

STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERALLETTITIA JAMES
ATTORNEY GENERALDIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

November 7, 2025

Hon. Christopher P. Baker
Hazlett Building
203-205 Lake Street
Elmira, NY 14901

Re: *Raven v. DEC* (2025-1215); Opposition to Petitioner's
Request for a Temporary Restraining Order.

Dear Judge Baker:

The State opposes petitioner's temporary restraining order (TRO) request as unnecessary and improper.¹ Petitioner acknowledged in his November 7, 2025 affidavit that there is no immediate harm (*see* [NYSCEF Doc No. 8](#), Petitioner's Aff., at 1). He then attempts to reverse the burden and ask for an overly broad TRO based on the lack of an imminent harm. Accordingly, the Court should deny petitioner's request.

The Department has no plans to conduct a remedial action on the site (808041) before January 6, 2026 and is willing to stipulate that it will not enter the site to conduct remedial work or sampling without first giving ten days' notice specified in [ECL 27-1309](#)(4) and [27-1313](#)(8). Any such notice would afford petitioner ample time to seek a temporary restraining order and moots the need for this motion.

Even if the Department had not assured the Court and petitioner that it will comply with the statutory notice requirements, which would give petitioner sufficient time to seek the Court's assistance, he is still not entitled to the restraint he seeks.

¹ Petitioner's notice of motion and accompanying documents seek a TRO; however, he improperly argues factors that are relevant to the preliminary injunction request that is set for argument on January 6, 2026. The State reserves its right to brief the preliminary injunction and merits in full according to the Court's scheduling order, and limits its response here to the request for a TRO. Petitioner also violated [22 NYCRR 202.8\(c\)](#), by filing an affidavit apart from his notice of motion. Further, the State respondents do not waive personal jurisdiction to this proceeding/action.

Under [CPLR 6301](#), “[a] temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.” Temporary restraining orders are drastic remedies that should be used sparingly (see [Rick J. Jarvis, Assoc. Inc. v Stotler](#), 216 AD2d 649, 650 [3d Dept 1995]; [Silvestre v De Loaiza](#), 12 Misc 3d 492, 493 [Sup Ct, NY County 2006]). The party seeking a TRO “must be certain as to the law and the facts and the burden of establishing such an undisputed right rests upon the plaintiff” ([Town of Southeast v Gonnella](#), 26 AD2d 550, 550 [2d Dept 1966]).

There is no imminent threat of an irreparable harm because any remedial action the Department might take requires several preliminary steps. If a responsible party declines to remediate a contaminated site, and the Department wishes to proceed, the Department prepares a workplan under [DER-10](#), 5.2 and gives ten days’ notice before taking remedial action under [ECL 27-1313](#)(8). Neither of those things has happened yet for this site. Petitioner’s fear—that the Department will remediate the site before January 6, 2026—is unfounded.

Nor has petitioner demonstrated irreparable harm—a fundamental requirement for an immediate restraint. Petitioner appears to be afraid that the Department will hire contractors to remediate his contaminated property, thereby making it safer for both him and the community. Petitioner cannot claim that remediation would somehow harm him. Further, any financial loss is not an irreparable injury (see [DiFabio v Omnipoint Communications, Inc.](#), 66 AD3d 635, 637 [2d Dept 2009]).

Petitioner’s requested relief is also inappropriate because a restraint may not stop the State from conducting its statutory duties ([CPLR 6313](#)[a] [“No temporary restraining order may be granted. . . against a public officer, board or municipal corporation of the state to restrain the performance of statutory duties.”]). The Department has statutory authority to remediate contaminated sites (see [ECL 27-1309](#), [1313](#)[8]). The Department also has a statutory right to seek cost recovery under [ECL 27-1327](#)(1) and [42 USC 9607](#). If the Department seeks cost recovery against petitioner, petitioner could present defenses to a court. Petitioner’s demand is also overbroad. He asks that the Department “be prohibited from altering, expanding, or disseminating any record, notice, or data concerning the property’s classification or environmental condition while this proceeding is pending,” which would deprive the State respondents of their ability to conduct statutory duties and to defend themselves in this proceeding. While the State maintains documents related to ongoing litigation, there is no need for a court order and disclosure is typically not warranted in article 78 proceedings.

The Department is willing to stipulate that, until January 6, 2026, it will not enter the site (808041) at issue in this proceeding to conduct remedial work or

sampling, as authorized by [ECL 27-1309](#)(4) and [27-1313](#)(8), without first giving the ten days' notice specified by those statutes. Any further relief is unnecessary and improper.

Respectfully submitted,

/s/ Nicholas C. Buttino

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