

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

In the Matter of the Alleged Violations of Articles 17 and 23 of the New York State Environmental Conservation Law (ECL) and Parts 551, 556 and 613 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

ORDER

File No. 19-68
R9-20191121-149

- by -

AJ Oil and Gas Exploration Inc.,

Respondent.

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department or DEC) served respondent AJ Oil and Gas Exploration Inc. (respondent) with a notice of hearing and complaint dated April 22, 2020 (Complaint), alleging that respondent AJ Oil and Gas Exploration Inc. violated sections of 6 NYCRR parts 551 and 556 and 6 NYCRR part 613 with respect to more than thirty (30) oil wells located in the Town of Willing, Allegany County, New York.¹

The wells are known as the Fords Brook FB 3, Fords Brook FB 4,² Fords Brook FB 5, Fords Brook FB 6, Fords Brook FB 7, Fords Brook FB 10, Fords Brook FB 11, Fords Brook FB 12, Fords Brook FB 13, Fords Brook FB 14, Fords Brook FB 15, Fords Brook FB 16, Fords Brook FB 018, Fords Brook FB 019, Fords Brook 020, Fords Brook ow-1, Fords Brook ow-2, Fords Brook ow-8, Fords Brook ow-9, W&J 7, W&J 10, W&J 11, W&J 16, W&J 17, W&J 18, W&J 19, W&J 21, W&J 22, Bierman 1, Bierman 2, Bierman 3 and Bierman 4.³

¹ Staff in the Complaint provided a list of thirty-one (31) wells at issue (*see* Complaint ¶ 24). Staff in the Complaint also cited an additional well, Fords Brook FB 4, for violations (*see id.* at ¶¶ 44 and 45), for a total of thirty-two (32) wells. In addition, Rudin Emborsky, DEC Mineral Resources Technician 1, in an affidavit sworn to December 20, 2020 (Motion for Default – Exhibit C)(Emborsky Affidavit), lists thirty-two (32) wells, including Fords Brook FB 4 (*see* Emborsky Affidavit ¶ 8).

² *See* footnote 1, *supra*.

³ The wells are designated by American Petroleum Institute (API) Well Numbers as follows Fords Brook wells -- 31-003-65243-00-00 (FB-3), 31-003-65244-00-00 (FB-4), 31-003-65245-00-00 (FB-5), 31-003-65246-00-00 (FB-6), 31-003-65247-00-00 (FB-7), 31-003-65248-00-00 (FB-10), 31-003-65249-00-00 (FB 11), 31-003-65250-00-00 (FB 12), 31-003-65251-00-00 (FB 13), 31-003-65252-00-00 (FB 14), 31-003-65253-00-00 (FB 15), 31-003-65254-00-00 (FB 16), 31-003-56080-00-00 (FB 018), 31-003-56081-00-00 (FB 019), 31-003-56082-00-00 (FB 020), 31-003-11216-00-00 (ow-1), 31-003-11264-00-00 (ow-2), 31-003-11343-00-00 (ow-8), 31-003-11306-00-00 (ow-9); W&J Wells -- 31-003-65948-00-00 (W&J 7), 31-003-65951-00-00 (W&J 10), 31-003-65952-00-00 (W&J 11), and unregistered wells W&J 16, W&J 17, W&J 18, W&J 19, W&J 21, and W&J 22; and the Bierman wells: 31-003-55939-00-00 (Bierman 1), 31-003-55940-00-00 (Bierman 2), 31-003-55941-00-00 (Bierman 3), and 31-003-55942-00-00 (Bierman 4).

Specifically, staff set forth fifteen causes of action, alleging violations of:

- 6 NYCRR 551.1(b) (failure to submit a revised organizational report to provide a correct address for correspondence);
- 6 NYCRR 556.1(b) (failure to install wellhead controls at Fords Brook FB 7, Fords Brook FB 15, Fords Brook FB 018, and Fords Brook ow-2);
- 6 NYCRR 556.4 (failure to remove overgrown vegetation and debris around eighteen [18] wells);⁴
- 6 NYCRR 556.5(a) (failure to cleanup oil and contaminated soils around thirteen [13] wells);⁵
- 6 NYCRR 556.6 (failure to have requisite identification information at 21 [twenty-one] wells);
- 6 NYCRR 613-1.9(c) (failure to renew petroleum bulk storage [PBS] registrations for the Fords Brook lease and the W&J [White Jackson] lease);
- 6 NYCRR 613-1.9(e) (failure to have correct information on its PBS registration for the Fords Brook lease), and 6 NYCRR 613.1.9(f) (failure to notify the Department of permanent closure or change in service of registerable tank systems with respect to unregistered tank 720222 and registered tank 720226 [now labeled as “B Water”]);⁶
- 6 NYCRR 613-1.9(g) (failure to display a current registration certificate at the tank system for the Fords Brook lease);
- 6 NYCRR 613-1.9(h) (failure to notify the Department prior to installing the unregistered tank, Tank 720222, at the Fords Brook lease);
- 6 NYCRR 613-4.4(d)(1) (failure to timely report spills at the Fords Brook lease);
- 6 NYCRR 613-4.1(b)(1)(v)(b) (failure to have secondary containment around unregistered Tank 720222 at the Fords Brook lease which is located within 500 feet of Fords Brook);
- 6 NYCRR 613-4.1(b)(3) (failure to install an overfill prevention device on unregistered Tank 720222 at the Fords Brook lease);
- 6 NYCRR 613-4.2(a)(3) (failure to properly label Tank 720222);
- 6 NYCRR 613-4.3(b)(1) (failure to perform monthly inspections of unregistered Tank 720222 at the Fords Brook lease); and
- 6 NYCRR 613-4.1(b)(1)(iii) (failure to equip unregistered Tank 720222 at the Fords Brook lease with corrosion protection).

The Complaint seeks an order (1) finding respondent in violation of the above-referenced violations; (2) assessing a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050); (3) directing respondent to perform the corrective actions in the compliance schedule attached to the Complaint as Appendix A; and (4) granting such other relief as may be deemed appropriate. Respondent failed to file an answer to the complaint and by motion dated January 12, 2021, staff moved for default judgment in this matter.

