

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

In the Matter of the Alleged Violations of Article 23, Title 3 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

SCHREINER OIL AND GAS, INC.,

Respondent.

ORDER

**DEC Case No.
CO 9-20190620-47**

In this administrative enforcement proceeding, staff of the New York State Department of Environmental Conservation (Department) alleges that respondent Schreiner Oil and Gas, Inc. violated 6 NYCRR 555.1 and 6 NYCRR 555.2(a) and (c) by unlawfully shutting-in 66 natural gas wells that it operated without permanently plugging and abandoning the wells in accordance with Department regulations. Department staff further alleges that, pursuant to ECL 23-0305(8)(e), respondent is liable for costs incurred by the Department for plugging certain of respondent's wells.

Respondent's wells are located in Chautauqua and Erie Counties. During the pendency of this matter, respondent requested and was granted permission to transfer some of its gas wells to a third party. After the transfer, respondent retained 41 gas wells.

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 (*see* Default Summary Report at 6 [Finding of Fact No. 26]). On July 24, 2020, Department staff filed and served a motion for a 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 7-9). I concur that staff is entitled to a judgment on default on Department staff's two causes of action pursuant to former 6 NYCRR 622.15.¹ 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 Schreiner Oil and Gas, Inc. shut-in 41 wells for more

¹ *See* Default Summary Report at 6 n.4.

than one year without Department permission and without permanently plugging and abandoning the wells and, accordingly, was in violation of 6 NYCRR 555.1 and 555.2(a) and (c).

The complaint seeks an order of the Commissioner directing respondent to:

- submit a notice of intent to plug and abandon each well listed on Exhibit A to the Complaint within fifteen (15) days after the issuance of the order and to plug such wells during the term of, and pursuant to, the permits to plug issued by the Department and to restore the surrounding areas pursuant to 6 NYCRR part 555 under Department oversight;
- reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), in the amount of \$34,988.00 which reflects costs incurred by the Department in plugging respondent's Mill 832 and Mill 833 wells;
- reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the Department for well plugging at respondent's other wells, within thirty (30) days of receipt of notification from the Department of the costs that the Department incurred in plugging such other of respondent's wells;² and
- granting such other and further relief as the Commissioner deems appropriate.

The findings of the ALJ and relief requested by Department staff involve respondent's remaining 41 wells after the transfer of a number of wells to a third party (*see* Default Summary Report at 4 [Findings of Fact Nos. 10 and 11]). Of these wells, Department staff has plugged three of them. Two of those wells (Mill 832 and Mill 833) were plugged by the Department because the wells were leaking gas and respondent had failed to permanently plug and abandon the wells (*see* Default Summary Report at 5 [Finding of Fact No. 19]). A third leaking well (Mundt 828) was plugged by the Department during the pendency of this matter (*see* Default Summary Report at 6 [Finding of Fact No. 23]). The ALJ concluded that respondent Schreiner Oil and Gas, Inc. is responsible for the expense of plugging the Mill 832, Mill 833 and Mundt 828 wells (*see* Default Summary Report at 7-8; *see also* ECL 23-0305[8][e]).

Respondent's remaining 38 wells have not been permanently plugged and abandoned as required by 6 NYCRR 555.1 and 555.2(a) and (c). Many of these remaining wells are also leaking gas (*see* Default Summary Report at 5 [Finding of Fact No. 22] [nearly half of respondent's wells were leaking natural gas]; *see also* Affidavit of Theodore Loukides sworn to on July 23, 2020 [Loukides Affidavit], Exhibit A [noting leaking wells];³ Affidavit of Paul Giachetti sworn to on July 22, 2020, ¶¶ 10-11 [referencing the negative environmental, public health and safety impacts arising from the failure to properly plug and abandon gas wells]).

² The specific expenditures associated with the Department's permanently plugging and abandoning a third respondent-operated well (Mundt 828) were not available at the time of this proceeding.

³ Among the wells was Mundt 828 where it was noted that the leak from that well could be heard from a nearby apartment complex (*see* Loukides Affidavit, Exhibit A at 2).

Department staff's proof demonstrates that respondent Schreiner Oil and Gas, Inc. failed to permanently plug and abandon the 41 wells at issue and therefore was in violation of 6 NYCRR 555.1 and 555.2(a) and (c). The record demonstrates that the 41 wells have been unproductive and abandoned since 2016 (*see* Default Summary Report at 4 [Findings of Fact Nos. 9, 12 and 14]). The proof also demonstrates that Department staff is entitled to reimbursement for the three wells that it has plugged. This includes \$34,988.00 incurred by the Department for plugging respondent's Mill 832 and Mill 833 wells. Department staff has incurred additional, but yet to be determined, costs plugging respondent's Mundt 828 well and is entitled to reimbursement for those costs as well. Moreover, the Department will be entitled to reimbursement for any costs that the Department incurs for plugging any other of respondent's wells.

