

Following the 1994 collapse of the Retsof Salt Mine in Livingston County, residents in Tompkins County, the site of the other major salt mine in NYS, urged their Assembly representative to investigate the causes for the collapse.

Assemblymember Marty Luster lobbied for the NYS Assembly to engage in a systematic inquiry into the legal, factual and environmental issues that required a full and complete public exploration to better understand how to reduce the potential for such an event at the Cayuga Salt Mine. (Assembly Legislative Public Hearing on Underground Mining in NYS, June 14, 1995)

The DEC received an application from Cargill for renewal of its permit on September 17, 1997, which application proposed to include an additional 5,056 underground acres within the Cayuga Mine. On April 23, 1998, the DEC informed the Applicant that the Application for renewal was timely and sufficient for purposes of the State Administrative Procedure Act §401(2); that the renewal application required correction and clarification; that the proposed inclusion of an additional 5,056 underground acres requires a modification of the existing permit; and that additional information would be required in connection with the Application.

Cargill in response contended that “the Application does not involve a modification of its MLRL permit; that the Department lacks statutory or regulatory authority to regulate the Applicant's underground mining operations and to require the submission of the information requested by the April 23, 1998 letter; that the Application is a Type II action, not subject to review under the State Environmental Quality Review Act ("SEQRA"); and that the Application is and has been complete pursuant to ECL Article 70 since at least October 2, 1997, and the Applicant is entitled to approval of the Application without further submissions or Departmental review.”

While recognizing the disagreement reserving each party's respective rights, DEC staff and Cargill agreed to a stipulation that would require Cargill to provide additional information. The DEC and Cargill entered a Stipulation Agreement on January 14, 2000. “Within 120 days following the execution of this Stipulation, the Applicant would submit to the Department such further information as the Applicant and the Department shall agree upon, in an effort to comply with the requests contained in the Department's April 23, 1998 letter.”

The DEC in effect exempted Cargill from compliance with the SEQR regulations. Compliance with SEQR would have required a public environmental review process with the preparation of a Scoping Plan for an Environmental Impact Statement (EIS) and then a public review of the draft EIS.

Despite an EIS being fully warranted by the scope of the environmental risk, the DEC chose to not require Cargill to prepare such a document. Instead, Cargill submitted additional data in the form of a 2 volume Expanded Environmental Assessment (EEA). The stipulation contains a paragraph 5D that Cargill asserts requires the DEC to maintain the confidentiality of the information provided by Cargill "to the full extent of the law."

On August 14, 2002, the DEC issued a Notice of Complete Application. A 30-day public comment period followed. Cargill notified the DEC that it considered Vol. II of the EEA confidential; qualified for trade secret protection. A FOIL was filed with the DEC for data in Vol. II to enable the public to submit a meaningful comment. DEC denied the FOIL and an appeal was filed. Prior to the Appeal being heard, the DEC issued the permit on January 6.

Among the types of data sought in the FOIL were seismic data, geological data specific to the Cayuga Mine, specific dimensions of the yield pillar design, and the protocol for stability analysis. Thus, the question for consideration in the appeal was whether Cargill had carried the burden of establishing the "likelihood of substantial competitive injury if the subject information is disclosed." The ALJ found that that "Cargill failed to carry that burden."

"The environmental and public safety risks associated with mining are significant as evidenced by Akzo's Retsof mine collapse and closure. Given the apparently limited value of the withheld information in this case for competitors, the trade secret provision of FOIL and the Departments relations should not be read to shield the public, information relating to the environmental soundness of property which belongs to the people of this state" and that "ultimately has a direct bearing on public health and safety." "Cargill's request that the withheld information be excepted from disclosure under FOIL should be denied."

In July 2005, Asst. DEC Commissioner Alexander over ruled the ALJ's Recommended Decision in part and upheld it part; information on specific dimensions of yield pillar mine design, miscellaneous operational expense, and

geology specific to the mine shall be released, while information relating to certain seismic information and the protocol for stability analysis shall be withheld.