Exhibit A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

GREEN EDUCATION AND LEGAL FUND, LIGHTS OUT NORLITE, BRADFORD BLAUHUT, DEBORAH LINDLEY, MARK BELOKOPITSKY, and KAREN ROBINSON

Plaintiffs,

vs.

THE STATE OF NEW YORK, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NORLITE, LLC.

Defendants,

Case No. 907689-22

INTERVENORS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Green Education and Legal Fund, Lights out Norlite, Bradford Blauhut, Deborah Lindley, Mark Belokopitsky, and Karen Robinson (collectively referred to as "Lights Out Norlite" or "LON"), for its Complaint against the Defendant, Norlite, LLC ("Norlite") and the New York State Department of Environmental Conservation ("DEC"), hereby allege and state as follows:

INTRODUCTION

1. Plaintiffs bring this action to enjoin the operation of the Facility owned and operated by Norlite, LLC ("Facility"), located in Albany County, New York.

2. Norlite has for decades operated the Facility in a manner that is negligent, creates a private nuisance, and violates state law; despite bringing the instant action, DEC has failed to remedy the harm and fulfill its duties with respect to the Facility under New York environmental law and the New York State Constitution.

3. Accordingly, LON brings this Complaint alleging tort claim against Norlite for its wrongful operation of the Facility and a cross claim against DEC for a declaratory judgment that

allowing the Facility to continue to operate violates Plaintiffs' right to clean air and a healthful environment.

4. Norlite owns and operates an aggregate production and hazardous waste incineration facility located at 628 South Saratoga Street, City of Cohoes, State of New York.

5. At all relevant times, the Facility has emitted myriad pollutants, including emissions from its incineration processes and fugitive dust emissions containing air contaminants at concentrations that significantly increase the risk of adverse health effects in the surrounding communities (collectively, the "Emissions").

6. Fugitive dust emissions are defined as materials, particulates, and/or substances emitted from these materials caused by Norlite's processing, handling, and/or storage of aggregate materials, fine materials, and block-mix materials.

7. In addition, for individuals with underlying health issues, exposure to Norlite's Emissions exacerbates asthma and chronic obstructive pulmonary disease (COPD). It can lead to cardiac arrhythmias and/or initiation of other cardiac events such as myocardial infarction (heart attack). Norlite's operation of the Facility has significantly disrupted and continues to disrupt the Plaintiffs' daily lives.

8. Plaintiffs have spent years voicing their grievances to Defendants. Plaintiffs have also communicated their concerns to the news media as well as directly contacted the Attorneys Generals' office, the New York Department of Health, and DEC.

9. Despite repeated failed attempts of administrative penalties and enforcement actions, DEC has been unable or unwilling to fully enforce applicable laws, regulations, and permits applicable to the Facility in order to prevent harmful Emissions.

10. Norlite's and DEC's continued failure to abate the Emissions caused by Norlite's operation of the Facility have left Plaintiffs with no choice but to bring this action to gain relief from the conditions its members have endured for so long.

11. For too long, Norlite has put the burden of dealing with its hazardous waste on the backs of the local community, including LON and its members.

12. This action seeks no monetary damages against any party other than litigation costs. Indeed, money would not remedy the issues raised here. Rather, this action seeks to stop the unlawful operation of the Norlite Facility, which Norlite is patently incapable of operating in a way that complies with the law and Plaintiffs' rights.

13. For these reasons, LON respectfully requests the following relief: (i) a judgment that Norlite's current operations constitute a private nuisance and its operations are negligent; (ii) a declaration that DEC's allowance of the Facility to continue to operate is unconstitutional and violates Plaintiffs' right to clean air and a healthful environment; (iii) an injunction directing the immediate proper closure of the Facility, either directly against Norlite or by directing DEC to cease permitting operation of the Site, and (iv) all other relief that the Court deems just and proper.

JURISDICTION AND VENUE

14. This action is brought pursuant to the Court's equitable power to enjoin Norlite from maintaining a private nuisance and otherwise operating the Facility contrary to law. The Court has personal jurisdiction under New York Civil Practice Law and Rules ("CPLR") § 302 because Norlite is incorporated in the State of New York and has already been subjected to jurisdiction of this Court in the underlying matter.

