

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

In the Matter of the Alleged Violations of Article 23, Title 3 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

MICHAEL J. McCAFFERY, individually and as principal officer of M.J. McCAFFERY OIL CO. and McCAFFERY & KRAMPF OIL CO.,

DEC Case No.
CO 9-20210316-8

Respondents.

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department or DEC) served respondents Michael J. McCaffery (McCaffery), individually and as principal officer of M.J. McCaffery Oil Co. (McCaffery Oil) and McCaffery & Krampf Oil Co., with notice of pre-hearing conference, hearing and complaint dated November 23, 2021 (complaint), alleging respondents violated ECL article 23, title 3 and 6 NYCRR parts 551, 555, and 556 with respect to (a) forty-eight (48) oil wells operated by respondents Michael J. McCaffery and M.J. McCaffery Oil Co. and (b) three (3) oil wells operated by respondents Michael J. McCaffery and McCaffery & Krampf Oil Co. These wells are located in Cattaraugus County, New York.

Staff served the notice of hearing and complaint on respondents by certified mail on November 24, 2021, which was received by respondents on December 6, 2021. Specifically, staff set forth eight causes of action, alleging violations of:

1. 6 NYCRR 555.1 and 555.2 (failure to plug and abandon fifty [50] oil wells that had been shut-in for more than one year);
2. 6 NYCRR 556.5(a) (failure to prevent leaks and pollution at seven [7] oil wells);
3. 6 NYCRR 556.1(b) and 556.2(c) (failure to maintain adequate wellhead controls at nineteen [19] oil wells);
4. ECL 23-0305 (8)(f) and 6 NYCRR 551.2 (failure to submit complete and accurate annual well reports for 2018, 2019 and 2020);
5. 6 NYCRR 551.1 (failure to submit complete and up-to-date organizational reports for the registered well operators);
6. ECL 23-0305(8)(k) and 6 NYCRR 551.4 (failure to submit financial security for six [6] oil wells);

7. 6 NYCRR 556.4 (failure to keep and maintain well sites free of debris and vegetation for thirty-one [31] oil wells); and
8. 6 NYCRR 556.6 (failure to have acceptable signage at twenty-seven [27] oil wells).¹

The complaint seeks an order:

- (1) finding respondents in violation of the above-referenced laws and regulations;
- (2) assessing a civil penalty in the amount of five hundred thousand dollars (\$500,000);
- (3) directing respondents to reimburse the oil and gas account referenced at ECL 23-1903(1)(a) for any costs expended by the Department to plug any of respondents' wells within thirty (30) days of respondents' receipt of the Department's invoice;
- (4) directing respondents to provide notice of the Commissioner's order to any potential purchasers or other future owners or lessees of interests in leases or mineral estates that respondents own covering wells listed in Exhibit A of the complaint of the obligations imposed by the order, if respondents have not fulfilled such obligations at the time of transfer of ownership to another party of such leases, wells or mineral estates;
- (5) directing respondents to perform the corrective actions listed in the complaint; and
- (6) granting such other relief as may be deemed appropriate (*see* Complaint at 4-5, 27-32).

Administrative Law Judge (ALJ) Lara Q. Olivieri of the Department's Office of Hearings and Mediation Services was assigned to this matter. Respondents did not answer the complaint but sent a letter to ALJ Olivieri dated December 13, 2021 with copies of two agreements and one correspondence (dated March 10, 2021 to Theodore Loukides). The letter did not address the complaint or explain the relevance of the attachments.

Following ALJ Olivieri's hiring by another state entity, the matter was reassigned to ALJ Michael S. Caruso, who convened the pre-hearing conference virtually on January 13, 2022. Department staff was represented by David Keehn, Esq. No one appeared on behalf of respondents.

On March 24, 2022, Department staff served a notice of motion and motion for order without hearing (motion) with supporting papers on respondents by first-class mail. In the motion, staff made certain modifications to the complaint. In that regard, staff withdrew the relief sought against respondents McCaffery & Krampf Oil Co. and Michael J. McCaffery (in his capacity as the legal alter ego McCaffery & Krampf Oil Co.). Staff also reduced the relief requested in the sixth cause of action and requests that respondents McCaffery and McCaffery Oil be directed to post financial security in the amount of two thousand five hundred dollars (\$2,500) for the Hill Lease 4 well. In addition, staff withdrew in its entirety its request that respondents provide notice of the order to any potential

¹ The numbered violations represent the corresponding number for each cause of action. As noted in the Summary Report, staff's complaint includes a ninth, tenth and eleventh cause of action which are, in actuality, requests for relief (*see* Summary Report at 2).

purchasers. With respect to the civil penalty requested, staff reduced the penalty to four hundred thirty thousand dollar (\$430,000). (See Motion at 3-4, ¶¶ 8-9).

In the motion, staff requests that I issue an order finding respondents, McCaffery and McCaffery Oil, in violation of the statutes and regulations cited in the motion and directing respondents to:

- submit notices of intention (NOIs) to plug and abandon the wells identified in the motion as requiring plugging, together with a proposed schedule to complete such plugging and abandoning, within fifteen (15) days of the effective date of the order. Both the schedule and the NOIs would be submitted for the Department's review and approval. The schedule is to call for all wells to be plugged and abandoned as required by Department regulation at a minimum rate of six (6) wells per month, and for all such wells to be plugged and abandoned at the latest nine (9) months after the effective date of the order. In addition, respondents are to plug and abandon such wells in accordance with permits issued by the Department, under the supervision of Department staff, and within the periods for which the permits are effective;
- make all repairs necessary to stop any leaks and remediate pollution at all wells identified in the motion as leaking within fifteen (15) days of the effective date of the order;
- repair any inadequate wellheads at all wells identified in the motion as requiring such repair within fifteen (15) days of the effective date of the order unless a longer period is agreed to in writing by the Department;
- submit complete, acceptable, and correct annual well reports for the calendar years 2018, 2019 and 2020 within sixty (60) days of the effective date of the order unless a longer period is agreed to in writing by the Department;
- submit a complete and correct organizational report for any entity that will operate wells at issue in this proceeding, which entity must be duly authorized by the jurisdictional state, county, and local government agencies, as appropriate, to conduct business in New York State within sixty (60) days of the effective date of the order;
- clear all excessive debris and vegetation from the wells and well sites identified in the motion as requiring such clearing within sixty (60) days of the effective date of the order, unless a longer period is agreed to in writing by the Department;
- post adequate identification at the wells identified in the motion as requiring such identification within sixty (60) days of the effective date of the order, unless a longer period is agreed to in writing by the Department;
- reimburse the oil and gas account referenced at ECL 23-1903(1)(a), within 30 days of receipt of an invoice therefor, for any costs the Department is required to expend in the future to plug any of respondents' wells;
- pay a civil penalty in the amount of \$430,000, jointly and severally assessed against Michael J. McCaffery and M. J. McCaffery Oil Co., within fifteen (15) days of the effective date of the order;
- post a financial security of \$2,500 for the Hill Lease 4 well within (sixty) 60 days of the effective date of the order;
- submit color photographs documenting the completion of all required corrective actions; and

- comply with such other and further relief as the Commissioner deems appropriate. (*See* Motion at 18-20).

The motion reduced the number of wells involved in the alleged violations to forty-six (46) wells. These wells include the following:

Hill Lease 1 (American Petroleum Institute [API] Well Number 31-009-19130-00-00²)
 Hill Lease 2 (31-009-19129-00-00)
 Hill Lease 4 well (31-009-19362-00-00)³
 Hill U-1 (31-009-56123-00-00)
 McCaffery 98 (31-009-56160-00-00)
 Roggenbaum 1 (31-009-62210-00-00)
 Roggenbaum 2 (31-009-62211-00-00)
 Roggenbaum 3 (31-009-62212-00-00)
 Roggenbaum 4 (31-009-62213-00-00)
 Roggenbaum 6 (31-009-62215-00-00)
 Roggenbaum 9 (31-009-62218-00-00)
 Roggenbaum 10 (31-009-62219-00-00)
 Roggenbaum 11 (31-009-62220-00-00)
 Roggenbaum 12 (31-009-62221-00-00)
 Roggenbaum 13 (31-009-62222-00-00)
 Roggenbaum 14 (31-009-62223-00-00)
 Roggenbaum 15 (31-009-62224-00-00)
 Roggenbaum 16 (31-009-62225-00-00)
 Roggenbaum 19 (31-009-62228-00-00)
 Roggenbaum 20 (31-009-62229-00-00)
 Hill a (31-009-66398-00-00)
 Hill 1 (31-009-66399-00-00)
 Hill 2 (31-009-66400-00-00)
 Hill 4 (31-009-66402-00-00)
 Hill 5 (31-009-66403-00-00)
 Hill 6 (31-009-66404-00-00)
 Hill 7 (31-009-66405-00-00)
 Hill 8 (31-009-66406-00-00)
 Hill 9 (31-009-66407-00-00)
 Hill 10 (31-009-66408-00-00)
 Hill 11 (31-009-66409-00-00)
 Hill 12 (31-009-66410-00-00)
 Hill 13 (31-009-66411-00-00)
 Hill 14 (31-009-66412-00-00)
 Hill 15 (31-009-66413-00-00)

² The referenced API numbers are from Exhibit B to the Complaint (Table 1 attached to letter dated May 21, 2018 from Theodore N. Loukides, Chief, Oil & Gas Compliance and Enforcement Section, to Michael J. McCaffrey).

³ Hill Lease 4 well is producing oil and is not abandoned. Accordingly, staff is not seeking to have the Hill Lease 4 well plugged (*see* Motion at 8 n3). Staff is, however, seeking corrective action relating to the Hill Lease 4 well, and associated penalties (*see id.*).

Hill 16 (31-009-66414-00-00)
Hill 17 (31-009-66415-00-00)
Hill 18 (31-009-66416-00-00)
Hill 19 (31-009-36417-00-00)
Hill 20 (31-009-66418-00-00)
Sue 21 (31-009-67343-00-00)
Sue 22 (31-009-67344-00-00)
Sue 23 (31-009-67345-00-00)
Sue 40 (31-009-67348-00-00)
Sue 41 (31-009-67349-00-00)
Sue 44 (31-009-67350-00-00).

Respondents served correspondence, agreements and exhibits on Department staff in response to staff's motion. ALJ Caruso prepared the attached summary report, which I adopt as my decision, subject to my comments below.

As set forth in the ALJ's summary report, Department staff's proof establishes a prima facie showing that respondents violated the statutory and regulatory provisions alleged in the complaint and motion. Respondents failed to raise a material issue of fact requiring a hearing on any of staff's eight causes of action. The ALJ recommends that Department staff's motion for order without hearing be granted on each cause of action.

I concur that staff is entitled to summary judgment pursuant to 6 NYCRR 622.12. The pleadings and papers submitted in support of the motion provide a prima facie showing that respondents committed the violations cited in the complaint and in the motion. The evidence submitted by staff demonstrates as a matter of law that respondents failed to comply with the law and regulations alleged by staff. Moreover, I concur with the ALJ's conclusions that respondents McCaffery and McCaffery Oil are the owners and operators of the forty-six (46) wells set forth in the motion and are jointly and severally liable for the violations proven by staff.

