

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Articles 23 and 71 of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

**AJ OIL AND GAS EXPLORATION INC,**

Respondent.

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**ORDER**  
DEC Case No.  
**CO 9-20210709-70**

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent AJ Oil and Gas Exploration Inc, violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2020 calendar year for oil wells known as the Ford's Brook wells fb3 through fb7, fb 10 through fb 16, and FB018 through FB020, and the W & J wells 1 through 14. These wells are located in the Town of Willing, Allegany County, New York.

The fifteen Ford's Brook wells are designated by American Petroleum Institute (API) Well Numbers 31-003-65243-00-00, 31-003-65244-00-00, 31-003-65245-00-00, 31-003-65246-00-00, 31-003-65247-00-00, 31-003-65248-00-00, 31-003-65249-00-00, 31-003-65250-00-00, 31-003-65251-00-00, 31-003-65252-00-00, 31-003-65253-00-00, 31-003-65254-00-00, 31-003-56080-00-00, 31-003-56081-00-00 and 31-003-56082-00-00. The fourteen W & J wells are designated by API Well Numbers 31-003-65942-00-00, 31-003-65943-00-00, 31-003-65944-00-00, 31-003-65945-00-00, 31-003-65946-00-00, 31-003-65947-00-00, 31-003-65948-00-00, 31-003-65949-00-00, 31-003-65950-00-00, 31-003-65951-00-00, 31-003-65952-00-00, 31-003-65953-00-00, 31-003-65954-00-00, and 31-003-65955-00-00. Respondent is the operator of the aforementioned wells.

Administrative Law Judge (ALJ) Timothy M. MacPherson of the Department's Office of Hearings and Mediation Services prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled for January 27, 2022 (*see* Default Summary Report at 4 and 5 [Findings of Fact Nos. 15 and 20]). At the January 27, 2022 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Michael S. Caruso, presiding at the hearing, reserved on

the motion, and Department staff later submitted a written motion for default judgment with supporting papers. The matter was then assigned to ALJ MacPherson.

As a consequence of respondent's failure to answer or appear in this matter, ALJ MacPherson recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 6 and 7). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent failed to timely file an annual well report for the 2020 calendar year for Ford's Brook wells fb 3 through fb 7, fb 10 through fb 16, and FB018 through FB020, and for W & J wells 1 through 14. Accordingly, respondent is in violation of 6 NYCRR 551.2(b).

Department staff correctly points out that the requirement to file annual well reports is important to determining the status of the State's resources given the potential or actual environmental harm that may result from the lack of accurate, annual information about well activity. The identification of non-producing wells for plugging is significant for the prevention of groundwater contamination (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq. (Haas Aff.), dated February 22, 2022, ¶ 13; *see also* Affidavit of Ted Loukides, sworn to February 16, 2022, ¶ 22).

Department staff, in its papers, sought a penalty of three thousand dollars (\$3,000), and ALJ MacPherson recommended that respondent AJ Oil and Gas Exploration Inc be directed to pay this amount. ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b).

In other proceedings of this nature, Department staff has requested a civil penalty of \$1,500 for each time that a well owner or operator failed to timely submit an annual well report (*see* Default Summary Report at 6 and 7; Haas Aff., ¶ 14).

In its motion for default judgment however, Department staff maintained that a higher penalty of three thousand dollars (\$3,000) was warranted (*see* Default Summary Report at 6 and 7); Haas Aff., ¶¶ 9-13, 15-16,). Department staff cited respondent's history of noncompliance with the oil and gas well program, exemplified by a 2020 consent order, as an aggravating factor (*see id.*; *see also* Exhibit E [prior order on consent effective November 13, 2020]).