15. This Court has Jurisdiction in the case against DEC pursuant to CPLR § 3001.

16. Venue is proper in the New York State Supreme Court of Albany County pursuant to CPLR § 503(a) as members of LON, reside or maintain their principal places of business in Albany County, both Norlite and DEC have offices in Albany County, and a substantial part of the events or omissions giving rise to the claim occurred in Albany County.

PARTIES

17. LON is an unincorporated organization operating under and through its fiscal sponsor, Green Education, and Legal Fund ("GELF"), which is a non-profit organization dedicated to promoting the green values of nonviolence, ecology, democracy, and justice.

18. GELF is a New York not-for-profit corporation with offices located in the State of New York. GELF was organized exclusively to carry on the activities of a charitable or educational organization as specified in Section 501(c)(3) of the Internal Revenue Code.

19. LON was formed under GELF to raise awareness about the Facility and educate the surrounding community about the dangers of the Facility.

20. The members of LON include over eighty individuals, including the three individual plaintiffs. A significant number of the members own property and reside less than or around one mile from the Facility, and their lives and properties have been and continue to be adversely impacted by persistent, noxious, offensive Fugitive Emissions being released from the Facility.

21. Brad Blauhut owns and resides in a house at 79 Cohoes Road, Watervliet, NY. His property is less than 2,000 feet southeast of the Norlite Facility. He has stated that the filth and dust from the Facility are a non-stop issue and that he has to keep the windows shut at all

times because of it. He also states that the smell from the Facility is unbearable, especially at night.

22. Deborah Lindley owns and resides at 291 Central Ave, Cohoes, NY. Her property is less than 2,000 feet northeast of the Facility. She has stated that her husband has issues sleeping and that there is dust on the car daily.

23. Mark Belokopitsky resides in a house at 28 Elm Street, Watervliet, NY. His property is directly across from the southern entrance to Norlite. He has stated that because of this location, he feels like he bears the brunt of the dust that re-entrains into the air because of the heavy traffic going in and out of the Facility.

24. Karen Robinson resides in a house at 596 Saratoga St, Cohoes, NY. Her property is right next to the eastern entrance to Norlite. She has stated that they have lost ten pets in the three years they have resided at this property. She stated that she could not leave the windows open at any time because of the constant amount of dust in the air and that is always a dust film on the cars and any toys left in the yard for any extended period.

25. Defendant Norlite is a Delaware limited liability company authorized to do business in New York with a principal office and/or place of business located at 628 South Saratoga Street, City of Cohoes, Albany County, State of New York.

26. Norlite exercises control over and oversees processes and operations at the Facility.

27. The Norlite Facility was acquired by Tradebe Environmental Services, LLC (Tradebe), which is in the business of waste collection, transportation, management, and disposal. Tradebe uses the Facility to dispose of and incinerate millions of pounds of hazardous waste.

28. An essential part of the business model for the Norlite Facility is to use the hazard waste as fuel for the high-temperature, lightweight aggregate kilns ("LWAK") to manufacture, produce, and process dusty, toxic aggregate materials, fine materials, and block-mix materials.

29. The Norlite Facility is the only commercial hazardous waste combustion facility in New York State. It is one of only two facilities in the country with LWAKs fueled by hazardous waste.

STATEMENT OF FACTS

Surrounding Community

30. The Norlite Facility is an approximately 221-acre site located in Albany County, with approximately 40 acres of the site being located within the boundaries of the City of Cohoes and the remaining located in the Town of Colonie. Residential communities surround the Norlite Facility.

31. The eastern boundary of the Norlite Facility is a railroad track that immediately adjoins Saratoga Sites, which consists of several residential apartment buildings owned and operated by the Cohoes Housing Authority as a public housing project. Of the 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 property border for the Norlite Facility is less than 200 feet from residential apartment buildings in Saratoga Sites.

32. According to DEC, potential environmental justice areas are US Census block groups of 250 to 500 households each that, in the Census, had populations that met or exceeded at least 22.82% of the population in an urban or rural area and have household incomes below the federal poverty level.

