

SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

THE PEOPLE OF THE STATE OF NEW YORK
and the NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Plaintiffs,

SUMMONS

-against-

Index No. _____

NORLITE, LLC,

Defendant.

YOU ARE HEREBY SUMMONED and required to serve upon the attorney for the plaintiffs the People of the State of New York and the New York State Department of Environmental Conservation (DEC) at the address below an answer to the complaint in this action within twenty days after the service of this summons and complaint, exclusive of the day of service, or within thirty days after service is complete if this summons and complaint is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

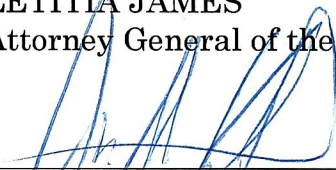
Basis of the designated venue is that the Office of the Attorney General and DEC headquarters are each located in Albany County and the events and omissions

giving rise to the plaintiffs' claims occurred in in Albany County.

Dated: October 11, 2022

LETITIA JAMES
Attorney General of the State of New York

By:


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SUPREME COURT OF THE STATE OF NEW YORK
ALBANY COUNTY

THE PEOPLE OF THE STATE OF NEW YORK
and the NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Plaintiffs,

VERIFIED COMPLAINT

-against-

Index No. _____

NORLITE, LLC,

Defendant.

Plaintiffs the People of the State of New York and the New York State Department of Environmental Conservation (DEC or the Department) (collectively, the State), by their attorney, Letitia James, Attorney General of the State of New York, allege as follows:

NATURE OF THE ACTION

1. The State brings this action to protect the public health, welfare and environment of New York, to enforce Environmental Conservation Law (ECL) Article 19, and to compel compliance with ECL Article 19 and the rules and regulations promulgated thereto at a facility owned and operated by Norlite, LLC (Norlite) located in Albany County, New York (Facility).

2. At all relevant times, Norlite has emitted fugitive dust containing air contaminants at concentrations significantly increasing the risk of adverse health effects in the surrounding communities. The quantity, characteristic and/or duration of emissions of air contaminants migrating from the Facility are injurious to human life. Norlite's air contaminant emissions adversely affect cardiovascular

systems and respiratory systems and can result in adverse effects in central nervous systems, affect metabolic processes, and increase the risk of cardiac, pulmonary, and extra-pulmonary disease in the surrounding communities. In addition, for individuals with underlying health issues, exposure to Norlite's fugitive dust emissions leads to exacerbation of asthma and chronic obstructive pulmonary disease (COPD) and can lead to cardiac arrhythmias and/or initiation of other cardiac events such as myocardial infarction (heart attack).

STATUTORY AND REGULATORY FRAMEWORK

3. Article 19 of the ECL provides DEC with the authority to regulate, control and prohibit air pollution and air contamination in New York. Pursuant to this authority, DEC promulgated 6 NYCRR Part 201 *et seq.*

4. In October 2019, DEC issued Norlite Modification 6 of the Air Title V Permit (Air Permit), which requires compliance with the ECL, all applicable regulations, and the General Conditions and Special Conditions of the Air Permit.

5. Condition 1 of the Air Permit provides in pertinent part that “[n]otwithstanding the provisions of 6 NYCRR Chapter III, Subchapter A, no person shall allow or permit any air contamination source to emit air contaminants in quantities which alone or in combination with emissions from other air contamination sources would . . . cause air pollution.” This condition is consistent with DEC regulation 6 NYCRR § 200.6.

6. Condition 10 of the Air Permit provides that “[a]ny person who owns or operates an air contamination source which is equipped with an emission control

device shall operate such device and keep it in a satisfactory state of maintenance and repair in accordance with ordinary and necessary practices, standards and procedures, inclusive of manufacturer's specifications, required to operate such device effectively." This condition is consistent with DEC regulation 6 NYCRR § 200.7.

7. Condition 24 of the Air Permit provides that "[n]o person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others." This condition is consistent with DEC regulation 6 NYCRR § 211.1.

8. 6 NYCRR § 200.1(d) defines "[a]ir contaminant or air pollutant" as "[a] chemical, dust, compound, fume, gas, mist, odor, smoke, vapor, pollen or any combination thereof."

9. 6 NYCRR § 200.1(f) defines "[a]ir contamination source or emission source" as "[a]ny apparatus, contrivance or machine capable of causing emission of any air contaminant to the outdoor atmosphere, including any appurtenant exhaust system or air cleaning device. Where a process at an emission unit uses more than

one apparatus, contrivance or machine in combination, the combination may be considered a single emission source.”

10. 6 NYCRR § 200.1(g) defines “[a]ir pollution” as “[t]he presence in the outdoor atmosphere of one or more contaminants in quantities, of characteristics and of a duration which are or may be injurious to human, plant or animal life or to property or which unreasonably interfere with the comfortable enjoyment of life and property.”

11. 6 NYCRR § 200.1(s) defines “[e]mission” as “[t]he release of any air contaminant into the outdoor atmosphere.”

12. 6 NYCRR § 200.1(af) defines “[f]ugitive emissions” as “[e]missions of air contaminants which could not reasonably pass through a stack, vent, chimney or other functionally equivalent opening.” 6 NYCRR § 212-1.2(b)(3) defines “[c]arcinogenic to humans” as “[c]hemicals where there is convincing epidemiological evidence of a causal association between human exposure and cancer as described by the United States Environmental Protection Agency Guidelines for Carcinogen Risk Assessment.”

13. 6 NYCRR § 212-1.2(b)(5) defines “[g]uideline concentrations” as “[a]mbient air concentrations that are listed in the Division of Air Resource’s Annual and Short-term Guideline Concentrations (AGC/SGC) tables.”

14. ECL §§ 71-2103(1) and 71-2107 provide the Attorney General with authority to bring an action for an injunction against any person violating a provision of ECL Article 19 or any rule or regulation promulgated thereto.

15. ECL § 71-2103(1) provides that any person who violates any provision of ECL Article 19 or any rule or regulation promulgated thereto shall be liable, in the case of a first violation, for a penalty of not more than \$18,000 and an additional penalty not to exceed \$15,000 for each day during which such violation continues. In the case of a second or any further violation, the liability shall be for a penalty not to exceed \$26,000 and an additional penalty not to exceed \$22,500 for each day during which such violation continues.

16. In determining the amount of the penalty to be imposed for ECL Article 19 violations, ECL § 71-2115 provides that the “court shall take into consideration any evidence introduced by a party regarding the economic impact of a penalty on a business, the compliance history of a violator, good faith efforts of a violator to comply, any economic benefit obtained from noncompliance, the amount of risk or damage to public health or the environment caused by a violator, whether the violation was procedural in nature, or such other factors as justice may require.”