⁴ The specific regulatory provision is 6 NYCRR 556.4(b).

⁵ This regulation prohibits pollution of the land or surface or ground fresh water resulting from producing, refining, transportation or processing of oil, gas, and products, or in connection with solution mining.

⁶ The violations of 6 NYCRR 613-1.9(e) and (f) were combined as part of the seventh cause of action of the Complaint.

Administrative Law Judge (ALJ) Lara Q. Olivieri of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision, 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 (*see* Default Summary Report at 7 [Finding of Fact No. 18]). As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgement be granted (*see* Default Summary Report at 10). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has viable claims that respondent committed the violations cited in the complaint.

Department staff in its papers identified various environmental impacts including leaks around several well casings, the lack of wellhead controls to maintain and control oil flows, and overgrown vegetation around various wells (*see e.g.* Emborsky Affidavit, ¶¶ 46-47). Staff correctly points out that oil laws and regulations are designed to (a) protect groundwater and (b) prevent pollution, waste of oil and commingling of oil, brine, and fresh water (*see* Emborsky Affidavit, ¶ 46). According to Department staff, the Department's regulations are important to prevent potential harm and actual damage caused by petroleum discharges from oil wells and that compliance with the applicable laws and regulations is of a high priority (*see* Emborsky Affidavit, ¶ 47).

Department staff, in its papers, sought a penalty of twenty-five thousand and fifty dollars (\$25,050) and the ALJ 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 (which includes violations of 6 NYCRR parts 551 and 556 at issue here) shall be liable for a penalty not to exceed eight thousand dollars (\$8,000) and an additional penalty of up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1929 provides that any person who violates titles 1 through 11 inclusive and title 19 of article 17 or the rules and regulations promulgated thereto (which includes violations of 6 NYCRR part 613 cited here) shall be liable for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation.

In support of its penalty request, Department staff considered applicable Department enforcement and penalty policies, respondent's failure to cooperate, the duration of the violations and respondent's economic benefit of noncompliance (*see* Emborsky Affidavit, ¶¶ 35-45, 48; Affidavit of Patrick Diez sworn to January 11, 2021 [Diez Affidavit], ¶¶ 45-54). Staff calculated the civil penalty for the PBS-related violations in the amount of twenty thousand and fifty dollars (\$20,050) and the civil penalty for the oil law and regulation violations as five thousand dollars (\$5,000), for a total of twenty-five thousand and fifty dollars (\$25,050) (*see* Emborsky Affidavit ¶ 44; Diez Affidavit ¶ 54).

Although the extent and duration of the violations could support a higher penalty, I am taking into consideration the range of corrective actions that staff is requesting in Appendix A of the Complaint and its motion for default judgment. These corrective actions are important to address the current environmental harm arising from the violations and to protect against future

environmental harm at these locations. Based on the record before me, and in consideration of the corrective actions that respondent is hereby directed to undertake, the recommended penalty is authorized and appropriate.

I hereby direct that respondent submit the civil penalty of twenty-five thousand and fifty dollars (\$25,050) to the Department within thirty (30) days of the service of this order upon respondent, and that respondent must fully complete the corrective actions that are contained in Appendix A to the Complaint, as modified by the motion for default judgment and this order,⁷ within sixty (60) days of the service of this order upon respondent, provided that Department staff may, at its sole discretion, extend the date for the completion of one or more corrective actions upon good cause shown. Respondent must document any request for an extension in writing.

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 the complaint, respondent AJ Oil and Gas Exploration Inc. waived its right to be heard at 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:
 - A. 6 NYCRR 551.1(b) (failure to submit a revised organizational report to provide a correct address for correspondence);
 - B. 6 NYCRR 556.1(b) (failure to install wellhead controls at Fords Brook FB 7, Fords Brook FB 15, Fords Brook FB 018, and Fords Brook ow-2);
 - C. 6 NYCRR 556.4(b) (failure to remove overgrown vegetation and debris around eighteen [18] wells);
 - D. 6 NYCRR 556.5(a) (failure to cleanup oil and contaminated soils around thirteen [13] wells);
 - E. 6 NYCRR 556.6 (failure to have requisite identification information at 21 [twenty-one] wells);
 - F. 6 NYCRR 613-1.9(c) (failure to renew petroleum bulk storage [PBS] registrations for the Fords Brook lease and the W&J lease);

⁷ The motion for default judgment set forth a slightly modified list of corrective actions (*see* Motion for Default Judgment dated January 12, 2021 [Wherefore Clause § III, pars 1-14]). In addition, I hereby direct that submission of monthly inspection records for the unregistered tank 720222 is to be for the months of September 2019 through the month in which I sign this order. With respect to any off-site disposal of contaminated materials and soils, respondent must furnish appropriate written documentation to Department staff. Respondent is directed to consult with Department staff regarding any requisite repairs to the oil wells in order to prevent future leaks.