33. Based on the 2000 Census, DEC has designated the area and communities surrounding the Norlite Facility as an Environmental Justice area, meaning that these communities are minority and low-income communities that are likely to "bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."

34. Based on the 2010 US Census, the Norlite Facility is known to be located in a geographical area where, at the time, within a one-mile radius, approximately 32.5% of the residents in this area were classified as being below the poverty level, and approximately 58.42% of the households have a recorded income of below $50,000.

Operations at the Norlite Facility

35. In Norlite's permit documents, maps of the Facility identify specific areas based on activity and location. Much of this complaint focuses on the Primary Plant area, Kiln area, Finishing Plant area, Block Mix Pile, and others. All these areas are in close proximity to each other and are all within a square ¼-mile space at the Facility. All are also close to the surrounding residential areas to the east, north, and south of Norlite, sometimes as close as 200 feet.

36. The Facility manufactures ceramic lightweight aggregate from shale for use as road filler and construction.

37. The aggregate is manufactured 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. At the Kiln area, the shale is sent through two rotary kilns. When in operation, these kilns maintain a temperature of approximately 2000-2100 degrees Fahrenheit.

38. Exposure to this heat transforms the shale into aggregate.

39. To fuel the Kilns Norlite uses liquid hazardous waste as its primary fuel, which introduces a wide range of toxins. These include mercury, lead, cadmium, arsenic, and acid gasses. Also, the incineration process itself may cause dioxins and furans to form.

40. After it is heated, the aggregate exits the kilns into a clinker cooler. The aggregate eventually exits the clinker cooler via a conveyer and is dropped off the conveyor into two large "clinker piles." Meanwhile, fly ash (exhaust) from the kilns continues through a pollution control system (PCS).

41. Norlite's PCS uses temperature modulation, filtration, additives, and key devices (specifically: bag houses, cyclones, scrubbers, and heat exchangers) to cool, capture or neutralize toxic particulates, gasses and liquids, otherwise known as fly ash. Since Norlite uses hazardous waste as fuel in its combustion process, the fly ash waste may contain heavy metals, dioxins, furans, and acid gasses, depending on what Norlite is burning, the condition of Norlite's equipment, and how Norlite is managing the process at the time. All of the solid material captured by the PCS is generally referred to as baghouse dust. All of the liquid material is generally referred to as wastewater.

42. Since the PCS does not have 100% capture/control, some of the exhaust from the kilns is still released into the air, becoming a potential health problem for people breathing air downwind of the Facility.

43. Norlite currently takes advantage of a federal exemption known as the Bevill Amendment. This exemption allows Norlite to mix the baghouse dust with aggregate and sell it as a product Norlite calls "block mix." Norlite's "Block-mix" product is a blend of aggregate fines and fly ash and is typically 88% bag house dust and 12% aggregate. Since Norlite uses hazardous material as fuel for the kilns, this fly ash often consists of toxic materials. In its permit documents,

Norlite clearly outlines this process of mixing and storage of block mix. Norlite describes block mix as a "beneficial use" of baghouse dust. While DEC and the EPA currently do not allow use of Bevill amendment in this situation, Norlite still takes advantage of it since it is listed in their expired Air Permit.

44. Norlite creates and stores block mix in multiple "temporary piles" that are subject to frequent disturbance by front end loaders and other heavy machinery. Norlite also has a permanent Block Mix Pile by the southern entrance to the facility. The Block Mix Pile is often one of the largest piles at the Facility. Norlite does not cover or spray the Block Mix Pile.

45. The Kiln Area also contains the muck pile, a collection of materials, including baghouse dust, aggregate fines, and other rejected or off-spec products. When the material is added to the pile, it is typically from a vacuum truck and is in the form of a wet slurry. Norlite actively feeds back this material into the beginning of the finish plant.

46. Multiple long-term storage piles exist in the Kiln and Finishing Plant areas, including block-mix storage piles, 3/4"-aggregate storage piles, and 3/8"-aggregate storage piles. Front-end loaders are used to load and unload these storage piles. Block mix and aggregate piles are often thirty feet in height or higher.

