

At a Motion Term of The Supreme Court of the State of New York held in and for the Sixth Judicial District in the County of Chemung, at Elmira, New York, heard on the 6th day of January, 2026.

**PRESENT: HON. CHRISTOPHER P. BAKER
SUPREME COURT JUSTICE**

STATE OF NEW YORK
SUPREME COURT: COUNTY OF CHEMUNG

JULIAN RAVEN,

Petitioner,

DECISION & ORDER

vs.

INDEX # 2025-1215

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
KATHY HOCHUL, in her official capacity as Governor of the State of New York,
AMANDA LEFTON, in her official capacity as Commissioner of the Department of Environmental Conservation, DUDLEY LOEW, Project Attorney, KIRA BRUNO, Project Manager, in their official capacities,

Respondents.

CHRISTOPHER P. BAKER, JSC

BACKGROUND

In this CPLR Article 78 proceeding, Petitioner challenges respondent New York State Department of Environmental Conservation's ("DEC") designation of his property, located at 714 Baldwin Street, Elmira, New York (also known as Site No. 808041), as a "Class 2" property on the DEC's Registry of Inactive Hazardous Waste Disposal Sites (the "Registry"). See ECL § 27-1305; 6 NYCRR §375-2.7. Petitioner specifically challenges a September 5, 2025, letter from

DEC, which he characterizes as a “Consent Order,” and which he contends resulted in the Class 2 designation. See Petition, NYSCEF Doc. 22 at ¶1, p. 48 (exhibit A.1).¹

Petitioner separates his claims into four categories. First, he challenges the DEC’s Class 2 determination, arguing that it violates 6 NYCRR §375-2.7 because it does not tie the detection of contaminants to current or reasonably foreseeable harm. He notes that, pursuant 6 NYCRR §375-2.7(a)(4), the mere presence of contaminants at a site is not a sufficient basis to find that the contaminants constitute a significant threat. Therefore, petitioner argues the DEC’s determination is arbitrary and capricious and affected by error of law.

Second, Petitioner argues that the DEC failed to perform its mandatory annual review of the property’s classification, and to submit an up-to-date Registry to the legislature and governor each year. See 6 NYCRR §375-2.7(d)(1); ECL §27-1305(1). Petitioner argues he has never received notice of any annual reclassification.

Third, Petitioner seeks a declaratory judgment, finding that the site meets the criteria to be classified as a Class 3 site. Fourth, Petitioner seeks injunctive relief prohibiting the DEC from proceeding with any intrusive remediation work.

While this Petition has been pending, Petitioner has also filed several motions, which largely relate to the Petition. The first is a motion for a “renewed” temporary restraining order. See NYSCEF Doc. 11. Therein, he cites to “ongoing constitutional violations” unrelated to any potential physical intrusion by the DEC onto his property. Rather, he seeks to enjoin respondents from “continuing to represent or act upon the unlawful ‘class 2’ classification.” He also challenges a November 13, 2025, FOIL request denial from the DEC.

The second motion seeks “factual correction” and an adverse inference relative to the Assistant Attorney General’s representations at a prior temporary restraining order hearing that the site was classified as Class 2 in 2009. See NYSCEF Doc. 13.

The Third motion seeks clarification relative to the Court’s statement at the above-referenced temporary restraining order hearing that the Court has “known about this building for 20 years.” See NYSCEF Doc. 14. Petitioner seeks information concerning the Court’s “extrajudicial familiarity” or prior involvement that could reasonably bear on the Court’s impartiality. Petitioner also moves for recusal. See NYSCEF Doc. 28.

