

STATE OF NEW YORK
CHEMUNG COUNTY SUPREME COURT

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In the Matter of:

JULIAN RAVEN,

INDEX NO.:

2025-1215

Petitioner,

- versus -

NYS DEC, KATHY HOCHUL, AMANDA LEFTON,
DUDLEY LOEW, and KIRA BRUNO,

Respondents.

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November 14, 2025
203 Lake Street,
Elmira, New York 14901
TRO application

BEFORE: HONORABLE CHRISTOPHER P. BAKER, Judge

APPEARANCES:

FOR THE PETITIONER:
Julian Raven, Pro Se

FOR THE RESPONDENTS:
Nicholas Buttino, Esq.

Digitally recorded proceeding,
Transcribed by: Ria Jara
Czerenda Court Reporting
PO Box 903
Binghamton, NY 13902

1 THE COURT: We're going to go ahead and call the
2 matter of *Julian Raven v. The New York State Department of*
3 *Environmental Conservation*. Sir, you're Julian Raven?

4 MR. JULIAN RAVEN: Yes, I am, Judge.

5 THE COURT: On behalf of the New York State
6 Department of Environmental Conversation, Nicholas
7 Buttino?

8 MR. NICHOLAS BUTTINO: Yes, Your Honor.

9 THE COURT: Okay. So, we're going to go ahead
10 and get started on this matter. I want to make sure that
11 everyone is aware that today we are simply here to argue
12 the issue of the temporary restraining order application
13 that was brought by Mr. Raven.

14 I know that -- Mr. Raven, I'm looking at some of
15 your submissions that you're somewhat eager to move
16 forward with our January 6th arguments on the merits of
17 your petition. That's for January. So, I want you to
18 constrain your arguments. And I want the respondent in
19 this matter to constrain your arguments simply to the
20 matter of the temporary restraining order that's before
21 the court. I am fully aware of all the facts and
22 circumstances of almost 20 years regarding this property.

23 So, Mr. Raven, in regards to your request for a
24 temporary restraining order, what would you like me to
25 know?

1 MR. RAVEN: Well, Good morning, Your Honor.
2 First of all --

3 THE COURT: You know what, we're recording this,
4 the microphone. So, I have no problem if you want to
5 remain seated, just as long as we make sure that we have
6 this microphone close enough to your face. Yes.

7 MR. RAVEN: Is this far enough for me? Shall I
8 pull (phonetic) this thing? Okay.

9 THE COURT: Yes, please. Thank you. Go ahead.

10 MR. RAVEN: First of all, Your Honor --

11 THE COURT: You know, I don't mean to stop you,
12 but we are about 20 minutes early. As long as everyone is
13 ready and prepared to go forward, I am fine going ahead
14 and starting a little bit early. We don't expect anyone
15 else to appear. This isn't a hearing, so I don't expect
16 any witnesses. Mr. Raven, any problems starting a little
17 early today?

18 MR. RAVEN: No. I am fine.

19 THE COURT: Please.

20 MR. RAVEN: My wife is willing to be here, but
21 she's going to have to get out or so I --

22 THE COURT: Okay. Please go ahead.

23 MR. RAVEN: All right, Your Honor. Firstly,
24 regarding your statement there about the merits, the
25 merits correctly are for January, but the procedure is for

1 today.

2 THE COURT: Understood.

3 MR. RAVEN: And we cannot establish injury
4 without establishing violation of procedure. Otherwise,
5 we're just talking suppositions. And I know that this
6 case is about appearances, so we can look at those things,
7 but it is important.

8 And the first thing I'd like to start with, Your
9 Honor, I respectfully ask the Court to confirm the
10 supplemental affidavits 1 and 2 with their exhibits are
11 included in the record, that these sworn statements under
12 CPLR 2106 and 3020 supplement, not expand, the original
13 motion papers.

14 They addressed ongoing documented procedural
15 violations and continuing due process harm since
16 respondents' opposition. Courts may consider such
17 supplemental affidavits, and they clarify or complete the
18 record under CPLR 2001 and the matter of *Gross v. NYC*
19 *Health & Hospitals Corp.* They simply ensure the factual
20 and constitutional context is complete for today's
21 determination under CPLR 6301, 6313(a) and 7805.

22 THE COURT: I have a complete record of your
23 application for the temporary restraining order, along
24 with your affidavit in support. So, I'm going to be
25 considering all of the documentation that you have

1 submitted in the context of your pending application.

