

**STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violations of Articles 15, 17 and 25 of the New York State Environmental Conservation Law and Parts 608, 661 and 750 of Title 6 of the Codes, Rules and Regulations of the State of New York

-by-

NYCON SUPPLY CORP.;

**FORDHAM ROAD CONCRETE
CORP.;**

ARTHUR G. REIS, individually and as chief executive officer of NYCON Supply Corp. and Fordham Road Concrete Corp .;

PRINCIPE-DANNA, INC.;

27TH ST. HOLDING, LLC;

**LEE JAMES PRINCIPE REVOCABLE
TRUST;**

and

LEE JAMES PRINCIPE, individually, as administrator of Lee James Principe Revocable Trust, and as president of Principe-Danna, Inc. and managing member of 27th St. Holding LLC

Respondents

Site: 47-17 27th Street,
Long Island City, NY 11101
Queens County Tax Block 115 Lot 56

COMPLAINT

DEC File No. R2-20070205-63

The staff ("Department Staff" or "Staff") of the New York State of Department of Environmental Conservation (the "Department" or "DEC"), complaining of the respondents named in the caption above ("Respondents"), allege the following:

JURISDICTION

- 1) The DEC is a department of the state of New York ("the State") with authority under section 3-0301 of the Environmental Conservation Law ("ECL") to enforce the environmental laws of the State and the rules, regulations and orders issued pursuant to that authority. Among other subject matters, DEC's jurisdiction includes the following:
- 2) Pursuant to Article 15 of the ECL and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Part 608, the Department has administrative jurisdiction over and is responsible for regulating the building of structures and the placement of fill in the waters of the State as well as for the issuance of permits for such activities.
- 3) The Department is also responsible for the administration and enforcement of laws and regulations pertaining to the abatement and prevention of pollution of state waters pursuant to Article 17 of the ECL and 6 NYCRR Part 750.
- 4) The Department has administrative jurisdiction over the management of tidal wetlands and tidal wetland adjacent areas of the State and thus regulates, among other activities, the placement of fill and other materials or structures therein by requiring permits for such activities pursuant to Article 25 of the ECL and 6 NYCRR Part 661.

PARTIES

- 5) Respondent *NYCON Supply Corp.* is a domestic business corporation, having its principal place of business at 47-17 27th Street, Long Island City, NY 11101-4410.
- 6) Respondent *Fordham Road Concrete Corp.* is a domestic business corporation, having its principal place of business at 47-17 27th Street, Long Island City, NY 11101-4410.
- 7) Respondent *Arthur G. Reis* is the chief executive officer of respondents NYCON Supply Corp. and Fordham Road Concrete Corp. and has been directly involved in the corporations' day-to-day business throughout the time relevant in this proceeding.

- 8) Respondent *27th St. Holding LLC*, having a mailing address at 63-66 61st St., Maspeth, NY 11378, is a domestic limited liability company that has since July 20, 1998 been the owner of the parcel on which the alleged violations occurred.
- 9) Respondent *Lee James Principe*, having a mailing address at 20 Blossom Lane, Brewster, NY 10509, is the president of Principe-Danna, Inc. and managing member of 27th St. Holding LLC as well as the administrator of Lee James Principe Revocable Trust, and as such has been involved in the operations at and control of the Site during the times relevant for this proceeding.
- 10) Respondent *Principe-Danna, Inc.*, having a mailing address at 53-66 61st St., Maspeth, NY 11378, is a domestic business corporation with a controlling ownership interest in the facility at the Site.
- 11) On February 13, 2008, Respondent *The Lee James Principe Revocable Trust*, having a mailing address at 20 Blossom Lane, Brewster, NY 10509, obtained from Respondent Lee James Principe a possessory interest in the Site that allowed it to control activities on the Site.

THE SITE

- 12) The Site, as the term is used in this complaint, is a commercial waterfront parcel in Long Island City, New York, with mailing addresses of 47-17 27th Street, 47-01 27th Street and 49-19 27th Street, Long Island City, NY 11101.
- 13) The Site is also identified as Queens County Tax Block 115 Lot 56.
- 14) The Site is situated at the northwest corner of the Dutch Kills in Queens. It lies along the north and west banks of the Dutch Kills, at the junction of 27th Street and 47th Avenue. It runs along the eastern side of 27th Street and the southerly side of 47th Avenue.
- 15) Newtown Creek and Dutch Kills are navigable waters of the state and at the Site are mapped as tidal wetlands on the official tidal wetlands map, panel number 588-510.
- 16) At all times relevant to this proceeding, Respondents NYCON Supply Corp. and Arthur G. Reis operated a ready-mix concrete facility at the Site.
- 17) At all times relevant to this proceeding, Respondents Fordham Road Concrete Corp. and Arthur G. Reis operated a concrete contracting business at the Site.

