SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF CHEMUNG

JULIAN MARCUS RAVEN,
Petitioner,

-against-

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, Et. al,
Respondent.

Index No. 2025-1215

PETIONER'S RESPONSE

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(for filing in NY Supreme Court, Chemung County)

MEMORANDUM OF LAW

IN SUPPORT OF PETITIONER'S ARTICLE 78 PETITION AND CONSTITUTIONAL CLAIMS
Index No. 2025-1215
Supreme Court of the State of New York
County of Chemung

PRELIMINARY STATEMENT

This case presents a single, threshold question: **Does the New York State Department of Environmental Conservation ("DEC") have the lawful authority to issue or enforce Orders on Consent or a "Class 2 Significant Threat" designation where it failed to comply with the mandatory statutory and regulatory prerequisites required by ECL §27-1313(4), 6 NYCRR 375-2.7(b)(1)–(6), and the Fourteenth Amendment?**

The answer, as demonstrated in the record and binding precedent, is **no**.

The DEC never issued or served a final site classification determination, never provided Notice, never offered a hearing, never permitted statutory or common-law defenses to be raised, and never issued a final determination upon which any lawful order could rest.

Because each of these steps is a **mandatory condition precedent**, every subsequent DEC action—including the 2017 and 2025 Orders on Consent—is **ultra vires and void ab initio**.

STATEMENT OF FACTS

The full factual narrative and statutory analysis appear at pages 1–25 of the filing.

The key facts are undisputed:

1. **DEC never issued a final determination** under ECL §27-1313(4).
2. **No Notice was ever served** by certified mail in 2017 or 2025.
3. **No hearing was ever offered**, despite the statute's explicit mandate.
4. **No opportunity to raise defenses** was ever provided.
5. **No record exists** within DEC of any required step.
6. DEC nevertheless issued two Orders on Consent and continues to publish a "Class 2 Significant Threat" classification.

Under New York and federal law, these omissions render every DEC action **legally non-existent**.

QUESTIONS PRESENTED

1. **Whether DEC acted without jurisdiction by issuing Orders on Consent without satisfying ECL §27-1313(4)'s mandatory Notice, Hearing, and Determination requirements?**
2. **Whether the DEC's failure to comply with its own regulations under 6 NYCRR 375-2.7(b)(1)–(6) renders its acts void under Field Delivery and Accardi?**
3. **Whether the DEC's actions violated the Fourteenth Amendment's Due Process Clause?**
4. **Whether ongoing unconstitutional acts defeat any statute of limitations defense?**
5. **Whether Petitioner, as a pro se litigant, is entitled to liberal construction of filings without penalty for tone or rhetorical style?**

Each question must be answered **yes**.

ARGUMENT

POINT I

THE DEC'S ACTIONS ARE ULTRA VIRES AND VOID AB INITIO

ECL §27-1313(4) requires:

- Notice by certified mail,
- Opportunity for a hearing,
- Right to raise statutory and common-law defenses,
- A final determination,
- And only then, the issuance of an order.

None of these prerequisites occurred. The statute is clear: **no hearing = no order**.

Agency actions taken without statutory authority are **void**, not merely voidable. *Matter of Grossman*, 46 N.Y.2d 184 (1978).

Thus, the 2017 and 2025 Orders on Consent, and all downstream actions, are **legal nullities**.

POINT II

DEC VIOLATED MANDATORY PROCEDURES UNDER ECL §27-1313(4) AND 6 NYCRR 375-2.7(b)

The DEC's own regulations mirror the statute:

- Proposed classification
- Written notice
- Right to comment / contest
- Hearing
- Final determination
- Right to Article 78 review

DEC performed **none** of these mandatory steps.

Where an agency violates mandatory procedures, its acts are void.

POINT III

AGENCY VIOLATIONS OF MANDATORY RULES ARE VOID UNDER FIELD DELIVERY AND ACCARDI

Field Delivery Doctrine – New York Court of Appeals

Failure to follow mandatory regulations renders agency action **invalid as a matter of law**.
Matter of Field Delivery Serv., Inc. v. Roberts, 66 N.Y.2d 516 (1985).

Accardi Doctrine – United States Supreme Court

Agencies must follow their own rules; violations render actions **unlawful and void**.
Accardi v. Shaughnessy, 347 U.S. 260 (1954).

Reaffirmed in:
– *Service v. Dulles*, 354 U.S. 363 (1957)
– *Vitarelli v. Seaton*, 359 U.S. 535 (1959)
– *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1991)

Because DEC violated **every** procedural safeguard, its actions are void.

POINT IV

THE DEC'S ACTIONS VIOLATED THE FOURTEENTH AMENDMENT

The Constitution prohibits property deprivations without due process.
U.S. Const. amend. XIV.

Absent Notice, Hearing, findings, and determination, the DEC's actions violate:

- *Loudermill*, 470 U.S. 532 (1985)
- *Mathews v. Eldridge*, 424 U.S. 319 (1976)
- *Fuentes v. Shevin*, 407 U.S. 67 (1972)

Government actions taken in violation of due process are **void**.

POINT V

ONGOING CONSTITUTIONAL VIOLATIONS DEFEAT ANY STATUTE OF LIMITATIONS ARGUMENT

Where constitutional deprivations continue, limitations do not bar relief:

- *Elrod v. Burns*, 427 U.S. 347 (1976): continuing constitutional harm = irreparable.
- *Ex parte Young*, 209 U.S. 123 (1908): unconstitutional state action is enjoinable at any time.
- *Verizon Maryland*, 535 U.S. 635 (2002).
- *Lucente v. County of Suffolk*, 980 F.3d 284 (2d Cir. 2020): ongoing unconstitutional conditions renew accrual daily.

Thus, the DEC's continuing publication of a "Class 2 Significant Threat" classification keeps the violation alive.

POINT VI

PRO SE LITIGANTS ARE ENTITLED TO LIBERAL CONSTRUCTION AND CANNOT BE PENALIZED FOR PASSIONATE OR SARCASTIC TONE

Courts must construe pro se pleadings liberally:

- *Haines v. Kerner*, 404 U.S. 519 (1972)
- *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471 (2d Cir. 2006)
- *Ruotolo v. IRS*, 28 F.3d 6 (2d Cir. 1994)
- *Burgos v. Hopkins*, 14 F.3d 787 (2d Cir. 1994)
- *Erickson v. Pardus*, 551 U.S. 89 (2007)

Passionate language does not diminish substantive legal claims.
See *Davis v. Goord*, 320 F.3d 346 (2d Cir. 2003).

CONCLUSION

Because the DEC acted:

- without statutory authority,
- without regulatory compliance,
- without constitutional due process,

all of its actions—including the 2017 and 2025 Orders on Consent—are **ultra vires and void ab initio**.

The Court must:

1. **Annul** both Orders on Consent;
2. **Declare void** all DEC classifications and publications;
3. **Enjoin** further enforcement or publication;
4. **Order removal** of the “Class 2 Significant Threat” designation; and
5. **Require** the DEC to restart the process lawfully, beginning with certified Notice.

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PETITIONER'S RESPONSE

Any - is an English word from the English language.

