

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

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 -

ORDER

DEC Case No.
CO9-20200622-124

BDH OIL, INC.,

Respondent.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent BDH Oil, Inc. violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2017, 2018 and 2019 calendar years for several hundred oil and injection wells designated as Nichols Run, Mallory or James Lease wells. These wells are located in the Towns of Allegany and Olean, Cattaraugus County, New York and operated by respondent.

Administrative Law Judge (ALJ) Michael S. Caruso 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 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 March 9, 2021 (*see* Default Summary Report at 4 [Findings of Fact Nos. 13 and 16]). At the March 9, 2021 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Caruso reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers.

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 judgment be granted (*see* Default Summary Report at 6). 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 the annual well reports for the 2017, 2018 and 2019 calendar years for respondent's wells, 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., dated April 6, 2021, ¶ 13; *see also* Affidavit of Ted Loukides, sworn to April 2, 2021, ¶ 21).

Department staff sought a penalty of four thousand five hundred dollars (\$4,500), that is, one thousand five hundred dollars for each year that respondent failed to file an annual report for the wells referenced in its papers. The ALJ has recommended that respondent BDH Oil, Inc. be directed to pay this amount (*see* Default Summary Report at 6).

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 civil penalties of one thousand five hundred dollars (\$1,500) for each year that the well owner or operator has failed to timely submit an annual report for its wells (*see Matter of Sahlem*, Order of the Commissioner, dated January 4, 2021, *Matter of Gilray*, Order of the Commissioner, March 4, 2015, at 2, *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2).

The record demonstrates that respondent BDH Oil, Inc. failed to submit timely and complete reports for several hundred wells in calendar years 2017, 2018 and 2019.¹ Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written reminders, nothing in this record indicates that respondent filed acceptable reports for the 2017, 2018 and 2019 calendar years (*see e.g.* Default Summary Report at 2-4 [Findings of Fact Nos. 5-12]). Department staff relies on ECL 71-1307(1), the Department's Civil Penalty Policy (DEE-1), dated June 20, 1990, and administrative precedent (*see* Default Summary Report at 5-6; Affirmation of Anne Haas, Esq., dated April 6, 2021, ¶¶ 10-14) in support of the penalty requested. The requested penalty of four thousand five hundred dollars (\$4,500) is authorized under the law. However, the significant number of wells for which annual reports were not filed constitutes an aggravating factor that may have supported the imposition of a substantially higher penalty.

In a default proceeding, the general principle is that a default judgment cannot exceed the amount demanded in the complaint, absent notice to respondent that a greater penalty is being sought (*see Matter of Reliable Heating Oil, Inc.*, Decision and Order of the Commissioner,

¹ The exact number of wells at issue is unclear (*see* Default Summary Report at 5). For purposes of this proceeding, I am relying on the "Attachment A: Wells Operated by Respondent" that is part of Department staff's complaint dated January 28, 2021 and which is also attached to this order.

October 30, 2013 at 2-3; *see also* CPLR 3215[b]). Accordingly, I adopt Department staff's requested penalty.

I hereby direct that respondent submit the civil penalty of four thousand five hundred dollars (\$4,500) to the Department within thirty (30) days of the service of this order upon respondent. In addition, within thirty (30) days of the service of this order upon respondent BDH Oil, Inc., respondent shall submit to the Department annual well reports for the 2017, 2018 and 2019 calendar years for the wells listed on the attachment to this order.

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 BDH Oil, 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 BDH Oil, Inc. is determined to have violated 6 NYCRR 551.2(b), by failing to timely file complete and accurate annual well reports for the 2017, 2018 and 2019 calendar years for respondent's wells.
- III. Within thirty (30) days of the service of this order upon respondent BDH Oil, Inc., respondent shall submit to the Department annual well reports for the 2017, 2018 and 2019 calendar years for the wells listed on the attachment to this order.
- IV. Respondent BDH Oil, Inc. is hereby assessed a civil penalty in the amount of four thousand five hundred dollars (\$4,500), to be paid within thirty (30) days 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. The annual well reports 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, 3rd 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 BDH Oil, 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: June 8, 2021
Albany, New York