The record demonstrates that respondent AJ Oil and Gas Exploration Inc failed to submit a timely and complete annual well report for the referenced Ford's Brook and W & J wells for the calendar year 2020. Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written and oral reminders, respondent failed to file an acceptable annual well report for the 2020 calendar year (*see e.g.* Default Summary Report at 3-5 [Findings of Fact Nos. 8-13, 16-19]). The record reflects that respondent's filing of the 2020 annual well report, which was over seven months late, was incomplete. Although respondent has

submitted a late 2020 annual well report or pages thereto on several occasions., it has failed to make the requisite and necessary corrections. Respondent has also failed to sign the proposed Department consent order and submit the associated penalty payment required to resolve this matter (*see* Default Summary Report at 4 [Finding of Fact No. 13]). Although the civil penalty that Department staff is requesting is consistent with ECL 71-1307(1), due to the number of wells at issue a higher civil penalty could have been supported. However, in the circumstances here, the civil penalty is limited to the amount set forth in staff's papers.<sup>1</sup>

Based on the record before me, the recommended penalty is authorized. I direct that respondent AJ Oil and Gas Exploration Inc submit the civil penalty of three thousand dollars (\$3,000) and a complete and annual well report to the Department within thirty (30) days of the service of this order upon respondent.

**NOW, THEREFORE**, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent AJ Oil and Gas Exploration Inc waived its right to be heard at the hearing.
- II. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent AJ Oil and Gas Exploration Inc is determined to have violated 6 NYCRR 551.2(b), by failing to timely file a complete and accurate annual well report for the 2020 calendar year for the fifteen Ford's Brook wells fb3 through fb7, fb 10 through 16, FB018 through FB020 (API Well Numbers 31-003-65243-00-00, 31-003-65244-00-00, 31-003-65245-00-00, 31-003-65246-00-00, 31-003-65247-00-00, 31-003-65248-00-00, 31-003-65249-00-00, 31-003-65250-00-00, 31-003-65251-00-00, 31-003-65252-00-00, 31-003-65253-00-00, 31-003-65254-00-00, 31-003-56080-00-00, 31-003-56081-00-00, 31-003-56082-00-00), and the fourteen W & J wells 1 through 14, (API Well Numbers 31-003-65942-00-00, 31-003-65943-00-00, 31-003-65944-00-00, 31-003-65945-00-00, 31-003-65946-00-00, 31-003-65947-00-00, 31-003-65948-00-00, 31-003-65949-00-00, 31-003-65950-00-00, 31-003-65951-00-00, 31-003-65952-00-00, 31-003-65953-00-00, 31-003-65954-00-00, and 31-003-65955-00-00).
- III. Within thirty (30) days of the service of this order upon respondent AJ Oil and Gas Exploration Inc, respondent shall submit to the Department a complete and accurate annual well report for the fifteen Ford's Brook and fourteen W & J wells for the 2020 calendar year.
- IV. Respondent AJ Oil and Gas Exploration Inc is hereby assessed a civil penalty in the amount of three thousand dollars (\$3,000), to be paid within thirty (30) days of the service of this order upon respondent. Payment is to be by certified check, cashier's

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<sup>1</sup> The general principle is that a default judgment cannot exceed the amount demanded in complaint, absent notice to respondent that a greater penalty would be sought. *See* Matter of 134-15 Rock Management Corp., et al., Order of the Commissioner, December 10, 2008, at 4; *see also* CPLR 3215(b).

check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph V of this order.

- V. The annual well report and civil penalty payment shall be sent to the following address:

New York State Department of Environmental Conservation  
Division of Mineral Resources  
Oil and Gas Compliance Enforcement Section  
625 Broadway, 3<sup>rd</sup> Floor  
Albany, New York 12233-6500  
Attn: Theodore N. Loukides, Chief.