I have considered the recommendations of the ALJ that I issue an order:

- directing respondent Schreiner Oil and Gas, Inc. to submit a notice of intention to permanently plug and abandon the thirty-eight (38) unplugged wells listed in Appendix B attached to the Default Summary Report within fifteen (15) days of the service of this order upon respondent and to plug those wells during the term of, and pursuant to, the permits to plug issued by the Department, and to restore the surrounding areas pursuant to 6 NYCRR part 555 under Department oversight (*see* Default Summary Report at 9; Recommendation 3);
- directing respondent Schreiner Oil and Gas, Inc. to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the amount of \$34,988.00 incurred by the Department for plugging respondent's Mill 832 and Mill 833 wells within fifteen (15) days of the service of this order upon respondent (*see* Default Summary Report at 9; Recommendation 4); and
- directing respondent Schreiner Oil and Gas, Inc. to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the Department for well plugging required at respondent's other wells, within thirty (30) days of receipt of notification from the Department of the costs incurred by the Department in plugging such other of respondent's wells (*see* Default Summary Report at 9; Recommendation 5).

Those recommendations are appropriate, and I have incorporated them into this order with the following modifications. I am modifying the payment time period under this order for the costs incurred by the Department in plugging the Mill 832 and Mill 833 wells from fifteen (15) days to thirty (30) days of the service of this order upon respondent. With respect to reimbursement for costs incurred for well plugging for the Mundt 828 well, I direct that respondent Schreiner Oil and Gas, Inc. reimburse the oil and gas account for the full amount of any and all expenditures that the Department incurred within thirty (30) days of receipt of notification from the Department of the costs incurred by the Department in plugging that well. Upon good cause shown by respondent, Department staff in its discretion may extend the time periods set forth in this order for respondent's reimbursement payments.

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 former 6 NYCRR 622.15 is granted on Department staff's two causes of action. By failing to answer or appear in this proceeding, respondent Schreiner Oil and Gas, Inc. waived the right to be heard at a hearing.
- II. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent Schreiner Oil and Gas, Inc. is determined:
 - A. to have violated 6 NYCRR 555.1 and 555.2(a) by shutting-in the 41 wells listed in Appendix B to the Default Summary Report (attached hereto) for more than one year without specific permission from the Department for an extension of the time period during which shut-in is permitted;
 - B. to have violated 6 NYCRR 555.1 and 555.2(c) by failing to permanently plug and abandon the 41 wells listed in Appendix B to the Default Summary Report after the wells had been shut-in for more than one year; and
 - C. to be liable for the expenses incurred by the Department for well plugging required at respondent's wells pursuant to ECL 23-0305(8).
- III. Within fifteen (15) days of the service of this order upon respondent Schreiner Oil and Gas, Inc., respondent shall submit a notice of intention to plug and abandon the thirty-eight (38) wells listed in Appendix B of the Default Summary Report which have not been permanently plugged.
- IV. Within thirty (30) days of the service of this order upon respondent Schreiner Oil and Gas, Inc., respondent shall reimburse the Department's oil and gas account in the amount of \$34,988.00 that the Department incurred for plugging respondent's Mill 832 and Mill 833 wells. Upon good cause shown by respondent, Department staff in its discretion may extend the time period set forth in this paragraph for respondent's reimbursement of the Department's expenditures with respect to the Mill 832 and Mill 833 wells.
- V. Respondent Schreiner Oil and Gas, Inc. shall reimburse the oil and gas account for the full amount of any and all expenditures made by the Department for the plugging required at respondent's Mundt 828 well. The Department shall notify respondent of the costs so incurred by the Department and respondent shall pay these costs within thirty (30) days of receipt of such notification. Upon good cause shown by respondent, Department staff in its discretion may extend the time period set forth in this paragraph for respondent's reimbursement of the Department's expenditures with respect to the Mundt 828 well.

- VI. The notice of intention to plug and abandon the respondent's wells, and reimbursement of \$34,988.00 for the plugging of respondent's Mill 832 and Mill 833 wells, as well as any reimbursement of the Department for the plugging of respondent's other wells, shall be sent to the following address:

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

The payment of any reimbursement shall be by certified check, cashier's check, or money order made payable to the "New York State Department of Environmental Conservation." The memorandum or other entry line on any check or money order is to note "For the Oil & Gas Account."

