

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

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

- by -

RICHARD C. CLARK,

Respondent.

ORDER

DEC Case No.
CO 9-20200622-97

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent Richard C. Clark violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2019 calendar year for seven oil wells operated by respondent. These oil wells are known as the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandall 6 wells located in the Town of Bolivar, Allegany County, New York. The wells are designated by American Petroleum Institute (API) Well Numbers 31-003-66678-00-00, 31-003-66679-00-00, 31-003-66680-00-00, 31-003-66681-00-00, 31-003-66682-00-00, 31-003-66683-00-00, and 31-003-66684-00-00, respectively.

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

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter, and failed to appear for the adjudicatory hearing scheduled for March 9, 2021 (*see* Default Summary Report at 3-4 [Findings of Fact Nos. 10 and 13]). At the March 9, 2021 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Caruso reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers.

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 6). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent

failed to timely file an annual well report for the 2019 calendar year for the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandell 6 wells and, therefore, is in violation of 6 NYCRR 551.2(b).

Department staff correctly points out that the requirement to file annual well reports is important to determining the status of the State's resources given the potential or actual environmental harm that may result from the lack of accurate annual information about well activity. The identification of non-producing wells for plugging is significant for the prevention of groundwater contamination (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated April 6, 2021, ¶ 12; *see also* Affidavit of Ted Loukides, sworn to April 2, 2021, ¶¶ 10, 14).

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

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

The record demonstrates that respondent Richard C. Clark failed to submit a timely and complete report for the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandell 6 wells for the calendar year 2019. Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written and oral reminders, nothing in this record indicates that respondent filed an acceptable report for the 2019 calendar year until August 14, 2020, more than four months after the report was due (*see e.g.* Default Summary Report at 2-3 [Findings of Fact Nos. 4-7]). The civil penalty that Department staff is requesting is consistent with ECL 71-1307(1), the Department's Civil Penalty Policy (DEE-1), dated June 20, 1990, and administrative precedent (*see* Default Summary Report at 5-6; Affirmation of Anne Haas, Esq., dated April 6, 2021, ¶¶ 9-11, 13-14).

Based on the record before me, the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of one thousand five hundred dollars (\$1,500) to the Department within thirty (30) days of the service of this order upon respondent.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Richard C. Clark waived his right to be heard at the hearing.
- II. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent Richard C. Clark is determined to have violated 6 NYCRR 551.2(b), by failing to timely file a complete and accurate annual well report for the 2019 calendar year for the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandell 6 wells (API Well Numbers 31-003-66678-00-00, 31-003-66679-00-00, 31-003-66680-00-00, 31-003-66681-00-00, 31-003-66682-00-00, 31-003-66683-00-00, and 31-003-66684-00-00, respectively).
- III. Respondent Richard C. Clark is hereby assessed a civil penalty in the amount of one thousand five hundred dollars (\$1,500), to be paid within thirty (30) days of the service of this order upon respondent. Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph IV of this order.
- IV. The civil penalty payment shall be sent to the following address:

New York State Department of Environmental Conservation
Division of Mineral Resources
Oil and Gas Compliance Enforcement Section
625 Broadway, 3rd Floor
Albany, New York 12233-6500
Attn: Theodore N. Loukides, Chief.
- V. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph IV of this order.

VI. The provisions, terms and conditions of this order shall bind respondent Richard C. Clark and his agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: /s/
Basil Seggos
Commissioner

Dated: June 4, 2021
Albany, New York

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

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

**DEFAULT SUMMARY
REPORT**

- by -

RICHARD C. CLARK,

DEC Case No.
CO9-20200622-97

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Richard C. Clark (respondent) with a notice of hearing and complaint dated January 28, 2021, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b) for failure to file a timely annual well report for the 2019 calendar year for seven oil wells known as the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandall 6 wells located in the Town of Bolivar, Allegany County, New York. The wells are designated by American Petroleum Institute (API) Well Numbers 31-003-66678-00-00, 31-003-66679-00-00, 31-003-66680-00-00, 31-003-66681-00-00, 31-003-66682-00-00, 31-003-66683-00-00, and 31-003-66684-00-00, respectively.

The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 71-1305(2) and 6 NYCRR 551.2(b); (2) assessing a civil penalty in the amount of one thousand five hundred dollars (\$1,500); and (3) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent on January 30, 2021 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. As stated in staff's January 28, 2021 notice of hearing, a virtual adjudicatory hearing was convened before me at 10:00 a.m. on March 9, 2021. (*See* affirmation of Anne Haas [Haas Aff.], dated April 6, 2021, ¶ 2, Exhibits B, C.) Department staff was represented by Anne Haas, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent (*see id.* at ¶ 4).

I noted for the record that respondent failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. I reserved on the oral motion, allowing the record to remain open for

Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated April 6, 2021, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on or about April 6, 2021 (*see* affidavit of service of Melissa Evans, sworn to April 6, 2021). Respondent did not respond to the motion.