- VI. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent AJ Oil and Gas Exploration Inc and its agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By:       /s/  
Basil Seggos  
Commissioner

Dated: April 22, 2022  
Albany, New York

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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In the Matter of the Alleged Violations of Articles 23 and 71 of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**DEFAULT SUMMARY  
REPORT**

- by -

**AJ OIL AND GAS EXPLORATION INC,**

DEC Case No.  
**CO 9-20210709-70**

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served AJ Oil and Gas Exploration Inc (respondent) with a notice of hearing and complaint dated November 22, 2021, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file a timely annual well report for the 2020 calendar year for fifteen (15) wells (known as Ford's Brook wells fb 3 through fb 7, fb 10 through fb 16, and FB 018 through FB 020), and fourteen (14) wells (known as W & J wells 1 through 14) located in the Town of Willing, Allegany County, New York.

The Ford's Brook wells are designated by American Petroleum Institute (API) Well Numbers 31-003-65243-00-00, 31-003-65244-00-00, 31-003-65245-00-00, 31-003-65246-00-00, 31-003-65247-00-00, 31-003-65248-00-00, 31-003-65249-00-00, 31-003-65250-00-00, 31-003-65251-00-00, 31-003-65252-00-00, 31-003-65253-00-00, 31-003-65254-00-00, 31-003-56080-00-00, 31-003-56081-00-00, and 31-003-56082-00-00, respectively. The W & J wells are designated by API Well Numbers 31-003-65942-00-00, 31-003-65943-00-00, 31-003-65944-00-00, 31-003-65945-00-00, 31-003-65946-00-00, 31-003-65947-00-00, 31-003-65948-00-00, 31-003-65949-00-00, 31-003-65950-00-00, 31-003-65951-00-00, 31-003-65952-00-00, 31-003-65953-00-00, 31-003-65954-00-00, and 31-003-65955-00-00, respectively.

The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 71-1305(2) and 6 NYCRR 551.2(b); (2) directing respondent to submit an acceptable annual well report to the Department for the calendar year 2020; (3) assessing a civil penalty in the amount of three thousand dollars (\$3,000); and (4) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint was made by certified mail, return receipt requested and was received by respondent on November 24, 2021 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. As stated in Department staff's November 22, 2021, notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Michael S. Caruso at 10:00 a.m. on January 27, 2022. (*See* Motion for Default Judgment, Exhibit A, affirmation of Anne Haas [Haas Aff.], dated February 22, 2022, ¶ 2; Hearing Record). Department staff was represented by Anne Haas, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent (*see* Haas Aff. ¶ 4; Hearing Record).

ALJ Caruso noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Caruso reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated February 22, 2022, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on or about February 22, 2022 (*see* affidavit of service of Melissa Evans, sworn to February 22, 2022). Respondent did not respond to the motion.

#### Applicable Regulatory Provisions

6 NYCRR Section 551.2 Production and purchase reports.

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“(b) Each person who first produces, sells or purchases oil and gas produced in the State and the operator of each gas storage facility in the State must file with the department on a form the department prescribes a statement of the oil and gas produced, sold, purchased or stored. The information contained in this statement must be compiled on a calendar year basis and must be filed no later than March 31st next following the close of the calendar year, unless the department requires otherwise.”

\* \* \*

#### Findings of Fact

1. Ted Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department's Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division's Bureau of Resource Development and Reclamation. Mr. Loukides's duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all annual well reports (AWRs) submitted to the Department. (*See* affidavit of Ted Loukides

[Loukides Aff.], sworn to February 16, 2022, ¶¶ 1-3.)

