

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

In the Matter of the Alleged Violations of Article 15 of the New York State Environmental Conservation Law (ECL)

- by -

**ADIRONDACK WATER SYSTEMS INC.
and TODD E. ORMSBY,**

ORDER
DEC Case No.
CO5-20220301-28

Respondents.

This administrative enforcement proceeding addresses allegations by staff of the New York State Department of Environmental Conservation (Department or DEC) that respondent Adirondack Water Systems Inc. (Adirondack Water) and respondent Todd E. Ormsby (Ormsby) (collectively, respondents) violated article 15 of the ECL with respect to water well drilling activities conducted by respondents.

Department staff commenced this proceeding by serving upon respondents a notice of hearing and complaint, statement of readiness and staff affidavit with exhibits, all dated September 8, 2022. Department staff alleges twelve violations of ECL 15-1525 (3) and two violations of ECL 15-1525 (1) in nine enumerated causes of action. Specifically, Department staff alleges that respondents violated:

- (1) ECL 15-1525 (3) by failing to submit a completion report for a water well installed on Bartlett Carry Road, Saranac Lake, New York (First Cause of Action);
- (2) ECL 15-1525 (3) by failing to submit a completion report for a water well installed on Bean Cob Road, Lake Placid, New York (Second Cause of Action);
- (3) ECL 15-1525 (3) by failing to submit preliminary notices for three water wells installed at Adirondack Farms, located at 193 Brown Road, Peru, New York, in September 2020 and May 2021 (Third Cause of Action [three violations]);
- (4) ECL 15-1525 (3) by failing to submit completion reports for three water wells installed at Adirondack Farms, located at 193 Brown Road, Peru, New York, in September 2020 and May 2021 (Fourth Cause of Action [three violations]);
- (5) ECL 15-1525 (3) by failing to submit a preliminary notice for a water well installed at 632 Dugway Road, Chesterfield, New York (Fifth Cause of Action);

- (6) ECL 15-1525 (3) by failing to submit a completion report for a water well installed at 632 Dugway Road, Chesterfield, New York (Sixth Cause of Action);
- (7) ECL 15-1525 (3) by failing to submit a preliminary notice for a water well installed at 415 Fern Lake Road, Au Sable Forks, New York (Seventh Cause of Action);
- (8) ECL 15-1525 (3) by failing to submit a completion report for a water well installed at 415 Fern Lake Road, Au Sable Forks, New York (Eighth Cause of Action); and
- (9) ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the 2020/2021 and 2021/2022 annual registration periods (Ninth Cause of Action [two violations]) (see Complaint ¶¶ 10-36).

Department staff seeks an order: (i) finding that respondents committed the fourteen alleged violations; (ii) directing respondents to submit a completion report for each of the seven water wells referenced in the complaint, along with proof that a copy of each completion report was provided to the respective customer; (iii) directing respondents to apply for and obtain an annual certificate of registration for the April 1, 2022 to March 31, 2023 registration period within 60 days; and (iv) assessing a civil penalty of \$21,000 for the violations (see Complaint, Wherefore Clause ¶¶ I-IV).

Respondents failed to serve an answer to the complaint served by Department staff in this matter (see Default Summary Report at 5 [Finding of Fact No. 20]).

The matter was assigned to Administrative Law Judge (ALJ) Jennifer M. Ukeritis of the Department's Office of Hearings and Mediation Services. ALJ Ukeritis held a hearing in this matter on October 19, 2022 as provided in the notice of hearing. Respondents failed to appear at the hearing (see Default Summary Report at 5 [Finding of Fact No. 21]). At the hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15 and presented its case at that time (see Default Summary Report at 2). Staff offered the testimony of one witness, Beth K. Guidetti, a Professional Geologist 1 with the Department's Division of Water,¹ and also offered exhibits in support of its motion.² The ALJ permitted the hearing

¹ Ms. Guidetti testified that her duties include managing the water well contractor program at the Department, collecting preliminary notices and completion reports with respect to water wells drilled in New York, managing a state-wide database that contains these notices and reports and performing enforcement activities with respect to water well drilling (see Hearing Record at 10:07-10:59).

