

**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 -

DOUGLAS VANSTROM,

Respondent.

ORDER

DEC Case No.
CO 9-20210709-74

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent Douglas Vanstrom violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2020 calendar year for a gas well, known as the Vanstrom 1 well, located in the Town of Ellicott, Chautauqua County, New York. The well is designated by American Petroleum Institute (API) Well Number 31-013-18005-00-00 and is operated by respondent.

Administrative Law Judge (ALJ) Jennifer M. Ukeritis 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, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter and failed to appear for the adjudicatory hearing scheduled for January 27, 2022 (*see* Default Summary Report at 3 [Findings of Fact Nos. 11 and 13]). At the January 27, 2022 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Michael S. Caruso, presiding at the hearing, reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers. The matter was then assigned to ALJ Ukeritis.

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 6). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent failed to timely file an annual well report for the 2020 calendar year for the Vanstrom 1 well and, therefore, is in violation of 6 NYCRR 551.2(b).

Department staff correctly points out that the requirement to file annual well reports is important to determining the status of the State's resources given the potential or actual environmental harm that may result from the lack of accurate, annual information about well activity. The identification of non-producing wells for plugging is significant for the prevention of groundwater contamination (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated February 22, 2022, ¶ 13; *see also* Affidavit of Ted Loukides, sworn to February 16, 2022, ¶ 15).

Department staff, in its papers, sought a penalty of three thousand dollars (\$3,000), and the ALJ recommended that respondent Douglas Vanstrom 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 Douglas Vanstrom failed to submit a timely and complete report for the Vanstrom 1 well for the calendar year 2020, after failing to file his 2019 annual well report. Respondent was the subject of a Commissioner's Order dated May 26, 2021, for that 2019 annual well report violation. Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written and oral reminders, nothing in this record indicates that respondent filed a report for the 2020 calendar year (*see e.g.* Default Summary Report at 2-3 [Findings of Fact Nos. 4-9]). In light of respondent's past noncompliance, the recommended penalty is authorized and appropriate.

I direct that respondent submit the civil penalty of three thousand dollars (\$3,000) to the Department within thirty (30) days of the service of this order upon respondent. In addition, within thirty (30) days of the service of this order upon respondent, respondent Douglas Vanstrom is directed to submit a complete and accurate well report for the Vanstrom 1 well for calendar year 2020 to the Department.

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 Douglas Vanstrom 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 Douglas Vanstrom is determined to have violated 6 NYCRR 551.2(b), by failing to timely file a complete and accurate annual well report for the 2020 calendar year for the Vanstrom 1 well (API Well Number 31-013-18005-00-00).

- III. Within thirty (30) days of the service of this order upon respondent Douglas Vanstrom, respondent shall submit to the Department a complete and accurate annual well report for the Vanstrom 1 well for the 2020 calendar year.
- IV. Respondent Douglas Vanstrom is hereby assessed a civil penalty in the amount of three thousand dollars (\$3,000), 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 V of this order.
- V. The annual well report and 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.
- VI. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph V of this order.
- VII. The provisions, terms and conditions of this order shall bind respondent Douglas Vanstrom and respondent's agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: /s/
Basil Seggos
Commissioner

Dated: May 4, 2022
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violation of Articles 23 and 71
of the Environmental Conservation Law of the State of
New York and Title 6 of the Official Compilation of
Codes, Rules and Regulations of the State of New York

-by-

DOUGLAS VANSTROM,

Respondent.

**DEFAULT SUMMARY
REPORT
Case No. CO 9-20210709-74**

Appearance of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Anne Haas, Senior Attorney, of counsel) for staff of the Department of Environmental Conservation
- No appearance for the Respondent

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served Douglas Vanstrom (respondent) with a notice of hearing and complaint dated November 22, 2021 (complaint), alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file a timely annual well report for the 2020 calendar year for a well known as the Vanstrom 1 well located in the Town of Ellicott, Chautauqua County, New York. The well is designated by American Petroleum Institute (API) Well Number 31-013-18005-00-00.

The complaint seeks an order of the Commissioner:

- finding that respondent committed the alleged violation;
- directing respondent to submit an acceptable annual well report for calendar year 2020 to the Department;
- assessing a civil penalty in the amount of \$3,000; and
- for 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 November 26, 2021 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. (*See* affirmation of Anne Hass [Hass Aff.], dated February 22, 2022, ¶ 3.) As stated in staff's notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Michael Caruso on January 27, 2022. (*See* Hass Aff. ¶ 2, and Exhibit B.) Department Staff was represented by Anne Hass, Esq.,

Office of General Counsel, New York State Department of Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of the respondent. (*See* Hass Aff. ¶¶ 3-4.)