Webster's Dictionary says the word "*Any*" means: "unmeasured or unlimited in amount, number, or extent" *As in "any* **quantity you desire.**"

Webster's also says "*Any*" is an adjective. "An adjective is a word that describes or modifies a noun or pronoun, adding details about its qualities, size, color, or state, like "blue sky" or "a happy child," making sentences more vivid; they typically appear before the noun or after a linking verb, functioning as subject complements." In other words, the adjective modifies, describes or defines the noun to clarify the meaning of the noun.

It is often helpful to use or read a new word recently learned in ***any*** sentence to help grasp its full meaning. Below is an excellent sentence that uses the word ***"any"*** multiple times to help one learn the new term.

"No state shall make or enforce ***any*** law which shall abridge the privileges or immunities of citizens of the United States; nor shall ***any*** state deprive ***any*** person of life, liberty, or property, without due process of law; nor deny to ***any*** person within its jurisdiction the equal protection of the laws." This sentence originates, not from ***any*** old law, but from a set of important American Laws called the Bill of Rights. This Bill of Rights is part of a larger set of important American laws called the United States Constitution.

We learn from this law, certain non-negotiable truths and binding legal principles that help us understand the word ***any***. It says that no State, for example New York State, shall make ***any*** law that curtails or deprives American citizens, for example the Plaintiff in this case, of their privileges or immunities as American citizens.

It also says, which is particularly pertinent to this New York case, "nor shall ***any*** state deprive ***any*** person of life, liberty, or property, without due process of law;" Here we see the word ***any*** apply again to all and every American state, again for example New York State. "***Any*** state" does not apply to foreign states in other nations, "***any*** state" only means American states like for example New York State.

And what is it that ***any*** state should not at ***any*** time do? It clearly states that ***any*** state that deprives ***any*** person from ***any*** American state of ***any*** of the following three natural rights to life, liberty or property without due process of law, breaks the fundamental American law, expressed in the Bill of Rights. The ‘due process clause’ as it is called, from the Bill of Rights’ 14th Amendment is not hard to understand, ***any*** person can understand it.

Other important places where the word ***any*** appears with significant force for absolute clarity can be found for example in New York State’s very own environmental statutes created by the New York legislature. These laws are called Environmental Conservation Laws or ECLs and in this particular case **ECL §27-1313 (4).**

Let's take a closer look at the statute, because it is quite important and actually is New York State’s interpretation and application of the 14th Amendment to environmental remediation activities of New York State’s executive remedial agency called, the Department of Environmental Conservation(DEC). We will also see how this same statute became a binding, self imposed law **(6 NYCRR part 375 2.7 B (1-6))** that the DEC itself must enforce upon itself in ***any*** actions that involve depriving ***any*** citizen of life, liberty and property. It is so important that for the sake of argument we can call this ECL statute the ECL linchpin statute, similar to a linchpin that is passed through an axle to prevent the wheel from falling off. So that we are clear, without the linchpin the whole wheel will fall off.

ECL §27-1313 (4) states:

"4. ***Any*** **order** issued pursuant to subdivision three of this section shall be issued **only after notice and the opportunity for a hearing is provided** to persons **who may be the subject of such order**.

The commissioner shall determine which persons are **responsible (not potentially responsible/ PRP-*added*) pursuant** to said subdivision according to applicable principles of statutory or common law liability.

Such persons shall be entitled to **raise *any* statutory or common law defense** at ***any*** such hearing and such defenses shall have **the same force and effect** at such hearings as they would have **in a court of law**.

In the event a hearing is held, **NO ORDER shall be issued** by the commissioner under subdivision three of this section **until** a **final decision** has **been rendered**.

Any such **order shall be reviewable** pursuant to article **seventy-eight of the civil practice law** and rules within thirty days after service of such **order**. The commissioner may request the participation of the attorney general in such hearings." (*Italics*, **bold** and CAPS added for effect.)

Let us now examine this text closely, for it is an excellent example of the use of the word ***any*** in both the English language and New York's interpretation of the 14th Amendment's 'Due Process Clause' from the Bill of Rights.

ECL §27-1313 (4), the linchpin statute, starts off with our favorite new word, "***Any,"*** by declaring unequivocally ***"Any*** order." Since we are now familiar with the meaning of the word ***any***, it is a breeze to understand what this adjective is trying to explain about the word and noun **"order"** in this case. ***Any*** order is not saying **some** orders, or **good** orders, or **bad** orders, or **lawful** orders, or **unlawful** orders, or **past** orders, or **future** orders, or **small** orders or even **big** orders, because orders do come in a variety of

forms. What **ECL §27-1313 (4)** says is "***Any*** order" and this means **ALL** and **EVERY** single one of the above variations and more. This use of the word ***reflects*** the Legislature's profound understanding and respect for the U.S. Constitution and the Bill of Rights. And that is why the Legislature used the word "***Any***" because they meant ***any*** order to protect ***any*** citizen from ***any*** arbitrary and capricious order that could be issued by the DEC in this case.

The Legislature is primarily concerned with the fundamental due process constitutional rights of the citizen than with the actions of the DEC. The citizen is actually meant to come first, amazing!

So let us ask the question, are there or have there been ***any*** orders issued by the DEC in this case that would qualify to be considered under the "***any*** order" definition issued by the DEC? Lets see, well yes, here are two such "***any*** orders", (Exhibits A and B.) These copies are actual copies of real and original, unaltered "Orders on Consent" issued by the DEC on March 6, 2017 and September 5, 2025.

TEST: So, as we progress through applying **ECL §27-1313 (4)** lets us ask whether the DEC obeyed the 14th Amendment, the ECLs and NYCRR at each stage of the journey in developing and issuing these two orders.

ECL §27-1313 (4) continues after declaring, "***Any* <u>order..</u>"** we read "..issued pursuant to subdivision three of this section shall be issued **only after notice and the opportunity for a hearing is provided** to persons **who may be the subject of such order**."

Here we begin to grasp the expanded scope of the due process of law that is baked into the statute. If ***any*** order issued pursuant subdivision three, and in this case it refers to **3a** the **"Class #2 - Significant Threat"** classification and clause, the binding steps under the due process of law are clearly defined. We continue to read that said proposed order shall be issued "***<u>ONLY AFTER NOTICE AND THE OPPORTUNITY FOR A HEARING IS PROVIDED</u>***"(**Bold**, *italics, CAPS* and <u>underline</u> added for effect)

<u>QUESTION:</u> Did the DEC give Petitioner 15 day Notice through certified mail and the opportunity for a hearing to contest their proposed order?

<u>ANSWER: NO…….. NEVER…… and NEITHER in 2017 nor in 2025.</u>

The glory of American constitutional liberty expressed through guaranteed due process rights is found in Anglo-American jurisprudence stretching back 810 years to 1215 A.D. and the signing of Magna Carta. "The words "due process" suggest a concern with procedure rather than substance, The promise of legality and fair procedure. The clause also promises that before depriving a person of life, liberty or property, the government ***must follow*** fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. People may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. ***Action***

denying the process that is "due" would be unconstitutional." (**Bold** and *italics* added) Cornell Legal Institute.