- VII. Respondent Schreiner Oil and Gas, Inc. shall reimburse the Department's oil and gas account for the full amount of any and all expenditures made by the Department for well plugging required at respondent's other wells, in addition to the reimbursements set forth in paragraphs IV and V. Upon completion of any such plugging of respondent's other wells, the Department shall notify respondent of the costs incurred by the Department. Respondent shall pay these costs within thirty (30) days of receipt of such notification following the procedures set forth in paragraph VI. Upon good cause shown by respondent, Department staff in its discretion may extend the time period set forth in this paragraph for respondent's reimbursement of Department's expenditures as to such other respondent wells.
- VIII. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph VI of this order.
- IX. The provisions, terms and conditions of this order shall bind respondent Schreiner Gas and Oil, Inc., and its 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 5, 2021
Albany, New York

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

In the Matter of the Alleged Violations of Article 23, Title 3 of the Environmental Conservation Law (ECL) of the State of New York and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**DEFAULT SUMMARY
REPORT**

- by -

**DEC Case No.
CO 9-20190620-47**

SCHREINER OIL AND GAS, INC.,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Schreiner Oil and Gas, Inc. (respondent) with a notice of hearing and complaint dated March 6, 2020, alleging respondent unlawfully abandoned and shut-in 66 natural gas wells operated by respondent in Chautauqua and Erie Counties, New York without permanently plugging and abandoning the wells in accordance with Department regulations in violation of 6 NYCRR 555.1 and 555.2(a) and (c); and alleging respondent is liable for costs incurred by the Department for plugging two of respondent's wells, pursuant to ECL 23-0305(8)(e).

The complaint seeks an order of the Commissioner (1) finding respondent in violation of 6 NYCRR 555.1 and 555.2(a) and (c); and finding respondent liable for the expense of plugging respondent's wells pursuant to ECL 23-0305(8)(e); (2) directing respondent to: (a) submit applications to permanently plug the wells listed in Exhibit A attached to the complaint within 15 days of the issuance of an order, (b) plug the wells during the term of, and pursuant to, the permits issued by the Department, and (c) restore the surrounding land, pursuant to 6 NYCRR part 555 under Department oversight; (3) ordering respondent to reimburse the oil and gas account a total of \$34,988.00 for two wells plugged by the Department, in accordance with ECL 23-0305(8); (4) directing respondent to reimburse the Department the full amount of any and all expenditures made by the Department from the oil and gas account for any other well plugging required at respondent's wells within 30 days of receipt of notification from the Department of the costs incurred by the Department in plugging such other wells; and (5) granting such other and further relief as the Commissioner deems appropriate.

Inasmuch as respondent is an active foreign business corporation doing business in the State of New York, service of the notice of hearing and complaint on respondent was made by

personally serving the New York State Department of State on March 6, 2020 (*see* affirmation of David H. Keehn [Keehn Aff.], dated July 24, 2020, ¶ 9; motion for default judgment Exhibit [Motion Exhibit] E). Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on or about March 6, 2020 (*see* Keehn Aff., ¶¶ 10-12). Respondent failed to file an answer to the complaint (*see id.*, ¶ 8).

By cover letter dated July 24, 2020, 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 July 24, 2020 (*see* affidavit of service of Ellen Shupe-Bell [Shupe-Bell Aff.], sworn to July 24, 2020).

Applicable Regulatory Provisions

Section 555.1 Policy.

“It 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. Shut-in wells.

“(a) It shall be unlawful for the owner or operator thereof to shut in a well capable of being produced on a commercial basis for more than one year without specific permission from the department for an extension of the time period during which shut-in is permitted.

“(b) Permission for an extension of the time period during which shut-in is permitted shall be granted administratively by the department upon written application therefor by the owner or operator and the demonstration of sufficient good cause. Such extension shall be granted for a period of not more than one year, but shall be renewable for additional successive periods of equivalent length upon receipt of successive petitions from the owner or operator and the demonstration of continued sufficient good cause.

“(c) Upon termination of the period of lawful shut-in, the owner or operator must begin producing the well or permanently plug and abandon it as provided hereinafter.”

