

**Arthur L. Miller**  
**Attorney at Law**

---

67-05 Alderton Street  
Rego Park, New York 11374  
(718) 997-0641 ☎  
(718) 997-0245 📠  
[arthur@amlawny.com](mailto:arthur@amlawny.com)

**Comments to Proposed Changes to Air Code Penalty Schedule – Second and Third Offenses of Certain Violations, Including Vehicular Idling Violations – NYC Dept. of Environmental Protection - Hearing February 8, 2023**

I am an attorney who has worked for many years with the trucking industry. I have represented and advised many firms, large and small in connection with summonses issued under Administrative Code §24-163. DEP has not demonstrated that the proposed changes are “necessary to effectuate the purposes..” of the Air Pollution Control Code, as required by Administrative Code §24-105. In fact, as discussed, below, the proposed changes will likely do nothing to alter behavior concerning air pollution and will unfairly burden an industry that has made substantial investments in clean emissions technology.

While I am glad to see a provision to require that each summons issued provide an opportunity to stipulate to the fine, the language as written does not go far enough. It should clearly indicate what the specific fine would be and, in fact, settlement might get a higher acceptance rate if the settlement fine was lower than the base fine at a hearing. People generally react more favorably to a savings.

But tweaking the stipulated settlement issue ignores the broader problem. The current administration of this program is unwieldy, violative of due process, and unnecessarily traps respondents in higher fine situations. Accordingly, neither the rates for repeat offenders nor the time periods for when something is deemed a repeat should be increased unless and until the administration of this program is made more fair.

Specifically, service of process and identification of the responsible respondents is, to put it mildly, slipshod. I have seen respondents identified simply by a logo on the vehicle or a DOT number. Each vehicle has a license plate and DEP has its own law enforcement unit. There’s no reason why the DEP should permit a summons to go out to a company because the operator of a vehicle has a logo that says we use this company’s product.

Then, a significant number of summonses are “served” via dropping them off at the NYS Secretary of State. While such service is permitted under City and State Rules, that should only be used in a situation of last resort, where DEP cannot identify the registered owner of the vehicle involved. Again, DEP has its own internal law enforcement unit. There’s no reason why DEP cannot secure the identities of the owners.

The Secretary of State, when it sends out notices, often sends them to the name it has on file for a registered agent for a company. That could be a lawyer who handled the incorporation years ago or some general corporate office.

Also, summonses are issued months and years after the alleged violation date. There is little opportunity to go back to the driver to correct the behavior and, for leasing companies, it is frequently too late to transfer the liability to the lessee.

The end result of these service issues is that many respondents do not get these summonses at all or on a timely basis. If the summonses go into default, they miss the opportunity to stipulate to a settlement. Worse, if they are in default, the next summons then becomes a second or third offense... all without notice and an opportunity to be heard.

If respondents do not get the summonses on a timely basis, and if the correct violators are not identified, if at all, how will raising the fines and extending the time encourage better behavior?

Additionally, as mentioned, many firms have invested in certified clean idling technology. Those that spend thousands of dollars per vehicle to reduce emissions, should not be treated the same as those who do not. There must be a carve out for vehicles that are certified to be non or reduced polluters. The Agency misses a huge opportunity to induce better practices.

I would be happy to work with the Agency to tweak the existing program so that it truly serves its objectives and operates in a more fair and sustainable manner. However, as proposed, I strongly protest the proposed changes.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Arthur Miller', with a long, sweeping horizontal line extending to the right.

Arthur Miller

Rego Park, NY February 8, 2023