2 MR. RAVEN: Excellent.

3 THE COURT: Tell me again now as we look at the
4 issues regarding the temporary restraining order
5 application and the requirement that you have or will
6 suffer immediate and irreparable injury in the absence of
7 a temporary restraining order, please tell me why you
8 believe that in light of even the respondents' assertion
9 that they're not going to move forward with the remedial
10 work, tell me how you meet your burden on those elements
11 that are necessary for you to prevail.

12 MR. RAVEN: This is not about remedial work,
13 Your Honor, only. Constitutional injuries stem from
14 violations of procedure. My constitutional rights under
15 the 4th, 5th and 14th Amendment have been violated now for
16 over four -- eight years because of the unlawful conduct
17 of the Department of Environmental Conservation in failing
18 to classify this property according to CPLR 1313(4) and
19 1313(3)(a).

20 Without the procedural process in place and
21 without following those procedures, the Department of
22 Environmental Conservation has violated the law, violated
23 due process. And because of that, they are irreparably
24 harming my constitutional due process rights. This is not
25 just about remediation and physical remediation, this is

1 about ongoing, present today irreparable harm as a result
2 of a failure to abide by statutory authority and statutory
3 power, which only attaches when the department follows its
4 constitutionally mandated rules under the ECL laws in the
5 State of New York, which declare that they can only
6 classify a property when they have completed their
7 remedial studies, when they have issued notice to the
8 petitioner or the owner of the property. They have failed
9 completely in their process since 2008.

10 THE COURT: You're getting into your arguments,
11 which we're going to hear a lot in depth on January 6th as
12 far as your due process arguments and your arbitrary and
13 capricious arguments regarding their classification of
14 your property being a level 2, apparently, site.

15 But in regards to -- I understand your argument
16 as to irreparable injury. Tell me now in regards to the
17 requirement of imminent injury, if they were to move
18 forward with the remedial work, which they say they're not
19 going to do, ending our January 6th, tell me how, in light
20 of that, an immediate or exigent circumstances would exist
21 for me to grant this temporary restraining order.

22 MR. RAVEN: Firstly, Your Honor, the remedial
23 process is already active. This is not something future.
24 This has been going on now for four years. This has been
25 going on since the first illicit order on consent that

1 they issued in September of -- I mean, in March the 6th,
2 2017. This has been ongoing since then. This is not
3 about a future remedial action. This is presently going
4 on.

5 It has been since March the 12th this year when
6 they failed to give me notice about their going public
7 with the Class 2 significant threat classification that
8 they broadcast to the media, that the whole town found out
9 about. I was in Spain.

10 I had left to Spain the year before. And I had
11 emailed the department and said, "I'm going to Spain. I
12 need you. I have a tenant in the building. I need to
13 know everything about what your planning is, when your
14 public meetings are." And they wrote back, "Yes, we will
15 tell you in advance. You'll know all about it." They
16 never did.

17 I got a phone call from a friend of mine in
18 Spain, who called me from Elmira who said, "Your building
19 was on the news." I said, "Really?" And then I called
20 the DEC. I said, "What's going on?" They ran ahead.
21 They went to the public without notice.

22 They have failed continually and violated CPLR
23 1313(a) - (3)(a) and (4). These are constitutionally
24 required procedures that violate the Constitution when
25 they are not followed, and in that way are continually

1 harming me and my constitutional rights. This is not a
2 future issue, Your Honor.

3 THE COURT: So, getting back to the remedial
4 situation --

5 MR. RAVEN: Yes.

6 THE COURT: -- you say that --

7 MR. RAVEN: The remedial is ongoing. It's --

8 THE COURT: But let me ask you this question.
9 You're saying remedial is ongoing. There are no trucks,
10 equipment, contractors at your site in the process of
11 digging up right at the moment as we speak. Is that
12 correct?

13 MR. RAVEN: They have been there. They have
14 been there --

15 THE COURT: Right now --

16 MR. RAVEN: -- for three years.

17 MR. RAVEN: -- there's no contractors there with
18 backhoes, dump trucks and remedial equipment presently at
19 your site, correct?

20 MR. RAVEN: But the order on consent has that
21 pending as of September the 5th, 2025.

22 THE COURT: Mr. Raven, yes or no, are there any
23 trucks, remedial equipment, contractors currently at the
24 site as we speak, prepared to move forward with that
25 September letter to remediate any of this content

1 (phonetic)?

