

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

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

- by -

**CONTINENTAL ENERGY, LLC,**

Respondent.

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**ORDER**

DEC Case No.  
**CO 9-20210709-76**

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent Continental Energy, LLC violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2020 calendar year for the Hogenboom 2 oil well located in the Town of Clymer, Chautauqua County, New York, designated by American Petroleum Institute (API) as Well Number 31-013-17860-00-00.

Administrative Law Judge (ALJ) Michael S. Caruso of the Department's Office of Hearings and Mediation Services was originally assigned to this matter and held the virtual hearing. Administrative Law Judge Elizabeth Phillips prepared the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled for January 27, 2022 (*see* Default Summary Report at 4 [Finding of Fact No. 13]). At the January 27, 2022 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, ALJ Phillips 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 an annual well report for the 2020 calendar year for the Hogenboom 2 oil well (API Number 31-013-17860-00-00) and therefore is in violation of 6 NYCRR 551.2(b).

Department staff correctly points out that the requirement to file annual well reports is important to determining the status of the State's resources given the potential or actual environmental harm that may result from the lack of accurate, annual information about well activity. The identification of non-producing wells for plugging is significant for the prevention of groundwater contamination (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated February 22, 2022 [Haas Aff.], ¶ 12; *see also* Affidavit of Ted Loukides, sworn to February 16, 2022, ¶ 16).

Department staff, in its papers, sought a penalty of one thousand five hundred dollars (\$1,500), and the ALJ recommended that respondent Continental Energy, LLC be directed to pay this amount. ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b).

In other proceedings of this nature, Department staff has requested similar civil penalties (*see Matter of Sahlem*, Order of the Commissioner, January 4, 2021, at 3; *Matter of Gilray*, Order of the Commissioner, March 4, 2015, at 2; and *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). In those cases, a civil penalty of \$1,500 was assessed for each time that a well owner or operator failed to timely submit an annual well report.

The record demonstrates that respondent Continental Energy, LLC failed to submit a timely and complete report for the Hogenboom 2 well for the calendar year 2020. Notwithstanding the efforts of Department staff to obtain respondent's compliance, nothing in this record indicates that respondent filed a report for the 2020 calendar year (*see e.g.*, Default Summary Report at 3 [Findings of Fact Nos. 7, 11]). The civil penalty that Department staff is requesting is consistent with 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; Haas Aff., ¶¶ 9-13).

Based on the record before me, the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of one thousand five hundred dollars (\$1,500) 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, respondent Continental Energy, LLC is directed to submit a complete and accurate well report for the Hogenboom 2 oil well (API Number 31-013-17860-00-00) for calendar year 2020 to the Department.

**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 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 Continental Energy, LLC is determined to have violated 6 NYCRR 551.2(b), by failing to timely file a complete and accurate annual well report for the 2020 calendar year for the Hogenboom 2 well (API Number 31-013-17860-00-00), for the 2020 production year.
- III. Within thirty (30) days of the service of this order upon Continental Energy LLC, respondent shall submit to the Department a complete and accurate annual well report for the Hogenboom 2 well (API Number 31-013-17860-00-00) for the 2020 production year.
- IV. Respondent Continental Energy, LLC is hereby assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500), 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 report and civil penalty payment shall be sent to the following address:

New York State Department of Environmental Conservation  
Division of Mineral Resources  
Oil and Gas Compliance Enforcement Section  
625 Broadway, 3<sup>rd</sup> Floor  
Albany, New York 12233-6500  
Attn: Theodore N. Loukides, Chief
- VI. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent Continental Energy LLC and respondent's agents, successors and assigns, in any and all capacities.

For the New York State Department  
of Environmental Conservation

By: /s/  
Basil Seggos  
Commissioner

Dated: April 28, 2022  
Albany, New York

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

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

- by -

**CONTINENTAL ENERGY, LLC,**

**DEFAULT SUMMARY  
REPORT**

DEC Case No.  
**CO 9-20210709-76**

Respondent.

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Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Continental Energy, LLC (respondent) with a notice of hearing and complaint dated November 22, 2021, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file a timely annual well report for the 2020 calendar year for an oil well known as the Hogenboom 2<sup>1</sup> well located in the Town of Clymer, Chautauqua County, New York. The well is designated by American Petroleum Institute (API) as Well Number 31-013-17860-00-00.