2. Respondent AJ Oil and Gas Exploration Inc maintains an address at 4404 Ford Brook North Branch, Wellsville, New York 14895. (See affidavit of Ted Loukides [Loukides Aff.], sworn to February 16, 2022, ¶ 14.)
3. Respondent AJ Oil and Gas Exploration Inc operates wells designated as API Well Numbers 31-003-65243-00-00, 31-003-65244-00-00, 31-003-65245-00-00, 31-003-65246-00-00, 31-003-65247-00-00, 31-003-65248-00-00, 31-003-65249-00-00, 31-003-65250-00-00, 31-003-65251-00-00, 31-003-65252-00-00, 31-003-65253-00-00, 31-003-65254-00-00, 31-003-56080-00-00, 31-003-56081-00-00, and 31-003-56082-00-00 (known as Ford's Brook wells fb 3 through fb 7, fb 10 through fb 16, and FB018 through FB020, respectively), along with wells designated as API Well Numbers 31-003-65942-00-00, 31-003-65943-00-00, 31-003-65944-00-00, 31-003-65945-00-00, 31-003-65946-00-00, 31-003-65947-00-00, 31-003-65948-00-00, 31-003-65949-00-00, 31-003-65950-00-00, 31-003-65951-00-00, 31-003-65952-00-00, 31-003-65953-00-00, 31-003-65954-00-00, and 31-003-65955-00-00 (known as W & J wells 1 through 14, respectively). Collectively, these wells are located in the Town of Willing, Allegany County, New York. (See Loukides Aff. ¶ 4, Exhibits 1, 3-6, 13, 14.)
4. Respondent is required to file annual well reports (AWRs) with the Department for each calendar year for each well respondent operates on a form supplied by the Department, as typified by Loukides Aff. Exhibit 6 (AWR sent to respondent for the 2020 calendar year). (See Loukides Aff. ¶¶ 9, 10, 12, Exhibit 6.)
5. On October 23, 2020, respondent signed an order on consent, prepared by Department staff, to resolve respondent's liability for failure to timely submit an AWR for the calendar year 2019. (See Haas Aff. ¶ 9, Exhibit E.)
6. On January 25, 2021, Department staff e-mailed respondent a cover letter and AWR form for the 2020 calendar year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2021. (See Loukides Aff. ¶ 9, Exhibit 6.)
7. On March 9, 2021, Department staff sent a second e-mail to respondent after failing to reach respondent by phone. The email reminded respondent to file a completed AWR by March 31, 2021. (See Loukides Aff. ¶ 10, Exhibit 7.)
8. Respondent failed to submit the 2020 AWR by March 31, 2021. (See Loukides Aff. ¶ 11, Exhibit 8.)
9. On July 8, 2021, Department staff attempted to contact respondent by phone and left a voicemail notifying respondent that the Department had not yet received its 2020 AWR. In addition, Department staff re-sent its March 9, 2021, email reminder to respondent. Respondent did not return Department staff's call, respond to the email or submit the missing AWR. (See Loukides Aff. ¶ 12.)

10. On July 26, 2021, Department staff attempted to mail respondent, by certified mail, a notice of violation (NOV) advising respondent that respondent had failed to file an acceptable AWR by March 31, 2021. Included with the NOV was an order on consent to settle the matter within thirty days. The NOV advised respondent of the potential penalties for failing to submit the required AWR along with a fully executed copy of the order on consent. The NOV was mailed to respondent at the address listed on respondent's organizational report: 2811 Burdick Road, Bolivar, NY 13715; however, it was returned to the Department marked "forward expired." (See Loukides Aff. ¶ 13, Exhibit 2, 8.)
11. On August 20, 2021, Department staff re-mailed the NOV to respondent at 4404 Ford Brook North Branch, Wellsville, New York 14895. The notice of violation and consent order were mailed by certified mail return receipt requested and were received by respondent on August 23, 2021. (See Loukides Aff. ¶ 14, Exhibit 8, 9.)
12. On September 22, 2021, Department staff left a voicemail message with respondent, advising respondent that staff had still not received an acceptable AWR for 2020, signed order on consent or penalty payment. Staff advised respondent to submit the missing documents or to contact the Office of General Counsel. Respondent did not comply with any of staff's requests. (See Loukides Aff. ¶ 15.)
13. On November 22, 2021, Department staff received three of the five required pages of 2020 AWRs from respondent. In addition to the two missing AWR pages, respondent also failed to submit the signed order on consent and penalty payment. That same day, Department staff mailed the unacceptable AWR package back to respondent, by USPS First Class mail, along with a cover letter explaining that only three of the required five pages of AWRs were received and requesting that respondent submit the missing pages, signed order on consent and penalty payment. (See Loukides Aff. ¶ 16, Exhibit 10, 11.)
14. Department staff served the notice of hearing and complaint, statement of readiness, consent order and invoice, on respondent by certified mail, return receipt requested, pursuant to 6 NYCRR 622.3(a)(3), which were delivered on November 24, 2021. (See Haas Aff. ¶ 2, Exhibits B, C.)
15. Respondent did not answer the complaint which was dated November 22, 2021. (See Haas Aff. ¶ 3, Exhibit B.)
16. On December 13, 2021, Department staff received the two missing AWR pages, but determined that the submitted pages were unacceptable because respondent failed to provide complete production information, failed to properly total production data, and did not indicate the number of barrels sold. (See Loukides Aff. ¶ 17, Exhibit 12.)
17. On December 15, 2021, Department staff returned respondent's unacceptable 2020 AWR, by USPS First Class mail, along with a cover letter requesting that respondent correct the noted deficiencies and resubmit the corrected AWR along with the signed