Another legal institute defines due process as "a fundamental principle of fairness in ***all*** legal matters, both civil and criminal, especially in the courts. **All legal procedures set by statute** and court practice, **including notice of rights**, ***must*** **be followed for each individual** so that no prejudicial or unequal treatment will result."(**Bold**, *italics* and underline added) Law.com

ECL §27-1313 (4) is absolutely clear on the binding requirement of "notice and the opportunity for a hearing is provided" to the "persons **who may be the subject of such order**." This does not mean in this present case any person or persons who may have received an void and illicit order 16 years ago, in 2009 or at ***any*** other time. This case is brought now, today, by Petitioner **Julian Raven** and is attached specifically to Petitioner's guaranteed constitutional rights under the U.S. Citizen as both a New York and US citizen.

QUESTION: And so who is the qualifying "subject" of the "***any***" orders in this case? You can read it for yourself in **EXHIBITS A & B**

ANSWER: Petitioner JULIAN RAVEN is identified as the subject of both the 2017 and 2025 Orders on Consent.

QUESTION: Was Petitioner Julian Raven, the subject of the two DEC Orders on Consent, given 15 day **notice by certified mail** and an opportunity before the issuance to contest such proposed orders in a DEC arranged **hearing**?

ANSWER: NO…….. NEVER…… and NEITHER in 2017 nor in 2025.

QUESTION: Did the DEC violate the 14th Amendment's Due Process of Law Clause?

ANSWER: YES!

QUESTION: Did the DEC violate ECL §27-1313 (4) “Notice and hearing” requirement?

ANSWER: YES

QUESTION: Did the DEC violate 6 NYCRR 375 2.7 b (1-6) 15 Day notice by certified mail?

ANSWER: YES

ECL §27-1313 (4) goes on to further clarify the high bar of procedural due process required for ***any*** order to stick, or in other words, for ***any*** order to have jurisdiction;

“Such persons shall be entitled to **raise any statutory or common law defense** at ***any*** such hearing and such defenses shall have **the same force and effect** at such hearings as they would have **in a court of law**.”

Wow, this is not ***any*** old process, this is a serious legal ***due*** process. Amazing, even ***any*** DEC due process hearing will allow for statutory and common law defenses to be made by the subject of the proposed order and will have the same effect as they would have in a court of law. Wow, this is really serious business, just imagine if ECL §27-1313 (4)’s mandate for notice and hearing was never afforded to Petitioner? Can you imagine what that would mean?

QUESTION: Did Petitioner have the opportunity to raise statutory and common law defenses at any DEC arranged hearing to contest the DEC’s arbitrary and capricious determination before the Order on Consent was issued?

ANSWER: NO…….. NEVER…… and NEITHER in 2017 nor in 2025 since Petitioner was never given NOTICE or ***any*** opportunity to participate at ***any*** hearing where

Petitioner would have surely opposed the DEC's arbitrary and capricious determinations, thus he never was able to raise any statutory or common law defenses.

ECL §27-1313 (4) continues to elucidate the due process principles in action in environmental law and required in this case. "**In the event** a hearing is held, **NO ORDER shall be issued** by the commissioner under subdivision three of this section **until** a **final decision** has **been rendered**." Once again we see now that in the event of hearing, and for the sake of argument let us pretend that the hearing required and described above actually took place, the Commissioner ***cannot*** even issue an order until a final decision based upon that same hearing has been rendered. This means in simple terms, ***no hearing…… no order!***

QUESTION: Was Petitioner able to redress, argue, influence and stay the proposed order during a fair and due process compliant hearing in which Petitioner raised significant and sufficient objections to impact a final decision that could only be rendered ***after*** such a hearing?

ANSWER: NO…….. NEVER…… and NEITHER in 2017 nor in 2025 since Petitioner was never given NOTICE or ***any*** opportunity to participate at ***any*** hearing where Petitioner would have **surely** opposed the DEC's arbitrary and capricious determinations, thus he never was able to raise any statutory or common law defenses.

ECL §27-1313 (4) And finally, the statute wonderfully transports us to where we find ourselves today in this ongoing 14th Amendment, natural rights depriving Article 78 procedure, although not the same as what the statue intended, that is marching towards the January 6, 2026 Order to Show Cause hearing. The statute states "***Any*** such **order shall be reviewable** pursuant to article **seventy-eight of the civil practice law**…" Again our friendly new English word '***any,***' of Germanic origin comes to Petitioner's aid. **ECL §27-1313 (4)** is crystal clear that at ***every stage*** of the due process of law, the

issuance of ***any*** order, is covered by the due process of law guarantee, having been baked into ECL from the 14th Amendment.

The U.S. Constitution is an absolutely incredible set of laws, meticulous in its defense of citizen members of We The People, designed exactly for this egregious case, that Defendants continually demonstrate their indifference towards in their desperate attempts to cover their negligent, arbitrary and capricious failures, violations and actions. **For even *after*** 15 days of ***NOTICE*** by certified mail and a legally binding follow up DEC arranged ***HEARING*** contesting the order, and, **even after all that**, ***any*** final order issued by the DEC Commissioner is still reviewable before a real court under a Rule 78 hearing. Until that time, no jurisdiction attaches to ***any*** action that the DEC takes. Until that final determination by a court regarding the DEC's constitutional compliance and either absence or presence of arbitrary and capricious determinations and decisions, the DEC is legally paralyzed from acting. But in the event, in the *unimaginable* event that the DEC recklessly forges ahead, their actions are deemed ***ultra vires***, without jurisdiction, devoid of statutory authority, constitutionally violative and ***void ab initio***.

QUESTION: Was Petitioner able to contest ***any*** final determination and ***any*** order issued by the DEC Commissioner **after NOTICE, after a HEARING, after OBJECTIONS after RAISING STATUTORY AND COMMON LAW DEFENSES** and after **DELIBERATIONS** and then a **FINAL DEC DECISION,** in a RULE 78 judicial proceeding?

ANSWER: NO…..NEVER….and NEITHER in 2017 and 2025 since Petitioner could never arrive at a **ECL §27-1313(4)** Rule 78 hearing contesting a post due process compliant NOTICE, HEARING and final DEC decision, because there never was any **DUE PROCESS of LAW** given in the form of **NOTICE** and **HEARING** in which

STATUTORY and **COMMON LAW OBJECTIONS** precipitating a final DEC decision could have been raised.

Rule 7803 is like a buffet of delicious options to choose from, clearly presenting a wide offering of required thresholds, determining duty, jurisdiction and procedure necessary to determine culpability of defendants actions by asking these 3 probing questions that in this case are super easy to answer for ***any*** honest person:

1. "...whether the body or officer ***failed to perform <u>a duty</u> enjoined upon it by law***; or

2. whether the body or officer **proceeded, is proceeding or is about to proceed <u>without</u>** or in excess of **<u>jurisdiction</u>**; or

3. whether a determination was made in **violation of lawful procedure**, was **affected** by an **error of law** or **was arbitrary and capricious** or an **abuse of discretion**,...;" (**Bold**, *italics* and <u>underline</u> added)

And finally ECL §27-1313 (4), comes with some guidelines on filing, which **do not apply**, because **NO NOTICE, NO HEARING, NO** statutory or common law objections were raised in ***any*** hearing, **NO** post hearing final determination and or ***any*** order was issued, thus **NO** thirty days apply.

"…and rules within thirty days after service of such **<u>order</u>**. The commissioner may request the participation of the attorney general in such hearings."

