

**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 -

ORDER

DEC Case No.
CO9-20190705-65

WILLIAM J. SAHLEM,

Respondent.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent William J. Sahlem violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2016 through 2018 calendar years for two wells (known as the Siwec 1 and Siwec 2 wells [designated by American Petroleum Institute (API) Well Numbers 31-029-19753-00-00 and 31-029-20812-00-00, respectively]). These two wells, which are owned and operated by respondent, are located in the Town of Aurora, Erie County, New York.

On August 6, 2020, an adjudicatory hearing was convened before Michael S. Caruso, Administrative Law Judge (ALJ) of the Department's Office of Hearings and Mediation Services, to address these violations. Respondent appeared at the hearing and expressed an interest in settling the matter. After discussing a schedule for settling the matter with the parties, ALJ Caruso directed the parties to settle the matter by August 27, 2020, and if the matter did not settle the hearing would be reconvened on September 23, 2020. ALJ Caruso also advised respondent that if respondent failed to appear at the reconvened hearing that Department staff may move for a default and submit its motion on the papers. Respondent indicated on the record that he understood.

The matter did not settle, and shortly before the September 23 hearing, respondent requested by email that the matter be postponed because he was unavailable. No further explanation was provided. ALJ Caruso responded and advised respondent that the hearing record would be opened as scheduled and Department staff would be allowed to respond to respondent's request. The ALJ also advised respondent that he could provide further explanation at that time. Respondent failed to appear at the hearing or otherwise

respond to the ALJ. At hearing, Department staff opposed respondent's request for a postponement because no explanation had been provided. ALJ Caruso advised Department staff that because respondent had defaulted in answering the complaint, he would consider staff's default motion on papers and provide respondent an opportunity to respond to staff's motion. By letter dated September 24, 2020, the ALJ canceled the hearing and directed Department staff to serve its motion and supporting papers on respondent by October 9, 2020 and directed respondent to serve a response by October 23, 2020. On October 7, 2020, Department staff served and filed its motion for a default judgment. Respondent did not respond. ALJ Caruso 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 on September 23, 2020, as was directed in the scheduling order and notice of adjourned hearing (*see* Default Summary Report at 2, and 5 [Findings of Fact Nos. 17 and 19]).

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 8). 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 the annual well reports for the 2016, 2017 and 2018 calendar years for the Siwieg 1 and Siwieg 2 wells and, therefore, is in violation of 6 NYCRR 551.2(b).

Respondent has indicated that the wells are for his personal use (*see e.g.* Affidavit of Ted Loukides, sworn to October 6, 2020 [Loukides Affidavit], Exhibits 7 and 8). Department staff correctly points out that the failure to timely file complete and accurate annual well reports may result in potential and actual environmental harm because the annual well reports identify (1) non-producing wells; (2) operational information regarding a well's viability; and (3) potential complications within wells that are precursors to well failure and which can lead to impacts to groundwater, surface water, soils and air quality (*see* Loukides Affidavit, ¶¶ 11 and 24).

Department staff, in its papers, sought a penalty of four thousand five hundred dollars (\$4,500), and the ALJ recommended that respondent William J. Sahlem 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).

The record demonstrates that respondent William J. Sahlem failed to submit timely and complete report for the two wells in calendar years 2016, 2017 and 2018. Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written reminders, nothing in this record indicates that respondent filed acceptable reports for the 2016, 2017 and 2018 calendar years until September 3, 2020, long after the dates when each of those reports were due (*see e.g.* Default Summary Report at 3-5 [Findings of Fact Nos. 5, 7, 8, 10-14, 20 and 21]). 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 7; Affirmation of Anne Haas, Esq., dated October 7, 2020, ¶¶ 17-21).

Based on the record before me, the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of four thousand five hundred dollars (\$4,500) to the Department within thirty (30) days of the service of this order upon him.