² Staff did not offer into evidence at the hearing the affidavit of Ms. Guidetti which had been served with the notice of hearing and complaint. As a general rule, any evidence that staff wishes to have considered as part of its motion for a default judgment must be offered as an exhibit at the hearing if the motion is made orally, or attached to the motion papers if the motion is made in writing. Nevertheless, in this matter, because the affidavit was served with the notice of hearing and complaint and was therefore before the ALJ as part of the pleadings, I find that it was appropriate for the ALJ to consider the affidavit as part of the hearing record. I recommend in future proceedings that staff follow the general rule enunciated herein.

record to remain open to allow staff to submit a supplemental affidavit of service and water well driller registration applications previously filed with the Department by Adirondack Water. Department staff thereafter submitted two supplemental affidavits, with attachments.

ALJ Ukeritis prepared the attached default summary report, in which she recommends that I:

- (i) grant Department staff's motion for a default judgment in part and deny it in part;
- (ii) hold that respondents, jointly and severally, violated ECL 15-1525 (3) by failing to file two preliminary notices of well drilling for two wells and violated ECL 15-1525 (1) by failing to apply for and receive the annual certificate of registration for water well drilling for the 2021/2022 registration period and direct that respondents, jointly and severally, pay a civil penalty of \$4,500 for these violations;
- (iii) hold that respondent Todd E. Ormsby violated ECL 15-1525 (3) by failing to submit three preliminary notices of well drilling and three completion reports and violated ECL 15-1525 (1) by failing to apply for and receive the annual certificate of registration for water well drilling for the 2020/2021 registration period and direct that respondent Ormsby pay a civil penalty of \$10,500 for these violations; and
- (iv) direct that respondents perform corrective actions to address the violations.

Upon review, I adopt the ALJ's findings of fact, conclusions of law and recommendations as my decision in this matter, subject to the following comments.

Liability

At the hearing, staff provided proof of service upon respondents of the notice of hearing and complaint (see Default Summary Report at 5 [Findings of Fact Nos. 17-19]).³ As stated above, respondents failed to answer the complaint or appear at the hearing (see *id.* [Findings of Fact Nos. 20-21]). As such, I find that Department staff has demonstrated those aspects of its motion for a default judgment pursuant to 6 NYCRR 622.15.

³ The affidavit of service submitted by Department staff reflecting service of the notice of hearing and complaint upon respondents by certified mail does not state the addresses where the mail was sent (see Affidavit of Service sworn to October 19, 2022). As a matter of practice, an affidavit of service should, on its face, contain all of the information necessary to demonstrate proper service upon a respondent (see 6 NYCRR 622.2 [v] [defining proof of service as: "an affirmation of an attorney or affidavit if made by any other person specifying the papers served, the person served, and the date and manner of service, and setting forth facts showing that service was made by an authorized person and in an authorized manner"]). Where, as here, service is made by certified mail, the affidavit should state the address(es) where the mail was sent. Nevertheless, in this matter, I find that the affidavit of service and its attached exhibits, considered together, are sufficient to demonstrate proper service of the notice of hearing and complaint upon respondents pursuant to 6 NYCRR 622.3 (a)(3). Attached to the affidavit of service as Exhibit A is the cover letter referenced in the affidavit of service, which is dated the same date that service was made and which provides the addresses where the mail was sent.

Although “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (Matter of Hunt, d/b/a Our Cleaners, Decision and Order of the Commissioner, July 25, 2006, at 6), Department staff is nevertheless required to provide, in support of its motion for a default judgment, “proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim” (6 NYCRR 622.15 [b][3]; see CPLR 3215 [f]).

In this matter, respondents are charged with violations of ECL 15-1525 (1) and (3). ECL 15-1525 (1) provides that “[n]o person shall engage in the business of water well drilling in the state of New York without first obtaining a certificate of registration from the department.” In addition, pursuant to ECL 15-1525 (3), the certificate of registration shall require, among other things, that “before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department,” providing certain information about the water well. The term “water well driller” is defined as “a person who, for compensation or as part of property development and sale, engages in water well drilling activities” (ECL 15-1502 [5]). The terms “water well drilling” and “water well drilling activities” include “the construction and reconstruction of water wells” (ECL 15-1502 [4]). The term “person” as used in the statute includes individuals as well as private corporations (see ECL 15-1502 [11]).