17. ECL § 71-2103(2) provides that the penalty provided for in ECL § 71-2103(1) shall be recoverable in an action brought by the Attorney General.

18. The Attorney General is authorized pursuant to Executive Law § 63(12) to bring an action to enjoin “repeated fraudulent or illegal acts” and “persistent fraud or illegality” in the “carrying on, conducting or transaction of business.”

19. “Illegal” conduct includes the violation of any state, federal, or local law or regulation. Executive Law § 63(12). “Repeated” fraud or illegality includes

the “repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person,” and “persistent” fraud or illegality includes “continuance or carrying on of any fraudulent or illegal act or conduct.”

20. In addition to an order enjoining such activity, the Attorney General may seek restitution, damages, and other relief.

JURISDICTION AND VENUE

21. This Court has jurisdiction over the subject matter of this action, personal jurisdiction over the Defendant and authority to grant the relief requested pursuant to ECL §§ 71-2103 and 71-2107 and New York Executive Law § 63(12).

22. Venue is proper in Albany County pursuant to CPLR §§ 503(a) and 507 because DEC’s headquarters is in Albany County and the events and omissions giving rise to the State’s claims occurred in Albany County.

PARTIES

23. Plaintiff State of New York is a sovereign entity that brings this action on behalf of its citizens and residents.

24. Plaintiff DEC is an executive agency of the State of New York, and is authorized to administer and enforce the ECL and regulations promulgated thereunder.

25. Norlite, LLC (Norlite or Defendant), is a Delaware limited liability company and is a person as defined under ECL § 19-0107(1) and 6 NYCRR Part 200.1(bi).

26. Norlite has a principal office and/or place of business located at 628 South Saratoga Street, City of Cohoes, Albany County, State of New York.

27. Norlite owns and operates an aggregate production and hazardous waste incineration facility with an address of 628 South Saratoga Street, City of Cohoes, Albany County, State of New York (the Facility).

28. Norlite exercises control over and oversees process and operations at the Facility.

RELEVANT FACTS

Norlite Has Caused or Allowed Fugitive Dust Emissions Containing Crystalline Silica and Particulate Matter to Migrate Off Site

29. Fugitive dust is atmospheric dust that arises from the mechanical disturbance of granular materials exposed to the air that is not discharged to the atmosphere in a confined flow stream. Sources of fugitive dust generated at the Facility include material handling, wind erosion, and vehicle re-entrainment.

30. The respirable fraction of airborne dust is the proportion of an airborne dust contaminant capable of penetrating the respiratory tree, including the deep lung (alveoli).

31. Respirable crystalline silica enters the body when dust containing a proportion of crystalline silica is inhaled. When inhaled, crystalline silica can cause permanent, irreversible health effects and there is no safe threshold for respirable crystalline silica exposure.

32. Most crystalline silica exposure is occupationally related. However, nonoccupational exposure to crystalline silica can occur due to close proximity to dust from industrial activities.

33. Particulate matter (PM) is a term for a mixture of solid particles and

liquid droplets found in the air. Some particles, such as dust, dirt, soot, or smoke, are large enough to be seen with the naked eye. Others such as PM₁₀ and PM_{2.5} are so small they can only be detected using a microscope. These microscopic particles are so small that they can be inhaled into the lungs and cause serious health problems.

34. PM₁₀ is the abbreviation for fine particulate matter with an aerodynamic diameter smaller than 10 microns (μm). PM₁₀ includes particulate matter defined as PM_{2.5}, which includes particulate smaller than 2.5 μm in diameter that can penetrate deeply into the lungs.

35. Air quality relative to PM is assessed based on the concentration of PM as measured by micrograms per cubic meter of air ($\mu\text{g}/\text{m}^3$). PM₁₀ and PM_{2.5} are U.S. EPA “criteria air pollutants,” meaning that they are contained in one of six categories of pollutants for which the EPA is required to set air quality standards pursuant to the Clean Air Act.

36. PM Coarse is the term for particulate matter with a diameter between 2.5 μm and 10 μm . While the smaller PM_{2.5} particles (PM Fine) can travel long distances in the atmosphere, PM Coarse settle out much faster and typically travel only a mile or less, unless there is high wind.

37. Norlite has caused or allowed injurious emissions of fugitive dust containing air contaminants including crystalline silica and PM to migrate off-site.

Norlite Facility and Operations

38. Upon information and belief, in April 2011 the Norlite Facility was acquired by Tradebe Environmental Services, LLC (Tradebe), which has operated for over 35 years in the business of waste collection, transportation, management, and disposal and has over 80 facilities around the world with over 2,500 employees. The company's Corporate Social Responsibility policy purports that "Tradebe is firmly committed to environmental protection, which is why we promote the development of the local communities with whom we work. . . . We recognize the importance of building stable relationships with our workers and their neighborhoods, maintaining smooth and open communications with our local communities. . . . In Tradebe the environmental protection and the creation of a healthy and sustainable environment for future generations is a priority." The Tradebe Board of Directors is chaired by Joseph Creixell, Founder and President of the company. The Executive Committee is headed by Chief Executive Officer Victor Creixell, and is the governing body through which the company is managed from Barcelona, Spain.

39. The Facility manufactures aggregate by mining shale from an on-site quarry and transporting it to the Primary Plant Area, where it is crushed before being transported to the Kiln Area, where it is added to two rotary industrial furnaces (also known as rotary kilns) fueled by hazardous waste and nonhazardous industrial and commercial waste. The materials are then transported to the Finish Plant Area.

40. Material handling at and between the Primary Plant Area, the Kiln Area, and the Finish Plant Area is a major source of fugitive dust emissions at the Facility and includes a wide range of activities (crushing, screening, loading, unloading, and transferring material), and types of equipment (trucks, front end loaders, conveyors, etc.). Dust generation resulting from materials handling at the Facility is affected by factors such as drop height of the material, quantity of material being handled, and material silt and moisture content.

41. Fugitive dust emissions due to material handling at the Facility can be controlled by using dust control measures such as reducing the wind speed (such as implementing windbreaks); reducing the exposed surface area (e.g. reducing pile heights); increasing the cohesive forces between material particles by watering or using chemical stabilizers; reducing drop point heights; and using material chutes, conveyor covers, and transfer point enclosures.

42. Norlite addresses dust generation and control measures to prevent fugitive dust events in its Fugitive Dust Plan. The most recent Fugitive Dust Plan approved by DEC is dated 2014 and is the culmination of four previous Fugitive Dust Plans from 1990, 1995, 2002, and 2010. Norlite is required to comply with all elements of the 2014 Fugitive Dust Plan under the Facility's Clean Air Act Title V Permit.