Attachment

ATTACHMENT A: Wells Operated by Respondent

<u>Well Number</u>	<u>Well Name</u>	<u>Well Location</u>
31-009-05471-00-00	Nichols Run Hw38	Cattaraugus County, New York
31-009-06462-00-00	Nichols Run Ho 35	Cattaraugus County, New York
31-009-06463-00-00	Nichols Run Ho 36	Cattaraugus County, New York
31-009-06464-00-00	Nichols Run Hw 37	Cattaraugus County, New York
31-009-10366-00-00	Nichols Run Hw-213	Cattaraugus County, New York
31-009-10367-00-00	Nichols Run Hw-214	Cattaraugus County, New York
31-009-10390-00-00	Nichols Run Ho-212	Cattaraugus County, New York
31-009-10391-00-00	Nichols Run Ho-213	Cattaraugus County, New York
31-009-10419-00-00	Nichols Run Ho-214	Cattaraugus County, New York
31-009-10420-00-00	Nichols Run Hw-216	Cattaraugus County, New York
31-009-10462-00-00	Nichols Run Hw-212	Cattaraugus County, New York
31-009-10463-00-00	Nichols Run Hw-209	Cattaraugus County, New York
31-009-10581-00-00	Nichols Run Ho-210	Cattaraugus County, New York
31-009-10582-00-00	Nichols Run Ho-211	Cattaraugus County, New York
31-009-10650-00-00	Nichols Run Ho-203	Cattaraugus County, New York
31-009-10651-00-00	Nichols Run Hw-204	Cattaraugus County, New York
31-009-10652-00-00	Nichols Run Ho-208	Cattaraugus County, New York
31-009-10653-00-00	Nichols Run Hw-202	Cattaraugus County, New York
31-009-10654-00-00	Nichols Run Hw-208	Cattaraugus County, New York
31-009-10780-00-00	Nichols Run Hw-211	Cattaraugus County, New York
31-009-10783-00-00	Nichols Run Hw-203	Cattaraugus County, New York
31-009-10784-00-00	Nichols Run Hw-205	Cattaraugus County, New York
31-009-10785-00-00	Nichols Run Hw-206	Cattaraugus County, New York
31-009-10786-00-00	Nichols Run Hw-207	Cattaraugus County, New York
31-009-10831-00-00	Nichols Run Hw-201	Cattaraugus County, New York
31-009-10832-00-00	Nichols Run Ho-206	Cattaraugus County, New York
31-009-10833-00-00	Nichols Run Ho-209	Cattaraugus County, New York
31-009-10847-00-00	Nichols Run Ho-202	Cattaraugus County, New York
31-009-10848-00-00	Nichols Run Ho-204	Cattaraugus County, New York
31-009-10849-00-00	Nichols Run Ho-205	Cattaraugus County, New York
31-009-10850-00-00	Nichols Run Ho-207	Cattaraugus County, New York
31-009-10901-00-00	Nichols Run Ho-216	Cattaraugus County, New York
31-009-10902-00-00	Nichols Run Ho-217	Cattaraugus County, New York
31-009-10903-00-00	Nichols Run Ho-221	Cattaraugus County, New York
31-009-10904-00-00	Nichols Run Ho-222	Cattaraugus County, New York
31-009-10905-00-00	Nichols Run Hw-217	Cattaraugus County, New York