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 William J. Sahlem 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 William J. Sahlem is determined to have violated 6 NYCRR 551.2(b), by failing to timely file complete and accurate annual well reports for the 2016 through 2018 calendar years for the Siwec 1 and Siwec 2 wells (API Well Numbers 31-029-19753-00-00 and 31-029-20812-00-00, respectively).
- III. Respondent William J. Sahlem is hereby assessed a civil penalty in the amount of four thousand five hundred dollars (\$4,500), 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 William J. Sahlem 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: January 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 -

WILLIAM J. SAHLEM,

DEC Case No.
CO9-20190705-65

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent William J. Sahlem (respondent) with a notice of hearing and complaint dated May 8, 2020, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file timely annual well reports for the 2016 through 2018 production years for two wells (known as the Siwec 1 and Siwec 2 wells) located in Aurora, Erie County, New York. The Siwec wells are designated by American Petroleum Institute (API) Well Numbers 31-029-19753-00-00 and 31-029-20812-00-00, 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) directing respondent to submit the missing annual well reports; (3) assessing a civil penalty in the amount of four thousand five hundred dollars (\$4,500); and (4) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent on May 14, 2020 (*see* former 6 NYCRR 622.3[a][3]).¹ Respondent failed to answer the complaint as directed in the notice of hearing. As stated in staff's May 8, 2020 notice of hearing and in a second notice of hearing dated July 9, 2020, a virtual adjudicatory hearing convened at 10:00 a.m. on August 6, 2020. (*See* affirmation of Anne Haas [Haas Aff.], dated October 7, 2020, ¶¶ 2, 4, Exhibits B, D.) Department staff was represented by Anne Haas, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. Respondent William J. Sahlem appeared on his own behalf.

¹ 6 NYCRR part 622, Uniform Enforcement Hearing Procedures, was repealed and replaced effective September 16, 2020. Department staff commenced this proceeding before the effective date of the current part 622 regulations. Accordingly, jurisdictional service is reviewed and considered pursuant to former part 622. Staff's default motion papers were submitted after the effective date of the current part 622 and will be reviewed and considered pursuant to the current part 622 regulations.

At hearing, Department staff and respondent expressed an interest in settling the matter. On the record, I advised the parties that the matter must be settled by August 27, 2020. If the matter did not settle, I directed the parties to serve the evidence they intended to introduce at hearing on each other on or before September 10, 2020 and to appear at a virtual adjudicatory hearing on September 23, 2020. Respondent was also advised that if respondent failed to appear at the September 23 hearing, Department staff may move for a default and submit staff's motion on the papers. Respondent acknowledged that he understood.

By scheduling order and notice of adjourned hearing dated August 6, 2020 and served on the parties, I ordered the scheduling and provided instructions for attending the adjourned hearing. The matter did not settle, and Department staff filed and served the evidence staff intended to introduce at the hearing as directed in the scheduling order. Respondent did not serve or file any evidence. Less than two hours before the September 23 hearing was to be convened, respondent requested, by email, that the matter be postponed because he was not available. No further explanation was provided. I responded by email and advised the parties that I would open the hearing record as scheduled and provide Department staff the opportunity to respond to respondent's request before ruling on the request and provide respondent the opportunity to provide further explanation for his request at that time.

The hearing record was opened, and Department staff was present, but respondent failed to appear. Department staff opposed the request because no explanation was provided warranting a postponement. Because respondent had defaulted in answering the complaint, I advised Department staff that I would consider a motion on papers and provide respondent the opportunity to respond to staff's motion. Department staff stated that staff would submit its motion for a default judgment on the papers.

