OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

Hearings Division

DECISION

Michael Anthony Sargo, Esq. 592 Pacific Street Brooklyn,NY 11217	**Summons No: 0881346950 et al. (1 Summons)** **DEPARTMENT OF HEALTH & MENTAL HYGIENE,** **-against-** **8 - 11 & 13 43RD ROAD LLC** **Hearing Date: 09/15/2026** **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
0881346950	Dismissed	08/27/2026	43-10 9th STREET Queens

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1		ADMIN CODE 17-194.1(F)	Dismissed	$0.00

Findings of Fact & Conclusions of Law

Summons 0881346950 alleges a violation of § 17-194.1(f) of the Administrative Code of the City of New York (Code), for failing to timely report to DOHMH the date of a required cooling tower test by February 27, 2026.

Petitioner, DOHMH, did not appear.

Respondent, 8-11 AMP 13 43RD ROAD LLC, appeared by Michael Sargo, Esq., who did not dispute the IO's statements but moved to dismiss the summons as an impermissible retroactive application of a subsequently adopted penalty provision. In support, Respondent submitted two OATH decisions dismissing substantially similar charges, Local Law 159 of 2025,

DOHMH's February 12, 2026 Notice of Public Hearing concerning proposed amendments to the cooling-tower rules and penalty schedule, and the Court of Appeals' decision in *Matter of Regina Metropolitan Co., LLC v. New York State Division of Housing & Community Renewal*, 35 N.Y.3d 332 (2020).

Code § 17-194.1(f) requires the owner of a building with a cooling tower to ensure that a qualified person reports to DOHMH, within five days, the date on which required testing occurred.

Respondent does not dispute that the required report was not timely filed. Rather, Respondent contends that no penalty provision applicable to such failure existed when the alleged violation occurred and that the subsequently adopted penalty provision may not be applied retroactively.

I agree. The summons alleges a failure occurring on February 27, 2026. However, the penalty provision applicable to the charged conduct was not added until May 2026, after the alleged violation occurred. Indeed, DOHMH's February 2026 rulemaking notice expressly stated that the Department proposed to amend the penalty schedule in 24 RCNY § 8-09 to add new monetary penalties for failing to report the date of a Legionella sample test and for failing to report such test date within five days.

Although the reporting obligation contained in Code § 17-194.1(f) existed at the time of the alleged conduct, the subsequently adopted penalty provision cannot be applied retroactively to impose a monetary penalty for conduct occurring before that provision became effective. *See Matter of Regina Metro. Co., LLC v. N.Y.S. Div. of Hous. & Community Renewal*, 35 N.Y.3d 332 (2020) (holding that provisions creating or substantially enlarging financial liability may not be applied retroactively to past conduct absent a sufficient basis for retroactive application).

Accordingly, because the alleged violation occurred before the applicable penalty provision became effective, the summons is dismissed.

K Lawner

09/17/2026

09/17/2026

Kevin Lawner, Judicial Hearing Officer

Date