Department staff in its papers identified various environmental impacts including leaks around several well casings, the lack of wellhead controls to maintain and control oil flows, and overgrown vegetation around various wells (*see e.g.* affidavit of Theodore Loukides [Loukides Aff.], sworn to March 24, 2022, ¶¶ 39, 47, 69-77; affidavit of David McCoy [McCoy Aff.], sworn to March 23, 2022, ¶¶ 12-19; affidavit of Justin Schwab [Schwab Aff.], sworn to March 23, 2022, ¶¶ 10-17). Staff correctly points out that oil well laws and regulations are designed to (a) protect groundwater; (b) prevent the escape of natural gas from unplugged wells to the atmosphere; and (c) prevent pollution, waste of oil and commingling of oil, brine, and fresh water (*see* Loukides Aff. ¶¶ 39, 70; Schwab Aff. ¶ 10; McCoy Aff. ¶ 12). The Department's regulations are important to prevent potential harm and actual damage caused by petroleum discharges from oil wells and that compliance with the applicable laws and regulations is of high priority (*see* Loukides Aff. ¶ 71). The corrective actions, as approved by this order, are authorized and appropriate.

Department staff, in its papers, sought a penalty of four hundred thirty thousand dollars (\$430,000). ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 (which includes violations of 6 NYCRR parts 551 and

556 at issue here) shall be liable for a penalty not to exceed eight thousand dollars (\$8,000) and an additional penalty of up to two thousand dollars (\$2,000) per day for each day the violation continues.

In support of its penalty request, Department staff considered DEE-1: Civil Penalty Policy (June 20, 1990), respondents' failure to cooperate, the duration of the violations, respondents' economic benefit of noncompliance, the importance of each violation to the regulatory scheme, the potential for environmental harm from petroleum discharges, and respondents' failure to plug forty-five wells resulting in the release of methane to the atmosphere, as well as respondents' overall failure to maintain the well sites and correct violations (*see* Loukides Aff. 64-77; affidavit of Nancy L. Allen sworn to March 22, 2022. ¶¶ 10-15; McCoy Aff. ¶¶ 12-20; Schwab Aff. ¶¶ 10-18). Based on the record before me, the recommended penalty of four hundred thirty thousand dollars (\$430,000) is authorized and appropriate.

Although the extent and duration of the violations support staff's requested penalty, I am taking into consideration the range of corrective actions that staff is requesting in the complaint and its motion for order without hearing. These corrective actions are important to address the current environmental harm arising from the violations and to protect against future environmental harm at these locations. In consideration of the corrective actions, the ALJ recommends suspending two hundred sixty thousand eight hundred dollars (\$260,800) or approximately sixty percent (60%) of the total penalty so long as respondents perform the corrective actions directed in this order. I concur with the ALJ's recommendation that a substantial portion of the penalty should be suspended subject to respondents' performance of the corrective actions directed in this order. Based on the record before me, and in consideration of the corrective actions that respondents are hereby directed to undertake, I have determined to set the payable portion of the civil penalty at one hundred thousand dollars (\$100,000) with the remaining portion of the penalty (three hundred thirty thousand dollars [\$330,000]) suspended so long as respondents timely perform the corrective actions set forth in this order and otherwise comply with the terms and conditions of this order.

I hereby direct that respondents submit the one hundred thousand dollars (\$100,000) to the Department within thirty (30) days of the service of this order upon respondents. I further direct that respondents must fully complete the corrective actions that are contained in the complaint, as modified by the motion for order without hearing and this order, within the time frames established herein. If respondents fail to comply with any of the terms and conditions of this order, including but not limited to the completion of the corrective actions and the payment of the non-suspended portion of the civil penalty, the suspended portion of civil penalty of three hundred thirty thousand dollars (\$330,000) shall immediately become due and payable to the Department.

With respect to the performance of the corrective actions, Department staff may, at its sole discretion, extend the date for the completion of one or more corrective actions upon good cause shown. Respondents must document any request for an extension in writing. Staff has requested that the timeframe for the corrective actions commence within designated time periods of the effective date of this order. This order establishes that the timeframes will commence upon the service of the order.

NOW, THEREFORE, having considered this matter and being duly advised, it is **ORDERED** that:

- I. Department staff's motion for order without hearing on staff's first, second, third, fourth, fifth, sixth, seventh and eighth causes of action against respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, pursuant to 6 NYCRR 622.12, is granted.
- II. Based on record evidence, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, are adjudged to have violated the following:
 - A. 6 NYCRR 555.1 and 555.2 for failing to plug and abandon forty-five (45) oil wells that had been shut-in and abandoned for more than one year;
 - B. 6 NYCRR 556.5(a) for failing to prevent leaks and pollution at six (6) oil wells;
 - C. 6 NYCRR 556.1 for failing to maintain adequate wellhead controls at eighteen (18) oil wells;
 - D. ECL 23-0305(8)(f) and 6 NYCRR 551.2 for failing to submit complete and accurate annual well reports for 2018, 2019 and 2020;
 - E. 6 NYCRR 551.1 for failing to submit complete and accurate updated organizational reports for the registered well operators;
 - F. ECL 23-0305(8)(k) and 6 NYCRR 551.4 for failing to submit financial security for one (1) oil well;
 - G. 6 NYCRR 556.4 for failing to maintain and keep well sites free of debris and vegetation for twenty-six (26) oil wells; and
 - H. 6 NYCRR 556.6 for failing to have acceptable signage at twenty-five (25) oil wells.
- III. Respondents Michael J. McCaffery and M.J. McCaffery Oil Co. are jointly and severally, assessed a civil penalty of four hundred thirty thousand dollars (\$430,000). Of this amount, three hundred thirty thousand (\$330,000) is suspended, conditioned upon respondents' compliance with the terms and conditions of this order, including but not limited to the completion of the corrective actions and the payment of the non-suspended portion of the civil penalty
- IV. Within thirty (30) days of service of this order on respondents Michael J. McCaffery and M.J. McCaffery Oil Co., respondents shall pay the non-suspended portion of the civil penalty of one hundred thousand dollars (\$100,000) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation in accordance with paragraph VII of this order.

V. If respondents Michael J. McCaffery and M.J. McCaffery Oil Co. fail to comply with any terms and conditions of this order, respondents shall immediately pay the suspended portion of the penalty, that is three hundred thirty thousand dollars (\$330,000).to the Department in accordance with paragraph VII of this order.

VI. Respondents Michael J. McCaffery and M.J. McCaffery Oil Co. shall:

A. 1) within fifteen (15) days of service of this order on respondents, submit notices of intention to plug and abandon the following wells:

- Hill Lease 1 and 2,
- McCaffery 98,
- Roggenbaum 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19, and 20,
- Hill a, U-1, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20,
- and
- Sue 21, 22, 23, 40, 41, and 44,

together with a proposed schedule to complete such plugging and abandoning. The notices of intention and the schedule are to be submitted for Department staff's review and approval;

2) schedule all wells to be plugged and abandoned as required by Department regulation at a minimum rate of six (6) wells per month, and for all such wells to be plugged and abandoned at the latest nine (9) months after the effective date of the order; and

3) plug and abandon such wells in accordance with permits issued by the Department, under the supervision of Department staff, and within the periods for which the permits are effective;

B. within fifteen (15) days of service of this order on respondents, make all repairs necessary to stop any leaks and remediate pollution at the Hill Lease 4, Roggenbaum 6, Roggenbaum 12, Roggenbaum 13, Roggenbaum 16, and Sue 40 wells;

C. within fifteen (15) days of service of this order on respondents, repair the inadequate wellheads on the Roggenbaum 4, Roggenbaum 9, Roggenbaum 15, Roggenbaum 19, Hill a, Hill 5, Hill 7, Hill 8, Hill 10, Hill 11, Hill 14, Hill 15, Hill 16, Hill 18, Hill 20, Sue 23, Sue 40 and Sue 41 wells;

D. within sixty (60) days of service of this order on respondents submit complete, acceptable, and correct annual well reports for the calendar years 2018, 2019 and 2020;

E. within sixty (60) days of service of this order on respondents, submit a complete and correct organizational report for any entity that will operate respondents' wells, which entity must be duly authorized by the jurisdictional state, county, and local government agencies, as appropriate, to conduct business in New York State;

- F. within sixty (60) days of service of this order on respondents, post financial security in the amount of \$2,500 for the Hill Lease 4 well;
- G. within sixty (60) days of service of this order on respondents, remove the excessive vegetation and debris from the Hill Lease 2, Roggenbaum 1, Roggenbaum 2, Roggenbaum 3, Roggenbaum 4, Roggenbaum 6, Roggenbaum 10, Roggenbaum 11, Roggenbaum 12, Roggenbaum 14, Roggenbaum 16, Roggenbaum 19, Hill a, Hill 1, Hill 8, Hill 11, Hill 15, Hill 16, Hill 17, Hill 18, Hill 20, Sue 21, Sue 23, Sue 40, Sue 41 and McCaffery 98 wells and well sites;
- H. within sixty (60) days of service of the order on respondents, place the required signage and identification at the Roggenbaum 3, Roggenbaum 9, Roggenbaum 10, Roggenbaum 11, Roggenbaum 12, Roggenbaum 13, Roggenbaum 14, Roggenbaum 15, Roggenbaum 16, Hill a, Hill 1, Hill 5, Hill 6, Hill 7, Hill 8, Hill 9, Hill 11, Hill 14, Hill 15, Hill 16, Hill 17, Hill 18, Hill 19, Hill 20, and Sue 44 wells;
- I. within thirty (30) days of receipt of an invoice from DEC, reimburse the DEC oil and gas account referenced at ECL 23-1903(1)(a) for any costs that the Department is required to expend to plug any of respondents' wells; and
- J. submit color photographs to the Department documenting the completion of all required corrective actions.

Department staff may, at its sole discretion, extend the date for the completion of one or more corrective actions upon good cause shown. Respondents must document any request for an extension in writing.

- VII. Respondents Michael J. McCaffery and M.J. McCaffery Oil Co. shall submit the penalty payment and all other submissions to:

Theodore Loukides, Chief
 NYS Department of Environmental Conservation
 Division of Mineral Resources
 Oil and Gas Compliance Enforcement Section
 625 Broadway, 3rd Floor
 Albany, New York 12233-6500

- VIII. Any questions or other correspondence regarding this order shall also be addressed to Theodore Loukides at the address referenced in paragraph VII of this order.

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

In the Matter of the Alleged Violations of Article 23, Title 3 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 -

SUMMARY REPORT

MICHAEL J. McCAFFERY, individually and as principal officer of M.J. McCAFFERY OIL CO. and McCAFFERY & KRAMPF OIL CO.,

DEC Case No.
CO 9-20210316-8

Respondents.

Proceedings

By notice of pre-hearing conference and hearing and complaint dated November 23, 2021, staff of the New York State Department of Environmental Conservation (Department or DEC) commenced this enforcement proceeding against respondents Michael J. McCaffery (McCaffery), individually and as principal officer of M.J. McCaffery Oil Co. (McCaffery Oil) and McCaffery & Krampf Oil Co. for alleged violations of ECL article 23, title 3 and 6 NYCRR parts 551, 555, and 556 related to 48 oil wells operated by respondents Michael J. McCaffery and M.J. McCaffery Oil Co. and 3 oil wells operated by respondents Michael J. McCaffery and McCaffery & Krampf Oil Co. in Cattaraugus County, New York. Staff served the notice of hearing and complaint on respondents by certified mail on November 24, 2021, which was received by respondents on December 6, 2021.