31-009-10906-00-00	Nichols Run Hw-218	Cattaraugus County, New York
31-009-10907-00-00	Nichols Run Hw-219	Cattaraugus County, New York
31-009-10908-00-00	Nichols Run Hw-220	Cattaraugus County, New York
31-009-10909-00-00	Nichols Run Hw-221	Cattaraugus County, New York
31-009-10910-00-00	Nichols Run Hw-222	Cattaraugus County, New York
31-009-10911-00-00	Nichols Run Hw-223	Cattaraugus County, New York
31-009-10912-00-00	Nichols Run Hw-224	Cattaraugus County, New York
31-009-10913-00-00	Nichols Run Hw-225	Cattaraugus County, New York
31-009-10914-00-00	Nichols Run Hw-226	Cattaraugus County, New York
31-009-10969-00-00	Nichols Run Ho-201	Cattaraugus County, New York
31-009-10974-00-00	Nichols Run Ho-220	Cattaraugus County, New York
31-009-10977-00-00	Nichols Run Ho-223	Cattaraugus County, New York
31-009-10978-00-00	Nichols Run Ho-224	Cattaraugus County, New York
31-009-10979-00-00	Nichols Run Ho-225	Cattaraugus County, New York
31-009-10980-00-00	Nichols Run Ho-226	Cattaraugus County, New York
31-009-10981-00-00	Nichols Run Ho-227	Cattaraugus County, New York
31-009-10982-00-00	Nichols Run Ho-228	Cattaraugus County, New York
31-009-10983-00-00	Nichols Run Ho-229	Cattaraugus County, New York
31-009-10984-00-00	Nichols Run Hw-227	Cattaraugus County, New York
31-009-10985-00-00	Nichols Run Hw-228	Cattaraugus County, New York
31-009-10986-00-00	Nichols Run Hw-229	Cattaraugus County, New York
31-009-10987-00-00	Nichols Run Hw-230	Cattaraugus County, New York
31-009-10989-00-00	Nichols Run Hw-232	Cattaraugus County, New York
31-009-10990-00-00	Nichols Run Hw-233	Cattaraugus County, New York
31-009-10991-00-00	Nichols Run Hw-234	Cattaraugus County, New York
31-009-11172-00-00	Nichols Run Ho-215	Cattaraugus County, New York
31-009-11173-00-00	Nichols Run Ho-218	Cattaraugus County, New York
31-009-11174-00-00	Nichols Run Ho-219	Cattaraugus County, New York
31-009-11175-00-00	Nichols Run Hw-308	Cattaraugus County, New York
31-009-12827-00-00	Nichols Run Hw-401	Cattaraugus County, New York
31-009-12828-00-00	Nichols Run Ho-34-C2	Cattaraugus County, New York
31-009-12829-00-00	Nichols Run Ho-401	Cattaraugus County, New York
31-009-12830-00-00	Nichols Run Ho-402	Cattaraugus County, New York
31-009-12831-00-00	Nichols Run Ho-403	Cattaraugus County, New York
31-009-12832-00-00	Nichols Run Ho-404	Cattaraugus County, New York
31-009-12833-00-00	Nichols Run Ho-405	Cattaraugus County, New York
31-009-12834-00-00	Nichols Run Ho-406	Cattaraugus County, New York
31-009-13815-00-00	Nichols Run Hw-301	Cattaraugus County, New York
31-009-13816-00-00	Nichols Run Hw-302	Cattaraugus County, New York
31-009-13817-00-00	Nichols Run HW303	Cattaraugus County, New York

31-009-13818-00-00	Nichols Run HW304	Cattaraugus County, New York
31-009-13819-00-00	Nichols Run Hw-305	Cattaraugus County, New York
31-009-13820-00-00	Nichols Run Hw-306	Cattaraugus County, New York
31-009-13821-00-00	Nichols Run Hw-307	Cattaraugus County, New York
31-009-13822-00-00	Nichols Run HW309	Cattaraugus County, New York
31-009-13823-00-00	Nichols Run Hw-310	Cattaraugus County, New York
31-009-13824-00-00	Nichols Run Hw-311	Cattaraugus County, New York
31-009-13825-00-00	Nichols Run HW312	Cattaraugus County, New York
31-009-13826-00-00	Nichols Run Ho-301	Cattaraugus County, New York
31-009-13827-00-00	Nichols Run Ho-302	Cattaraugus County, New York
31-009-13828-00-00	Nichols Run Ho-303	Cattaraugus County, New York
31-009-13829-00-00	Nichols Run Ho-304	Cattaraugus County, New York
31-009-13830-00-00	Nichols Run Ho-305	Cattaraugus County, New York
31-009-13831-00-00	Nichols Run Ho-306	Cattaraugus County, New York
31-009-23287-00-00	Mallory Nr1	Cattaraugus County, New York
31-009-23288-00-00	Mallory Nr2	Cattaraugus County, New York
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31-009-23333-00-00	Mallory Est. R0-Ck 7	Cattaraugus County, New York
31-009-23337-00-00	Mallory Ro-Ck 8	Cattaraugus County, New York
31-009-64915-00-00	James Lease K1	Cattaraugus County, New York
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31-009-64917-00-00	James Lease 6	Cattaraugus County, New York
31-009-64918-00-00	James Lease 7	Cattaraugus County, New York
31-009-64919-00-00	James Lease 9	Cattaraugus County, New York
31-009-64920-00-00	James Lease 10	Cattaraugus County, New York
31-009-64921-00-00	James Lease 11	Cattaraugus County, New York
31-009-64922-00-00	James Lease 12	Cattaraugus County, New York
31-009-64923-00-00	James Lease 13	Cattaraugus County, New York
31-009-64924-00-00	James Lease 14	Cattaraugus County, New York
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31-009-64926-00-00	James Lease 17	Cattaraugus County, New York
31-009-64927-00-00	James Lease 18	Cattaraugus County, New York
31-009-64928-00-00	James Lease 20	Cattaraugus County, New York
31-009-64929-00-00	James Lease 21	Cattaraugus County, New York
31-009-64930-00-00	James Lease 25	Cattaraugus County, New York
31-009-64931-00-00	James Lease 26	Cattaraugus County, New York
31-009-64932-00-00	James Lease 27	Cattaraugus County, New York