Applicable Regulatory Provisions

Section 551.2 Production and purchase reports.

* * *

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

* * *

Findings of Fact

1. Respondent Richard C. Clark maintains an address at 1552 County Route 5, Bolivar, New York. (*See* affidavit of Ted Loukides [Loukides Aff.], sworn to April 2, 2021, Exhibits 2, 3.)
2. Respondent Richard C. Clark operates the seven oil wells designated as API Well Numbers 31-003-66678-00-00, 31-003-66679-00-00, 31-003-66680-00-00, 31-003-66681-00-00, 31-003-66682-00-00, 31-003-66683-00-00, and 31-003-66684-00-00 and known as the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandall 6 wells located in the Town of Bolivar, Allegany County, New York. (*See* Loukides Aff. ¶¶ 4, 5, 6, Exhibits 1, 2, 3.)
3. Respondent is required to file annual well reports (AWRs) with the Department for each calendar year for each well respondent operates on a form supplied by the Department, as typified by Loukides Aff. Exhibit 4 (AWR sent to respondent for the 2019 calendar year). (*See* Loukides Aff. ¶ 4, Exhibit 4.)
4. On January 8, 2020, Department staff mailed respondent a cover letter and AWR form for the 2019 calendar year, pre-printed with respondent’s name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2020. Respondent failed to submit the 2019 AWR by March 31, 2020. (*See* Loukides Aff. ¶¶ 7, 8, Exhibit 4.)

5. On July 20, 2020, Department staff mailed respondent a notice of violation (NOV) advising respondent that respondent had failed to file an acceptable AWR by March 31, 2020. Included with the NOV was an order on consent to settle the matter within thirty days. The NOV advised respondent of the potential penalties for failing to submit the required AWR along with the signed order on consent. The notice of violation and consent order were mailed by certified mail return receipt requested and were received by respondent on July 24, 2020. (*See Loukides Aff. ¶ 9, Exhibit 5.*)
6. On August 3, 2020, Department staff received a 2019 AWR from respondent. Department staff determined that the AWR was unacceptable because respondent had left the “months of production” column blank. (*See Loukides Aff. ¶ 10, Exhibit 6.*)
7. Department staff called respondent on August 14, 2020. After advising respondent that the AWR was unacceptable, respondent and staff corrected the AWR over the phone and staff determined that AWR was acceptable. Staff also advised respondent that to resolve the violation completely, respondent must submit the order on consent along with the penalty payment or contact the Office of General Counsel to discuss settlement of the matter. Respondent did not submit a signed order on consent or penalty payment and did not contact counsel’s office. (*See Loukides Aff. ¶ 11.*)
8. On September 23, 2020, Department staff telephoned respondent and left a voicemail informing respondent that the Department had not received the signed order on consent or penalty payment. Staff advised respondent to contact the Office of General Counsel to resolve the violation. Respondent did not return staff’s call or submit the order on consent or penalty payment. (*See Loukides Aff. ¶ 12.*)
9. On November 3, 2020, Department staff telephoned respondent. At respondent’s request, staff mailed a copy of the July 20, 2020 NOV and accompanying documents to respondent. Respondent failed to submit the order on consent or penalty payment. (*See Loukides Aff. ¶ 13.*)
10. Respondent did not answer the complaint. (*See Haas Aff. ¶ 3.*)
11. Ted Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department’s Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division’s Bureau of Resource Development and Reclamation. Mr. Loukides duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all annual well reports (AWRs) submitted to the Department. (*See Loukides Aff. ¶¶ 1-3.*)
12. As shown by the affidavit of service of Melissa Evans, sworn to March 25, 2021, Department staff served the notice of hearing and complaint, statement of readiness, order on consent and invoice, on respondent by certified mail, pursuant to 6 NYCRR

622.3(a)(3), that was received by respondent on January 30, 2021. (See Haas Aff. Exhibit C.)

13. Respondent failed to appear at the March 9, 2021 hearing. (See Haas Aff. ¶ 4; hearing record.)

Discussion

A respondent upon whom a complaint has been served must serve an answer within 20 days of receiving a notice of hearing and complaint (*see* 6 NYCRR 622.4[a]). A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (6 NYCRR 622.15[a]). In addition, attendance by a respondent at a scheduled pre-hearing conference or hearing is mandatory, and failure to attend constitutes a default and a waiver of the opportunity for a hearing (*see* 6 NYCRR 622.8[c]; *see also* 6 NYCRR 622.15[a] ["A respondent's ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent's right to a hearing"]).

Upon a respondent's failure to answer a complaint or failure to appear for a pre-hearing conference or hearing, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain:

"(1) Proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;

"(2) Proof of respondent's failure to appear or failure to file a timely answer;

"(3) Consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;

"(4) A concise statement of the relief requested;

"(5) A statement of authority and support for any penalty or relief requested; and

"(6) Proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable."

