

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

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

ORDER

- by -

DEC Case No.
1098-2015DK

**ERIC STARK,
DRAGON EYE OIL COMPANY,**

Respondents.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondents Eric Stark and Dragon Eye Oil Company violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports: (i) for the 2006 through 2010 and 2013 production years for three wells (known as the Brandes 08327, Clark 1 and McLaughlin 1 wells); and (ii) for the 2006 through 2011, 2013 and 2014 production years for eighteen wells (known as the Pike 1 through Pike 18 wells). Staff also alleges a violation of 6 NYCRR 555.3(c) for failure to plug the eighteen Pike wells respondents owned in the State of New York. These wells are located in Allegany County.

On September 16, 2016, an adjudicatory hearing was convened before Michael S. Caruso, Administrative Law Judge (ALJ) of the Department's Office of Hearings and Mediation Services, to address these violations. ALJ Caruso prepared the attached hearing report, which I adopt as my decision in this matter, subject to the following comments.

As set forth in the ALJ's hearing report, respondents failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled in the matter on September 16, 2016, as was directed in the notice of hearing (see Hearing Report at 8 [Finding of Fact No. 27]).

At the hearing, Department staff orally moved to amend the complaint to change the violation noted in the second cause of action from a violation of 6 NYCRR 555.3(c) (temporary abandonment) to 6 NYCRR 555.2(c) (shut-in wells). The ALJ granted staff's motion to amend, concluding that correcting the violation would not prejudice respondents because the relief for each violation is the same. I agree.

Staff also orally moved for a default judgment at hearing. The ALJ recommended that Department staff's motion for default be granted (see Hearing Report at 10), and I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. Furthermore, at the hearing, Department staff presented a prima facie case on the merits, and proved its case by a preponderance of the evidence (see Hearing Report at 10-11). Accordingly, staff is entitled to a judgment based on record evidence.

The ALJ determined that Eric Stark owns and operates the Brandes 08327, Clark 1 and McLaughlin 1 wells (see Hearing Report at 4 [Finding of Fact 4]). The ALJ further determined that Eric Stark dba Dragon Eye Oil Company owns and operates the Pike 1 through Pike 18 wells (see Hearing Report at 4 [Finding of Fact 5]).

Department staff, in its papers, sought a penalty of five thousand dollars (\$5,000), and the ALJ recommended that respondent Eric Stark, individually and dba Dragon Eye Oil Company, be directed to pay this amount. ECL 71-1307(1) provides for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. Respondent Eric Stark, individually and dba Dragon Eye Oil Company, has failed to submit reports for twenty-one wells. Notwithstanding the efforts of Department staff to obtain compliance, nothing in this record indicates that respondents made an effort to address this failure to file the reports (see e.g. Hearing Exhibit D [July 3, 2014 correspondence from Department staff to respondents]).

Moreover, Department staff's proof demonstrates that respondent Eric Stark dba Dragon Eye Oil Company failed to permanently plug and abandon the eighteen Pike wells in violation of 6 NYCRR 555.2(c). The record demonstrates that the eighteen wells have been unproductive and abandoned since 2000 (see Hearing Report at 7 [Findings of Fact Nos. 23 and 24]).

Based on the record before me, the recommended penalty is authorized and appropriate. Respondent Eric Stark, individually and dba Dragon Eye Oil Company, has not been in compliance for many years, which resulted in shut-in orders being issued against respondent Stark in 2012 and respondent Dragon Eye Oil Company in 2013 (see e.g. Hearing Report at 5 [Findings of Fact Nos. 8 and 9]).