- G. 6 NYCRR 613-1.9(e) (failure to have correct information on its PBS registration for the Fords Brook lease);
 - H. 6 NYCRR 613.1.9(f) (failure to notify the Department of permanent closure or change in service of registerable tank systems with respect to unregistered tank 720222 and registered tank 720226 [now marked as “B Water”]);
 - I. 6 NYCRR 613-1.9(g) (failure to display a current registration certificate at the tank system for the Fords Brook lease);
 - J. 6 NYCRR 613-1.9(h) (failure to notify the Department prior to installing the unregistered tank, Tank 720222, at the Fords Brook lease);
 - K. 6 NYCRR 613-4.4(d)(1) (failure to timely report spills at the Fords Brook lease);
 - L. 6 NYCRR 613-4.1(b)(1)(v)(b) (failure to have secondary containment around unregistered Tank 720222 at the Fords Brook lease);
 - M. 6 NYCRR 613-4.1(b)(3) (failure to install an overfill prevention device on unregistered Tank 720222 at the Fords Brook lease);
 - N. 6 NYCRR 613-4.2(a)(3) (failure to mark Tank 720222 with the tank registration number);
 - O. 6 NYCRR 613-4.3(b)(1) (failure to perform monthly inspections of unregistered Tank 720222 at the Fords Brook lease); and
 - P. 6 NYCRR 613-4.1(b)(1)(iii) (failure to equip unregistered Tank 720222 at the Fords Brook lease with corrosion protection).
- III. Within sixty (60) days of service of this order upon respondent AJ Oil and Gas Exploration Inc., respondent shall:
- A. Submit to the Department a revised organization report providing a current address and updating any additional information as needed;
 - B. Submit to the Department an application for API Well Identification Number form for the unregistered wells: W&J 16, W&J 17, W&J 18, W&J 19, W&J 21, and W&J 22;
 - C. Submit a completed PBS registration applications and fee of one thousand dollars (\$1,000) to renew the registrations for the Fords Brook lease and the W&J lease , and change the status of tank 720226 on the Fords Brook lease to “converted to non-regulated use;”
 - D. Install a gauge at unregistered tank 720222 and submit a color photograph confirming the completion of this installation;

- E. Properly label the unregistered tank 720222 and submit a color photograph confirming the completion of this labeling;
 - F. Submit copies of the monthly inspection records for the unregistered tank 720222 for the months of September 2019 through the month in which I sign this order;
 - G. Remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a Department approved work plan. Disposal must be at an authorized off-site disposal location and documentation confirming such disposal must be provided to Department staff;
 - H. Make, in consultation with Department staff, any requisite repairs to the oil wells in order to prevent future leaks;
 - I. Place lease identification at the entrance of the lease roads and individual identification at each well, and submit color photographs confirming the placement of this lease identification;
 - J. Remove all vegetation and debris around the wellheads and production equipment and submit color photographs confirming the removal of the vegetation and debris;
 - K. Install adequate wellheads on Fords Brook FB15, Fords Brook FB 018 and Fords Brook ow-2, and submit color photographs confirming the completion of the installation;
 - L. Submit a proposed work plan, with installation schedule, for the installation of a secondary containment system at unregistered tank 720222, or submit a schedule to permanently close the tank;
 - M. Remove the unregistered tank 720222 from contact with the ground if the tank was installed prior to December 27, 1986, and submit a color photograph to confirm completion of this task, or provide documentation that the tank has been equipped with a corrosion protection system on any part of the tank that has contact with the ground; and
 - N. Submit to Department staff a color photograph showing that the current registration certificate has been posted at any or all tank systems.
- IV. Respondent AJ Oil and Gas Exploration Inc. is hereby assessed a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050) to be paid within sixty days (60) of the service of this order upon respondent. Payment is to be by certified check, cashier's 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. Respondent AJ Oil and Gas Exploration Inc. shall submit the penalty payment and all other submissions to the following:

Teresa J. Mucha, Esq.
Associate Attorney
NYSDEC Region 9
270 Michigan Avenue
Buffalo, New York 14203-2915

- VI. Any questions or other correspondence regarding this order shall also be addressed to Teresa J. Mucha, Esq. 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: August 28, 2021
Albany, New York

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

In the Matter of the Alleged Violations of Articles 17 and 23 of the New York State Environmental Conservation Law (ECL) and Parts 551, 556 and 613 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**DEFAULT SUMMARY
REPORT**

- by -

File No. 19-68
R9-20191121-149

AJ Oil and Gas Exploration Inc.,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent AJ Oil and Gas Exploration Inc. (respondent) with a notice of hearing and complaint dated April 22, 2020, alleging violations of 6 NYCRR 551.1(b), 6 NYCRR 556.1(b), 6 NYCRR 556.4, 6 NYCRR 556.5(a) and 6 NYCRR 556.6 for failure to submit a revised organizational report, failure to install wellhead controls, failure to remove overgrown vegetation and debris, failure to cleanup oil and contaminated soils, and failure to have requisite identification. The notice of hearing and complaint also alleges violations of 6 NYCRR 613-1.9(c), 6 NYCRR 613-1.9(e), 6 NYCRR 613.1.9(f), 6 NYCRR 613-1.9(g), 6 NYCRR 613-1.9(h), 6 NYCRR 613-4.4(d)(1), 6 NYCRR 613-4.1(b)(1)(v)(b), 6 NYCRR 613-4.1(b)(3), 6 NYCRR 613-4.2(a)(3), 6 NYCRR 613-4.3(b)(1) and 6 NYCRR 613-4.1(b)(1)(iii) for failure to renew petroleum bulk storage (PBS) registrations, failure to have correct information on the PBS registration, failure to notify the Department of permanent closure or change in service of registerable tank systems, failure to display a current registration certificate, failure to notify the Department prior to installing an unregistered tank (Tank 720222), failure to timely report spills at the Fords Brook lease, failure to have secondary containment around Tank 720222, failure to install an overfill prevention device on Tank 720222, failure to properly label unregistered Tank 720222, failure to perform monthly inspections, and failure to equip Tank 720222 with corrosion protection.

The alleged violations are in regards to thirty-two (32) oil wells known as the Fords Brook FB 3, Fords Brook FB 4, Fords Brook FB 5, Fords Brook FB 6, Fords Brook FB 7, Fords Brook FB 10, Fords Brook FB 11, Fords Brook FB 12, Fords Brook FB 13, Fords Brook FB 14, Fords Brook FB 15, Fords Brook FB 16, Fords Brook FB 018, Fords Brook FB 019, Fords Brook 020, Fords Brook ow-1, Fords Brook ow-2, Fords Brook ow-8, Fords Brook ow-9, W&J 7, W&J 10, W&J 11, W&J 16, W&J 17, W&J 18, W&J 19, W&J 21, W&J 22, Bierman 1, Bierman 2, Bierman 3 and Bierman 4, located in Allegany County, New York. The 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, 31-003-

56082-00-00, 31-003-11216-00-00, 31-003-11264-00-00, 31-003-11343-00-00, 31-003-11306-00-00, 31-003-65948-00-00, 31-003-65951-00-00, 31-003-65952-00-00 (W&J 16 - W&J 22 are not registered), 31-003-55939-00-00, 31-003-55940-00-00, 31-003-55941-00-00, 31-003-55942-00-00, respectively.

