

February 11, 2021

Letizia Tagliafiero, NYS Inspector General
Empire State Plaza
Agency Building 2, 16th floor
Albany, NY 12223

NYS Department of Environmental
Conservation
Office of Internal Investigations
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Albany NY 12233-1060
internal.investigations@dec.ny.gov

Dear Inspector General Tagliafiero and DEC Office of Internal Investigations:

We are writing to request that your office launch an investigation into the behavior of two key staff members of the NYS Department of Environmental Conservation (“DEC”) as it relates to the regulation of the Norlite hazardous waste incinerator in Cohoes, New York. Norlite is the state’s only commercial hazardous waste incinerator and it operates next to the Saratoga Sites public housing apartments, which is home to over 70 families. The DEC has designated this neighborhood as an environmental justice area.

Specifically, we request that you investigate Mr. Keith Goertz, who until a few weeks ago, served as Regional Director of DEC Region 4. Further, we request that you investigate Mr. Joe Hadersbeck, who spent many years serving as the DEC onsite monitor at Norlite.

According to its website, the DEC’s mission is to “conserve, improve and protect New York’s natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being.” However, Mr. Goertz abused and disregarded this mission as illustrated in an email dated April 2, 2019 that was obtained from a FOIL request, Mr. Goertz intentionally ignored the new incineration of Aqueous Film-Forming Foam Concentrates (“AFFF”) at the Norlite facility. AFFF contains PFAS chemicals that

have been linked to numerous adverse health impacts including cancer. A copy of this email is being sent with this letter.

In his email, Mr. Goertz stated “[t]here are so few effective ways in which to manage this waste, it would be great to show that incineration is a viable option.” Mr. Goertz also acknowledged that it was unknown whether AFFF was effectively destroyed by incineration because he requested “sampling” to determine this, even though he clearly knew that the incineration was already ongoing. In fact, Norlite accepted and incinerated over 2 million pounds of toxic AFFF throughout 2018 and 2019 without public knowledge. Mr. Goertz also urged Norlite’s parent company, Tradebe, to attend an “ACS National Meeting.” It is believed that the referenced ACS meeting was the American Chemical Society’s Spring 2019 meeting that occurred from March 31- April 4, 2019 (<https://www.acs.org/content/acs/en/meetings/acs-meetings/about/meetings-archive.html>). Mr. Goertz’s email was sent on Tuesday, April 2, 2019 and referenced the “ACS National Meeting” on “Thursday,” which was April 4, 2019 and the last day of that meeting.

Therefore, while acting in his capacity as DEC Regional Director for the region with jurisdiction over Norlite, Mr. Goertz clearly allowed the incineration of toxic AFFF to occur and even encouraged it in many ways. Notably, Mr. Goertz acted in this manner despite knowing or should have known the significant hazards and risks from incinerating this toxic material. Mr. Goertz himself eventually acknowledged these hazards and risks in a letter dated June 18, 2020. Specifically, Mr. Goertz stated that there was a “national knowledge gap” about whether “thermal destruction is the safest and most effective method of AFFF disposal.” In fact, sworn declarations from a chemical engineer and a toxicologist support that the incineration of AFFF is highly risky and far from proven to be effective. Mr. Goertz also acknowledged that incinerating AFFF was outside of the scope of Norlite’s various permits. Copies of the letter dated June 18, 2020 and these declarations also are being sent with this letter.

With respect to Mr. Hadersbeck, he had knowledge of this incineration and expressed a concerningly cavalier attitude towards it, as well as the obvious dangers resulting from it. Specifically, Mr. Hadersbeck made the following statements that were reported in a news article dated November 9, 2020

<https://www.cityandstateny.com/articles/policy/energy-environment/cuomo-pushes-weaken-ban-toxic-foam-burning.html>):

- “This stuff isn’t new. It’s been around for 60, 70 years. And now, everybody and their brother wants to test for it.”
- “It’s kind of hard to burn it when all of a sudden it becomes a cause celebre of every environmentalist.”
- Asked whether trial burns should be run outside of public housing complexes, Mr. Hadersbeck downplayed the concern by saying, “You think you’re going to find somewhere where people say, ‘Yeah, bring it here, burn it here, we don’t care’? I don’t think that is going to happen.”