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 report to the Department; (3) assessing a civil penalty in the amount of one thousand five hundred dollars (\$1,500); 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 November 26, 2021 (*see* 6 NYCRR 622.3[a][3]; Exhibit C). Respondent failed to answer the complaint as directed in the notice of hearing. As stated in staff's November 22, 2021 notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Michael S. Caruso at 10:00 a.m. on January 27, 2022. (*See* affirmation of Anne Haas [Haas Aff.], dated February 22, 2022, ¶ 2, Exhibit B.) Department staff was represented by Anne Haas, Esq., Office of General Counsel, New York State

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<sup>1</sup> Respondent's oil well is known by various names in Department staff's papers, including Hogenboom 2, Hogenboom #2 and Hogenboom, N2. (*Compare* affidavit of Ted Loukides, sworn to February 16, 2022, [Loukides Aff.] ¶ 4 [referring to Hogenboom 2] *with* affirmation of Anne Haas [Haas Aff.], dated February 22, 2022, ¶ 5 and Loukides Aff. Exhibit 3 [referring to Hogenboom #2] *and with* Attachment A to Complaint [Exhibit B] and Loukides Aff. Exhibits 4-5 [referring to Hogenboom, N2]).

Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent (Haas Aff. at ¶ 4).

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

### Applicable Regulatory Provisions

Section 551.2 Production and purchase reports.

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

\* \* \*

### Findings of Fact

1. Respondent Continental Energy, LLC maintains an address at 2608 North Belmont Place, Garden City, KS 67846. (*See* affidavit of Ted Loukides, sworn to February 16, 2022, [Loukides Aff.] ¶ 13, Exhibits 2-3.)
2. Ted Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department’s Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division’s Bureau of Resource Development and Reclamation. Mr. Loukides’s duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all annual well reports (AWRs) submitted to the Department. (*See* Loukides Aff. ¶¶ 1-3.)
3. Respondent Continental Energy, LLC operates the oil well designated as API Well Number 31-013-17860-00-00 and known as the Hogenboom 2 well, located in the Town of Clymer, Chautauqua County, New York. (*See* Loukides Aff. ¶¶ 4, 5, 6, Exhibits 1, 2,

- 3.)
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 4 (AWR sent to respondent for the 2020 calendar year). (See Loukides Aff. ¶¶ 4, 8, Exhibit 4.)
  5. On January 22, 2021, Department staff mailed respondent a cover letter and AWR form for the 2020 calendar year, pre-printed with respondent's name and address from the respondent's organizational report (Exhibit 3) and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2021. The letter was returned to the Department marked "Forward Expired." (Loukides Aff. ¶ 7; Exhibit 4.)
  6. Although the Department typically provides oil and gas operators with blank AWR forms by mail or email, these forms are also available on the Department's website. (Loukides Aff. ¶ 8.)
  7. Respondent failed to submit the 2020 AWR by March 31, 2021. (See Loukides Aff. ¶ 9, Exhibit 4.)
  8. On July 1, 2021, Department staff attempted to contact respondent by telephone at the phone number provided on the Organizational Report. The phone number was out of service. (See Loukides Aff. ¶10.)
  9. In September 2021, Department staff contacted the respondent's authorized representative and agent for service in New York. The registered agent provided a current phone number for respondent. Staff called that number on September 3, 2021, and left a message. Jo E. Perkins, a member of respondent and the signatory on the Organizational Report, returned the call that day and provided a current address of 2608 North Belmont Place, Garden City, KS 67846. (See Loukides Aff. ¶¶ 5, 11-13; Exhibit 2.)
  10. After receiving the respondent's current address in September 2021, Department staff mailed, by certified mail, a letter dated July 26, 2021, to respondent, enclosing a notice of violation (NOV) advising respondent that respondent had failed to file an acceptable AWR by March 31, 2021. The NOV indicated that the offer to settle would expire within thirty days of the date of the July 26, 2021 notice, which date had already passed by the time the NOV was mailed. Included with the NOV was an order on consent to settle the matter within thirty days of the date of the notice. The order on consent provided that the AWR be filed by August 31, 2021. The NOV advised respondent of the potential penalties for failing to submit the required AWR along with the signed order on consent. The notice of violation and consent order were mailed by certified mail return receipt requested and were received by respondent on September 21, 2021. (See Loukides Aff. ¶ 12-15, Exhibit 5.)
  11. Respondent failed to submit the missing AWR or respond to the NOV. (See Loukides

Aff. ¶¶ 14-15, Exhibit 5.)

12. As shown by the affidavit of service of Melissa Evans, Department staff served the notice of hearing and complaint, statement of readiness, and proposed consent order and invoice, on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), which was received by respondent on November 26, 2021. (*See* Haas Aff. Exhibit C.)
13. Respondent failed to answer the complaint or appear at the January 27, 2022 hearing. (*See* Haas Aff. ¶¶ 3-4; 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].)