Findings of Fact

1. As of March 6, 2020, respondent Schreiner Oil and Gas, Inc. (respondent) operated 66 natural gas wells, which are located in Chautauqua and Erie Counties, New York. (*See* complaint, ¶¶ 10 and 18; complaint exhibit A.)
2. Respondent is an active foreign business corporation in the State of New York. (*See* Motion Exhibit C.)
3. 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 well operator requirements and reporting and the care, custody, and maintenance of the records pertaining to the oil, gas and solution mining program of the State of New York. These records are kept in the normal course of business of the Department and include all annual well reports (AWRs) filed by operators and requests from operators to shut-in wells. (*See* affidavit of Theodore Loukides [Loukides Aff.], sworn to July 23, 2020, ¶¶ 2-4.)

4. Paul Giachetti is an employee of the Department and is a Mineral Resources Specialist 3 in the Department's Division of Mineral Resources at the Department's Region 8 office located in Avon, New York. Mr. Giachetti's duties include inspections of oil and gas wells, and he has access to and custody of inspection reports. He inspected some of respondent's gas wells, as indicated in exhibit A to the Loukides Aff. (Loukides Exhibit A), which accurately reflects the wells he inspected, date of inspection, inspection reports and his observations. (*See* affidavit of Paul Giachetti [Giachetti Aff.], sworn to July 22, 2020, ¶¶ 2-4, 8.)
5. David McCoy is an employee of the Department and is a Mineral Resources Technician 1 in the Department's Division of Mineral Resources at the Department's Region 9 office in Allegany, New York. Mr. McCoy's duties include inspecting locations where oil and gas mining activities are carried out, including plugging inspections to ensure the plugging practices are performed in accordance with 6 NYCRR 555.5. (*See* affidavit of David McCoy [McCoy Aff.], sworn to July 24, 2020, ¶¶ 2-4.)
6. Rudin Emborsky is an employee of the Department and is a Mineral Resources Technician 1 in the Department's Division of Mineral Resources at the Department's Region 9 office in Allegany, New York. Mr. Emborsky's duties include inspecting locations where oil and gas mining activities are carried out. He has access to and custody of inspection reports. He inspected some of respondent's gas wells, as indicated in Loukides Exhibit A, which accurately reflects the wells he inspected, date of inspection, inspection reports and his observations. (*See* affidavit of Rudin Emborsky [Emborsky Aff.], sworn to July 24, 2020, ¶¶ 2-5, 7.)
7. Noah Mantaro is an employee of the Department and is a Mineral Resources Technician 1 in the Department's Division of Mineral Resources at the Department's Region 8 office in Avon, New York. Mr. Mantaro's duties include inspecting locations where oil and gas mining activities are carried out. He has access to and custody of inspection reports. He inspected some of respondent's gas wells, as indicated in Loukides Exhibit A, which accurately reflects the wells he inspected, date of inspection, inspection reports and his observations. (*See* affidavit of Noah Mantaro [Mantaro Aff.], sworn to July 24, 2020, ¶¶ 2-4, 8.)
8. Robert Roth, Jr. is an employee of the Department and is a Mineral Resources Technician 1 in the Department's Division of Mineral Resources at the Department's

Region 9 office in Allegany, New York. Mr. Roth's duties include inspecting locations where oil and gas mining activities are carried out. He has access to and custody of inspection reports. He inspected some of respondent's gas wells, as indicated in Loukides Exhibit A, which accurately reflects the wells he inspected, date of inspection, inspection reports and his observations. (*See* affidavit of Robert Roth, Jr. [Roth Aff.], sworn to July 23, 2020, ¶¶ 2-7.)

9. On July 17, 2020, Mr. Loukides reviewed the records kept by the Department related to respondent's wells. As a result, Mr. Loukides determined that respondent's wells listed in Loukides Exhibit A have not produced gas for at least four years. (*See* Loukides Aff., ¶ 5; Loukides Exhibit A.)
10. Between March 6, 2020 and July 23, 2020, respondent sought the Department's permission to transfer some of respondent's 66 wells listed in staff's complaint. Staff granted respondent's request and those wells were transferred to a third party. (*See* Loukides Aff., ¶ 14.)
11. Respondent retained 41 natural gas wells, which are located in Chautauqua and Erie Counties, New York. (*See* Loukides Aff., ¶ 14; Loukides Exhibit A.)¹
12. Respondent is required to file AWRs with the Department for each production year for each well respondent operates. Respondent's AWRs indicated that:
 - a. In 2014, 13 of respondent's 41 wells did not produce any natural gas;
 - b. In 2015, 24 of respondent's 41 wells did not produce any natural gas; and
 - c. In 2016, none of respondent's 41 wells produced natural gas. (*See* Loukides Aff., ¶ 5; Loukides Exhibit A, pp. 1-3, n 1.)
13. Respondent did not file AWRs for any of its wells for the 2017, 2018 and 2019 productions years. (*See* Loukides Aff., ¶ 5; Loukides Exhibit A, n 1.)
14. Respondent's 41 wells have had no production since 2015. (*See* Loukides Aff., ¶ 5; Loukides Exhibit A, pp. 1-3, n 1.)
15. Based on Department records, Mr. Loukides also determined that respondent has not requested or been granted permission from the Department to shut-in or permanently plug and abandon any of respondent's wells listed in Loukides Exhibit A. (*See* Loukides Aff., ¶ 10; Loukides Exhibit A.)
16. Mr. Loukides also administers the Department's orphan/abandoned well plugging program, which uses funds from the NY Works program and the oil and gas account to plug wells posing environmental threats that operators have failed to plug. (*See* Loukides Aff., ¶ 11.)

