



PRESS RELEASE

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## Investigation by Protect the Adirondacks finds the Department of Environmental Conservation acted as a private lobbyist for NYCO Minerals, Inc., to pass the 2013 NYCO Amendment, in Violation of State Constitution

*Documents obtained under the Freedom of Information Law show dozens of DEC staff worked to lobby legislators, build support among advocacy groups, draft and revise legislation, draft lobbying materials in support of the NYCO amendment, intervene with the Board of Elections to change state ballot language in favor of passing the NYCO Amendment, and assist NYCO's campaign efforts in the general election*

*State Constitution bans state agencies from working for benefit of private corporations and requires that they remain neutral and impartial during legislative review and public referendum on Constitutional Amendments*

*PROTECT has submitted a formal Complaint about DEC's activities to the State Attorney General, State Comptroller, State Inspector General, and Joint Commission on Public Ethics*

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Lake George – Protect the Adirondacks conducted an investigation into the role of the Department of Environmental Conservation (DEC) in support of the 2013 Constitutional Amendment to allow NYCO Minerals, Inc., a mining company in Essex County, to undertake mining activities and obtain 200 acres of “forever wild” Forest Preserve lands. This investigation started in early 2014 and used hundreds of documents from the DEC and Board of Elections obtained under the Freedom of Information Law. PROTECT's investigation found a startling and illegal commitment of DEC's staff time and resources to support NYCO's bid to buy Forest Preserve lands.

Protect the Adirondacks has submitted a Complaint over these actions to New York's Attorney General, State Comptroller, State Inspector General, and the Joint Commission on

Public Ethics. A copy of this Complaint and 120 Exhibits is available on the Protect the Adirondacks' website [www.protectadks.org](http://www.protectadks.org).

A constitutional amendment is vastly different from other kinds of legislation. The courts have repeatedly ruled that "partisan activities" by State agencies, including activities of the sort at issue here, violate Article VII, Section 8(1) of the Constitution, prohibiting gifts or loans of State monies to or in aid of any private undertaking. The fact that the public must vote on a proposed Constitutional Amendment requires that state agencies must be neutral actors and provide only technical information, impartially and without any bias, favoritism or advocacy for a particular position.

"New York's Department of Environmental Conservation worked for two years as a de facto private lobbyist for NYCO Minerals, Inc., to help them explore and buy 200 acres of Forest Preserve lands for open pit mining. On NYCO's behalf, dozens of DEC staff drafted and revised legislation, lobbied numerous legislators, lobbied environmental groups, business associations, and unions to support the NYCO amendment, developed lobbying materials, assisted NYCO during the general election with its Vote Yes campaign, and even intervened with the Board of Elections to change state ballot language for NYCO's benefit," said Peter Bauer, Executive Director of Protect the Adirondacks.

In November 2013, New Yorkers narrowly voted (53-47%) to pass a Constitutional Amendment to allow NYCO Minerals, Inc., to expand its open pit mine in Essex County onto 200 acres of the "forever wild" Forest Preserve in the Adirondacks. This was the most closely contested of the 15 Constitutional Amendments passed for the Forest Preserve since the 1940s. Over 1 million New Yorkers said no.

This was the first amendment in state history where the "forever wild" Forest Preserve was to be sold to a private corporation. All other Forest Preserve amendments focused on public or municipal benefits, such as expanding cemeteries, making airports safer, allowing a municipality to expand a landfill, or saving a historic Great Camp as a public museum, among others.

"DEC's active support for NYCO in the run-up to the 2013 election is deeply troubling. To see a state agency assist one side with campaign materials in a public referendum, help them formulate their arguments and then get the Board of Elections to change ballot language after NYCO complained raises serious questions," said Charles Clusen, Chair of Protect the Adirondacks.

Protect the Adirondacks believes that the DEC violated Article VII, Section 8(1) of the State Constitution when it acted as a lobbyist for NYCO Minerals in 2011-2103. NYCO and DEC had hundreds of meetings, phone calls, and emails during this time. DEC spent hundreds of thousands of dollars, if not millions, in staff time to lobby on NYCO's behalf.