The complaint seeks an order of the Commissioner (1) finding respondent in violation of the alleged violations; (2) assessing a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050); (3) directing respondent to perform corrective actions as according to Appendix A attached to the notice of hearing and complaint; 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 and was received by respondent on May 1, 2020 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. By cover letter dated January 13, 2021, 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 January 13, 2021 (*see* affidavit of service of Pamela Frasier, sworn to January 13, 2021). Respondent did not respond to the motion.

Applicable Regulatory Provisions

Section 551.1(b) of 6 NYCRR states:

“(b) Except as provided in subdivision (c) of this section, any person required to file an organizational report must file a new organizational report showing the new organizational information within 30 calendar days of the occurrence of the change of any fact stated on the most recent organizational report.”

Section 556.1(b) of 6 NYCRR states:

“(b) All oil wells capable of production shall be equipped with wellhead controls adequate to properly contain and control the flow thereof.”

Section 556.4 of 6 NYCRR states:

“(b) The operation of any well, lease or unit shall be such as to keep and maintain all well locations and lease or unit installations free of rubbish, debris, dead grass, brush, weeds and other inflammable material. All waste oil shall be disposed of in a manner which will not create a fire hazard.”

Section 556.5(a) of 6 NYCRR states:

“(a) Pollution of the land and/or surface or ground fresh water resulting from producing, refining, transportation or processing of oil, gas and products, or in connection with solution mining, is prohibited.”

Section 556.6 of 6 NYCRR states:

“Any owner or operator of a lease or unit containing one or more producing or producible oil or gas wells shall cause a weatherproof sign to be conspicuously placed where the principal lease road enters the lease or on the tank battery or other lease facilities. Said signs shall show the name of the lease owner or operator, the name of the lease and the lease location as to township. In addition, a legible identifying numeral shall be attached or painted on the wellhead, pumping unit or jack of each well or alternatively, a legible identifying sign shall be placed near each well. In the case of a multiple completion, each wellhead connection shall be appropriately identified.”

Section 613-1.9(c) of 6 NYCRR states:

“Registration must be renewed every five years from the date of the last valid registration certificate until the department receives written notice and documentation from the facility owner that the facility has been permanently closed in accordance with section 613-2.6(b), 613-3.5(b), or 613-4.5(b) of this Part, or that ownership of the facility has been transferred in accordance with subdivision (d) of this section.”

Section 613-1.9(e) of 6 NYCRR states:

“(1) The facility owner must submit information corrections for registered facilities using forms or electronic means as provided by the department. Forms are available online at www.dec.ny.gov and at all department offices.

(2) The registration application must be signed by the facility owner.

(3) Changes in the following registration items are considered information corrections:

(i) contact information;

(ii) class A or class B operator;

(iii) tank system status;

(iv) tank system equipment; or

(v) type of petroleum stored.

(4) No registration fee is required for submitting information corrections.”

Section 613-1.9(f) of 6 NYCRR states:

“The facility owner must notify the department of permanent closure or change in service of tank systems using forms or electronic means as provided by the department. Forms are available online at www.dec.ny.gov and at all department offices.”

Section 613-1.9(g) of 6 NYCRR states:

“Upon submittal of a complete registration application and payment of the applicable registration fee, the department will issue a registration certificate. The current registration certificate must be displayed at all times in a conspicuous location at the facility.”

Section 613-1.9(h) of 6 NYCRR states:

“Except in the case of a temporary tank system, when a facility intends to install a tank, the facility owner must notify the department of this action at least 30 days prior to installing the tank. For any tank added to a previously registered facility, any increased fee applicable to the facility will not be assessed until the registration is due for renewal.”

Section 613-4.4(d)(1) of 6 NYCRR states:

“(1) A facility must report every spill to the department’s spill hotline (518-457-7362) within two hours after discovery, contain the spill, and begin corrective action in accordance with the requirements of Subpart 613-6 of this Part except if the spill meets the following conditions:
(i) it is known to be less than five gallons in total volume;
(ii) it is contained and under the control of the spiller;
(iii) it has not reached and will not reach the land or waters of the State; and
(iv) it is cleaned up within two hours after discovery.”

Section 613-4.1(b)(1)(v)(b) of 6 NYCRR states:

“(b) Any AST that has a design capacity of less than 10,000 gallons and is in close proximity to sensitive receptors is required to either have secondary containment as described in clause (a) of this subparagraph or utilize a design/technology such that a release is not reasonably expected to occur. ASTs within 500 horizontal feet of the following resources are considered to be in close proximity to sensitive receptors:
(1) a perennial or intermittent stream;
(2) a public or private well;
(3) a primary or principal aquifer as defined in USGS Water Resource Investigation Reports 87-4274, 87-4275, 87-4276, 87-4122, 88-4076, and Appendix C;
(4) a wetland as defined in Part 664 of this Title;
(5) a lake/pond, estuary, or other similar surface water body; or
(6) a storm drain.”

Section 613-4.1(b)(3) of 6 NYCRR states:

“(3) Overfill prevention equipment. Every AST must be equipped with a gauge which accurately shows the level of petroleum in the AST. The gauge must be accessible to the carrier and be installed so it can be conveniently read. A high-level warning alarm, a high-level liquid pump cut-off controller, or equivalent device may be used in lieu of a gauge.”

Section 613-4.2(a)(3) of 6 NYCRR states:

“(3) Every AST must be marked (for example, with stenciled letters) with the tank registration identification number, as well as the tank design and working capacities.”

Section 613-4.3(b)(1) of 6 NYCRR states:

“(1) Monthly inspections. The inspection must include, as applicable, identification of leaks, cracks, areas of wear, corrosion and thinning, poor maintenance and operating practices, excessive settlement of structures, separation or swelling of tank insulation, malfunctioning equipment, and structural and foundation weaknesses.”

