

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of a Violation of Article 27 of the New York
State Environmental Conservation Law and Title 6, Part 375
of the Official Compilation of Codes, Rules, and Regulations
of the State of New York,

ORDER ON CONSENT

by

Index No. CO 2-20231002-298
Site: 27-09 40th Avenue
Site No. C241241

40th Ave Dutch Kills Realty LLC,
N.Y. Preferred Development Group, LLC

Respondent.

WHEREAS:

JURISDICTION

1. The New York State Department of Environmental Conservation (the "Department") is responsible for the administration and enforcement of law and regulations pursuant to Article 27, Titles 13 and 14, of the New York State Environmental Conservation Law ("ECL") and 6 NYCRR Part 375 and may issue orders thereunder.
2. This Order on Consent (the "Order") is issued in accordance with the Department's enforcement authority pursuant to ECL Articles 3 and 71.

PARTIES

3. Respondent 40th Ave Dutch Kills Realty LLC is a limited liability company with a principal place of business at 36-08 30th Avenue, 2nd Floor, Astoria, NY 11103, is the owner of the property located at 27-03 and 27-09/27-11 40th Ave and 29-44 28th St., Long Island City (Queens, Block: 397, Lots: 33, 35, 39) and is a party to a Brownfield Cleanup Agreement dated April 14, 2020 (Index No. C241241-03-20).
4. Respondent N.Y. Preferred Development Group, LLC is a limited liability company with a principal place of business at 3908 24th Street, Long Island City, NY 11101 and is the general contractor for Respondent, 40th Ave Dutch Kills LLC, at the Brownfield Cleanup Program Site, 27-09 40th Avenue, Site No. C241241.

PROVISIONS OF LAW

5. The New York State Department of Environmental Conservation ("Department") is responsible for remedial programs pursuant to Article 27, Title 13 and 14 of the ECL and 6 NYCRR Part 375 and may issue orders consistent with the authority granted to the Commissioner of the Department by such statute.
6. The Department enacted 6 NYCRR Part 375 pursuant to Titles 13 and 14 of Article 27 to provide for the orderly and efficient administration of inactive hazardous waste disposal sites, including sites in the State Superfund and Brownfield Cleanup Programs. See 6 NYCRR 375-1.1(a).
7. The regulations state that all work undertaken as part of a remedial program for a site shall be detailed in a work plan approved by the Department. See 6 NYCRR 375-1.6 (a).
8. The statute and regulations state that it is a violation to engage in any activity that will or is reasonably anticipated to prevent or interfere significantly with any proposed or ongoing remedial program. See ECL § 27-1425(2) and 6 NYCRR 375-1.11(b)(2)(i).
9. The regulations state that it is a violation to engage in any activity that will, or that is reasonably foreseeable to, expose the public health or the environment to a significantly increased threat of harm or damage at any site. See NYCRR 375-1.11(b)(2)(ii).
10. Pursuant to ECL § 71-2705, any person who violates any of the provisions of, or who fails to perform any duty imposed by Article 27, Title 13 or any rule or regulation promulgated thereto, may be liable for penalties of up to \$37,500 per day per violation.

FACTS

11. The property owned by 40th Ave Dutch Kills Realty LLC, (the 27-09 40th Avenue Site or the "Site"), is in the Brownfield Cleanup Program pursuant to a Brownfield Cleanup Agreement dated April 14, 2020 (Index No. C241241-03-20).
12. The Site is currently in the remedial action phase of remediation. The Site is subject to a remedial action work plan (RAWP) that was approved by the Department on May 2021.

The RAWP requires that transport of material will be performed by licensed haulers in accordance with appropriate local, State and Federal Regulations. See May 2021, RAWP, Section 6.4.4, Materials Transport Off-Site.