I concur with the ALJ that staff presented sufficient evidence to enable me to determine that Ormsby, as President and sole corporate officer and employee of Adirondack Water, may be held liable as a responsible corporate officer for violations of the ECL committed by Adirondack Water (see Matter of Supreme Energy Corp., Decision and Order of the Commissioner, April 11, 2014, at 25-26 [“A corporate officer can be held personally liable for violations of the corporate entity that threaten the public health, safety, or welfare” where it is shown that “the officer had direct responsibility for operations and was in a position to prevent the violations”]). On this point, staff submitted proof that Adirondack Water, from 2006 through 2016, applied for and obtained a certificate of registration from the Department to install or repair water wells pursuant to ECL 15-1525 (see Supplemental Affidavit of Beth K. Guidetti, sworn to November 4, 2022 [Guidetti Supplemental Affidavit] at ¶¶ 3-4; Appendix A). Each of Adirondack Water’s applications was signed by Ormsby and listed Ormsby as the sole certified individual and the sole owner, partner or officer of the corporation (see id. ¶ 5; Appendix A).

First and Second Causes of Action

In the first two causes of action, staff alleges that respondents failed to submit completion reports for two wells, one drilled in Saranac Lake, New York, and one drilled in Lake Placid, New York (see Complaint ¶¶ 10-13). In support of these causes of action, staff presented evidence that: (1) Adirondack Water filed with the Department a preliminary notice for the drilling of a well in Saranac Lake, New York, dated June 26, 2016; and (2) Adirondack Water filed with the Department a preliminary notice for the drilling of a well in Lake Placid, New York, dated October 20, 2016 (see DEC Hearing Exhibits [DEC Exhs] B and C). At the hearing, Ms. Guidetti testified that the Department did not receive a completion report for these wells and did not receive any communication from the well driller advising that the wells were not drilled

or rescinding the preliminary notices (see Hearing Record at 20:13-20:25; 21:42-21:52; 22:33). She affirmed that she could not determine from the preliminary notice whether the well was installed (see id. at 19:48-19:55). She also affirmed that she routinely assumes that a well that has been the subject of a preliminary notice submitted to the Department was drilled unless she receives information to the contrary (see id. at 19:57-20:11).

Upon review, I concur with the determination of the ALJ that the evidence presented by staff at the hearing is not sufficient to enable me to determine that staff has a viable claim that respondents violated ECL 15-1525 (3) by failing to file a completion report for wells drilled in Saranac Lake and Lake Placid (see Default Hearing Report at 7-8). There was no demonstration that the requirement to file a completion report was triggered (see ECL 15-1525 [3] [stating that a completion report shall be filed with the Department “upon the completion of the drilling of any water well or water wells”]). As such, staff’s motion is denied with respect to the First and Second Causes of Action.

Third and Fourth Causes of Action

In these causes of action, staff alleges that respondents committed six violations of ECL 15-1525 (3) by failing to file preliminary notices and completion reports for three wells drilled at Adirondack Farms, located at 193 Brown Road, Peru, New York in September 2020 and May 2021 (see Complaint ¶¶ 14-21).

Upon review, I concur with the ALJ that staff’s evidence is insufficient to enable me to determine that staff has a viable claim that respondent Adirondack Water violated ECL 15-1525 (3) by failing to file preliminary notices and completion reports for three wells drilled at Adirondack Farms (see Default Summary Report at 8-9). As such, I find that the motion must be denied as against Adirondack Water with respect to the Third and Fourth Causes of Action.

As to respondent Ormsby, I concur with the ALJ that staff’s evidence, including Ms. Guidetti’s testimony and the emails and invoices included in DEC Exhibit D, provided sufficient proof to enable me to determine that staff has a viable claim that respondent Ormsby violated ECL 15-1525 (3) by failing to file preliminary notices and completion reports for three wells drilled at Adirondack Farms in Peru, New York. DEC Exhibit D includes emails from Adirondack Farms which reference two wells drilled for Adirondack Farms by Ormsby in September 2020 and one well drilled for Adirondack Farms by Ormsby in May 2021 (see DEC Exh D). DEC Exhibit D also includes invoices for the drilling of three wells for Adirondack Farms, and the invoice for the drilling of two wells indicates that Ormsby was paid by Adirondack Farms for the work (see id.). In addition, Ms. Guidetti’s testimony establishes that Ormsby did not file preliminary notices or completion reports for those three wells.