Section 613-4.1(b)(1)(iii) of 6 NYCRR states:

“(iii) Every AST, if in contact with the ground, must be protected from corrosion. Any category 3 AST in contact with the ground must be protected from corrosion in accordance with API Standard 651, January 2007.”

Findings of Fact

1. Respondent AJ Oil and Gas Exploration Inc. is an active business incorporated under the laws of the State of New York (*see* Motion for Default Judgment ¶ 4, Exhibit A).
2. Dinar Choudhury is designated as an agent of the corporation upon whom the process against the corporation can be served (*see* Motion for Default Judgment ¶ 5, Exhibit B).
3. Dinar Choudhury is listed as the president of AJ Oil and Gas Exploration Inc. on the organizational report and PBS applications filed with the Department for tanks associated with the Fords Brook lease and the W&J lease (*see* Motion for Default Judgment ¶¶ 6-7, Exhibit C – Emborsky Affidavit, Exhibit A; Exhibit D – Diez Affidavit, Exhibits A and B).
4. In or about May of 2012, respondent acquired certain mineral rights to produce oil through the wells that are included in the Fords Brook lease and the W&J lease (also referred to as the White Jackson lease) and located in the Town of Willing, Allegany County (*see* Motion for Default Judgment, ¶ 8, Exhibit C – Emborsky Affidavit, ¶ 8, Exhibits B and C).
5. Respondent operates the following wells: Fords Brook FB 3, Fords Brook FB 4, Fords Brook FB 5, Fords Brook FB 6, Fords Brook FB 7, Fords Brook FB 10, Fords Brook FB 11, Fords Brook FB 12, Fords Brook FB 13, Fords Brook FB 14, Fords Brook FB 15, Fords Brook FB 16, Fords Brook FB 018, Fords Brook FB 019, Fords Brook 020, Fords Brook ow-1, Fords Brook ow-2, Fords Brook ow-8, Fords Brook ow-9, W&J 7, W&J 10, W&J 11, W&J 16, W&J 17, W&J 18, W&J 19, W&J 21, W&J 22, Bierman 1, Bierman 2, Bierman 3 and Bierman 4, located in Allegany County, New York. The 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, 31-003-56082-00-00, 31-003-11216-00-00, 31-003-11264-00-00, 31-003-11343-00-00, 31-003-11306-00-00, 31-003-65948-00-00, 31-003-65951-00-00, 31-003-65952-00-00 (W&J 16 - W&J 22 are not registered), 31-003-55939-00-00, 31-003-55940-00-00, 31-003-55941-00-00, 31-003-55942-00-00, respectively (*see* Motion for Default Judgment, Exhibit C – Emborsky Affidavit, ¶¶ 8-13, Exhibits B, C, D, E, F and G).
6. Department staff performed an inspection of respondent’s wells on April 2, 2019, and sent two letters to respondent on June 7, 2019. The letters set forth the violations noted during the inspection and the corrective actions required by July 19, 2019, to address the

violations at each lease. Department staff did not receive a response from respondent. (See Motion for Default Judgment, Exhibit C – Emborsky Affidavit, ¶¶ 19-20, Exhibit H.)

7. Rudin Emborsky is an employee of the Department and is a Mineral Resources Technician 1 in the Department’s Division of Mineral Resources in the Department’s Region 9 office in Allegany, New York. Rudin Emborsky is familiar with and administers provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* pertaining to the development, production and utilization of natural oil and gas resources, and implements the elements of the oil and gas regulatory program under article 23 of the ECL as they relate to the drilling and operation of oil and gas wells, conducts inspections of oil and gas wells and assists in enforcing violations of ECL article 23, including development of civil penalties (*see* Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶¶ 2-4).
8. On September 13, 2019, Rudin Emborsky performed a further inspection of respondent’s wells, except for the Fords Brook FB 10, W&J 17, W&J 18 and W&J 19 wells (*see* Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶¶ 21-22, Exhibit I).
9. During the inspection, further violations were documented: a) failure to submit a revised organizational report to provide correct address for correspondence in violation of 6 NYCRR 551.1(b); b) failure to install wellhead controls in violation of 6 NYCRR 556.1(b); c) failure to remove overgrown vegetation and/or debris around wells in violation of 6 NYCRR 556.4; d) wells had leakage and oil staining on the ground surrounding the well casing, in violation of 6 NYCRR 556.5(a); and e) failure to have requisite identification (*see* Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶¶ 24-34, Exhibit I).
10. Department staff has not received a response from the respondent regarding the ownership and operation of the wells as outlined in the complaint (*see* Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶ 23).
11. Respondent owns and operates PBS tank systems subject to the requirements of 6 NYCRR part 613 at the Fords Brook lease and the W&J lease. The tank system at the Fords Brook lease is registered with the Department’s PBS facility database as PBS #9-601368 and consists of one aboveground storage tank with a total capacity of 2,800 gallons. The tank system at the W&J lease is registered with the Department’s PBS facility database as PBS #9-601367 and consists of one aboveground storage tank with a total capacity of 5,600 gallons. (*See* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶¶ 7-11, Exhibits A and B.)
12. The PBS applications for both facilities list “AJ Oil and Gas Exploration” as the tank owner and facility owner and Dinar Choudhury as the facility contact person (*see* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶¶ 12-14, Exhibits A and B).
13. Department staff sent two notices of violation (NOV), dated October 22, 2018, to respondent for failure to renew the PBS registrations for the two facilities associated with the Fords Brook and W&J leases. The registrations for both facilities expired on July 1,

2018. The NOV's stated that respondent must submit renewal applications for both facilities by November 23, 2018. Respondent failed to submit the renewal applications by this date. (*See* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶¶ 16-18, Exhibit D.)