ALJ Caruso noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Caruso reserved on the oral motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated February 22, 2022, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on or about February 22, 2022 (*see* affidavit of service of Melissa Evans, sworn to February 22, 2022). Respondent did not respond to the motion.

Applicable Regulatory Provisions

Section 551.2(b) of 6 NYCRR, “Production and purchase reports,” states “[e]ach 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. Theodore Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department’s Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division’s Bureau of Resource Development and Reclamation. Mr. Loukides’s duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, et seq. including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all annual well reports (AWRs) submitted to the Department. (*See* affidavit of Ted Loukides [Loukides Aff.], sworn to February 16, 2022, ¶¶ 1-3.)
2. Respondent Douglas Vanstrom maintains an address at 400 Glengrove Drive, Youngstown, New York. (*See* Loukides Aff., Exhibits 2, 3.)
3. Respondent Douglas Vanstrom operates the well designated as API Well Number 31-013-18005-00-00 and known as the Vanstrom 1 well, located in the Town of Ellicott, Chautauqua County, New York. (*See* Loukides Aff. ¶¶ 4, 5, 6, Exhibits 1, 2, 3.)
4. Respondent is required to file annual well reports (AWRs) with the Department for each calendar year for each well respondent operates on a form supplied by the Department, as typified by Loukides Aff. Exhibit 4 (AWR sent to respondent for the 2020 calendar year). (*See* Loukides Aff. ¶¶ 4, 7, Exhibit 4.)

5. On January 22, 2021, Department staff mailed respondent a cover letter and AWR form for the 2020 calendar year, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2021. Respondent failed to submit the 2020 AWR by March 31, 2021. (*See Loukides Aff. ¶¶ 7, 8, Exhibit 4.*)
6. On July 26, 2021, Department staff mailed respondent a notice of violation (NOV) advising respondent that respondent had failed to file an acceptable AWR by March 31, 2021. Included with the NOV was an order on consent to settle the matter within thirty days. The NOV advised respondent of the potential penalties for failing to submit the required AWR along with the signed order on consent. Respondent failed to submit the missing AWR or respond to the July 26, 2021, notice. The notice of violation and consent order were mailed by certified mail return receipt requested. Tracking as of August 1, 2021, could not confirm respondent's receipt. (*See Loukides Aff. ¶ 11, Exhibits 5, 6, and 7.*)
7. On September 2, 2021, Department staff re-mailed the NOV, still dated July 26, 2021, to respondent by USPS first class mail. Respondent failed to submit the missing AWR, order on consent, and penalty, or otherwise respond. (*See Loukides Aff. ¶ 12.*)
8. Department staff also tried to reach respondent by phone on September 22, 2021, but received no answer and left a voice mail reminding respondent that the Department had not received his AWR, the order on consent, or penalty payment. (*See Loukides Aff. ¶ 13.*)
9. As of February 16, 2022, the Department had not received respondent's 2020 AWR. (*See Loukides Aff. ¶ 14.*)
10. As shown by the affidavit of service of Melissa Evans, sworn to January 3, 2022, Department staff served the notice of hearing, complaint, statement of readiness, order on consent and invoice, on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), which was received by respondent on November 26, 2021. (*See Haas Aff. Exhibit C.*)
11. Respondent did not answer the complaint. (*See Haas Aff. ¶ 3.*)
12. Pursuant to the notice of hearing, a virtual hearing was convened on January 27, 2022. (*See Haas Aff. ¶2*)
13. Respondent failed to appear at the January 27, 2022, hearing. (*See Haas Aff. ¶ 4; hearing record.*)
14. On May 26, 2021, the Commissioner issued an order finding respondent violated 6 NYCRR 551.2(b) for failing to file an AWR for the 2019 calendar year. (*See Haas Aff. ¶ 9, Exhibit D.*)

Discussion

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

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

- "(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
 - "(2) proof of respondent's failure to appear or failure to file a timely answer;
 - "(3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
 - "(4) a concise statement of the relief requested;
 - "(5) a statement of authority and support for any penalty or relief requested; and
 - "(6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable."
- (*see* 6 NYCRR 622.15[b][1] - [6]).

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* 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on January 27, 2022, as directed in the notice of hearing; (iii) Department staff's papers provide proof of the facts sufficient to support the violations alleged and enable me to determine that staff has a viable claim; (iv) Department staff's papers include a concise statement of the relief requested (*see* motion for default judgment, wherefore clause; Haas Aff. Exhibit B [complaint]); (v) staff's motion includes a

statement of authority and support for the penalty and relief requested (*see* Haas Aff. ¶¶ 9-16); and (vi) Department staff provided proof of service of the motion papers on respondent (*see* affidavit of service of Melissa Evans, sworn to February 22, 2022). Respondent did not file or serve a response to staff's motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff's submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file a complete and accurate AWR for the 2020 calendar year for respondent's Vanstrom 1 well, in violation of 6 NYCRR 551.2(b).

