



June 30, 2024

Dereth B. Glance, Regional Director
Kevin Balduzzi, Regional Permit Administrator
Department of Environmental Conservation, Region 7
5786 Widewaters Parkway
Syracuse, NY 13214-1867
(Dereth.Glance@dec.ny.gov; Kevin.Balduzzi@dec.ny.gov
by email and U.S. Mail)

Re: Water storage (brine disposal) not currently permitted in underwater lands

Dear Ms. Glance and Mr. Balduzzi:

Cargill has submitted an application for a modification to their mining permit with the DEC, specifically Permit #0-9999-00075/00001, dated June 30, 2023. This modification proposes significant changes to the activities currently permitted in underwater lands under Cayuga Lake, including the establishment of water storage areas within said underwater lands, as outlined in the application prepared by JMT of New York, Inc., and as referred to in DEC's Notice of Incomplete Action (NOIA) dated January 17, 2024.

Cayuga Lake Environmental Action Now (CLEAN) has the following concerns about the proposed permit modification and associated procedure:

- Cargill's salt mining permit has expired. To the best of our knowledge, both salt mining and recently-initiated water storage are ongoing within said underwater lands. CLEAN understands that a permittee may continue to operate in accordance with an existing permit pursuant to the New York State Administrative Procedures Act (SAPA) until DEC makes a final determination on the permit application. However, while CLEAN recognizes that this continued right of operation is applicable to salt mining within said underwater lands, it does not authorize any practice of water storage within said underwater lands where no authorization has yet been granted under either DEC's mining permit or the mining rights granted by the Office of General Services (OGS). In CLEAN's understanding, any ongoing water storage lacks legal authority and should cease unless and until DEC and OGS provide explicit approval of water storage within said underwater lands, with such approval duly supported by applicable provisions of law including the State Environmental Quality Review Act (SEQRA).
- Water storage within said underwater lands will almost certainly be irreversible brine disposal within such lands, thus being an initial step toward permanent flooding of the mine. While the pros, cons, and (ir)reversibility of such flooding require far more evaluation than can be set forth in this letter, CLEAN submits that a decision to flood (or not to flood) the mine is an important and discretionary policy decision, involving underwater lands and the overlying waters of Cayuga Lake, that falls squarely within the

purposes of SEQRA. In CLEAN's view, this would be either a Type I action (e.g., adoption of a comprehensive resource management plan, 6 NYCRR 617.4(b)(1)) or an Unlisted action that exceeds the significance threshold, which in either case would need an Environmental Impact Statement (EIS) to support any DEC and OGS approvals of water storage (brine disposal) within said underwater lands.

- In CLEAN's understanding, both DEC and OGS would need to give discretionary approvals to allow water storage (i.e., brine disposal) within said underwater lands. See generally ECL Article 8 and 6 NYCRR 617, and also summaries such as the two following sentences from a DEC website:

Agencies must follow the multi-step SEQR Decision Process, which requires them to assess the environmental significance of all actions they have the power to approve, fund, or directly assume. If an action consists of multiple phases, sets of activities, or if separate agencies are involved, SEQR requires agencies jointly consider these cumulative impacts during their review.

<https://dec.ny.gov/regulatory/permits-licenses/seqr>

See also, DEC Handbook, 4TH Edition, Chapter 2, Section 1 at page 15 requiring that "classes of actions identified as "Type I" or "Unlisted" must be reviewed further under SEQR to determine the potential for significant adverse environmental impacts," and Section 10 at page 16 on DEC's duty to determine and evaluate "against the criteria in 617.7"

OGS has resisted the idea that they have any discretionary approval in this matter. (See, for example, the April 15, 2024 OGS letter to Brian Eden of CLEAN; copy attached.) However, the approvals already in force and currently applicable to said underwater lands do not convey rights for either water storage or brine disposal. As such, CLEAN understands that approvals from both DEC and OGS would be needed, and that a single EIS process should be viewed as the necessary SEQRA support for both agencies' decisions. In CLEAN's understanding, either DEC or OGS would be the Lead Agency in such a process; the other would be an Involved Agency.

- There is a common thread of timeliness in all of these points of concern. It appears that Cargill has not timely prosecuted its application by responding to reasonable requests DEC has made. Timeliness and sufficiency of Cargill, by your own acknowledgment in your February 1, 2024 written response to CLEAN, is required for Cargill to continue to flood the panel in question under the existing permit. On this point alone, CLEAN requests you take action and give a final notice that full compliance (by disclosure and by its thorough responses) must occur or the permit will be revoked. The State Administrative Procedure Act (SAPA) appears to mandate this result.
- Details of the shared stewardship responsibilities of DEC and OGS for the said underwater lands are difficult to discern. On this point alone, CLEAN requests copies of any written documents that define the agencies' shared responsibilities. For example, is there a Memorandum of Understanding between DEC and OGS that defines and clarifies the agencies' respective roles in protecting Cayuga Lake and its underwater lands? And, has OGS exceeded its lawful authority in entering into a series of Consent Orders without proper review and compliance?

- DEC has a duty, acknowledged in paragraph 3 of your February 1 response, to determine the validity and bona fides of Cargill's claims to the protections it claims to proprietary information/trade secrets. For example, data from seismic studies conducted by Cargill on the mine structure and its stability, and data on pressurized brine pockets near the proposed S3 flood area (mentioned in the Boyd/Scovazzo letter to DEC/Rigley, January 11, 2023, and Boyd/Heasley-Scovazzo letter to DEC/Rigley, August 2, 2023) have been almost entirely kept secret. You have a duty to challenge the validity of such claims in light of the current application for storage of water in the affected areas, and DEC appears to be improperly shielding Cargill from disclosing these critical data. We request you take such steps now, or as a necessary step in the EIS process.

In summary, the storage of brine within said underwater lands is an activity that has not been approved. A necessary step toward approval is that an environmental impact statement be performed. Pending that process, the permit modification should be put on hold, and the flooding now occurring in the mine operation by Cargill, cease.

In light of these concerns, we urge the DEC to carefully consider the potential environmental impacts of the proposed modifications to the mining permit. We look forward to your correspondence regarding this issue, and we continue to believe we can continue to work together for a better environmental outcome.

Sincerely,



John V. Dennis
Cayuga Lake Environmental Action Now Steering Committee

Attachment: April 15, 2024, letter from Commissioner Jeanette M. Moy to Brian Eden

cc: Jeanette M. Moy, Commissioner, OGS (by email and U.S. Mail)
Sean Mahar, Interim Commissioner, DEC (by email and U.S. Mail)
Bradley Allen, OGS (by email)
Cynthia M. Connelly, DEC (by email)
Catherine A. Dickert, DEC (by email)
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