14. Patrick Diez is an employee of the Department and is an Environmental Program Specialist T2 in the Department's Division of Environmental Remediation, Petroleum Bulk Storage Unit in the Department's Region 9 office in Buffalo, New York. Patrick Diez is familiar with and administers provisions of ECL article 17 title 10 and 6 NYCRR part 613 pertaining to the regulation of PBS tanks, and assists the regulated community with PBS compliance, conducts inspections of PBS facilities and assists in enforcing violations of the PBS laws and regulations including development of civil penalties (*see* Motion for Default Judgment, Exhibit D - Diez Affidavit, ¶¶ 2-4).
15. On August 26, 2019, Patrick Diez performed an inspection at the Fords Brook lease and detected several PBS violations (*see* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶ 19, Exhibit E).
16. A NOV dated October 2, 2019, was mailed to respondent, which included corrective actions to be completed by November 4, 2019. Per Department staff's information and belief, respondent has not performed the corrective actions to address the alleged violations. (*See* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶¶ 22-23, Exhibit G.)
17. The NOVs set forth the following violations: a) failure to renew the PBS registrations for both leases in violation 6 NYCRR 613-1.9(c); b) failure to submit registration correction information in violation of 6 NYCRR 613-1.9(e); c) failure to notify the Department of permanent closure or change in service of tank systems in violation of 6 NYCRR 1.9(f); d) failure to display a current registration certificate at the tank system in violation of 6 NYCRR 613-1.9(g); e) failure to provide 30-day notice to the Department of the installation of a new tank, in violation of 6 NYCRR 613-1.9(h); f) failure to report a spill to the Department in violation of 6 NYCRR 613-4.4(d)(1); g) failure to have secondary containment in violation of 6 NYCRR 613-4.1(b)(1)(v)(b); h) failure to have an overflow prevention device in violation of 6 NYCRR 613-4.1(b)(3); i) failure to properly label a tank in violation of 6 NYCRR 613-4.2(a)(3); j) failure to perform monthly inspections in violation of 6 NYCRR 613-4.3(b)(1); and k) failure to equip a tank with corrosion protection in violation of 6 NYCRR 613-4.1(b)(1)(iii) (*see* Motion for Default Judgment, Exhibit D – Diez Affidavit, ¶ 23-44, Exhibit G).
18. Service of the notice of hearing and complaint was made by certified mail and was received by respondent on May 1, 2020 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. By cover letter dated January 13, 2021, 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 January 13, 2021 (*see* affidavit of service of Pamela Frasier, sworn to January 13, 2021). Respondent did not respond to the motion.

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 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 (*see* affidavit of service of Pamela Frasier, sworn to December 15, 2020); (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint; (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; (v) staff's motion includes a statement of authority and support for the penalty and relief requested; and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of Pamela Frasier, sworn to January 13, 2021). 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 viable claims that respondent failed to 1) submit a revised organizational report; 2) failed to install wellhead controls; 3) failed to remove overgrown vegetation and debris; 4) failed to cleanup oil and contaminated soils; and 5) failed to have requisite identification as per 6 NYCRR 551.1(b), 6 NYCRR 556.1(b), 6 NYCRR 556.4, 6 NYCRR 556.5(a) and 6 NYCRR 556.6. The submissions in support of the motion for a default judgment also provide proof of facts sufficient to enable me to determine that staff has viable claims that respondent failed to 1) renew PBS registrations; 2) failed to notify the Department of permanent closure or change in service of registerable tank systems, 3) failed to have correct information on the PBS registration; 4) failed to display a current registration certificate; 5) failed to notify the Department prior to installing an unregistered tank; 6) failed to timely report spills; 7) failed to have secondary containment; 8) failed to install an overfill prevention device; 9) failed to properly label unregistered tank; 10) failed to perform monthly inspections; and 11) failed to equip a tank with corrosion protection as per 6 NYCRR 613-1.9(c), 6 NYCRR 613-1.9(e), 6 NYCRR 613.1.9(f), 6 NYCRR 613-1.9(g), 6 NYCRR 613-1.9(h), 6 NYCRR 613-4.4(d)(1), 6 NYCRR 613-4.1(b)(1)(v)(b), 6 NYCRR 613-4.1(b)(3), 6 NYCRR 613-4.2(a)(3), 6 NYCRR 613-4.3(b)(1) and 6 NYCRR 613-4.1(b)(1)(iii).

Department staff seeks a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050). 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 *DEE-22: Petroleum Bulk Storage Inspection Enforcement Policy-Penalty Schedule* (see Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶¶ 35-48; Exhibit D - Diez Affidavit, ¶¶ 45-54). Department staff further asserts that oil laws and regulations are designed to protect groundwater and prevent pollution, waste of oil and commingling of oil, brine and fresh water. According to Department staff, the potential harm and actual damage caused by petroleum discharges from oil wells and non-compliance with oil laws and regulations are high priorities and importance in the context of the Department's regulatory scheme. (See Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶¶ 46-47.)

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 71-1929 provides that any person who violates any provision of, or who fails to perform any duty imposed by titles 1 through 11 and title 19 of ECL article 17, shall be liable for a penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation. The statutory maximum penalty for the violations, as computed by Department staff, exceeds one hundred thirty million dollars.

Department staff discusses the economic benefit and costs avoided by respondent's noncompliance with applicable laws. Department staff further points out that respondent was aware of the violations for approximately two years (see Motion for Default Judgment, Exhibit C - Emborsky Affidavit, ¶ 48; Exhibit D - Diez Affidavit, ¶ 55).