2 MR. RAVEN: No, Your Honor. But remediation is
3 not contingent upon physical work.

4 THE COURT: Understood.

5 MR. RAVEN: It is the mechanics and machinery of
6 the DEC that is in process as we speak in violation of my
7 constitutional due process right, having performed these
8 things without notice, Your Honor, a single time in eight
9 years.

10 THE COURT: I think now, we're getting closer --
11 again, we're getting closer into your argument and
12 arbitrary and capricious. And I understand that and I
13 appreciate that. And I'm going to give you a full and
14 fair opportunity to argue that because I have a lot of
15 questions for the DEC in regards to that classification as
16 well. However --

17 MR. RAVEN: May I ask a question, Your Honor?

18 THE COURT: Yes.

19 MR. RAVEN: If my constitutional rights right
20 now under the 4th, 5th and 14th Amendments, right now,
21 today, as we speak, are being violated because of a
22 violation of due process under the ECL statutes, that
23 violation as we speak is causing irreparable harm, is it
24 not?

25 THE COURT: There's been no finding of that yet.

1 That's your allegation. And that's the reason why we're
2 going to have a full and fair opportunity in January.

3 MR. RAVEN: But is there an appearance of that?

4 THE COURT: Is there an appearance of that? I'm
5 not prepared to make that decision. I'm prepared after I
6 have an opportunity to get a full and fair and accurate
7 record of the respondents to make that determination.
8 That's what we're going to be here in January for.

9 I certainly understand your arguments and I
10 understand your arbitrary and capricious nature. I
11 understand your due process arguments on the
12 classification of the site. So what I'm really here today
13 to determine is, because I did grant them that adjournment
14 from November when we were supposed to be here on November
15 19th all the way until January, I understand your concerns
16 that they could move forward in relation to their
17 September 2025 letter to you.

18 So, the reason why I'm here today is because of
19 your application for a temporary restraining order, for
20 your proof that you needed to show me that there's
21 immediate irreparable harm that's going to occur. So --

22 MR. RAVEN: Under the 4th and 5th Amendment.

23 THE COURT: Whatever grounds that you're seeking
24 is what I'm here to determine. And I also have to take
25 into account the respondents' papers before the Court,

1 which indicate to me that presently and up until January
2 6th and likely hopefully thereafter, they are not planning
3 to move forward with that action that you claim is going
4 to be a violation of your constitutional rights.

5 MR. RAVEN: Your Honor, if on the field
6 delivery, the field principle of New York State where when
7 a government agency fails to follow its own rules and all
8 of its actions are void ab initio, we are now going to be
9 discussing fruit, poisonous fruit on a tree. And the
10 problem with the tree is that the tree is poisonous.

11 And so, if we allow the respondents to argue all
12 of their supplemental and pursuant issues, we're failing
13 to focus on the essential, fundamental violation --

14 THE COURT: And that's what we're --

15 MR. RAVEN: -- which is the violation --

16 THE COURT: That's what we're going to do in
17 January.

18 MR. RAVEN: But if my constitutional rights are
19 being harmed right this moment?

20 THE COURT: This is the reason why I have an
21 opportunity to have arguments now to determine whether --

22 MR. RAVEN: A temporary restraining order based
23 upon a violation of constitutional rights now because it's
24 irreparable harm now. Any minute violation of the
25 Constitution now causes irreparable harm now.

1 THE COURT: Let me ask the respondents'
2 attorney. I know that -- you obviously have indicated to
3 me through your papers is that the DEC has no plans to
4 move forward with the requirement of moving forward with
5 that September letter of remediation pending the Court's
6 decision on Mr. Raven's application. Is that correct?

7 MR. BUTTINO: That's basically correct, Your
8 Honor. Would you prefer that I stand or sit?

9 THE COURT: Whatever is the most comfortable for
10 you.

11 MR. BUTTINO: Okay. I want to clarify. The
12 September letter that, I believe, Mr. Raven is referring
13 to, the consent order is essentially a settlement document
14 to give Mr. Raven, as we would any potentially responsible
15 party, the opportunity to do a cleanup themselves. Some
16 responsible parties prefer that.

17 THE COURT: That sounds great, an opportunity
18 for a cleanup. But he's probably going to be on the hook
19 for the cost of that, right?

20 MR. BUTTINO: We're not there yet, Your Honor.
21 The State does have statutory rights to bring a cost
22 recovery action. We haven't done so yet.