Fourth, Petitioner seeks an adverse inference against respondents for allegedly accusing Petitioner of “doctoring” court filings, for sanctions, and for a referral to the attorney grievance committee. See NYSCEF Doc. 15. This is apparently in relation to a statement the Assistant Attorney General made at the above-referenced temporary restraining order hearing. Respondents have indicated in their subsequent filings that these statements referred to a

¹ Section 27-1305 of the Environmental Conservation Law requires the DEC to maintain a registry of inactive hazardous waste disposal sites and to classify such sites into one of five categories of diminishing severity. Class 2 sites constitute a “significant threat to the public health or environment,” and “action is required” as to those sites. Class 3 sites “do[] not present a significant threat to the public health or environment” and “action may be deferred.” See ECL §§27-1305(2)(b)(1)(i)-(v).

document filed by Petitioner as having handwritten notes, scribbles, doodles, and the like, on it, and not a claim that the Petitioner is fraudulently altering documents.

Finally, Petitioner moves for judicial subpoenas directed to DEC personnel. See NYSCEF Doc. 16.

Respondents now move to dismiss the Petition on four bases. First, the Court lacks personal jurisdiction over the Respondents because Petitioner improperly served them pursuant to CPLR §307(2). Second, this proceeding is premature, and Petitioner failed to exhaust his administrative remedies, because there is no final agency action to challenge. Alternatively, if Petitioner is challenging the original Class 2 classification, the classification occurred in 2009, and the challenge is time barred. Third, the DEC properly completed the required annual review of classification and provided updated registry documents to the legislature and the governor as required by law. Fourth, the declaratory judgment portion of the Petition should be converted into an Article 78 proceeding, because a declaratory judgment action is not a proper vehicle to challenge an administrative action where Article 78 review is available. Additionally, the declaratory judgment claim, here, seeks the same relief as the Article 78 claim.

CONCLUSIONS OF LAW

The Court turns first to Petitioner's motions seeking the Court's recusal, as they impact the Court's ability to decide the remaining controversies here. Petitioner argues the Court must recuse because the circumstances create an appearance of impropriety or partiality. Specifically, Petitioner argues, first, that he was formerly a registered Republican, and after leaving the Republican Party, he "experienced visible political retaliation at a Chemung County Legislature meeting." While Petitioner does not argue the Court has acted improperly, he states that, "in a small political community, such shifts in political affiliation may reasonably create an appearance of political sensitivity or residual partiality, even if unintended."

Second, Petitioner contends that recusal is required because the Court possesses extrajudicial knowledge of disputed evidentiary facts. Specifically, Petitioner states that the Court indicated during a prior hearing that it had "twenty years of personal familiarity with my property." The Court's actual statement was that "I am fully aware of all the facts and circumstances of almost 20 years regarding this property," and the statement was solely in reference to the dense history which the Court learned *from the Petitioner's Petition and supporting exhibits*. The Court has no personal knowledge of any disputed facts regarding this property.

Part 100 of the Rules of the Chief Administrative Judge sets forth the rules governing judicial conduct. As relevant here, "[a] judge shall disqualify himself...in a proceeding in which the judge's impartiality might reasonably be questioned..." including where "the judge has a personal bias or prejudice concerning a party" or "the judge has personal knowledge of disputed evidentiary facts concerning the proceeding." 22 NYCRR §100.3(E)(1)(a); see also Jud. Law §14. "[A] party's unsubstantiated allegations of bias are insufficient to require recusal," and "the fact that a judge issues a ruling that is not to a party's liking does not demonstrate either bias or misconduct." Tripi v. Alabiso, 189 A.D.3d 2060, 2061, 2062 (4th Dept. 2020), quoting Matter of

Brooks v. Greene, 153 A.D.3d 1621, 1622 (4th Dept. 2017), and Gonzalez v. L'Oreal USA, Inc., 92 A.D.3d 1158, 1160 (3d Dept. 2012).

Here, the Court declines to recuse. The mere fact that the presiding Justice and a litigant were formerly members of the same political party does not provide evidence of bias, partiality, or other impropriety, nor does the fact that Republican members of the Chemung County Legislature allegedly refused to recognize Petitioner during a meeting. These allegations, thus, do not provide a basis from which the presiding Justice's impartiality might reasonably be questioned. Additionally, while the Court understands how Petitioner may have misconstrued the Court's statement during a prior hearing that he was familiar with the at-issue property, the Court makes clear, here, that such familiarity stems solely from having read Petitioner's submissions in this matter, and not from any extrajudicial source. For those reasons, recusal is not required here, and the Court denies Petitioner's motion.

