OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

DECISION

TIFFANY IRIZARRY - NACMIAS LAW FIRM, PLLC 592 PACIFIC STREET BROOKLYN,NY 11217	**Summons No:** 001009041L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- NAT TECH LLC **Hearing Date:** 09/22/2026 **Hearing Location:** Remote **Type of Hearing:** By Telephone

Total Penalty Amount:**$0.00**

Community Service(Hr): **Not Applicable**

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
001009041L	Dismissed	10/06/2025	W 37 St btw Broadway and 5 Ave Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA51	24 -163	Dismissed	$0.00

Findings of Fact & Conclusions of Law

Tiffany Irizarry for Respondent

DEP Waived Appearance

The summons alleges unlawful idling and it carries a $350 fine. Respondent asserted that a processing device was in use and submitted the video as well as a supporting affidavit which states in relevant part:

"Our technicians operate our splice lab, which requires the use of the engine in order to power our fiber optic splicing

equipment, power the interior lights as well as the testing devices used while our technicians perform splicing work. We cannot run our equipment via battery as our equipment will drain the battery. Further, our trucks are certified clean idle."

The processing device exemption is an affirmative defense where respondent has to burden of proving that the device was in actual use or where the operation was imminent. DEP v. Liberty Contracting, Appeal No. 2501428 (Jan. 29, 2026). DEP v. Shred Services, Appeal No. 2500657 (July 31, 2025)(idling is only exempted while the device is actually being operated or about to be operated – where operation is "imminent.")

Here, a worker is observed leaving the truck and going to the back of the truck and was seen pulling cables down from the truck. I find that the use of the processing device was imminent and the summons is dismissed.

09/22/2026

09/22/2026

Mitchell Rubinstein, Judicial Hearing Officer **Date**