23 MR. RAVEN: Your Honor, I must object.

24 THE COURT: Please don't interrupt.

25 MR. RAVEN: Okay. I'm sorry.

1 THE COURT: Go ahead.

2 MR. BUTTINO: This case is not a cost recovery
3 action. No cost recovery action has been brought against
4 the petitioner. It's possible that at some point in the
5 future the State might choose to. At that point, Mr.
6 Raven could present defenses if the State moves forward on
7 that ground. That's very premature.

8 THE COURT: So I understand the respondents'
9 arguments that they don't plan to move forward, you know,
10 pending a court decision on the January 6th date. I
11 understand that that is the respondents' position. They
12 stipulate to that. But you don't take the necessary step
13 and agree to a full temporary restraining order because
14 your papers seem to indicate that.

15 If, for some reason, you seek to move forward,
16 Mr. Raven is afforded that ten-day notice as required by
17 the Environmental Conservation Law. That will give him
18 notice ten days. And if, for some reason, you choose to
19 do something, you have to, you know, fulfill that ten-day
20 requirement. And then Mr. Raven would then have another
21 opportunity to seek leave of this Court to file a
22 temporary restraining order.

23 Why not just in the interest of equity and
24 fairness and for this Court to make sure that I have a
25 full and fair record from the respondents' papers that you

1 just stipulate that no remedial work will be done at all
2 until the Court makes its final decision on the petition?
3 I'm a little bit confused because you're willing to
4 stipulate, but you're really not willing to, you know,
5 fully agree that a temporary restraining order should be
6 in effect.

7 So, I'm kind of -- my thought is that the DEC is
8 kind of talking out of both sides of their mouth here.
9 Explain that to me.

10 MR. BUTTINO: Sure, Your Honor. May I also
11 raise some procedural issues? I want to note there are a
12 number of procedural problems with how these materials
13 have been presented, materials submitted for the first
14 time in reply, documents that appear to have alterations
15 in them. But notably, my clients have not been properly
16 served. And thus, there's no personal jurisdiction here.

17 It appears that we have actual copies, but the
18 petitioner did not follow 307(2) under the CPLR. Notably,
19 it appears that the petitioner served without using
20 certified mail the terms he requested and did not properly
21 mark the envelopes, which require strict compliance. I
22 don't want to belabor this point, but there is no
23 jurisdiction without those things over my clients.

24 THE COURT: So, I --

25 MR. RAVEN: You Honor, pro se --

1 THE COURT: Hold on. Hold on.

2 MR. RAVEN: Yeah. That's just technicalities.

3 THE COURT: Please, please. But let's just
4 assume for a matter that I afford Mr. Raven as a pro se
5 litigant extra benefits of, you know, he needs to follow
6 the CPLR. And maybe the fact that he didn't. You're here
7 today. You've submitted opposing papers, and I overlooked
8 those defects under the CPLR.

9 Getting back to my question, why doesn't the
10 DEC, since this matter has been going on since 2006, why
11 wouldn't they just go ahead and stipulate to a full
12 temporary restraining order pending the Court's decision?

13 MR. BUTTINO: Sure, Your Honor. This matter has
14 been classified -- the site has been classified as a Class
15 2 site since 2009. I believe Mr. Raven purchased the site
16 somewhere around 2015. The reason that I've --

17 MR. RAVEN: Objection, Your Honor. There is no
18 classification in 2009.

19 THE COURT: Mr. Raven, please. Mr. Buttino
20 didn't interrupt you.

21 MR. RAVEN: But it is --

22 THE COURT: I'm going to give you an opportunity
23 to reply.

24 MR. RAVEN: But it's false, Your Honor.

25 THE COURT: I'm going to give you an opportunity

1 to reply. Please do not interrupt him.

2 MR. RAVEN: Okay.

3 THE COURT: Go ahead.

4 MR. BUTTINO: The reason I have stated that,
5 although we have no - excuse me, not we - that the
6 department has no plans to proceed with any sort of
7 remedial action on this site but would give notice is on
8 the grounds that we know now, on the facts, there's no
9 reason to proceed before the Court has an opportunity to
10 fully hear this case.

11 Should the facts on the ground change or the
12 department's understanding of those facts, if for some
13 reason, the department felt there was some sort of urgent
14 action it needed to take to protect the public, I wanted
15 to preserve the flexibility for the department to do so.
16 It's very unlikely that that would happen in this
17 particular matter, given what the department knows about
18 these particular sites.