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

- directing respondent Eric Stark individually to submit the annual well reports for the Brandes, Clarke and McLaughlin wells for the 2006, 2007, 2008, 2009, 2010 and 2013 production years (see Hearing Report at 12-13, Recommendations 2 and 5);
- directing respondent Eric Stark dba Dragon Eye Oil Company to submit the annual well reports for the eighteen Pike wells for the 2006, 2007, 2008, 2009, 2010, 2011, 2013 and 2014 production years (see Hearing Report at 12-13, Recommendations 3 and 5);
- directing respondent Eric Stark dba Dragon Eye Oil Company to submit a notice of intention to plug and abandon the eighteen Pike wells, to engage a registered New York State plugging contractor to plug and abandon those wells, and to submit a plugging report no later than thirty (30) days after completion of plugging operations (see Hearing Report at 13-14, Recommendations 8-10); and
- directing respondent Eric Stark dba Dragon Eye Oil Company 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 State for well plugging expenditures required at respondent's wells.

Those recommendations are appropriate, and I have incorporated them into this order with the following modification. With respect to the engaging of a contractor to plug and abandon these wells, the recommendation is for that contracting to occur within one hundred eighty days (180) of the service of this order upon respondent Eric Stark dba Dragon Eye Oil Company. That time period may be extended by Department

staff upon written application and sufficient good cause shown by respondent Eric Stark dba Dragon Eye Oil Company.

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 Eric Stark individually and Erik Stark dba Dragon Eye Oil Company waived the right to be heard at the hearing.

- II. Moreover, based upon record evidence it is adjudged that:
 - A. Respondent Eric Stark violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006 through 2010 and 2013 production years for the Brandes 08327, Clark 1 and McLaughlin 1 wells (API Well Numbers 31-003-00766-00-00, 31-003-66930-00-00, and 31-003-66931-00-00, respectively).

 - B. Respondent Eric Stark dba Dragon Eye Oil Company violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006 through 2011, 2013 and 2014 for the Pike 1 through Pike 18 wells (API Well Numbers 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00, respectively).

 - C. Respondent Eric Stark dba Dragon Eye Oil Company violated 6 NYCRR 555.2(c) by failing to permanently plug and abandon the Pike 1 through Pike 18 wells (API Well Numbers 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-

00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00, respectively) after the wells had been shut-in for more than one year.

- III. Within thirty (30) days of the service of this order upon respondent Eric Stark individually and Erik Stark dba Dragon Eye Oil Company:
- A. Respondent Eric Stark individually and Erik Stark dba Dragon Eye Oil Company shall submit updated organizational reports reflecting the current personnel for the operator(s) of the wells.
 - B. Respondent Eric Stark shall submit the annual well reports for the 2006 through 2010 and 2013 production years for the Brandes 08327, Clark 1 and McLaughlin 1 wells to the Department.
 - C. Respondent Eric Stark dba Dragon Eye Oil Company shall submit the annual well reports for the 2006 through 2011, 2013 and 2014 for the Pike 1 through Pike 18 wells.
- IV. Respondent Eric Stark, individually and dba Dragon Eye Oil Company, is hereby assessed a civil penalty in the amount of five thousand dollars (\$5,000), to be paid the within thirty (30) days of the service of this order upon respondents. 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 VIII of this order.
- V. Within thirty (30) days of the service of this order upon respondent Eric Stark dba Dragon Eye Oil Company, respondent shall submit a notice of intention to plug and abandon the Pike 1 through Pike 18 wells.
- VI. Within one hundred eighty (180) days of the service of this order upon respondent Eric Stark dba Dragon Eye Oil Company, respondent shall contract with a registered New York State plugging contractor to plug and abandon the Pike 1 through Pike 18 wells in accordance with ECL article 23 and 6 NYCRR part 555. Department staff may extend this time period of up to one hundred eighty (180) days upon written application and a demonstration of sufficient good cause shown by respondent.

- VII. Within thirty (30) days after the completion of the plugging operations, respondent Eric Stark dba Dragon Eye Oil Company shall submit a plugging report to the Department on the Pike 1 through Pike 18 wells.
- VIII. The annual well reports, the organizational reports, the notice of intention to plug and abandon the Pike 1 through Pike 18 wells, the plugging report, and 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.

- IX. Respondent Eric Stark dba Dragon Eye Oil Company shall 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 State for well plugging required at respondent's wells. Upon completion of any such plugging of respondent's wells, the State shall notify respondent of the costs so incurred by the State and respondent shall pay these costs within thirty (30) days of receipt of such notification.
- X. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph VIII of this order.