Other DEC officials consistently said they did not know that AFFF was being burned at Norlite until “in late 2019” <https://theintercept.com/2020/04/28/toxic-pfas-aff-upstate-new-york/>) and in public information meetings posted to their website, DEC has said that they immediately directed Norlite to stop burning AFFF and began conducting a permit review when they became aware of the AFFF incineration, even though Mr. Goertz’s email proves that the DEC knew about it as early as April of 2019. Despite his knowledge, he never informed local authorities or residents of the incineration of this toxic waste at Norlite, as Cohoes’s Mayor, William Keeler, stated that he was not told until his meetings with the DEC in 2020 (<https://www.cityandstateny.com/articles/policy/energy-environment/cuomo-pushes-weaken-ban-toxic-foam-burning.html>). Also, the DEC was not honest with Mayor Keeler because he stated that the DEC acted “surprised” during those meetings. It is not plausible that Mr. Goertz was aware of burning this high-profile toxic material and did not tell anyone at the agency.

The DEC was consistently telling the public and local officials that they were not aware until late 2019 that AFFF was being incinerated at Norlite, but both the DEC Regional Director and the on-site monitor knew otherwise. Did the DEC not ask the question to these two staff? Did these career staff people remain silent while they watched their agency make public statements that were untrue? Did these two staff provide correct information to their supervisors and a decision was made not to correct the public record? All of these issues warrant investigation.

Lastly, through their intentional disregard of their regulatory duties, Mr. Goertz and Mr. Hadersbeck have violated local residents' rights to equal protection under and enjoyment of the applicable environmental laws. This constitutes a gross violation of these residents' civil rights, which would likely not have occurred in more affluent communities.

In addition to Norlite's proximity to the Saratoga Sites public housing apartments, the City of Cohoes, and the Hudson River, the City of Troy (population 50,000), lies just one mile east under the predominant prevailing winds.

In sum, Mr. Goertz and Mr. Hadersbeck encouraged and ignored the hazards arising from the incineration of AFFF at Norlite, despite considerable uncertainty about the effectiveness and safety of doing so. Again, Mr. Goertz himself acknowledged these hazards and that the incineration of AFFF was outside the scope of Norlite's permits, but he still knowingly allowed it to occur. Both of these individuals also failed to inform local authorities and residents about it, and the DEC was dishonest to both when it stated that the incineration was not known "until late 2019." As two of the lead regulators for Norlite, this conduct, at best, was dishonest to, in disregard of, and grossly neglectful of DEC's stated mission. At worst, the conduct constituted a abuse of power by intentionally encouraging highly dangerous and risky incineration at Norlite, as well as misleading and deceiving the communities who were put at risk.

The behavior of Mr. Goertz and Mr. Hadersbeck undermines any confidence in their ability to be honest and independent regulators. Their actions and lack of needed actions warrants an immediate investigation by your office. We would appreciate an opportunity to meet with you to provide additional information. Please contact Joe Ritchie, Executive Director of Saratoga Sites Against Norlite Emissions at 518 526 9543 to arrange a time. Thank you for your attention to this serious environmental and public health concern.

Sincerely,

Joe Ritchie, Executive Director, Saratoga Sites Against Norlite Emissions
20-year resident of Saratoga Sites

Judith Enck, Former EPA Regional Administrator

Patricia Sibiliala, President, League of Women Voters, Albany County

Christopher J. Sevinsky, PhD, concerned local resident and cancer biologist

Alexis Goldsmith, Lights Out Norlite, Resident of North Central Troy

Enclosures: Emails between Keith Goertz and Tradebe

News Article from NY Focus "Cuomo Pushes to Weaken Ban on Toxic Foam Burning"

Rickman Declaration

Grandjean Declaration

List of environmental law violations at Norlite, spanning decades

CC: Attorney General Letitia James

HUD Secretary nominee The Honorable Marsha Fudge

Cohoes Mayor Keeler

Assemblyman John McDonald

Senator Neil Breslin