And yet, here is a brief defense against ***any*** effort to bar ***any*** part of this verified Rule 78 OSC petition based on ***any*** statute of limitations, because they fail because ***any*** and all constitutional rights do not, at ***any*** time, run out of time. The 14th Amendment did not

come with ***any*** statute of limitations. Courts have long held that **ongoing constitutional violations cannot be extinguished by mechanical statute-of-limitations arguments**, particularly where the State itself failed to provide the notice that would trigger ***any*** deadline.

The Supreme Court has made clear that **continuing constitutional injury is irreparable as a matter of law** (*Elrod v. Burns*, 427 U.S. 347, 373 (1976)) and that unconstitutional state conduct is **void ab initio and may be enjoined at *any* time** (*Ex parte Young*, 209 U.S. 123 (1908); *Verizon Maryland*, 535 U.S. 635 (2002)). The Second Circuit reaffirmed in **Lucente v. County of Suffolk**, 980 F.3d 284 (2d Cir. 2020), that when government action imposes an unconstitutional condition that persists into the present, **the limitations clock does not bar suits seeking prospective relief**, because each day the unconstitutional condition continues constitutes a new violation.

Petitioner Now Assists the Court in Answering CPLR 7803's Probing 3 Questions

The court must ask these essential questions of Defendants actions cited below from CPLR 7803:

"1. whether the body or officer ***failed to perform a duty*** enjoined upon it by law;" CPLR 7803

<u>QUESTION:</u> Did the DEC and *any* of its officials, Defendants in this case fail in *any* of their duties?

<u>ANSWER:</u> ***Oh my, clearly, YES!***

"2. whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction;" CPLR 7803

<u>QUESTION:</u> Did the DEC and *any* of its officers, Defendants in this case proceed without *any* jurisdiction?

<u>ANSWER:</u> *Obviously, YES!*

"3. whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion," CPLR 7803

<u>QUESTION:</u> Did the DEC and *any* of its officers violate *any* lawful procedures?

<u>ANSWER:</u> *YES, YES, YES……*

<u>QUESTION</u>: Did the DEC and *any* of its officers, Defendants in this case make a determination based upon *any* error of Law?
<u>ANSWER:</u> *YES, of course.*

<u>QUESTION</u>: Did the DEC and *any* of its officers, Defendants in this case, make a final determination that was in *any* way arbitrary and capricious?

<u>ANSWER:</u> *Hell Yes!*

<u>QUESTION:</u> Did the DEC and *any* of its officials, Defendants in this case abuse their discretion in *any* of their actions and *any* final determinations?

<u>ANSWER</u>: *OMG, absolutely, YES!*

Is Petitioner absolutely sure?

Let's ask some refresher questions, just to make sure:

1. 15 days prior to or at ***any*** time before the March 6, 2017 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, giving Mr. Raven ***any*** NOTICE of the proposed "significant threat" determination and proposed order by certified mail?

ANSWER: **NO**

2. 15 days prior to or at ***any*** time before the March 6, 2017 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, giving Mr. Raven ***any*** opportunity to contest the proposed order containing a potential “significant threat” determination?

ANSWER: **NO**

3. 15 days prior to or at ***any*** time before the March 6, 2017 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, sending Mr. Raven ***any*** certified USPS mail regarding the proposed order's supposed “significant threat” determination?

ANSWER: **NO**

4. 15 days prior to or at ***any*** time before the March 6, 2017 Order on Consent sent to Mr. Raven, can the DEC provide to this court ***any*** return requested receipt or signature proving that the DEC complied with ***any*** part of ECL §27-1313 (4) and or ***any*** part of 6NYCRR 375 2.7 (B 1-6) and the Due Process clause of the 14th Amendment?

ANSWER: **NO**

5. 15 days prior to or at ***any*** time before the September 5, 2025 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, giving Mr. Raven ***any*** NOTICE of the “significant threat” determination and proposed order by certified mail?

ANSWER: **NO**

6. 15 days prior to or at ***any*** time before the September 5, 2025 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, giving Mr. Raven ***any*** opportunity to contest the proposed order containing a potential “significant threat” determination?

ANSWER: **NO**

7. 15 days prior to or at ***any*** time before the September 5, 2025 Order on Consent sent to Mr. Raven, did the DEC follow the mandate under ECL §27-1313 (4) and 6 NYCRR 375 Part 2.7 (B 1-6) and the Due Process clause of the 14th Amendment, sending Mr. Raven ***any*** certified USPS mail regarding the proposed order's supposed “significant threat” determination?

ANSWER: **NO**

8. 15 days prior to or at ***any*** time before the September 5, 2025 Order on Consent sent to Mr. Raven, can the DEC provide to this court ***any*** return requested receipt or signature proving that the DEC complied with ***any*** part of ECL §27-1313 (4) and or ***any*** part of 6 NYCRR 375 2.7 (B 1-6) and the Due Process clause of the 14th Amendment?

ANSWER: **NO**

SO WHAT DOES ALL THIS ACTUALLY MEAN?

What does the Law say when ***any*** agency of the government, in this case the NYS DEC, acts outside and in violation of ***any*** of the U.S. Constitution's statutes and amendments, but in this case specifically the 14th Amendment, New York’s ECL §27-1313 (4) and the DEC’s own 6 NYCRR 375 2.7 B (1-6).....**?**

ITS ACTIONS and DETERMINATIONS are DEEMED ULTRA VIRES and thus VOID AB INITIO:

DEC’S ACTIONS ARE LEGALLY NON-EXISTENT AND CANNOT BE ENFORCED

The agency actions challenged here—including the 2017 Order on Consent, the 2025 Order on Consent, and every subsequent enforcement from the March 6, 2017 date, up until and including all coercive calls and emails, all coerced entrance, onsite drilling through Petitioner's property, seizure of Petitioner's soil, or publications of a “Significant Threat” classification on the DEC Website and in the Media—are **void ab initio** because they were taken ***without*** **statutory authority**, **without the required administrative predicates**, and **in complete violation of constitutional due-process guarantees**.

A. Under the New York Field Delivery Rule, Agency Actions Taken in Violation of Mandatory Procedures Are Void and Cannot Be Enforced

New York’s seminal **Field Delivery Service** doctrine holds that **when an agency fails to follow its own binding regulations, its actions are “invalid” and of no legal effect**.

See *Matter of Field Delivery Serv., Inc. v. Roberts*, 66 N.Y.2d 516, 520–521 (1985):

> “An agency’s failure to comply with its own regulations renders its determination invalid as a matter of law.”

This principle is absolute where—as here—the regulation is **mandatory**, not discretionary.

The DEC’s own regulations at **6 NYCRR 375-2.7(b)(1)–(6)** make clear that before any classification (Class 2, Class 3, etc.) or enforcement action can be initiated, the agency **must**:

1. issue a proposed formal site classification determination prior to the order;
2. provide mailed notice to the property owner;
3. include a right to contest or comment about the classification in a DEC arranged hearing;
4. including the right during that hearing to raise statutory and common law objections;
5. make a final post hearing determination;
6. allow thirty days for that final determination to be contested in an article 78 civil proceeding
7. And then, and only ***after that hearing***, make a final determination upon which it can then issue ***any*** order with lawful jurisdiction under statutory authority.