31-009-64933-00-00	James Lease 28	Cattaraugus County, New York
31-009-64934-00-00	James Lease 29	Cattaraugus County, New York
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31-009-64940-00-00	James Lease 37	Cattaraugus County, New York
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31-009-64943-00-00	Nichols Run Ao-2	Cattaraugus County, New York
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31-009-64951-00-00	Nichols Run Aw-6	Cattaraugus County, New York
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31-009-64958-00-00	Nichols Run Bo-4	Cattaraugus County, New York
31-009-64962-00-00	Nichols Run Bw-4	Cattaraugus County, New York
31-009-64963-00-00	Nichols Run Bw-5	Cattaraugus County, New York
31-009-64964-00-00	Nichols Run Bw-6	Cattaraugus County, New York
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31-009-64966-00-00	Nichols Run Bw-8	Cattaraugus County, New York
31-009-64967-00-00	Nichols Run Bw-9	Cattaraugus County, New York
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31-009-64969-00-00	Nichols Run Co-2	Cattaraugus County, New York
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31-009-64971-00-00	Nichols Run Co-4	Cattaraugus County, New York
31-009-64972-00-00	Nichols Run Cw-1	Cattaraugus County, New York
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31-009-64985-00-00	Nichols Run Do-5	Cattaraugus County, New York
31-009-64986-00-00	Nichols Run Do-6	Cattaraugus County, New York
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31-009-64998-00-00	Nichols Run Dw-4	Cattaraugus County, New York
31-009-65000-00-00	Nichols Run Dw-8	Cattaraugus County, New York
31-009-65005-00-00	Nichols Run Dw-16	Cattaraugus County, New York
31-009-65008-00-00	Nichols Run Dw-19	Cattaraugus County, New York
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31-009-65023-00-00	Nichols Run Eo-16	Cattaraugus County, New York
31-009-65024-00-00	Nichols Run Eo-17	Cattaraugus County, New York
31-009-65025-00-00	Nichols Run Eo-18	Cattaraugus County, New York
31-009-65026-00-00	Nichols Run Eo-19	Cattaraugus County, New York