By letter dated September 24, 2020, I canceled the hearing and directed Department staff to serve staff's motion for a default judgment and supporting papers on respondent by October 9, 2020 and directed respondent to serve a response by October 23, 2020. As directed, Department staff served its motion for a default judgment and supporting papers on respondent on October 7, 2020 (*see* Appendix A, attached hereto [listing documents submitted on motion]). 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 William J. Sahlem resides at 190 Reserve Road, West Seneca, New York. (See Staff Exhibit B, Complaint ¶ 3; Affidavit of Ted Loukides (Loukides Aff.), sworn to October 6, 2020, ¶ 5, Exhibit 2.)
2. Respondent owns and operates the gas wells designated as API Well Numbers 31-029-19753-00-00 and 31-029-20812-00-00 and known as the Siwec 1 and Siwec 2 wells, respectively, located in the Town of Aurora, Erie County, New York. (See Loukides Aff. ¶¶ 4, 6, Exhibits 1, 2, 3, 7, 9, 15.)
3. Respondent is required to file annual well reports (AWRs) with the Department for each production year for each well respondent owns on a form supplied by the Department, as typified by Loukides Aff. Exhibits 7 and 9 (incomplete AWRs filed by respondent for the production years 2016 and 2017). (See Loukides Aff. ¶ 7, Exhibits 7, 9.)
4. On January 3, 2017, Department staff mailed respondent a cover letter and an AWR form for the 2016 production year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2017. Respondent failed to submit the 2016 AWR by March 31, 2017. (See Loukides Aff. ¶ 8, Exhibit 4.)
5. On June 20, 2017, Department staff mailed respondent a notice that respondent had failed to file an acceptable AWR for calendar year 2016 and advised respondent of the potential penalties for failing to file the required AWR. Respondent failed to submit the missing AWR or respond to the June 20, 2017 notice. (See Loukides Aff. ¶ 9, Exhibit 5.)
6. On January 8, 2018, Department staff mailed respondent a cover letter and an AWR form for the 2017 production year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2018. Respondent failed to submit the 2017 AWR by March 31, 2018. (See Loukides Aff. ¶ 10, Exhibit 6.)
7. On January 11, 2018, Department staff received a completed AWR form from respondent for the 2016 production year. Staff determined the AWR was unacceptable because respondent failed to provide the number of months that each well was in production. (See Loukides Aff. ¶ 11, Exhibit 7.)
8. Department staff called and left telephone messages for respondent in February and March 2018 in an attempt to correct the issue with the submitted 2016 AWR. After receiving no response to those messages, Department staff returned the unacceptable 2016 AWR to respondent with a notice, dated March 29, 2018, indicating why the AWR was deemed unacceptable. The notice incorrectly referenced a 2017 AWR rather than the 2016 AWR being returned with the notice. Respondent did not contact the Department or submit a revised AWR for 2016. (See Loukides Aff. ¶¶ 12, 13, Exhibit 8.)

9. On April 13, 2018, Department staff received a completed AWR form from respondent for the 2017 production year. Staff determined the AWR was unacceptable because respondent failed to provide the number of months that each well was in production. (See Loukides Aff. ¶ 14, Exhibit 9.)
10. On June 25, 2018, Department staff mailed respondent a notice that he had failed to file an acceptable AWR for the 2017 production year and requested the AWR be submitted within 30 days. The notice also advised respondent of the potential penalties for failing to file the required AWR. Respondent failed to file an acceptable AWR within 30 days and failed to respond to the notice. (See Loukides Aff. ¶ 15, Exhibit 10.)
11. On January 8, 2019, Department staff mailed respondent a cover letter and an AWR form for the 2018 production year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2019. Respondent failed to submit the 2018 AWR by March 31, 2019. (See Loukides Aff. ¶ 16, Exhibit 11.)
12. On May 9, 2019, Department staff mailed respondent a notice of violation reminding respondent that he had failed to submit an acceptable AWR for the 2018 production year and requested that the missing AWR be submitted within 30 days. The notice of violation was mailed by certified mail return receipt requested, but the mail was not claimed, and it was returned to the Department. (See Loukides Aff. ¶ 17, Exhibit 12.)
13. On May 23, 2019, Department staff mailed respondent a notice of violation notifying respondent that he had failed to submit an acceptable AWR for the 2016 and 2017 production years and requested that the missing AWRs be submitted within 30 days. The notice of violation was mailed by certified mail return receipt requested, but the mail was not claimed, and it was returned to the Department. (See Loukides Aff. ¶ 18, Exhibit 13.)
14. On July 17, 2019, Department staff mailed respondent a notice of violation notifying respondent that he had failed to submit an acceptable AWR for the 2016, 2017 and 2018 production year and that the matter had been referred to the Department's Office of General Counsel. The notice also enclosed an order on consent in an offer to settle the matter and advised respondent that the settlement offer would expire in 30 days. The notice of violation and consent order were mailed by certified mail return receipt requested and received by respondent on July 20, 2019. (See Loukides Aff. ¶ 19, Exhibit 14.)
15. Each cover letter mailed with the AWR for the previous production year included the following instructions: "All wells must be reported regardless of activity. Owners of oil and/or gas wells must report individual well production as well as the number of months each well is active. Volumes must be reported in whole numbers (no decimals). Oil and gas totals for production must be accurate. Water production volumes may be estimated, but values must be provided, even if zero." Each cover letter also advised well owners that incomplete or unacceptable reports will require corrections, and the

failure to submit an AWR by the March 31 deadline may subject the owner to fines and penalties. (*See Loukides Aff. Exhibits 4, 6, 11 [emphasis in originals].*)