13. The RAWP requires disposal documentation from each receiving facility to document lawful disposal of material. See May 2021, RAWP, Section 6.4.5, Materials Disposal Off-Site.
14. In November 2022, NYSDEC provided contained-in determination letters for all soil being removed from the site. The site had been divided into six distinct areas, and six contained-in letters were issued. The letters required soil disposal at a specific disposal facility (which varied between the six areas) or a permitted solid waste facility. In addition, Section 6.4.5 of the RAWP requires disposal documentation from each receiving facility to document lawful disposal of material. Each receiving facility shall provide a letter acknowledging the material to be disposed and stating it is approved to accept the material.
15. During implementation of the RAWP, between November 2022 and March 2023, soils, or non-hazardous regulated material, were excavated from the site. Shipments of missing soil and/or non-hazardous regulated material occurred on December 20 and 28, 2022; January 5, 20, 25, and 30, 2023; February 1, 22, and 28, 2023; and March 1 and 3, 2023.
16. On May 1, 2023, the Applicant's consultant disclosed that (1) transport tickets for receipt of the material had not been received from the permitted disposal facilities for 43 loads of soil; and (2) 194 loads of soil were sent off-site to a non-permitted facility, and no transport tickets acknowledging receipt of the 194 loads were received from the non-permitted disposal facility.
17. NYSDEC discovered that (3) transportation records submitted by the consultant indicated that not all of the transporters of the soil from the site were licensed to transport waste in NYS and (4) the non-permitted disposal facility denied issuing the letter of acceptance that was provided with the May 1 submittal to the Department.

VIOLATIONS

18. Respondent violated 6 NYCRR 375-1.11(b)(2)(i) by engaging in an activity that exposes the public health or the environment to a significantly increased threat of harm or damage at a BCP site.
19. Violation of 6 NYCRR 375-1.11(b)(2)(ii) by engaging in activities that were reasonably anticipated to prevent or interfere significantly with any proposed or ongoing remedial program.
20. Respondent violated 6 NYCRR 375-1.6(a) by failing to comply with the RAWP, specifically by failing to implement sections 6.4.4 5 (Materials Transport Off-site) and 6.4.5 (Materials Disposal Off-site).

In settlement of Respondents' liability for the aforesaid violations, Respondent admits the violations set forth herein, waives its right to a hearing as provided by law, and consents to the issuing and entering of this Order on Consent pursuant to the provisions of ECL Articles 27 and 71, and agrees to be bound by the provisions, terms, and conditions herein. Respondent consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Order and agrees not to contest the validity of this Order or its terms.

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

I. PENALTY

A. Respondent may be liable for a total civil penalty in the amount of \$1,050,000.00 for the violations stated in this Consent Order to be paid as follows: **Payable Penalty:** Respondent shall pay **\$350,000.00** for the Violation of the penalty upon the execution of this Consent Order. The first payment, in the amount of \$70,000.00, shall be paid within 30 days of the Department's execution of this Order by electronic payment at <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation," with the enclosed invoice and Index Number "C241241-03-20" written in the memo section of the check, which shall be sent to the Department of Environmental Conservation, Division of Management and Budget Services, 625 Broadway, 10th Floor, Albany, NY 12233-4900.

Additional payments shall be paid according to the schedule provided below.

Installment #	Amount Due	Date Due
#2	\$70,000.00	12/31/2026
#3	\$70,000.00	12/31/2027
#4	\$70,000.00	12/31/2028
#5	\$70,000.00	12/31/2029
Total (including first payment)	\$350,000.00	

B. **Suspended Penalty:** Notwithstanding the Payable Penalty above, \$650,000.00 of the assessed civil penalty against Respondent has been suspended, provided Respondent complies with all the terms of this Order and all applicable provision of law. In the event that Respondent fails to comply with all the terms of this order and all applicable provisions of law, the entire suspended portion of the penalty shall become due

and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for the violations by Respondent.

C. This Order on Consent, along with any applicable submissions, shall be sent to:

New York State Department of Environmental Conservation
Office of General Counsel
Attention: Leia Schmidt, Remediation Bureau
625 Broadway, 14th Floor
Albany, NY 12233-1500

II. FINAL ENGINEERING REPORT

The Final Engineering Report (FER) must provide an accounting of the destination of material removed from the site to the best of the ability of Respondent, and may be certified upon executing execution of this order and compliance with all requirements thereof, including satisfactory payment of the penalty calculated in Section I.

III. ENTIRETY OF ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondents, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the modification provisions of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondents shall be construed as relieving the Respondents of their obligations to obtain such formal approvals as may be required by this Order.

