State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: October 29, 2026 CV-25-0574

SENECA LAKE GUARDIAN, INC., et al.,
Appellants-Respondents,
v

SENECA MEADOWS, INC.,
Respondent-Appellant,
and

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION,
Respondent.

MEMORANDUM AND ORDER

Calendar Date: September 8, 2026

Before: Ceresia, J.P., Powers, Corcoran and Ryba, JJ.

Whiteman Osterman & Hanna LLP, Albany (*Robert S. Rosborough IV* of counsel), for appellants-respondents.

Beveridge & Diamond, PC, New York City (*Michael G. Murphy* of counsel), for respondent-appellant.

Letitia James, Attorney General, Albany (*Brian Lusignan* of counsel), for respondent.

Ryba, J.

Cross-appeals from an order of the Supreme Court (Kimberly O'Connor, J.), entered March 13, 2025 in Albany County, which, among other things, granted a motion by defendant Department of Environmental Conservation to dismiss the complaint against it and partially denied a motion by defendant Seneca Meadows, Inc. to dismiss the complaint against it.

Plaintiffs consist of two environmental groups, two Seneca County businesses and two individuals living in the vicinity of a municipal solid waste landfill. Together, they brought an action against defendants to enjoin the continued operation of the landfill and for the immediate abatement of the persistent and noxious odors emanating therefrom. Defendant Seneca Meadows, Inc. (hereinafter SMI) owns and operates the landfill at issue pursuant to permits issued by defendant Department of Environmental Conservation (hereinafter DEC). In July 2020, SMI submitted applications to DEC to modify its air emissions and solid waste management facility permits in connection with a proposal to significantly expand the landfill's disposal capacity and extend its operational life by 15 years. DEC declared itself lead agency for purposes of reviewing the permit applications pursuant to the State Environmental Quality Review Act (*see* ECL art 8 [hereinafter SEQRA]) and thereafter issued a positive declaration directing the preparation of a draft environmental impact statement. Before DEC rendered a final determination on the applications, plaintiffs commenced this action challenging the continued operation of the landfill and the pending permit applications.

The complaint alleged that the landfill persistently produces offensive odors and other adverse conditions that substantially interfere with the use and enjoyment of plaintiffs' properties and negatively affect the surrounding community. As against SMI, plaintiffs asserted causes of action for public and private nuisance and sought a declaration that continued operation of the landfill violates article I, § 19 of the NY Constitution, otherwise known as the Green Amendment. As against DEC, plaintiffs sought a declaration that DEC has violated the Green Amendment by failing to require SMI to remedy the landfill's environmental impacts, as well as an injunction prohibiting DEC from approving the pending permit applications for expansion of the landfill. In lieu of answering, DEC and SMI separately moved to dismiss the respective claims against them pursuant to CPLR 3211. Supreme Court granted DEC's motion and dismissed all claims asserted against that defendant, finding that the Green Amendment claim failed to state a cause of action and that the injunction claim was not ripe for judicial review. Likewise, the court dismissed two causes of action alleging public nuisance and a

violation of the Green Amendment against SMI. However, SMI's motion to dismiss related to the private nuisance cause of action was denied. Plaintiffs appeal from so much of the order that dismissed the above claims against SMI and DEC. SMI cross-appeals from so much of the order that denied dismissal of the private nuisance cause of action.

In reviewing the dismissal of plaintiffs' request to enjoin DEC from approving the permit applications, we must first determine whether that claim is ripe for judicial review, as courts will not intervene in administrative proceedings before an agency has rendered a final determination (*see Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d 188, 190-191 [3d Dept 2012]). Here, plaintiffs' request for an injunction is not ripe for judicial review as there has been no final administrative determination (*see Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 520 [1986]). Although DEC declared itself lead agency under SEQRA, issued a positive declaration and required preparation of a draft environmental impact statement, its administrative review of the permit applications remains ongoing and it has not rendered a final determination approving or denying either application. Inasmuch as plaintiffs' challenge to a future approval of those applications depends upon contingent events that may never occur, the claim is not ripe for judicial review (*see Matter of Adirondack Council, Inc. v Adirondack Park Agency*, 92 AD3d at 190-192; *Matter of Town of Riverhead v Central Pine Barrens Joint Planning & Policy Commn.*, 71 AD3d 679, 681 [2d Dept 2010]). Dismissal of plaintiffs' cause of action for an injunction was therefore appropriate.