19 THE COURT: So, what is the department going to
20 learn between now and January 6th that it's going to
21 change its position that now remedial measures need to
22 begin now rather than waiting the Court's determination
23 when 2006, 2009 we've been on notice, the community's been
24 on notice, the Department of Environmental Conservation
25 has been on notice that this is reportedly a contaminated

1 site? What would happen? What would change?

2 I know that there is the, I guess, contention at
3 least on this ten-day notice is that -- you know, that
4 there could be some work order steps that could take
5 place. Do you mean that the DEC is going to move
6 expeditiously between now and the holidays to go ahead and
7 start putting in contractors in there to clean things up
8 before this Court makes a determination on the petition?

9 MR. BUTTINO: That is extremely unlikely, Your
10 Honor. And certainly, we would give them notice that we
11 stipulated to. Also, it is Mr. Raven's burden to show
12 that there is any sort of irreparable harm. And the TRO
13 that petitioner have requested is much, much broader.
14 That includes preventing the department from carrying out
15 its statutory and regulatory duties such as giving public
16 notice. Arguably, preparing the work plans could be a
17 violation of what Mr. Raven has requested.

18 THE COURT: Let's talk about irreparable injury.
19 You indicate in your opposing papers that Mr. Raven has
20 failed to show irreparable injury because if remedial
21 efforts were going to continue, simply this would mean
22 that there would be a safe site for the community, a safe
23 property for Mr. Raven and et cetera, and that there would
24 be no harm. Is that kind of essentially your argument on
25 the irreparable harm problem?

1 MR. BUTTINO: It's two-pronged, Your Honor.

2 First, that the department doesn't plan to do anything in
3 the next couple of months. But yes, that even cleaning up
4 a site is not irreparable harm, and any sort of economic
5 damage is not irreparable harm for the purposes of a TRO
6 request.

7 THE COURT: Could irreparable harm be construed
8 by the fact that remedial efforts could permanently alter
9 Mr. Raven's land in the sense that digging and excavating
10 could damage his property, could compromise the foundation
11 of the building and change the nature and character of his
12 building in the future? Would that constitute irreparable
13 harm?

14 MR. BUTTINO: I don't think so, Your Honor. And
15 also, I think it's premature. The department would have
16 to do a work plan in order to proceed. That would give
17 any sort of details as to what the department exactly is
18 going to do. The department hasn't done that and thus
19 won't proceed without it.

20 Conceivably, we could have some sort of future
21 discussion about whether what the department exactly plans
22 to do constitutes irreparable harm. And the State would
23 reserve its rights on that, you know, very premature on
24 that.

25 THE COURT: In your experience, how long does it

1 take the DEC to formulate these work plans?

2 MR. BUTTINO: I'm not sure that I have a
3 specific number in mind. I think it could be a matter of
4 weeks to months depending on their priorities for
5 particular sites. But that's a little more than an
6 estimate.

7 THE COURT: In regards to your claim that CPLR
8 6313(a) precludes a temporary restraining order being
9 brought against a state agency, because really,
10 essentially, your argument boils down to that they're
11 carrying forward a statutory duty. And this Court can't
12 issue a temporary restraining order in the sense that
13 carrying forward a statutory duty is something that the
14 Court cannot interfere with. Is that essentially your
15 argument?

16 MR. BUTTINO: In essence, yes, Your Honor.
17 Certainly, we do not hold that the Court can never issue a
18 temporary restraining order against the State under any
19 circumstances. But that many of the specific requests
20 made by petitioner would interfere with specific statutory
21 duties.

22 THE COURT: I'm kind of a little bit curious
23 because my understanding in some of the case law that I
24 was able to find indicated that determination of
25 government enforcement agencies concerning violations and

1 whether to prosecute those violations are generally
2 matters of discretion. They're not statutorily compelled.
3 Therefore, they do not constitute the performance of
4 statutory duties within the meaning of the Environmental
5 Conservation Law. So, they're matters of discretion.

6 And since the Environmental Conservation Law
7 provisions that you're relying upon here in this case also
8 use the word that the commissioner or the agency may,
9 isn't that a discretionary duty rather than a statutory
10 duty which then defeats your 6313(a) argument?

