

STATE OF NEW YORK
EXECUTIVE DEPARTMENT
OFFICE OF GENERAL SERVICES

In the Matter of The application of
Cargill, Inc. for a Modification and
Extension of the Permit to Remove
Salt from State Owned Lands Under the
Waters of Cayuga Lake

CONSENT
ORDER

WHEREAS, on June 20, 1938, the Board of Commissioners of the Land Office of the State of New York, the predecessor to the Office of General Services of the State of New York, pursuant to Article 7, §84 of the Public Lands Laws, granted consent to enter upon and mine rock salt in the lands of the State of New York under Cayuga Lake in the Towns of Lansing and Ulysses, Tompkins County, New York, to the Cayuga Rock Salt Company, Inc., a copy of which Resolution is attached hereto and made a part hereof as Exhibit "A"; and

WHEREAS, Cargill, Inc. became the successor in interest to Cayuga Rock Salt Company, Inc., and upon application received permission for the assignment to it of all of the rights and privileges granted to Cayuga Rock Salt Company, Inc. by Exhibit A, by a permit granted by the Office of General Services on the 5th day of April, 1974, a copy of which permit is attached hereto as Exhibit "B"; and

WHEREAS, Cargill, Inc. was issued a Consent Order, for a modification and extension of the permit to remove salt from State-owned Lands under the waters of Cayuga Lake, by the Office of General Service on the 1st day of April, 1984, a copy of which Consent Orders is attached hereto as Exhibit "C"; and

WHEREAS, Cargill, Inc. has petitioned the Commissioner of General Services for renewal of said right to enter upon State land and to mine salt, pursuant to Article 7, §84 of the Public Land Law; and

WHEREAS, the terms of a consent renewal, including the perimeters of the property involved and the royalty to be paid to the State, have been mutually agreed upon between the parties hereto;

NOW THEREFORE, it is hereby

ORDERED that, pursuant to the provisions of Article 7, §84 of the Public Lands Law, and in consideration of the Agreement of Royalties, as provided in §81 of the Public Lands Law, and upon the terms and conditions as hereinafter set forth, the consent of the Commissioner of General Services on behalf of THE PEOPLE OF THE STATE OF NEW YORK, hereinafter referred to as "Grantor", is hereby given to CARGILL, INC., a Delaware Corporation authorized to do business in the State of New York, having an office and place of business at the Town of Lansing, Tompkins County, New York 14882, hereinafter referred to as "Grantee", to enter upon and mine rock salt in the State owned lands under the waters of Cayuga Lake, in the Towns of Lansing and Ulysses, Tompkins County, between and adjacent to lands owned or controlled by the Grantee on both sides of Cayuga Lake, and extending to the north and south as hereinafter described, more particularly bounded and described as follows:

ALL THAT TRACT OR PARCEL OF LAND under Cayuga Lake bounded by the low water line of Cayuga Lake on the east and the west beginning at a point in the east low water line of said lake at the southwest corner of lands of the Grantee, said point being 1,000 feet, more or less, southeast of the intersection of Gulf Creek (formerly Schurter Creek) and the east low water line of Cayuga Lake; said point being also in the southeast projection of Portland Point; thence southeasterly 7,500 feet, more or less, along the east low water line of Cayuga Lake to a point; thence southwesterly 6,800 feet, more or less, perpendicular to the east low water mark of Cayuga Lake to a point in the low water mark on the west shore of Cayuga Lake, which point is 2,000 feet, more or less, southeasterly of Maple Point; thence northerly and northwesterly 21,400 feet, more or less, along the west low water line of Cayuga Lake to a point, which point is 7,000 feet, more or less, northwest of Willow Creek Point; thence northeasterly 7,200 feet, more or less, perpendicular to the west low water mark of Cayuga Lake to a point in the east low water mark of Cayuga Lake; thence southwesterly 20,500 feet, more or less, along the east low water line of Cayuga Lake to the place of beginning, containing 3,485 acres of land, more or less.

Said description includes a parcel of land containing 1,600 acres of land consented to by the "Commissioners of the Land Board" on June 20, 1938; a parcel of approximately 500 acres consented to by the Office of General Services by an instrument dated January 31, 1974, and two additional parcels: one in the amount of 1,075 acres, and the second in the amount of 310 acres, both as requested by letter from the Grantee herein, dated May 14, 1984; all of the same being hereby consented to and conveyed. Said premises being shown on a map attached hereto as Exhibit "D".

This CONSENT to enter upon State lands to mine rock salt is made and accepted subject to the following covenants, terms and conditions.