16. As of the date of service of the notice of hearing and complaint, May 14, 2020, respondent had not submitted acceptable AWRs for the Siwec wells for the 2016, 2017 and 2018 production years. (*See Loukides Aff. ¶ 20.*)
17. Respondent did not answer the complaint. (*See Hass Aff. ¶ 3.*)
18. Respondent appeared at the August 6, 2020 hearing and expressed an interest in settling the matter. (*See Hearing Record; Haas Aff. ¶ 5.*)
19. On August 6, 2020, I served a scheduling order and notice of adjourned hearing on respondent that provided the schedule for settling the matter and advised the parties that if the matter did not settle, the hearing would be reconvened on September 23, 2020. (*See Hass Aff. ¶ 6, Exhibit E.*)
20. On August 19, 2020, respondent submitted AWRs for the 2016, 2017 and 2018 production years that were again deemed unacceptable because respondent failed to include all the required information. On August 20, 2020, Department staff spoke with respondent and explained the issues with the AWRs. On August 21, 2020, respondent resubmitted the AWRs and again did not include all the required information. Department staff emailed respondent and advised him of the problem. (*See Loukides Aff. ¶¶ 21, 22.*)
21. On September 3, 2020, Department staff received acceptable AWRs for the 2016, 2017 and 2018 production years. (*See Loukides Aff. ¶ 23, Exhibit 15.*)
22. Department staff made repeated attempts to settle the matter with respondent, but staff did not receive any response to staff's settlement offer from respondent. (*See Haas Aff. ¶¶ 7-10.*)
23. 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.*)
24. As shown by the affidavit of service of Ellen Shupe-Bell, sworn to July 15, 2020, Department staff served the notice of hearing and complaint, order on consent, invoice and statement of readiness, on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that was received by respondent on May 14, 2020. (*See Haas Aff., Exhibit C.*)

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" (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 Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must "provide proof of the facts sufficient to support the claim[s]" alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018 [*Samber*], at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; *see also* 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; (iii) respondent failed to appear for the adjudicatory hearing scheduled on September 23, 2020, as directed in the scheduling order and notice of adjourned hearing; (iv) Department staff submitted a proposed order that includes a concise statement of the relief requested (*see* Haas Aff., Exhibit F); (v) staff's motion includes a statement of authority and support for the penalty and relief requested (*see* Haas Aff., ¶¶ 17-21); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of Melissa Evans, sworn to October 7, 2020). 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 complete and accurate AWRs for the 2016, 2017 and 2018 production years for respondent's Siwec 1 and Siwec 2 wells, in violation of 6 NYCRR 551.2(b) (*see Samber* at 1).

Staff's complaint requested a total civil penalty of four thousand five hundred dollars (\$4,500). 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 Affirmation* ¶¶ 19-21).² Department staff argues 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. (Haas Affirmation ¶ 20; Loukides Affidavit ¶ 24.)

ECL 71-1307(1) provides for a maximum civil penalty of up to eight thousand dollars (\$8,000) per violation plus additional civil penalties of two thousand dollars (\$2,000) for every day the violation continues. With the motion, Department staff provided documentation that respondent was aware of his obligation to file AWRs, and that he did file an unacceptable 2016 AWR, 286 days late, on January 11, 2018. Respondent also filed a late unacceptable AWR for 2017 on April 13, 2018 but failed to file an AWR for the 2018 production year altogether. In each instance, Department staff notified respondent that he did not file acceptable AWRs for calendar years 2016, 2017 and 2018, and that failing to do so would result in enforcement action. (Loukides Affidavit ¶¶ 9, 15, 19, Exhibits 5, 10, 14.)

Two attempts to serve notices of violation on respondent in May 2019 by certified mail were returned to the Department because respondent did not claim the certified mail. Department staff sent a second notice of violation dated July 17, 2019 which, again, reminded respondent of his obligation to file the 2016, 2017 and 2018 AWRs, and that failing to do so could result in enforcement action. With the July 17, 2019 second notice of violation, Department staff also enclosed a draft order on consent, invoice, and blank AWR forms for calendar years 2016, 2017 and 2018. Respondent received the July 17, 2019 second notice of violation on July 20, 2019. However, respondent did not respond to the July 17, 2019 second notice of violation and did not submit the delinquent AWRs for calendar years 2016, 2017 and 2018. (Loukides Affidavit ¶¶ 17-20, Exhibits 12, 13, 14.)