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

*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on January 27, 2022, as directed in the notice of hearing; (iii) Department staff's papers provide proof of the facts sufficient to support the violations alleged and enable me to determine that staff has a viable claim; (iv) Department staff's papers include a concise statement of the relief requested (*see* motion for default judgment, wherefore clause; Haas Aff. Exhibit B [complaint]); (v) staff's motion includes a statement of authority and support for the penalty and relief requested (*see* Haas Aff. ¶¶ 9-13); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of Melissa Evans, sworn to February 22, 2022). Respondent did not file or serve a response to staff's motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to determine that staff has a viable claim that respondent failed to timely file a complete and accurate AWR for the 2020 calendar year for respondent's Hogenboom 2 well, in violation of 6 NYCRR 551.2(b).

There is a discrepancy between the date of the NOV and proposed order on consent and the actual date it was mailed and served on the respondent. The NOV is dated July 26, 2021, but the record indicates that it was not mailed until after staff obtained a new address on September 3, 2021, and it was received on September 21, 2021. (*See* Exhibit 5.) The NOV indicated that the offer to settle would expire within thirty days of the date of the July 26, 2021 NOV, presumably August 25, 2021, which date had already passed by the time the NOV was mailed. The order on consent proposed to settle the matter within thirty days of the date of the NOV and further stated that the AWR be filed by August 31, 2021, which date had already passed. Although it appears that respondent was not advised of the pending violation in a timely fashion, it was respondent's responsibility to update the organizational report with a current address, pursuant to 6 NYCRR 551.1(b). Staff's delay in notifying respondent of the violation was due in part to respondent's failure to update its organizational report. In any event, staff was able to properly serve respondent with the complaint and notice of hearing, and respondent neither answered the complaint nor appeared at the hearing. (*See* Haas Aff. ¶¶ 3-4.)

Staff's complaint requested a total civil penalty of one thousand five hundred dollars (\$1,500). 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. ¶¶ 9-13).<sup>2</sup> 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

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<sup>2</sup> *See Matter of Sahlem*, Order of the Commissioner, January 4, 2021, *Matter of Gilray*, Order of the Commissioner, March 4, 2015, and *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013. For each demonstrated violation, the Commissioner assessed a civil penalty of \$1,500. (Haas Aff. ¶ 13).

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. ¶ 12; Loukides Aff. ¶ 16.)

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 one thousand five hundred dollars (\$1,500) 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 *Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). Accordingly, I conclude that the penalty of one thousand five hundred dollars (\$1,500) requested by Department staff, is supported and appropriate.

#### Conclusion of Law

By failing to timely file a complete and accurate annual well report for the 2020 calendar year for the Hogenboom 2 well, respondent Continental Energy, LLC 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 Continental Energy, LLC violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2020 calendar year for respondent's Hogenboom 2 well (API Well Number 31-13-17860-00-00);
3. directing respondent Continental Energy, LLC to submit a complete and accurate annual well report for the 2020 calendar year within thirty (30) days of the service of the Commissioner's order upon respondent;

4. directing respondent Continental Energy, LLC to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) 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/  
Elizabeth Phillips  
Administrative Law Judge

Dated: Albany, New York  
April 15, 2022

## APPENDIX A

*Matter of Continental Energy, LLC,*  
DEC Case No. CO 9-20210709-76  
Motion for Default Judgment

1. Cover letter dated February 22, 2022, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated February 22, 2022.
3. Motion for Default Judgment, dated February 22, 2022, attaching Exhibit A and affidavit of Ted Loukides;
  - A. Affirmation of Anne Haas, Esq., dated February 22, 2022, attaching Exhibits B-C;
  - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated November 22, 2021, and proposed Consent Order and Invoice;
  - C. Affidavit of Service of Melissa Evans, sworn to January 3, 2022, attaching United States Postal Service (USPS) electronic proof of delivery; and
  - D. New York Department of State Entity information for Continental Energy LLC, printed February 7, 2022.
4. Affidavit of Ted Loukides, sworn to February 16, 2022, attaching Exhibits 1-5;
  1. Tax Parcel Map depicting location of well on property operated by Continental Energy, LLC;
  2. Organizational Report for Continental Energy, LLC, sworn to September 4, 2018;
  3. Request for Well Transfer from Pefley Oil & Gas to Russell Freeman d/b/a Continental Energy, sworn to August 23, 2000;
  4. Cover letter from Theodore N. Loukides to Continental Energy, LLC, dated January 22, 2021, with enclosed 2020 Annual Well Report form;
  5. Cover letter from Theodore N. Loukides to Continental Energy, LLC, dated July 26, 2021 (re: Notice of Violation – Failure to File Annual Well Report) with proposed order on consent, invoice and 2020 Annual Well Report form enclosed, and USPS electronic proof of delivery attached.

6. Affidavit of Service of Melissa Evans, sworn to February 22, 2022 (default motion papers).