Based on this evidence, staff’s motion is granted as against respondent Ormsby with respect to the Third and Fourth Causes of Action.

Fifth and Sixth Causes of Action

In these causes of action, staff alleges that respondents violated ECL 15-1525 (3) by failing to file a preliminary notice and completion report for a water well drilled at 632 Dugway Road, Chesterfield, New York. In support of these causes of action, Ms. Guidetti testified that she received an email on August 12, 2021 from “a competitor” (see Hearing Record at 35:06-35:14; DEC Exh H). She testified that the email provided photographic evidence that Ormsby was drilling a water well in Chesterfield, New York (see Hearing Record at 36:26-36:35; DEC Exh H). After receiving this email, she requested that an officer go to the site and obtain additional evidence of a violation (see Hearing Record at 36:53-37:05). Environmental Conservation Officer (ECO) Jeffrey Hovey went to the site and confirmed that Ormsby was drilling at the site (see Hearing Record at 37:07-37:27). Ms. Guidetti testified that she did not receive a preliminary notice or completion report for this well in Chesterfield (see Hearing Record at 37:29-37:35).

Copies of the email from the competitor, with attached photographs, and an email from ECO Hovey were admitted into evidence as DEC Exhibit H. ECO Hovey’s email states that, on August 12, 2021, he went to 632 Dugway Road, in Chesterfield, and observed “the Adirondack Water Systems Truck parked” at the property with “a drilling bit in the ground” (DEC Exh H [Hovey email, dated August 12, 2021]). ECO Hovey states that he spoke with a resident, who advised that “Todd Ormsby had hit rock while drilling the well about two weeks ago” (id.).

Upon review, I concur with the ALJ that staff’s evidence, as summarized above, is sufficient to enable me to determine that staff has a viable claim that respondents violated ECL 15-1525 (3) by failing to file a preliminary notice before commencing the drilling of a well in Chesterfield, New York. I also concur with the determination of the ALJ that the evidence presented by staff at the hearing is not sufficient to enable me to determine that staff has a viable claim that respondents violated ECL 15-1525 (3) by failing to file a completion report for the Chesterfield well. Staff presented no proof that the Chesterfield well was completed, which, as discussed above, is the event that would trigger respondents’ obligation to file a completion report pursuant to ECL 15-1525 (3). As such, staff’s motion is granted as to the Fifth Cause of Action and is denied as to the Sixth Cause of Action.

Seventh and Eighth Causes of Action

In these causes of action, staff alleges that respondents violated ECL 15-1525 (3) by failing to file a preliminary notice and completion report for a water well drilled at 415 Fern Lake Road, Au Sable Forks, New York (see Complaint ¶¶ 28-33). As to these causes of action, Department staff submitted evidence that, on November 17, 2021, ECO Matthew LaCroix observed an Adirondack Water Systems well drilling truck “with its rigging up in the yard of 415 Fern Lake Road” in Au Sable Forks, New York (DEC Exh I [Incident Report]). ECO LaCroix took photographs and issued an incident report and two notices of violation to respondents alleging, among other things, that respondents failed to notify the Department of a well being drilled (see id.). Ms. Guidetti testified that ECO LaCroix contacted her via email and provided her with the incident report, notices of violation and photographs (see Hearing Record at 42:43-43:09; see DEC Exh I). The photographs were admitted into evidence as DEC Exhibit L; the

photographs depict a water well in the process of being drilled (see DEC Exh L). Ms. Guidetti testified that she did not receive a preliminary notice or completion report with respect to this well (see Hearing Record at 49:39-50:00).

Upon review, I concur with the ALJ that staff's evidence, as summarized above, is sufficient to enable me to determine that staff has a viable claim that respondents violated ECL 15-1525 (3) by failing to file a preliminary notice before commencing the drilling of a well in Au Sable Forks, New York. I also concur with the determination of the ALJ that the evidence presented by staff at the hearing is not sufficient to enable me to determine that staff has a viable claim that respondents violated ECL 15-1525 (3) by failing to file a completion report for the Au Sable Forks well. Staff presented no proof that that well was completed, which, as discussed above, is the event that would trigger respondents' obligation to file a completion report pursuant to ECL 15-1525 (3). As such, staff's motion is granted as to the Seventh Cause of Action and is denied as to the Eighth Cause of Action.