- order on consent and penalty payment. (*See Loukides Aff. ¶ 18, Exhibit 13.*)
18. On December 17, 2021, the Department received another completed 2020 AWR from respondent, however, respondent failed to make any of the requested corrections. (*See Loukides Aff. ¶ 19.*)
  19. On December 23, 2021, Department staff once again returned respondent's unacceptable 2020 AWR, by USPS First Class mail, along with another cover letter instructing respondent to make the requisite corrections, submit the signed order on consent and remit the penalty payment. (*See Loukides Aff. ¶ 20, Exhibit 14.*)
  20. Respondent failed to appear at the January 27, 2022 hearing (*see Haas Aff. ¶ 4; Hearing Record.*)
  21. At the hearing on January 27, 2022, Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Caruso reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). (*See Hearing Record.*)
  22. Department staff served the Notice of Motion for Default Judgment, Motion for Default Judgment, and accompanying documents, on respondent by First Class Mail via USPS, pursuant to 6 NYCRR 622.15(d)(1) and 6 NYCRR 622.6(c)(1). (*See affidavit of service of Melissa Evans, sworn to February 22, 2022.*)

### Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see 6 NYCRR 622.4[a]*). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, and failure to attend constitutes a default and a waiver of the opportunity for a hearing (*see 6 NYCRR 622.8[c]; see also 6 NYCRR 622.15[a]* ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

- “(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
- “(2) proof of respondent's failure to appear or failure to file a timely answer;
- “(3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
- “(4) a concise statement of the relief requested;
- “(5) a statement of authority and support for any penalty or relief requested; and

“(6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable.”  
(see 6 NYCRR 622.15[b][1] - [6] [effective September 16, 2020]).

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim[s]” alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (see *Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018 [*Samber*], at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; see also 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and failed to appear for the adjudicatory hearing scheduled on January 27, 2022, as directed in the notice of hearing; (iii) Department staff’s papers provide proof of the facts sufficient to support the violations alleged and enable me to determine that staff has a viable claim; (iv) Department staff’s papers include a concise statement of the relief requested (see Motion for Default Judgment, Wherefore Clause; Haas Aff. Exhibit B [complaint]); (v) staff’s motion includes a statement of authority and support for the penalty and relief requested (see Haas Aff. ¶¶ 10-16); and (vi) Department staff provided proof of service of the motion papers on respondent (see affidavit of service of Melissa Evans, sworn to February 22, 2022). Respondent did not file or serve a response to staff’s motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff’s submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file a complete and accurate AWR for the 2020 calendar year for respondent’s fifteen Ford’s Brook and fourteen W & J wells, in violation of 6 NYCRR 551.2(b).