31-009-65027-00-00	Nichols Run Eo-20	Cattaraugus County, New York
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31-009-65030-00-00	Nichols Run Eo-23	Cattaraugus County, New York
31-009-65031-00-00	Nichols Run Eo-24	Cattaraugus County, New York
31-009-65032-00-00	Nichols Run Ew-1	Cattaraugus County, New York
31-009-65033-00-00	Nichols Run Ew-2	Cattaraugus County, New York
31-009-65034-00-00	Nichols Run Ew-3	Cattaraugus County, New York
31-009-65035-00-00	Nichols Run Ew-8	Cattaraugus County, New York
31-009-65036-00-00	Nichols Run Ew-9	Cattaraugus County, New York
31-009-65037-00-00	Nichols Run Ew-10	Cattaraugus County, New York
31-009-65038-00-00	Nichols Run Ew-11	Cattaraugus County, New York
31-009-65039-00-00	Nichols Run Ew-12	Cattaraugus County, New York
31-009-65040-00-00	Nichols Run Ew-13	Cattaraugus County, New York
31-009-65041-00-00	Nichols Run Ew-14	Cattaraugus County, New York
31-009-65042-00-00	Nichols Run Ew-15	Cattaraugus County, New York
31-009-65043-00-00	Nichols Run Ew-16	Cattaraugus County, New York
31-009-65044-00-00	Nichols Run Ew-17	Cattaraugus County, New York
31-009-65045-00-00	Nichols Run Ew-18	Cattaraugus County, New York
31-009-65046-00-00	Nichols Run Ew-19	Cattaraugus County, New York
31-009-65047-00-00	Nichols Run Ew-20	Cattaraugus County, New York
31-009-65048-00-00	Nichols Run Ew-21	Cattaraugus County, New York
31-009-65049-00-00	Nichols Run Ew-22	Cattaraugus County, New York
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31-009-65056-00-00	Nichols Run Ew-29	Cattaraugus County, New York
31-009-65057-00-00	Nichols Run Ew-30	Cattaraugus County, New York
31-009-65058-00-00	Nichols Run Ew-31	Cattaraugus County, New York
31-009-65059-00-00	Nichols Run Ew-32	Cattaraugus County, New York
31-009-65060-00-00	Nichols Run Ew-33	Cattaraugus County, New York
31-009-65061-00-00	Nichols Run Fo-1	Cattaraugus County, New York
31-009-65062-00-00	Nichols Run Fo-2	Cattaraugus County, New York
31-009-65063-00-00	Nichols Run Fo-3	Cattaraugus County, New York
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31-009-65067-00-00	Nichols Run Fo-7	Cattaraugus County, New York
31-009-65068-00-00	Nichols Run Fo-8	Cattaraugus County, New York
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31-009-65077-00-00	Nichols Run Fw-5	Cattaraugus County, New York
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31-009-65082-00-00	Nichols Run Go-2	Cattaraugus County, New York
31-009-65083-00-00	Nichols Run Go-3	Cattaraugus County, New York
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31-009-65096-00-00	Nichols Run Go-16	Cattaraugus County, New York
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31-009-65104-00-00	Nichols Run Go-24	Cattaraugus County, New York
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31-009-65107-00-00	Nichols Run Gw-1	Cattaraugus County, New York

31-009-65108-00-00	Nichols Run Gw-2	Cattaraugus County, New York
31-009-65109-00-00	Nichols Run Gw-3	Cattaraugus County, New York
31-009-65110-00-00	Nichols Run Gw-4	Cattaraugus County, New York
31-009-65111-00-00	Nichols Run Gw-5	Cattaraugus County, New York
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31-009-65342-00-00	Nichols Run Hw-6	Cattaraugus County, New York
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31-009-65344-00-00	Nichols Run Hw-8	Cattaraugus County, New York
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31-009-65350-00-00	Nichols Run Hw-14	Cattaraugus County, New York
31-009-65351-00-00	Nichols Run Hw-15	Cattaraugus County, New York
31-009-65352-00-00	Nichols Run Hw-16	Cattaraugus County, New York

31-009-65353-00-00	Nichols Run Hw-17	Cattaraugus County, New York
31-009-65354-00-00	Nichols Run Hw-18	Cattaraugus County, New York
31-009-65355-00-00	Nichols Run Hw-19	Cattaraugus County, New York
31-009-65356-00-00	Nichols Run Hw-20	Cattaraugus County, New York
31-009-65357-00-00	Nichols Run Hw-21	Cattaraugus County, New York
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31-009-65528-00-00	Nichols Run Ho-16	Cattaraugus County, New York
31-009-65529-00-00	Nichols Run Ho-17	Cattaraugus County, New York
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31-009-65534-00-00	Nichols Run Ho-22	Cattaraugus County, New York
31-009-65535-00-00	Nichols Run Ho-23	Cattaraugus County, New York

