



OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
Hearings Division

DECISION

LANCE CHEBIN - NACMIAS LAW FIRM 592 PACIFIC STREET BROOKLYN, NY 11217	Summons No: 000911765R et al. (1 Summons) DEPT OF ENVIRONMENTAL PROTECTION, -against- HUGH OKANE ELECTRIC CO INC Hearing Date: 07/07/2025 Hearing Location: Remote Type of Hearing: By Telephone
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Total Penalty Amount: \$600.00
Community Service(Hr): Not Applicable

SUMMONS #	SUMMARY DISPOSITION	DATE OF OCCURRENCE	PLACE OF OCCURRENCE
000911765R	Sustained	10/09/2024	290 BROADWAY Manhattan

LINE ITEM	OATH CODE	CODE SECTION/RULE	RESULT	PENALTY
1	BA1F	24 -163	Sustained	\$600.00

Findings of Fact & Conclusions of Law

This telephone hearing was held on July 7, 2025. Petitioner, NYCDEP, appeared by John McLoughlin, Representative. Respondent, Hugh Okane Electric Co. Inc, appeared by Michael Nacmias, Esq.

This summons alleges a third violation of NYC Administrative Code §24-163 (Idling of motor vehicle). The prior violations were for summons Nos. 000745803H and 000798253L. In the summons, the Issuing Officer (IO) affirmed, as verified by a review of DEP records, that on 10/9/24, at 290 Broadway, a citizen-complainant observed 1 truck with NY License Plate #27256MM idling for longer than three minutes from 2:07:09 pm to 2:11:45 pm.

Mr. McLoughlin relied on the Issuing Officer's statements in the summons. He submitted a copy of the redacted-citizen complaint (P-1), two photo depicting the truck, its address and its license plate, which were taken by the citizen-complainant (P-2&3). and documentation of the two prior violations (P-4 & 5). He also submitted a video in excess of three minutes which could not be uploaded as evidence due to the size of the file. The video was taken by the citizen-complainant at the time of the alleged violation, and it depicts audible engine noise emanating from Respondent's engine. Mr. McLoughlin argued that the video did not depict any work being done by Respondent.

Mr. Nacmias did not deny the prior violations, nor did he object to Petitioner's evidence. He stated that the Respondent's truck was connected to electrical wiring in the manhole that was depicted in the video. and the work on the manhole required the Respondent's truck engine to be on. He did not submit any evidence from Respondent.

Mr. McLoughlin argued that although the video depicts wires leading from the truck to the manhole, the Respondent was not using a processing device because an inverter is not a processing device and Respondent did not show that a processing device was in use during the video.

NYC Administrative Code § 24-163 states in relevant part that "No person shall cause or permit the engine of a motor vehicle to idle for longer than three minutes, unless the engine is used to operate a loading, unloading or processing device..."

I credit the Issuing Officer's affirmed statements in the summons and Petitioner's evidence regarding the citizen's complaint concerning the idling of Respondent's truck engine. I find that Respondent did not establish a valid defense and permitted the idling of its engine for more than three minutes while parked. Respondent failed to establish as an affirmative defense that its truck's engine was idled to operate a processing device for manhole work or that such device was in use during the relevant period. (See DEP v. Madison Group, Appeal No. 2401566 (November 21, 2024-Respondent failed to establish that the inverter was integral to the design and purpose of the vehicle so it did not fall under the processing device exemption while performing work in a manhole.) I further find that Respondent failed to produce any evidence such as testimony or affidavits from the vehicle's driver to establish an affirmative defense "by a preponderance of the evidence." (See DEP v. G & F Design Appeal No. 2301482 (December 21, 2023).) Therefore, this violation is sustained and a penalty of \$600 is imposed for this third offense of NYC Administrative Code § 24-163.

Barbara Halper

07/08/2025

07/08/2025

Barbara Halper, Hearing Officer

Date