



Board of Directors

April 23, 2024

Charles Clusen
Chair

James McMartin Long
Michael Wilson
Vice-Chairs

Barbara Rottier
Secretary

David Quinn
Treasurer

Nancy Bernstein
John Caffry
Andy Coney
Dean Cook
James C. Dawson
Lorraine Duvall
Robert Glennon
Roger Gray
Evelyn Greene
Sidney Haring
Sheila Hutt
Dale Jeffers
Patricia Morrison
John Nemjo
Peter O'Shea
Philip Terrie
Chris Walsh

Staff

Peter Bauer
Executive Director

Claudia K. Braymer, Esq.
Deputy Director

Christopher Amato, Esq.
**Conservation Director
and Counsel**

Sean Mahar
Interim Commissioner
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY. 12233-1010

RE: Mineral Exploration by NYCO Minerals, Inc. in the Jay Mountain Wilderness Area

Dear Commissioner Mahar:

Congratulations on your appointment as Department of Environmental Conservation ("DEC") Interim Commissioner. We wish you every success and hope that your appointment will open a new chapter of increased transparency at the Department.

One of the transparency issues we would like the Department to address involves DEC's withholding of information from the public concerning mineral exploration by NYCO Minerals, Inc. ("NYCO") in the Jay Mountain Wilderness Area in the Adirondack Park. DEC's refusal to release records regarding NYCO's exploitation of publicly owned Forest Preserve lands for private gain runs counter to the Department's obligations as the public's trustee and guardian of those lands and contravenes the express language of the constitutional amendment authorizing NYCO's mineral exploration on those lands.

The NYCO Constitutional Amendment

In November 2013, New York State voters narrowly approved an amendment to the Forever Wild clause of the New York State Constitution granting NYCO permission to conduct mineral sampling in a 200-acre portion of the Jay Mountain Wilderness Area known as "Lot 8." The amendment allows NYCO to conduct mineral sampling operations on Lot 8 "to determine the quantity and quality of wollastonite" and specifies that NYCO "shall provide the data and information derived from such drilling to the state for appraisal purposes."

Protect the Adirondacks

PO Box 48, North Creek, NY 12853 518.251.2700

www.protectadks.org info@protectadks.org

Like Us on Facebook and on Instagram/Threads @ProtectAdkPark

The amendment further provides that if NYCO determines, based on its sampling of Lot 8, that it wants to extract mineral deposits from the area, the State may transfer ownership of Lot 8 to NYCO on the condition that the company conveys to the State at least the same acreage of lands for incorporation into the Forest Preserve. The lands conveyed by NYCO to the State must be reviewed and approved by the Legislature and determined to be of equal or greater value than the lands conveyed from the State to NYCO, and in no event can the value of the transferred lands be less than one million dollars. At the conclusion of mining activities on Lot 8, NYCO must remediate all disturbed areas and convey the remediated lands back to the State.

In the event that NYCO determines not to proceed with mining on Lot 8, it must remediate all areas disturbed by its mineral exploration activities and convey to the State for incorporation into the Forest Preserve the same number of acres disturbed by mineral exploration. The Legislature must determine that the lands are of equal or greater value than the lands on Lot 8 disturbed by mineral exploration.

DEC Has Failed to Insist that NYCO Provide the Sampling Data to the Department

By May 2015, NYCO had completed its mineral exploration activities on Lot 8. However, contrary to the express language of the constitutional amendment, NYCO failed to provide “the data and information derived from such drilling” to DEC. Remarkably, despite the passage of nine years since NYCO completed its exploratory drilling, DEC has yet to demand that NYCO provide the data from its drilling on the Forest Preserve lands as required by the amendment. This is confirmed by DEC’s response to PROTECT’s January 2024 record request pursuant to the Freedom of Information Law (“FOIL”), in which the Department acknowledged that the NYCO sampling data were never submitted to DEC. Notably, the FOIL records provided to PROTECT included no records indicating that DEC has demanded that NYCO provide the data that is required by the constitutional amendment.