31-009-65536-00-00	Nichols Run Ho-24	Cattaraugus County, New York
31-009-65537-00-00	Nichols Run Ho-25	Cattaraugus County, New York
31-009-65538-00-00	Nichols Run Ho-26	Cattaraugus County, New York
31-009-65539-00-00	Nichols Run Ho-27	Cattaraugus County, New York
31-009-65540-00-00	Nichols Run Ho-28	Cattaraugus County, New York
31-009-65541-00-00	Nichols Run Ho-29	Cattaraugus County, New York
31-009-65542-00-00	Nichols Run Ho-30	Cattaraugus County, New York
31-009-65543-00-00	Nichols Run Ho-31	Cattaraugus County, New York
31-009-65544-00-00	Nichols Run Ho-32	Cattaraugus County, New York
31-009-65545-00-00	Nichols Run Ho-33	Cattaraugus County, New York
31-009-65603-00-00	Nichols Run Ho-1	Cattaraugus County, New York
31-009-65604-00-00	Nichols Run 113	Cattaraugus County, New York
31-009-68549-00-00	Nichols Run 76	Cattaraugus County, New York
31-009-68550-00-00	Nichols Run 53	Cattaraugus County, New York
31-009-68551-00-00	Nichols Run 11	Cattaraugus County, New York

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

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 -

BDH OIL, INC.,

DEC Case No.
CO 9-20200622-124

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent BDH Oil, Inc. (respondent) with a notice of hearing and complaint dated January 28, 2021, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file timely annual well reports for the 2017, 2018 and 2019 calendar years for numerous wells located in the Towns of Allegany and Olean, Cattaraugus County, New York.¹

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 the missing annual well reports to the Department; (3) assessing a civil penalty in the amount of four thousand five hundred dollars (\$4,500); 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 January 30, 2021 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. As stated in staff's January 28, 2021 notice of hearing, a virtual adjudicatory hearing was convened before me at 10:00 a.m. on March 9, 2021. (*See* affirmation of Anne Haas [Haas Aff.], dated April 6, 2021, ¶ 2, Exhibits B, C.) 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 (*id.* at ¶ 4).

I 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. I 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

¹ Attachment A to Department staff's complaint lists a total of 371 wells known as various Nichols Run, Mallory and James Lease wells. (*See* Affirmation of Anne Haas, dated April 6, 2021, Exhibit B.)

letter dated April 6, 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 or about April 6, 2021 (*see* Affidavit of Service of Melissa Evans, sworn to April 6, 2021). Respondent did not respond to the motion.

Applicable Regulatory Provisions

Section 551.2 Production and purchase reports.

* * *

“(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. Respondent BDH Oil, Inc. maintains an address at 580 Interstate Parkway, Bradford, Pennsylvania. (*See* Haas Aff. ¶ 5, Exhibit D; affidavit of Ted Loukides [Loukides Aff.], sworn to April 2, 2021, Exhibit 2, 3, 4, 5.)
2. Respondent is an active foreign business corporation in the State of New York. (*See* Haas Aff. ¶ 5, Exhibit D.)
3. Respondent BDH Oil, Inc. operates 251 wells located in the towns of Allegany and Olean, Cattaraugus County, New York known as various Nichols Run, Mallory and James Lease wells. (*See* Haas Aff. ¶ 6; Loukides Aff. ¶¶ 4, 7, 8, Exhibits 1, 4, 5.)²
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 12 (AWRs sent to respondent for the 2019 calendar year). (*See* Loukides Aff. ¶ 18, Exhibit 12.)³
5. On January 8, 2018, Department staff mailed respondent a cover letter and AWR forms

² Mr. Loukides references Exhibit 1 to his affidavit in support of BDH Oil, Inc. operating 251 wells. Exhibit 1, however, lists 371 wells and is consistent with Attachment A to the complaint. Exhibit 4, on the other hand, lists 358 wells transferred to respondent and Exhibit 5 lists 8 wells transferred to respondent.