Respondents did not answer the complaint but sent a letter to then administrative law judge (ALJ) Lara Olivieri dated December 13, 2021 with copies of two agreements and one correspondence to Ted Loukides dated March 10, 2021. The letter to ALJ Olivieri stated that Mr. McCaffery did not want a pre-hearing conference and that he would only communicate in writing with the Office of Hearings and Mediation Services (OHMS). The letter did not address the complaint or explain the relevance of the attachments.

Department staff's complaint contains eleven causes of action alleging respondents violated the following:

1. 6 NYCRR 555.1 and 555.2 for failing to plug and abandon 50 oil wells that had been shut-in for more than one year;
2. 6 NYCRR 556.5(a) for failing to prevent leaks and pollution at 7 oil wells;

3. 6 NYCRR 556.1(b) and 556.2(c) for failing to maintain adequate well equipment and wellhead controls at 19 oil wells;
4. ECL 23-0305 (8)(f) and 6 NYCRR 551.2 for failing to submit complete and accurate annual well reports;
5. 6 NYCRR 551.1 for failing to submit a complete and up-to-date organizational report;
6. ECL 23-0305 (8)(k) and 6 NYCRR 551.4 for failing to submit financial security for 6 oil wells;
7. 6 NYCRR 556.4 for failing to keep and maintain well sites free of debris and vegetation for 31 oil wells; and
8. 6 NYCRR 556.6 for failing to have acceptable well or lease registration and identification signage at 27 oil wells.¹

The ninth, tenth and eleventh cause of action of the complaint are actually requests for relief as follows:

9. Staff requests, pursuant to ECL 23-0305(8), that respondents be directed to reimburse the oil and gas account referenced at ECL 23-1903(1)(a) for any costs expended by the Department to plug any of respondents' wells within thirty days of respondents' receipt of the Department's invoice;
10. Staff requests, pursuant to ECL 23-0305(8)(e), that respondents be directed to provide notice of the Commissioner's order to any potential purchasers or other future owners or lessees of interests in the well leases or mineral estates, if respondents have not fulfilled the obligations directed by the order at the time of transfer of ownership to another party of such leases, wells or mineral estates; and
11. The assessment of a \$500,000 penalty on respondents, jointly and severally.

In addition, staff requests the following relief:

- “1. On the first cause of action, an order directing respondents, jointly and severally, to come into compliance with the law by plugging and abandoning the identified wells and restoring the surrounding land pursuant to 6 NYCRR Part 555 under DEC oversight and pursuant to DEC permits;
- “2. On the second cause of action, an order directing respondents, jointly and severally, to stop all leaks and remediate all pollution at their wells and well sites;
- “3. On the third cause of action, an order directing respondents, jointly and severally, to repair all equipment, including wellheads, which are in need of repair;
- “4. On the fourth cause of action, an order directing respondents, jointly and severally, to come into compliance with the law by submitting updated and correct annual well reports for all wells;
- “5. On the fifth cause of action, an order directing respondents, jointly and severally, to come into compliance with the law by submitting updated organizational reports for the operators of the wells;
- “6. On the sixth cause of action, an order directing respondents Michael McCaffery and M.J. McCaffery Oil Co, jointly and severally, to come into compliance by posting required financial security of \$7,500 and directing respondents Michael McCaffery and McCaffery

¹ The numbered paragraphs represent the corresponding number of each cause of action.

& Krampf Oil Co, jointly and severally, to come into compliance by posting required financial security of \$7,500;

“7. On the seventh cause of action, an order directing the respondents, jointly and severally, to come into compliance with the law by clearing all debris and vegetation from their wells and well sites; [and]

“8. On the eighth cause of action, an order directing the respondents, jointly and severally, to come into compliance with the law by posting adequate identification at their wells and lease site sites[.]”

On December 20, 2021, I served a notice of pre-hearing conference on respondents advising that the pre-hearing conference would be held virtually on January 13, 2022 at 10:00 a.m. On January 13, 2022, I convened the pre-hearing conference as scheduled. David Keehn, Esq., and Theodore Loukides appeared on behalf of Department staff. Respondents did not appear. By letter to ALJ Olivieri, dated January 5, 2022, but not received until January 17, 2022, respondent McCaffery advised that he would not take part in the pre-hearing conference. Respondent further advised that he needed 90 days to prepare his defense.

On March 24, 2022, Department staff served the following on respondents by first-class mail: a notice of motion for an order without a hearing dated March 24, 2022, together with a motion for order without hearing (motion), affirmation of David H. Keehn, Esq. (Keehn Aff.), dated March 24, 2022 (attaching two exhibits), affidavit of Ellen Shupe Bell, sworn to March 21, 2022 (attaching one exhibit), affidavit of Theodore Loukides (Loukides Aff.), sworn to March 24, 2022 (attaching six exhibits), affidavit of David McCoy (McCoy Aff.), sworn to March 23, 2022 (attaching two exhibits), affidavit of Justin Schwab (Schwab Aff.), sworn to March 23, 2022 (attaching thirty-four exhibits), and affidavit of Nancy L. Allen (Allen Aff.), sworn to March 22, 2022 (*see* Appendix A attached hereto).

In staff’s motion, staff withdraws the relief sought against respondents McCaffery & Krampf Oil Co. and Michael J. McCaffery (in his capacity as the legal alter ego thereof). In addition, staff withdraws the relief requested in the sixth cause of action and requests the Commissioner direct respondents McCaffery and McCaffery Oil to post financial security in the amount of \$2,500 for the Hill Lease 4 well; and staff withdraws the relief requested in the tenth cause of action in its entirety. As a result of the foregoing, staff reduced the penalty requested to \$430,000. Staff requests that the Commissioner issue an order finding respondents, McCaffery and McCaffery Oil, in violation of the statutes and regulations cited in the motion and directing respondents to:

- submit notices of intention (NOIs) to plug and abandon the wells identified in the motion as requiring plugging, together with a proposed schedule to complete such plugging and abandoning, within 15 days of the effective date of the order. Both the schedule and the NOIs should be submitted for the Department’s review and approval. The schedule must call for all wells to be plugged and abandoned as required by Department regulation at a minimum rate of six wells per month, and for all such wells to be plugged and abandoned no later than nine months after the effective date of the order. In addition, respondents shall plug and abandon such wells in accordance with permits issued by the Department, under the supervision of Department staff, and within the periods for which the permits are effective;

- make all repairs necessary to stop any leaks and remediate pollution at all wells identified in the motion as leaking within 15 days of the effective date of the order;
- repair any inadequate wellheads at all wells identified in the motion as requiring such repair within 15 days of the effective date of the order unless a longer period is agreed to in writing by the Department;
- submit complete, acceptable, and correct annual well reports for the calendar years 2018, 2019 and 2020 within 60 days of the effective date of the order unless a longer period is agreed to in writing by the Department;
- submit a complete and correct organizational report for any entity that will operate wells at issue in this proceeding, which entity must be duly authorized by the jurisdictional state, county, and local government agencies, as appropriate, to conduct business in New York State within 60 days of the effective date of the order;
- clear all excessive debris and vegetation from the wells and well sites identified in the motion as requiring such clearing within 60 days of the effective date of the order, unless a longer period is agreed to in writing by the Department;
- post adequate identification at the wells identified in the motion as requiring such identification within 60 days of the effective date of the order, unless a longer period is agreed to in writing by the Department;
- reimburse the oil and gas account referenced at ECL 23-1903(1)(a), within 30 days of receipt of an invoice therefor, for any costs the Department is required to expend in the future to plug any of respondents' wells;
- pay a civil penalty in the amount of \$430,000, jointly and severally assessed against Michael J. McCaffery and M. J. McCaffery Oil Co. within 15 days of the effective date of the order;
- post a financial security of \$2,500 for the Hill Lease 4 well within 60 days of the effective date of the order;
- submit color photographs documenting the completion of all required remedial actions; and
- comply with such other and further relief as the Commissioner deems appropriate.

Respondents served undated correspondence and exhibits on Department staff in April 2022 in response to staff's motion (*see* Appendix A).

FINDINGS OF FACT

1. Respondents Michael J. McCaffery and M. J. McCaffery Oil Co. (respondents) maintain an address at 1875 Chipmonk Road, Allegany, New York. (*See* Keehn Aff. Exhibit B; Loukides Aff. Exhibits A, C.)
2. Theodore 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), organizational reports, requests

for transfer of well responsibilities, inspection forms, shut-in requests, financial security records and plugging records submitted to the Department. (See Loukides Aff. ¶¶ 3-6.)

3. Respondent M.J. McCaffery Oil Co. is an unincorporated company that is not registered as a business entity with the New York State Department of State. (See Keehn Aff. ¶¶ 87, 88.)
4. Respondent Michael J. McCaffery does business as M.J. McCaffery Oil Co. (See Loukides Aff. Exhibit C.)
5. Respondents McCaffery and McCaffery Oil are the registered owners and operators of 46 oil wells located in Cattaraugus County, New York, identified as follows:

- | | | | |
|-----------------|----------------------|-----------|-----------------------------------|
| • Hill Lease 2 | (31-009-19129-00-00) | • Hill 4 | (31-009-66402-00-00) |
| • Hill Lease 1 | (31-009-19130-00-00) | • Hill 5 | (31-009-66403-00-00) |
| • Hill Lease 4 | (31-009-19362-00-00) | • Hill 6 | (31-009-66404-00-00) |
| • Hill U-1 | (31-009-56123-00-00) | • Hill 7 | (31-009-66405-00-00) |
| • McCaffery 98 | (31-009-56160-00-00) | • Hill 8 | (31-009-66406-00-00) |
| • Roggenbaum 1 | (31-009-62210-00-00) | • Hill 9 | (31-009-66407-00-00) |
| • Roggenbaum 2 | (31-009-62211-00-00) | • Hill 10 | (31-009-66408-00-00) |
| • Roggenbaum 3 | (31-009-62212-00-00) | • Hill 11 | (31-009-66409-00-00) |
| • Roggenbaum 4 | (31-009-62213-00-00) | • Hill 12 | (31-009-66410-00-00) |
| • Roggenbaum 6 | (31-009-62215-00-00) | • Hill 13 | (31-009-66411-00-00) |
| • Roggenbaum 9 | (31-009-62218-00-00) | • Hill 14 | (31-009-66412-00-00) |
| • Roggenbaum 10 | (31-009-62219-00-00) | • Hill 15 | (31-009-66413-00-00) |
| • Roggenbaum 11 | (31-009-62220-00-00) | • Hill 16 | (31-009-66414-00-00) |
| • Roggenbaum 12 | (31-009-62221-00-00) | • Hill 17 | (31-009-66415-00-00) |
| • Roggenbaum 13 | (31-009-62222-00-00) | • Hill 18 | (31-009-66416-00-00) |
| • Roggenbaum 14 | (31-009-62223-00-00) | • Hill 19 | (31-009-36417-00-00) |
| • Roggenbaum 15 | (31-009-62224-00-00) | • Hill 20 | (31-009-66418-00-00) |
| • Roggenbaum 16 | (31-009-62225-00-00) | • Sue 21 | (31-009-67343-00-00) |
| • Roggenbaum 19 | (31-009-62228-00-00) | • Sue 22 | (31-009-67344-00-00) |
| • Roggenbaum 20 | (31-009-62229-00-00) | • Sue 23 | (31-009-67345-00-00) |
| • Hill a | (31-009-66398-00-00) | • Sue 40 | (31-009-67348-00-00) |
| • Hill 1 | (31-009-66399-00-00) | • Sue 41 | (31-009-67349-00-00) |
| • Hill 2 | (31-009-66400-00-00) | • Sue 44 | (31-009-67350-00-00) ² |

(See e.g. Complaint ¶¶ 27, 46; Exhibit A; Keehn Aff. Exhibit B; Loukides Aff. ¶ 18, Exhibit A; Motion ¶¶ 12, 17, 21, 25; McCoy Aff. ¶¶ 7, 9; Schwab Aff. ¶ 6.)