THE FACTS

- 18) On July 7, 2006, staff from the environmental organization Riverkeeper patrolled the Dutch Kills beneath the Site and observed that:
- a) Respondents were discharging or allowed the discharge of liquid concrete into the Dutch Kills from a series of weep holes along the bulkhead on the western bank of the Dutch Kills.
 - b) Respondents were dumping or allowed the dumping of solid concrete, gravel, and other small rock aggregate into the Dutch Kills from a fissure in the northwest corner of the bulkhead.
 - c) Along the northern bank of the Dutch Kills, Respondents were discharging or allowing the discharge of liquid concrete and turbid wash-water through a fissure, down an embankment, through a patch of wetland grasses and into the Kills.
 - d) At both points where Respondents were discharging or allowing the discharge of concrete and other materials into the Dutch Kills, said materials had accumulated in the water and formed visible beaches.
 - e) Due to the collective discharges caused by or allowed to be caused by the respondents, the water in the Dutch Kills beneath the bulkheads had turned a shade of white in substantial visible contrast to the rest of the Dutch Kills.
- 19) On October 13, 2006, staff from Riverkeeper again visited the Site and observed solid concrete and gravel materials that had been dumped into the Dutch Kills from Respondents' bulkhead on the western bank, again forming a visible beach.
- 20) On the same day, Staff from Riverkeeper observed respondents discharging or allowing the discharge of liquid concrete and turbid washwater through fissures in the bulkhead at the northwest corner and along the western bank of the Dutch Kills.
- 21) On or before December 31, 2006, respondents NYCON Supply Corp. and Arthur Reis placed at least two large cranes in their parking area in such a manner that portions of the cranes extended over the bulkhead and above the water along the northern bank of the Dutch Kills.
- 22) On June 26, 2007, respondent NYCON Supply Corp.'s SPDES Multi-Sector General Permit (GP-98-03) expired and was not renewed.
- 23) Respondents continued their operation on the Site after that date, thereby allowing

stormwater discharges associated with their operation without having obtained the required coverage.

- 24) On or before March 13, 2008, respondents NYCON Supply Corp. and Arthur Reis filed a Notice of Termination application with the DEC requesting that they no longer be required to obtain a permit for their operation under the new SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-06-002).
- 25) The application was incomplete because it lacked required outfalls information. Furthermore, DEC Region 2 staff disagreed with the termination request.
- 26) As of March 13, 2008, NYCON Supply Corp. still had no permit coverage for stormwater discharges associated with industrial activity.
- 27) On May 28, 2008, Riverkeeper once again patrolled the Dutch Kills area adjacent to the Site and observed runoff water dripping from the bulkhead of the facility into the Dutch Kills as well as white-colored water, in visible contrast to the rest of the Dutch Kills.
- 28) On June 26, 2008, a Riverkeeper patrol observed concrete stains below the weep holes along Respondents' bulkhead and the presence of pipes protruding from the bulkhead out over the Dutch Kills.
- 29) Additionally, also on June 26, 2008, layers of concrete and piles of gravel and other small rock aggregate were found covering the bed of the Dutch Kills along both the western and northern banks, beneath respondents' bulkhead.
- 30) On June 26, 2008, Riverkeeper conducted a test of the pH levels of the water in the Dutch Kills. They found the pH of the water adjacent to the respondents' bulkhead to be a highly alkaline 10.24, whereas the background pH of the water where the Dutch Kills merges with Newtown Creek was a much lower 7.37.
- 31) On July 28, 2008, DEC's Central Office sent respondent NYCON a letter reminding them to file for permit coverage under the new SPDES Multi-Sector General Permit (GP-0-06-002).
- 32) On September 4, 2008, Riverkeeper issued a *Notice of Intent to Sue* NYCON Supply Corp. for on-Site violations of the Clean Water Act and Resource Conservation and Recovery Act.
- 33) On September 26, 2008, DEC inspected the Site and observed gaps in the perimeter control wall surrounding the paved parking area of the Site, through which stormwater runoff was allowed to flow into the Dutch Kills.

