

New York State Department of Environmental Conservation
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Via E-Mail Only

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Re: Global Companies, LLC

Dear Counsel:

This letter confirms our recent discussions concerning the Department's commitment to ensuring that you and your clients are able to preserve -- beyond the expiration of the present tolling agreement -- claims based upon the November 21, 2013, Negative Declaration / Notice of Determination of Non Significance ("Negative Declaration") in connection with the Global Companies, LLC ("Global") proposed modification of its Title V permit. Regardless of the merits of our respective legal arguments, and notwithstanding our differing conclusions about whether there has been a final agency decision that is reviewable under Article 78 of the Civil Practice Law and Rules ("CPLR"), you have clearly articulated your clients' concerns about the potential running of the statute of limitations under Article 19 of the Environmental Conservation Law and its implementing regulations and/or CPLR Article 78. We respect those concerns.

We further understand that your clients' present objective is for the Department to rescind the Negative Declaration, which you contend is required by SEQRA and the implementing regulations. Such action is governed by, *inter alia*, 6 NYCRR 617.7 which establishes criteria for amending or rescinding negative declarations. As we have previously indicated, under the unique facts and circumstances of this case, the Department will not treat the present Negative Declaration as a final determination of significance regarding Global's proposal. The Department continues to collect additional information necessary to evaluate the significance of the proposed project. In particular, we expect to seek clarification concerning

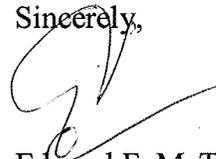
Global's May 15, 2014 response to the Department's March 24, 2014 letter, as well as the issues raised in the April 28, 2014 letter from the U.S. Environmental Protection Agency. Before making any further decision concerning significance, the Department also intends to complete the Community Air Screen to better evaluate whether there is any relationship between air quality and the proposed project. We acknowledge your clients' request at the April 29, 2014 community meeting, and reiterated in your May 2, 2014 letter, that the air monitoring results be provided to the community as they become available, as well as the request in your May 19, 2014 letter for a follow-up community meeting to discuss the sampling program for hydrogen sulfide. The Department will be responding to those requests shortly, in accordance with DEC's Environmental Justice Policy.

In addition, subject to the Department's oversight, Global will implement the enhanced community outreach mandated by DEC's Environmental Justice Policy, Commissioner's Policy #29. We will consider the results of that enhanced outreach as we further evaluate the proposed action under SEQRA. Accordingly, until the Department makes a final determination concerning significance and rescinds, amends or confirms the Negative Declaration, it will not issue a permit for Global's proposal.

Therefore, we continue to believe that our mutual desire to avoid potentially costly and time-consuming litigation outweighs our competing interpretations of the case law concerning when a claim challenging this particular Negative Declaration might be ripe. Our joint preference was to extend the tolling agreement. Unfortunately, further extensions were not possible due to the conditions which Global sought to impose on an extension of the tolling agreement.

Accordingly, although all of the parties will need to reserve all of our rights, we are ready and willing to work together to develop a motion to stay the action. Such a motion will be jointly filed shortly after the filing of your action. That motion will ask the court to maintain the status quo without ruling on the merits of either party's position until the public participation and comment period closes, the Department completes its review of public comments and additional information submitted by Global, and DEC announces its final decision concerning whether the Negative Declaration will be rescinded or amended, or until September 3, 2014, whichever occurs first. The motion will also stipulate that each side will bear its own legal expenses and that no costs will be taxed. This approach should provide a way for us to work together to avoid any risks to your clients while ensuring that the expiration of the tolling period does not result in needless litigation.

Sincerely,



Edward F. McTiernan
Deputy Commissioner
and General Counsel