(*see* 6 NYCRR 622.15[b][1] - [6] [effective September 16, 2020]).

As the Commissioner has held, "a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them" (*Matter of Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim[s]" alleged in the complaint (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3). Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018 [*Samber*], at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on March 9, 2021, as directed in the notice of

hearing; (iii) Department staff's papers provide proof of the facts sufficient to support the violations alleged and enable me to determine that staff has a viable claim; (iv) Department staff's papers include a concise statement of the relief requested (*see* motion for default judgment, wherefore clause; Haas Aff. Exhibit B [complaint]); (v) staff's motion includes a statement of authority and support for the penalty and relief requested (*see* Haas Aff. ¶¶ 9-14); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of Melissa Evans, sworn to April 6, 2021). Respondent did not file or serve a response to staff's motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file a complete and accurate AWR for the 2019 calendar year for respondent's Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandall 6 oil wells, in violation of 6 NYCRR 551.2(b).

Staff's complaint requested a total civil penalty of one thousand five hundred dollars (\$1,500). Staff's submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department's Civil Penalty Policy, *DEE-1*, and administrative precedent concerning similar violations (*see* Haas Aff. ¶¶ 9-14).¹ Department staff asserts that reporting requirements, such as those at issue here, provide the Department with important information about the status of the State's resources. According to Department staff, the failure to timely submit AWRs may result in potential and actual environmental harm. Staff explains that the AWRs identify non-producing wells for plugging, and that the failure to plug non-producing wells may result in contamination of groundwater with petroleum products, and the release of harmful greenhouse gases. In addition, Department staff transmits production information to affected State agencies and local governments for real property tax purposes. (*See* Haas Aff. ¶ 12; Loukides Aff. ¶¶ 10, 14.)

ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b). Department staff's proposed civil penalty of one thousand five hundred dollars (\$1,500) is consistent with the Department's Civil Penalty Policy (DEE 1, issued June 20, 1990) as well as applicable provisions of ECL article 71 and prior Commissioner orders. Furthermore, staff demonstrated the importance of AWRs to the regulatory scheme. Although an acceptable AWR was eventually received by the Department after staff called respondent to complete the AWR, "the timely filing of complete and accurate AWRs is critical to the regulatory requirements of this program" (*see Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at

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

2). Accordingly, I conclude that the penalty of one thousand five hundred dollars (\$1,500) requested by Department staff, is supported and appropriate.

Conclusion of Law

By failing to timely file a complete and accurate annual well report for the 2019 calendar year for the Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandell 6 oil wells, respondent Richard C. Clark violated 6 NYCRR 551.2(b).

Recommendation

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

1. granting Department staff's motion for default;
2. holding that respondent Richard C. Clark violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2019 calendar year for respondent's Brown 1, Crandall 1, Crandall 2, Crandall 3, Crandall 4, Crandall 5, and Crandell 6 oil wells (API Well Numbers 31-003-66678-00-00, 31-003-66679-00-00, 31-003-66680-00-00, 31-003-66681-00-00, 31-003-66682-00-00, 31-003-66683-00-00, and 31-003-66684-00-00);
3. directing respondent Richard C. Clark to pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) within thirty days (30) of the service of the Commissioner's order upon respondent; and
4. directing such other and further relief as he may deem just and appropriate.

/s/

Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
April 29, 2021

APPENDIX A

Matter of Richard C. Clark
DEC Case No. CO9-20200622-97
Motion for Default Judgment

1. Cover letter, dated April 6, 2021, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated April 6, 2021.
3. Motion for Default Judgment, dated April 6, 2021, attaching Exhibit A and affidavit of Ted Loukides;
 - A. Affirmation of Anne Haas, Esq., dated April 6, 2021, attaching Exhibits B-C;
 - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated January 28, 2021, and proposed Order on Consent and Invoice; and
 - C. Affidavit of Service of Melissa Evans, sworn to March 25, 2021, attaching United States Postal Service (USPS) electronic proof of delivery.
4. Affidavit of Ted Loukides, sworn to April 2, 2021, attaching Exhibits 1-6;
 1. List of wells and Tax Parcel Map depicting location of wells on property operated by Richard C. Clark;
 2. Organizational Report for Richard C. Clark, sworn to February 20, 2009;
 3. Request for Well Transfer to Richard C. Clark, sworn to February 20, 2009;
 4. Cover letter from Theodore N. Loukides to Richard C. Clark, dated January 8, 2020 with enclosed 2019 Annual Well Report form;
 5. Letter from Theodore N. Loukides to Richard C. Clark, dated July 20, 2020 (re: Notice of Violation – Failure to File Annual Well Report) with proposed order on consent, invoice and 2019 Annual Well Report form enclosed and USPS electronic proof of delivery attached; and
 6. 2019 Annual Well Report from Richard C. Clark, received August 3, 2020.
5. Affidavit of Service of Melissa Evans, sworn to April 6, 2021 (default motion papers).