Staff's complaint requested a total civil penalty of three thousand dollars (\$3,000). Staff's submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department's Civil Penalty Policy, DEE-1, and administrative precedent concerning similar violations (*see* Haas Aff. ¶¶ 9-16). Department staff typically seeks a penalty of one thousand five hundred dollars (\$1,500) for the failure to submit an AWR.¹ Here, however, respondent has a history of noncompliance as exemplified by the May 26, 2021, order of the Commissioner (*see* Haas Aff. ¶9, Exhibit D). Therefore, staff applied respondent's history of noncompliance as an aggravating factor in support of staff's three-thousand-dollar (\$3,000) penalty request. Department staff asserts that reporting requirements, such as those at issue here, provide the Department with important information about the status of the State's resources. According to Department staff, the failure to timely submit AWRs may result in potential and actual environmental harm. Staff explains that the AWRs identify non-producing wells for plugging, and that the failure to plug non-producing wells may result in contamination of groundwater with petroleum products, and the release of harmful greenhouse gases. In addition, Department staff transmits production information to affected State agencies and local governments for real property tax purposes. (*See* Haas Aff. ¶ 13; Loukides Aff. ¶ 15.)

ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b). Department staff's proposed civil penalty of three thousand dollars (\$3,000) is consistent with the Department's Civil Penalty Policy (DEE 1, issued June 20, 1990) as well as applicable provisions of ECL article 71 and prior Commissioner orders. Furthermore, staff demonstrated the importance of AWRs to the regulatory scheme. The Commissioner has previously held that "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). Accordingly, I conclude that the penalty of three thousand dollars (\$3,000) requested by Department staff, is supported and appropriate.

¹ *See Matter of Sahlem*, Order of the Commissioner, January 4, 2021, *Matter of Gilray*, Order of the Commissioner, March 4, 2015, and *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013. For each demonstrated violation, the Commissioner assessed a civil penalty of \$1,500. (Haas Aff. ¶ 14).

Conclusion of Law

By failing to timely file a complete and accurate annual well report for the 2020 calendar year for the Vanstrom 1 well, respondent Douglas Vanstrom 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 Douglas Vanstrom violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2020 calendar year for respondent's Vanstrom 1 well (API Well Number 31-013-18005-00-00);
3. directing respondent Douglas Vanstrom to submit a complete and accurate annual well report for the 2020 calendar year within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing respondent Douglas Vanstrom to pay a civil penalty in the amount of three thousand dollars (\$3,000) within thirty days (30) of the service of the Commissioner's order upon respondent; and
5. directing such other and further relief as he may deem just and appropriate.

/s/

Jennifer M. Ukeritis
Administrative Law Judge

Dated: April 22, 2022
Albany, New York

APPENDIX A

Matter of Douglas Vanstrom
DEC Case No. CO 9-20210709-74
Motion for Default Judgment

1. Cover Letter, dated February 22, 2022, from Anne Haas, Esq filing and attaching staff's motion papers
2. Affidavit of service of Melissa Evans, sworn to February 22, 2022 (default motion papers)
3. Notice of Motion for Default Judgment, dated February 22, 2022
4. Motion for Default Judgment, dated February 22, 2022, attaching Exhibit A Affirmation of Anne Haas.

Exhibit A – Affirmation of Anne Haas, dated February 22, 2022, attaching exhibits B through D.

Exhibit B – Cover letter, Notice of Hearing, Complaint, and Statement of Readiness, all dated November 22, 2021, and proposed Order on Consent and Invoice

Exhibit C – Affidavit of Service of Melissa Evans, sworn to January 3, 2022 (notice of hearing and complaint)

Exhibit D – Commissioner's Order in the Matter of Douglas Vanstrom dated May 26, 2021

5. Affidavit of Ted Loukides, sworn to February 16, 2022

Exhibit 1 – Tax map parcel depicting location of well on property owned by Douglas Vanstrom

Exhibit 2 – Organizational Report for Douglas Vanstrom sworn to February 8, 2013

Exhibit 3 – Request for Well Transfer from estate of Donald Vanstrom to Douglas Vanstrom sworn January 14, 2013

Exhibit 4 – Cover Letter from Theodore N. Loukides, dated January 22, 2021, with enclosed 2020 AWR form

Exhibit 5 – Letter from Theodore N. Loukides dated May 7, 2021, final notice to file 2020 AWR form

Exhibit 6 – Letter from Theodore N. Loukides dated July 26, 2021, (re: NOV – Failure to File AWR) with proposed order on consent, invoice and 2020 AWR form enclosed

Exhibit 7 – USPS tracking for Exhibit 6