IV. CONTRIBUTION PROTECTION

Respondent is a party who has resolved its liability to the Department and New York State in this Order and shall not be liable for claims for contribution regarding matters addressed in this Order. This Order does not discharge any of the other potentially liable parties unless its terms so provide, but it reduces the potential liability of the others by the amount of the settlement.

V. RELEASE

This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondents,

their trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge, or which occur after the effective date of this Order.

VI. RESERVATION OF RIGHTS

The Department reserves the right to require that the Respondents undertake any additional measures required to protect human health or the environment and shall reserve the Department's rights to exercise its authorities under law to protect human health and the environment or to otherwise require compliance with the law. This Order does not bar, diminish, adjudicate, or in any way affect the Department's rights or authorities, except as set forth in this Order, including but not limited to, exercising summary abatement powers.

VII. BINDING EFFECT

The provisions, terms and conditions of this Order shall be deemed to bind Respondents and the Respondents' heirs, legal representatives, receivers, trustees in bankruptcy, successors, and assigns, employees, and all persons, firms, and business entities acting under or for them.

VIII. FAILURE, DEFAULT, AND VIOLATION OF ORDER

Respondents' failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to the Respondents by the Department.

IX. DEFAULT OF PAYMENT

The penalty assessed in this Order constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the terms of this Order, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset any tax refund or other monies that may be owed to you by the State of New York by the penalty amount. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

X. MODIFICATION

No change in this Order shall be made or become effective except as specifically set

forth by written order of the Commissioner, being made either upon written application of the Respondents, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to the Respondents. The Respondents shall have the burden of proving entitlement to any modification requested.

XI. INDEMNIFICATION

The Respondents shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs resulting from the acts and/or omissions of the Respondents, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by the Respondents or its employees, servants, agents, successors, or assigns.

XII. NOT A PERMIT

This Order is not a permit, or a modification of a permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondents are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondents' compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein. The Department does not warrant or aver that the Respondents' compliance with this Order will result in compliance with any laws, regulations or permits.

XIII. FORCE MAJEURE

If Respondents cannot comply with a deadline or requirement of this Order, because of natural disaster, pandemic, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondents and which could not have been avoided by Respondents through the exercise of due care, Respondents shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement. Respondents shall include in such application the measures taken by Respondents to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondents shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order pursuant to this Article.

XIV. EFFECTIVE DATE AND TERMINATION

This Order shall take effect when it is signed by the Commissioner of the Department of Environmental Conservation or his designee. This Order shall terminate when all requirements imposed by this Order are completed to the Department's satisfaction.

DATED: Albany, New York
December 2, 2025

Amanda Lefton
Commissioner, NYSDEC

By: Janet E. Brown
Janet Brown, Assistant Division
Director Division of Environmental
Remediation

**CONSENT BY
RESPONDENT**

Respondent 40th Ave Dutch Kills Realty LLC hereby consents to the issuing and entering of this Order on Consent without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order on Consent.

By (Signature):

Print Name:

Title:

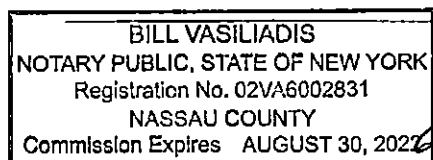
Date:

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF Queens)

On this 11 day of November, 2025, before me personally came Konstandinos Vorillas, who being properly identified and who being by me duly sworn did depose and say that s/he the authorized signatory is of 40th Ave Dutch Kills Realty LLC, and did execute this Order on Consent on behalf of and as authorized by the m.

Notary Public



**CONSENT BY
RESPONDENT**

Respondent N.Y. Preferred Development Group, LLC. hereby consents to the issuing and entering of this Order on Consent without further notice, waives its right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order on Consent.

By (Signature):



Print Name:

Anthony Vitale

Title:

President

Date:

11/11/25

ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss:
COUNTY OF Queens)

On this 11 day of November, 2025, before me personally came Anthony Vitale, who being properly identified and who being by me duly sworn did depose and say that s/he Pres. 2025 is President of N.Y. Preferred Development Group, Inc. and did execute this Order on Consent on behalf of and as authorized by the Board of Directors



Notary Public