XI. The provisions, terms and conditions of this order shall bind respondent Eric Stark, individually and dba Dragon Eye Oil Company, 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: February 27, 2017
Albany, New York

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

In the Matter of the Alleged Violation
of Article 23 of the Environmental
Conservation Law (ECL) of the State of
New York and Title 6 of the Official
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Regulations of the State of New York
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HEARING REPORT

DEC Case No.
1098-2015DK

- by -

**ERIC STARK,
DRAGON EYE OIL COMPANY,**

Respondents.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondents Eric Stark and Dragon Eye Oil Company (respondents) with a notice of hearing and complaint dated August 21, 2015, alleging a violation of 6 NYCRR 551.2(b), for failure to file timely annual well reports for the 2006 through 2010 and 2013 production years for three wells (known as the Brandes 08327, Clark 1 and McLaughlin 1 wells) and for the 2006 through 2011, 2013 and 2014 production years for eighteen wells (known as the Pike 1 through Pike 18 wells). Staff also alleged a violation of 6 NYCRR 555.3(c) for failure to plug the eighteen Pike wells respondents owned in the State of New York.

The Pike wells are designated by American Petroleum Institute (API) Well Numbers 31-003-00766-00-00, 31-003-66930-00-00, 31-003-66931-00-00, 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00, respectively.

The complaint seeks an order of the Commissioner (1) finding respondents in violation of 6 NYCRR 551.2(b); (2)

finding respondents in violation of 6 NYCRR 555.3(c); (3) assessing a civil penalty in the amount of five thousand dollars (\$5,000); (4) directing respondents to comply with the schedule of compliance included in the papers served on respondents; and (4) granting such other and further relief as the Commissioner shall deem just and appropriate.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent Dragon Eye Oil Company on September 1, 2015 and by respondent Eric Stark on September 1, 2015 (see 6 NYCRR 622.3[a][3]). Respondents failed to appear for the adjudicatory hearing scheduled in the matter on September 29, 2015 as directed in the notice of hearing. Respondents' time to answer the complaint had not expired at the time of the hearing, and Department staff requested the matter be adjourned to a later date.

The Office of Hearings and Mediation Services served a notice of hearing dated August 6, 2016 on respondents by first class mail advising respondents that the hearing in this matter would be reconvened on September 16, 2016 at 10:00 a.m. At 3:44 pm on September 16, 2016, the adjudicatory hearing was reconvened before the undersigned at the Department's Central Office at 625 Broadway, Albany, New York 12233 in room 919.

Department staff was represented by David H. Keehn, Esq., Associate Attorney, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. No one appeared on behalf of respondents.

Department staff indicated that it was prepared to proceed with the hearing, proffering a program staff witness. Noting for the record that respondents had failed to answer the complaint, and failed to appear for the adjudicatory hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15. I reserved on the default motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). Department staff also sought judgment on the merits.

Department staff called one witness, Christopher J. McKelvey, Mined Land Reclamation Specialist 3, Division of Mineral Resources. In all, nine (9) exhibits were received in evidence.

Applicable Regulatory Provisions

Section 551.2 Production and purchase reports.

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

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

* * *

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."

Section 555.3 Temporary abandonment.

"(a) It shall be unlawful for the owner or operator of any well to temporarily abandon same for more than 90 days without specific permission from the department for an extension of the time period during which temporary abandonment is permitted.

"(b) Permission for an extension of the time period during which temporary abandonment 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 reasonable time period and shall be renewable for additional reasonable time periods 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 temporary abandonment, the owner or operator must either resume operations or permanently plug and abandon the well as provided hereinafter."

