

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
THIRD DEPARTMENT

People v. Norlite, LLC

2026 NY Slip Op 01105 (Supreme Court of the State of New York Appellate Division Third Department 2026) ·
No. CV-25-0091 · Decided February 26, 2026

SUMMARY

The Appellate Division, Third Department, affirmed dismissal of environmental intervenors' cross-claim against the Department of Environmental Conservation. The court held that the New York Constitution's Green Amendment did not authorize the intervenors to compel DEC to take particular enforcement action against Norlite, LLC, because permit enforcement decisions involve agency discretion rather than a ministerial duty enforceable through mandamus. The court also concluded that the claim was essentially a CPLR article 78 proceeding and was duplicative in the context of declaratory relief.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Third Department
WRITING FOR THE COURT	Fisher, J.; Clark, J.P.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Third Department
DECIDED	February 26, 2026
DOCKET	CV-25-0091
DISPOSITION	affirmed
PROCEDURAL POSTURE	Intervenors appealed from an order of Supreme Court, Albany County, which, upon renewal, granted the state plaintiffs' motion to dismiss the intervenors' third cause of action for failure to state a cause of action.
STANDARD OF REVIEW	De novo review of dismissal for failure to state a cause of action; the court accepts the pleaded facts as true and determines whether they fit within any cognizable legal theory.
PRECEDENTIAL VALUE	published

PARTIES

Green Education and Legal Fund et al., intervenors v. The People of the State of New York et al., New York State Department of Environmental Conservation

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QUESTIONS PRESENTED

1. Whether the Green Amendment to the New York Constitution creates an enforceable private substantive right or cause of action allowing intervenors to compel DEC to take enforcement action against Norlite.
2. Whether the intervenors' claim, although styled as declaratory relief, was in substance a CPLR article 78 mandamus proceeding.
3. Whether DEC had a mandatory ministerial duty, rather than discretionary enforcement authority, to revoke, suspend, or modify Norlite's permits in response to fugitive-dust violations.

HOLDINGS

1. The Green Amendment does not create a private cause of action that permits intervenors to compel DEC to take enforcement action when alternative remedies exist, including state tort claims and a CPLR article 78 proceeding.
2. The intervenors' ostensibly declaratory claim was essentially a CPLR article 78 proceeding in the nature of mandamus because it sought to compel the State to take enforcement action against a private entity.
3. DEC did not have a mandatory ministerial duty to take the particular enforcement action sought by intervenors because the governing statutes and regulations vest the agency with discretionary enforcement authority.

KEY QUOTATIONS

*“mandamus is not available to compel an officer or body to reach a particular outcome with respect to a decision that turns on the exercise of discretion or judgment that could theoretically produce a variety of acceptable outcomes” (*3)*

*“While perhaps these outcomes are unsatisfactory to the intervenors, as private parties they cannot use mandamus “to compel a particular outcome” from an administrative agency” (*4)*

FACTUAL BACKGROUND

Norlite operates an industrial shale-mining and aggregate-processing facility in Albany County under air-emissions and hazardous-waste permits issued by DEC. Nearby residents reported repeated exposures to fugitive dust, and DEC issued multiple notices of violation; Norlite had paid substantial penalties and made

environmental commitments in resolving prior charges. After continued dust releases, the State and DEC brought an enforcement action, and intervenors sought to compel DEC to revoke or rescind Norlite's permits and take enforcement action under the Green Amendment.

PROCEDURAL HISTORY

New York and the Department of Environmental Conservation sued Norlite, LLC, alleging public nuisance and violations of statutory, regulatory, and permit requirements arising from fugitive dust emissions. Environmental groups and individuals intervened and asserted a cross-claim against DEC seeking declaratory and injunctive relief under the Green Amendment to the New York Constitution. Supreme Court dismissed that claim against the state plaintiffs, and the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Fresh Air for the Eastside, Inc. v State of New York, 229 AD3d 1217, 1219-1220 (4th Dept 2024)
- Alwan v City of New York, 311 F Supp 3d 570, 586 (ED NY 2018)
- Martinez v City of Schenectady, 97 NY2d 78, 83 (2001)
- Shelton v New York State Liq. Auth., 61 AD3d 1145, 1150 (3d Dept 2009)
- Chan v United States Dept. of Transp., 2024 WL 5199945, *38, 2024 U.S. Dist. LEXIS 231658, *133-134 (SD NY Dec. 23, 2024)
- Galbraith v City of Buffalo, 2025 WL 3456169, *7-*8, 2025 U.S. Dist. LEXIS 252579, *18-20 (WD NY Oct. 20, 2025)
- Friends of Fort Greene Park v NYC Parks & Recreation Dept., 87 Misc 3d 1064, 1093-1094 (Sup Ct, NY County 2025)
- Streeter v New York City Dept. of Env'tl. Protection, 83 Misc 3d 417, 422 (Sup Ct, Kings County 2024)
- Matter of Hoffman v New York State Ind. Redistricting Commn., 41 NY3d 341, 364 (2023)
- Matter of Melendez v New York State Dept. of Corr. & Community Supervision, 240 AD3d 1111, 1112 (3d Dept 2025)
- Hussain v Lynch, 215 AD3d 121, 126 (3d Dept 2023)
- Clements v New York Secretary of State, 227 AD3d 84, 87, 89-90 (3d Dept 2024)
- New York Civ. Liberties Union v State of New York, 4 NY3d 175, 184 (2005)
- Tango v Tulevech, 61 NY2d 34, 41 (1983)
- Willows Condominium Assn. v Town of Greenburgh, 153 AD3d 535, 537 (2d Dept 2017)
- Alliance to End Chickens as Kaporos v New York City Police Dept., 32 NY3d 1091, 1093 (2018)
- Central Hudson Gas & Elec. Corp. v Public Serv. Commn., 242 AD3d 33, 36-37 (3d Dept 2025)
- Alliance to End Chickens as Kaporos v New York City Police Dept., 587 U.S. 1027 (2019)

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