

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

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

ORDER

- by -

DEC Case No.
R9-20191121-148

CHOUDHURY OIL & GAS MINING CORP,

Respondent.

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department or DEC) served respondent Choudhury Oil & Gas Mining Corp (respondent) with a notice of hearing and complaint dated April 22, 2020 (Complaint), alleging that respondent Choudhury Oil & Gas Mining Corp violated 6 NYCRR Parts 551 and 556 for: failure to submit a revised organizational report; failure to install wellhead controls; failure to properly identify wells; and failure to remove vegetation, debris, oil and contaminated soils with respect to oil wells located in the Town of Wirt, Allegany County, New York.

The alleged violations relate to twenty (20) oil wells known as the Wightman #1, Wightman #2, Wightman #3, Wightman #4, Wightman #5, Wightman #6, Wightman #7, Wightman #8, Wightman #9, Cass #9, Cass #10, Cass #12, Cass #13, Cass #43, Cass #47, Cass #53, Cass #54, Cass #57, Cass #58 and Cass #59.¹

The complaint sets forth five causes of action, alleging that respondent violated:

- 6 NYCRR 551.1(b), for failing to submit a revised organizational report to provide a correct address for correspondence;
- 6 NYCRR 556.1(b), for failing to install wellhead controls at Cass #9 and Wightman #9 wells;
- 6 NYCRR 556.4, for failing to remove overgrown vegetation and debris around Cass #13, Cass #43, Cass #47, Cass #57, Cass #59, Wightman #1, Wightman #2, Wightman #3, Wightman #5, Wightman #6, Wightman #8, and Wightman #9;
- 6 NYCRR 556.5(a), for failing to cleanup oil and contaminated soils around Cass #10, Cass #12, Cass #53, and Cass #57; and

¹ The wells are designated by American Petroleum Institute (API) Well Numbers 31-003-60750-00-00, 31-003-60751-00-00, 31-003-60752-00-00, 31-003-60753-00-00, 31-003-60754-00-00, 31-003-60755-00-00, 31-003-60756-00-00, 31-003-60757-00-00, 31-003-60758-00-00, 31-003-66662-00-00, 31-003-66663-00-00, 31-003-66664-00-00, 31-003-66665-00-00, 31-003-66666-00-00, 31-003-66667-00-00, 31-003-66668-00-00, 31-003-66669-00-00, 31-003-66670-00-00, 31-003-66671-00-00 and 31-003-66672-00-00, respectively.

- 6 NYCRR 556.6, for failing to have the requisite identification at all 20 wells.

Department staff seeks an order of the Commissioner (1) finding respondent in violation 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; (2) directing respondent to undertake various remedial actions;² (3) assessing a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375); and (4) granting such other relief as the Commissioner may deem appropriate.

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 4 [Finding of Fact No. 12]). 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 6). 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 relating to these wells including oil and contaminated soils around well casings, the lack of wellhead controls to maintain and control oil flows, and overgrown vegetation and debris around various wells (*see e.g.* Affidavit of Adam Schultz, sworn to January 25, 2021 [Schultz Affidavit], ¶¶ 22-27, 36). Department staff also identified other regulatory violations relating to signage and well identification (*see* Schultz Affidavit, ¶¶ 28-29). 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* Schultz Affidavit, ¶ 36). 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 a high priority (*see* Schultz Affidavit, ¶ 42).

As noted, Department staff in its papers sought a penalty of four thousand three hundred and seventy-five dollars (\$4,375) and the ALJ recommended that respondent Choudhury Oil & Gas Mining Corp 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

² The Department requested that respondent be required to (a) submit a revised organizational report providing a current address and updating any additional information if needed; (b) remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a work plan approved by the Department including disposal of the contaminated and related materials at an authorized facility; (c) provide lease identification at the entrance of lease roads and at each well, and submit color photographs to Department staff confirming completion of this task; (d) remove all vegetation and debris around the wellheads and production equipment to the satisfaction of the Department, and submit color photographs to Department staff confirming completion of this task; and (e) install adequate wellheads on Cass #9 and Wightman #9, and submit color photographs to Department staff confirming completion of the installation (*see* Complaint at Wherefore Clause, par III and Appendix A to the Complaint [Compliance Schedule]; Schultz Affidavit ¶ 44). By letter dated May 24, 2021, Dinar Choudhury, on behalf of Choudhury Oil and Gas Mining Corp advised Department staff that "most violations" had been "fixed" but no specific list of what violations had been addressed and no supporting documentation was provided.

(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. 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 e.g.* Schultz Affidavit, ¶¶ 33-40, 43).