³ The 2019 AWRs attached as part of Exhibit 12 demonstrate that respondent was required to file reports for 251 wells for the 2019 calendar year.

for the 2017 calendar year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWRs by March 31, 2018. Respondent failed to submit the AWRs for the 2017 calendar year by March 31, 2018. (*See Loukides Aff. ¶¶ 10, 11, Exhibit 6.*)

6. On June 25, 2018, Department staff mailed respondent a letter notifying respondent that respondent had failed to file acceptable AWRs for calendar year 2017. The letter advised respondent of the potential penalties for failing to submit the required AWRs and potential enforcement if respondent failed to submit the 2017 AWRs within 30 days. Respondent failed to submit the AWRs for the 2017 calendar year or otherwise respond to the June 25, 2018 notice. (*See Loukides Aff. ¶ 12, Exhibit 7.*)
7. On January 8, 2019, Department staff mailed respondent a cover letter and AWR forms for the 2018 calendar year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWRs by March 31, 2019. Respondent failed to submit the AWRs for the 2018 calendar year by March 31, 2019. (*See Loukides Aff. ¶¶ 13, 14, Exhibit 8.*)
8. On May 9, 2019, Department staff mailed respondent a Notice of Violation-Failure to File Annual Report (NOV) advising respondent that respondent had failed to file acceptable AWRs for the 2018 calendar year by March 31, 2019. The NOV advised respondent of the potential penalties for failing to submit the required AWRs within 30 days. Respondent failed to submit the missing AWRs or respond to the May 9, 2019 notice. The notice of violation was mailed by certified mail return receipt requested, and received by respondent on May 15, 2019. (*See Loukides Aff. ¶ 15, Exhibit 9.*)
9. On May 23, 2019, Department staff mailed respondent a NOV advising respondent that respondent had failed to file acceptable AWRs for the 2017 calendar year by March 31, 2018. The NOV advised respondent of the potential penalties for failing to submit the required AWRs within 30 days. Respondent failed to submit the missing AWRs or respond to the May 23, 2019 notice. The notice of violation was mailed by certified mail return receipt requested, and received by respondent on May 30, 2019. (*See Loukides Aff. ¶ 16, Exhibit 10.*)
10. On July 17, 2019, Department staff mailed respondent a second notice of violation advising respondent that respondent had failed to file acceptable AWRs for the 2017 and 2018 calendar years. Enclosed with the notice was an order on consent and invoice. The notice was mailed by certified mail, but Department staff could not confirm delivery of the July 17, 2019 notice. (*See Loukides Aff. ¶ 17, Exhibit 11.*)
11. On January 8, 2020, Department staff mailed respondent a cover letter and AWR forms for the 2019 calendar year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWRs by March 31, 2020. Respondent failed to submit the 2019 AWRs by March 31, 2020. (*See Loukides Aff. ¶¶ 18, 19, Exhibit 12.*)

12. On July 20, 2020, Department staff mailed respondent a notice of violation advising respondent that respondent had failed to file acceptable AWRs for the 2019 calendar year, and that the matter had been referred to the Department's Office of General Counsel. The notice also enclosed an order on consent in an offer to settle the matter and advised respondent that the settlement offer would expire in 30 days. The notice was mailed by certified mail, and received by respondent on July 25, 2020. Respondent failed to submit the missing AWRs or otherwise respond to the July 20, 2020 notice. (See Loukides Aff. ¶ 20, Exhibit 13.)
13. Respondent did not answer the complaint. (See Haas Aff. ¶ 3.)
14. 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 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 Loukides Aff. ¶¶ 1-3.)
15. As shown by the affidavit of service of Melissa Evans, sworn to March 25, 2021, Department staff served the notice of hearing and complaint, statement of readiness, order on consent and invoice, on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that was received by respondent on January 30, 2021. (See Haas Aff. Exhibit C.)
16. Respondent failed to appear at the March 9, 2021 hearing. (See Haas Aff. ¶ 4; hearing record.)

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; (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 respondent failed to appear for the adjudicatory hearing scheduled on March 9, 2021, 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. ¶¶ 10-14); and (vi) Department staff provided proof of service of the motion papers on respondent (see affidavit of service of Melissa Evans, sworn to April 6, 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.

Although I cannot determine on this record the exact number or identity of wells that respondent should have included in AWRs for the 2017 and 2018 calendar years, 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 complete and accurate AWRs for the 2017, 2018 and 2019 calendar years for respondent’s wells, in violation of 6 NYCRR 551.2(b).

Staff’s complaint requested a total civil penalty of four thousand five hundred dollars (\$4,500). 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. ¶¶ 10-14).⁴ Department staff asserts that reporting requirements, such as those at issue here, provide the 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. (Haas Aff. ¶ 13; Loukides Aff. ¶ 21.)