We next turn to plaintiffs' cause of action against DEC asserting a violation of the Green Amendment, which guarantees the "right to clean air and water, and a healthful environment" (NY Const, art I, §19). Plaintiffs' Green Amendment claim began with the allegation that SMI is operating the landfill in violation of DEC regulations and the conditions of its air emissions permit by permitting persistent, noxious odors that constitute a nuisance and unreasonably interfere with the comfortable enjoyment of neighboring properties (*see* 6 NYCRR 211.1). Plaintiffs further alleged that, because DEC possesses the authority to require SMI to abate those conditions through an enforcement action pursuant to 6 NYCRR 360.19 (a), DEC's failure to do so violates the Green Amendment. On that basis, plaintiffs sought a declaration that DEC has violated the Green Amendment.

Accepting plaintiffs' allegations as true and affording them the benefit of every favorable inference, we find they do not state a cognizable claim against DEC for a Green Amendment violation. Although the claim is characterized as one seeking declaratory and injunctive relief under the Green Amendment, we must look beyond the form of the

pleading to the substance of the claim and the relief requested to determine its true nature (*see Camp Bearberry, LLC v Khanna*, 234 AD3d 1158, 1159 [3d Dept 2025], *lv dismissed* 43 NY3d 960 [2025]). Evaluation of plaintiffs' claim that DEC violated the Green Amendment by failing to commence enforcement proceedings against SMI would require the court to determine whether DEC is required to exercise such enforcement authority in this matter. Thus, plaintiffs' claim in essence seeks an order that compels DEC to investigate, regulate or otherwise exercise its enforcement authority against SMI. Such relief sounds in the nature of mandamus and, as set forth below, is not available here.

Mandamus to compel is an extraordinary remedy available only where there is a clear legal duty to perform the requested act and a corresponding right to compel its performance (*see People v Norlite, LLC*, 246 AD3d 1346, 1349 [3d Dept 2025], *appeal dismissed* 46 NY3d 938 [2026]; *Matter of Hussain v Lynch*, 215 AD3d 121, 125-126 [3d Dept 2023]). Relief lies only to compel the performance of a ministerial duty and may not be used to direct governmental action involving the exercise of judgment or discretion (*see Alliance to End Chickens as Kaporos v New York City Police Dept.*, 32 NY3d 1091, 1093 [2018], *cert denied* 587 US 1027 [2019]; *People v Norlite, LLC*, 246 AD3d at 1349; *Matter of Woodside Manor Nursing Home, Inc. v Zucker*, 223 AD3d 94, 99 [3d Dept 2024], *appeal dismissed* 41 NY3d 991 [2024], *lv denied* 42 NY3d 907 [2024]). A ministerial duty exists only where a statute or other source of law imposes a clear legal duty requiring the agency to perform a specific act (*see Alliance to End Chickens as Kaporos v New York City Police Dept.*, 32 NY3d at 1093; *New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184 [2005]).

Nothing in the ECL or DEC's implementing regulations imposes a ministerial duty upon DEC to commence enforcement proceedings against SMI. The Legislature has vested DEC with broad authority to administer and enforce the ECL, and in carrying out that responsibility, DEC necessarily exercises its judgment in determining whether, when and how to investigate alleged violations and pursue enforcement proceedings. Because such determinations are discretionary rather than ministerial, they are not subject to judicial enforcement (*see People v Norlite*, 246 AD3d at 1349). Plaintiffs' attempt to cast DEC's decision not to commence enforcement proceedings as a constitutional violation of the Green Amendment does not alter this analysis. As we recently explained in *People v Norlite* (246 AD3d at 1349), the Green Amendment does not impose a ministerial duty requiring DEC to pursue enforcement proceedings.

We next turn to plaintiffs' challenge to Supreme Court's dismissal of their Green Amendment and public nuisance causes of action against SMI, and SMI's cross-appeal contending that the court should have also dismissed plaintiffs' private nuisance cause of action. We conclude that Supreme Court properly resolved each of these issues.