Based on the record before me, including consideration of the remedial actions requested, the recommended penalty is authorized and appropriate. I hereby direct that respondent submit the civil penalty of four thousand three hundred and seventy-five dollars (\$4,375) to the Department within thirty (30) days of the service of this order upon respondent, and that respondent fully complete the remedial actions that are contained in Appendix A to the Complaint and as set forth in this order. Respondent is directed to complete the staff-requested remedial actions within thirty (30) days of the service of this order upon respondent and provide documentation of the completion of the tasks that is satisfactory to Department staff. Department staff may, at its sole discretion, extend the date for the completion of one or more remedial 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 Choudhury Oil & Gas Mining Corp 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 Choudhury Oil & Gas Mining Corp 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 Cass #9 and Wightman #9);
 - C. 6 NYCRR 556.4(b) (failure to remove overgrown vegetation and debris around Cass #13, Cass #43, Cass #47, Cass #57, Cass #59, Wightman #1, Wightman #2, Wightman #3, Wightman #5, Wightman #6, Wightman #8, and Wightman #9);
 - D. 6 NYCRR 556.5(a) (failure to cleanup oil and contaminated soils at Cass #10, Cass #12, Cass #53 and Cass #57);
 - E. 6 NYCRR 556.6 (failure to have requisite identification information at all 20 [twenty] wells referenced in the Complaint).
- III. Within thirty (30) days of service of this order upon respondent Choudhury Oil & Gas Mining Corp, respondent shall:
 - A. Submit a revised organizational report providing a current address and updating any additional information if needed;

- B. Remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a work plan approved by the Department. Disposal of contaminated soils and related materials shall be at an authorized facility and respondent shall provide Department staff with appropriate and satisfactory documentation of that disposal;
 - C. Provide lease identification at entrance of lease roads and individual identification at each well, and submit color photographs to Department staff confirming completion of this task;
 - D. Remove all vegetation and debris around the wellheads and production equipment, and submit color photographs to Department staff confirming completion of this task; and
 - E. Install adequate wellheads on Cass #9 and Wightman #9, and submit color photographs to Department staff confirming completion of the installation.
- IV. Respondent Choudhury Oil & Gas Mining Corp is hereby assessed a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375) 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. Respondent Choudhury Oil & Gas Mining Corp 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 Choudhury Oil & Gas Mining Corp 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: September 7, 2021
Albany, New York

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

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

**DEFAULT SUMMARY
REPORT**

- by -

DEC Case No.
R9-20191121-148

CHOUDHURY OIL & GAS MINING CORP,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Choudhury Oil & Gas Mining Corp (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 properly identify wells and failure to remove vegetation and/or debris, oil and contaminated soils surrounding wells located in Allegany County, New York.

The alleged violations are in regards to twenty (20) oil wells known as the Wightman #1, Wightman #2, Wightman #3, Wightman #4, Wightman #5, Wightman #6, Wightman #7, Wightman #8, Wightman #9, Cass #9, Cass #10, Cass #12, Cass #13, Cass #43, Cass #47, Cass #53, Cass #54, Cass #57, Cass #58 and Cass #59. The wells are designated by American Petroleum Institute (API) Well Numbers 31-003-60750-00-00, 31-003-60751-00-00, 31-003-60752-00-00, 31-003-60753-00-00, 31-003-60754-00-00, 31-003-60755-00-00, 31-003-60756-00-00, 31-003-60757-00-00, 31-003-60758-00-00, 31-003-66662-00-00, 31-003-66663-00-00, 31-003-66664-00-00, 31-003-66665-00-00, 31-003-66666-00-00, 31-003-66667-00-00, 31-003-66668-00-00, 31-003-66669-00-00, 31-003-66670-00-00, 31-003-66671-00-00 and 31-003-66672-00-00, respectively.

The complaint seeks an order of the Commissioner (1) finding respondent in violation 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; (2) directing respondent to: (a) submit a revised and updated organizational report to the Department; (b) remediate the petroleum discharges at the wellheads and surrounding soils in accordance with a plan approved by the Department including disposal at an authorized facility;

(c) provide lease identification at entrance of lease roads and individual identification at each well, and submit color photographs to Department staff confirming completion; (d) remove all vegetation and debris around the wellheads, including production equipment, and submit color photographs to Department staff confirming completion; and (e) install adequate wellheads on Cass #9 and Wightman #9, and submit color photographs to Department staff confirming completion; (3) assessing a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375); 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 27, 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 27, 2021 (*see* affidavit of service of Pamela Frasier, sworn to January 27, 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 welhead controls adequate to properly contain and control the flow thereof.”

Section 556.4(b) 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.”