Findings of Fact

1. Respondent Eric Stark resides at 1839 Fulmer Valley Road, Wellsville, New York. (Staff Exhibits A, B, D, E and I; Testimony of Christopher J. McKelvey.)
2. Respondent Dragon Eye Oil Company has a mailing address of 1839 Fulmer Valley Road, Wellsville, New York. (Staff Exhibits A, B, D, E and I; Testimony of Christopher J. McKelvey.)
3. Respondent Eric Stark does business as Dragon Eye Oil Company (hereinafter respondent Eric Stark dba Dragon Eye Oil Company). (Staff Exhibit I.)
4. Respondent Eric Stark owns and operates the wells designated as API Well Numbers 31-003-00766-00-00, 31-003-66930-00-00, and 31-003-66931-00-00 and known as the Brandes 08327, Clark 1 and McLaughlin 1 wells (Brandes, Clark and McLaughlin wells), respectively, located in the Towns of Wellsville and Independence, Allegany County, New York. (Staff Exhibits A, E, F and I.)
5. Respondent Eric Stark dba Dragon Eye Oil Company owns and operates the wells designated as API Well Numbers 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00 and known as the Pike 1 through Pike 18 wells, respectively, located in the Town of Alma, Allegany County,

New York. (Staff Exhibits A, E, F and I.)

6. The Brandes, Clarke and McLaughlin wells are active but have had little or no production since 2001 and two of the three wells have had no production since 2012. (Staff Exhibits E and F; Testimony of Christopher J. McKelvey.)
7. The eighteen Pike wells are inactive and have had no production since 2001. (Staff Exhibits E and F; Testimony of Christopher J. McKelvey.)
8. Respondent Eric Stark was served with a Shut-In Order for Oil and Gas Production on May 4, 2012, which directed respondent to suspend operation of and shut-in the Brandes, Clarke and McLaughlin wells on May 7, 2012, due to respondent's failure to file annual well reports for the 2006 through 2010 production years. (Staff Exhibits F and G; Testimony of Christopher J. McKelvey.)
9. Respondent Eric Stark dba Dragon Eye Oil Company was served with a Shut-In Order for Oil and Gas Production on December 5, 2013, which directed respondent to suspend operation of and shut-in the eighteen Pike wells on December 12, 2013, due to respondent's failure to file annual well reports for the 2006 through 2012 production years. (Staff Exhibits F and H; Testimony of Christopher J. McKelvey.)
10. Respondent Stark 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 Department staff's Exhibit E, an AWR filed by respondent Eric Stark dba Dragon Eye Oil Company for the production year 2012 and an AWR filed by respondent Eric Stark individually for the production year 2014. (Testimony of Christopher J. McKelvey; Staff Exhibit E.)
11. The Department supplies the AWR form to owners or other responsible parties by regular mail in January of each year immediately following the production year for which the AWR is required. The AWR must be filed by March 31 of that year. As a courtesy, if the Department does not timely receive the required AWR, it sends out a letter reminding the owners or other responsible parties of their obligation to file the AWRs, and enclosing another copy of the AWR form. (Testimony of Christopher J. McKelvey; Staff Exhibit D [January 9, 2014 and July 3, 2014 correspondence to each respondent, respectively].)

12. Each AWR form filled in by the owner or other responsible party and filed with the Department must be signed by them on the signature line indicated in the form. (Testimony of Christopher J. McKelvey; Staff Exhibits D and E.)
13. Above the signature line in the AWR form is the following certification made by the person executing the form:
"Certification: I understand that Environmental Conservation Law (ECL) Sec. 23-0305 requires me to file complete and accurate well records on a form provided by NYSDEC and that ECL Sec. 71-1307 provides that knowingly violating ECL Sec. 23-0305 is punishable as a misdemeanor. I certify under penalty of perjury that the information provided above is complete and accurate." (Staff Exhibits D and E.)
14. Respondent Eric Stark executed AWR forms for the Brandes, Clarke and McLaughlin wells containing the certification indicated in Finding of Fact 13 for the production years 2001 through 2005, 2011, 2012 and 2014 and filed the AWRs with the Department. (Testimony of Christopher J. McKelvey; Staff Exhibits E and F.)¹
15. Respondent Eric Stark dba Dragon Eye Oil Company executed AWR forms for the eighteen Pike wells containing the certification indicated in Finding of Fact 13 for the production years 2000 through 2005 and 2012 and filed the AWRs with the Department. (Testimony of Christopher J. McKelvey; Staff Exhibits E and F.)
16. The Department provided respondents with AWR forms in January 2014 for the AWR due for the 2013 production year for the wells indicated in Findings of Fact 4 and 5, above. (Testimony of Christopher J. McKelvey; Staff Exhibit D.)
17. The Department sent a letter to respondents in July 2014 reminding respondents to file the required AWR for the 2013 production year. (Testimony of Christopher J. McKelvey; Staff Exhibit D.)
18. Christopher McKelvey is an employee of the Department and is a Mined Land Reclamation Specialist 3 in the