First, Supreme Court properly dismissed plaintiffs' cause of action seeking a declaration that SMI, a private entity, violated the Green Amendment. It is well settled that the Green Amendment regulates governmental conduct, not private conduct (*see* NY Const, art I, §19; *SHAD Alliance v Smith Haven Mall*, 66 NY2d 496, 503 [1985]; *Downs v Town of Guilderland*, 70 AD3d 1228, 1230-1232 [3d Dept 2010], *appeal dismissed* 15 NY3d 742 [2010]). Accordingly, in order to maintain a Green Amendment claim, plaintiffs needed to allege facts establishing that SMI's conduct is sufficiently attributable to the state. In assessing whether state action exists, courts consider the source of authority for the private conduct, the extent of state involvement in regulating the challenged activity, whether the state meaningfully participated in that activity and whether the private entity has been delegated a function traditionally performed by the state (*see Fresh Air for the Eastside, Inc. v State of New York*, 229 AD3d 1217, 1218 [4th Dept 2024], *appeal dismissed* 42 NY3d 1084 [2025], *lv denied* 44 NY3d 907 [2025]). No single factor is dispositive, and the relevant inquiry is not merely whether the state is involved, but whether state involvement is so significant as to render the challenged conduct fairly attributable to the state.

Here, plaintiffs contend that SMI's conduct is properly attributable to DEC because the landfill operates pursuant to permits issued by DEC, is subject to extensive statutory and regulatory oversight by DEC and may expand its operations only with DEC approval. They further assert that DEC exercises continuing supervisory authority over the landfill through inspections, monitoring, enforcement powers and the permitting process, rendering the state sufficiently intertwined with SMI's operations to constitute state action. We are unpersuaded. The fact that SMI operates the landfill pursuant to DEC permits and is subject to extensive governmental regulation and oversight does not, without more, render its conduct fairly attributable to DEC (*see SHAD Alliance v Smith Haven Mall*, 66 NY2d at 502-503; *Fresh Air for the Eastside, Inc. v State of New York*, 229 AD3d at 1218). As plaintiffs have alleged no facts demonstrating that DEC directed, compelled or jointly participated in the conduct giving rise to their claims, or that SMI was performing a function traditionally reserved to DEC, plaintiffs' Green Amendment claim was appropriately dismissed.

We further conclude that Supreme Court properly dismissed plaintiffs' public

nuisance cause of action. "A public nuisance consists of conduct or omissions which offend, interfere with or cause damage to the public in the exercise of rights common to all, in a manner such as to offend public morals, interfere with use by the public of a public place or endanger or injure the property, health, safety or comfort of a considerable number of persons" (*Duffy v Baldwin*, 183 AD3d 1053, 1054-1055 [3d Dept 2020] [internal quotation marks and citations omitted]; *see 532 Madison Ave. Gourmet Foods v Finlandia Ctr.*, 96 NY2d 280, 292 [2001]; *Davies v S.A. Dunn & Co., LLC*, 200 AD3d 8, 11-12 [3d Dept 2021], *lv denied* 38 NY3d 902 [2022]). Because a public nuisance constitutes an offense against the State, its abatement ordinarily rests with the appropriate governmental authorities rather than private litigants (*see Burns Jackson Miller Summit & Spitzer v Lindner,* 59 NY2d 314, 334 [1983]; *Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d 564, 568 [1977]). Accordingly, a private party may maintain an action for public nuisance only upon demonstrating a special injury beyond that suffered by the community at large (*see 532 Madison Ave. Gourmet Foods v Finlandia Ctr.*, 96 NY2d at 292; *Duffy v Baldwin*, 183 AD3d at 1055).

The special injury requirement is a significant limitation on a private plaintiff's ability to recover for a public nuisance. The injury must be "different in kind, not merely in degree," from that sustained by the public generally (*532 Madison Ave. Gourmet Foods v Finlandia Ctr.*, 96 NY2d at 294; *see Davies v S.A. Dunn & Co.*, *LLC*, 200 AD3d at 12). Put differently, it is not enough that a plaintiff suffers the same injury more frequently or more severely than others. Rather, the plaintiff must establish an injury that is "private and peculiar" to it, as distinguished from the common injury experienced by the public (*Wakeman v Wilbur*, 147 NY 657, 663 [1895]; *see Davies v S.A. Dunn & Co., LLC*, 200 AD3d at 12). This limitation serves the important purpose of preventing "the multiplicity of lawsuits that would follow if everyone were permitted to seek redress for a wrong common to the public" (*532 Madison Ave. Gourmet Foods v Finlandia Ctr.*, 96 NY2d at 292). Where the alleged business interference and resulting economic harm are "so general and widespread as to affect a whole community, or a very wide area within it," the economic losses sustained by individual businesses are insufficient to establish a special injury because they are not different in kind from those suffered by other similarly affected members of the public (*id.* at 293 [internal quotations marks and citation omitted]).