¹ Department staff plugged 3 of the 41 wells. Department staff states that respondent is responsible for 39 remaining wells (*see* Keehn Aff., ¶¶ 16, 18). Upon review of the record that number should be reduced to 38.

17. On May 31, 2018, Department staff served a notice of violation (NOV) on respondent notifying respondent of violations at respondent's gas wells discovered by Department inspections, noting in particular that many wells were inactive without approved shut-in status in violation of 6 NYCRR 555.2(a) and many wells were leaking gas. The NOV directed respondent to remedy the violations within 30 days of the date of the NOV. (*See* Complaint ¶ 24; Complaint Exhibit C [NOV with Table 1].)
18. Respondent did not remedy any of the violations noted in the NOV. (*See* Loukides Aff., ¶ 13; Giachetti Aff., ¶ 9; Emborsky Aff., ¶ 8; Mantaro Aff., ¶ 9; Roth Aff., ¶ 9.)
19. On March 7 and 8, 2019, the Department plugged two of respondent's natural gas wells (Mill 832 and Mill 833) because they were leaking gas, and respondent had not plugged them. The cost to plug the two wells totaled \$34,988.00. (*See* Loukides Aff., ¶ 12; Loukides Exhibit A; Complaint Exhibit D [voucher and invoice]; McCoy Aff., ¶ 4.)
20. Respondent has not plugged any of respondent's 41 nonproducing wells. (*See* Loukides Aff., ¶¶ 10, 13; Loukides Exhibit A.)
21. Natural gas wells that are no longer producing or have been shut-in for extended periods without Department knowledge or permission pose potential environmental impacts due to damage to well casings and surface facilities and the fact that the wells are no longer inspected, maintained or plugged by the operator. The potential environmental impacts include release of greenhouse gases (methane) to the atmosphere, contamination of ground water or surface water from the release of hydrocarbons or other contaminants, or the use of the wells for disposal of other pollutants. (*See* Loukides Aff., ¶ 16; Loukides Exhibit A; Giachetti Aff. ¶¶ 7, 10-11; Emborsky Aff., ¶¶ 9-10; Mantaro Aff., ¶ 10; Roth Aff. ¶¶ 8, 10.)
22. Inspections in 2017, 2018 and 2019 revealed nearly half respondent's wells appeared to be shut-in without permission and nearly half of the wells were leaking natural gas. (*See* Loukides Aff., ¶ 10; Loukides Exhibit A). In particular, inspections revealed the following wells had gas leaks:
 - a. Mill 832, Mill 833, Kiss 845, Richardson 1, Trefts 2, Bixby 827 and Yates 1s (*see* Giachetti Aff., ¶ 6 [all inspections performed in 2017, *see* Loukides Exhibit A]);²
 - b. Emery 645, Orr 1, Perdue 676, Wiseman 1 and Mundt 828 (*see* Emborsky Aff., ¶ 6 [inspection of Purdue 676 performed in 2019, inspections of Mundt 828 performed in 2017 and 2019; Emery 645, Orr 1 and Wiseman 1 appear to have been transferred, compare Complaint Exhibit A and Loukides Exhibit A]);³
 - c. McNeil 830, Moskowitz 1, Mill 833, Chilcott 826 and Kold 848 (*see* Mantaro Aff., ¶ 6 [all inspections performed in 2017, *see* Loukides Exhibit A]); and
 - d. Bixby 827, Bockman 1, Colarusso 849, Kiss 845, McNeil 830 and Tagliarino 823 (*see* Roth Aff., ¶ 6 [all inspections performed in 2019, *see* Loukides Exhibit A]).

² Mill 832 and Mill 833 were plugged by the Department on March 7 and 8, 2019, respectively (*see* Finding of Fact No. 19).

³ Mundt 828 was plugged by the Department on June 28, 2020 (*see* Finding of Fact No. 23).