Staff’s complaint requested a total civil penalty of three thousand dollars (\$3,000). Staff’s submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department’s Civil Penalty Policy, *DEE-1*, and administrative precedent concerning similar violations (see Haas Aff. ¶¶ 10-16). Department staff typically seek a penalty of one thousand five hundred dollars (\$1,500) for the failure to submit an AWR.<sup>1</sup> Here, however, respondent has a history of noncompliance having previously settled the same violation by order on consent. Therefore, staff applied respondent’s history of noncompliance as an aggravating factor in support of staff’s three-thousand-dollar (\$3,000) penalty request. Department staff asserts that reporting requirements, such as those at issue here, provide the

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<sup>1</sup> See *Matter of Sahlem*, Order of the Commissioner, January 4, 2021, *Matter of Gilray*, Order of the Commissioner, March 4, 2015, and *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013. For each demonstrated violation, the Commissioner assessed a civil penalty of \$1,500. (Haas Aff. ¶ 14).

Department with important information about the status of the State's resources. According to Department staff, the failure to timely submit AWRs may result in potential and actual environmental harm. Staff explains that the AWRs identify non-producing wells for plugging, and that the failure to plug non-producing wells may result in contamination of groundwater with petroleum products, and the release of harmful greenhouse gases. In addition, Department staff transmits production information to affected State agencies and local governments for real property tax purposes. (See Haas Aff. ¶ 13; Loukides Aff. ¶ 22.)

ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b). Department staff's proposed civil penalty of three thousand dollars (\$3,000) is consistent with the Department's Civil Penalty Policy (DEE 1, issued June 20, 1990) as well as applicable provisions of ECL article 71 and prior Commissioner orders. Furthermore, staff demonstrated the importance of AWRs to the regulatory scheme. Although respondent eventually filed an AWR for the 2020 calendar year, Department staff deemed the filing to be unacceptable. Department staff have repeatedly identified the specific corrections required to make respondent's AWR acceptable and have given respondent multiple opportunities to make those corrections. Nonetheless, as of the date of this report, the deficiencies in respondent's AWR remain. The Commissioner has previously held that "the timely filing of complete and accurate AWRs is critical to the regulatory requirements of this program" (see *Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). Accordingly, I conclude that the penalty of three thousand dollars (\$3,000) requested by Department staff, is supported and appropriate.

#### Conclusion of Law

By failing to timely file complete and accurate annual well reports for the 2020 calendar year for the fifteen Ford's Brook and fourteen W & J wells, respondent AJ Oil and Gas Exploration Inc violated 6 NYCRR 551.2(b).

#### Recommendation

Based upon the foregoing, I recommend that the Commissioner issue an order:

1. granting Department staff's motion for default;
2. holding that respondent AJ Oil and Gas Exploration Inc violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2020 calendar year for Ford's Brook wells fb3 through fb7, fb 10 through 16, FB018 through FB020 and W & J wells 1 through 14 (API Well Numbers 31-003-65243-00-00, 31-003-65244-00-00, 31-003-65245-00-00, 31-003-65246-00-00, 31-003-65247-00-00, 31-003-65248-00-00, 31-003-65249-00-00, 31-003-65250-00-00, 31-003-65251-00-00, 31-003-65252-00-00, 31-003-65253-00-00, 31-003-65254-00-00, 31-

003-56080-00-00, 31-003-56081-00-00, 31-003-56082-00-00, 31-003-65942-00-00, 31-003-65943-00-00, 31-003-65944-00-00, 31-003-65945-00-00, 31-003-65946-00-00, 31-003-65947-00-00, 31-003-65948-00-00, 31-003-65949-00-00, 31-003-65950-00-00, 31-003-65951-00-00, 31-003-65952-00-00, 31-003-65953-00-00, 31-003-65954-00-00, and 31-003-65955-00-00 respectively).