43. At the time the October 2014 Fugitive Dust Plan was written, production at Norlite included the following materials: "Block-mix" (approximately 92,000 tons per year (tpy)), 3/4" aggregate (approximately 69,000 tons per year),

3/8" aggregate (approximately 46,000 tons per year), and aggregate fines (approximately 28,000 tons per year).

44. Norlite's "Block-mix" product is a blend of aggregate fines and air pollution control baghouse dust and is typically comprised of 88% baghouse dust and 12% aggregate. Baghouse dust is composed of material that has been captured by the air pollution control system and consists of PM Coarse and PM Fine. Materials from two baghouse dust silos and an aggregate fines silo are sent via conveyor to be deposited on a block-mix pile by way of a stationary belt and radial stacker.

Primary Plant Area

45. Fugitive dust containing crystalline silica and PM is generated from operations at the Primary Plant Area, including by material handling practices, a jaw crusher, double deck screen, cone crusher, conveyor belts, material transfer points, material stockpiles, and material handling by front end loaders.

46. Norlite has caused or allowed emissions of fugitive dust containing crystalline silica and PM generated at the Primary Plant Area to migrate off-site.

Kiln Area

47. At the Kiln Area, the shale is heated in two high-temperature rotary kilns to produce expanded shale aggregate, also known as "clinker," that is used in the manufacture of building materials and construction products. The output from the Kiln Area is then conveyed to the Finish Plant.

48. Fugitive dust containing crystalline silica and PM is generated from

operations at the Kiln Area, including by conveyors, material-transfer points, material piles, and materials-handling practices by front end loaders, the kilns, cyclones, and clinker coolers.

49. Norlite has caused or allowed emissions of fugitive dust containing crystalline silica and PM generated at the Kiln Area to migrate off-site.

Finish Plant Area

50. From the Kiln Area, the materials are transported via an open conveyor to “grizzly” bars in the Finish Plant Area. The grizzly sorts out materials that are considered to be too large. The materials that pass through the grizzly are then transported to the Screens Building for screening, and the materials are then deposited onto various open conveyors depending on material size to be transported to storage piles. Materials handled in the Finish Plant Area include 3/4” aggregate, 3/8” aggregate, oversized material, and fines.

51. Fugitive dust containing crystalline silica and PM is generated from operations at the Finish Plant Area, including conveyors, material-transfer points, material piles, and/or materials-handling practices.

52. Norlite has caused or allowed emissions of fugitive dust containing crystalline silica and PM generated at the Finish Plant Area to migrate off-site.

Material Piles

53. Norlite stores processed material in a number of large, uncovered and unprotected piles in excess of thirty feet high at the Facility.

54. Fugitive dust containing crystalline silica and PM is generated from

the material piles due to factors including wind erosion of the material piles.

55. Norlite has caused or allowed emissions of fugitive dust containing crystalline silica and PM generated at the material piles to migrate off-site.

Vehicle Re-Entrainment

56. Vehicle traffic passing over dusty surfaces (vehicle re-entrainment) is a source of fugitive dust emissions at the Facility. Fugitive dust emissions resulting from vehicle re-entrainment at the Facility are affected by factors including vehicle speed, vehicle weight, surface loading, and surface material and moisture content.

57. Fugitive dust emissions at the Facility due to vehicle re-entrainment can be controlled by measures including preventing material from getting onto road surfaces, removing material once it is on road surfaces, adding water to the road surfaces, and reducing the impact of the vehicles on the surface material by reducing vehicle loads and reducing the number of vehicles using the roads. Fugitive dust can be reduced on unpaved roads through the use of paving, gravel, and chemical stabilizers.

58. Norlite has caused or allowed emissions of fugitive dust containing crystalline silica and PM generated by vehicle re-entrainment to migrate off-site.

59. Primary jaw crushing and aggregate fines screening represent a significant fraction of the potential fugitive dust emissions at the Norlite Facility and can be reduced by improved water spray application and wind screens.

60. Fugitive dust emissions at the Facility can be reduced by measures including reducing the wind speed, by reducing the exposed surface area, or by

increasing the cohesive forces between material particles. Slowing down the wind at the Facility can be accomplished by artificial windbreaks (windscreens and fences) or natural windbreaks (trees, shrubs, or berms). Reducing the exposed material surface area at the Facility can be accomplished by pile shaping, lowering pile heights, constructing enclosures, and increasing cohesive forces by watering, through use of chemical stabilizers, or by compacting the material to reduce the spaces between particles.

61. Upon information and belief, the total estimated potential fugitive dust emissions from the Facility are on the order of 56 tons per year.

62. Norlite has failed to implement all technically feasible and economically practicable methods for eliminating the off-site migration of fugitive dust containing crystalline silica and PM from the Facility.

63. Indeed, Norlite has failed to adequately address evidence that the Facility's dust is harming the community and has failed to implement simple, cost-effective changes that would improve conditions for the surrounding community.

Norlite's Neighbors

64. The Facility is in Albany County, with a portion of the approximately 221-acre site within the boundaries of the City of Cohoes and the remaining portion located in the Town of Colonie.

65. There are residential properties to the east and north of the Facility fence line. Several homes and Saratoga Sites apartments, a 70-unit public housing complex, are within 100 feet of the Facility fence line. Of approximately 150 people

residing at the Saratoga Sites public housing complex in May 2022, approximately 60 are children and approximately 25 are disabled individuals. The Saratoga Sites public housing complex includes a playground and a basketball court.

66. Based upon the socioeconomic make-up of the communities near the Facility, many people living nearby are at greater risk of adverse health impacts resulting from exposure to the air contaminants Norlite has caused or allowed to emit from the Facility.

Norlite Failed to Implement Recommendations of the Agency for Toxic Substances and Disease Registry

67. In or about 2004 and 2005, scientists from the U.S. Department of Health and Human Services Public Health Service Agency for Toxic Substances and Disease Registry (ATSDR) reviewed available environmental data to determine whether people – particularly children who ATSDR considers more sensitive and vulnerable to hazardous substances – were being exposed to such substances migrating from the Facility and attempted to evaluate whether the exposure was resulting in harmful effects. ATSDR is a public health agency funded by Congress without any regulations or regulatory authority of industry.

68. ATSDR used existing scientific information for the evaluation and ultimately issued a “Public Health Assessment for Norlite Corporation” dated December 2, 2005 (ATSDR Report). The ATSDR Report presented conclusions about the public health threat posed by the Facility and recommended ways to stop or reduce exposure in a public health action plan.

69. When independent laboratory data was available for comparison, the existing scientific information ATSDR relied upon included data from the Norlite laboratory. Samples taken by Norlite were analyzed by an independent laboratory. The scientific information reviewed by ATSDR included a macroinvertebrate study paid for by Norlite, but done by an independent laboratory. At ATSDR's request, Norlite also performed total metals analysis to determine the metals concentrations that might be in fugitive emissions.

