

At a motion term of the
Supreme Court, Tompkins
County on the 13th day of
September 2018.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF TOMPKINS

**In the Matter of the Application of THE CITY OF
ITHACA, THE TOWN OF ITHACA, THE TOWN OF
ULYSSES, THE VILLAGE OF UNION SPRINGS,
JOHN V. DENNIS, individually and as President of
CAYUGA LAKE ENVIRONMENTAL ACTION NOW
(CLEAN), an unincorporated association, ALFRED
THOMAS VAWTER, JOSHUA J. and JENNIFER L.
LAPENNA, RODNEY and CYNTHIA HOWELL, KENT
and HEATHER STRUCK, JUDITH R. SCOTT,
WILLIAM HECHT,**

AMENDED
DECISION AND ORDER

Index No: EF2017-0285
RJI No.: 2017-0566-M

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

vs.

**THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and CARGILL,
INCORPORATED,**

Respondents.

Petitioners in this action move by Notice of Motion dated August 10, 2018, for an Order compelling Respondent, Cargill, Incorporated, to provide Petitioners certain documents and to extend the current Scheduling Order. The motion was returnable on September 13, 2018.

Petitioners seek documents cited in a letter attached to an affidavit submitted by Respondent Cargill in response to the Article 78 Petition filed in this proceeding. Specifically, Petitioners seek documents cited in the letter of Vincent A. Scovazzo, of John T. Boyd Company, dated February 22, 2018, which was attached to the affidavit of Robert La Fleur, an environmental consultant for Cargill.

The Scovazzo letter was drafted in February of 2018, and was not part of record at the time of the issuance of the 2017 Shaft 4 permit by the Respondent NYSDEC, that is the subject of the

Petition. The court has discretion to permit disclosure under CPLR § 408, upon a consideration of several factors including whether the party seeking disclosure has established that the information is material and necessary (*Matter of Suit-Kote Corp. v. Rivera*, 137 AD3d 1361 at 1365 [3d Dept 2016]). As set forth above, the Scovazzo letter was drafted after the issuance of the Shaft 4 permit and therefore was not reviewed in connection with that permit, and the Petitioners have not demonstrated that the documents cited in that letter are material and necessary to this proceeding.

Therefore, the petitioners motion to compel is denied, and the Scheduling Order is hereby modified as follows:

As ordered at the September 12th motion term, Petitioners' Reply to Respondents' Answers is due by October 26, 2018 and Sur Reply date is November 9, 2018.

Oral Argument is scheduled for November 26, 2018 at 1:30 p.m.

Dated: October 15, 2018

**John C.
Rowley**

Digitally signed by John C. Rowley
DN: CN=John C. Rowley, OU=NY State
Unified Courts, O=Tompkins County
Court,
E=tpkrowley_chambers@nycourts.gov
Date: 2018-10-15 14:05:22

HON. JOHN C. ROWLEY
Acting Supreme Court Judge