11 MR. BUTTINO: I understand this, Your Honor.
12 The department does, of course, have discretion on when
13 and how to proceed. I want to be clear. The department
14 is not bringing an enforcement action against the
15 petitioner. The petitioner is suing the department. And
16 the department does need the flexibility to proceed to
17 protect the public as it is mandated to do.

18 THE COURT: Doesn't your September -- can't your
19 September 2025 letter to Mr. Raven be construed as an
20 enforcement act?

21 MR. BUTTINO: No, Your Honor.

22 THE COURT: Okay.

23 MR. BUTTINO: If the department wanted to take
24 enforcement action, they would typically do so either by a
25 notice of hearing (phonetic) and complaint or a referral

1 to the Attorney General's Office. In which case we could
2 potentially - this is all hypothetical and speculative -
3 could bring a civil enforcement action. The department
4 has not done so in this particular case.

5 THE COURT: There are some additional issues or
6 additional relief that Mr. Raven seeks in his temporary
7 restraining order application is one. And I'm pretty
8 sure, and hopefully this is academic, that it would
9 require the DEC to preserve any record of proceedings and
10 documents and et cetera. And obviously, those are going
11 to be documents that are going to be submitted in your
12 answer or objections in the point of law, correct?

13 MR. BUTTINO: Your Honor, we may have a
14 disagreement on this. We do have litigation holds as is
15 our standard practice. We think there's no reason for a
16 court order on that. The State has the ability to either
17 move to dismiss or to answer. We may very well move to
18 dismiss.

19 You know, certainly, we've raised a personal
20 jurisdiction defense. There are also some ripeness issues
21 here. We are not destroying documents, there are
22 litigation holds in place, through a litigation hold in
23 place.

24 THE COURT: Lastly, there has been an argument
25 that Mr. Raven has put forth to this Court regarding

1 future dissemination of any classification levels and et
2 cetera. My feeling is, is that the cat is already out of
3 the bag here. This has been an open and known site since
4 2006 or 2009. What's your position regarding that?

5 MR. BUTTINO: The department maintains
6 registries as they're required to. They do public notice
7 as they're required to under both their guidance documents
8 and regulations. I would defer to them on exactly how
9 those are exactly interpreted. But generally, the
10 department has to give certain public notice. That's what
11 they've been doing. There's --

12 THE COURT: There's nothing privileged -- is
13 there anything privileged in your communications regarding
14 this site that would fall under any type of statutory
15 confidentiality provisions that would warrant the DEC not
16 to publish any findings absent required public notices?

17 MR. BUTTINO: I'm not sure that I understand the
18 question, Your Honor. There's certainly privileged
19 communications within the department, with their counsel,
20 both internally. One of the respondents is the regional
21 attorney. There is certainly communications with the
22 Attorney General's Office. There would be privilege
23 there. But I'm not sure that I'm answering your question
24 because I'm not sure that I understand.

25 THE COURT: Brief reply. Mr. Raven, let's talk

1 simply on the issues of the elements of the temporary
2 restraining order in brief reply. What would you like me
3 to know?

4 MR. RAVEN: May I just address the full
5 statement that Mr. Buttino made?

6 THE COURT: You're going to have an opportunity
7 to do that on January 6th. But very briefly, go ahead.

8 MR. RAVEN: Mr. Buttino stated that in 2009,
9 there was a classification. It's completely false. The
10 DEC's mandated report by the MACTEC organization in 2013
11 was completely inconclusive. They recommended multiple
12 continual sampling tests throughout the property. They
13 were completely inconclusive. They recommended that.

14 And then in 2017, they came up with a
15 classification. And, Your Honor, I'd like to mention that
16 my FOIL request that I had appealed, the answer came in
17 yesterday. And I would like the Court to pay attention
18 and take notice of this. I have a judicial order that I'd
19 like to submit. But I also have a supplemental Exhibit K
20 that I need to submit to the Court regarding that --

21 THE COURT: Submit those through NYSCEF. You
22 can submit those to make sure that Mr. Buttino has --

23 MR. RAVEN: But may I address the issue because
24 it's -- this absolutely goes to the issue today that they
25 admitted and contradicted everything Mr. Buttino just said

1 today in their letter yesterday. They contradicted it,
2 Your Honor. It is absolutely important that the Court
3 hears this.

4 They admitted that there are 148 emails that
5 they withheld. I gathered that since they didn't produce
6 them. What they also said is, none of those emails --
7 under the law that they used to avoid giving me those
8 emails, they said none of those emails were
9 determinations. None of those emails were conclusions.
10 And they admitted they don't have a single conclusive
11 report regarding classification of my property that Mr.
12 Buttino claims happened in 2009. It's false.