DEC's help for this mining company consisted of dozens of DEC staff who worked with NYCO to craft an amendment it believed would pass a public vote. DEC lawyers drafted and revised the draft Constitutional Amendment numerous times. DEC and NYCO worked together to lobby legislators and strategize for how to pass the draft amendment. DEC

worked aggressively to line up support from environmental organizations and business lobbyists. DEC pressured some organizations opposed to the amendment to change their positions to support and others that opposed to back down and take no position.

Under the State Constitution, a draft amendment must be passed by two separately elected Legislatures and then the electorate must approve it. The NYCO amendment received first passage in 2012 and second passage in 2013 and was approved by voters in the 2013 election.

DEC developed “Fact Sheets,” “Talking Points,” and a “Position Paper” in support of NYCO in widely distributed lobbying materials. DEC staff counseled the mining company on which legislators to lobby and what to say and published a “Vote Yes” article in support of NYCO. DEC staff advised NYCO to line up support from politicians and unions.

“DEC’s support for NYCO was vast and unprecedented. This kind of work is usually undertaken by members of the State Legislature, legislative staff, or hired lobbyists. DEC’s commitment of time and personnel resources to lobby on behalf of a private corporation was extraordinary,” said Charles Clusen.

After the DEC successfully secured second passage for the NYCO Amendment in the State Legislature in June 2013, it continued to assist NYCO during the public debate before the November 2013 election. The DEC shared materials for NYCO’s public relations campaign and guided NYCO on refuting arguments by opponents. When NYCO objected to ballot language approved by the Board of Elections in July 2013, DEC successfully intervened to change the language in August to make it more favorable to NYCO.

Article XIV, section 1, the “forever wild” clause, was written into the New York Constitution and approved by voters in 1894. It has remained unchanged ever since. Today, the Adirondack and Catskill Forest Preserves comprise over 3 million acres, are internationally recognized for protection of a large intact northern temperate forest landscape, and have provided innumerable outdoor recreational experiences to millions.

As Protect the Adirondacks was gathering information about the actions of the DEC in 2014, a process delayed by denials and appeals of denials of Freedom of Information requests, state agencies awarded NYCO Minerals permits for exploratory drilling on the 200 acres of Forest Preserve in question. NYCO built roads, more than two dozen drilling sites, and cut hundreds of trees in a forest that had not seen an ax for more than 125 years.

Under the terms of the NYCO Amendment, the DEC and NYCO must agree upon an appraisal and price for these Forest Preserve lands, which must be approved by the State Legislature. Protect the Adirondacks calls upon the Legislature not to proceed with this legislation until an investigation is completed. If an investigation finds that the DEC acted inappropriately, the sale of lands to NYCO should not be permitted.

“Four Constitutional Amendments for the Forest Preserve have been passed by New Yorkers since 2007, making this period this most intensive in state history. The Department of Environmental Conservation and state leaders are currently preparing at least two new

Constitutional Amendments. It's important that the Department of Environmental Conservation reform its involvement and become a neutral actor henceforth in all Article XIV amendments," said Peter Bauer.

Protect the Adirondacks believes DEC's support for the NYCO Amendment marks a major violation of the "Forever Wild" Forest Preserve, the finest state-managed public land system in the U.S., and one of the greatest public policy and environmental achievements in New York history.

### **Protect the Adirondacks**

Protect the Adirondacks is a privately funded, IRS-approved not-for-profit organization dedicated to the protection of the 6-million-acre Adirondack Park in northern New York. PROTECT was formed through the merger of the Association for the Protection of the Adirondacks and the Residents' Committee to Protect the Adirondacks in 2009. PROTECT pursues its mission to protect the Adirondack Park and defend the public "forever wild" Forest Preserve through citizen advocacy, grassroots organizing, education, research, and legal action. PROTECT is governed by a volunteer Board of Directors. PROTECT maintains an office in Lake George. For more information see [www.protectadks.org](http://www.protectadks.org).

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