47. 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 the wind speed and direction at any given moment, the drop height of the material, the quantity of material being handled, and the material silt and moisture content.

48. Norlite has caused or allowed emissions of fugitive dust containing numerous hazardous materials as well as PM generated at the Kiln Area, finishing plant area, and material piles to migrate offsite.

49. 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 vehicle speed, vehicle weight, surface loading, and surface material and moisture content.

50. Front end loaders and trucks are used throughout the site in order to move material. Haul trucks are used to transport shot rock from the Quarry to the Primary Area, as well as to transport overburden from the Quarry to the Southern Overburden Storage Area. Front end loaders are used to load and unload all of the storage piles on-site, including preparing product for customer pickup.

51. Since 1990, at the direction of DEC, as part of the permit agreement, and in response to consistent complaints from local residents, Norlite has produced Fugitive dust plans in 1990, 1995, 2002, 2010, and 2014. Norlite agreed to implement these plans to control fugitive dust.

52. According to the 2014 Fugitive Dust Plan, areas that handle baghouse dust include the baghouse dust silos, block mix conveyor, radial stacker, Kiln area, Finishing plant area, Block Mix Processing area, Island area, and transport.

53. Measures include: reducing the wind speed at the Facility by reducing the exposed surface area or by increasing the cohesive forces between material particles; Attempting to slow down the wind at the Facility using artificial windbreaks (windscreens and fences) or natural windbreaks (trees, shrubs, or berms); Reducing the exposed material surface area at the Facility

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.

54. Norlite has failed to consistently maintain these measures. When implemented, these measures have proven ineffective.

Fugitive Emissions Migrating Off Site

55. The above-specified sources of fugitive dust emissions at the Norlite Facility — including the various stockpiles, conveyors, and transfer points — are consistent with the definition of fugitive dust and its potential sources in the AP-42 Publication from the US Environmental Protection Agency (the "EPA").

56. According to AP-42, fugitive dust is defined as "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." Further, according to AP-42, common fugitive dust sources from aggregate manufacturing include aggregate storage piles and crushing, screening, and material-transfer operations.

57. Sources of fugitive dust generated at the Facility include material handling, wind erosion, and vehicle re-entrainment.

58. Per the EPA's AP-42 Publication and Defendants' Fugitive Dust Plan, fugitive dust emissions - in general, and those specifically from the Norlite Facility - are generated by the application of wind forces and pressure that overcome the force of gravity on the particulates, as well as overcoming the force of adhesion between dust particulates and/or the surface upon which

the particulates rest. The threshold wind velocity, or the velocity required to cause wind erosion, is dependent on particulate type and size.

59. The Kiln, Finish Plant, and Island Areas — including the emission sources located there — are only between 200 feet to 700 feet away from several residential communities, including Saratoga Sites.

60. Saratoga Sites residents, including some of the LON's members and residents in surrounding communities, have repeatedly and continuously experienced the deposit of fugitive dust emissions on both their real and personal property. These fugitive dust emissions are carried from the Norlite Facility and are deposited on and inside their vehicles and on the exteriors of and inside of their homes and apartments, including ending up in attics, air-conditioning and/or central-air systems, floors, windowsills, pools, and other surfaces.

61. The Fugitive Emissions and Odors have been pervasive in the Community since at least 1990, as evidenced by DEC's enforcement history against Norlite. These Fugitive Emissions blanket the surrounding community in dust – on and inside vehicles and even infiltrating homes.

History of Non-Compliance with Regulations

62. 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 offsite dust migration. These include, but are not limited to the following:

63. DEC Order on Consent (R4-0768-90-01) dated June 21, 1990, 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.

64. 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.

65. 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.

66. 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 offsite 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."

67. 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.

68. 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.

69. DEC Notice of Violation (NOV) was issued on May 9, 2013. This was due to an inspection of the Facility in 2012. As part of this NOV, DEC identified inadequacies in the Facility's then-existing Fugitive Dust Plan, and updates were required.

70. 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.

71. 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.