The DEC did *none* of these things.

There is **no final determination according to statute**, **no certified notice**, **no findings**, **no record**, and **no authority**.

Under **Field Delivery**, agency actions taken without compliance with mandatory steps are not merely "erroneous"—they are **jurisdictionally void**.

B. Federal Law Reinforces This Rule Through the Accardi Doctrine: Agencies Must Follow Their Own Rules, or Their Actions Are Void

The United States Supreme Court's **Accardi Doctrine** likewise requires federal and state agencies acting under federal constitutional constraints to follow their own regulations.

See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

The core rule:

> When an agency fails to follow rules it has itself promulgated, its action is unlawful and must be set aside.

The Supreme Court and Second Circuit have repeatedly reaffirmed this principle:

- *Service v. Dulles*, 354 U.S. 363 (1957)
- *Vitarelli v. Seaton*, 359 U.S. 535 (1959)
- *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1991) ("Accardi Doctrine applies with full force to procedural rules designed to protect individual rights.")

Because DEC's required classification procedures are expressly designed to protect property owners' rights, notice, and the opportunity to be heard, **Accardi applies with maximum force**.

When an agency violates its own procedures **and** statutory prerequisites, its actions are:

- *ultra vires*,
- *void ab initio*, and
- *constitutionally unenforceable*.

C. DEC Acted Without Statutory Authority Under ECL §27-1313(4), Rendering All Subsequent Actions Void

ECL §27-1313(4) authorizes the Commissioner to issue orders **only after**:

1. **a final post notice and hearing determination** is made;
2. **after certified service** was made prior to the hearing and after containing a final determination to the property owner; and
3. **the expiration of a 30-day window in which the owner may seek Article 78 review**.

Because the DEC never issued or served a final determination, the statutory prerequisites to §27-1313(4) enforcement **never occurred**.

An agency cannot "bootstrap" authority from a predicate that never existed.

Thus:

- The 2017 Order on Consent,
- the 2025 Order on Consent,
- the continued publication of a "Class 2 Significant Threat" designation,
- and the already exercised enforcement and entry and,
- the ongoing threat of unilateral site entry or property destruction and soil seizure,

were all executed **without statutory authorization**, and are therefore **void ab initio**.

D. No Agency May Create Power Where the Legislature Withheld It

Courts repeatedly hold that an agency **cannot act unless the Legislature has given it power to do so**, and where an agency exceeds its statutory authority, its actions are void.

Examples include:

- *Rochester Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 71 N.Y.2d 313 (1988)
- *Matter of Aurelius Capital Partners v. Paterson*, 93 A.D.3d 95 (1st Dep't 2012)
- *Boreali v. Axelrod*, 71 N.Y.2d 1 (1987)

Here, the Legislature established very specific environmental enforcement procedures in ECL §27-1313 and 6 NYCRR Part 375.

DEC ignored them.

An agency cannot, by ignoring mandatory procedures, **create authority for itself that the statute expressly conditions on those procedures**.

E. Violations of the Fourteenth Amendment Render the Agency's Actions Void

Even if the DEC had complied with its own statute and regulations—which it did not—its failure to provide:

- **notice**,
- **a meaningful opportunity to be heard**,
- **a final determination**,
- **findings of fact**, and
- **the right to appeal or contest the classification**

violates the Fourteenth Amendment Due Process Clause.

Government actions undertaken in violation of due process are **constitutionally void**. See:

- *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985)
- *Mathews v. Eldridge*, 424 U.S. 319 (1976)
- *Fuentes v. Shevin*, 407 U.S. 67 (1972) (seizure of property without prior notice/hearing is void)

An unconstitutional deprivation of property rights **cannot be legitimized retroactively** through consent orders obtained without lawful authority, without lawful process, and under threat of coercive enforcement.

F. A Void Act Confers No Rights, Creates No Obligations, and Is a Legal Nullity

Under both New York and federal law, a void act:

- cannot be enforced,
- cannot form the basis of penalties or obligations,
- and cannot support ongoing publication or classification consequences.

As the Court of Appeals put it:

> "A void act is no act at all."
> — *Matter of Grossman*, 46 N.Y.2d 184 (1978)

DEC's orders and classifications fall squarely within this doctrine.

Pro Se Litigants May Write Passionately, Forcefully, and Even Sarcastically

Courts have repeatedly held that pro se pleadings must be liberally construed and are not to be judged by the stylistic or rhetorical standards expected of trained counsel. As the Supreme Court stated, a pro se filing must be held **"to less stringent standards than formal pleadings drafted by lawyers."** ***Haines v. Kerner*****, 404 U.S. 519, 520–21 (1972).** The Second Circuit echoes this mandate, explaining that courts must **"construe pro se submissions liberally and interpret them to raise the strongest arguments that they suggest."** ***Triestman v. Fed. Bureau of Prisons*****, 470 F.3d 471, 474 (2d Cir. 2006).** This liberal construction explicitly protects unconventional, forceful, emotionally charged, or rhetorically pointed language, because pro se litigants **"cannot be expected to frame legal issues with the precision of an attorney."** ***Ruotolo v. I.R.S.*****, 28 F.3d 6, 8 (2d Cir. 1994).**

Federal courts also recognize that passion, frustration, sarcasm, or strong rhetoric does not forfeit legal rights nor diminish the validity of claims. In *Erickson v. Pardus*, 551 U.S. 89, 94 (2007), the Supreme Court reversed a dismissal explicitly because **the lower courts improperly held a pro se litigant to heightened standards of precision and tone. Likewise, the Second Circuit in *Burgos v. Hopkins***, 14 F.3d 787, 790 (2d Cir. 1994), emphasized that a pro se litigant's **"informal words, inartful phrasing, or non-legal rhetoric do not undermine the substance of the claim."** Even filings

containing “strongly worded” or “impassioned” assertions must be evaluated on **their legal merit, not their tone**. **See *Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003)** (pro se complaints judged by “substance over form” regardless of expressive style).

Accordingly, any attempt by Defendants or this court to dismiss or belittle Plaintiff’s arguments on the basis that he writes passionately, forcefully, or with rhetorical edge is contrary to established law. **The judiciary is required to honor the content of a pro se litigant’s claims—not police his tone.**

CONCLUSION

This case is now marching towards an upcoming January 6,20256 OSC Rule 7803 hearing, where the DEC and the State of New York and the various defendants have been ordered to show cause. The cause they must show in this case is simply, did they comply with the Bill of Rights and specifically the14th Amendment to the U.S. Constitution expressed through **ECL §27-1313 (4) and 6 NYCRR 375 2.7 B (1-6).**

Though there are many facets to this case, if taken simultaneously or in the wrong order frustrate justice and possibly even thwart justice. These other subsidiary issues are clouding the case and that is by design, since defendants have no other recourse. Defendants can empty their archives, cite void and unlawful past determinations, make unfounded and defamatory accusations in the DEC’s ongoing bad faith efforts to continuously mislead the court by avoiding the fundamental questions that the court is

obligated to ask at the outset. And that is to determine whether the CPLR 7803 duty, jurisdiction, due process and arbitrary and capricious threshold have been met.

