the evidence.

Summons	Law Charged	Hearing Decision	Appeal Decision	Penalty
00920027J (27J)	Code § 24-163	Dismissed	Reversed – In Violation	\$350
00920805R (05R)	Code § 24-163	Dismissed	Reversed – In Violation	\$350
00920809Y (09Y)	Code § 24-163	Dismissed	Reversed – In Violation	\$350

In the summonses, the issuing officer (IO) affirmed, as verified through a review of DEP records, that a citizen complainant witnessed Respondent's bus idling at a terminal point at 451 West 30th Street, Manhattan as follows.

Summons 27J – On August 1, 2024 from 4:29:40 p.m. to 4:31:14 p.m.

Summons 05R – On August 5, 2024, from 4:18:41 p.m. to 4:20:04 p.m.

Summons 09Y – On August 5, 2024, from 4:20:08 p.m. to 4:21:40 p.m.

At a consolidated telephonic hearing, held on February 10, 2026, a representative for Petitioner did not appear. Respondent's attorney set forth the following arguments to apply to all summonses, which were also included in a written brief. The summonses do not establish a prima facie case because DEP's guidelines require observation of three minutes and one second of idling and a video of three minutes and four seconds capturing the idling. For idling cases at terminal points, when Petitioner waives appearance and fails to submit any evidence establishing that the temperature was over 40 degrees Fahrenheit on the date of violations, the summons should be dismissed. In support, the attorney submitted a hearing decision where the JHO dismissed the summons for failing to state the temperature. The attorney further argued that, because each summons alleges a period of idling for under three minutes, but has the

Panel: 4/30/2026
Atty: ABC/1389

Date Mailed:

infraction description “[i]dling of a motor vehicle engine for more than three minutes...” the summonses should be dismissed. The attorney cited *DEP v. Marathon Energy*, Appeal No. 2300707 (August 31, 2023), as holding a summons is defective if material facts are incorrect. He also submitted a screenshot showing a posted sign headed “3 min idling law.”

The attorney also submitted a variance application that is pending before DEP for idling of Respondent’s motor coaches. He raised an equal protection argument because Code § 24-163 is only enforced against private bus companies. He noted that the cited buses were transporting students and therefore idling for student comfort.

In the decisions dismissing the three summonses, the JHO found that the “summonses allege that the vehicle was idling over three minutes. However, in the description of the violation, the summons shows that the vehicle was observed idling less than three minutes. Although the summons was issued in the month of August, it does not allege that the ambient temperature was above 40°.” Therefore, the JHO found each summons failed “to establish the violation for idling over three minutes, or at a terminal.”

On appeal, Petitioner asserts as follows. The summonses establish a prima facie case and that the burden of establishing that the temperature was below 40 degrees at the time of the alleged idling is an affirmative defense which Respondent bears the burden of proving, citing *DEP v. Academy Lines LLC*, Appeal No. 1901031 (September 12, 2019); *DEP v. Academy Lines LLC*, Appeal No. 1900914 (August 29, 2019). Therefore, Petitioner did not have the burden of specifying in the summons that the ambient temperature was above 40 degrees, and furthermore, because the violations occurred in August, it could be presumed that the ambient temperature was over 40 degrees.

In response, Respondent’s attorney reiterates his hearing arguments, stating that the summonses failed to establish a prima facie case because it did not allege the ambient temperature was over 40 degrees Fahrenheit, again citing *Marathon Energy*, 2300707, to support the assertion that the summonses have facial defects. The attorney also notes that Petitioner failed to appear and submitted no evidence beyond the summons, which constitutes inadmissible hearsay without departmental records.

On this record, the Board reverses the JHO’s decisions.

As an initial matter, the Board finds that the summonses provided “a clear and concise statement sufficient to inform the Respondent with reasonable certainty and clarity of the essential facts alleged to constitute the violation,” as required under Title 48 of the Rules of the City of New York (RCNY) § 6-08(c)(2). Contrary to the JHO’s statement that the summonses allege that the vehicles were idling for more than three minutes, each description of violation

clearly states the timeframe of the idling, which in all three cases, was under two minutes, as well as the allegation that said idling was at a terminal point. That statement in each summons provided the essential facts constituting the violation required by 48 RCNY § 6-08(c)(2). Because that description clearly stated the span of the idling that Respondent was charged with, mention of “idling for more than three minutes” as the infraction description could not have reasonably confused Respondent or prevented Respondent’s attorney from presenting a defense.

Code 24-163(a) provides that “[n]o person shall cause or permit the engine of a motor vehicle . . . to idle for longer than three minutes[.]” Code § 24-163 further states that “[w]hen the ambient temperature is in excess of forty degrees Fahrenheit, no person shall cause or permit the engine of a bus as defined in section one hundred four of the vehicle and traffic law to idle while parking, standing, or stopping . . . at any terminal point, whether or not enclosed, along an established route.” This language prohibits any idling at a terminal point, unless the temperature is 40°F or lower. *See DEP v. DC Trails, Inc.*, Appeal No. 2400871 (July 25, 2024). At 40°F or lower, it allows idling only up to three minutes for buses at a terminal point. Therefore, idling for any amount of time at a terminal point was conduct for which Respondent was properly charged unless the temperature was below 41°F.

As to whether the temperature is an element that must be established by Petitioner, the Board has previously found establishing a temperature 40°F or lower at a terminal point is an affirmative defense. The respondent therefore has the burden of proof. *See DEP v. Academy Lines LLC*, Appeal No. 1901031 (reversing dismissal mistakenly premised on petitioner’s failure to prove temperature above 40°F). The hearing decision to the contrary that Respondent’s attorney relied on has no authority as precedent the Board must follow.

Furthermore, Petitioner was not required to appear at the hearing, *see DEP v. Cintas Corporation No. 2*, Appeal No. 2100897 (September 23, 2021), or submit the citizen complainant’s video. *See DEP v. Hub Truck Rental Corp.*, Appeal No. 2001344 (February 11, 2021). Rather, 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). The Board concludes that no such evidence was presented here, as Respondent’s attorney does not submit any testimonial or documentary evidence rebutting the charges. As to the validity of the prior violations Respondent presented no evidence that they did not involve the same vehicle as here or cited a charge other than as charged here. In the absence of probative evidence to contest Petitioner’s case, the

summonses should have been sustained. *See DEP v. Genco Lee Renovation Inc.*, Appeal No. 2200829 (September 29, 2022).

Accordingly, the Board reverses the JHO's decisions, sustains three violations of Code § 24-163 and imposes a total civil penalty of \$1,050.

By: OATH Appeals Division