72. 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. Norlite was also assessed a penalty of $154,700 following a series of effluent exceedances under the SPDES Permit between November 1, 2017, and August 31, 2019 (22 months total), including

chlorine, chromium, copper, flow rate, iron, lead, mercury, selenium, silver, total suspended solids, temperature, titanium, acute toxicity, and zinc.

73. On February 10, 2021, DEC issued two formal Notices of Violation (NOV) regarding conduct on February 3 and February 8, 2021. The February 3, 2021, NOV pertained to the deposition of baghouse dust on the "muck pile" where it can be reintroduced into the atmosphere rather than appropriate storage. February 8, 2021, NOV pertains to improper material handling inconsistent with the Fugitive Dust Plan. Both of these are in violation of the current Air Permit.

74. 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 as an Order of Consent that addressed significant fugitive dust events from November to March 2021. It also includes a comprehensive Schedule of Compliance outlining specific measures Norlite should implement to control the offsite migration of fugitive dust.

75. On August 2, 2021, DEC issued a formal NOV regarding improper material handling inconsistent with the Fugitive Dust Plan in violation of their current Air Permit.

76. On February 7, 2022, DEC issued a formal NOV dated January 21, 2022, with a continued demand that Norlite CEASE AND DESIST from further ECL violations, as well as a Schedule of Compliance to address the offsite migration of dust. The NOV involved improper material handling inconsistent with the fugitive Dust Plan resulting in fugitive dust migrating off site in violation of their current Air Permit.

77. On March 10, 2022, DEC issued a formal NOV to 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 NOV.

78. On October 11, 2022, DEC issued two formal NOV to Norlite regarding the Facility causing or allowing emissions of air contaminants into the outdoor atmosphere of such quantity, characteristics, or duration that are in violation of 6 NYCRR Part 211.1 and their current Air Permit.

79. This history of violations shows a repeating and continuing pattern of causing fugitive dust emissions to be deposited offsite from the Norlite Facility and into the surrounding communities, notwithstanding DEC's repeated attempts to mitigate the violations of law through administrative action.

80. Some of these violations have resulted in enforcement action by DEC. However, many have not because DEC either chose not to enforce or the violations have gone undetected by DEC, and/or Defendants have failed to report the violations.

81. Neither DEC nor Norlite has made any effort to warn area residents in an urgent and timely manner of the dangers posed by fugitive dust, even on windy days or during periods when the sensors indicated dangerous levels of silicates or baghouse dust.

82. Additionally, throughout 2018 and 2019, the Facility burned at least 2.4 million pounds of toxic firefighting foam ("AFFF") containing PFAS chemicals. Upon information and belief, DEC had knowledge of the Facility's burning of AFFF as early as April of 2019 but failed to inform local authorities and residents about it even though the materials were not allowed under the issued permit.

83. In April of 2021, DEC released an Environmental Sampling Report on the impact of Norlite's incineration of AFFF. DEC described the report as "comprehensive." Examination and analysis of the report shows that DEC did not take samples in the Primary Plant area, Kiln area, Finishing Plant area, or the Block Mix Pile. These areas, as described in this document, would, logically, be the most likely location to gauge the extent of any PFAS contamination. DEC also did not test for PFAS contamination at Outfall 006, an outlet into the nearby Mohawk River, which flows into the Hudson River. Norlite used Outfall 006 until approximately January of 2020 to discard enormous quantities of processed wastewater.

84. As a result, neither the various environmental laws and regulations nor enforcement by DEC has effectively stopped or even significantly curtailed the Defendants' emissions. Indeed, as is evident from the above summary, the frequency of administrative orders has only increased recently.

85. As is evident from these prior enforcement actions, no action nor any penalty imposed has stopped the negligent and hazardous operation of the Facility. The only remedy is for an order enjoining the operation of the Facility against Norlite.

86. While LON recognizes that DEC appears to be seeking, in part, this same remedy in the underlying action, the Facility continues to operate and continues to cause a nuisance, and this action seeks to compel the remedy sought here rather than merely another fine and temporary attempt at a partial solution.

87. For these reasons, LOC brings this action to ensure complete closure of the plant rather than a partial remedy or settlement that will not resolve the ongoing violation of the law and the Plaintiffs' rights.