6. By request for well transfer dated August 12, 2016, respondents McCaffery and McCaffery Oil sought approval from the Department to transfer well responsibilities to Asomeo LLC. (See Loukides Aff. ¶ 31, Exhibit D.)

² American Petroleum Institute (API) Well Numbers provided in parenthesis.

7. In February and April 2017, Department staff inspected respondents' wells and found multiple violations of 6 NYCRR parts 551, 552, 555, and 556. (*See* Complaint Exhibit B; Loukides Aff. ¶ 35.)
8. On April 10, 2018, Department staff denied respondents' transfer request because: i) the wells to be transferred were not clearly identified in the request, ii) there were multiple ongoing violations at the wells that were identified, and iii) there was no financial security posted by the proposed transferee. (*See* Loukides Aff. ¶ 32, Exhibit E.)
9. As a result of staff's February and April 2017 inspections, Department staff issued a notice of violation, dated May 21, 2018, noting the violations at each well and directing respondents to properly identify each well, cut and clear all vegetation around the wells, plug or install an adequate wellhead on any well lacking a wellhead, file a plugging report for any wells that have been plugged, and repair any oil and brine leaks within 30 days of the letter. (*See* Complaint Exhibit B; Loukides Aff. ¶ 35.)
10. As of March 24, 2022, the violations listed in the May 21, 2018, notice of violation have not been corrected except that one well (Roggenbaum 17) was plugged by the United States Environmental Protection Agency (US EPA). (*See* Loukides Aff. ¶ 37; McCoy Aff. ¶ 11.)
11. As of March 24, 2022, respondents McCaffery and McCaffery Oil have not appealed the denial of the transfer request or submitted any subsequent well transfer requests. (*See* Loukides Aff. ¶¶ 33, 34.)
12. Respondents' Hill Lease 4 is a productive oil well. (*See* Loukides Aff. ¶¶ 10-14, Exhibit A.)
13. Respondents have not submitted financial security for respondents' Hill Lease 4 well. (*See* Loukides Aff. ¶¶ 26-28.)
14. Respondents' remaining 45 oil wells — Hill Lease, McCaffery, Roggenbaum, Hill and Sue oil wells — have not produced for more than three years and have not been plugged by respondents. (*See* Loukides Aff. ¶¶ 10, 18, Exhibit A; Complaint Exhibit A.)
15. Respondents did not request or receive permission to shut-in any of respondents' wells. (*See* Loukides Aff. ¶ 17.)
16. Justin Schwab is a Mineral Resources Specialist 2 in the Department's Division of Mineral Resources Region 9 Office in Allegany, New York. Mr. Schwab's duties include administration of ECL article 23 and 6 NYCRR part 550, *et seq.* including inspections of oil and gas wells and enforcement of the ECL and regulations. Mr. Schwab also has access to and custody of inspection reports. (*See* Schwab Aff. ¶¶ 3-6.)
17. On June 10, 12 and 30, 2020, Mr. Schwab inspected wells operated by respondents McCaffery and McCaffery Oil. As a result of the inspections, Mr. Schwab observed the following:

- A. Thirty-nine of respondents' wells — Hill Lease 1, 2, and 4, McCaffery 98, Roggenbaum 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19, and 20, Hill a, 1, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, and 20, Sue 21, 23, 40, 41, and 44 — were unplugged (*see* Schwab Aff. ¶ 6[e], *see generally* Exhibits A-AE; Loukides Aff. Exhibit B; Complaint Exhibit A);
 - B. Six of respondents' oil wells — Hill Lease 4, Roggenbaum 6, 12, 13 and 16, and Sue 40 — were leaking oil (*see* Schwab Aff. ¶ 6[c], Exhibits N, Q, U, V, Y, AC; Loukides Aff. Exhibit B; Complaint Exhibit A);
 - C. Seventeen of respondents' wells — Hill a, 5, 7, 8, 11, 14, 15, 16, 18 and 20, Roggenbaum 4, 9, 15 and 19, and Sue 23, 40 and 41 — had an inadequate or no wellhead (Schwab Aff. ¶ 6[d], Exhibits B-H, J-L, R, X, Z, AB-AE; Loukides Aff. Exhibit B; Complaint Exhibit A);
 - D. Twenty-six of respondents' oil wells — Hill Lease 2, Roggenbaum 1, 2, 3, 4, 6, 10, 11, 12, 14, 16, and 19, Hill a, 1, 8, 11, 15, 16, 17, 18, and 20, Sue 21, 23, 40, 41 and McCaffery 98 — were covered in debris or overgrown with vegetation (*see* Schwab Aff. ¶ 6[b], Exhibits A, D, E, G-K, L, M, O-Q, S-U, W-AD; Loukides Aff. Exhibit B; Complaint Exhibit A); and
 - E. Twenty-four of respondents' wells — Roggenbaum 3, 9, 10, 11, 12, 13, 14, 15, and 16, Hill a, 1, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17, 18 and 20, and Sue 44 — lacked identification (*see* Schwab Aff. ¶¶ 6[a], 8, Exhibits A-L, P[1], R-X; Loukides Aff. Exhibit B; Complaint Exhibit A).³
18. David McCoy is a Mineral Resources Technician 1 in the Department's Division of Mineral Resources Region 9 Office in Allegany, New York. Mr. McCoy's duties include administration of ECL article 23 and 6 NYCRR part 550, *et seq.* including inspections of oil and gas wells and enforcement of the ECL and regulations and completing inspection reports. (*See* McCoy Aff. ¶¶ 3-6.)
19. On December 4, 2020, Mr. McCoy inspected wells operated by respondents McCaffery and McCaffery Oil. As a result of the inspections, Mr. McCoy observed the following:
- A. Respondents' Hill 10 well had no wellhead;
 - B. Respondents' Hill 19 well lacked identification; and
 - C. Respondents' Hill 2, 10, 12, 13 and 19 wells were unplugged. (*See* McCoy Aff. ¶ 7[a]-[c]; Exhibits A, B; Loukides Aff. Exhibit B; Complaint Exhibit A.)
20. Respondents McCaffery and McCaffery Oil filed AWRs for the 2018, 2019 and 2020 production years. (*See* Loukides Aff. ¶¶ 9-12; Exhibit A.)
21. The AWR for the 2018 production year was received on March 20, 2019. Respondents reported the production or lack thereof for the McCaffery 98 and Hill Lease 1, 2, and 4 wells, but claimed the rights to the remaining 44 wells on the AWR were sold to Asomeo LLC and claimed Michael J. McCaffery was no longer the owner or operator of those wells. (*See* Loukides Aff. ¶¶ 9, 10; Exhibit A.)
22. On May 9, 2019, Department staff issued a notice of violation to respondents for failure to submit an acceptable AWR for the 2018 production year. (*See* Complaint Exhibit B; Loukides

³ The Schwab Aff. includes two exhibits labeled P. For clarity, I refer to the second Exhibit P as P[1].

Aff. ¶ 36.)

23. For the 2019 production year, respondents reported no production or lack thereof for any wells and claimed that M.J. McCaffery Oil Co. was not the owner or operator of the 51 wells listed on the AWR and indicated that Asoemo, LLC was the owner and operator. (*See Loukides Aff. ¶¶ 9, 10; Exhibit A.*)
24. For the 2020 production year, respondents reported the production or lack thereof for the McCaffery 4, 8, 13, 22, and 98 and Hill Lease 1, 2, and 4 wells, but did not submit an AWR for any other wells. (*See Loukides Aff. ¶¶ 9-12; Exhibit A.*)
25. Respondent McCaffery crossed out the certifications for the AWRs that he signed and did not provide production information for the wells noted above that were still registered to respondents McCaffery and McCaffery Oil. (*See Loukides Aff. ¶¶ 9, 10; Exhibit A.*)
26. Although respondents failed to report any production on the 2019 AWRs, the purchaser taker reports demonstrate respondents sold approximately 670 barrels of oil in 2019. (*See Loukides Aff. ¶ 12; Exhibit A.*)
27. As shown by the affidavit of service of Ellen Shupe-Bell (Shupe-Bell Aff.), sworn to March 21, 2022, Department staff served the notice of hearing and complaint on respondents by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that were received by respondents on December 6, 2021. (*See Shupe-Bell Aff.*)
28. In response to the complaint, respondent McCaffery sent correspondence to ALJ Olivieri dated December 13, 2021, with lease agreements dated May 14, 2018 and February 25, 2015 attached. (*See correspondence from Michael J. McCaffery, dated December 13, 2021.*)
29. On January 5, 2022, respondent McCaffery wrote ALJ Olivieri advising that he needed 90 days to prepare a defense to the alleged violations. (*See correspondence from Michael J. McCaffery, dated January 5, 2022.*)
30. As shown by the affirmation of David H. Keehn, Esq., respondents were served with the notice of motion for order without hearing and accompanying papers by first class mail on March 24, 2022. (*See Keehn Aff. at 2.*)
31. By correspondence received April 4, 2022, respondent McCaffery submitted accompanying papers to the Department. (*See correspondence from Michael J. McCaffery, received April 4, 2022, and attached papers.*)

DISCUSSION

Section 622.12 of 6 NYCRR provides for an order without hearing when upon all the papers and proof filed, the cause of action or defense is established sufficiently to warrant granting summary judgment under the CPLR in favor of any party. “Summary judgment is appropriate when no genuine, triable issue of material fact exists between the parties and the movant is entitled to judgment as a matter of law.” (*Matter of Frank Perotta*, Partial Summary Order of the Commissioner, January 10, 1996, at 1, *adopting* ALJ Summary Report.)

CPLR 3212(b) provides that a motion for summary judgment shall be granted, “if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” Once the moving party has put forward a prima facie case, the burden shifts to the non-movant to produce sufficient evidence to establish a triable issue. (*Matter of Locaparra*, Commissioner’s Decision and Order, June 16, 2003.)

