

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

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

ORDER

DEC Case No.
2520-2013DK

- by -

THOMAS A. GILRAY,

Respondent.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation ("Department") staff alleges that respondent Thomas A. Gilray violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2012 production year for nine wells located and permitted to him in the town of Allegany, Cattaraugus County, New York. The wells, known as Wenog 1, 2, 3, 4, 5, 6, 7, 8, and 9, are designated as American Petroleum Institute ("API") Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00, respectively.

On February 28, 2014, an adjudicatory hearing was convened before Michael S. Caruso, Administrative Law Judge ("ALJ") of the Department's Office of Hearings and Mediation Services to address these violations. ALJ Caruso prepared the attached hearing report, which I adopt as my decision in this matter, subject to the following comments.

As set forth in the ALJ's hearing report, respondent Thomas A. Gilray failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled in the matter on February 28, 2014, as was directed in the notice of

hearing (see Hearing Report, at 6 [Finding of Fact No. 17]).

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommended that Department staff's motion for default be granted (see Hearing Report, at 7), and I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. Furthermore, at the hearing, Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report, at 6). Accordingly, staff is entitled to a judgment based on record evidence.

Department staff, in its papers, sought a penalty of one thousand five hundred dollars (\$1,500), and the ALJ recommended that respondent be directed to pay this penalty. ECL 71-1307 provides 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. Respondent has failed to submit a report for nine wells, and, notwithstanding the efforts to Department staff to obtain his compliance, there is nothing in this record that indicates that respondent made an effort to address this failure to file a report (see, e.g., Hearing Exhibit D [July 15, 2013 and December 3, 2013 correspondence from Department staff to respondent]). Accordingly, based on this record, the requested penalty of one thousand five hundred dollars (\$1,500) is authorized and appropriate.

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 Thomas A. Gilray waived his right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Thomas A. Gilray is adjudged to have violated 6 NYCRR 551.2(b) for failure to timely file a complete and accurate annual well report for certain wells located and permitted to him in the State of New York, that is, for wells known as Wenog 1, 2, 3, 4,

5, 6, 7, 8, and 9 designated as American Petroleum Institute ("API") Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00, respectively, for the 2012 production year.

III. Within thirty (30) days of the service of this order upon respondent Thomas A. Gilray, respondent shall submit the annual well report for the 2012 production year to the Department.

IV. Respondent Thomas A. Gilray is hereby assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500). Respondent shall pay the civil penalty within thirty (30) days of the service of this order upon him. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.

V. The annual well report for the 2012 production year and the civil penalty payment shall be sent to the following address:

New York State Department of Environmental
Conservation
Division of Mineral Resources
Bureau of Resource Development and Reclamation
625 Broadway, 3rd Floor
Albany, New York 12233-6500
Attn: John Dahl, Director.

VI. Any questions or other correspondence regarding this order shall also be addressed to John Dahl at the address referenced in paragraph V of this order.

VII. The provisions, terms and conditions of this order shall bind respondent Thomas A. Gilray, and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____ /s/

Joseph J. Martens
Commissioner

Dated: Albany, New York
March 4, 2015

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of Article 23 of the Environmental
Conservation Law ("ECL") of the State of
New York and Title 6 of the Official
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HEARING REPORT

DEC Case No.
2520-2013DK

- by -

THOMAS A. GILRAY,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation ("Department") served respondent Thomas A. Gilray ("respondent") with a notice of hearing and complaint dated January 21, 2014, alleging a violation of 6 NYCRR 551.2, for failure to file a timely annual well report for the 2012 production year for nine wells respondent owned in the State of New York, known as the Wenog 1, 2, 3, 4, 5, 6, 7, 8, and 9 wells and designated by American Petroleum Institute ("API") Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00, respectively. The complaint seeks an order of the Commissioner (1) finding respondent in violation of 6 NYCRR 551.2(b); (2) assessing a civil penalty in the amount of one thousand five hundred dollars (\$1,500); (3) directing respondent to comply with the schedule of compliance included in the papers served on respondent; and (4) granting such other and further relief as the Commissioner shall deem just and proper.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent on January 25, 2014 (see 6 NYCRR 622.3[a][3]). Department staff also provided additional service by sending the notice of hearing and

complaint to respondent by first class mail on January 22, 2014. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on February 28, 2014, as directed in the notice of hearing.