This was the case in the TRO hearing, where this court refused to consider the fundamental constitutional question required to establish ongoing irreparable harm. And as a result, even the court itself has become party to the ongoing and irreparable harm by the denial of the TRO's and the denial of Petitioner's guaranteed fundamental natural rights.

Petitioner continues to suffer the lingering, ongoing and dangling sword like effects of jurisdictionless statutory abuse at the hands of the DEC through their illicitly seized statutory power which the state has been enforcing over Petitioner's life for the past 8 years. This life consuming litigation itself, is nothing more than the poisonous fruit of the DEC's arbitrary and capricious acts.

If the court wishes to pretend by its continual deference to the DEC that the DEC has secretly, faithfully and meticulously fulfilled its lawful statutory obligations under its own 6 NYCRR Part 375 2.7 Rules, the State of New York's ECL §27-1313 - 4, and the U.S. Constitution's 14th Amendment, then there is no more argument that Petitioner can make that will persuade the court from its apparently predetermined course. Thus Petitioner will have to seek appellate review where he is confident that his guaranteed constitutional rights will be upheld and vindicated.

The Jan 6 OSC hearing can and ought to be brief since the core issue is narrow. All the court needs to do is ask these basic questions expanded and listed above of defendants to establish the necessary threshold criteria and multiple violations under CPLR 7803.

Because the DEC's actions were taken **without *any* statutory authority**, **without *any* compliance with their own mandatory regulations**, and **in violation of fundamental constitutional due process**, they are **ALL ultra vires and void ab initio**, legally nonexistent, and cannot form a valid basis for enforcement, publication, or any ongoing deprivation of rights.

The court must find the DEC's actions so.

The court must annul both the 2017 and 2025 "Class #2 Significant Threat" orders on consent and all subsequent actions, incursions, testing, results, investigation, violations, media press releases, website appearances and ***any*** and all other coercive efforts over plaintiff's life and property, stemming from their ***ultra vires*** actions, that has rendered them as the law clearly states they are……***VOID AB INITIO!***

After the court order below is signed, the DEC and its officers may restart their remedial processes by complying with ECL §27-1313 (4) and 6 NYCRR 375 2.7 B (1-6). It is that simple.

There is obviously no rush, and thus plenty of time as the DEC has confessed no significant threat exists, which is demonstrated by the DEC slowwalking this debacle in the exercise in environmental remediation for nearly 20 years.

Once the DEC sends its NOTICE of renewed proposed determination through certified mail, Petitioner will have 15 days to respond to the notice and proceed with Petitioner's statutory and common law objections in a DEC organized hearing. After that hearing a genuine DEC Commissioner's final determination and order can be issued. If that order is disagreeable to Petitioner, petitioner will proceed again under CPLR 7803 in a court of law in the state of New York to appropriately address areas of disagreement, trusting that the correct and lawful final determination will eventually come about by all parties involved, including this honorable court, abiding by and conforming its decisions and actions to the precious, fair, decent and righteous Due Process of Law clause under the 14th amendment to the United State’s Constitution.

EXHIBITS A and B

EXHIBIT A

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 8
6274 East Avon-Lima Road, Avon, NY 14414-9516
P: (585) 226-5311 I F: (585) 226-9485
www.dec.ny.gov

March 6, 2017

Certified Mail, Return Receipt Requested

Julian Raven
2524 County Route 60
Elmira, New York 14901

Re: Site Name: Associated Textile Rental Services
Site No.: 808041
Site Address: 714 Baldwin Street, Elmira, New York 14901
Property County: Chemung
Tax Map/Parcel No.: Section 89 Subsection 11 Block 03 Lot 15

Hereinafter referred to as "Site"

Dear Mr. Raven:

The New York State Department of Environmental Conservation (the "Department") has documented a release of "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, *et seq.*, (CERCLA) and the presence of "hazardous wastes" as defined in the New York State Environmental Conservation Law (the "ECL") at or near property identified as the Former Perfecto Dry Cleaners Site, consisting of approximately 0.59 acres, is more fully described as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

Tax Map/Parcel No.: Section 89 Subsection 11 Block 03 Lot 15
714 Baldwin Street
Elmira, New York 14901
Owner: Julian Raven

In response to the documented release and the threat of future releases, the Department determined the Site posed a "significant threat" as that condition is defined pursuant to the ECL and, the Site was placed on the Registry of Inactive Hazardous Waste Disposal Sites (the "Registry") and classified as a Class "2" site on the Registry. The Department anticipates spending public funds to remediate the contamination pursuant to ECL Article 27, Titles 13 and 71, and the New York State Finance Law §97-b (the "SFL").

NEW YORK STATE OF OPPORTUNITY. Department of Environmental Conservation

As the owner, past owner, possible arranger, generator, transporter, supplier, or operator, present or past including successors and assigns of those mentioned of the Site, the Department has determined that you are a party potentially responsible for the Site's contamination.

Be advised, responsible parties are liable for the reimbursement of funds expended by the State of New York (the "State") in taking response actions at sites where hazardous substances and/or wastes have been released, including investigative, planning, removal and remedial work.

Accordingly, in furtherance of ECL and the SFL, the Department hereby requests that you implement and finance a remedial program and selected remedy for the Site's contamination. The agreement to undertake and finance a remedial program for the Site must be memorialized in an administrative consent order (a "Consent Order").

In the event you are unwilling to enter into a Consent Order, please be further advised the Department shall use best efforts to begin a remedial program to perform the remediation of Site contamination. Be advised that to the extent that a signed Consent Order is not returned to the Department within 90 days of the date of this letter, the Department may task a contractor to develop a work plan to implement the Remedial Design/Remedial Action Work Plan. Be further advised that to the extent that a signed Consent Order is not returned to the Department within 120 days of the date of this letter, the Department may authorize the contractor to proceed with implementing the Remedial Design/Remedial Action Work Plan.

To the extent a Consent Order is not signed and returned, the State may use funds from the Hazardous Waste Remedial Fund established pursuant to the SFL, and in accordance with the ECL and the rules and regulations promulgated thereto, to undertake the investigation and/or remediation of such contamination. The State's costs incurred relative to such Site contamination, as well as any past costs and interest will be recoverable by the State from the responsible parties as provided by 42 USC ' 9607, the ECL, the SFL, and any other applicable provision of state and/or federal law.

Be further advised that the Environmental Conservation Law (ECL) Article 27-1309(3), 27-1309(4) and 27-1313(8) authorizes DEC or its authorized agents to enter upon any site, areas near such site, or area on which it has reason to believe that contaminants were disposed or discharged for purposes of inspection, sampling and testing, implementing a remedial program, long-term site management and temporary occupancy. This letter notifies you of DEC's intent to exercise its right, and the right of its authorized agents, to access the above referenced property, and any areas near such site, or area, pursuant to the cited statutory authority. This is not a notice that DEC intends to acquire the property nor is it an offer to acquire it.

Nothing contained herein constitutes a waiver by the Department and/or the State of New York for any rights held pursuant to any applicable state and/or federal law or a release for any party from any obligations accrued pursuant to those same laws.

Please contact me at (585) 226-5368 with any questions.