Respondents opposing staff’s motion for an order without hearing must also lay bare their proof. The New York State Court of Appeals has “repeatedly held that one opposing a motion for summary judgment must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim or must demonstrate acceptable excuse for his failure to meet the requirement of tender in admissible form; mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient.” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980].) A shadowy semblance of an issue, or bald conclusory assertions, even if believable, are not enough to raise a triable issue of fact (*Metropolitan Bank of Syracuse v. Hall*, 52 AD2d 1084 [4th Dept 1976]). General denials are insufficient to raise an issue of fact on a summary judgment motion. (*See Gruen v Deyo*, 218 AD2d 865, 866 [3rd Dept 1995]; *Bronowski v Magnus Enterprises, Inc.*, 61 AD2d 879 [4th Dept 1978].)

As an initial matter, Department staff’s allegations regarding the liability of respondent Michael J. McCaffery must be addressed. Department staff’s proof demonstrates M.J. McCaffery Oil Co. is nothing more than the assumed named under which respondent McCaffery conducts business and has no legal existence of its own. The organizational report for M.J. McCaffery Oil Co. requires the filer to state “whether the entity is a corporation, association, partnership, individual, public authority or governmental entity.” Respondent McCaffery identified the entity as an “individual” and himself as the “owner.” (*See Loukides Aff. Exhibit C.*) In addition, Department staff makes a prima facie showing that respondent McCaffery is the only one who has represented respondent McCaffery Oil in person or by correspondence with the Department (*see Loukides Aff.* ¶¶ 23-25; *Schwab Aff.* ¶ 9; *McCoy Aff.* ¶ 10). The record in this matter clearly demonstrates that M.J. McCaffery Oil Co. is the assumed name by which respondent McCaffery does business. Respondents have offered nothing in opposition to staff’s prima facie showing that respondents McCaffery and McCaffery Oil are one and the same, and therefore may be held jointly and severally liable for the violations alleged in this matter. As a result, there are no material facts that would require a hearing regarding the basis for liability against respondents. Accordingly, as discussed further below, respondent McCaffery is liable for the violations Department staff alleged against respondent McCaffery Oil, and full relief may be obtained against respondents McCaffery and McCaffery Oil, jointly and severally.

Secondly, respondents' putative answer to the complaint and response to the motion must also be addressed in advance of discussing the alleged violations. Respondents argue that respondents are not responsible for most of the wells involved in this matter because respondents sold or leased the well rights to other entities. In essence, respondents are denying the allegations of the complaint and motion because respondents claim respondents are no longer legally responsible for the wells transferred pursuant to those agreements. Department staff, however, has made a prima facie showing that the transfer of well responsibilities was never approved by the Department. Moreover, as staff points out, the May 14, 2018 agreement between respondents and Asomeo LLC states that DEC approval is required and must be obtained within 90 days of the date of the agreement. Of equal import, the agreement states that respondents will be responsible for plugging the wells even if the transfer was approved. (*See Oil & Gas Lease Agreement between Michael J. McCaffery and MJ McCaffery Oil Company (lessor) and ASOMEO LLC (lessee), dated May 14, 2018, at D.*)

The request for well transfer submitted by respondents includes the following express language above the signature boxes on the form:

"The transferor acknowledges, until the Department approves the requested transfer, that it remains legally responsible for all aspects of each well including but not limited to, maintaining financial security, annual reporting and the proper plugging and abandonment of the well(s).

"Part of the processing of this request may include a site inspection of each well. Any and all deficiencies found must be remediated to the Department's satisfaction before the transfer will be approved." (*See Loukides Aff. Exhibit D.*)

Notwithstanding the fact that nearly twenty months transpired between respondents' request and staff's denial, the language of the request form is clear – by signing the request, respondents acknowledged that respondents remained responsible for each well until Department staff approved the transfer. As noted, Department staff has made a prima facie showing that the request was never approved.

Respondents do not refute staff's showing except to argue in a recent letter that the transfer was denied to keep control over respondents and the denial constituted continued harassment of Mr. McCaffery by the Department (*see* correspondence from Michael J. McCaffery to David Keehn, dated March 30, 2022). Those arguments are without merit. Respondents have made no attempt to address the deficiencies in the transfer request as noted by staff (*see* Findings of Fact Nos. 6-10). I find that respondents McCaffery and McCaffery Oil are the registered operators of the 46 oil wells listed above (*see* Finding of Fact No. 5) and conclude respondents are responsible for complying with the ECL and regulations pertaining to each of those wells. To the extent respondents blame others for any noncompliance at a well site, those arguments are without merit because respondents remain the authorized operators of those wells.

I conclude that respondents have not raised any material facts that would require a hearing regarding the authorized operator of respondents' 46 oil wells. Accordingly, I conclude that respondents McCaffery and McCaffery Oil, are the operators of the wells and are jointly and severally responsible for compliance with the law and regulations at each of the listed wells.

Staff's First Cause of Action

Department staff alleges respondents violated 6 NYCRR 555.1 and 555.2(a) and (c) for illegally shutting in and abandoning 45 of the 46 oil wells without properly plugging the wells. Section 555.1 provides, “[i]t shall be unlawful for any owner or operator to abandon any well, wells or lease without having plugged and abandoned such well or wells and effected surface restoration in the manner prescribed herein.” Section 555.2 makes it unlawful to shut-in a well capable of being produced on a commercial basis for more than one year without permission from the department for an extension of the time period not to exceed a year during which the shut-in is permitted. After the legal shut-in period expires, the owner or operator must begin producing the well or permanently plug and abandon it as provided in the regulations.

Staff has made a prima facie showing that respondents did not request and were not granted approval to shut-in any wells pursuant to 6 NYCRR 555.2 and that 45 of respondents’ wells have not produced since 2017. Moreover, staff’s proof demonstrates that many of respondents’ wells look like they have not produced in many years with open casings showing rust and deterioration. (*See Findings of Fact Nos. 17, 19; see e.g. Schwab Aff. Exhibits B, E-L, R, S, X, Z, AA, AB, AD, AE.*) I note that respondents’ Hill U-1 and Sue 22 wells were not recently inspected to determine the compliance status as were the remaining 44 wells, but those wells were listed on the 2018 and 2019 AWRs, and respondents did not report production for those wells. According to staff, respondents’ failure to produce oil or gas from 45 wells for more than three years constitutes abandonment of those wells as well as shutting in the wells, all in violation of 6 NYCRR 555.1 and 555.2.

The Commissioner has previously held, “there is a presumption of abandonment based upon an owner/operator's failure to report well production as required” (*Matter of Farrell*, Order of the Commissioner, July 30, 1996, at 5). Staff’s proof, in this matter, presents a prima facie showing that respondents did not report well production as required. Accordingly, the lack of reporting is presumptive evidence that the wells were in fact abandoned. Moreover, in this matter, Department staff presented evidence that many of the wells were shut-in, leaking, missing well heads, and overgrown with vegetation or debris (*see Findings of Fact Nos. 17, 19*).

Staff’s proof demonstrates that respondents’ 45 wells were shut-in from January 2018, at a minimum, and have not been permanently plugged and abandoned, in violation of 6 NYCRR 555.1 and 555.2(a) and (c). As discussed above, respondents’ arguments regarding responsibility for the wells is without merit. In response to staff’s motion, respondents argue that the agreements with Asomeo LLC are legally binding documents and state that Asomeo LLC has been producing the Roggenbaum 19 and 20 wells, as well as three unidentified Sue wells, with more planned for the future (*see correspondence from Michael J. McCaffery to David Keehn, dated March 30, 2022*). Respondents, however, have not provided any documentation such as AWRs noting the production. The 2017 and 2020 inspections of the wells that respondents claim are producing demonstrate the following: i) the Roggenbaum 19 well lacked a wellhead and was not producing; ii) the Roggenbaum 20 well could not be found at the permitted location; iii) the Sue 21 well had an open wellhead and was not operating or set to operate; the Sue 23, 40 and 41 wells had no wellheads; and the Sue 40 well lacked production equipment (*see Complaint Exhibit B; Schwab Aff. Exhibits Z, AA-AD; Loukides Aff. Exhibit B*).

As noted above, Department staff have not approved the transfer of well responsibility of respondents' wells to Asomeo LLC. Accordingly, respondents still bear the burden of ensuring compliance with the law and regulations even if Asomeo LLC is allegedly operating the wells illegally. Respondents have offered no material facts that are in dispute that require a hearing. I conclude that Department staff is entitled to summary judgment against respondents on the first cause of action for shutting in and abandoning 45 oil wells in violation of 6 NYCRR 555.1 and 6 NYCRR 555.2(a) and (c).

For relief on the first cause of action, Department staff requests respondents be directed to:

- 1) submit notices of intention (NOIs) to plug and abandon the wells identified in the motion as requiring plugging, together with a proposed schedule to complete such plugging and abandoning, for Department staff's review and approval, within 15 days of the effective date of the order;
- 2) schedule all wells to be plugged and abandoned as required by Department regulation at a minimum rate of six wells per month, and for all such wells to be plugged and abandoned at the latest nine months after the effective date of the order; and
- 3) plug and abandon such wells in accordance with permits issued by the Department, under the supervision of Department staff, and within the periods for which the permits are effective.

Respondents' wells have been shut-in and abandoned for a number of years. Accordingly, directing respondents to begin producing the wells after a legal period of shut-in expires, as anticipated by 6 NYCRR 555.2, is not required as an option in this instance. I am, however, cognizant of respondents' assertion that some of respondents' wells may have recently been returned to production by Asomeo LLC, albeit without authorization from the Department. If such is actually the case, it would seem an absurd result to order the plugging of a producing well without providing respondents the opportunity to cure the defects in transferring those wells that are producing. Respondents, and allegedly Asomeo LLC, however, admittedly ignored Department staff's denial of the transfer request and proceeded to return some wells to production without authorization from the Department more than four years after the transfer was denied. If there is something to be worked out between staff, respondents and Asomeo LLC, it will not affect my recommendation that the relief requested by staff be granted. Any attempt to fashion something more equitable would send the wrong message to the regulated community. Neither respondents nor any third party should benefit more than they already have from illegal and unauthorized activities associated with respondents' wells.

The relief requested by staff is supported by the record in this matter and appropriate under the circumstances. I conclude that respondents' Hill Lease 1 and 2, McCaffery 98, Roggenbaum 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19, and 20, Hill a, U-1, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Sue 21, 22, 23, 40, 41, and 44 wells must be plugged as requested by staff, with the exception that the time frames be measured from service of the order on respondents and not the effective date of the order.⁴

⁴ Table 1 to the May 21, 2018, notice of violation states the Hill U-1 well appears to be plugged and a plugging report must be submitted. No record of the well being plugged has been submitted (*see* Loukides Aff. ¶ 18).

In addition, staff requests that respondents be directed pursuant to ECL 23-0305(8)(e) to reimburse the DEC oil and gas account referenced at ECL 23-1903(1)(a) for any costs DEC is required to expend to plug any of respondents' wells, should respondents fail to plug the wells as directed, within 30 days of receipt of an invoice from DEC. The requested relief is supported and appropriate because staff has demonstrated that respondents have not addressed previous directions from Department staff to correct violations at respondents' wells. Moreover, administrative precedent supports the granting of the requested relief (*see e.g. Matter of Eric Stark*, Order of the Commissioner, February 17, 2017; *Matter of Schreiner Oil and Gas, Inc.*, Order of the Commissioner, January 5, 2021; *Matter of Turtle Oil Co., Inc.*, Order of the Commissioner, February 13, 2017; *Matter of Russel A. Weise, Jr.*, Order of the Commissioner, April 3, 2017).