23. On June 28, 2020, the Department plugged respondent's Mundt 828 natural gas well because the well was leaking gas that could be heard from an apartment complex, and respondent had not plugged the well. (*See* Loukides Exhibit A, p. 2, [Mundt 828, API Well No. 31-029-15791-00-00].)
24. As shown by Receipt for Service No. 202003190281 issued by the New York State Department of State, respondent was served personally, on March 6, 2020, pursuant to section 306 of the Business Corporation Law, with a notice of hearing and complaint dated March 6, 2020 alleging violations of 6 NYCRR 555.1 and 555.2 and liability pursuant to ECL 23-0305(8)(e), together with a cover letter and supporting exhibits. Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on or about March 6, 2020. (*See* Keehn Aff., ¶¶ 9-13; Motion Exhibit E.)
25. Department staff served the notice of motion and motion for default judgment on respondent, along with the supporting documents, on July 24, 2020 by first class mail. (*See* Shupe-Bell Aff., ¶¶ 3-6.)
26. Respondent failed to file an answer to the complaint as directed in the notice of hearing. (*See* Keehn Aff., ¶ 8.)

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, unless the time to answer is extended by consent of staff or ruling of the ALJ (*see* former 6 NYCRR 622.4[a]).⁴ A respondent's failure to file a timely answer "constitutes a default and a waiver of respondent's right to a hearing" (former 6 NYCRR 622.15[a]). Upon a respondent's failure to answer a complaint, Department staff may make a motion to an ALJ for a default judgment. Such motion must contain (i) proof of service upon respondent of the notice of hearing and complaint; (ii) proof of respondent's failure to appear or to file a timely answer; and (iii) a proposed order (*see* former 6 NYCRR 622.15[b][1]-[3]).

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*

⁴ Part 622 of 6 NYCRR, Uniform Enforcement Hearing Procedures, was repealed and replaced effective September 16, 2020. Department staff's motion for a default judgment was filed before the effective date of the current part 622. Accordingly, staff's motion is reviewed for compliance with former part 622.

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; and (ii) respondent failed to file an answer to the complaint. Department staff has submitted a proposed order (*see* Motion Exhibit D). Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of former 6 NYCRR 622.15. Staff also served respondent with copies of the motion for default judgment and supporting papers (*see* *Shupe-Bell Aff.*, ¶¶ 3-6). Respondent did not respond to the motion.

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 on staff's first cause of action alleging respondent failed to plug and permanently abandon respondent's 41 natural gas wells listed in Loukides Exhibit A in accordance with Department regulations in violation of 6 NYCRR 555.1 and 555.2(a) and (c). Department staff alleges that respondent's 41 wells were shut-in for more than one year and have not been permanently plugged and abandoned. Respondent filed AWRs for 2016 showing the wells did not produce during the 2016 production year. In addition, staff has demonstrated that respondent has not filed any AWR for those 41 wells for the 2017, 2018 and 2019 production years. Department staff's proof demonstrates that respondent's 41 wells have been shut-in since January 2016.

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, in this matter, has expressly argued that 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 or both (*see* Findings of Fact Nos. 14, 15, 19, 20, 22). Staff has demonstrated that respondent's 41 wells were shut-in from January 2016 and, except for 3 wells plugged by the Department, have not been permanently plugged and abandoned, in violation of 6 NYCRR 555.1 and 555.2(a) and (c). Accordingly, staff's motion for default judgment on the first cause of action should be granted.

Department staff's second cause of action alleges that Department staff were required to plug respondent's Mill 832 and Mill 833 wells, and Department staff are entitled to reimbursement from respondent for the plugging costs incurred by the Department. Department staff has demonstrated that the Mill 832 and Mill 833 wells were unlawfully shut-in for more than one year and leaking gas, which was a violation of 6 NYCRR 555.1 and 555.2(a) and (c) pleaded in the first cause of action. Department staff also demonstrated that the Mill 833 well had a major gas leak that was bubbling and causing water to be thrown up from the ground and the leak was audible from 50 feet away (*see* *Loukides Aff.* ¶ 12; *Loukides Exhibit A*, p. 1).

