

TANY's Citizens Idling Program Concerns and Proposed Solutions:

I. Citizens Idling Program Concerns with Due Process

- Problem: Timing of summons (from observation to prosecution).
 - Currently we are seeing complaints received anywhere from 6-12 months (sometimes more) after the alleged idling violation. This threatens due process because it interferes with preparation of the defense.

- Solution: Codify guidelines
 - Guidelines State: "You should submit your completed complaint within 60 days from the date of observation, along with the completed affidavit or affirmation and all supporting evidence using the online Idling Complaint System. Submissions received after 60 days from the date of observation may be rejected. It is to your advantage to use this system as it allows you to keep track of your complaints."
 - The time limits should be codified: the citizen complainant has 60 days from the date of observation to file the complaint. From the date the complaint is filed with the Department of Environmental Protection (DEP), the agency then has 60 days to issue and serve a summons.
 - Also, if a summons is dismissed or withdrawn, after service of the summons, the same violation cannot be reserved under a different summons number.

II. Identification of Owner/Service of Summons to Secretary of State

- Problem: The service of a summons is supposed to be upon either the driver or the registered owner, but many are going directly to the Secretary of State without any notification leaving the owner uninformed and unable to defend themselves.
 - If service is upon the owner, then it must be the registered owner (a logo as ID is insufficient). DOT number, unless it matches name and address on the truck is also insufficient.
 - Frequently, the name on file with the Secretary of State is neither the owner nor the driver. For larger companies, it may just be an affiliate or holding company. Sometimes it's the name and address of the law firm that incorporated the company years ago.

- Solution: Require that service be made on the registered owner of the vehicle at the last address on file at the Department of Motor Vehicles (DMV) or the name and address appearing on the vehicle (if applicable). DEP should have access to the DMV's database for this information and would help bring DEP in line with other enforcement agencies/arms that use this database throughout the City and State.
 - Service upon the Secretary of State must be a last resort when either the name of the

registered owner cannot be found or there is no clear name and address displayed on the side of the vehicle. Also, service upon the Secretary of State must be followed up with the mailing of a true copy of the summons to the last known address of the respondent.

III. Information Contained on Summons/Opportunity to Obtain Evidence

- **Problem:** There is a lack of information/evidence provided on summons and accessible to defense.
 - There is no mechanism for respondents to request and view the evidence that has been filed against them with sufficient time to decide whether they wish to settle.

- **Solution:** A summons must tell respondents how they can obtain and look at the evidence and original materials provided by the complaining citizen. A mechanism must be created for respondents to request and view the evidence that has been filed against them with sufficient time to decide whether they wish to settle. The mechanism (perhaps a special website or email address) must be clearly referenced on the summons.
 - The guidelines note: “the sound of the engine must be clearly audible and verified by recording the sound either from the front of the truck or near the exhaust point for a few seconds throughout the entire recording (the beginning, middle and end of your recording); or there must be visible tailpipe emissions throughout the entire recording (beginning, middle and end of the recording). As of this date, complaints that do not include these details will now be deemed frivolous and cannot be pursued by DEP or yourself.”
 - The citizen must swear by affidavit that they took the video, and made the observations, personally and that they were not altered or edited in any way. Also, the actual complaint and all the original information provided by the complainant must be made available to respondents. There is no reason to redact information, outside of phone numbers, birthday and driver’s license and the vendor number should be provided.
 - Lastly, the date the information filed by the citizen-complainant was reviewed by the issuing officer who signed the summons must be stated.

IV. Mail in Penalty

- **Problem:** The summons does not set forth a mail-in penalty (\$350 for first time offenders), so respondents either have to wait until they get an offer or proactively call and find out how to get it.

- **Solution:** The summons should include the mail-in penalty so that those who want to (and we suspect this will be a decent portion) can plead guilty and simply pay their fine online, expediting payment for the city and cleaning up the backlog being adjudicated.

V. Discount/Adjustment for Certified Clean Idle

- **Problem:** Certified Clean Idle trucks are treated the same as older trucks that are much more harmful to the environment.

- Solution: Similar to the California clean idle, clean idle vehicles will be equipped with a decal identifying them as certified clean idle and therefore held to a different standard and used to encourage owners of older trucks to upgrade to such vehicle types.

VI. Leased Vehicles/Transfer Liability

- Problem: Currently there is not a provision that allows for the transfer of liability for leasing companies so that the liable party is held responsible and bad behavior is discouraged.
- Solution: Similar to what Department of Finance (DOF) and EZPASS do - allow the option for leasing companies to transfer responsibility for the violation (with an opportunity to defend itself) to the individual or company responsible.
 - Under DOF's system, lessors register with DOF as lessor and file a copy of the blank form lease. DOF then sends a weekly list of parking tickets to which lessor responds within 30 days with name and address of lessee for each ticket. DOF then transfers liability to the lessee.

VII. Judgment Summonses/Amnesty

- Problem: There are thousands of outstanding idling tickets that owners/companies are not aware of.
- Solution: DEP should provide a list of open summonses to commercial firms upon request. The lists of unpaid summonses should be sent to the registered owner and given sufficient time to reopen. There should be some time period to vacate defaults and get cases back on the calendar. This is very important with respect to fleets where they may not even know they have open summonses.

VIII. Clean Idle Exemption

- Problem: Certified Clean Idle trucks are held to the same standards as older trucks without Diesel Particulate Filters (DPF).
 - Employers whose trucks are regulated by the NYC Business Integrity Commission were mandated to purchase Clean Idle trucks to be used in the five boroughs. In addition, many fleets were able to purchase their Clean Idle trucks through the NYC Clean Trucks Program.
- Solution: Exemptions should be set to include trucks certified as Clean Idle, similar to the exemptions in the states of California and Pennsylvania.
 - This would ensure truck owners that have made the investment to upgrade their fleets do not face the same harsh penalties as older trucks, while also encouraging owners of older trucks to upgrade their vehicle type.

IX. NYC Clean Trucks Program

- Problem: The NYC Clean Trucks Program is underfunded preventing fleets from being updated to cleaner, zero emission vehicles while hundreds of thousands of dollars are being shelled out to citizens through the complaint program.
- Solution: Allocate a portion of the funds from the Citizens Air Complaint program to help fund the Clean Trucks incentive program and encourage the purchase of cleaner, zero emissions vehicles within the trucking industry.