Staff's Second Cause of Action

Department staff alleges that respondents are operating 6 wells that are leaking in violation of 6 NYCRR 556.5(a), which expressly prohibits pollution of the land, surface or ground fresh water resulting from the production of oil or gas wells. Staff's proof establishes a prima facie showing that the Hill Lease 4, Roggenbaum 6, 12, 13, and 16, and Sue 40 wells are leaking oil (*see* Finding of Fact No. 17[B]). Respondents have not offered any material facts in dispute regarding the allegations of the second cause of action or proof submitted by staff requiring a hearing.

I conclude that Department staff is entitled to summary judgment against respondents on the second cause of action for allowing the six wells to leak in violation of 6 NYCRR 556.5(a). Department staff requests that respondents be directed to make all repairs necessary to stop any leaks and remediate pollution at the Hill Lease 4, Roggenbaum 6, 12, 13, and 16, and Sue 40 wells within 15 days of the effective date of the order. Department staff's requested relief is supported and appropriate with the exception that time frames be measured from service of the order on respondents and not the effective date of the order.

Staff's Third Cause of Action

For a third cause of action, Department staff alleges respondents failed to maintain adequate wellhead controls for 18 of respondents' wells, Roggenbaum 4, 9, 15, and 19, Hill a, 5, 7, 8, 10, 11, 14, 15, 16, 18, and 20, and Sue 23, 40 and 41, in violation of 6 NYCRR 556.1(b). Staff presents a prima facie showing that those 18 wells lack adequate wellhead controls (*see* Findings of Fact Nos. 17[C] and 19[A]).

Notwithstanding respondents' assertion that some unidentified Sue wells are being produced, respondents have not offered any material facts in dispute regarding liability on the third cause of action that require a hearing. Moreover, as discussed above, respondents should not be rewarded for ignoring Department staff's determination to deny the transfer of respondents' wells. I conclude that Department staff is entitled to summary judgment against respondents on the third cause of action for failing to maintain adequate wellheads on the 18 wells in violation of 6 NYCRR 556.1(b).

Department staff requests that respondents be directed to repair the inadequate wellheads on the Roggenbaum 4, 9, 15, and 19, Hill a, 5, 7, 8, 10, 11, 14, 15, 16, 18, and 20, and Sue 23, 40 and 41 wells within 15 days of the effective date of the order unless a longer period is agreed to in writing by

the Department. Notwithstanding the fact that respondents will be directed to plug those same wells, immediate wellhead repairs will prevent leaks of oil, gas and brine from wells and the resulting pollution of land, water, and air resources (*see* Loukides Aff. ¶ 47). I conclude that the relief requested by staff is supported and appropriate with the exception that 15 days be measured from service of the order on respondents and not the effective date of the order.

Staff's Fourth Cause of Action

Department staff alleges, for a fourth cause of action, that respondents failed to submit complete and accurate annual well reports for the 2018, 2019 and 2020 production years, in violation of ECL 23-0305 (8)(f) and 6 NYCRR 551.2. Staff's proof presents a prima facie showing respondents submitted inaccurate and incomplete annual well reports for 2018, 2019 and 2020 (*see* Findings of Fact Nos. 20-26). I also find that any purported notices or legal notices regarding the authorized operator of the wells included in the AWRs or crossing out or refusing to sign the certification on the annual well reports as exhibited by respondents in the past constitute unacceptable submissions.

Respondents have not offered any material facts in dispute requiring a hearing except for respondents' assertion that respondents are not responsible for reporting wells transferred to Asomeo LLC. As discussed above, that transfer was never approved by Department staff and respondents remain responsible for submitting complete and accurate well reports for respondents' 46 wells. Accordingly, I conclude that Department staff is entitled to summary judgment against respondents on the fourth cause of action for failing to submit complete and accurate annual well reports for the 2018, 2019 and 2020 production years in violation of ECL 23-0305 (8)(f) and 6 NYCRR 551.2.

Department staff requests that respondents be directed to submit complete, acceptable, and correct annual well reports for the calendar years 2018, 2019 and 2020 within 60 days of the effective date of the order unless a longer period is agreed to in writing by the Department. I conclude that the relief requested by staff is supported and appropriate on this record with the exception that 60 days be measured from service of the order on respondents and not the effective date of the order.

Staff's Fifth Cause of Action

Department staff alleges that respondents failed to submit a complete and up-to-date organizational report for the registered well operators in violation of 6 NYCRR 555.1. Department staff asserts that respondents' organizational report does not contain accurate information because respondent McCaffery Oil is not registered as a business entity with the New York State Department of State. Staff's proof demonstrates that respondent McCaffery Oil is not registered with the Department of State and demonstrates that respondents' organizational report is inaccurate and, as I discuss further below, misleading.

Generally, when staff alleges a violation of 6 NYCRR 555.1, it stems from the operator failing to advise of an address change or some other change of information on the organizational report (*see Matter of Choudhury Oil & Gas Mining Corp*, Order of the Commissioner, September 7, 2021; *Matter of Russel A. Weise, Jr.*, Order of the Commissioner, April 3, 2017; *Matter of AJ Oil and Gas Exploration, Inc.*, Order of the Commissioner, August 25, 2021). Here, however, staff is alleging that the organizational report does not accurately describe the entity producing respondents' wells.

Respondents have not offered any material facts in dispute regarding the organizational report requiring a hearing.

Respondents' organizational report identifies "MJ McCaffery Oil Co" followed by "Michael J. McCaffery" as the entity and identifies Michael J. McCaffery as the agent to be served and lists Michael J. McCaffery as the owner of the identified entity. The organizational report also states that the entity is an individual. Once Department staff determined that M.J. McCaffery Oil Co is not registered as a business entity with the Department of State, staff could have contacted the Cattaraugus County Clerk's office to determine whether respondent Michael J. McCaffery had filed a certificate of doing business under an assumed name (dba) pursuant to General Business Law § 130. General Business Law § 130 provides, in part,

"1. No person shall hereafter (i) carry on or conduct or transact business in this state under any name or designation other than his or its real name, or (ii) carry on or conduct or transact business in this state as a member of a partnership, unless:
"(a) Such person, if other than a corporation, limited partnership or limited liability company, shall file in the office of the clerk of each county in which such business is conducted or transacted a certificate setting forth the name or designation under which and the address within the county at which such business is conducted or transacted, the full name or names of the person or persons conducting or transacting the same, including the names of all partners, with the residence address of each such person, and the age of any person less than eighteen years of age. Each certificate shall be executed and duly acknowledged by the person or, if there be more than one, by all of the persons conducting the business."

Respondents' organizational report gives the appearance that respondent McCaffery is doing business as M.J. McCaffery Oil Co., but the report is otherwise misleading because respondent McCaffery does not identify himself as doing business under that name. It is also misleading because those doing business with M.J. McCaffery Oil Co. would not know that they are doing business with an individual or sole proprietorship. Staff has made a prima facie showing that respondents failed to file an accurate organizational report in the first instance and failed to correct respondents' organizational report in violation of 6 NYCRR 551.1. Respondents do not offer any material facts in dispute requiring a hearing. Accordingly, I conclude that Department staff is entitled to summary judgment against respondents on the fifth cause of action for failing to submit a complete and up-to-date organizational report for the registered well operators in violation of 6 NYCRR 555.1.

Department staff requests that respondents be directed to submit a complete and correct organizational report for any entity that will operate the wells at issue in this proceeding, which entity must be duly authorized by the jurisdictional state, county, and local government agencies, as appropriate, to conduct business in New York State within 60 days of the effective date of the order. Staff's request is supported and appropriate with the exception that 60 days be measured from service of the order on respondents and not the effective date of the order.

Staff's Sixth Cause of Action

For a sixth cause of action, Department staff alleges that respondents failed to provide adequate financial security for respondents' six operational wells. Three of those wells were operated by McCaffery & Krampf Oil Co. and Mr. McCaffery, and as referenced above, staff withdrew its allegations against those respondents. Staff also notes in the motion that only one well operated by respondents McCaffery and McCaffery Oil, Hill Lease 4, is operational and producing and does not have the required financial security in violation of ECL 23-0305(8)(k) and 6 NYCRR 551.4. Staff's proof presents a prima facie showing that respondents have failed to provide financial security for the Hill Lease 4 oil well (*see* Findings of Fact Nos. 12, 13).

Respondents' papers do not offer any material facts in dispute regarding the required financial security requiring a hearing. I conclude that Department staff is entitled to summary judgment against respondents on the sixth cause of action for failing to provide adequate financial assurance for the Hill Lease 4 oil well in violation of ECL 23-0305(8)(k) and 6 NYCRR 551.4.

In its motion, Department staff requests that respondents McCaffery and McCaffery Oil be directed to post financial security in the amount of \$2,500 for the Hill Lease 4 well within 60 days of the effective date of the order. ECL 23-0305(8)(k) requires the posting of a \$2,500 financial security per well acceptable to the Department. The purpose of the financial security is to guarantee the performance of respondents' well plugging and abandoning obligations under 6 NYCRR part 555. Staff's request is supported and appropriate with the exception that 60 days be measured from service of the order on respondents and not the effective date of the order.

Staff's Seventh Cause of Action

In the complaint, Department staff alleges respondents failed to maintain and keep 31 well sites free of debris and excessive vegetation, including the McCaffery & Krampf Oil Co. Staff's motion alleges respondents McCaffery and McCaffery Oil failed to maintain and keep 27 well sites free of excessive vegetation or debris in violation of 6 NYCRR 556.4 (*see* motion ¶ 52). As proof, Department staff submits the Schwab Aff. and cites paragraph 6(b) in support of staff's assertion. The Schwab Aff., however, presents a prima facie showing that respondents failed to maintain and keep 26 wells free of excessive vegetation or debris. Staff's motion added the producing Hill Lease 4 well to the list of wells with excessive vegetation or debris, but the Schwab Aff. and accompanying photographs do not support the addition of that well to the 26 well sites attested to by Mr. Schwab.

Respondents' papers do not offer any material facts in dispute regarding respondents' failure to maintain and keep the 26 well sites free of excessive vegetation or debris requiring a hearing. The regulations require the operation of any well to be such as to keep and maintain all well locations free of rubbish, debris, dead grass, brush, weeds, and other inflammable material (6 NYCRR 556.4[b]). Accordingly, I conclude that Department staff is entitled to summary judgment against respondents on the seventh cause of action for failing to maintain and keep the 26 wells and well sites free of excessive vegetation or debris in violation of 6 NYCRR 556.4(b).

Department staff requests an order directing respondents' to remove the excessive vegetation and debris from the Hill Lease 2, Roggenbaum 1, 2, 3, 4, 6, 10, 11, 12, 14, 16, and 19, Hill a, 1, 8, 11, 15, 16, 17, 18, and 20, Sue 21, 23, 40, 41 and McCaffery 98 wells and well sites within 60 days of the effective date of the order unless a longer period is agreed to in writing by Department staff. Staff's request is supported and appropriate with the exception that 60 days be measured from service of the order on respondents and not the effective date of the order.