70. ATSDR concluded that analyses of shale and clinker (raw materials and product) indicate that fugitive particulates from the processing of these materials may expose nearby residents to particulate concentrations that could cause health effects. ATSDR further concluded that existing data at that time was insufficient to give a clear answer; therefore, because ATSDR was concerned about the public's inhalation of airborne dust from Norlite, in 2005 it recommended air sampling at the fence-line or in residential areas *under conditions likely to produce maximum fugitive emissions*. ATSDR further concluded that *dust control is extremely important at Norlite*.

71. ATSDR expressly concluded: i) it needed fence-line air samples and needed to know the concentration of particles smaller than 10 microns and 2.5 microns in diameter; ii) particles smaller than 10 microns are easily inhaled and irritate the nasal passages and airways, while particles smaller than 2.5 microns pass through the bronchi into the alveoli in the lungs and are readily absorbed directly into the bloodstream; and iii) *vigilance in maintaining dust control at*

Norlite is necessary to protect public health because residences are at the boundaries of the Norlite facility.

72. ATSDR lacked sufficient data to determine if crystalline silica presented a risk to the community and, therefore, recommended that air samples be collected at the Norlite fence-line or in the community and analyzed for the concentration of respirable dust particles.

73. ATSDR recommended that Norlite collect and analyze air samples to determine the sizes and concentrations of particulates and particulate-bound metals coming from the Facility into nearby residential areas and that the results be evaluated to characterize potential exposures to residents. Due to the difficulties in attributing the concentrations measured to a particular source, ATSDR also recommended that DEC and New York State Department of Health (DOH) *provide input into the plan* that is developed to collect data to be used for evaluating the community's exposure to particulates.

74. Although ATSDR concluded the available data indicated the community's exposure to chemicals from Norlite was not a public health hazard, it needed additional sampling data to determine whether inhalation of dust (particulate) that blows off site could be a public health hazard. ATSDR expressly encouraged Norlite to maintain existing procedures and to *look for additional ways to control dust migration from their property* and that it, with the cooperation of DEC, evaluate the effectiveness of existing measures.

75. Norlite failed to implement a fence-line air monitoring program in response to the ATSDR Report.

76. Norlite failed to seek DEC and/or DOH input into development of a fence-line air monitoring program in response to the ATSDR Report.

77. Norlite failed to protect the health of residents near the Facility boundaries by exercising vigilance in maintaining dust control at the Facility in response to the ATSDR Report.

78. Upon information and belief, Norlite failed to identify and implement additional measures to control dust migration from the Facility in response to the ATSDR Report.

Norlite Has A History of Non-Compliance with Environmental Requirements Related to Off-Site Dust Migration

79. Norlite's DEC compliance history includes numerous environmental violations based on failures to comply with the terms and conditions of the Air Permit, failures to comply with 6 NYCRR 211, and failures to control off-site dust migration.

80. Pursuant to DEC Order on Consent R4-0768-90-01, dated June 21, 1990, which assessed a penalty of \$12,000, Norlite was required, among other relief, to submit the initial approvable Fugitive Dust Plan, as well as a best management practices plan (BMP) to prevent or minimize the potential for release of kiln dust and shale fines to waters of the state arising from fugitive dust emissions.

81. Pursuant to DEC Order on Consent R4-1734-94-08, dated December 28, 1994, Norlite was assessed a penalty of \$200,000 based on numerous violations,

including violations of the Fugitive Dust Plan, BMP, and Air Permit. These violations related to Norlite's failure to operate water sprays or an equivalent system to control block mix finish product and Norlite's creation of long term finished product piles without prior amendments to the BMP and Fugitive Dust Plan.

82. Pursuant to DEC Order on Consent R4-1983-97-07, dated September 18, 1997, Norlite was assessed a penalty of \$7,500 based in part on failures to properly operate an emission control device in violation of Part 200.7, including improper baghouse operation, missing conveyor cover, and water spray cut-off.

83. Pursuant to DEC Order on Consent R4-2000-0420-27, dated July 13, 2000, Norlite was assessed a penalty of \$3,000 and required to submit an engineering plan to prevent off-site dust migration based on violations of 6 NYCRR 211. These violations involved the off-site migration of clinker, fines, and block mix materials, which unreasonably interfered with the comfortable enjoyment of life or property. The specifically identified "areas of concern" required to be addressed in the engineering plan included the "finish mill, block mix handling, moving of clinker piles, fines pile storage, portable crusher, road watering, and placement of wind screens."

84. Pursuant to DEC Order on Consent R4-2001-0102-2, dated July 24, 2001, Norlite was assessed a penalty of \$7,500 based on, among other violations, Norlite's failure to submit an approvable Fugitive Dust Plan evaluation as required under DEC Order on Consent R4-2000-0420-27.

85. Pursuant to DEC Order on Consent R4-2009-0610-101, dated May 17, 2010, Norlite was assessed a penalty of \$90,000, required to contribute \$35,000 to an environmental benefit project, and required to amend its Fugitive Dust Plan based in part on a failure to control fugitive emissions from a kiln.

86. Pursuant to DEC Order on Consent R4-2014-0017-6, dated September 2, 2014, Norlite was assessed a penalty of \$29,600 and required to contribute \$64,000 to an environmental benefit project based on violations including a failure to update the Fugitive Dust Control Plan and releasing methyl methacrylate vapor to the atmosphere, which interfered with the comfortable enjoyment of City of Cohoes residents in violation of 6 NYCRR 211.

87. Pursuant to DEC Order on Consent R4-2016-0718-127, dated November 14, 2016, Norlite was assessed a penalty of \$17,500 based on violations of the Air Permit including Norlite's failure to provide records of daily observations of visible emissions from each emission unit for a series of dates and Norlite's failure to conduct daily observations of visible emissions from the Primary Plant rock crusher.

88. Pursuant to DEC Order on Consent R4-2019-0731-48, dated November 22, 2019, Norlite was assessed a payable penalty of \$65,000 following a number of violations including Norlite's failure to properly implement its recordkeeping and reporting requirements for its Baghouse Leak Detection Alarm between September 2018 and June 2019 in violation of the Air Permit.

The State's Norlite Air Monitoring Program

89. In March 2021, DEC implemented an air monitoring program at the Saratoga Sites public housing complex to determine if fugitive dust from Norlite is impacting off-site communities.