13 And without classification, without following
14 procedure under CPLR 1313(3)(a) and (4), it is impossible
15 that statutory authority and statutory power exist.
16 Everything they have done since that time is void ab
17 initio. All of their actions have been ultra vires. They
18 are completely void.

19 And to have a discussion about it is like
20 picking rotten fruit from a rotten tree and failing to
21 acknowledge that the tree is rotten. And since the tree
22 is rotten, since they have failed to abide by the
23 procedural mandate of CPLR 1313(4), they have violated my
24 constitutional due process rights right now, yesterday,
25 2017, 2025, March 12, 2025, September 5th. This is an

1 ongoing violation of my constitutional rights.

2 They have no authority, Your Honor. They have
3 taken authority without statutory obedience. They have
4 failed. And the Court has no jurisdiction over their
5 arguments because they were void ab initio. And they
6 admitted it yesterday. They said, "We have no conclusive
7 records." In their own document that I would like to
8 submit to the Court, Your Honor, if I may, at this time.

9 THE COURT: You're going to have to go ahead and
10 upload those to NYSCEF. And while we're on -- speaking on
11 NYSCEF, if -- I know that you've been sending a lot of
12 emails to my law clerk.

13 MR. RAVEN: Yes.

14 THE COURT: Please, in the future, just upload
15 any request that you would have regarding scheduling or
16 procedure. Upload those to NYSCEF, so we make sure that
17 there's no error in Mr. Buttino not getting notice of
18 anything. So, any future correspondences with this Court,
19 please upload those to NYSCEF because this is now an e-
20 filed case.

21 MR. BUTTINO: Yes, sir.

22 THE COURT: So, we make sure that Mr. Buttino
23 has all of those.

24 MR. RAVEN: Your Honor, may I just ask the
25 Court --

1 THE COURT: Very briefly.

2 MR. RAVEN: Of course, Your Honor.

3 THE COURT: I mean, I think a lot of these
4 arguments you need to save for January.

5 MR. RAVEN: But is the Court not concerned with
6 procedural violations, statutory requirements that the DEC
7 must abide in order for their authority under 6313(a) to
8 stick?

9 THE COURT: Of course.

10 MR. RAVEN: If it's not their -- and then as a
11 result of that going on now for eight years, they have
12 been violating my constitutional rights then, now, and
13 tomorrow. It's not about remediation of some digging in
14 the future. That's just part of the picture. If we don't
15 deal with this now, I'm going to leave this Court if it's
16 denied.

17 And my constitutional rights are being denied
18 today, now, right now. My 4th Amendment due process --
19 5th Amendment due process, 14th Amendment due process,
20 they are violating it now because they have failed to
21 follow CPLR 13 -- ask them. Show me the evidence that
22 they have followed CPLR 1313(4) where it says, "Before you
23 issue an order, before you must notify the owner." That's
24 me.

25 I never got a single notification. They turned

1 up at my door with a note. They said, "You're a Class 2
2 significant threat," without procedure, without
3 notification. They have violated their own laws, Your
4 Honor. This violates the Constitution. This is void ab
5 initio. They have no standing.

6 And as a result, you must put a restraining
7 order on them. They cannot continue. You must suspend
8 their unlawful actions today until, Your Honor, you decide
9 on the merits in January, that you know, actually, they
10 are completely out of order, completely out of law.

11 THE COURT: Thank you. The Court's heard enough
12 arguments regarding the very narrow issue that's before
13 the Court today, which is the temporary restraining order
14 application. In light of the pending request and in
15 accordance with the respondents' opposing papers, the
16 Court is prepared to make its following ruling. And, Mr.
17 Buttino, the Court will be requiring you to submit the
18 following order.

19 First of all, in order for this Court to issue a
20 temporary restraining order, it is the requirement that
21 the petitioner in this matter show that immediate and
22 irreparable injury, loss or damage will result unless the
23 respondent is restrained before a hearing can be held.

24 In regards to the first, one of the defenses
25 that have been raised by the respondent in this matter,

1 that's CPLR 6313 subdivision (a) precludes the Court from
2 issuing a temporary restraining order against the DEC, the
3 Court believes that the enforcement provisions or the
4 enforcement mechanisms that the respondent is seeking to
5 do is a discretionary act and not a statutory act.
6 Therefore, 6313(a) is not a defense. And the Court denies
7 that argument as the basis for denying the temporary
8 restraining order.