Staff's Eighth Cause of Action

Staff alleges that respondents failed to have adequate signage at a number of well sites in violation of 6 NYCRR 556.6. After removing the McCaffery & Krampf Oil Co. wells listed in the complaint, staff's motion alleges respondents operate 25 wells that do not have adequate signage. Pursuant to 6 NYCRR 556.6, operators are required to 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. The sign must show the name of the lease owner or operator, the name of the lease and the township location of the lease. In addition, a legible identifying numeral must be attached or painted on the wellhead, pumping unit or jack of each well or alternatively, a legible identifying sign must be placed near each well. Staff's proof presents a prima facie showing that respondents failed to place the required signage at 25 well sites in violation of section 556.6 (*see* Findings of Fact Nos. 17[E], 19[B]).

Respondents' papers do not offer any material facts in dispute regarding respondents' failure to place the required signage at the 25 well sites identified by Department staff requiring a hearing. Accordingly, I conclude that Department staff is entitled to summary judgment against respondents on the eighth cause of action for failing to place the required signage at the 25 well sites in violation of 6 NYCRR 556.6.

Staff requests an order directing respondents to place the required signage and identification at the Roggenbaum 3, 9, 10, 11, 12, 13, 14, 15, and 16, Hill a, 1, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19 and 20, and Sue 44 wells within 60 days of the effective date of the order unless a longer period is agreed to in writing by Department staff. Staff's request is supported and appropriate with the exception that 60 days be measured from service of the order on respondents and not the effective date of the order.

Penalty

In its motion, Department staff reduced the \$500,000 penalty requested in the complaint to a \$430,000 penalty request. ECL 71-1305 provides that it shall be unlawful for any person to "violate any of the provisions of or fail to perform any duty imposed by" ECL article 23 or "any rule or regulation promulgated thereunder or any order or condition of any permit of the department made pursuant thereto." ECL 71-1307 provides "any person who violates any provision or ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a civil penalty not to exceed eight thousand dollars and an additional penalty of two thousand dollars for each day during which such violation continues." Department staff justifies its penalty request by applying DEE-1: Civil Penalty Policy (June 20, 1990) and determining the maximum penalty for each violation alleged by staff, the economic benefit and the gravity of the violations.

Staff calculated a total maximum penalty of \$223,884,000 as follows:

- Failure to plug 45 wells – \$123,480,000 on the first cause of action using the date of the notice of violation, May 21, 2018, at the start date and February 18, 2022 as the end date.
- Failure to prevent leaks at 6 well sites – \$7,360,000 on the second cause of action using the dates of the 2020 inspections (June 10 [one well], June 12 [three wells] and June 30 [two wells]) for start dates and February 18, 2022 as the end date.
- Failure to install and maintain adequate wellheads at 17 well sites – \$20,778,000 on the third cause of action using the dates of the 2020 inspections (June 10 [five wells], June 12 [four wells] and June 30 [eight wells]) for start dates and February 18, 2022 as the end date.⁵
- Failure to file acceptable annual well reports – \$4,148,000 on the fourth cause of action using the dates (March 31, 2019, 2020 and 2021 respectively) that the respective AWRs were due as start dates and February 18, 2022 as the end date.
- Failure to file an updated organizational report – \$6,126,000 on the fifth cause of action staff using the date of the most recent organizational report, October 3, 2013 as the start date and February 18, 2022 as the end date.
- Failure to prevent excessive debris and vegetation at the 26 well sites - \$31,864,000 on the seventh cause of action using the dates of the 2020 inspections (June 10 [nine wells], June 12 [seven wells] and June 30 [ten wells]) for start dates and February 18, 2022 as the end date.
- Failure to install and maintain sufficient identification at 25 well sites - \$31,366,000 on the eighth cause of action using the dates of the 2020 inspections (June 10 [eight wells], June 12 [three wells], June 30 [fourteen wells]) and December 4 [one well]) for start dates and February 18, 2022 as the end date.⁶

Staff did not request a penalty on the sixth cause of action. Staff principal economist Nancy L. Allen estimated the economic benefit to respondents' from delaying the plugging of the 45 unplugged wells from May 15, 2018 through February 18, 2022 to be \$29,931. Mr. Loukides explains the gravity of the violations, the importance of each violation to the regulatory scheme and the potential for environmental harm from petroleum discharges and respondents' failure to plug resulting in the release of methane to the atmosphere, as well as respondents' overall failure to maintain the well sites and correct violations. Mr. Loukides asserts that the potential for environmental harm and respondents' lack of cooperation warrant a significant increase in the penalty above the economic benefit and justifies staff's requested penalty of \$430,000. (*See* Loukides Aff. 66-77; Allen Aff. ¶¶ 10-15.) In addition, Mr. McCoy and Mr. Schwab attest that the general deteriorated conditions of respondents' wells lead to environmental harm and state that respondents are among the worst and least responsive operators in addressing violations and ensuring their wells are operated in compliance the law and regulations (*see* McCoy Aff. ¶¶ 12-20; Schwab Aff. ¶¶ 10-18).

⁵ Staff proved 18 wells lacked adequate wellheads but only calculated the maximum penalty for 17 wells, not calculating a penalty for the well inspected on December 4, 2020.

⁶ Staff calculated the penalty for the June 12, 2020 inspection for 3 wells, including respondents' Sue 41 well. The inclusion of the Sue 41 well for this violation is inconsistent with the Schwab and McCoy Affidavits and inspection reports. Accordingly, the maximum statutory penalty for this cause of action is reduced by \$1,238,000 to arrive at the total maximum penalty of \$223,884,000. (*Compare* Schwab Aff. ¶ 6[a]; Loukides Aff. ¶ 60[g][ii], Exhibit B.)

Department staff breaks down the requested \$430,000 penalty as a percentage of the maximum penalty for each cause of action in relation to the total maximum penalty to arrive at the following requested penalties:

- Failure to plug 45 wells - \$236,500 (First Cause of Action)
- Failure to prevent leaks (6 wells) - \$15,200 (Second Cause of Action)
- Failure to install and maintain adequate wellheads (18 wells) - \$38,700 (Third Cause of Action)
- Failure to file acceptable annual well reports - \$8,600 (Fourth Cause of Action)
- Failure to file an updated organizational report - \$10,700 (Fifth Cause of Action)
- Failure to prevent excessive debris and vegetation at 26 well sites - \$60,150 (Seventh Cause of Action)
- Failure to install and maintain sufficient identification at 25 well sites - \$60,150 (Eighth Cause of Action) (*See Loukides Aff. ¶¶ 52-61.*)

Staff requests that respondents be directed to pay the civil penalty of \$430,000 within 15 days of the effective date of the order. DEE-1 instructs staff to determine the statutory maximum penalty starting from the day of the first provable violation, which staff did here. Staff has sufficiently supported the appropriateness of the economic benefit component as well as the gravity component of the requested penalty. The requested penalty is approximately 0.2 percent of the statutory maximum penalty. The record demonstrates that respondents have willfully ignored responsibility for the wells. Moreover, US EPA plugged 7 of respondents' wells with significant environmental problems to ensure protection of waters of the United States. US EPA plugged respondents' Sue 24, Sue 25, Roggenbaum 5, Roggenbaum 7, Roggenbaum 8, Roggenbaum 17 and the Roggenbaum 18 wells, which are not the subject of this proceeding but further demonstrate the seriousness and gravity of respondents' violations in this matter (*see Loukides Aff. ¶ 50*). In brief, staff's requested penalty is supported given respondents' history of noncompliance and lack of cooperation, the duration of the violations, and the potential environmental harm that can result from noncompliance with the regulations.

I find, however, that it would be appropriate to suspend some of the penalties and recommend an adjustment to staff's penalty request. First, a portion of the penalty for respondents' failure to plug should be suspended as an incentive for respondents to plug the 45 wells. I recommend that respondents be assessed a civil penalty of \$236,500 with \$45,000 payable for failing to plug 45 wells and \$191,500 suspended so long as respondents comply with the Commissioner's order. I also recommend that a portion of the penalties related to the wells with excessive vegetation and debris and the wells lacking identification be suspended as described below, conditioned upon respondents' compliance with the Commissioner's order. I refrain from further modification of staff's penalty request due to the gravity and duration of the violations. Therefore, I recommend the following penalties:

- Failure to plug 45 wells - \$236,500 with \$45,000 payable and \$191,500 suspended
- Failure to prevent leaks (6 wells) - \$15,200
- Failure to install and maintain adequate wellheads (18 wells) - \$38,700
- Failure to file acceptable annual well reports (3 years) - \$8,600
- Failure to file an updated organizational report - \$10,700

- Failure to prevent excessive debris and vegetation at 26 well sites - \$60,150 with \$26,000 payable and \$34,150 suspended
- Failure to install and maintain sufficient identification at 25 well sites - \$60,150 with \$25,000 payable and \$35,150 suspended

I conclude that a total penalty of \$430,000 with \$169,200 payable and \$260,800 suspended provided respondents comply with the remedial relief directed in the order is supported and appropriate. In addition, I recommend that respondents be directed to pay the \$169,200 penalty within 30 days of service of the order on respondents.

Staff also requests injunctive relief for each cause action. As discussed, and modified above, staff is entitled to the relief requested. I will not repeat my findings and conclusions on the requested relief here.

CONCLUSIONS OF LAW

1. By failing to plug and abandon 45 oil wells that had been shut-in and abandoned for more than one year, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated 6 NYCRR 555.1 and 555.2(a) and (c);
2. By failing to prevent leaks and pollution at 6 oil wells, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated 6 NYCRR 556.5(a);
3. By failing to maintain adequate well equipment and wellhead controls at 16 oil wells, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated 6 NYCRR 556.1 and 556.2;
4. By failing to submit acceptable complete and accurate annual well reports for 2018, 2019 and 2020, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated ECL 23-0305 (8)(f) and 6 NYCRR 551.2;
5. By failing to submit an updated organizational report, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated 6 NYCRR 551.1;
6. By failing to submit financial security for one oil well, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated ECL 23-0305 (8)(k) and 6 NYCRR 551.4;
7. By failing to maintain and keep well sites free of debris and vegetation for 26 oil wells, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, 6 NYCRR 556.4; and
8. By failing to have acceptable well or lease registration and identification signage at 25 oil wells, respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated 6 NYCRR 556.6.