90. Beginning in March 2021, DEC performed 24-hour integrated filter-based sampling for PM₁₀ and crystalline silica (c-silica; PM₁₀ size fraction). DEC collected the data on an alternating every sixth-day basis at two air monitoring stations (north and south) at Saratoga Sites. After collecting six months of samples, DEC suspended the filter-based sampling in late October 2021. In late-January 2022, DEC resumed the 24-hour integrated sampling program for PM₁₀ and crystalline silica at the south air monitoring station.

91. In July 2021, DEC also began monitoring for PM₁₀ at the Saratoga Sites south air monitoring station using a Thermo Scientific model 1400AB TEOM, which is a continuous monitor that is a mass measurement. The TEOM meets U.S. EPA requirements as a Federal Equivalent Method for PM₁₀, meaning it produces data in real-time that are comparable to the Federal Reference Method. The TEOM also provides hourly PM₁₀ data, which can be used to alert interested parties to PM spikes and to calculate 24-hour averages for PM pollution.

92. In August 2021, under contract with the New York State Office of the Attorney General, the Northeast States for Coordinated Air Use Management (NESCAUM) began measuring PM at the Saratoga Sites south monitoring station

with a Thermo Scientific model pDR1500, which identifies PM through light scattering. The pDR1500 measures PM every five seconds and can thus provide temporal information on transient particulate matter peaks. The pDR1500 data can show how rapidly PM can change during an elevated PM event.

93. In August 2021, NESCAUM began using a sonic anemometer to measure windspeed and direction near Norlite and the Saratoga Sites. The anemometer measures wind speed every five seconds, which NESCAUM averaged to five minute and one hour intervals for use with TEOM and pDR1500 data.

94. DEC issued a Norlite Fugitive Dust Monitoring Interim Report dated February 2022 (DEC Interim Report) summarizing the air monitoring program and providing Norlite and the public with tables containing the monitoring program data.

95. Scanning electron microscopy performed by DEC staff in 2021 and reported in the DEC Interim Report confirmed that particles originating from Norlite were positively matched to particles on every sample collected at Saratoga Sites.

96. DEC Interim Report Appendix A: 24-Hr Silica Results, includes a table identifying 34 days that silica samples were obtained from the two Saratoga Sites air monitoring stations and providing crystalline silica values for 64 samples (two lab errors and two equipment malfunctions eliminated 4 samples).

97. Consistent with the TEOM data, microscopic and elemental analysis of ambient air PM samples at the Saratoga Sites monitoring stations indicate that the PM is being emitted from the Facility.

98. The expected dispersion area of concern regarding Norlite's emission of air contaminants is within one mile. People living in this area have been exposed to PM₁₀ at levels above thresholds that have been determined to be unsafe for vulnerable populations, including children, and to levels of crystalline silica that are above levels determined to be harmful to human health.

99. Emissions from the Norlite Facility are the predominant source of the observed elevated PM₁₀ concentrations recorded at the Saratoga Sites.

100. The elevated PM events occurring at the Saratoga Sites are associated with elevated crystalline silica events. The Facility is the primary source of elevated crystalline silica measured at the Saratoga Sites air monitoring stations.

Norlite's Emissions of Air Contaminants Are Injurious to Human Life

Health Impacts of Norlite Crystalline Silica Pollution

101. Inhalation of crystalline silica emitted by Norlite can affect lung structure and long-term exposure can lead to irreversible fibrotic lung damage ultimately affecting lung function. Lung disorders resulting from inhalation of Norlite crystalline silica emissions can include development of silicosis (an incurable lung disease that leads to disability and death), increased risk of lung infection, mineral dust-induced small airway disease, COPD, kidney disease, and is related to the development of autoimmune disorders, cardiovascular impairment,

and lung cancer. Inhalation of Norlite crystalline silica pollution can also lead to renal pathologies and a wide spectrum of autoimmune disorders.

102. The U.S. Department of Health and Human Services, the International Agency for Research on Cancer, and the National Institute for Occupational Safety and Health have concluded crystalline silica is a human carcinogen.

103. DEC Annual Guideline Concentrations (AGCs) are chosen to protect against adverse, long-lasting effects from exposure lasting months, years, or lifetimes, based upon annual exposure.

104. On February 28, 2014, DEC issued an AGC of $2 \mu\text{g}/\text{m}^3$ for respirable crystalline silica.

105. The arithmetic average of all the crystalline silica data collected at the Saratoga Sites South monitoring station is $2.4 \mu\text{g}/\text{m}^3$, based on 50 samples. Twenty-three of the 50 days (46%) had values above the DEC AGC of $2 \mu\text{g}/\text{m}^3$. The crystalline silica average during the first several months of 2022 was higher than that of the previous six months: the 2022 average is $2.7 \mu\text{g}/\text{m}^3$.

Health Impacts of Norlite Particle Pollution

106. The Clean Air Act requires U.S. EPA to set National Ambient Air Quality Standards (NAAQS) for particle pollution. Particle pollution includes fine particles ($\text{PM}_{2.5}$), which are 2.5 micrometers in diameter and smaller, and coarse particles, which have diameters between 2.5 and 10 micrometers. EPA has set a 24-

hour PM₁₀ primary standard of 150 µg/m³. This standard has been in place since 1987.

107. While the NAAQS may minimize adverse health effects, they do not prevent their occurrences and PM₁₀ levels that are much lower than the NAAQS are associated with adverse health effects.

108. In 2001 and 2002, the California Air Resources Board (CARB) and the California Office of Environmental Health Hazard Assessment (OEHHA) reviewed the published literature on particulate pollution and health impacts in order to make a recommendation for amendments to the California Ambient Air Quality Standards for particulate pollution that would be “protective of the health of the public, including infants and children, with an adequate margin of safety.”¹ Upon information and belief, this work by California represents the most comprehensive review of the health impacts of PM₁₀, and establishes a standard that is health-protective of vulnerable populations, such as many people living near the Facility.

109. The CARB & OEHHA recommendation for PM₁₀ 24-hour-Average Standard not to be exceeded, which was subsequently adopted, is 50 µg/m³. The CARB & OEHHA recommendation for an annual PM₁₀ standard, which was subsequently adopted, is 20 µg/m³, calculated as an arithmetic mean.

¹ CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY AIR RESOURCES BOARD AND CALIFORNIA OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT, Staff Report: Initial Statement of Reasons For Proposed Rulemaking, Public Hearing To Consider Amendments To The Ambient Air Quality Standards For Particulate Matter And Sulfates, at p. 1-1 (June 20, 2002).

110. Per California's Ambient Air Quality Standards, the levels of PM₁₀ observed at the Saratoga Sites South monitoring station are significantly higher than the levels determined to be "protective of the health of the public, including infants and children, with an adequate margin of safety."