ECL 23-0305(8)(e) reads, in part, that the Department has the power to "[e]nter, take temporary possession of, plug or replug any abandoned well as provided in the rules and regulations, whenever any owner or operator neglects or refuses to comply with such rules and regulations. Such plugging or replugging by the department shall be at the expense of the owner or operator whose duty it may be to plug the well and who shall hold harmless the state of New

York for all accounts, damages, costs and judgments arising from the plugging or replugging of the well and the surface restoration of the affected land.” Department staff’s proof demonstrates respondent failed to permanently plug and abandon Mill 832 and Mill 833 wells after issuance of the NOV. Department staff submitted proof that the cost to the Department to plug respondent’s Mill 832 and Mill 833 wells was \$34,988.00. Accordingly, staff’s motion for a default judgment on the second cause of action should be granted, and respondent should be directed to reimburse the Department’s oil and gas account (*see* ECL 23-1903[1][a]) for the costs incurred by the Department for plugging respondent’s Mill 832 and Mill 833 wells.

Department staff also requests that the Commissioner direct respondent to reimburse the oil and gas account for any other costs the Department incurs in plugging other wells operated by respondent within thirty days of receipt of notification from the Department of any costs incurred by the Department in plugging such wells. As noted above, the Department incurred costs for plugging respondent’s Mundt 828 well in June 2020. Those costs were not identified in staff’s motion. Respondent should be directed to reimburse the oil and gas account for those costs and any other costs incurred by the Department for plugging any of respondent’s wells.

Department staff does not seek a civil penalty in this matter. Staff requests the Commissioner to issue an order directing respondent to:

1. submit a notice of intent to plug and abandon each well listed in Loukides Exhibit A within fifteen days of the effective date of the order and to plug such wells during the term of, and pursuant to, the permits to plug issued by the Department and to restore the surrounding areas pursuant to 6 NYCRR part 555 under Department oversight;
2. reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the amount of \$34,988.00 incurred by the Department for plugging respondent’s Mill 832 and Mill 833 wells; and
3. reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the Department for well plugging required at respondent’s wells, within thirty days of receipt of notification from the Department of the costs incurred by the Department in plugging such other of respondent’s wells.

Conclusions of Law

1. By shutting-in the 41 wells operated by respondent for more than one year without Department permission and without permanently plugging and abandoning the wells, respondent Schreiner Oil and Gas, Inc., violated 6 NYCRR 555.1 and 555.2(a) and (c).
2. By failing to permanently plug and abandon wells that were leaking gas, pursuant to ECL 23-0305(8)(e), respondent Schreiner Oil and Gas, Inc. is responsible for the expense of plugging the Mill 832, Mill 833 and Mundt 828 wells that were plugged by the Department.

Recommendation

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

1. granting Department staff's motion for default judgment on staff's first and second causes of action;
2. holding that, respondent Schreiner Oil and Gas, Inc.:
 - a. violated 6 NYCRR 555.1 and 555.2(a) by shutting in the 41 wells listed in Appendix B (attached hereto) for more than one year without specific permission from the department for an extension of the time period during which shut-in is permitted;
 - b. violated 6 NYCRR 555.1 and 555.2(c) by failing to permanently plug and abandon the 41 wells listed in Appendix B after the wells had been shut-in for more than one year; and
 - c. is liable for the expenses incurred by the Department for well plugging required at respondent's wells pursuant to ECL 23-0305(8);
3. directing respondent Schreiner Oil and Gas, Inc. to submit a notice of intention to permanently plug and abandon the 38 unplugged wells listed in Appendix B attached hereto within fifteen (15) days of the service of the Commissioner's order upon respondent and to plug those wells during the term of, and pursuant to, the permits to plug issued by the Department and to restore the surrounding areas pursuant to 6 NYCRR part 555 under Department oversight;
4. directing respondent Schreiner Oil and Gas, Inc. to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the amount of \$34,988.00 incurred by the Department for plugging respondent's Mill 832 and Mill 833 wells within fifteen (15) days of the service of the Commissioner's order upon respondent;
5. directing respondent Schreiner Oil and Gas, Inc. to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the Department for well plugging required at respondents' wells, within thirty days of receipt of notification from the Department of the costs incurred by the Department in plugging such other of respondent's wells; and
6. directing such other and further relief as the Commissioner deems appropriate.

/s/

Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
October 7, 2020

APPENDIX A

Matter of Schreiner Oil and Gas, Inc.
DEC Case No. CO 9-20190620-47
Motion for Default Judgment