9 In regards to the irreparable harm claim, the
10 Court also finds that the irreparable harm argument as
11 advanced by the respondent in this matter is without
12 merit, while the respondent indicates that irreparable
13 harm does not exist because if remediation efforts would
14 occur, it would mean a safer property for Mr. Raven and a
15 safer property for the community. The Court feels that
16 that argument is without merit because there is no
17 evidence to show that any remediation efforts or actions
18 would not permanently alter the petitioner's property and
19 land. So therefore, the Court does find that there is
20 irreparable harm in this matter.

21 However, the Court does make a finding that in
22 regards to the respondents' representation to this Court
23 and as an officer of the Court that there is no immediate
24 plans to move forward with any type of remediation efforts
25 in accordance with the September 2025 letter issued to Mr.

1 Raven, this Court hereby finds that in light of that
2 representation -- and more importantly, in light of the
3 ten-day notice requirement as required under ECL 27-1309
4 subdivision (4) and ECL 27-1313 subdivision (8), in light
5 of that representation, the Court finds that there is no
6 imminent harm in the context of moving forward with any
7 remediation or any other enforcement actions.

8 So, the Court is hereby denying the temporary
9 restraining order pending the January 6, 2026 return date
10 without prejudice for leave for Mr. Raven to reapply to
11 this Court for a temporary restraining order should the
12 Department of Environmental Conservation exercise its ten-
13 day notice requirements under those ECL statutes to move
14 forward with this.

15 The Court, in the context of the request to stay
16 the proceedings under 7805 of the CPLR, also finds that
17 that has not been met regarding the imminent and immediacy
18 harm.

19 The Court is also directing the respondents in
20 this matter to preserve the record of any proceedings in
21 this matter or any type of evidence that they intend to
22 submit regarding their answer that is due to this Court,
23 as well as any decisions or any other documents that would
24 consist of answering papers to the pending application in
25 January 6th.

1 Please submit this order on notice to Mr. Raven
2 within two days, so he can have an opportunity should he
3 object to the substance of this order. However, this
4 Court intends to move forward with signing this order with
5 the understanding, again, that Mr. Raven is given an
6 opportunity to move again, should the Department of
7 Environmental Conservation seek to move forward within
8 that ten-day notice period. Thank you.

9 MR. BUTTINO: Your Honor, may I ask a couple of
10 clarifying questions? Of course, the State wants to
11 comply. Your direction is that the State should prepare
12 an order consistent with what you just read out?

13 THE COURT: Yes.

14 MR. BUTTINO: I did take notes. I can attempt
15 to do so. I would order a transcript to make sure that I
16 am --

17 THE COURT: Sure. You can order a transcript of
18 the record.

19 MR. BUTTINO: I'm not sure that we will have all
20 of that done within two business days.

21 THE COURT: It would be done by Wednesday of
22 next week. Thank you.

23 MR. BUTTINO: I have, excuse me, Your Honor, one
24 more clarifying question. You referred to an answer
25 related to the Article 78. The State does have subject

1 matter jurisdictions issues related to ripeness and
2 exhaustion. And we are permitted to move to dismiss, are
3 you precluding us from doing so?

4 THE COURT: I am not, no.

5 MR. BUTTINO: Okay.

6 THE COURT: Any affirmative defenses or
7 objections in point of law should be contained in your
8 answer.

9 MR. BUTTINO: I believe, Your Honor, we are
10 permitted to move to dismiss apart --

11 THE COURT: You are.

12 MR. BUTTINO: -- from an answer.

13 THE COURT: You are.

14 MR. BUTTINO: And then we could - if we lose
15 that - we could answer separately. That is my
16 understanding. Is that --

17 THE COURT: Correct. It's my understanding of
18 special proceedings such as this.

19 MR. BUTTINO: Thank you, Your Honor.

20 (Proceeding concluded)

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C E R T I F I C A T E

I, Ria Jara, certify that the foregoing transcript of proceedings in the State of New York, of the Chemung County Supreme Court, of *Julian Raven v. New York State Department of Environmental Conservation, et al*, Index No.: 2025-1215 was prepared using the required transcription equipment and is a true and accurate transcript of the digitally recorded proceedings.



Signature: _____

Date: December 2, 2025
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