¹ Staff Exhibit F indicates that respondent Stark also filed an AWR for the 2015 production year. As this matter was commenced in 2015 and respondent has been in default since October 1, 2015, I do not consider compliance or non-compliance after that date.

Department's Division of Mineral Resources. Mr. McKelvey's duties include the care, custody, and maintenance of the records pertaining to the oil, gas and solution mining program of the State of New York. These records are kept in a database maintained by the Department and include all AWRs filed pursuant to 6 NYCRR 551.2. (Testimony of Christopher J. McKelvey.)

19. On July 29, 2015 and September 13, 2016, Christopher McKelvey searched the Department's oil, gas and solution mining database for all AWRs filed by respondents. (Testimony of Christopher J. McKelvey; Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibit F.)
20. As a result of his search, Christopher McKelvey determined that respondent Eric Stark had not timely filed the AWRs for the 2006 through 2010 and 2013 production years for his Brandes 08327, Clark 1 and McLaughlin 1 wells. (Testimony of Christopher J. McKelvey; Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibit F.)
21. As a result of his search, Christopher McKelvey determined that respondent Eric Stark dba Dragon Eye Oil Company had not timely filed the AWRs for the 2006 through 2011, 2013 and 2014 production years for respondent's Pike 1 through Pike 18 wells. (Testimony of Christopher J. McKelvey; Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibit F.)
22. Respondents were responsible for filing the annual well reports referenced in Findings of Fact 20 and 21, respectively, and as of the date of the hearing had not done so. (Testimony of Christopher J. McKelvey.)
23. Respondent Eric Stark's (dba Dragon Eye Oil Company) Pike 1 through Pike 18 wells have been unproductive and abandoned since 2000. (Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibits E and F; Testimony of Christopher J. McKelvey.)
24. Prior to receiving the December 5, 2013 shut-in order, respondent Eric Stark's (dba Dragon Eye Oil Company) Pike 1 through Pike 18 wells had been shut-in for more than one year, but have not been plugged. (Testimony of Christopher J. McKelvey; Hearing Record.)

25. As shown by the affidavits of service of Keisha Rivera sworn to September 25, 2015, Department staff served the notice of hearing and complaint, order on consent, statement of readiness and affidavit of Christopher McKelvey, on respondents by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that were delivered on September 1, 2015. (Staff Exhibit B.)
26. The complaint alleges a violation of 6 NYCRR 551.2(b) for failure to file complete and accurate AWRs for the production years referenced in Findings of Fact 20 and 21 and alleges a violation of 6 NYCRR 555.3(c) for failure to plug respondent Eric Stark's (dba Dragon Eye Oil Company) Pike 1 through Pike 18 wells. (Staff Exhibit A.)
27. Respondents failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on September 16, 2016, as directed in the notice of hearing. (Staff Exhibit C; 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, unless the time to answer is extended by consent of staff or ruling of the ALJ (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 a 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 (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 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" (Matter of Queen City Recycle Center, Inc., Decision and Order of the Commissioner, December 12, 2013, at 3).

As an initial matter, Department staff's allegations against respondent Dragon Eye Oil Company must be addressed. Department staff's proof demonstrates that the eighteen Pike wells are owned by Eric Stark dba Dragon Eye Oil Company (Finding of Fact No. 5; Exhibit I). Dragon Eye Oil Company is nothing more than the assumed named under which respondent Stark conducts business and has no legal existence of its own. Accordingly, respondent Stark is liable for the violations Department staff alleged against respondent Dragon Eye Oil Company.