RECOMMENDATIONS

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

1. Granting Department staff's motion for order without hearing on staff's first, second, third, fourth, fifth, sixth, seventh and eighth causes of action against respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally;
2. Holding that respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, violated the following:
 - a. 6 NYCRR 555.1 and 555.2(a) and (c) for failing to plug and abandon 45 oil wells that had been shut-in and abandoned for more than one year;
 - b. 6 NYCRR 556.5(a) for failing to prevent leaks and pollution at 6 oil wells;
 - c. 6 NYCRR 556.1 for failing to maintain adequate well equipment and wellhead controls at 18 oil wells;
 - d. ECL 23-0305 (8)(f) and 6 NYCRR 551.2 for failing to submit complete and accurate annual well reports for 2018, 2019 and 2020;
 - e. 6 NYCRR 551.1 for failing to submit an updated organizational report;
 - f. ECL 23-0305 (8)(k) and 6 NYCRR 551.4 for failing to submit financial security for 1 oil well;
 - g. 6 NYCRR 556.4 for failing to maintain and keep well sites free of debris and vegetation for 26 oil wells; and
 - h. 6 NYCRR 556.6 for failing to have acceptable well or lease registration and identification signage at 25 oil wells;
3. Assessing a civil penalty against respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, in the amount of four hundred thirty thousand dollars (\$430,000), with payment of two hundred sixty thousand eight hundred dollars (\$260,800) suspended conditioned upon respondents' compliance with the Commissioner's order;
4. Directing respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, to pay the non-suspended portion of the civil penalty, one hundred sixty-nine thousand two hundred dollars (\$169,200), within thirty (30) days of service of the Commissioner's order on respondents;
5. Directing respondents Michael J. McCaffery and M.J. McCaffery Oil Co. to immediately pay the suspended portion of the penalty, two hundred sixty thousand eight hundred (\$260,800), if respondents fail to comply with any terms and conditions of the Commissioner's order;

6. Directing respondents Michael J. McCaffery and M.J. McCaffery Oil Co., jointly and severally, to:
 - a.
 - i) submit notices of intention (NOIs) to plug and abandon the Hill Lease 1 and 2, McCaffery 98, Roggenbaum 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 14, 15, 16, 19, and 20, Hill a, U-1, 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20, Sue 21, 22, 23, 40, 41, and 44 wells, together with a proposed schedule to complete such plugging and abandoning, for Department staff's review and approval, within 15 days of service of the order on respondents;
 - ii) schedule all wells to be plugged and abandoned as required by Department regulation at a minimum rate of six wells per month, and for all such wells to be plugged and abandoned at the latest nine months after the effective date of the order; and
 - iii) plug and abandon such wells in accordance with permits issued by the Department, under the supervision of Department staff, and within the periods for which the permits are effective;
 - b. make all repairs necessary to stop any leaks and remediate pollution at the Hill Lease 4, Roggenbaum 6, 12, 13, and 16, and Sue 40 wells within 15 days of service of the order on respondents;
 - c. repair the inadequate wellheads on the Roggenbaum 4, 9, 15, and 19, Hill a, 5, 7, 8, 10, 11, 14, 15, 16, 18, and 20, and Sue 23, 40 and 41 wells within 15 days of service of the order on respondents unless a longer period is agreed to in writing by the Department;
 - d. submit complete, acceptable, and correct annual well reports for the calendar years 2018, 2019 and 2020 within 60 days of service of the order on respondents unless a longer period is agreed to in writing by the Department;
 - e. submit a complete and correct organizational report for any entity that will operate respondents' wells, which entity must be duly authorized by the jurisdictional state, county, and local government agencies, as appropriate, to conduct business in New York State within 60 days of service of the order on respondents;
 - f. post financial security in the amount of \$2,500 for the Hill Lease 4 well within 60 days of service of the order on respondents;
 - g. remove the excessive vegetation and debris from the Hill Lease 2, Roggenbaum 1, 2, 3, 4, 6, 10, 11, 12, 14, 16, and 19, Hill a, 1, 8, 11, 15, 16, 17, 18, and 20, Sue 21, 23, 40, 41 and McCaffery 98 wells and well sites within 60 days of service of the order on respondents unless a longer period is agreed to in writing by Department staff;
 - h. place the required signage and identification at the Roggenbaum 3, 9, 10, 11, 12, 13, 14, 15, and 16, Hill a, 1, 5, 6, 7, 8, 9, 11, 14, 15, 16, 17, 18, 19 and 20, and Sue 44 wells within 60 days of service of the order on respondents unless a longer period is agreed to in writing by Department staff;
 - i. reimburse the DEC oil and gas account referenced at ECL 23-1903(1)(a) for any costs the Department is required to expend to plug any of respondents' wells, within 30 days of receipt of an invoice from DEC;
 - j. submit color photographs documenting the completion of all required remedial actions; and

APPENDIX A

*Matter of Michael J. McCaffery (McCaffery), individually and as principal officer of
M.J. McCaffery Oil Co. (McCaffery Oil) and McCaffery & Krampf Oil Co.*

DEC File No. CO 9-20210316-8
Motion for Order Without Hearing

Department Staff's Papers

1. Cover letter dated March 24, 2022, enclosing notice of motion and motion for order without hearing and supporting papers
2. Notice of Motion for Order Without Hearing, dated March 24, 2022
3. Motion for Order Without Hearing, dated March 24, 2022, attaching the following exhibits:
 - A. Cover letter, Notice of Prehearing Conference and Hearing, and Complaint, all dated November 23, 2021, attaching the following exhibits:
 - A. M.J. McCaffery Oil Co. and McCaffery and Krampf Oil Co. Wells, Reported Production 2020 and Alleged Violations
 - B. Notices of Violation dated, May 9, 2019 and May 21, 2018 (attaching a list of wells and associated violations as Table 1)
4. Affidavit of Service of Ellen Shupe-Bell, sworn to March 21, 2022, attaching proof of certified mail delivery as Exhibit A
5. Affirmation of David H. Keehn, Esq., dated March 24, 2022, attaching the following exhibits:
 - A. *State of New York v. Lee*, Decision and Order, Sup Ct, Albany County, August 10, 2020, Walsh, J. index No. 7430-18
 - B. Correspondence from Michael J. McCaffery, dated December 13, 2021, with lease agreements dated May 14, 2018 and February 25, 2015 and correspondence to Mr. Loukides, dated March 10, 2021 attached
6. Affidavit of Theodore Loukides, sworn to March 24, 2022, attaching the following exhibits:
 - A. M.J. McCaffery Oil Co., Annual Well Reports for 2018, 2019 and 2020 with Purchaser Taker Reports
 - B. M.J. McCaffery Oil Co., Inspection Reports dated June 10, 2020, June 12, 2022. June 30, 2020, December 4, 2020
 - C. M.J. McCaffery Oil Co., Organizational Report, sworn to September 30, 2013
 - D. M.J. McCaffery Oil Co., Request for Well Transfer, sworn to August 12, 2016, with list of wells attached

- E. Denial of Request for Well Transfer, dated April 10, 2018, from Theodore N. Loukides to Michael J. McCaffery and M.J. McCaffery Oil Co.
 - F. NYSDEC DEE 1: Civil Penalty Policy
7. Affidavit of Justin Schwab, sworn to March 23, 2022, attaching the following exhibits:
- A. Photograph taken June 10, 2020 of Hill 1 well
 - B. Photograph taken June 10, 2020 of Hill 5 well
 - C. Photograph taken June 30, 2020 of Hill 7 well
 - D. Photograph taken June 30, 2020 of Hill 8 well
 - E. Photograph taken June 10, 2020 of Hill 11 well
 - F. Photograph taken June 30, 2020 of Hill 14 well
 - G. Photograph taken June 30, 2020 of Hill 15 well
 - H. Photograph taken June 30, 2020 of Hill 16 well
 - I. Photograph taken June 12, 2020 of Hill 17 well
 - J. Photograph taken June 10, 2020 of Hill 18 well
 - K. Photograph taken June 10, 2020 of Hill 20 well
 - K-1. Photograph taken June 10, 2020 of Hill 20 well
 - L. Photograph taken June 10, 2020 of Hill a well
 - M. Photograph taken June 10, 2020 of Hill Lease 2 well
 - N. Photograph taken June 10, 2020 of Hill Lease 4 well
 - O. Photograph taken June 30, 2020 of Roggenbaum 1 well
 - P. Photograph taken June 30, 2020 of Roggenbaum 2 well
 - P[1]. Photograph taken June 30, 2020 of Roggenbaum 3 well
 - Q. Photograph taken June 12, 2020 of Roggenbaum 6 well
 - R. Photograph taken June 30, 2020 of Roggenbaum 9 well
 - S. Photograph taken June 30, 2020 of Roggenbaum 10 well
 - T. Photograph taken June 12, 2020 of Roggenbaum 11 well
 - U. Photograph taken June 12, 2020 of Roggenbaum 12 well
 - V. Photograph taken June 30, 2020 of Roggenbaum 13 well
 - W. Photograph taken June 30, 2020 of Roggenbaum 14 well
 - X. Photograph taken June 30, 2020 of Roggenbaum 15 well
 - Y. Photograph taken June 30, 2020 of Roggenbaum 16 well
 - Z. Photograph taken June 12, 2020 of Roggenbaum 19 well
 - AA. Photograph taken June 10, 2020 of Sue 21 well
 - AB. Photograph taken June 12, 2020 of Sue 23 well
 - AC. Photograph taken June 12, 2020 of Sue 40 well
 - AD. Photograph taken June 12, 2020 of Sue 41 well
 - AE. Photograph taken June 10, 2020 of Hill 6 well
8. Affidavit of David McCoy, sworn to March 23, 2022, attaching the following exhibits:
- A. Photograph taken December 4, 2020 of Hill 10 well
 - B. Photograph taken December 4, 2020 of Hill 19 well
9. Affidavit of Nancy L. Allen, sworn to March 22, 2022

Respondents' Papers

- A. Correspondence from Michael J. McCaffery, dated December 13, 2021, with lease agreements dated May 14, 2018 and February 25, 2015 and correspondence to Mr. Loukides, dated March 10, 2021 attached (same as 5[B])
- B. Correspondence from Michael J. McCaffery, dated January 5, 2022
- C. Correspondence from Michael J. McCaffery, received April 4, 2022, with the following attachments:
- Release & Agreement between S & S Exploration LLC and Sando Ferruci (lessee) and MJ McCaffery Oil Co. and Michael McCaffery (lessor), dated April 23, 2014
 - Assignment of Lease between S & S Exploration, LLC (assignor) and Asomeo LLC (assignee), dated February 24, 2015
 - Correspondence from Michael J. McCaffery to Theodore N. Loukides, dated June 2, 2018
 - Oil & Gas Lease Agreement between Michael J. McCaffery and MJ McCaffery Oil Company (lessor) and ASOMEO LLC (lessee), dated May 14, 2018
 - Map showing location of unidentified well
 - Correspondence from Michael J. McCaffery to Theodore N. Loukides, dated March 10, 2021
 - Correspondence from Michael J. McCaffery, dated December 18, 2017
 - Correspondence from Michael J. McCaffery to David H. Keehn, Esq, dated March 30, 2022
 - Correspondence from M J McCaffery Oil Co. to David H. Keehn, Esq, dated March 30, 2022
 - Correspondence from M J McCaffery Oil Co. to Mr. Bechtel, dated November 3, 2018
 - Correspondence from Michael J. McCaffery, re: Sando Ferrucci and S&S Exploration LLC (same as C above)
 - Release & Agreement between Asomeo LLC and Michael J. McCaffery, MJ McCaffery Oil Co. and McCaffery & Krampf Oil Co., dated February 25, 2015
 - Notice of illegally plugged wells, received June 4, 2018
 - Sketch of Hill lease well locations
 - Photograph taken December 4, 2020 of Hill 19 well with notations