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 four thousand five hundred dollars (\$4,500) 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. The Commissioner has previously held that “the timely filing of complete and accurate AWRs is critical to the regulatory requirements of this program” (*see Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). Accordingly, I conclude that the penalty of four thousand five hundred dollars (\$4,500) requested by Department staff, is supported and appropriate.

Conclusion of Law

By failing to timely file complete and accurate annual well reports for the 2017, 2018 and 2019 calendar years, respondent BDH Oil, 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 BDH Oil, Inc. violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2017, 2018 and 2019 calendar years for respondent’s wells;

⁴ *See Matter of Sahlem*, Order of the Commissioner, January 4, 2021; *Matter of Gilray*, Order of the Commissioner, March 4, 2015; *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).

3. directing respondent BDH Oil, Inc. to submit complete and accurate annual well reports for the 2017, 2018 and 2019 calendar years within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing respondent BDH Oil, Inc. to pay a civil penalty in the amount of four thousand five hundred dollars (\$4,500) 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/

Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
May 3, 2021

APPENDIX A

Matter of BDH Oil, Inc.
DEC Case No. CO 9-20200622-124
Motion for Default Judgment

1. Cover letter, dated April 6, 2021, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated April 6, 2021.
3. Motion for Default Judgment, dated April 6, 2021, attaching Exhibit A and affidavit of Ted Loukides;
 - A. Affirmation of Anne Haas, Esq., dated April 6, 2021, attaching Exhibits B-D;
 - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated January 28, 2021, and proposed Order on Consent and Invoice;
 - C. Affidavit of Service of Melissa Evans, sworn to March 25, 2021, attaching United States Postal Service (USPS) electronic proof of delivery; and
 - D. NYS Department of State, Division of Corporations, Entity Information, regarding BDH Oil, Inc., reflecting information through March 23, 2021.
4. Affidavit of Ted Loukides, sworn to April 2, 2021, attaching Exhibits 1-13;
 1. List of wells operated by BDH Oil, Inc. and Tax Parcel Maps depicting location of wells on properties operated by BDH Oil, Inc.;
 2. Organizational Report for BDH Oil, Inc., sworn to June 28, 1993;
 3. Organizational Report for BDH Oil, Inc., dated January 10, 1995 (unsigned);
 4. Request for Well Transfer to BDH Oil, Inc., sworn to March 19, 1993 (listing 358 wells [Nichols Run and James lease]);
 5. Request for Well Transfer to BDH Oil, Inc., sworn to January 8, 2001 (listing 8 wells [A.E. Mallory Estate]);
 6. Cover letter from Theodore N. Loukides to BDH Oil, Inc., dated January 8, 2018 enclosing 2017 Annual Well Report forms (the forms are not attached to the cover letter in the exhibit);

7. Letter from Theodore N. Loukides to BDH Oil, Inc., dated June 25, 2018 (re: Failure to File Annual Well Report[s]);
 8. Cover letter from Theodore N. Loukides to BDH Oil, Inc., dated January 8, 2019 enclosing 2018 Annual Well Report forms (the forms are not attached to the cover letter in the exhibit);
 9. Letter from Theodore N. Loukides to BDH Oil, Inc., dated May 9, 2019 (re: Notice of Violation – Failure to File Annual Well Report [for 2018]) with USPS electronic proof of delivery attached;
 10. Letter from Theodore N. Loukides to BDH Oil, Inc., dated May 23, 2019 (re: Notice of Violation – Failure to File Annual Well Report [for 2017]) with USPS electronic proof of delivery attached;
 11. Letter from Theodore N. Loukides to BDH Oil, Inc., dated July 17, 2019 (re: Second Notice of Violation – Failure to File Annual Well Report [for 2017 and 2018]) with proposed order on consent and invoice enclosed;
 12. Letter for Theodore N. Loukides to BDH Oil, Inc., dated January 8, 2020 enclosing 2019 Annual Well Report forms; and
 13. Letter from Theodore N. Loukides to BDH Oil, Inc., dated July 20, 2020 (re: Notice of Violation – Failure to File Annual Well Report [for 2019]) with proposed order on consent and invoice enclosed and USPS electronic proof of delivery attached.
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5. Affidavit of Service of Melissa Evans, sworn to April 6, 2021 (default motion papers).