1. **TERM**

The Term of this CONSENT is for ten (10) years, commencing on January 1, 1995; subject to the provisions of Paragraph 6, entitled "GROUNDS FOR REOPENING". The Grantee, if it wishes to extend the term hereof may do so by giving written notice to the Grantor six (6) months prior to the end of the Term. In the event that the Grantee exercises the option to extend the Term hereof, the Term shall be extended for an additional ten (10) years, subject to the provisions of Paragraph 6.

2. **ROYALTY RATE:**

A. Period from January 1, 1995 to December 31, 1995 twenty six four cents (\$0.264) per ton;

B. Period from January 1, 1996 to December 31, 2005 and during any extension period the royalty rate will be calculated by multiplying the royalty rate for the previous year by the percentage of fluctuation in the average value of rock salt as published in the United States Department of the Interior, Bureau of Mines, Annual Report (average value of salt, by product form and type based on ton weight of 2,000 pounds versus the table's use of a metric ton weight of 2,204.6 pounds) from the previous year. The result of said multiplication shall be added or subtracted from the previous year's royalty rate.

C. Period of January 1, 1995 to December 31, 2005 the royalty rate will be reduced by two cents (\$.02) per ton for additional volume of salt produced in excess of a threshold of 1.5 million tons per year.

For each year after December 31, 1995 the preceding year, upward of downward, during this contract shall the minimum price be less than fifteen cent (\$.15) per ton.

3. MINIMUM ROYALTY

Notwithstanding anything contained in the previous paragraph, the Grantee shall pay to the Grantor the minimum payment of Forty-Five Thousand and No/100 Dollars (\$45,000) per year, regardless of the amount of salt mined by the Grantee. If, during any royalty year (calendar year), covered by this CONSENT, the amount of salt mined by the Grantee when multiplied by the Royalty Rate yields an amount greater than Forty-Five Thousand and No/100 Dollars (\$45,000), the greater sum shall be paid. If the Grantee does not mine salt in the State land for a period of eighteen (18) consecutive months, or if the amount of salt so mined during a royalty year when multiplied times the Royalty Rate is less than Forty-Five Thousand and No/100 Dollars (\$45,000) per year, and said rate of extraction of the amount of salt from the State land continues for a period of eighteen (18) consecutive months, either the Grantor or the Grantee shall have the right to reopen the terms of this CONSENT for the purpose of renegotiation of the minimum payment herein provided. Such renegotiation shall be subject to the "Six-Month Rule".

4. PAYMENT OF ROYALTY

The payment of Royalty herein called for shall be made on the 31st day of February, and the 30th day of September, in each year.

5. SIX-MONTH RULE

The provisions for reopening this CONSENT, by either the Grantee or the Grantor, is subject to the provision that the parties must reach accord on the subject of the reopener, and if no accord is reached within six (6) months from the date of Notice of Reopening this CONSENT will terminate upon the written notice of either party to the other.

6. GROUNDS FOR REOPENING

A. Either the Grantee or the Grantor may request a Reopening of this CONSENT Agreement if the average price, as defined in Paragraph 2.B. either falls or rises more than ten percent (10%) of the Royalty Rate then in effect for two (2) consecutive years. This Reopener would be for the negotiation of Royalty Rate only.

B. The Grantee shall have the right to request a Reopening should the quality of the salt taken by the Grantee from State land change "substantially", making it unsaleable. "Substantially", as used in this clause, shall mean 1. The sodium chloride content of the salt mined shall be less than ninety-seven percent (97%), or 2. The thickness of seam of salt is less than eight feet (8'), or 3. The standard of salt to waste is less than seventy percent (70%) salt to thirty percent (30%) waste. The sodium chloride content will be measured pursuant to the American Society of Testing Materials (ASTM), being 632-84, Standards Specification for Sodium Chloride, being 534 Method for Chemical Analysis of Sodium Chloride.

7. ENLARGEMENT OF CONSENT AREA

During the term hereof, or any extension, the Grantee may request an Enlargement of the Area of land covered by this CONSENT. If the extension is granted, the Royalty Rate that would be imposed upon the salt mined from the extended area shall be governed by the terms of this CONSENT.

8. CANCELLATION BY GRANTEE

The Grantee shall have the ability to cancel this CONSENT and its obligations thereunder by giving written notice to the Office of General Services prior to October 1 of each year of the term of extension thereof. If in the event that the Grantee shall give such notice the Grantee shall vacate the State land by the end of the Royalty Year following the notice. (fifteen (15) months later).