111. During the period particulate matter was monitored at the Saratoga Sites station, August 1, 2021 through July 10, 2022, the concentration for the 24-hour average of PM₁₀ was 71.4 µg/m³. PM₁₀ exceeded a concentration of 50 µg/m³ for 24 days. In this data set, at least one day in every month in 2022 has PM₁₀ levels that exceed the California PM₁₀ 24-hour average standard that is protective of children and other vulnerable populations.

112. During August 1, 2021 to July 10, 2022, the annual average for PM₁₀ at Saratoga Sites was 25 µg/m³. This is greater than California's annual average standard of 20 µg/m³ and indicates an elevated risk of short-term (daily) and long-term (annual average) health impacts in the nearby community.

113. During August 1, 2021 to July 10, 2022, the Facility PM₁₀ emissions represented approximately 12 µg/m³ over the average PM₁₀ background at this location of approximately 13 µg/m³.

114. During August 1, 2021 to July 10, 2022, there were 13 instances of hourly Norlite PM₁₀ emissions over 380 µg/m³.

115. On May 5, 2022, Norlite hourly PM₁₀ emissions exceeded 900 µg/m³.

116. Between June 27, 2022 and June 30, 2022, there were repeated periods of elevated PM₁₀ recorded at the Saratoga Sites each day during the late afternoon

and evening, lasting from 4 to 7 hours with 1-hour TEOM PM₁₀ peaks each day between 270 and 720 µg/m³. The Facility was the source of these PM₁₀ spikes.

117. The average PM₁₀ background at the Saratoga Sites monitoring station location without influence from Norlite emissions is approximately 13 µg/m³. When the wind is coming from the direction of Norlite, from WNW (292 degrees) to north, the average concentrations exceed 50 to 60 µg/m³, with an average of 54 µg/m³. Thus, Norlite's emissions cause an average increase of PM₁₀ concentrations of approximately 41 µg/m³ above background when wind is coming from the Facility.

118. Increases of 10 µg/m³ of PM over a 24-hour period are associated with increased hospital admission rates for cerebrovascular incidents and cardiac disorders (including congestive heart failure and ischemic heart disease), as well as increased rate of mortality.

119. Chronic PM exposure is associated with increased mortality, including death related to cardiovascular disease, and premature mortality is associated with exposure to both PM Fine and PM Coarse. PM is also a potent endocrine disruptor and exposure is linked to increased risk of metabolic disorders such as diabetes and obesity. Metabolic dysfunction increases the risk of cardiovascular disease.

120. Exposure to elevated PM levels, such as those measured at the Saratoga Sites public housing complex, can cause hospitalization for cardiovascular or respiratory disease, emergency room and urgent care visits, asthma exacerbation, acute and chronic bronchitis, restrictions in activity, work loss, school absenteeism, respiratory symptoms, and decrements in lung function. Exposure to

PM₁₀ is associated with increased risk of cardiac, pulmonary, and extra-pulmonary diseases.

121. Exposure to elevated PM levels, such as those measured at the Saratoga Sites public housing complex, has a disproportionate effect on the elderly, children, and infants. The elderly, those with chronic heart or lung disease, and infants are at significantly greater risk of PM-associated mortality, and exposure is associated with significant reductions in life expectancy due to cardiovascular mortality.

122. For individuals with underlying health issues, exposure to the air contaminants measured at the Saratoga Sites air monitoring stations can lead to exacerbation of asthma, COPD, and cardiac arrhythmias, and can lead to initiation of other cardiac events such as myocardial infarction (heart attack).

123. Pregnancies can be adversely affected by exposure to PM pollution.

124. Among children enrolled in Medicaid, exposure to higher average PM Coarse levels is associated with increased asthma prevalence and morbidity.

125. Norlite has caused or allowed emissions of air contaminants to result in elevated PM₁₀ concentrations at the Saratoga Sites air monitoring stations that are injurious to human life.

Norlite's Emissions of Air Contaminants Unreasonably Interfere With the Comfortable Enjoyment of Life or Property

126. Residents of the Saratoga Sites public housing complex and employees of the Cohoes Housing Authority have reported observations of dust clouds migrating from the direction of the Facility onto the housing complex property.

127. Residents of the Saratoga Sites public housing complex and other nearby residents have complained of excessive Norlite dust that has interfered with the comfortable enjoyment of their lives and residences. These complaints regarding Norlite dust include forcing residents to limit or to refrain from engaging in outdoor activities, the need for excessive cleaning, the need to keep windows and doors closed, and the need to use air conditioning units in an effort to remove dust from the air. Residents have also complained that the excessive interference with the comfortable enjoyment of their lives and residences attributable to Norlite dust has gotten worse in recent years.

DEC Notices of Violation

128. On February 10, 2021, DEC issued two formal Notices of Violation to Norlite involving conduct on February 3, 2021 and February 8, 2021. The February 3, 2021 Notice of Violation pertained to the deposition of baghouse dust on the "Muck Pile" (an open pile of off-spec material) where it can be reintroduced into the atmosphere, rather than an appropriate storage silo, in violation of Condition 12 of the Air Permit. The February 8, 2021 Notice of Violation pertained to the improper material handling inconsistent with the Fugitive Dust Plan resulting in fugitive dust migrating off-site in violation of Conditions 24.1 and 5-124 of the Air Permit.

129. On March 16, 2021, DEC issued Norlite a CEASE AND DESIST Notice, demanding Norlite immediately cease and desist ongoing violations of the ECL and its implementing regulations. Attached to the Cease and Desist Notice was a proposed Order on Consent that addressed, among other air violations,

repeated significant off-site fugitive dust events from November 24, 2020 to March 15, 2021, in violation of Conditions 24.1 of the Air Permit. This Order also included the results of a December 2020 Sampling Report that concluded material particulate matter collected from Saratoga Sites matched material sourced from Norlite, as well as a comprehensive Schedule of Compliance outlining specific measures Norlite should implement to control the off-site migration of fugitive dust.

130. On August 2, 2021, DEC issued a formal Notice of Violation to Norlite regarding improper material handling inconsistent with the Fugitive Dust Plan resulting in fugitive dust migrating off-site in violation of Conditions 24.1 and 5-124 of the Air Permit on: February 8, 2021; February 10, 2021; March 5, 2021; March 9, 2021; March 15, 2021; April 5, 2021; April 30, 2021; May 24, 2021; June 30, 2021; July 9, 2021; July 16, 2021; July 23, 2021; and July 27, 2021.