Department staff's proposed order states that staff proved respondent Stark "is the sole individual with any connections with and operational control over the purported business entity Respondent Dragon Eye Oil Co., including the ability to have prevented the violations." The proposed order concludes that respondent Stark is jointly and severally liable for respondent Dragon Eye Oil Company's violations based on the responsible corporate officer doctrine. Staff did not plead or prove that Dragon Eye Oil Company is incorporated, did not plead responsible corporate officer liability in its complaint, and did not move to conform the pleadings to the proof. For those reasons, even if this matter involved a corporation and a corporate officer, I would not reach the legal conclusion requested by staff. As discussed above, the evidence in this matter demonstrates that Dragon Eye Oil Company is the assumed name by which respondent Stark does business. Therefore, full relief may be obtained against respondent Eric Stark in this matter, individually and dba Dragon Eye Oil Company.

Department staff's proof presents a prima facie case demonstrating that respondent Eric Stark failed to timely file complete and accurate AWRs for the 2006 through 2010 and 2013 production years for his Brandes 08327, Clark 1 and McLaughlin 1 wells, being those wells set forth in Findings of Fact 4 and 20, above, in violation of 6 NYCRR 551.2(b).

Department staff's proof also presents a prima facie case demonstrating that respondent Eric Stark dba Dragon Eye Oil Company failed to timely file complete and accurate AWRs for the 2006 through 2011, 2013 and 2014 production years for

respondent's Pike 1 through Pike 18 wells, being those wells set forth in Findings of Fact 5 and 21, above, in violation of 6 NYCRR 551.2(b).

At hearing Department staff moved to amend the complaint to change the violation noted in the second cause of action from a violation of 6 NYCRR 555.3(c)(temporary abandonment) to 6 NYCRR 555.2(c)(shut-in wells). Both sections require the offending wells be permanently plugged and abandoned. Staff's requested amendment more accurately applies to wells that have been producing but have been closed down for various reasons. As the relief for exceeding the regulatory period that a well is allowed to be temporarily abandoned or shut-in without Department approval is the same, there is no prejudice to respondents in correcting the violation noted in the second cause of action. Accordingly, I granted staff's motion at the hearing.

Department staff alleges that the eighteen Pike wells were abandoned for more than one year and have not been permanently plugged and abandoned. The eighteen Pike wells were ordered shut-in by the Department on December 12, 2013. Consequently, the wells were legally shut-in from December 12, 2013 to the date of the hearing. Department staff's proof, however, presents a prima facie case demonstrating that the eighteen Pike wells were shut-in from 2000 to December 12, 2013 and had not been permanently plugged and abandoned, in violation of 6 NYCRR 555.2(c).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondents; and (ii) respondents failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on September 16, 2016, as directed in the notice of hearing. Department staff provided a proposed order subsequent to the hearing and the record was closed. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent Eric Stark, individually and dba Dragon Eye Oil Company, failed to timely file complete and accurate AWRs for the production years noted above in violation of 6 NYCRR 551.2(b). The proof also demonstrates that the eighteen Pike wells have been shut-in and abandoned for years and have not been permanently plugged and abandoned in violation of 6

NYCRR 555.2(c). The Department is entitled to judgment upon the facts proven.

Department staff's proposed civil penalty of \$5,000 is consistent with the Department's Civil Penalty Policy (DEE 1, issued June 20, 1990) as well as applicable provisions of ECL article 71. Furthermore, staff demonstrated the importance of plugging abandoned wells to avoid environmental damage and contamination from the seepage of brine or hydrocarbons into groundwater and surrounding soils. Also of concern to the Department is the fact that State funds may be expended to permanently plug the wells should respondent fail to do so. I conclude that the requested penalty is supported and appropriate.