I find that staff's request for a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050) is consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Department staff in its complaint and motion further requested that respondent be directed to perform the following corrective measures to address the violations as set forth in the notice of hearing and complaint, appendix A:

- 1) Submit a revised organization report providing a current address and updating any additional information if needed.
- 2) Submit an application for API Well Identification Number form for the unregistered wells: W&J 16, W&J 17, W&J 18, W&J 19, W&J 21 and W&J 22.
- 3) Submit completed PBS registration applications and fee of one thousand dollars (\$1,000) to renew the registrations for both PBS facilities. The application for the Fords Brook lease must change the status of tank 720226 to “converted to non-regulated use.”
- 4) Install a gauge at unregistered tank 720222 and submit a color photograph confirming the completion.
- 5) Properly label the unregistered tank 720222 and submit a color photograph confirming the completion.
- 6) Submit copies of the monthly inspection records for the unregistered tank 720222 for the months of September 2019 through the date of the Commissioner’s order.
- 7) Remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a Department approved work plan. Disposal must be at an authorized off-site disposal location.
- 8) Make any requisite repairs to the oil wells in order to prevent future leaks.
- 9) Place lease identification at the entrance of the lease roads and individual identification must be placed at each well, and submit color photographs confirming the completion.
- 10) Remove all vegetation and debris around the wellheads and production equipment and submit color photographs confirming the completion.
- 11) Install adequate wellheads on Fords Brook FB15, Fords Brook FB 018 and Fords Brook ow-2, and submit color photographs confirming the completion.
- 12) Submit a proposed work plan, with installation schedule, for the installation of a secondary containment system at the unregistered tank 720222, or submit a schedule to permanently close this tank.
- 13) Remove the unregistered tank 720222 from contact with the ground if the tank was installed prior to December 27, 1986, and submit a color photograph to confirm completion or provide documentation that the tank has been equipped with a corrosion protection system on any part of the tank that has contact with the ground.
- 14) Submit a color photograph showing the current registration certificate has been posted at the tank system.

I conclude that Department staff’s request for corrective action is supported by the record and appropriate under the circumstances.

Conclusions of Law

1. Respondent violated 6 NYCRR 551.1(b) by failing to submit a revised organizational report in order to provide updated address information.
2. Respondent violated 6 NYCRR 556.1(b) by failing to install wellhead controls.
3. Respondent violated 6 NYCRR 556.4 by failing to remove overgrown vegetation and/or debris from well locations.
4. Respondent violated 6 NYCRR 556.5(a) by failing to clean oil and contaminated soils around well locations.
5. Respondent violated 6 NYCRR 556.6 by failing to have requisite identification at well locations.
6. Respondent violated 6 NYCRR 613-1.9(c) by failing to renew the PBS registrations for both leases.
7. Respondent violated 6 NYCRR 613-1.9(e) by failing to notify the Department of permanent closure or change in service of registerable tank systems.
8. Respondent violated 6 NYCRR 613-1.9(f) by failing to have correct information on the PBS registration for the Fords Brook lease and failed to notify the Department of permanent closure or change in service of tank systems.
9. Respondent violated 6 NYCRR 613-1.9(g) by failing to display a current registration certificate at the tank system for the Fords Brook lease.
10. Respondent violated 6 NYCRR 613-1.9(h) by failing to notify the Department prior to installing the unregistered tank (tank 720222) at the Ford Brooks lease.
11. Respondent violated 6 NYCRR 613-4.4(d)(1) by failing to timely report spills at the Fords Brook lease.
12. Respondent violated 6 NYCRR 613-4.1(b)(1)(v)(b) by failing to have secondary containment around the unregistered tank, tank 720222, at the Fords Brook lease.
13. Respondent violated 6 NYCRR 613-4.1(b)(3) by failing to install an overfill prevention device at the unregistered tank, tank 720222, at the Fords Brook lease.
14. Respondent violated 6 NYCRR 613-4.2(a)(3) by failing to properly label the unregistered tank, tank 720222, at the Ford Brook lease.
15. Respondent violated 6 NYCRR 613-4.3(b)(1) by failing to perform monthly inspections of the unregistered tank, tank 720222, at the Fords Brook lease.
16. Respondent violated 6 NYCRR 613-4.1(b)(1)(iii) by failing to equip the unregistered tank, tank 720222, with corrosion protection.

Recommendation

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

1. Granting Department staff's motion for default judgment;
2. Holding that respondent AJ Oil and Gas Exploration Inc. violated:
 - (i) 6 NYCRR 551.1(b) by failing to submit a revised organizational report in order to provide updated address information;

- (ii) 6 NYCRR 556.1(b) by failing to install wellhead controls;
 - (iii) 6 NYCRR 556.4 by failing to remove overgrown vegetation and/or debris from well locations;
 - (iv) 6 NYCRR 556.5(a) by failing to clean oil and contaminated soils around well locations;
 - (v) 6 NYCRR 556.6 by failing to have requisite identification at well locations;
 - (vi) 6 NYCRR 613-1.9(c) by failing to renew the PBS registrations for both leases;
 - (vii) 6 NYCRR 613-1.9(e) by failing to notify the Department of permanent closure or change in service of registerable tank systems;
 - (viii) 6 NYCRR 613.1.9(f) by failing to have correct information on the PBS registration for the Fords Brook lease and failed to notify the Department of permanent closure or change in service of tank systems;
 - (ix) 6 NYCRR 613-1.9(g) by failing to display a current registration certificate at the tank system for the Fords Brook lease;
 - (x) 6 NYCRR 613-1.9(h) by failing to notify the Department prior to installing the unregistered tank (tank 720222) at the Ford Brooks lease;
 - (xi) 6 NYCRR 613-4.4(d)(1) by failing to timely report spills at the Fords Brook lease;
 - (xii) 6 NYCRR 613-4.1(b)(1)(v)(b) by failing to have secondary containment around the unregistered tank, tank 720222, at the Fords Brook lease;
 - (xiii) 6 NYCRR 613-4.1(b)(3) by failing to install an overfill prevention device at the unregistered tank, tank 720222, at the Fords Brook lease;
 - (xiv) 6 NYCRR 613-4.2(a)(3) by failing to properly label the unregistered tank, tank 720222, at the Ford Brook lease;
 - (xv) 6 NYCRR 613-4.3(b)(1) by failing to perform monthly inspections of the unregistered tank, tank 720222, at the Fords Brook lease; and
 - (xvi) 6 NYCRR 613-4.1(b)(1)(iii) by failing to equip the unregistered tank, tank 720222, with corrosion protection.
3. Directing respondent AJ Oil and Gas Exploration Inc. to perform the following corrective actions, as set forth in the notice of hearing and complaint, Appendix A:
- (i) Submit a revised organization report providing a current address and updating any additional information if needed;
 - (ii) Submit an application for API Well Identification Number form for the unregistered wells: W&J 16, W&J 17, W&J 18, W&J 19, W&J 21 and W&J 22;
 - (iii) Submit completed PBS registration applications and fee of one thousand dollars (\$1,000) to renew the registrations for both PBS facilities. The application for the Fords Brook lease must change the status of tank 720226 to “converted to non-regulated use;”
 - (iv) Install a gauge at unregistered tank 720222 and submit a color photograph confirming the completion;
 - (v) Properly label the unregistered tank 720222 and submit a color photograph confirming the completion;

