

**Matter of Streeter v New York City Dept. of Env'tl.
Protection**

2025 NY Slip Op 30201(U)

January 10, 2025

Supreme Court, Kings County

Docket Number: Index No. 508512/2024

Judge: Gina Abadi

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, City Part 7 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 10th day of January, 2025.

P R E S E N T:

HON. GINA ABADI,
Justice.

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In the Matter of the Application of
MICHAEL STREETER,

Index No.: 508512/2024
Mot. Seq.: 1

Petitioner,

For a Judgment under Article 78 of the Civil Practice Law
and Rules

DECISION/JUDGMENT

-against-

NEW YORK CITY DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondent.

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Recitation, as required by CPLR § 2219(a), of the papers considered in the review of this petition:

<u>Papers</u>	<u>NYSCEF Numbered</u>
Notice of Motion/Cross-Motion/Order to Show Cause, and Affidavits (Affirmations) Annexed.	<u>1 – 6, 9</u>
Opposing Affidavits (Affirmations)	<u>13 – 17</u>
Reply Affidavits (Affirmations)	<u>18</u>

By order to show cause, dated May 7, 2024, the petitioner moved for an order:
(1) vacating the respondent’s disqualification of petitioner’s “citizen’s complaint number 2023-67362” (the “underlying complaint”) as predicated on the petitioner’s observation on October 10, 2023 of a truck that, while parking, standing or stopping, had its engine idling



in alleged violation of Administrative Code § 24-163 (a) (the “underlying incident”); and (2) directing the respondent to provide a self-prosecution summons to the petitioner. The respondent opposed the relief sought in the order to show cause, as well as the underlying petition. On September 11, 2024, the matter was fully submitted, with the Court reserving decision.

Administrative Code § 24-163 (a) provides, in relevant part, that “[n]o person shall cause or permit the engine of a motor vehicle . . . to idle for longer than three minutes, . . . , while parking . . . , standing . . . , or stopping . . . , unless the engine is used to operate a . . . *processing device*” (emphasis added). Effective June 22, 2022, and therefore applicable to the underlying incident, 15 RCNY § 39-01 has been amended to define “processing device” for purposes of Administrative Code § 24-163 as either one of the following: “(1) a device that accomplishes the function for which the vehicle or equipment was designed, other than transporting goods or people, via a mechanical connection to the engine. . . .”; or “(2) *a system that controls the environment of temperature-sensitive cargo or substances . . . , provided that such cargo or substances are being transported in a vehicle designed for the transportation of such cargo or substances*” (emphasis added). In interpreting the newly added definition of a processing device, the City of New York Office of Administrative Trials and Hearings (“OATH”), Appeals Division, repeatedly held that the second prong of the aforementioned definition which encompassed a vehicle designed for the transportation of temperature-sensitive cargo or substances did not require (unlike the first prong of the aforementioned definition) a “mechanical connection to the engine.” See *DEP v Ovalab LLC*, Appeal No. 2300900 (Sept. 28, 2023), page 3 of 3; *DEP v Docgo*

Mobile Health Supplies LLC, Appeal No. 2300863 (Aug. 31, 2023), page 3 of 3.¹ See also *DEP v Docgo Mobile Health Supplies LLC*, Appeal No. 2300987 (Oct. 26, 2023), page 1 of 1; *DEP v Accord Bus LLC*, Appeal No. 2301032 (Oct. 26, 2023), page 1 of 1.²

Accordingly, the respondent's disqualification of the underlying incident as a violation, on the basis of "several OATH appeals decision[s] . . . fall[ing] within the refrigeration exemption,"³ was neither made in violation of lawful procedure, nor was affected by an error of law, nor was arbitrary and capricious, nor was an abuse of discretion. See *Matter of Snaggs v New York City Dept. of Env'tl. Protection*, 162 AD3d 1050, 1051 (2d Dept 2018), *lv denied* 32 NY3d 908 (2018); *Matter of Bluebird Realty Corp. v Dept. of Env'tl. Protection of City of New York*, 300 AD2d 6, 7 (1st Dept 2002); *Matter of Streeter v New York City Dept. of Env'tl. Protection*, 83 Misc 3d 417, 420-421 (Sup Ct, Kings County 2024).

The petitioner's reference to the pending proceeding in *Matter of Lab Q Clinical Diagnostics, LLC v NYC Dept. Env'tl. Protect.* (Sup Ct, Kings County, index No. 536158/2023, Patria Frias-Colón, J.) (the "*Lab Q* proceeding"), is misplaced because

¹ Available at <https://archive.citylaw.org/wp-content/uploads/sites/12/ecb/2300900.pdf> and <https://archive.citylaw.org/wp-content/uploads/sites/12/ecb/2300863.pdf>, respectively (last accessed Jan. 2, 2025). The OATH decision in *DEP v Lab Q Clinical Diagnostics LLC*, Appeal No. 2201593 (Mar. 23, 2023), is not to the contrary because the underlying violation of November 22, 2021 occurred before the effective date of the "processing device" definition of June 22, 2022. In that regard, the OATH decision in *DEP v Simo Trucking*, Appeal No. 2300700 (Sept. 28, 2023), page 3 of 3, n 2, noted the effect of the enactment of the "processing device" definition on the original holding in *Lab Q*, Appeal No. 2201593. *Simo Trucking*, Appeal No. 2300700, is annexed as Exhibit A to respondent's memorandum of law (NYSCEF Doc No. 17).

² *Docgo Mobile Health*, Appeal No. 2300987, and *Accord Bus*, Appeal No. 2301032, are annexed as Exhibits B and C, respectively, to the respondent's memorandum of law.

³ Respondent's Idling Complaint Review Decision – 2023-67362, dated Feb. 21, 2024 (NYSCEF Doc No. 6).

the defenses raised by the respondents in that proceeding are substantively different from those raised by the respondent in the instant proceeding. In fact, repeated attempts by the petitioner and others to intervene in the *Lab Q* proceeding were rejected by Justice Frias-Colón. See *Matter of Lab Q Clinical Diagnostics, LLC v NYC Dept. Env'tl. Protect.*, 2024 WL 3257591, *2 (Sup Ct, Kings County, June 6, 2024), *rearg denied* 2024 WL 5116687, *1 (Sup Ct, Kings County, Nov. 25, 2024).

The Court considered the petitioner's remaining contentions and found them either unavailing or moot in light of its determination.

Accordingly, it is

ORDERED that respondent's disqualification of citizen's complaint number 2023-67362 and its concomitant refusal to provide a self-prosecution summons to the petitioner were supported by the record and the OATH Appeals-Division precedent, and were neither arbitrary nor capricious; and it is further

ORDERED and ADJUDGED that the petition is denied in its entirety, and the proceeding is dismissed with prejudice.

The foregoing constitutes the decision and judgment of the Court.

ENTER,



HON. GINA ABADI
J.S.C.

2025 JAN 16 A 9 36
KINGS COUNTY CLERK
FILED