Department staff's schedule of compliance requests that respondents be ordered to file the required AWRs and submit payment of the \$5,000 penalty immediately upon the effective date of the Commissioner's order. In addition, Department staff requests that the Commissioner order respondents to:

1. file updated organizational reports reflecting the current personnel for operator of the wells;
2. submit a notice of intent to plug and abandon each well listed in the appendix to the complaint within thirty days of the effective date of the order;
3. contract with a NYS-registered plugging contractor to plug and abandon the listed wells in accordance with ECL article 23, 6 NYCRR and the permit issued for the plugging within 180 days of the effective date of the order;
4. submit a plugging report within thirty days of completion of the plugging operations; and
5. 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 State for well plugging required at respondents' wells.

At hearing, Department staff stated if respondent Eric Stark submitted the AWRs for the Brandes, Clarke and McLaughlin wells and paid whatever penalty was ordered, that respondent Stark could produce those wells again. Staff stated those three wells did not need to be plugged. Staff's complaint only states that the eighteen Pike wells required plugging. Staff also testified that there was no reason to change the relief requested in the complaint and the attachments thereto. Staff's proposed order, however, requires plugging of the Brandes, Clarke and McLaughlin wells unless respondent Stark brings those

wells into compliance. It is well settled that the relief granted in a default judgment cannot exceed in amount or differ in type from the relief demanded in the complaint without notice to the respondent (see CPLR 3215[b]; Matter of Reliable Heating Oil, Inc., Decision and Order of the Commissioner, Oct. 30, 2013, at 2-3; Matter of 134-15 Rock Management Corp., Order of the Commissioner, Dec. 10, 2008, at 4). There has been no such notice provided to respondent Eric Stark individually and dba Dragon Eye Oil Company in this matter, therefore, respondent Stark cannot be ordered to plug the Brandes, Clarke and McLaughlin wells.

Conclusions of Law

1. By failing to file the annual well reports for the 2006 through 2010 and 2013 production years for the Brandes 08327, Clark 1 and McLaughlin 1 wells, respondent Eric Stark violated 6 NYCRR 551.2(b).
2. By failing to file the annual reports for the 2006 through 2011, 2013 and 2014 production years for the Pike 1 through Pike 18 wells, respondent Eric Stark dba Dragon Eye Oil Company violated 6 NYCRR 551.2(b).
3. By shutting in the eighteen Pike wells for more than one year without permanently plugging and abandoning the wells, respondent Eric Stark dba Dragon Eye Oil Company violated 6 NYCRR 555.2(c).

Recommendation

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

1. granting Department staff's motion for default;
2. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Eric Stark violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006 through 2010 and 2013 production years for his Brandes 08327, Clark 1 and McLaughlin 1 wells (API Well Numbers 31-003-00766-00-00, 31-003-66930-00-00, and 31-003-66931-00-00, respectively);
3. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Eric Stark dba Dragon

Eye Oil Company violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006 through 2011, 2013 and 2014 for his Pike 1 through Pike 18 wells (API Well Numbers 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00, respectively);

4. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Eric Stark dba Dragon Eye Oil Company violated 6 NYCRR 555.2(c) by failing to permanently plug and abandon the Pike 1 through Pike 18 wells (API Well Numbers 31-003-52377-00-00, 31-003-52378-00-00, 31-003-52379-00-00, 31-003-52380-00-00, 31-003-52381-00-00, 31-003-52382-00-00, 31-003-52383-00-00, 31-003-52384-00-00, 31-003-52385-00-00, 31-003-52386-00-00, 31-003-52387-00-00, 31-003-52388-00-00, 31-003-52389-00-00, 31-003-52390-00-00, 31-003-52391-00-00, 31-003-52392-00-00, 31-003-52393-00-00, and 31-003-52394-00-00, respectively) after the wells had been shut-in for more than one year;
5. directing respondent Eric Stark individually and dba Dragon Eye Oil Company to file the required annual well reports with the Department within thirty (30) days of the service of the Commissioner's order upon respondent;
6. directing respondent Eric Stark individually and dba Dragon Eye Oil Company to file updated organizational reports within thirty (30) days of the service of the Commissioner's order upon respondent;
7. directing respondent Eric Stark individually and dba Dragon Eye Oil Company to pay a civil penalty in the amount of five thousand dollars (\$5,000) within thirty days (30) of the service of the Commissioner's order upon respondent;
8. directing respondent Eric Stark dba Dragon Eye Oil Company to submit a notice of intention to plug and abandon the Pike 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 wells within thirty days (30) of the service of the Commissioner's order upon respondent;