131. On February 7, 2022, DEC issued a formal Notice of Violation dated January 21, 2022 to Norlite with a continued demand that Norlite CEASE AND DESIST from further ECL violations, as well as a Schedule of Compliance to address the off-site migration of dust. The January 21, 2022 Notice of Violation involved the following: i) improper material handling inconsistent with the Fugitive Dust Plan resulting in fugitive dust migrating off-site in violation of Conditions 24.1 and 5-124 of the Air Permit on August 10, 2021, October 18, 2021, October 26, 2021, November 10, 2021, November 22, 2021, and December 27, 2021; ii) fugitive dust emissions generated from the baghouse silos in violation of Air Permit Condition 10 and Condition 12 on July 28, 2021 and August 3, 2021; and iii) 22 events when 3-

hour running average PM₁₀ levels exceeded 155 µg/m³ in violation of Air Permit Condition 24.

132. On March 10, 2022, DEC issued a formal Notice of Violation dated March 9, 2022 to Norlite with a demand that the Facility immediately suspend operations related to the Finish Plant and block mix production during conditions identified in a schedule of compliance attached to the Notice of Violation. The March 9, 2022 Notice of Violation alleged fugitive dust migrating off-site on the following dates: February 28, 2022, March 2, 2022, March 3, 2022, and March 4, 2022.

133. On October 11, 2022, DEC issued a formal Notice of Violation to Norlite regarding the Facility causing or allowing emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration that are in violation of 6 NYCRR Part 211.1 and Air Permit Condition 24. The DEC Notice of Violation is supported by facts including the following: i) from March 17, 2021 to May 17, 2022, the arithmetic average of Norlite crystalline silica emissions was 2.4 µg/m³ (which is in excess of the DEC Annual Guideline Concentration for crystalline silica of 2 µg/m³); ii) between March 17, 2021 and May 17, 2022, Norlite crystalline silica emissions were above the AGC of 2 µg/m³ on 23 of the 50 days (46%); iii) for the first several months of 2022, the arithmetic average of Norlite crystalline silica emissions was 2.7 µg/m³; iv) from August 1, 2021 to July 10, 2022, there were 15 hours in which the PM₁₀ emissions from Norlite resulted in exceedances of the DAR-1 PM₁₀ Short-term Guideline Concentration (SGC) of a 1 hour exposure in

excess of 380 $\mu\text{g}/\text{m}^3$; v) from August 1, 2021 to July 10, 2022, the annual average for Norlite PM_{10} emissions was 25 $\mu\text{g}/\text{m}^3$; vi) from August 1, 2021 to July 10, 2022, the 24-hour PM_{10} emissions exceeded 50 $\mu\text{g}/\text{m}^3$ on 19 days (calculated on a midnight to midnight basis); vii) from August 1, 2021 to July 10, 2022, Norlite average PM_{10} emissions exceeded 50 $\mu\text{g}/\text{m}^3$ on a rolling 24-hour basis on 553 instances (or 7% of 7,897 rolling 24-hour periods) over 44 days (or 13% of 331 days); from August 1, 2021 to July 10, 2022, the highest concentration for the 24-average of Norlite PM_{10} emissions was 82.7 $\mu\text{g}/\text{m}^3$; viii) from August 1, 2021 to July 10, 2022, there were 55 hours in which the PM_{10} emissions from Norlite resulted in an AQI of 101-150, there were 13 hours in which the PM_{10} emissions from Norlite resulted in an AQI of 151-200, and there were 3 hours in which the PM_{10} emissions from Norlite resulted in an AQI greater than 301; ix) on May 5, 2022, Norlite hourly PM_{10} emissions exceeded 900 $\mu\text{g}/\text{m}^3$, which corresponds with an AQI greater than 500; and x) failure to maintain dust controls under the Fugitive Dust Plan resulting in fugitive dust migrating off-site in violation of Conditions 24.1 and 5-124 of the Air Permit on the following dates: February 8, 2021, February 10, 2021, March 5, 2021, March 15, 2021, April 30, 2021, May 24, 2021, June 30, 2021, July 9, 2021, July 16, 2021, July 23, 2021, July 27, 2021, July 28, 2021, August 10, 2021, October 18, 2021, October 26, 2021, November 10, 2021, November 22, 2021, January 14, 2022, February 28, 2022, March 3, 2022, March 4, 2022, March 9, 2022, March 15, 2022, April 7, 2022, and May 31, 2022.

134. On October 11, 2022, DEC issued a formal Notice of Violation to Norlite regarding the Facility causing or allowing emissions of air contaminants into the outdoor atmosphere of such quantity, characteristic or duration that are in violation of 6 NYCRR Part 211.1 and Air Permit Condition 24. The DEC Notice of Violation is supported by facts including the following: i) between July 10, 2022 to September 12, 2022, there were 6 hours in which the PM10 emissions from Norlite resulted in exceedances of the DAR-1 PM10 SGC of a 1 hour exposure in excess of 380 ug/m³; and ii) from July 10, 2022 to September 12, 2022, there were 15 hours in which the PM10 emissions from Norlite resulted in an AQI of 101-150, there were 5 hours in which the PM10 emissions from Norlite resulted in an AQI of 151-200, there was 1 hour in which the PM10 emissions from Norlite resulted in an AQI of 201-300, and there were 4 hours in which the PM10 emissions from Norlite resulted in an AQI greater than 301.

FIRST CAUSE OF ACTION

(Norlite emissions of air contaminants are injurious to human life in violation of 6 NYCRR § 211.1)

135. The allegations above are incorporated here by reference.

136. 6 NYCRR § 211.1 provides in pertinent part that no person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human life. Notwithstanding the existence of any specific air quality standards or emissions limits, this prohibition applies to any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emissions, either alone or in combination with others.

137. The arithmetic average of Norlite's crystalline silica emissions between March 17, 2021 and May 17, 2022 is $2.4 \mu\text{g}/\text{m}^3$, well above the DEC Annual Guideline Concentration for crystalline silica of $2.0 \mu\text{g}/\text{m}^3$.

138. The arithmetic average of Norlite's crystalline silica emissions for the first several months of 2022 is $2.7 \mu\text{g}/\text{m}^3$, well above the DEC Annual Guideline Concentration for crystalline silica of $2.0 \mu\text{g}/\text{m}^3$.

139. Norlite has caused or allowed emissions of crystalline silica into the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human life in violation of 6 NYCRR § 211.1, which violation is a continuing violation.

140. During the August 1, 2021 to July 10, 2022 period, the annual average for Norlite PM₁₀ emissions was $25 \mu\text{g}/\text{m}^3$, significantly above a level determined to be protective of the health of the public with an adequate margin of safety.

141. During the August 1, 2021 to July 10, 2022 period, the concentration for the 24-hour average of Norlite PM₁₀ emissions was $71 \mu\text{g}/\text{m}^3$, significantly above a level determined to be protective of the health of the public with an adequate margin of safety.