Applying these principles here, the complaint failed to allege a sufficient special injury to sustain the public nuisance cause of action. The complaint alleged that plaintiffs Waterloo Contractors, Inc. and Absolute Auto Repair, Inc. have sustained economic losses as the result of noxious odors emanating from the landfill and gulls attracted to the

landfill that frequent their properties. Such alleged injuries, however, were pleaded as consequences of the same community-wide interference that plaintiffs contend has affected the surrounding region. The complaint did not allege facts demonstrating that Waterloo and Absolute are uniquely affected by the conditions giving rise to their economic losses or that those conditions differ in kind from those alleged to affect a large portion of the local community. Because the pecuniary losses allegedly suffered by Waterloo and Absolute flow from the same widespread interference alleged to broadly affect the community population, those losses do not constitute a special injury, and the public nuisance cause of action was properly dismissed.

Finally, addressing SMI's cross-appeal, we conclude that Supreme Court properly denied that portion of SMI's motion seeking dismissal of plaintiffs' private nuisance cause of action. A private nuisance is a substantial interference with a person's interest in the private use and enjoyment of land that is intentional, negligent, reckless or otherwise actionable under the rules governing liability for abnormally dangerous activities (*see Copart Indus. v Consolidated Edison Co. of N.Y.*, 41 NY2d at 569). Whether an interference is substantial and unreasonable is a fact-specific inquiry that turns upon the nature, extent, duration and character of the alleged invasion and its effect upon the use and enjoyment of the affected property (*see id.* at 570; *Boomer v Atlantic Cement Co.*, 26 NY2d 219, 222-223 [1970]). Here, plaintiffs alleged that odors and other conditions caused by the landfill have, over an extended period, substantially interfered with the use and enjoyment of their homes and businesses, causing, among other things, diminished property enjoyment and economic losses. Accepting the allegations as true and affording plaintiffs the benefit of every favorable inference, these allegations sufficiently plead a substantial interference with plaintiffs' private interests so as to survive dismissal for failure to state a cause of action.

SMI nevertheless contends that the private nuisance claim fails as a matter of law because the alleged interference is not limited to a discrete number of property owners, but is instead experienced throughout the surrounding community. In support of this argument, SMI relies principally upon the Court of Appeals' observation in *Copart Indus. v Consolidated Edison Co. of N.Y.*, that a private nuisance threatens "one person or a relatively few" persons (41 NY2d at 568). SMI argues that this Court, in *Davies v S.A. Dunn & Co., LLC* (200 AD3d at 12), interpreted *Copart* as limiting private nuisance claims to interferences affecting only one person or relatively few persons, thereby precluding such claims where the alleged interference is experienced broadly throughout the community. SMI further notes that the Fourth Department adopted the same reasoning in *William Metrose Ltd. Bldr./Dev. v Waste Mgt. of N.Y., LLC* (225 AD3d

1223, 1224 [4th Dept 2024], *lv granted* 42 NY3d 912 [2025]). Plaintiffs, by contrast, rely upon the recent decision in *Dudley v API Indus., Inc.* (250 AD3d 53 [2d Dept 2025]), in which the Second Department declined to construe *Copart* as imposing a categorical numerical limitation upon private nuisance claims and instead viewed the "one person or a relatively few" language as an effort to describe the traditional distinction between private and public nuisance claims (*id.* at 59-66 [internal quotation marks and citation omitted]). According to plaintiffs, neither *Copart* nor *Davies* placed a substantive limitation on private nuisance claims nor required dismissal of such claims whenever numerous people are affected by the alleged interference.

At this early stage of the litigation, before discovery has been completed, it is premature to foreclose plaintiffs' private nuisance claim as a matter of law. The parties should instead be afforded the opportunity to develop the factual record regarding the nature, extent and impact of the alleged interference, following which the viability of the claim may be assessed on an appropriate motion. Accordingly, Supreme Court properly denied that portion of SMI's motion seeking dismissal of plaintiffs' private nuisance cause of action. The parties' remaining arguments have been considered and found to be either without merit or unnecessary to address.

Ceresia, J.P., Powers and Corcoran, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court