9. OPTION TO GRANTOR

In the event that the Grantee desires to sell or lease its land, shaft equipment, mining equipment, mining operations, leaseholds, and mineral rights the Grantee shall give to the Grantor a right of first refusal to buy or lease the same. The "right of first refusal", as stated herein, must be exercised by the Grantor in writing within one hundred twenty (120) days from the date that Grantor is notified by the Grantee of its intent to sell or lease to a bona fide third party, setting forth the terms and conditions it is willing to accept from said bona fide third party. If the Grantor does not exercise its "right of first refusal" the Grantee may assign its rights hereunder to the purchasing or leasing third party upon said third party's application to the Grantor for permission to assume the rights herein defined, which permission will not be unreasonably withheld by the Grantor.

10. BINDING EFFECT

All of the covenants, terms and conditions of the CONSENT will inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

11. STATE HELD HARMLESS AND INDEMNIFICATION THEREOF

A. In the event an unsafe or hazardous incident or condition occurs or exists on the land as a result of or in connection with the Grantee's use of the land hereunder, the Grantee shall notify the State immediately upon discovery of such incident or condition.

B. The Grantee shall defend, indemnify and hold harmless the State and its respective officers, employees and agents from all liability, loss, costs, expenses (including, without limitation, attorney fees and litigation/court cost), causes of action, suits, claims and demands of judgment of whatever nature arising out of the actions of the Grantee or its agents in pursuance of the authorized use (including any work incidental thereto) or the failure of the Grantee to comply with the terms and conditions of this Agreement.

C. For the full duration of this Agreement, the Grantee shall obtain and maintain comprehensive public liability and property damage insurance designating the State as an additional insured against any and all claims of liability of whatsoever kind and nature which may arise either directly or indirectly as a result of the Grantee's operations carried on under this Agreement. Said insurance shall provide limits of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregately with respect to bodily injury of death and one million dollars (\$1,000,000) with respect to property damage and shall be obtained from a company licensed to do business in the State of New York. The Grantee shall furnish to the State a certificate evidencing the policy or policies for said insurance, together with an endorsement evidencing that the policy or policies insure the contractual liability assumed by The Grantee provided, however, that The Grantee may, if it elects to do so, assume and carry such risks as self-insurer to the extent of the first \$100,000 of loss.

12. FORCE MAJEURE

In the event of a natural calamity or war which makes it impossible for the Grantee to continue its operations as contemplated herein upon the estate lands described herein, this CONSENT order shall terminate upon thirty days' written notice given by the grantee to the Grantor.

13. CONFORMITY TO REGULATORY AUTHORIZATION

The Grantee shall obtain any and all Federal, State and local regulatory approvals required for this authorized use and, in that regard, the work authorized by/under this Agreement shall be conducted in manner consistent with all requirements stipulated in said regulatory approvals including, but not limited to, the terms and conditions of permit No. 7-5032-00002/00001-1 dated May 2, 1993, issued by the New York State Department of Environmental Conservation.

14. The Grantee shall provide extraction reports to the Office of General Services on a monthly basis, no later than 15 days past the last day of the month being reported. The Office of General Services (the State) shall have the right to inspect the mine upon giving The Grantee no less than 48 hours notice and executing an appropriate Release prior to entering the mine.

This CONSENT shall not be operative until it shall have been duly accepted by a Resolution of the Board of Directors of the Grantee, and a certified copy of such Resolution filed with the Office of General Services.

IN WITNESS WHEREOF the First Deputy Commissioner of General Services on behalf of the People of the State of New York has caused this CONSENT Order to be signed by its duly authorized representative on this 12th day of January 1995.

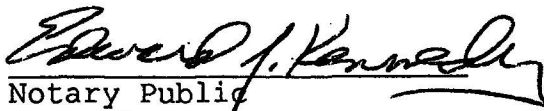
THE PEOPLE OF THE STATE OF NEW
YORK acting by Raymond W. Casey
First Deputy Commissioner of
General of Services

By: 

Raymond W. Casey
First Deputy Commissioner

STATE OF NEW YORK)
) SS:
COUNTY OF ALBANY)

On this 12th day of January, 1995, before me the
subscriber personally came Raymond W. Casey, First
Deputy Commissioner of the Office of General Services
of the State of New York in the Executive Department of
the State of New York, to the me known and known to me
to be the First Deputy Commissioner of the Office of
General Services decribed in and who executed the
foregoing instrument and he acknowledged to me that he
executed the same as such First Deputy Commissioner for
and on behalf of The People of the State of New York.


Notary Public

EDWARD J. KENNEDY
Notary Public, State of New York
Qualified in Albany County

My Commission Expires March 30, 1996
Nov. 30, 1995