Findings of Fact

The following facts are found based upon the pleadings and papers submitted with and in support of staff’s motion for default judgment:

1. Respondent Choudhury Oil & Gas Mining Corp 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 Choudhury Oil & Gas Mining Corp on the organizational report filed with the Department in September 2021 (*see* Motion for Default Judgment ¶ 6, Exhibit C – Schultz Affidavit, Exhibit A).
4. In October 2011, respondent acquired certain mineral rights to produce oil through the wells that are included in the Wightman lease and the Cass lease on property located in Allegany County, New York (*see* Motion for Default Judgment, ¶ 7, Exhibit C – Schultz Affidavit, ¶ 8, Exhibit B).
5. Respondent operates twenty (20) oil wells known as the Wightman #1, Wightman #2, Wightman #3, Wightman #4, Wightman #5, Wightman #6, Wightman #7, Wightman #8, Wightman #9, Cass #9, Cass #10, Cass #12, Cass #13, Cass #43, Cass #47, Cass #53, Cass #54, Cass #57, Cass #58 and Cass #59. The wells are designated by American Petroleum Institute (API) Well Numbers 31-003-60750-00-00, 31-003-60751-00-00, 31-003-60752-00-00, 31-003-60753-00-00, 31-003-60754-00-00, 31-003-60755-00-00, 31-003-60756-00-00, 31-003-60757-00-00, 31-003-60758-00-00, 31-00366662-00-00, 31-003-66663-00-00, 31-003-66664-00-00, 31-003-66665-00-00, 31-003-66666-00-00, 31-003-66667-00-00, 31-003-66668-00-00, 31-003-66669-00-00, 31-003-66670-00-00, 31-003-66671-00-00 and 31-003-66672-00-00, respectively (*see* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶¶ 8-9, Exhibits B and C).

6. Adam Schultz is employed as a Mineral Resources Technician 2 in the Department's Division of Mineral Resources, at the Department's Region 9 office in Allegany, New York (*see* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶ 2).
7. Mr. Schultz is familiar with and administers provisions of ECL article 23 and the regulations promulgated thereunder 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 ECL article 23 as they relate to the drilling and operation of oil and gas wells, inspecting oil and gas wells and assisting in the enforcement of violations of ECL article 23 including development of civil penalties (*see* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶¶ 3-4).
8. On April 3, 2019, Mr. Schultz and other Department staff performed an inspection of respondent's oil wells (*see* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶¶ 10-11, Exhibit D).
9. On April 9, 2019, Department staff mailed respondent two letters which outlined the violations documented during the April 3, 2019 inspection. The letters were undeliverable and Department staff mailed the letters to an alternative address on June 7, 2019. The letters set forth the corrective actions required to address the violations and requested a response by July 19, 2019. Department staff did not receive a response to the letters. (*See* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶¶ 12-16, Exhibits E and F.)
10. On September 17, 2019, Mr. Schultz and other Department staff performed a second inspection of respondent's oil wells. Department staff documented new violations and also previous violations which were not corrected. (*See* Motion for Default Judgment, Exhibit C – Schultz Affidavit, ¶ 17, Exhibit G.)
11. The complaint set forth the following violations: 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) failure to clean oil and contaminated soils around wells, in violation of 6 NYCRR 556.5(a); and e) failure to have requisite identification in violation of 6 NYCRR 556.6 (*see* Motion for Default Judgment, Exhibit C - Schultz Affidavit, ¶¶ 20-29).
12. As shown by the affidavit of Pamela Frasier, sworn to January 5, 2021, 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 27, 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 27,

2021 (*see* affidavit of service of Pamela Frasier, sworn to January 27, 2021). Respondent did not respond to the motion.¹

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]).

¹ Subsequent to the date by which respondent was to serve an answer to the notice of hearing and complaint and respond to staff's motion for a default judgment, Dinar Choudhury, president of Choudhury Oil & Gas Mining Corp, sent a letter dated May 24, 2021 to Department staff and copied the Office of Hearings and Mediation Services. No correspondence was received from Department staff in response. To the extent the May 24, 2021 letter is deemed to be either an answer or a response to the motion for a default judgment, it is untimely. In any event, upon review of respondent's letter on the issue of penalty, which is the only issue a defaulting respondent is entitled to be hearing on (*see Matter of 366 Ave. Y Develop. Corp.*, ALJ Ruling on Motion for Default Judgment, April 23, 2010, at 7), the statements made therein do not provide a basis for modifying the relief requested by Department staff.

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 January 5, 2021); (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 27, 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 a) failed to submit a revised organizational report to provide correct address for correspondence in violation of 6 NYCRR 551.1(b); b) failed to install wellhead controls at Cass #9 and Wightman #9 in violation of 6 NYCRR 556.1(b); c) failed to remove overgrown vegetation and/or debris around Cass #13, Cass #43, Cass #47, Cass #57, Cass #59, Wightman #1, Wightman #2, Wightman #3, Wightman #5, Wightman #6, Wightman #8 and Wightman #9, in violation of 6 NYCRR 556.4; d) failed to cleanup oil and contaminated soils around Cass #10, Cass #12, Cass #53 and Cass #57, in violation of 6 NYCRR 556.5(a); and e) failed to have requisite identification at Cass #9, Cass #10, Cass #12, Cass #13, Cass #43, Cass #47, Cass #53, Cass #54, Cass #57, Cass #58, Cass #59, Wightman #1, Wightman #2, Wightman #3, Wightman #4, Wightman #5, Wightman #6, Wightman #7, Wightman #8, and Wightman #9, in violation of 6 NYCRR 556.6.