As stated in the notice of hearing, on February 28, 2014, an adjudicatory hearing was convened before Administrative Law Judge ("ALJ") Richard R. Wissler of the Department's Office of Hearings and Mediation Services ("OHMS") at the Department's Region 9 office, 270 Michigan Avenue, Buffalo, New York 14203. Department staff was represented by David H. Keehn, Esq., Associate Counsel, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a program staff witness. Noting for the record that respondent had failed to answer the complaint, and failed to appear for the adjudicatory hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15. ALJ Wissler reserved on the default motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). Moreover, the ALJ noted Department staff's readiness for hearing and noted the failure of respondent to appear. The ALJ advised that the hearing, in the absence of respondent, would be convened at a subsequent time or on a subsequent date.

At 12:30 p.m. on February 28, 2014, the adjudicatory hearing was convened before ALJ Michael S. Caruso at the Department's Region 9 office.¹ Department staff was represented by Mr. Keehn. Department staff orally renewed its motion for a default judgment, and also sought judgment on the merits.

Department staff called one witness, Theodore Loukides, Chief, Compliance and Enforcement Section, Division of Mineral Resources. In all, four (4) exhibits were received in evidence.

¹ Upon respondent's failure to appear for the hearing on February 28, 2014 at 10:00 a.m. and called at calendar at approximately 12:00 noon, he waived his right to notice of any subsequent proceedings in this matter, including any hearing in absentia. Department staff proceeded to hearing on this matter at 12:30 p.m. on February 28, 2014.

Applicable Regulatory Provision

Section 551.2 Production and purchase reports.

"(a) Each person who first produces, sells, purchases, acquires, stores or transports oil and gas produced in the State must keep and maintain complete and accurate records of the amounts thereof. These records must be retained for five calendar years after the calendar year to which they pertain. True copies or duplicates must be kept or made available within the State for examination by the department at all reasonable times.

"(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.

"(c) (1) All records or reports and any information obtained under the provisions of this section are only for the confidential use of the department and other departments, agencies, and officers of the State government until six months after the period to which those records or reports apply, unless the person furnishing them expressly agrees to an earlier publication or availability to the general public.

"(2) The provisions of this subdivision shall not be construed to prevent the use of those records, reports or information by any department, agency or officer of the State government in compiling or publishing analyses or summaries relating to the general condition of the industry, the economy or the condition of the natural resources of the State, provided that those analyses or summaries do not involve the publication of records, reports or information relating to a single firm or business enterprise."

Findings of Fact

1. Respondent Thomas A. Gilray resides at 1474 Four Mile Road, Allegany, New York 14706. (Staff Exhibits A, B, C and D.)
2. Respondent owns the wells designated as API Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00 and known as the Wenog 1, 2, 3, 4, 5, 6, 7, 8, and 9 wells, respectively (hereinafter "Wenog wells"), located in the town of Allegany, Cattaraugus County, New York. (Staff Exhibits A and C.)
3. The wells are productive. As defined by regulation, a "producing well" is "any well capable of the production of oil or gas or both." (6 NYCRR 550.3[am].) (Staff Exhibit C; Testimony of Theodore Loukides.)
4. Respondent is required to file annual well reports ("AWRs") with the Department for each production year for each well he owns on a form supplied by the Department, as typified by Department Staff's Exhibit C, an AWR filed by respondent for the production year 2011. (Testimony of Theodore Loukides; Staff Exhibit C.)
5. The Department supplies the AWR form to owners or other responsible parties by regular mail in January of each year immediately following the production year for which the AWR is required. The AWR must be filed by March 31st of that year. As a courtesy, if the Department does not timely receive the required AWR, it sends out a letter reminding the owners or other responsible parties of their obligation to file the AWRs, enclosing another copy of the AWR form. (Testimony of Theodore Loukides; Staff Exhibit D, January 9, 2013 and July 15, 2013 correspondence to respondent.)
6. Each AWR form filled in by the owner or other responsible party and filed with the Department must be signed by them on the signature line indicated in the form. (Testimony of Theodore Loukides; Staff Exhibits C and D.)
7. Above the signature line in the AWR form is the following certification made by the person executing the form:
"Certification: I understand that Environmental Conservation Law (ECL) Sec. 23-0305 requires me to file complete and accurate well records on a form provided by NYSDEC and that ECL Sec. 71-1307 provides that knowingly

violating ECL Sec. 23-0305 is punishable as a misdemeanor. I certify under penalty of perjury that the information provided above is complete and accurate." (Staff Exhibit C.)