DEC Claims that NYCO is Acting as its “Agent”

DEC’s response to PROTECT’s FOIL request makes clear that NYCO is in the process of identifying and purchasing options on lands to convey to the State. DEC’s response included a letter dated April 24, 2023, from NYCO’s lawyer at the law firm Bond Schoeneck & King to an attorney in DEC’s Office of General Counsel. The purpose of the letter was “to submit a proposed land swap map related to the mining of wollastonite by NYCO on certain forest preserve land contained in [the Jay Mountain Wilderness Area] and the land swap authorized under the [NYCO] amendment.” The letter further states that “[g]iven the confidential nature of the information . . . we request that the information submitted by NYCO . . . be withheld from future disclosure under the Freedom of Information Law.” DEC did not provide any other records responsive to PROTECT’s FOIL request and stated that responsive records were being withheld on the grounds that they “would impair present or imminent contract awards or collective bargaining negotiations,” were “trade secrets . . . which if disclosed would cause substantial injury to the competitive position” of a commercial enterprise, or were “[i]nter-agency or intra-agency materials.”

PROTECT filed an appeal of the FOIL response with DEC’s Office of General Counsel arguing that the mineral sampling data collected by NYCO and required by the amendment to be submitted to

DEC is not exempt from disclosure; that there is no “imminent contract award” that could be impaired because there has been no submission of a proposed land swap to the Legislature for approval; and that NYCO’s land swap submission cannot qualify as a “trade secret” because that information must be submitted to the Legislature for approval and will therefore become public. In addition, there is no “contract award” involved here since any land swap would be pursuant to the constitutional amendment, not pursuant to the letting of a contract by DEC for the purchase of land.

DEC denied PROTECT’s FOIL appeal on March 19, 2024, stating that “[r]egarding the data and information collected by NYCO during exploratory drilling, the DEC does not possess this data since it wasn’t submitted to the Department.” The appeal denial did not directly address the “imminent contract award” claim, stating only that “NYCO is in some sense acting as DEC’s land agent in a process of evaluating properties to acquire land that best suit the State’s goals.” And regarding trade secrets, DEC claimed that “[d]isclosure would cause “substantial injury” since it could drive up the price of the privately held parcels under consideration.” We find these responses to our appeal of questionably legal validity and are considering our options.

The Public is Entitled to the NYCO Sampling Data and Communications Between DEC and a Private Entity Concerning a Proposed Land Swap

It is remarkable that nearly nine years have passed since NYCO collected mineral exploration data on public Forest Preserve lands pursuant to the constitutional amendment and it has yet to comply with the amendment’s requirement that the data be submitted to DEC. Equally remarkable is the fact that DEC has failed to insist that NYCO provide the data—particularly since DEC is plainly involved in negotiating a land deal with NYCO. Because the amendment requires the mineral exploration data to be used for appraisal purposes, it is perplexing how NYCO can be “acting as DEC’s land agent” for a prospective land swap in the absence of the crucial appraisal-related data that NYCO is withholding from DEC. This peculiar set of circumstances looks like DEC and NYCO are colluding to withhold the mineral exploration data from DEC so that it is not obtainable under FOIL.

Although it is clear that DEC and NYCO are deeply involved in finalizing a land swap involving Lot 8, it remains unclear whether NYCO’s anticipated conveyance of lands to the State is for the purpose of receiving title to Lot 8 in order to conduct mining activities or is for the purpose of compensating the State for the acreage disturbed by its mineral sampling because the company does not intend to mine Lot 8. The public has a right to know which of these scenarios is being pursued.

Because informing the public about whether NYCO is pursuing title to Lot 8 will not divulge trade secrets or impair contract negotiations, we request that DEC provide that basic information in response to this letter. We also request that DEC demand the mineral exploration data collected by NYCO as required by the constitutional amendment and provide that information to PROTECT as required by FOIL.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Amato". The signature is fluid and cursive, with a large initial "C" and "A".

Christopher Amato
Conservation Director and Counsel
Protect the Adirondacks
P.O. Box 48
North Creek, NY 12853
(518) 860-3696
conservationdirector@protectadks.org

cc: Ashely Dougherty, Assistant Secretary for the Environment
Tom Berkman, DEC Deputy Commissioner and General Counsel
Fiona Watt, Director, Division of Lands and Forests