Turning to the merits of Respondents' motion to dismiss for lack of personal jurisdiction, CPLR §307 provides two methods for effectuating personal service upon a state officer sued solely in an official capacity, and upon a state agency. Petitioner availed himself of the second (CPLR §307(2)(2)). This method of service requires (1) mailing the summons by certified mail, return receipt requested, to such officer, and (2) personal service upon the state by delivering the summons to either (a) an assistant attorney general at an office of the attorney general, or (b) to the attorney general. Notably, "service by certified mail shall not be complete until the summons is received in a principal office of the agency and until personal service upon the state in the manner provided by subdivision one of this section is completed." *Id.* Moreover, "service by certified mail shall not be effective unless the front of the envelope bears the legend 'URGENT LEGAL MAIL' in capital letters." *Id.* These requirements are strictly construed, and the failure to include the "urgent legal mail" language on the envelope "is not a mere 'technical infirmity' but rather a jurisdictional defect that may not be cured by CPLR 2001." Nelson v. New York State Dept. of Motor Vehicles, 188 A.D.3d 692, 693 (2d Dept. 2020).

Here, Petitioner alleges that he served the Petition by certified mail. However, the receipt he included with the petition only lists "media mail" with "signature confirmation," which is a different United States Postal Service shipping method than certified mail. Additionally, Respondents have submitted an affidavit from DEC executive assistant Wendy Gerasia, indicating that the petition was received in the DEC's mailroom via USPS mail. See Gerasia Aff., NYSCEF Doc. 49. The affidavit included photographs of the package, which simply states "USPS Media Mail," and it does not include the "URGENT LEGAL MAIL" notation as required. Respondents have also submitted an affidavit from Amanda Nazario, legal services coordinator in the office of Governor Hochul. See Nazario Aff., NYSCEF Doc. 50. Nazario states that she, too, received the Petition by USPS mail. Her affidavit also included photographs of the envelope, which again demonstrate that it was sent by "USPS Media Mail," without the "URGENT LEGAL MAIL" notation. Because Petitioner failed to properly send the Petition by certified mail with the required envelope notation, Petitioner has failed to obtain personal jurisdiction over the Respondents. The Petition must be dismissed on this basis.

Respondents' motion goes further, however, and they argue that the Court should also dismiss the Petition on the merits both because the applicable statute of limitations has run, and

because the Petition is premature, as Petitioner has failed to exhaust his administrative remedies. Respondents' argument has two facets. First, they argue that Petitioner is mistaken when he argues that his property was only recently classified as Class 2. Rather, they have submitted documentary evidence establishing that the property was classified as Class 2 in 2009. See Bruno Aff., NYSCEF Doc. 48. Kira Bruno, environmental program specialist trainee with the DEC, states that she is the project manager for this site. She affirms that the property was first classified as class 2 in 2009. See Bruno Aff., NYSCEF Doc. 48 at ¶5. Bruno attaches a March 30, 2009, letter from the DEC to the property's former owner, Dan Zeddy, advising pursuant to ECL §27-1305 that the site was being added to the Registry of Inactive Disposal Sites, and indicating that the site classification was Class 2. See NYSCEF Doc. 48 at p. 7. She also attaches a DEC Inactive Hazardous Waste Disposal Report, dated March 26, 2009, and a State Superfund Program Public Notice dated April 23, 2009, advising that the site was recently added to the Registry with a Class 2 designation. Id. at pp. 10-16. Respondents argue, based on these facts, that the Petition is now barred by the applicable statute of limitations.