Sincerely,

Dudley D. Loew
Assistant Regional Attorney

ec: Michael Cruden, Bureau Director
Bart Putzig, Section Chief
Robert Schick, P.E., Division Director DER
Zachary Russo, DEC Project Manager
Dolores Tuohy, Office of General Counsel
Dennis Harkawik, Regional Attorney
Dudley Loew, Senior Attorney
Bernette Schilling, RHWRE

NEW YORK STATE | Department of Environmental Conservation

KATHY HOCHUL
Governor

AMANDA LEFTON
Commissioner

Sent via 1st Class Mail

September 5, 2025

EXHIBIT B

Julian Raven
714 Baldwin St.
Elmira, NY 14901

Re:	Site Name:	714 Baldwin Street
	Site No.:	808041
	Site Address:	714 Baldwin Street, Elmira, New York
	Property County:	Chemung
	Tax Map/Parcel No.:	89.11-3-15

Hereinafter referred to as "Site"

Dear Sir/Madam:

The New York State Department of Environmental Conservation (the "Department") has documented a release of "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601, *et seq.*, (CERCLA) and the presence of "hazardous wastes" as defined in the New York State Environmental Conservation Law (the "ECL") at or near property identified as the 714 Baldwin Street Site, consisting of approximately 0.75 acres, which is more fully described as follows:

Subject Property Description (A Map of the Site is attached as Exhibit "A")

Tax Map/Parcel No.: 89.11-3-15
714 Baldwin Street
Elmira, New York 14901

Owner: Julian Raven

In response to the documented release and the threat of future releases of hazardous waste at the Site, the Department determined the Site poses a "significant threat" to public health or the environment as that condition is defined pursuant to the ECL, and the Site was classified as a Class "2" site and placed on the Registry of Inactive Hazardous Waste Disposal Sites (the "Registry"). The Department anticipates spending public funds to remediate the contamination pursuant to ECL Article 27, Titles 13 and 71, and the New York State Finance Law § 97-b (the "SFL").

The Department has determined that you, as the past or present owner, arranger, generator, transporter, supplier, or operator of the Site, including successors and assigns of these same entities, are potentially responsible for the Site's contamination.

Be advised, responsible parties are liable for the reimbursement of funds expended by the State of New York (the "State") in taking response actions at sites where hazardous substances and/or wastes have been released, including investigative, planning, removal and remedial work.

Accordingly, in furtherance of ECL and the SFL, the Department hereby requests that you implement or finance a remedial program in connection with the contamination at or emanating from the Site. The agreement to undertake or finance a remedial program at the Site must be memorialized in an administrative consent order (a "Consent Order") with the Department.

If you do not enter into a Consent Order, the State may use funds from the Hazardous Waste Remedial Fund established pursuant to the SFL, and in accordance with the ECL and the rules and regulations promulgated thereto, to undertake the investigation and/or remediation of contamination at and/or emanating from the Site. The State's costs incurred relative to such Site contamination, as well as any past costs and interest, will be recoverable by the State from the responsible parties as provided by 42 USC § 9607, the ECL, the SFL, and any other applicable provision of state and/or federal law.

In the event you do not enter into a Consent Order within 120 days of the date of this letter, the Department may authorize a contractor to proceed with implementing work plans to perform the investigation and/or remediation of contamination at or emanating from the Site.

Additionally, ECL Sections 27-1309(3), 27-1309(4) and 27-1313(8) authorize the Department (including its authorized agents) to enter upon any site, area(s) near such site, or any area(s) on which it has reason to believe that contaminants were disposed or discharged. The Department may enter any of these site(s) and/or areas for purposes of inspection, sampling and testing, implementing a remedial program, long-term site management and temporary occupancy. This letter notifies you of the Department's intent, pursuant to the previously cited statutory authority, to exercise its right, and the right of its authorized agents, to access the above-referenced property(ies), site(s), any area(s) near such site or area, and any area(s) on which it has reason to believe contaminants were disposed or discharged.

Please contact Kira Bruno, the Project Manager for the site, at (518) 402-8068 or kira.bruno@dec.ny.gov, with any technical questions. If you have retained legal counsel in regards to this matter, please have your counsel contact me, the Project Attorney, at (585) 226-5368 or dudley.loew@dec.ny.gov with any legal questions or concerns.

You or your attorney must contact the Department's Project Manager or Project Attorney by 30 days from date of the letter to discuss whether you intend to enter into a Consent Order to implement a remedial program for the Site, or whether you intend to remain liable for costs incurred by NYSDEC for the remedial program and selected remedy. If you do not contact the Department, you may not receive any further notice. The Department may start accruing costs, which are potentially your responsibility and these costs may be referred to the Attorney General's office for collection.

Nothing contained herein constitutes a waiver by the Department and/or the State of New York of any rights held pursuant to any applicable state and/or federal law or a release for any party from any obligations accrued pursuant to those same laws.

Sincerely,

Dudley Loew

Dudley Loew
Regional Attorney

ec: J. Raven (julianmarcusraven@gmail.com)
K. Bruno
M. Cruden, Bureau Director
P. Long, Section Chief
A. Guglielmi, Division Director DER
D. Loew, Office of General Counsel
D. Pratt, RHWRE

[PROPOSED] ORDER DECLARING AGENCY ACTION ULTRA VIRES AND VOID AB INITIO AND GRANTING INJUNCTIVE RELIEF

Upon consideration of Plaintiff's submissions, including arguments concerning the New York Department of Environmental Conservation's failure to comply with the mandatory statutory and regulatory prerequisites governing environmental site classification and enforcement authority; and upon review of the governing constitutional, statutory, and decisional law, the Court finds as follows:

FINDINGS OF FACT AND LAW

1. The New York State Department of Environmental Conservation ("DEC") did not issue or serve any final site classification determination regarding Plaintiff's property as required by ECL §27-1313(4) and the implementing regulations at 6 NYCRR 375-2.7(b)(1)–(6).
2. DEC did not provide Plaintiff with certified notice, an opportunity to respond, or any meaningful pre-deprivation process, in violation of both New York statutory requirements and the Fourteenth Amendment Due Process Clause.
3. The agency's internal record contains no findings, no determination documents, no administrative adjudication, and no statutory basis authorizing the issuance of any Order on Consent or enforcement action with respect to Plaintiff's property.
4. Under Matter of Field Delivery Serv., Inc. v. Roberts, 66 N.Y.2d 516 (1985), agency actions taken in violation of mandatory procedural rules are invalid as a matter of law.
5. Under the Accardi Doctrine, originating in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), agencies must follow their own rules, and actions taken in violation of those rules are unlawful and must be set aside. See also *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1991).
6. Because DEC failed to comply with mandatory statutory and regulatory prerequisites, the agency lacked jurisdiction and legal authority to issue the 2017 or 2025 Orders on Consent, and therefore those documents were ultra vires and void ab initio, conferring no legal rights and imposing no legal obligations on Plaintiff.
7. A governmental action undertaken without lawful authority is "no act at all." *Matter of Grossman*, 46 N.Y.2d 184 (1978). Such actions cannot be enforced, relied upon, or used to justify ongoing or future deprivation of constitutional rights.
8. The ongoing publication and enforcement of a "Class 2" or "Significant Threat" classification, absent a valid final determination, constitutes a continuing violation of Plaintiff's constitutional rights and causes ongoing irreparable harm.