- (vi) Submit copies of the monthly inspection records for the unregistered tank 720222 for the months of September 2019 through the date of the Commissioner's order;
 - (vii) Remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a Department approved work plan. Disposal must be at an authorized off-site disposal location;
 - (viii) Make any requisite repairs to the oil wells in order to prevent future leaks;
 - (ix) Place lease identification at the entrance of the lease roads and individual identification must be placed at each well, and submit color photographs confirming the completion;
 - (x) Remove all vegetation and debris around the wellheads and production equipment and submit color photographs confirming the completion;
 - (xi) Install adequate wellheads on Fords Brook FB15, Fords Brook FB 018 and Fords Brook ow-2, and submit color photographs confirming the completion;
 - (xii) Submit a proposed work plan, with installation schedule, for the installation of a secondary containment system at the unregistered tank 720222, or submit a schedule to permanently close this tank;
 - (xiii) Remove the unregistered tank 720222 from contact with the ground if the tank was installed prior to December 27, 1986, and submit a color photograph to confirm completion or provide documentation that the tank has been equipped with a corrosion protection system on any part of the tank that has contact with the ground; and
 - (xiv) Submit a color photograph showing the current registration certificate has been posted at the tank system.
4. Directing respondent AJ Oil and Gas Exploration Inc. to pay a civil penalty in the amount of twenty-five thousand and fifty dollars (\$25,050) within thirty days (30) of the service of the Commissioner's order upon respondent; and
5. Directing such other and further relief as the Commissioner may deem just and appropriate.

/s/
Lara Q. Olivieri
Administrative Law Judge

Dated: Albany, New York
August 24, 2021

APPENDIX A

Matter of AJ Oil and Gas Exploration Inc.

File No. 19-68

DEC Case No. R9-20191121-149

Motion for Default Judgment

1. Cover letter, dated January 13, 2021, from Teresa J. Mucha, Esq., filing and attaching staff's motion papers.
2. Notice of Motion and Motion for Default Judgment, and Affirmation of Teresa J. Mucha, Esq. dated January 12, 2021, attaching the following exhibits:
 - A. NYS Department of State, Division of Corporations Entity Information for AJ Oil and Gas Exploration Inc.
 - B. Certificate of Incorporation for AJ Oil and Gas Exploration Inc.
 - C. Affidavit of Rudin Emborsky, sworn to December 30, 2020, attaching the following exhibits:
 - A) Organizational Report for AJ Oil and Gas Exploration Inc., sworn to September 18, 2012.
 - B) Requests for Well Transfer to AJ Oil and Gas Exploration, Inc., sworn to October 11, 2012 and May 30, 2012.
 - C) Applications for A.P.I. Well Identification Number dated September 18, 2012 and location verified on September 26, 2012.
 - D) Annual Well Report from AJ Oil and Gas Exploration Inc., received on April 13, 2015.
 - E) Photographs of wells with signs containing the name of AJ Oil and Gas Exploration Inc.
 - F) Post-site Inspection Reports regarding well owner AJ Oil and Gas Exploration Inc. by primary inspector Rudin Emborsky.
 - G) Letters from Christopher Miller, Mineral Resources Manager, to AJ Oil and Gas Exploration, Inc. dated April 12, 2019, referencing the Fords Brook lease and the W&J lease.
 - H) Letters from Christopher Miller, Mineral Resources Manager, to AJ Oil and Gas Exploration, Inc. dated June 7, 2019, referencing the Fords Brook lease and the W&J lease.
 - I) Post-site Inspection Reports regarding well owner AJ Oil and Gas Exploration Inc. by primary inspector Rudin Emborsky.

- D. Affidavit of Patrick Diez, sworn to January 11, 2021, attaching the following exhibits:
- A) Petroleum Bulk Storage Application regarding facility owner AJ Oil and Gas Exploration, Inc. and Fords Brook lease, received on July 1, 2013.
 - B) Petroleum Bulk Storage Application regarding facility owner AJ Oil and Gas Exploration, Inc. and White Jackson lease, received on July 1, 2013.
 - C) Petroleum Bulk Storage Facility Information Report regarding owner AJ Oil and Gas Exploration, Inc., Fords Brook lease and White Jackson lease.
 - D) Notices of Violation dated October 22, 2018 to AJ Oil and Gas Exploration, Inc. from Andrea E. Skalski, P.E. regarding the Fords Brook lease and White Jackson lease.
 - E) Petroleum Bulk Storage Inspection Form, dated August 26, 2019 by Patrick Diez.
 - F) Notice of Violation dated September 18, 2019 to AJ Oil and Gas Exploration Inc. from Patrick Diez.
 - G) Notice of Violation dated October 2, 2019 to AJ Oil and Gas Exploration Inc. from Patrick Diez.
- E. Cover letter to AJ Oil and Gas Exploration Inc. dated April 28, 2020 from Teresa J. Mucha, Esq., attaching Notice of Hearing and Complaint dated April 22, 2020.
- F. Affidavit of Service by Mail of Pamela Frasier, sworn to December 15, 2020 (cover letter and Notice of Hearing and Complaint) attaching the following exhibits:
- A) USPS Tracking, tracking information for number 70141820000239780914.
 - B) USPS certified mailing green card receipt.
- G. Affidavit of Susan L. Reynolds, sworn to December 15, 2020.
- H. Affidavit of Service by Mail of Pamela Frasier, sworn to January 13, 2021 (cover letter and Notice of Motion and Motion for Default Judgment).