Hazards and Health Impacts for Norlite Emissions

88. The Emissions at the Facility are known to contain dangerous and hazardous materials and substances.

89. In December 2005, the Agency for Toxic Substances and Disease Registry (ATSDR) conducted a Public Health Assessment of Norlite. ATSDR recommended sampling of Norlite neighborhood air for particulate matter. Without such data, ATSDR stated that it could not determine whether the emissions from Norlite posed a public health threat or not.

90. In 2021, 16 years after the ATSDR report, DEC finally followed through with the ATSDR recommendations for fence-line monitoring of fugitive dust emissions; DEC placed sensors at Saratoga Sites, to the east of Norlite. DEC did not, and has not placed sensors in the residential areas to the south or north of the Norlite Facility

91. Testing has confirmed that the emissions contain sharp crystalline silica quartz particles and baghouse dust.

92. In particular, testing of the fugitive dust emissions taken from exterior surfaces at Saratoga Sites and an attic in a house a short distance away from Saratoga Sites have confirmed that the emissions contain sharp crystalline silica quartz particulates, as well as glass particulates.

93. Additionally, testing confirmed that the particulates included bubbly, glass-matrixed shards resulting from exposure to high temperatures. The kilns at the Norlite Facility are the only places in the relevant area where temperatures are high enough to cause this.

94. Inhalation of crystalline silica, as those 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 crystalline silica emissions can include the 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 crystalline silica pollution can also lead to renal pathologies and a broad spectrum of autoimmune disorders.

95. Norlites own Material Safety Data Sheets (MSDS) show that exposure to the silica dust can cause silicosis.

96. The US 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.

97. Along with silica particles, DEC's own monitoring has measured higher levels of arsenic, mercury, and lead downwind of Norlite.

98. The Clean Air Act requires the EPA to set National Ambient Air Quality Standards (NAAQS) for particle pollution. Particle pollution includes fine particles (PM2.5), 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 PM_{10} primary standard of 150 pg/m3. This standard has been in place since 1987.

99. While the NAAQS may minimize adverse health effects, they do not prevent their occurrences, and PM_{10} levels that are much lower than the NAAQS are associated with adverse health effects.

100. As noted by DEC, other jurisdictions have recognized the need for more stringent regulations of these contaminants. In 2001 and 2002, the California Air Resources Board (CARE) 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." Upon information and belief, this work by California represents the most comprehensive review of the health impacts of PM_{10} and establishes a standard that is health protective of vulnerable populations, such as many people living near the Facility.

101. The CARB & OEHHA recommendation for PM_{10} 24-hour-Average Standard not to be exceeded, which was subsequently adopted, is 50 pg/m3. The CARB & OEHHA recommendation for an annual PM_{10} standard, which was subsequently adopted, is 20 pg/m3, calculated as an arithmetic mean.

102. Per California's Ambient Air Quality Standards, the levels of PM_{10} 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."

103. According to DEC testing, 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 PM_{10} was 71.4 gg/m3. The annual average for PM_{10} at Saratoga Sites was 25 fig/m3. This is greater than California's annual average standard of 20 (xg/m3 and indicates an elevated risk of short-term (daily) and long-term (annual average) health impacts in the nearby community.

104. 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.

105. 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 an increased risk of metabolic disorders such as diabetes and obesity. Metabolic dysfunction increases the risk of cardiovascular disease.

106. 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 PM_{10} is associated with an increased risk of cardiac, pulmonary, and extra-pulmonary diseases.

107. 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.

108. 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 the initiation of other cardiac events such as myocardial infarction (heart attack).

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

110. Exposure to higher average PM Course levels is associated with increased asthma prevalence and morbidity among children.

111. Additionally, in March of 2020, a team of scientists and students from Bennington College sent soil samples taken from Saratoga Sites out for independent analysis. Those samples

tested positive for PFAS contamination. DEC and the New York State Department of Health (DoH) have consistently refused to test residents of Saratoga Sites and surrounding neighborhoods for exposure to PFAS.