These facts demonstrate a repeated lack of cooperation by respondent to resolve these reporting violations. Department staff's proposed civil penalty of four thousand five hundred

² *See Matter of Gilray*, Order of the Commissioner, dated March 4, 2015, and *Matter of Buffalo China, Inc.*, Order of the Commissioner, dated October 27, 2013. For each demonstrated violation, the Commissioner assessed a civil penalty of \$1,500. (Haas Affirmation ¶ 21).

dollars (\$4,500) 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 acceptable AWRs were eventually received by the Department, "the timely filing of complete and accurate AWRs is critical to the regulatory requirements of this program" (*see Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013 at 2). In this matter, acceptable AWRs were received 1,252 days late (2016 AWR), 887 days late (2017 AWR) and 522 days late (2018 AWR), respectively. Accordingly, I conclude that the penalty of four thousand five hundred dollars (\$4,500) requested by Department staff, is supported and appropriate.

Conclusion of Law

By failing to timely file complete and accurate annual well reports for the 2016, 2017 and 2018 production years for the Siwec 1 and Siwec 2 wells, respondent William J. Sahlem 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 William J. Sahlem violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2016, 2017 and 2018 production years for his Siwec 1 and Siwec 2 wells (API Well Numbers 31-029-19753-00-00 and 31-029-20812-00-00, respectively);
3. directing respondent William J. Sahlem to pay a civil penalty in the amount of four thousand five hundred dollars (\$4,500) 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
December 8, 2020

APPENDIX A

Matter of William J. Sahlem
DEC Case No. CO 9-20190705-65
Motion for Default Judgment

1. Cover letter, dated October 7, 2020, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated October 7, 2020.
3. Motion for Default Judgment, dated October 7, 2020, attaching Exhibit A and affidavit of Ted Loukides;
 - A. Affirmation of Anne Haas, Esq., dated October 7, 2020, attaching Exhibits B-F;
 - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated May 8, 2020, and proposed Order on Consent and Invoice;
 - C. Affidavit of Service of Ellen Shupe-Bell, sworn to July 15, 2020, attaching United States Postal Service (USPS) electronic proof of delivery;
 - D. Notice of Hearing, dated July 9, 2020;
 - E. Scheduling Order and Notice of Adjourned Hearing, dated August 6, 2020; and
 - F. Proposed Order.
4. Affidavit of Ted Loukides, sworn to October 6, 2020, attaching Exhibits 1-15;
 1. Tax Parcel Map depicting location of wells on property owned by William J. Sahlem;
 2. Organizational Report for William J. Sahlem, sworn to December 27, 2003;
 3. Request for Well Transfer from Weil Resources, Inc. to William J. Sahlem, sworn to August 14 and August 6, 2003, respectively;
 4. Cover letter from Ted Loukides to William J. Sahlem, dated January 3, 2017 with enclosed 2016 Annual Well Report form;
 5. Letter from Ted Loukides to William J. Sahlem, dated June 20, 2017 (re: Failure to File 2016 Annual Reports);

6. Cover letter from Ted Loukides to William J. Sahlem, dated January 8, 2018 with enclosed 2017 Annual Well Report form;
 7. 2016 Annual Well Report from William J. Sahlem, received January 11, 2018;
 8. Notice to William J. Sahlem, dated March 29, 2018 returning 2017 [sic] Annual Well Report for incompleteness, with 2016 Annual Well Report attached;
 9. 2017 Annual Well Report from William J. Sahlem, received April 13, 2018;
 10. Letter from Theodore N. Loukides to William J. Sahlem, dated June 25, 2018 (re: Failure to File 2017 Annual Reports);
 11. Cover letter from Theodore N. Loukides to William J. Sahlem, dated January 8, 2019 with enclosed 2018 Annual Well Report form;
 12. Letter from Theodore N. Loukides to William J. Sahlem, dated May 9, 2019 (re: Notice of Violation – failure to file 2018 Annual Well Report Form) with USPS tracking attached;
 13. Letter from Theodore N. Loukides to William J. Sahlem, dated May 23, 2019 (re: Notice of Violation – failure to file acceptable 2016 and 2017 Annual Well Report Form) with USPS tracking attached;
 14. Letter from Theodore N. Loukides to William J. Sahlem, dated June 17, 2019 (re: Second Notice of Violation – failure to file acceptable 2016, 2017 and 2018 Annual Well Report Form) with proposed order on consent enclosed and USPS electronic proof of delivery attached; and
 15. 2016, 2017 and 2018 Annual Well Report forms from William J. Sahlem, received September 3, 2020.
5. Affidavit of Service of Melissa Evans, sworn to October 7, 2020.