3. directing respondent AJ Oil and Gas Exploration Inc to submit a complete and accurate annual well report for the 2020 calendar year within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing respondent AJ Oil and Gas Exploration Inc to pay a civil penalty in the amount of three thousand dollars (\$3,000) within thirty days (30) of the service of the Commissioner's order upon respondent; and
5. directing such other and further relief as he may deem just and appropriate.

/s/

Timothy M. MacPherson  
Administrative Law Judge

Dated: Albany, New York  
April 8, 2022

## APPENDIX A

*Matter of AJ Oil and Gas Exploration Inc*  
DEC Case No. CO 9-20210709-70  
Motion for Default Judgment

1. Cover letter dated February 22, 2022, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated February 22, 2022.
3. Motion for Default Judgment, dated February 22, 2022, attaching Exhibit A:
  - A. Affirmation of Anne Haas, Esq., dated February 22, 2022, attaching Exhibits B-E;
  - B. Cover letter to AJ Oil and Gas Exploration Inc, Notice of Hearing, Complaint and Statement of Readiness, all dated November 22, 2021, along with a proposed Order on Consent and Invoice;
  - C. Affidavit of Service of Melissa Evans, sworn to January 3, 2022, attaching United States Postal Service (USPS) electronic proof of delivery;
  - D. NYS Department of State, Division of Corporations, Entity Information regarding AJ Oil and Gas Exploration Inc, dated February 6, 2022; and
  - E. Matter of AJ Oil and Gas Exploration Inc, Order on Consent, dated November 13, 2020.
4. Affidavit of Ted Loukides, sworn to February 16, 2022, attaching Exhibits 1-14:
  1. Map depicting location of wells on property operated by AJ Oil and Gas Exploration Inc along with list of 29 wells operated by AJ Oil and Gas Exploration Inc;
  2. Organizational Report for AJ Oil and Gas Exploration Inc sworn to September 18, 2012;
  3. Request for Well Transfer from H & M Oil Company, to AJ Oil and Gas Exploration Inc, sworn to May 30, 2012;
  4. Request for Well Transfer from Walter B Sturdevant, to AJ Oil and Gas Exploration Inc, sworn to October 11, 2012;

5. Applications for A.P.I. Well Identification Numbers for FB 018 through FB 020 wells signed by AJ Oil and Gas Exploration Inc dated September 18, 2012;
  6. E-mail dated January 25, 2021, from Theodore N. Loukides to AJ Oil and Gas Exploration Inc, attaching pre-filled Annual Well Report forms with instructions;
  7. Email dated March 9, 2021, from Theodore N. Loukides to AJ Oil and Gas Exploration Inc (re: failure to file Annual Well Report);
  8. Letter from Theodore N. Loukides to AJ Oil and Gas Exploration Inc, dated July 26, 2021, (re: Notice of Violation-Failure to File Annual Well Report) with proposed order on consent, invoice and pre-filled Annual Well Report enclosed);
  9. USPS Tracking receipt for August 23, 2021, delivery;
  10. Incomplete Annual Well Report Forms for the 2020 production year from AJ Oil and Gas Exploration Inc received on November 22, 2021;
  11. Letter of Kelly Smith to AJ Oil and Gas Exploration Inc, dated November 22, 2021, (re: missing pages of 2020 AWR, failure to provide signed order on consent and failure to pay civil penalty);
  12. Incomplete Annual Well Report Forms for the 2020 production year from AJ Oil and Gas Exploration Inc received on December 13, 2021;
  13. Letter from Kelly Smith to AJ Oil and Gas Exploration Inc, dated December 15, 2021, (re: incomplete Annual Well Report forms, failure to provide signed order on consent and failure to pay civil penalty); and
  14. Letter from Kelly Smith to AJ Oil and Gas Exploration Inc, dated December 23, 2021 (re: incomplete Annual Well Report forms, failure to provide signed order on consent and failure to pay civil penalty).
5. Affidavit of Service of Melissa Evans, sworn to February 22, 2022 (default motion papers).