9. Prospective injunctive and declaratory relief is proper under Ex parte Young, 209 U.S. 123 (1908), because Plaintiff challenges ongoing constitutional violations, not past harms.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

I. DECLARATORY RELIEF

1. The DEC's purported classification of Plaintiff's property as a "Class 2" or "Significant Threat" site is hereby DECLARED ULTRA VIRES, VOID AB INITIO, and of no legal effect, as it was issued without statutory authority, without compliance with 6 NYCRR Part 375, and in violation of the Fourteenth Amendment.
2. The 2017 Order on Consent and 2025 Order on Consent concerning Plaintiff's property are hereby DECLARED INVALID AND VOID, as they were executed without prerequisite lawful authority and in violation of mandatory statutory and constitutional procedures.

II. INJUNCTIVE RELIEF

3. The DEC, its officers, agents, employees, successors, and all persons acting in concert with them are ENJOINED AND RESTRAINED from:
   a. publishing, maintaining, disseminating, or enforcing any classification of Plaintiff's property as a "Class 2" or "Significant Threat" site;
   b. undertaking or threatening any enforcement action, entry, excavation, sampling, seizure of soil, or other physical intrusion premised on the void Orders on Consent;
   c. relying on any void or ultra vires classification, determination, or order for any purpose whatsoever.
4. The DEC shall REMOVE any such classification from all public-facing databases, websites, or publications within seven (7) days of entry of this Order.
5. The DEC shall preserve all internal communications, drafts, emails, notes, database entries, and records relating to Plaintiff's property, including all withheld or undisclosed documents, and shall not alter, delete, destroy, modify, or overwrite any such materials.

III. FURTHER RELIEF

6. This Order does not preclude DEC from initiating any lawful administrative process in the future, provided that it complies fully with ECL §27-1313, 6 NYCRR Part 375, and the Fourteenth Amendment Due Process Clause, including notice, findings, and an opportunity to be heard.

7. The Court retains continuing jurisdiction to enforce this Order and to adjudicate any subsequent filings.

IT IS SO ORDERED.

Dated: _____

AFFIDAVIT OF JULIAN MARCUS RAVEN IN SUPPORT OF DECLARATORY AND INJUNCTIVE RELIEF (ULTRA VIRES / VOID AB INITIO)

I, Julian Marcus Raven, being duly sworn, hereby depose and state under penalty of perjury:

I. Personal Background

1. I am the Plaintiff in this action. I submit this affidavit in support of my request for declaratory and injunctive relief based upon the ultra vires and void ab initio nature of the New York State Department of Environmental Conservation's ("DEC") actions concerning my property located at 714 Baldwin Street, Elmira, New York.
2. I make this affidavit based upon personal knowledge, review of documents produced by the DEC, FOIL responses, public records, and the absence of records that must exist as a matter of law.

II. DEC Never Issued or Served the Mandatory Final Determination Required by Law

3. At no time since my purchase of the property did the DEC ever:
   a. issue a final site classification determination,
   b. serve such determination upon me by certified mail,
   c. provide me with findings of fact or environmental/risk analyses, or
   d. afford me an opportunity to contest or appeal the classification.
4. ECL §27-1313(4) authorizes DEC enforcement only after a valid final determination is issued and served. Because no such determination exists, the statutory conditions precedent to DEC's authority never occurred.
5. The DEC's own FOIL responses confirm the absence of these required documents. They produced no final determination, and unlawfully withheld 148 internal communications that should exist if lawful action had occurred.

III. DEC Violated Its Own Mandatory Regulations Under 6 NYCRR 375-2.7(b)(1)–(6)

6. Before classifying a site as "Significant Threat" or issuing any enforcement instrument, the DEC is required by regulation to:
   - investigate;

- prepare findings;
- issue a proposed classification;
- provide written notice;
- allow comment or contest;
- finalize the determination in the record.

7. The DEC failed to perform every one of these mandatory steps. My property was never afforded the procedural protections guaranteed by these rules.
8. Under *Matter of Field Delivery Serv., Inc. v. Roberts*, 66 N.Y.2d 516 (1985), when an agency fails to follow its own mandatory procedures, its actions are invalid as a matter of law.
   Here, the DEC's failure was total.

IV. Under the Federal Accardi Doctrine, DEC Was Required to Follow Its Own Rules

9. The U.S. Supreme Court in *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954), held that agencies must follow their own rules, and actions taken in violation of those rules are unlawful and must be set aside.
10. This doctrine has been reaffirmed in:

- *Service v. Dulles*, 354 U.S. 363 (1957);
- *Vitarelli v. Seaton*, 359 U.S. 535 (1959);
- *Montilla v. INS*, 926 F.2d 162 (2d Cir. 1991).

11. DEC violated every procedural safeguard in its own regulations. Under Accardi and its progeny, DEC's actions—classification, publication, and the Orders on Consent—are void.

V. The 2017 and 2025 Orders on Consent Were Ultra Vires

12. Because the DEC never issued a final determination, it had no statutory authority to issue the 2017 or 2025 Orders on Consent under ECL §27-1313.
13. A governmental action undertaken without jurisdiction or statutory authority is ultra vires and void ab initio.
14. The 2017 Order on Consent was issued without:

- a valid classification,
- any prior notice,
- any opportunity to contest,
- any lawful foundation.

15. The 2025 Order on Consent was likewise based upon the same nonexistent determinations and therefore also void.
16. No person can lawfully be bound by, or penalized under, an agency action that was void from inception.

VI. The Ongoing Publication of a "Class 2 Significant Threat" Classification Is a Continuing Constitutional Violation

17. DEC continues—today—to publish and disseminate a “Class 2 Significant Threat” classification for my property, even though no lawful determination exists.
18. This ongoing publication:
- damages my property rights,
- deters tenants, lenders, insurers, and contractors,
- stigmatizes my property and reputation,
- threatens seizure of soil and physical intrusion, and
- inflicts irreparable harm every day it remains public.
19. Because the underlying determination is void, the continuing publication constitutes a continuing violation of my Fourteenth Amendment rights.
20. As the Supreme Court held in *Elrod v. Burns*, 427 U.S. 347, 373 (1976), ongoing constitutional injury constitutes irreparable harm as a matter of law.

VII. Void Acts Cannot Be Enforced

21. Under New York law, a void act is a “nullity.” *Matter of Grossman*, 46 N.Y.2d 184 (1978).
22. A void act:
- confers no rights,
- creates no obligations,
- imposes no duties,
- and cannot be enforced.
23. The DEC’s actions meet this definition precisely.

VIII. I Seek Only Prospective Relief to Halt Ongoing Unlawful Conduct

24. I am not seeking damages against the State of New York.

25. I am seeking only prospective equitable relief, which is explicitly permitted under *Ex parte Young*, 209 U.S. 123 (1908), when a plaintiff challenges ongoing violations of federal law.
26. I respectfully request that this Court declare the DEC's actions void and enjoin further publication or enforcement until the agency complies with the law.

AFFIRMATION

I affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this 8th day of December, 2025,
at Elmira, New York.

Julian Marcus Raven
Plaintiff
714 Baldwin Street
Elmira, NY 14901
julianmarcusraven@gmail.com

KAYLA A BOLT
Notary Public - State of New York
NO. 01BO0035074
Qualified in Chemung County
My Commission Expires Mar 20, 2029