8. Respondent executed an AWR form containing the certification indicated in Finding of Fact 7 for the production year 2011 and filed it with the Department. (Testimony of Theodore Loukides; Staff Exhibit C.)
9. Respondent was provided with AWR forms in January 2013 for the AWR due for the 2012 production year for the wells indicated in Finding of Fact 2, above. (Testimony of Theodore Loukides; Staff Exhibit D.)
10. Respondent was sent letters in July and December 2013 reminding him to file the required AWR for the 2012 production year. (Testimony of Theodore Loukides; Staff Exhibit D.)
11. Theodore Loukides is an employee of the Department and is Chief of the Compliance and Enforcement Section of the Department's Division of Mineral Resources. Mr. Loukides's duties include the care, custody, and maintenance of the records pertaining to the oil, gas and solution mining program of the State of New York. These records are kept in a database maintained by the Department and include all AWRs filed pursuant to 6 NYCRR 551.2. (Testimony of Theodore Loukides.)
12. On January 6 and February 27, 2014, Theodore Loukides searched the Department's oil, gas and solution mining database for all AWRs filed by respondent. (Testimony of Theodore Loukides; Staff Exhibit A, Affidavit of Ted Loukides, sworn to January 21, 2014.)
13. As a result of his search, Theodore Loukides determined that respondent had not timely filed an AWR for the 2012 production year for his Wenog wells. (Testimony of Theodore Loukides; Staff Exhibit A, Affidavit of Ted Loukides, sworn to January 21, 2014.)
14. Respondent was responsible for filing the 2012 annual well report and as of the date of the hearing had not done so. (Testimony of Theodore Loukides.)
15. As shown by the Affidavit of Service of Keisha Wilkerson sworn to February 24, 2014, Department staff served the

notice of hearing and complaint together with a supporting affidavit of Ted Loukides on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that were delivered on January 25, 2014. Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on January 22, 2014. (Staff Exhibit B)

16. The notice of hearing and complaint allege a violation of 6 NYCRR 551.2(b) for failure to file a complete and accurate AWR for respondent's Wenog wells. (Staff Exhibit A)
17. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on February 28, 2014, as directed in the notice of hearing. (Staff Exhibit A; Hearing Record.)

Discussion

Department staff's proof presents a prima facie case demonstrating that respondent failed to timely file a complete and accurate AWR for the 2012 production year for the Wenog 1, 2, 3, 4, 5, 6, 7, 8, and 9 wells (API Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00, respectively), being those wells set forth in Finding of Fact 2, above, in violation of 6 NYCRR 551.2(b).

The record shows that Department staff duly served the notice of hearing and complaint upon respondent; and that respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on February 28, 2014, as directed in the notice of hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent failed to timely file a complete and accurate AWR for the 2012 production year for the Wenog wells in violation of 6 NYCRR 551.2(b). The Department is entitled to judgment upon the facts proven.

Department staff's proposed civil penalty of \$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.

Recommendation

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

1. granting Department staff's motion for default, finding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. holding that, based upon the proof adduced at the adjudicatory hearing, respondent violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2012 production year for the Wenog 1, 2, 3, 4, 5, 6, 7, 8, and 9 wells (API Well Numbers 31-009-66938-00-00, 31-009-66939-00-00, 31-009-66940-00-00, 31-009-66941-00-00, 31-009-66942-00-00, 31-009-66943-00-00, 31-009-66944-00-00, 31-009-66945-00-00, and 31-009-66946-00-00, respectively);
3. directing respondent to file the required annual well report with the Department within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing respondent 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 proper.

/s/

Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
March 17, 2014

EXHIBIT CHART – AWR EXPEDITED PROCEEDINGS

Matter of Thomas A. Gilray – Allegany, New York – DEC Case No. 2520-2013DK

February 28, 2014 – Region 9 Office

Edirol File No. 050330122959

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
A	Cover Letter from David H. Keehn, Esq. to respondent, dated January 21, 2014 with Notice of Hearing and Complaint, dated January 21, 2014, Order on Consent, Statement of Readiness, dated January 21, 2014, Affidavit of Ted Loukides sworn to January 21, 2014, and Schedule of Compliance.	✓	✓	Department Staff	
B	Affidavit of Service of Keisha Wilkerson, dated February 24, 2014, including USPS attachments.	✓	✓	Department Staff	
C	Annual Well Report for production year 2011, received July 2, 2012.	✓	✓	Department Staff	
D	Cover Letter, reminder to submit Annual Well Report, from Donald J. Drazan to respondent, dated January 9, 2013. Cover Letter, notice of missing 2012 Annual Well Report, from John K. Dahl to respondent, dated July 15, 2013. Cover Letter, notice of violation, missing 2012 Annual Well Report, from John K. Dahl to respondent, dated December 3, 2013 with consent order and USPS attachment.	✓	✓	Department Staff	