APPLICABLE LAW

- 34) ECL §15-0505 and 6 NYCRR § 608 prohibit the excavation and placement of fill in the navigable waters of the State of New York in the absence or violation of the required permit from DEC. ECL § 71-1107 provides for a civil penalty of up to five thousand dollars (\$5,000) for each violation of Article 15 as well as criminal sanctions and injunctive relief.
- 35) ECL §17-0501 and 6 NYCRR § 703.1 et seq. prohibit any discharge into the waters of the state that shall cause or contribute to a condition in contravention of the State's Surface Water and Groundwater Quality Standards and Groundwater Effluent Limitations.
- 36) 6 NYCRR § 890.6 provides classifications and standards of quality and purity assigned to fresh surface waters and tidal salt waters of New York City. Item 54 lists Newtown Creek as Class SD.
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- 37) 6 NYCRR § 703.2 sets the narrative standard for turbidity of Class SD waters at any increase that causes a "substantial visible contrast to natural conditions."
- 38) 6 NYCRR § 703.3 sets the water quality standard for pH of Class SD waters at no more than one-tenth of a pH unit outside the normal range.
- 39) Rock, sand, and industrial waste discharged into the water are *pollutants*, as the term is defined in ECL §17-0105(17).
- 40) ECL §17-0803 and 6 NYCRR § 750-1.4 prohibit the discharge of pollutants without or in violation of an SPDES permit.
- 41) ECL §17-0807 and 6 NYCRR § 750-1.3 prohibit any discharge into the waters of the state not permitted by the provisions of Article 17 of the ECL, the rules and regulations adopted or applicable pursuant thereto, the Federal Water Pollution Control Act, or provisions of a permit issued pursuant to ECL Article 17.
- 42) ECL §71-1929 provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of titles 1 through 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto.
- 43) ECL § 25-0401(1), (2) and 6 NYCRR § 661.8 require any person proposing to conduct regulated activity to first obtain a permit from the DEC.

- 44) ECL § 25-0103(4) defines the term *person* to mean “any individual, public or private corporation, ...industry, copartnership, association, firm, trust, estate or any other legal entity whatsoever.”
- 45) ECL § 25-0401(2) and 6 NYCRR § 661.4(e)(1)(vi) define *regulated activity* to mean
- a) “any form of [...] excavation or removal, either directly or indirectly, of soil, mud, sand, shells, gravel or other aggregate;
 - b) “any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;”
 - c) “the erection of any structures or construction of any facilities or roads, the driving of any pilings or placing of any other obstructions, whether or not changing the ebb and flow of the tide;”
 - d) “any form of pollution;”
 - e) “any portion of a subdivision of land located in any tidal wetland or adjacent area;” and
 - f) “any other new activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland.”
- 46) ECL § 71-2503 provides for a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of Article 25, as well as criminal sanctions and injunctive relief.

FIRST CAUSE OF ACTION

- 47) By placing or allowing runoff of concrete-laden water as set forth in paragraph 18 above, Respondents violated ECL §15-0505 and 6 NYCRR §608.5.

SECOND CAUSE OF ACTION

- 48) By placing or allowing the placement of gravel, concrete, and other small rock aggregate in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §15-0505 and 6 NYCRR §608.5.

THIRD CAUSE OF ACTION

49) By allowing concrete-laden stormwater runoff in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §17-0501 and 6 NYCRR § 703.1.

FOURTH CAUSE OF ACTION

50) By placing or allowing the placement of gravel, concrete, and other small rock aggregate in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §17-0501 and 6 NYCRR § 703.1.

FIFTH CAUSE OF ACTION

51) By allowing concrete-laden stormwater runoff in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §17-0807 and 6 NYCRR §750-1.3.

SIXTH CAUSE OF ACTION

52) By placing or allowing the placement of gravel, concrete, and other small rock aggregate in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §17-0807 and 6 NYCRR §750-1.3.

SEVENTH CAUSE OF ACTION

53) By allowing concrete-laden stormwater runoff in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §25-0401 and 6 NYCRR §661.8

EIGHTH CAUSE OF ACTION

54) By placing or allowing the placement of gravel, concrete, and other small rock aggregate in the Dutch Kills as set forth in paragraph 18 above, Respondents violated ECL §25-0401 and 6 NYCRR §661.8.

NINTH CAUSE OF ACTION

55) By placing or allowing the placement of solid concrete and gravel material in the Dutch Kills as set forth in paragraph 19 above, Respondents violated ECL §15-0505 and 6 NYCRR §608.5.

TENTH CAUSE OF ACTION

56) By placing or allowing the placement of solid concrete and gravel material in the Dutch Kills as set forth in paragraph 19 above, Respondents violated ECL §17-0807 and 6 NYCRR §750-1.3.

ELEVENTH CAUSE OF ACTION

57) By placing or allowing the placement of solid concrete and gravel material in the Dutch Kills as set forth in paragraph 19 above, Respondents violated ECL §25-0401 and 6 NYCRR §661.8.

TWELFTH CAUSE OF ACTION

58) By discharging or allowing the discharge of liquid concrete and turbid washwater as set forth in paragraph 20 above, Respondents violated ECL §15-0505 and 6 NYCRR §608.5.

THIRTEENTH CAUSE OF ACTION

59) By discharging or allowing the discharge of liquid concrete and turbid washwater as set forth in paragraph 20 above, Respondents violated ECL §17-0501 and 6 NYCRR § 703.1.