Second, in their submissions, Respondents indicate that Petitioner filed a separate *petition to reclassify*, which is permitted under ECL §27-1305(2)(c)(1), on October 10, 2025. The DEC rejected this petition as incomplete pursuant to 6 NYCRR §375-2.7(f)(3), because it did not include an affidavit from one with personal knowledge or from an expert, as required. Respondents argue that, because the DEC did not issue a final determination on the merits as to the petition to reclassify, Petitioner has failed to exhaust his administrative remedies, requiring dismissal.

As to the former, CPLR §217(1) establishes a four-month statute of limitations for most Article 78 proceedings. The statute of limitations begins to run when the challenged action becomes final and binding upon the petitioner (or his predecessor in interest). Agency action is final and binding upon the petitioner when the agency has reached a definitive position on the issue that inflicts actual, concrete injury that may not be prevented or significantly ameliorated by further administrative action or by steps available to the complaining party. See Riverkeeper, Inc. v. Crotty, 28 A.D.3d 957, 960 (3d Dept. 2006) (internal quotations omitted), quoting Matter of Best Payphones v. Dept. of Info. Tech. & Telecom. of City of N.Y., 5 N.Y.3d 30, 34 (2005) (agency action final where it notified petitioner it had to execute proposed agreement, sell business or remove phones, and petitioner had no way to avoid injury except by agreeing to agency demands or initiating lawsuit); see Stop-the-Barge ex rel Gilrain v. Cahill, 1 N.Y.3d 218 (2003) (issuance of a SEQRA conditioned negative declaration resulted in actual concrete injury to petitioners, who opposed project due to air pollution concerns, because it gave developer ability to proceed with project without need to prepare environmental impact statement).

Here, the DEC's listing of Petitioner's property on the Registry, and its classification of the site as a Class 2 site, were final and binding upon the Petitioner (or more accurately, his predecessor in interest), in or about March of 2009.² It was then that the DEC added Petitioner's property to the Registry and classified it as Class 2, which constituted the DEC's taking definitive positions on these issues. These actions also inflicted actual, concrete injury; they set in motion the panoply of rights and remedies to which the DEC is entitled under Article 27 of

² Petitioner's references to the September 5, 2025, letter requesting that he enter into a Consent Order, are unavailing. The document itself is not an Order; it is essentially akin to a settlement proposal. It has no legal effect.

the Environmental Conservation Law, including, *inter alia*, the ability to conduct field investigations with invasive measures, such as conducting subsurface boring and other testing and sampling, and to order the owner to develop and implement an inactive hazardous waste disposal site remedial program. See, e.g., ECL §§27-1305(3)(a),(b); 27-1313(3)(a). Additionally, Petitioner's injury could not be prevented or significantly ameliorated by further administrative action or steps available to him; as in Best Payphones, his options were to enter an agreement with DEC or to litigate. Thus, this claim accrued in or about March of 2009, and the four-month statute of limitations expired in or about July of 2009.³ Because the statute of limitations has long since expired, Petitioner's claims relating to the original Registry listing and Class 2 classification are time barred.

Petitioner was, of course, also entitled to bring a petition to reclassify the site. See ECL § 27-1305(c)(1) ("Any owner...of a site listed pursuant to this section may petition the commissioner for...modification of the site classification...by submitting a written statement *in such form as the commissioner may require setting forth the grounds of the petition.*") (emphasis added). Such a reclassification petition is not before the Court in this proceeding; however, the Court notes Petitioner seeks "judicial reclassification to Class 3" in this Petition. Additionally, Respondents have stated that Petitioner did submit an administrative reclassification petition to DEC on October 10, 2025, and DEC did not decide it on the merits, as it was incomplete. See 6 NYCRR §375-2.7(f)(3) ("proof must be in the form of an affidavit made by a person having direct knowledge of, or who is an expert with regard to, the subject of the matters covered by the petition."). "A petitioner must exhaust all administrative remedies before seeking judicial review unless 'an agency's action is challenged as either unconstitutional or wholly beyond its grant of power...or when resort to an administrative remedy would be futile...or when its pursuit would cause irreparable injury.'" Matter of Town of Belmont v. N.Y. State Dept. of Envtl. Conservation, 284 A.D.2d 761, 763 (3d Dept. 2001), quoting Matter of Cliff v. Russell, 264 A.D.2d 892, 893 (3d Dept. 1999) (internal quotations omitted). Therefore, even if the Court were to read the Petition broadly to encompass the DEC's rejection of his reclassification petition, the Court would still be required to dismiss this Petition, as Petitioner failed to exhaust his administrative remedy, i.e., the administrative reclassification process.