112. PFAS is a family of chemicals known to be toxic to humans in quantities so low as to be measured in single digits of parts per trillion. PFAS chemicals have shown a clear resistance to heat, including incineration. Exposure to PFAS may cause liver damage, thyroid disease, decreased fertility, high cholesterol, obesity, hormone suppression, and cancer. These chemicals can easily migrate into the air, dust, food, soil, and water.

113. Thus, the ongoing emissions from the Facility deprive LON and its members of the use and enjoyment of their property.

Impact on Members

114. Plaintiffs are exposed to Emissions in myriad ways: emissions directly from combustion drift onto and through Plaintiffs' homes and properties; fugitive dust coats Plaintiffs' vehicles, homes, and even recreational areas; Plaintiffs often cannot avoid the dust by staying indoors, as Norlite's emissions often seep into their attic, air-conditioning, and/or central air systems, floors, windowsills, and other surfaces.

115. Plaintiffs and 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.

116. 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.

117. Residents at Saratoga Sites and in neighborhoods around Norlite have consistently and independently stated that the most noxious smells from Norlite come late at night. Many residents suffer from asthma, chronic obstructive pulmonary disease (COPD), thyroid problems, lung cancer, multiple myeloma, chronic nose bleeds and anxiety. In addition, census data show elevated levels of lung cancer in areas downwind of the Norlite Facility.

FIRST CAUSE OF ACTION
Against Norlite
Private Nuisance

118. Plaintiff repeats and realleges the allegations of the prior paragraphs of this Complaint.

119. Norlite's operation of the Facility caused excess Emissions, including fugitive dust emissions, hazardous emissions, and crystalline silica and particulate matter, which constituted a substantial interference with the Plaintiffs right to use and enjoy their land. This interference is intentional in origin, unreasonable in character, and caused by the conduct of Norlite.

120. Defendants, through repeated and continuing negligent, reckless, unreasonable, and/or intentional actions and/or omissions alleged herein, have caused fugitive dust emissions to be deposited offsite from the Norlite Facility. Dust has been seen migrating from the direction of the Facility onto the housing complex property and the surrounding area, constituting a substantial interference. The dust has forced Plaintiffs to limit or 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 dust has gotten worse over the years.

121. Norlite's actions are intentional in nature because Norlite knows or is substantially certain that their actions cause the emissions that affect the Plaintiffs and surrounding communities. Norlite has long known that these Emissions were being deposited onto these properties and failed to prevent the same from ever occurring, and Norlite thereby acted intentionally when they continued to allow this nuisance with full knowledge of repeated and continuing emissions onto and damaging Plaintiff's properties. Furthermore, as discussed above, Norlite has a long history of violations arising from fugitive dust emissions from the Norlite Facility.

122. Norlite's actions are unreasonable in nature because reasonable steps can be taken to reduce the severity of these impacts on the community.

123. Norlite's actions have resulted in unreasonable impacts on Plaintiffs use and enjoyment of their property and constitute a private nuisance.

124. Norlite has actual notice of the nuisance and have a reasonable opportunity to abate the nuisance.

125. Norlite's conduct constitutes a private nuisance and has proximately caused, and will continue to cause, damage to the Plaintiffs. Plaintiffs are entitled to injunctive relief, requiring, inter alia, defendants to abate the nuisance.

SECOND CAUSE OF ACTION
Against Norlite
Negligence

126. Plaintiff repeats and realleges the allegations of the prior paragraphs of this Complaint.

127. Norlite has acted negligently in its operation of the Facility.

128. Norlite knew or should have known that the various sources of Emissions described above would result in pollution that is hazardous to human health and the environment.

129. Norlite had a duty to take adequate safety precautions and all reasonable measures in order to mitigate any such Emissions such that they did not have a noticeable presence in or affect the residents in the surrounding communities.

130. Norlite repeatedly and continuously breached the above-stated duties by negligently, recklessly, carelessly, and unreasonably processing, handling, and/or storing aggregate materials, fines materials, block-mix materials, and other materials processed, handled, and/or stored at the Norlite Facility in a manner that caused Emissions to enter the surrounding environment and/or communities, including residents.

131. Norlite's failure to control the Emissions migrating off the property has proximately caused and will continue to cause damage to the Plaintiffs. The consistent amount of Emissions has proximately caused injury to the Plaintiffs' mental and physical health, use, and enjoyment of the Plaintiffs' land.

132. The Emissions have directly and proximately caused and continue to cause damage by accumulating on and/or in the exterior surfaces of residential structures, the exterior surfaces of vehicles, air conditioning and/or central-air units, pools, the interiors of residential structures, various types of personal property stored outdoors and indoors, and other forms of personal property. This damage has caused the Plaintiffs and the class members to undertake replacements, repairs, cleaning, maintenance, and other corrective actions that would not have otherwise been necessary but for the fugitive dust emissions from the Norlite Facility.

THIRD CAUSE OF ACTION
Against DEC
For a Declaratory Judgment that Permitting Operation of the Facility Violates Article, I §19 of the New York Constitution

133. Plaintiff repeats and realleges the allegations of the prior paragraphs of this Complaint.

134. On November 2, 2021, voters in New York approved and adopted Article I § 19 of the New York Constitution, which provides and guarantees that "Each person shall have a right to clean air and water, and a healthful environment." The amendment took effect on January 1, 2022.

135. Article I § 19 recognizes and functions to preserve New Yorkers' constitutional right to clean air, clean water, and a healthful environment.

136. The State, and in particular DEC, has an affirmative duty to all the citizens of New York to protect the environment.

137. By allowing repeated permit and regulatory violations at the Facility, the State is acting contrary to its mission and contributes to the Emissions, which will affect the health and well-being of the Plaintiffs.

138. DEC continues to allow Norlite to operate under the terms and conditions of Norlite's 2014 Title V permit. DEC's repeated attempts at regulatory enforcement, which have only been more frequent in recent years, have been patently insufficient to prevent violations of Plaintiffs' right to a clean and healthful environment.

139. Information gathered since January of 2020 by DEC conclusively shows that the terms of the 2014 permit allow Norlite to expose the surrounding community, on a daily basis, to highly toxic dust. This fugitive dust contains silicates and baghouse dust. Baghouse dust may contain heavy metals, dioxins, furans, PFAS, and other toxic substances.

140. This failure breaches the agency's basic duty to care for the Plaintiffs and their environment.

141. The State has failed to adequately use its enforcement powers to cause Norlite to control the Emissions at the Facility.

142. As discussed in detail above, Norlite has a long history of violations issued by DEC.

143. Norlite has acted jointly and/or in concert with the State, and with the approval of DEC, to operate the Facility in a manner that results in Fugitive Emissions which deprive Members of their right under the Green Amendment to clean air and a healthful environment.

144. While it is understood that if the current DEC and states efforts are successful in shutting the Facility down, Plaintiffs would withdraw this claim. Nevertheless, anything less than shutting down the Facility would cause continued violation of Plaintiffs' rights under the New York Constitution.

145. Accordingly, Plaintiffs seek a declaratory judgment that DEC's ongoing permitting and allowing the Norlite Facility to operate is unconstitutional and violates Plaintiffs' constitutional rights.

146. By reason of this constitutional violation, this Court should issue an injunction directing the immediate proper closure of the Facility.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court award the following relief:

147. A judgment that Defendants actions stated herein have constituted and continue to constitute a private nuisance.

148. A judgment that Defendants actions stated herein have constituted and continue to constitute negligence.

149. A declaratory judgment that DEC's allowing operation of the Norlite Facility violates Plaintiffs' constitutional rights under Article I §19 of the New York State Constitution by continuing to allow the release of harmful Emissions.

150. An injunction permanently enjoining Norite from operating the Facility and directing the immediate proper closure of the Facility.

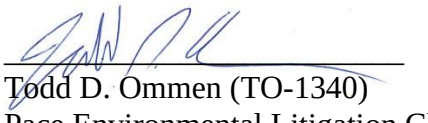
151. An injunction directing DEC to vacate or rescind the current Hazardous waste and Air Permits applicable to the Facility and not permit the Facility to resume operations.

152. All costs of litigation, including any expert fees and attorneys' fees, if any;

153. Any and all other relief that the Court deems just and proper.

DATED: December 20, 2022,
Dobbs Ferry, NY

Respectfully Submitted,



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