

**New York State Department of Environmental Conservation**

**Office of General Counsel, Region 4**

1130 North Westcott Road, Schenectady, New York 12306-2014

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Website: [www.dec.ny.gov](http://www.dec.ny.gov)



Joe Martens  
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7013 1090 0002 3365 0884

September 3, 2014

Kevin Young, Esq.  
Young/Sommer LLC  
Executive Woods  
5 Palisades Drive  
Albany, NY 12205

Re: Order on Consent  
Norlite  
R4-2014-0017-6

Dear Mr. Young:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$29,600 of the civil penalty pursuant to Paragraph I.

Sincerely,

Richard Ostrov  
Regional Attorney  
Region 4

Enclosure

ec: J. Quinn  
H. Brezner  
R. Leone  
J. Hadersbeck

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Articles 19 and  
27 of the Environmental  
Conservation Law of the State of  
New York and Title 6 of the Official  
Compilation of the Codes, Rules and  
Regulations of the State of New York

DEC CASE NO.  
R4-2014-0017-6

ORDER ON CONSENT

NORLITE CORPORATION

Respondent.

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1. The New York State Department of Environmental Conservation (“DEC” or “Department”) is the State agency with jurisdiction over the environmental law and policy of the State pursuant to §3-0301 of the Environmental Conservation Law (“ECL”). In particular, DEC is and has been responsible for the enforcement of the transportation, storage and disposal of hazardous waste and the protection of air resources pursuant to ECL Articles 27 and 19 and the rules and regulations promulgated there under.

2. Respondent, Norlite, LLC, is a Limited Liability Company of the State of Delaware that owns and operates a hazardous waste management facility and light aggregate plant at 628 South Saratoga St., City of Cohoes, County of Albany, New York (“facility”).

3. Respondent operates the facility pursuant to a RCRA permit (“permit”) (EPA Identification Number: NY D080469935) that contains special conditions) and RCRA regulations in 6 NYCRR Parts 372- 374 et seq.

4. On March 21, 2012, Department staff conducted an annual inspection of the facility to determine its compliance with applicable RCRA regulations and its permit.

AIR VIOLATION

5. Regulations at 6 NYCRR Section 211.2 state that “No person shall cause or allow emissions of air contaminants to the outdoor atmosphere of such quantity, characteristic or duration which are injurious to human, plant or animal life or to property, or which unreasonably interfere with the comfortable enjoyment of life or property. Notwithstanding the existence of specific air quality standards or emission limits, this prohibition applies, but is not limited to, any particulate, fume, gas, mist, odor, smoke, vapor, pollen, toxic or deleterious emission, either alone or in combination with others”.

6. On July 31, 2013, the facility released methyl methacrylate vapor to the atmosphere at approximately 10:30 P.M. from an emergency release vent. The release affected the comfortable enjoyment of City residents. Respondent has notified the customer responsible for the shipment that was subject to the release that it would no longer accept any waste stream that contained methyl methacrylate as a constituent.

7. Respondent's July 31, 2013 release of methyl methacrylate vapor to the atmosphere interfered with the comfortable enjoyment of City residents and is a violation of 6 NYCRR Section 211.2.

### RCRA INSPECTION VIOLATIONS

#### SIGNAGE

8. Regulations at 6 NYCRR 373-2.10 (e) (4) and Condition IV.D.5 of the permit require Respondent to mark all tanks with the words "Hazardous Waste" and with other words that identify the contents of the tanks.

9. On March 21, 2012, Department staff observed that the Hazardous Waste sign on Tank 200 B in the Hazardous Waste Tanks Building (a.k.a. LLGF Storage Building) was on the floor and not affixed to the tank. This violation was corrected during the inspection by having plant personnel affix the sign to the tank. Respondent alleges that its employees are directed during weekly inspection to inspect signage, note any deficiencies noted and immediately correct

10. Respondent's failure to have a Hazardous Waste sign affixed to Tank 200 B is a violation of 6NYCRR Part 373-2.10(e)(4) and Condition IV.D.5 of the permit.

#### INSPECTION REPORTS

11. Regulations at 6 NYCRR 373-2.2(g) (4) provide that the owner or operator must record inspections in an inspection log or summary. Respondent has conducted its weekly hazardous waste inspections and its daily pre-shift inspections and recorded inspection information on its Weekly Environmental and LLGF Inspection Report forms. Respondent alleges that is also conducts daily pre-shift inspections of the Fuel Farm area and records the results on Fuel Farm Daily Inspection Reports.

12. On March 21, 2012, Department staff compared Respondent's Fuel Farm Daily Inspection reports and Weekly Environmental and LLGF Inspections Reports and observed 45 instances of inconsistent information in the reports.