Department staff seeks a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375). 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* (*see* Motion for Default Judgment, Exhibit C - Schultz Affidavit, ¶ 30). 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 – Schultz Affidavit, ¶¶ 41-42.)

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. The statutory maximum penalty for the violations, as computed by Department staff, exceeds eight hundred thousand 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 since the spring of 2019 (*see* Motion for Default Judgment, Exhibit C - Schultz Affidavit, ¶ 43).

I find that staff's request for a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375) 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) 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.
- 3) 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.
- 4) Remove all vegetation and debris around the wellheads and production equipment and submit color photographs confirming the completion.
- 5) Install adequate wellheads on Cass #9 and Wightman #9, and submit color photographs confirming the completion.

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

Conclusion 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.

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 Choudhury Oil & Gas Mining Corp 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; and
 - (v) 6 NYCRR 556.6 by failing to have requisite identification at well locations.
3. Directing respondent Choudhury Oil & Gas Mining Corp to perform the following corrective actions, as set forth in the notice of hearing and complaint, Appendix A:
 - a. Submit a revised organization report providing a current address and updating any additional information if needed.
 - b. 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.
 - c. 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.
 - d. Remove all vegetation and debris around the wellheads and production equipment and submit color photographs confirming the completion.
 - e. Install adequate wellheads on Cass #9 and Wightman #9, and submit color photographs confirming the completion.
4. Directing respondent Choudhury Oil & Gas Mining Corp to pay a civil penalty in the amount of four thousand three hundred and seventy-five dollars (\$4,375) 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 31, 2021

APPENDIX A

Matter of Choudhury Oil & Gas Mining Corp

DEC Case No. R9-20191121-148

Motion for Default Judgment

1. Cover letter, dated January 27, 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 27, 2021 (with Exhibit A, Order on Consent Index # CO 9-20200622-94), attaching the following exhibits:
 - A. New York State Department of State, Division of Corporations, entity information for Choudhury Oil & Gas Mining Corp;
 - B. New York State Department of State, Certificate of Incorporation of Choudhury Oil & Gas Mining Corp;
 - C. Affidavit of Adam Schultz, sworn to January 25, 2021, attaching the following exhibits:
 - A) Organizational Report for Choudhury Oil and Gas Mining Corp, sworn to September 18, 2012.
 - B) Request for Well Transfer from K & L Oil Company to Choudhury Oil & Gas Mining Corp, sworn to October 3, 2011. Request for Well Transfer from Bolivar Oil & Gas LLC to Choudhury Oil & Gas Mining Corp, sworn to October 18, 2011.
 - C) 2019 Annual Well Report from Choudhury Oil & Gas Mining Corp, received on August 31, 2020.
 - D) Division of Mineral Resources Post-Site Inspection Reports, inspection date April 3, 2019.
 - E) Letter from Christopher Miller, NYSDEC Mineral Resources Manager, Region 9, to Choudhury Oil & Gas Mining Corp, regarding the Wightman lease, dated April 9, 2019. Letter from Christopher Miller, NYSDEC Mineral Resources Manager, Region 9, to Choudhury Oil & Gas Mining Corp, regarding the Cass lease, dated April 9, 2019.
 - F) Letter from Christopher Miller, NYSDEC Mineral Resources Manager, Region 9, to Choudhury Oil & Gas Mining Corp, regarding the Wightman lease, dated June 7, 2019. Letter from Christopher Miller, NYSDEC Mineral Resources Manager, Region 9, to Choudhury Oil & Gas Mining Corp, regarding the Cass lease, dated June 7, 2019.
 - G) Division of Mineral Resources Post-Site Inspection Reports, inspection date September 17, 2019.

- D. Cover letter to Choudhury Oil & Gas Mining Corp dated April 28, 2020 from Teresa J. Mucha, Esq., attaching Notice of Hearing and Complaint dated April 22, 2020.

- E. Affidavit of Service by Mail of Pamela Frasier, sworn to January 5, 2021, (cover letter and Notice of Hearing and Complaint) attaching the following exhibits:
 - a) USPS Tracking, tracking information for number 70141820000239780907.
 - b) USPS certified mailing green card receipt.

- F. Affidavit of Susan L. Reynolds, sworn to January 5, 2021.

- G. Affidavit of Service by Mail of Pamela Frasier, sworn to January 27, 2021 (cover letter and Notice of Motion and Motion for Default Judgment).