As to Petitioner's claim that the DEC failed to complete the mandatory annual review and updated Registry (see 6 NYCRR §375-2.7(d)(1) and ECL §25-1305(1)), Respondents have provided documentary evidence that they did complete the annual review for 2025, and they submitted the updated registry to the legislature and the governor for 2023-2024 (the most recent registry update was not yet due). They also submitted documentary evidence that the initial notice of classification was given to the site's then-owner. To the extent Petitioner complains he has not received personal notice as to the annual review, DEC is only required to notify the owner if there is a change in classification, and no such change in classification has occurred. See 6 NYCRR §§375-2.7(b)(6), (d)(1). Therefore, Petitioner's complaints as to the updated annual review and registry, and his lack of notice of same, have no merit. In any event, were

³ Petitioner's submissions confirm that the site was classified as a Class 2 site years before he brought this Petition. See Exhibit N3, NYSCEF Doc. 22 at pdf p. 75 (March 6, 2017 letter from DEC to Petitioner, recounting the history that the site was listed as Class 2 on the Registry); see Exhibit N7, NYSCEF Doc. 22 at pdf p. 172 (August 12, 2013, MACTEC Report, stating "[t]he Site is listed as a Class 2 Inactive hazardous waste site; Site No. 808030...").

these claims meritorious, they would not entitle Petitioner to the relief he seeks (reclassification of the site to Class 3).

Respondents next call on the Court to convert the declaratory judgment portion of the Petition into an Article 78 proceeding, and to dismiss it for the reasons outlined above. “Generally, a declaratory judgment action is not the proper vehicle to challenge an administrative procedure, where judicial review by way of article 78 proceeding is available.” Greystone Mgmt. Corp. v. Conciliation and Appeals Bd., 62 N.Y.2d 763 (1984); see also Smith v. City of Norwich, 205 A.D.3d 140 (3d Dept. 2022). Because the declaratory relief essentially mirrors the Article 78 relief and challenges the same underlying agency action, the declaratory relief claim must also be dismissed.

Based on the foregoing, Petitioner’s requests for related relief, including for the issuance of judicial subpoenas and a preliminary injunction, must also be denied. Relatedly, petitioner’s complaints relating to denial of a FOIL request must be brought via a new, separate Article 78 proceeding. See Pub. Off. Law §89(4)(b); Doe v. Riback 7 Misc.3d 341 (Albany County 2005).

It is therefore,

ORDERED, that the Respondents’ motion to dismiss is hereby **granted**; and it is further

ORDERED, that the Petition is hereby **dismissed**; and it is further

ORDERED, that the Petitioner’s remaining motions are hereby **denied** accordingly.

This shall constitute the Decision and Order of The Court. The original Decision and Order is being uploaded to the NYSCEF system for filing and entry by the Chemung County Clerk. The signing of this Decision and Order and uploading to the NYSCEF system shall not constitute filing, entry, service, or notice of entry under CPLR Rule 2220, section 202.5-b(h) of the Uniform Civil Rules for the Supreme and County Courts, or other applicable rules. Counsel is not relieved from the applicable provisions of those rules with respect to service and notice of entry of this Decision and Order.

ENTER

Dated: February 6, 2026.



Hon. Christopher P. Baker
Supreme Court Justice

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