13. Respondent violated 6 NYCRR 373-2.2(g) (4) by failing to record consistent information in its inspections logs.

### BEST MANAGEMENT PRACTICES PLAN

14. Permit Attachment N / Special Condition #9 requires that Respondent maintain compliance with its Norlite Best Management Practices Plan (Revision 1 dated 4/30/92 and as revised 10/26/95) and update the plan as necessary.
15. On March 21, 2012, Department staff reviewed Respondent's Best Management Practices Plan and observed that the plan had not been updated to address changes in personnel, and to reflect new or changed operations at the facility.
16. Respondent's failure to update its Best Management Practices Plan is a violation of Permit Attachment N / Special Condition #9c.

### FUGITIVE DUST PLAN

17. Permit Attachment O /Special Condition 9 requires Respondent to comply with the recommended control measures found in the approved Fugitive Dust Control Plan by Sci-Tech (dated 10/95 and updated 12/14/01); revise the plan, if appropriate; submit revisions to the Department by March 31st of each year; and implement the plan including any revisions, within 30 days of approval by Department.
18. On March 21, 2012, Department staff observed fines which had formerly been stored in the facility's shale silo and finish plant light-weight aggregate silo were located in piles without being addressed in its Fugitive Dust Control Plan.
19. Respondent violated Permit Attachment O /Special Condition 9b by not updating its Fugitive Dust Control Plan to reflect the removal of the silos

### WEBSITE

20. Module I, General Condition C, Subsection 9 (Public Participation) of the permit requires that the Respondent maintain a web site accessible to public that includes required specific information.
21. On March 21, 2012, Department staff reviewed Respondent's website and found that it did not contain all of the information required in the permit.
22. Respondent violated Permit General Condition C by failing to maintain the required information on the website.

### UNIVERSAL WASTE

23. Regulations at 6 NYCRR 374-3.2(d)(4)(i) require that the Respondent place universal waste lamps in a container that is closed, structurally sound, adequate to prevent breakage, compatible with the contents, and lacks evidence of leakage, spillage, or damage.
24. On March 21, 2013, Department staff observed two 4' long boxes of Universal Waste - Spent Fluorescent Lamps. One box had an open hand hole and one box had the top flap open.
25. Respondent violated 6 NYCRR 374-3.2 (d) (4) (i) by having openings in each of the two n boxes of Universal Waste - Spent Fluorescent Lamps.

### CAPS, FLANGES, PLUGS AND VALVES

26. Regulations at 6 NYCRR 373-3.28 (g) (1) require each open-ended valve or line to be equipped with a cap, blind flange, plug or a second valve.
27. On March 21, 2013, Department staff observed that the sampling port cap on pump 4 was not screwed in and was lying on the ground.
28. Respondent violated 6 NYCRR 373-3.28 (g) (1) by not having port cap on pump 4 sampling port. Respondent corrected violation during the inspection.

### CIVIL PENALTIES

29. ECL Section 71-2705(1) provides for a maximum civil penalty of \$37,500 for the first day of a violation and each day thereafter of a regulation promulgated under Title 13 of ECL Article 27.
30. ECL Section 71-2103(1) provides for a civil penalty of not less than five hundred dollars nor more than eighteen thousand dollars for a violation of a regulation and an additional penalty of not to exceed fifteen thousand dollars for each day during which such violation continues.

### WAIVER OF HEARING

31. Respondent has affirmatively waived the right to notice and hearing in the manner provided by law, has consented to the issuing and entering of this Order, and agrees to be bound by the terms, provisions and conditions contained therein.

NOW, having considered this matter and being duly advised, it is ORDERED THAT:

I. Civil Penalty

Respondent is hereby assessed a civil penalty in the amount of TWENTY NINE THOUSAND SIX HUNDRED DOLLARS (\$29,600 ). The civil penalty shall be paid to the Department of Environmental Conservation by certified check with the return of the signed and notarized Order.

II. Environmental Benefit Project

Within 30 days of the effective date of this Order, Respondent shall fund a SIXTY FOUR THOUSAND DOLLARS (\$64,000) Environmental Benefit Project (EBP) for the benefit of the City of Cohoes. Respondent shall establish an escrow account solely for the purpose of holding the EBP funds until notified by the Department where to deliver the EBP funds. Respondent shall not use the cost of the EBP(s) to reduce its tax liability. The Department has the sole discretion to determine the appropriate use of the EBP funds in accordance with CP-37 "Environmental Benefit Projects (EBP) Policy". Any statements, whether oral or written, that Respondent (or a third party at the request of the Respondent) makes with respect to the EBP will include language stating that the project was undertaken as part of the resolution of an enforcement matter brought by the Department for applicable violation(s).