9. directing respondent Eric Stark dba Dragon Eye Oil Company to contract with a registered New York State plugging contractor to permanently plug and abandon the Pike 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 wells in accordance with ECL article 23 and 6 NYCRR part 555 within one hundred eighty (180) days of the service of the Commissioner's order upon respondent;
10. directing respondent Eric Stark dba Dragon Eye Oil Company to submit a plugging report within thirty (30) days after completion of plugging operations;
11. directing respondent Eric Stark dba Dragon Eye Oil Company 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 State for well plugging required at respondent's wells; and
12. 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 7, 2016

EXHIBIT CHART – OIL & GAS WELL EXPEDITED PROCEEDINGS

Matter of Eric Stark, Dragon Eye Oil Co. – Town of Alma, Allegany County, New York – DEC Case No. 1098-2015DK
September 16, 2016 – Central Office
Edirol File No. 030224125335

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
A	Cover Letter from David H. Keehn, Esq. to Eric Stark, Dragon Eye Oil Co., dated August 21, 2015 with Notice of Hearing and Complaint, dated August 21, 2015, Order on Consent, Statement of Readiness, dated August 21, 2015, Affidavit of Christopher McKelvey sworn to August 21, 2015, Schedule of Compliance and List of Wells.	✓	✓	Department Staff	
B	Affidavits of Service of Keisha Rivera, sworn to September 25, 2015, including USPS attachments.	✓	✓	Department Staff	
C	Notice of Hearing, dated August 6, 2016.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
D	<p>Letter to Dragon Eye Oil Co. from Ted Loukides, dated January 9, 2014 and Letter to Eric Stark from Theodore N. Loukides, dated January 9, 2014 - transmitting annual well report form for 2013 production year and reminding respondents to submit by March 31, 2014 with Commercial Well Example form attached.</p> <p>Letter to Dragon Eye Oil Co. from John K. Dahl, dated July 3, 2014 and Letter to Eric Stark from John K. Dahl, dated July 3, 2014 regarding missing 2013 Annual Well Report.</p>	✓	✓	Department Staff	
E	<p>Annual Well Report for 2012 production year for Dragon Eye Oil Co. (2 pages) certified by Eric C. Stark, Owner on March 28, 2013 and received by Department staff on April 5, 2013.</p> <p>Annual Well Report for 2014 production year for Eric Stark (2 pages) certified by Eric C. Stark, Owner on March 26, 2015 and received by Department staff on March 30, 2015.</p>	✓	✓	Department Staff	
F	<p>Annual Well Production Data for Eric Stark (Brandes 08327, Clark 1, McLaughlin 1 wells) for years 2001 through 2005 and 2011, 2012, 2014 and 2015, generated on September 13, 2016.</p> <p>Annual Well Production Data for Dragon Eye Oil Co. (Pike 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 Wells) for years 2000 through 2005 and 2012, generated on September 13, 2016.</p>	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
G	Letter to Eric Stark, et al from David H. Keehn, dated May 4, 2012 with Shut-In Order (re: Brandes 08327, Clark 1, McLaughlin 1 wells), dated May 1, 2012 and Affidavit of John Dahl sworn to March 27, 2012 attached.	✓	✓	Department Staff	
H	Letter to Dragon Eye Oil, Co, et al from David H. Keehn, undated with Shut-In Order (re: Pike 1-18 wells), dated December 5, 2013 and Affidavit of Ted Loukides sworn to November 18, 2013 attached.	✓	✓	Department Staff	
I	Organizational Report for Dragon Eye Oil Co. affirmed by Eric C. Stark on November 10, 1999. Organizational Report for Eric Stark affirmed by Eric C. Stark on April 25, 2000.	✓	✓	Department Staff	