1. Cover letter, dated July 24, 2020, addressed to Chief Administrative Law Judge James T. McClymonds of the Department's Office of Hearings and Mediation Services, attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated July 24, 2020.
3. Motion for Default Judgment, dated June 24, 2020, attaching Exhibits A-E;
 - A. Cover letter, Notice of Hearing and Complaint, dated March 6, 2020, with the following exhibits attached;
 - A. Unplugged Schreiner Wells (spreadsheet incorporating inspection observations);
 - B. Schreiner Oil and Gas, Inc. Wells in New York State (map);
 - C. Notice of Violation, addressed to Michael D. Schreiner, Schreiner Oil and Gas, Inc. from Theodore N. Loukides, dated May 31, 2018, with Table 1 (list of wells) attached;
 - D. Standard Voucher and Invoice from Plants and Goodwin, Inc. submitted to the Department, dated March 14, 2019, for \$34,988 for Schreiner well plugging;
 - B. Affirmation of David H. Keehn, Esq., dated July 24, 2020;
 - C. NYS Department of State, Division of Corporations, Entity Information Sheet regarding Schreiner Oil and Gas, Inc., reflecting information through July 21, 2020;
 - D. Draft Order; and
 - E. Department of State Receipt for Service, dated March 6, 2020, reflecting service upon respondent pursuant to section 306 of the Business Corporation Law.
4. Affidavit of Theodore Loukides, sworn to July 23, 2020, attaching Exhibit A;
 - A. Schreiner Oil and Gas, Inc. Remaining Wells and Wells Plugged by DEC (spreadsheet incorporating inspection observations).
5. Affidavit of Service of Ellen Shupe-Bell, sworn to July 24, 2020.

6. Affidavit of Paul Giachetti, sworn to July 22, 2020.
7. Affidavit of David McCoy, sworn to July 24, 2020.
8. Affidavit of Rudin Emborsky, sworn to July 24, 2020.
9. Affidavit of Noah Mantaro, sworn to July 24, 2020.
10. Affidavit of Robert Roth, Jr., sworn to July 23, 2020.

APPENDIX B

Matter of Schreiner Oil and Gas, Inc.

DEC Case No. CO 9-20190620-47

List of Wells Operated by Schreiner Oil and Gas, Inc.

1. API Well No. 31-013-17088-00-00	Schofield 649
2. API Well No. 31-013-17252-00-00	Deakins 648
3. API Well No. 31-013-17845-00-00	Perdue 676
4. API Well No. 31-013-17846-00-00	Bronson 681
5. API Well No. 31-013-17847-00-00	Cochran 670
6. API Well No. 31-013-17871-00-00	Hillicker 666 1
7. API Well No. 31-013-22339-00-00	Stoll 1
8. API Well No. 31-013-22518-00-00	Young 1
9. API Well No. 31-029-14407-00-00	McNeil 829
10. API Well No. 31-029-14408-00-00	McNeil 830
11. API Well No. 31-029-14410-00-00	Moskowitz 1
12. API Well No. 31-029-14423-00-00	Mill 832 – Permanently plugged by DEC
13. API Well No. 31-029-14424-00-00	Mill 833 – Permanently plugged by DEC
14. API Well No. 31-029-14455-00-00	Vigneron 1-834
15. API Well No. 31-029-14456-00-00	Bockman 1
16. API Well No. 31-029-14457-00-00	Bockman 2
17. API Well No. 31-029-14530-00-00	Dick E 1 831
18. API Well No. 31-029-14626-00-00	Moden 1-838
19. API Well No. 31-029-14666-00-00	Nagel 837
20. API Well No. 31-029-15192-00-00	Yates 821
21. API Well No. 31-029-15234-00-00	Fisher-Price 841
22. API Well No. 31-0W-15313-00-00	Trefts 824
23. API Well No. 31-029-15326-00-00	Kiss 845
24. API Well No. 31-029-15329-00-00	Bartz 842
25. API Well No. 31-029-15388-00-00	Bartz 843
26. API Well No. 31-029-15401-00-00	Colarusso 846
27. API Well No. 31-029-15402-00-00	Colarusso 849
28. API Well No. 31-029-15466-00-00	Chilcott 826
29. API Well No. 31-029-15487-00-00	Yates 822
30. API Well No. 31-029-15533-00-00	Richardson 1
31. API Well No. 31-029-15534-00-00	Trefts 2
32. API Well No. 31-029-15535-00-00	Kold 848
33. API Well No. 31-029-15791-00-00	Mundt 828 – Permanently plugged by DEC
34. API Well No. 31-029-15831-00-00	Bixby 827
35. API Well No. 31-029-15844-00-00	Boldt 847
36. API Well No. 31-029-15895-00-00	Robinson 1
37. API Well No. 31-029-22522-00-00	Thompson 1
38. API Well No. 31-029-22524-00-00	Yates 1s
39. API Well No. 31-029-22533-00-00	Skotnicki 1
40. API Well No. 31-029-22543-00-00	Dps 1
41. API Well No. 31-029-22544-00-00	Dps 2