142. On 25 days during the August 1, 2021 to July 10, 2022 period, Norlite PM₁₀ emissions exceeded $50 \mu\text{g}/\text{m}^3$ (calculated on a midnight to midnight basis), a level determined to be protective of the health of the public with an adequate margin of safety.

143. During the August 1, 2021 to July 10, 2022 period, there were 15 hours in which the PM₁₀ emissions from Norlite resulted in exceedances of the DEC DART-1 PM₁₀ Short-term Guideline Concentration of a 1 hour exposure in excess of 380 µg/m³.

144. Norlite has caused or allowed emissions of PM₁₀ to migrate from the Facility of such quantity, characteristic and/or duration that such emissions have been and continue to be injurious to human life in violation of 6 NYCRR 211.1, which violation is a continuing violation.

145. Norlite has allowed emissions of air contaminants to migrate from the Facility of such quantity, characteristic and/or duration that such emissions have been and continue to be injurious to human life in violation of Condition 24 of the Air Permit and ECL Article 19, which violation is a continuing violation.

146. By reason of the foregoing, Norlite has also engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12). Pursuant to ECL § 71-2107, the State is entitled to an order enjoining Norlite from violating ECL Article 19, the regulations promulgated thereto, and the air permit.

147. Pursuant to ECL § 71-2103, the State is entitled to an award of civil penalties against Norlite.

SECOND CAUSE OF ACTION

(Norlite's emissions of air contaminants unreasonably interfere with the comfortable enjoyment of life or property in violation of 6 NYCRR § 211.1)

148. The allegations above are incorporated here by reference.

149. 6 NYCRR § 211.1 provides in pertinent part that no person shall cause

or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of any specific air quality standards or emissions limits, this prohibition applies to any particulate, fume, gas, mist, odor, smoke, vapor, toxic or deleterious emissions, either alone or in combination with others.

150. Norlite has caused or allowed emissions of air contaminants to migrate from the Facility of such quantity, characteristic or duration that such emissions have unreasonably interfered, and continue to unreasonably interfere, with the comfortable enjoyment of life or property in violation of 6 NYCRR 211.1.

151. Norlite has allowed emissions of air contaminants to migrate from the Facility of such quantity, characteristic or duration that such emissions have and continue to unreasonably interfere with the comfortable enjoyment of life or property in violation of Condition 24 of the Air Permit.

152. By reason of the foregoing, Norlite has also engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

153. Pursuant to ECL § 71-2107, the State is entitled to an order enjoining Norlite from violating ECL Article 19, the regulations promulgated thereto, and the air permit.

154. Pursuant to ECL § 71-2103, the State is entitled to an award of civil penalties against Norlite.

THIRD CAUSE OF ACTION

(Norlite emissions of air contaminants endanger health, safety or comfort, and constitute a substantial interference with rights of the public, creating a public nuisance at common law)

155. The allegations above are incorporated here by reference.

156. As set forth above, Norlite's acts and omissions at the Facility have created a public nuisance.

157. Norlite has caused or allowed emissions of air contaminants, including crystalline silica and particulate matter, to migrate from the Facility of such quantity, characteristic or duration that such emissions have endangered, and continue to endanger, the health, safety, or comfort of the public.

158. Norlite has operated and continues to operate the Facility in a manner that offends, interferes with, and causes damage to the public in the exercise of rights common to all and that injures the property, comfort, health, safety, and environment of a substantial number of persons through its noxious odors, fumes, smoke, noise, and vibration.

159. Norlite's acts, omissions and violations of law, including the ECL and regulations concerning air pollution, and its violations of its air permit constitute a public nuisance *per se*.

160. The aspects of Norlite's operations at the Facility that may be within the law are done so in an unreasonable or negligent manner, considering the surrounding neighborhoods.

161. Norlite has failed to abate the public nuisance created by the operations at the Facility, despite having actual knowledge of the conditions creating the nuisance.

162. Upon information and belief, Norlite is continuing to create a public nuisance.

163. The State has no adequate remedy at law for the public nuisance created and maintained by Norlite.

164. The State is entitled to an injunction requiring Norlite to abate the public nuisance.

**FOURTH CAUSE OF ACTION
(Violations of DEC regulations and the air permit)**

165. The allegations above are incorporated here by reference.

166. Norlite has violated ECL Article 19, the rules and regulations promulgated thereto, and the Air Permit, as set forth in each of the formal DEC Notices of Violation described above.

167. By reason of the foregoing, Norlite has also engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

168. Pursuant to ECL § 71-2107, the State is entitled to an order enjoining Norlite from violating ECL Article 19, the regulations promulgated thereto, and the Air Permit.

169. Pursuant to ECL § 71-2103, the State is entitled to an award of civil penalties against Norlite for each and every violation.

WHEREFORE, the State respectfully requests an order and judgment:

A. Permanently enjoining Norlite from further violations of ECL Article 19 and its implementing regulations and permits;

B. Ordering Norlite to promptly take all steps necessary or appropriate to comply with ECL Article 19 and its implementing regulations and permits;

C. For each violation of ECL Article 19 and its implementing regulations and permits, awarding the State civil penalties in an amount to be determined, but not to exceed \$18,000 in the case of a first violation and an additional penalty not to exceed \$15,000 for each day during which such violation continues, and in the case of a second violation, civil penalties not to exceed \$26,000 and an additional penalty not to exceed \$22,500 for each day during which such violation continues;

D. Permanently enjoining Norlite from operating the Facility in a manner that endangers health, safety or comfort and constitutes a substantial interference with rights of the public and thereby creating a public nuisance; and

E. Awarding such other relief as this Court may deem just and

proper.

Dated: October 11, 2022
Albany, New York

LETITIA JAMES
Attorney General of the
State of New York

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VERIFICATION

STATE OF NEW YORK)

)ss:

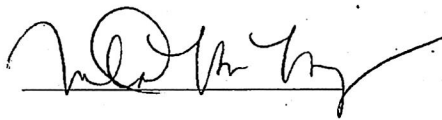
COUNTY OF SCHENECTADY)

Victoria R. Ruglis, being duly sworn, deposes and states:

I am an attorney with the New York State Department of Environmental Conservation (DEC), and I am fully familiar with the facts of the verified complaint. The source of my information is the records and documents contained in the files of DEC and my discussions with DEC staff and others with knowledge and information regarding this matter.

I have read the foregoing verified complaint and know the contents thereof to be true to the best of my knowledge except as to matters stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

This verification is made pursuant to the provisions of CPLR 3020(d)(2).



Victoria R. Ruglis

Sworn to before me this

11th day of October 2022



Notary Public

STEPHEN J. REPSHER
Notary Public, State of New York
Residing in Saratoga County
Req. No. 02RE6368749
My Comm. Expires Dec. 18, 2025