FOURTEENTH CAUSE OF ACTION

60) By discharging or allowing the discharge of liquid concrete and turbid washwater as set forth in paragraph 20 above, Respondents violated ECL §17-0807 and 6 NYCRR §750-1.3.

FIFTEENTH CAUSE OF ACTION

61) By discharging or allowing the discharge of liquid concrete and turbid washwater as set forth in paragraph 20 above, Respondents violated ECL §25-0401 and 6 NYCRR §661.8.

SIXTEENTH CAUSE OF ACTION

62) By parking cranes along the shoreline of the Dutch Kills in such a manner that they extended seaward of the bulkhead and were thus placed above waters of the state as set forth in paragraph 21 above, Respondents NYCON, Fordham Road Concrete Corp., and Arthur Reis engaged in a commercial use activity within a regulated tidal wetlands area without a DEC permit and thus violated ECL § 25-0401 and 6 NYCRR § 661.8.

SEVENTEENTH CAUSE OF ACTION

63) By failing to renew coverage under the general SPDES permit after its expiration on June 26, 2007 yet continuing discharging stormwater and pollutants into the Dutch Kills as stated in paragraph 23 above, Respondents NYCON and Arthur Reis violated ECL §17-0501 and 6 NYCRR § 703.1.

EIGHTEENTH CAUSE OF ACTION

64) By continuing discharging stormwater and pollutants into the Dutch Kills as stated in paragraph 23 above, Respondents NYCON and Arthur Reis violated ECL §17-0803 and 6 NYCRR §750-1.4.

NINETEENTH CAUSE OF ACTION

65) By allowing sediment-laden runoff into the Dutch Kills from their bulkhead and causing a visible plume as set forth in paragraph 27 above, Respondents violated ECL §17-0501 and 6 NYCRR §703.1.

TWENTIETH CAUSE OF ACTION

66) By allowing sediment-laden runoff into the Dutch Kills from their bulkhead and causing a visible plume as set forth in paragraph 27 above, Respondents violated ECL §17-0803 and 6 NYCRR §750-1.4.

TWENTY-FIRST CAUSE OF ACTION

67) By allowing sediment-laden runoff into the Dutch Kills from their bulkhead and causing a visible plume as set forth in paragraph 27 above, Respondents violated §17-0807 and 6 NYCRR §750-1.3.

TWENTY-SECOND CAUSE OF ACTION

68) By allowing sediment-laden runoff into the Dutch Kills from their bulkhead and causing a visible plume as set forth in paragraph 27 above, Respondents violated ECL § 25-0401 and 6 NYCRR § 661.8.

TWENTY-THIRD CAUSE OF ACTION

69) By allowing stormwater runoff into the Dutch Kills via gaps in their perimeter wall as set forth in paragraph 33 above, Respondents violated ECL §17-0501 and 6 NYCRR §703.1; ECL §17-0803 and 6 NYCRR §750-1.4; and ECL §17-0807 and 6 NYCRR §750-1.3.

CONTINUED AND PRIOR VIOLATIONS

70) Upon information and belief, the violations complained of herein continue unabated.

71) On January 4, 2008, Respondents Fordham Road Concrete Corp. and Principe-Danna, Inc. entered into a consent order with the DEC under DEC file number R2-20071218-431 to resolve violations at the Site involving the regulations for petroleum bulk storage facilities.

72) That consent order was executed by Respondent Arthur George Reis on behalf of both respondents.

73) Both Respondents are currently in non-compliance with that consent order, a situation that is being pursued in a separate proceeding but is of relevance here because it reflects on the compliance history for at least those respondents.

WHEREFORE, Staff respectfully requests on Order of the Commissioner, which

- I. finds the Respondents violated the ECL and rules and regulations issued pursuant thereto as delineated in the Complaint;
- II. requires Respondents to
 - a. remove all spilled material from the Dutch Kills at the Site pursuant to a plan, to be approved by Staff, encompassing sampling, analysis and removal of the material;
 - b. move all cranes and all other equipment so that no portion thereof extends seaward of the bulkhead;
- III. imposes a civil penalty upon the Respondents for each violation alleged herein, calculated on a daily basis where both authorized by law and proven at the hearing of this matter, pursuant to §§71-1107, 71-1929, 71-2503 and 71-4003 of the ECL and holding Respondents jointly and severally liable for such penalties, which penalty should be no less than one hundred fifty thousand dollars (\$150,000);
- IV. orders Respondents to cease and desist from any and all future violations of the ECL and rules or regulations promulgated pursuant thereto; and
- V. orders such other and further relief as may be just and proper.

Dated: Long Island City, New York
October 31, 2008



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