



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

lance chebin 592 PACIFIC STREET NEW YORK, NY 11217	Summons No: 000818007L et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- HUGH O'KANE ELECTRIC CO INC Hearing Date: 01/14/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$350.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000818007L	Sustained	10/25/2023	ON E 12TH ST BETWEEN AVE B AND A Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1I	24-163 (F)	Sustained	\$350.00

Findings of Fact & Conclusions of Law

Lance Chebin appeared as the authorized representative of the named respondent, and Antwan Gibbs appeared for the petitioner.

The summons cites a violation of 24-163f.

The petitioner submitted the idling summons affidavit and complaint, and photos.

A video which exceeded one minute was played into the record and described.

The petitioner stated that while there is a fiber optic cable in the manhole, there was no processing device

The respondent contended that the cable is running and the truck needs to be on to service the cable.

I find the sworn account of the issuing officer and the Petitioner's other evidence to be credible, and that it establishes the charge. The respondent failed to set forth a valid legal defense. There is insufficient evidence presented that the fiber optic cable is powered by the engine, or that its manner of operation would meet the definition of a processing device. I further note that issues relating to fiber optic repairs were addressed in Appeal No. 2200956 DEP v. Pilot Fiber NY LLC September 29, 2022, where, in a footnote, it was held that "effective June 22, 2022, DEP amended 15 RCNY § 39-01 to create a new definition of "Processing Device" for the purposes of Code § 24-163, that includes 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, including operating a lift, crane, pump, drill, hoist, or mixer;" and "a system that controls the environment of temperature-sensitive cargo or substances," subject to certain requirements. While this provision does not control in the instant case, the Board notes that neither the inverter nor the fiber optic fuser/splicer would meet the criteria for a processing device under the new definition."

Accordingly, the summons is sustained.

Amy Baranoff

01/14/2025

01/14/2025

Amy Baranoff, Hearing Officer

Date