Department shall notify Respondent in writing of the selection of the EBP(s). The notification shall include the name, address and description of the EBP(s) and the amount of funds to be sent to the recipient. Within 10 days of receipt of the EBP notification from the Department, Respondent shall deliver a check to the recipient and provide a completed affidavit of proof of delivery as set forth in Appendix A of this Order on Consent. The EBP recipient(s) shall certify in writing to the Department that the EBP funds were spent in accordance with the approved Department EBP(s). Appendix B contains a copy of the certification to be executed by the EBP recipient.

III. Settlement

Timely payment of the civil penalty called for above and full compliance with the terms and conditions of this Order is accepted as full settlement of the violations and conduct described above.

IV. Communications

All communications required herein shall be made to: Department - DEC Region 4, 1130 North Westcott Road, Schenectady, NY 12306, Attn: Regional Engineer; and Respondent - Mark Coombs, Norlite LLC, 628 South Saratoga Street, P.O. Box 694, Cohoes, New York 12047.

V. Access

Respondent shall allow duly authorized representatives of DEC access to the facility referred to in this Order without prior notice, at such times as may be desirable or necessary in order for DEC to inspect and determine the status of Respondent's compliance with this Order or the ECL.

VI. Summary Abatement

This Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

VII. Indemnification

Respondent shall indemnify and hold DEC, New York State, and their representatives and employees harmless for all claims, suits, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

VIII. Entire Agreement; Modification

This Order constitutes the entire agreement of the parties, and no provision of the agreement shall be deemed waived or otherwise modified except as is specifically set forth in a writing executed by the Commissioner or Regional Director of DEC indicating intent to modify this Order.

IX. Effective Date

The effective date of this Order shall be the date it is signed by the Regional Director.

X. Termination Date

This Order shall terminate upon the latter of the Respondent's compliance with the requirements of this Order or two years from the effective date of the Order.

XI. Third Parties

This Order is made strictly for the purposes of the Department, the State of New York and the United States Environmental Protection Agency and is not intended for use by any third party.

XII. Compliance with the Order on Consent and Schedule of Compliance

Respondent shall comply with the Order on Consent and the Schedule of Compliance.

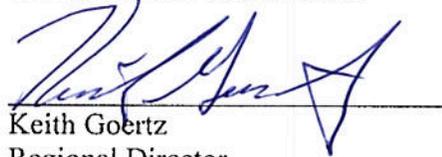
DATED: Rotterdam, New York

~~August~~ 2014

September 2,

BY:

Joseph Martens  
Commissioner  
New York State Department of  
Environmental Conservation

A handwritten signature in blue ink, appearing to read "Keith Goertz", is written over a horizontal line. The signature is stylized and includes a large, sharp downward-pointing triangle at the end.

Keith Goertz  
Regional Director  
Acting Region 4



## SCHEDULE OF COMPLIANCE

- 1) Within 30 days of the effective date of this Order, Respondent shall update its Fugitive Dust plan to include fugitive dust controls to replace the facility's shale silo and finish plant light-weight aggregate silo to capture the fines and implement such dust control measures in accordance with the schedule set forth in the Fugitive Dust Plan.
  
- 2) Within 30 days of the effective date of this Order, Respondent shall update its BMP to address changes in personnel, and to reflect new or changed operations at the facility.

APPENDIX A

STATE OF NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Articles 19 and  
27 of the Environmental  
Conservation Law of the State of  
New York and Title 6 of the Official  
Compilation of the Codes, Rules and  
Regulations of the State of New York  
NORLITE CORPORATION

DEC CASE NO.  
R4-2014-0017-6

AFFIDAVIT OF FUNDING EBP

Respondent.  
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I, \_\_\_\_\_, \_\_\_\_\_ being duly sworn, deposes and says as follows, subject to the penalty of law:

1. I am employed by Respondent, Norlite Corporation, and hold the title of \_\_\_\_\_ with Respondent. I am authorized to make this affidavit on behalf of Respondent in this matter.
2. On behalf of Respondent I hereby certify that EBP funds have been delivered to the EBP recipient identified in the Department's \_\_\_\_\_ dated notification pursuant to Paragraph II of the Order on Consent.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

Sworn to before me this  
\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

APPENDIX B

STATE OF New York DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of Articles 19 and  
27 of the Environmental  
Conservation Law of the State of  
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NORLITE CORPORATION

DEC CASE NO.  
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EBP Recipient Certification of  
Proper Use of Funds

Respondent.  
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I, \_\_\_\_\_, \_\_\_\_\_ being duly sworn, deposes and says as follows, subject to the penalty of law:

1. I am the Mayor of Cohoes, New York and I am authorized to make this affidavit. .
2. On behalf of the City of Cohoes as a recipient of the EBP funds in above captioned case, I hereby certify that EBP funds have been spent in accordance with the terms and conditions set forth in the Department of Environmental Conservation’s notification in the above captioned matter.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATED: \_\_\_\_\_

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC