

# 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.

**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**

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

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.

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 Beville 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

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 515.56 Tm0 g0



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

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 penalt

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 n Mer(o Mar)-3(ch 202)4(1. It)-3( als)-3(o )5(includes a)-2( comp)JTJETi6iETQ7\*nl-3



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.

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.



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 (PM<sub>2.5</sub>), 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<sub>10</sub> primary standard of 150 µg/m<sup>3</sup>. 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<sub>10</sub> 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

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<sub>10</sub> 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,

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





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

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

128. Norlite

**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



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.

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