Ninth Cause of Action

In this cause of action, Department staff alleges that respondents violated ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the 2020/2021 and 2021/2022 annual registration periods (see Complaint ¶¶ 34-36 [two violations]). As to this claim, Department staff offered proof that, although Adirondack Water applied for and received a certificate of registration for the years 2005/2006 through 2016/2017, "[n]o applications were received after 2016" (Guidetti Supplemental Affidavit ¶ 3). As to the annual registration period running from April 1, 2020 through March 31, 2021,⁴ staff's evidence, as outlined above, demonstrates that Ormsby, but not Adirondack Water, engaged in the business of water well drilling during this period (Ormsby's drilling of two wells at Adirondack Farms in September 2020). As to the annual registration period running from April 1, 2021 through March 31, 2022, staff's evidence demonstrates that both respondents engaged in the business of water drilling during this period (Ormsby's drilling of a well at Adirondack Farms in May 2021 and respondents' drilling of a well in Chesterfield in August 2021 and a well in Au Sable Forks in November 2021).

I concur with the ALJ's recommendations with respect to this cause of action. I find that staff's evidence is sufficient to enable me to determine that staff has a viable claim that Ormsby committed two violations of ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the years 2020/2021 and 2021/2022. I further find that staff's evidence is sufficient to enable me to determine that staff has a viable claim that Adirondack Water committed one violation of ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the years 2021/2022. I deny staff's motion inasmuch as it seeks a finding that Adirondack Water committed a violation pertaining to registration for the 2020/2021 registration period, as no evidence was presented that Adirondack Water engaged in the business of water well drilling during that period.

⁴ The application forms in the record indicate that the annual registration period runs from April 1 of one year to March 31 of the following year (see Guidetti Supplemental Affidavit, Appendix A).

Penalty/Remedial Relief

ECL 71-1115 provides: “[a]ny person violating the provisions of section 15-1525 . . . shall be liable for a civil penalty of not more than fifteen hundred dollars [\$1,500].” This penalty is per violation (see Matter of Sullivan, Order of the Commissioner, August 31, 2022, at 2). Here, Department staff sought a penalty of twenty one thousand dollars (\$21,000), that is, one thousand five hundred dollars (\$1,500) for each of the fourteen (14) alleged violations (see Complaint, Wherefore Clause ¶ IV).

The ALJ found the requested penalty of \$1,500 per violation to be appropriate. Having found that respondents Adirondack Water and Ormsby, jointly and severally, committed three (3) violations of ECL 15-1525, the ALJ recommended a penalty of four thousand five hundred dollars (\$4,500) for those violations. Having found that respondent Ormsby committed an additional seven (7) violations of ECL 15-1525, the ALJ recommended that an additional penalty of ten thousand five hundred dollars (\$10,500) be assessed as against Ormsby (see Default Summary Report at 11-13).

Based on the record before me, I find that a penalty of \$1,500 for each proven violation is authorized and appropriate. The civil penalty of \$1,500 per violation requested by staff is consistent with ECL 71-1115 and the Department’s Civil Penalty Policy (DEE-1), dated June 20, 1990. As Ms. Guidetti testified, the water well program is an important part of the Department’s objective of conserving water resources, and compliance with ECL 15-1525 aids in protecting the waters of the State (see Hearing Record at 1:00:25-1:00:32; 1:00:56-1:01:01; see also Matter of Sullivan, Order of the Commissioner, August 31, 2022, at 2). The statutory maximum is relatively low when compared with other penalties provided for in the ECL (see Hearing Record at 1:01:18-1:01:42), and the failure to assess the maximum penalty would downplay the violations and would be unfair to competitors who are in compliance (see id. at 1:00:56-1:01:16). In addition, notwithstanding the efforts of Department staff to obtain respondents’ compliance with ECL 15-1525, respondents failed to cooperate (see id. at 55:57-1:00:21; 1:00:42-1:00:54). Indeed, the well-drilling that occurred in August 2021 and November 2021 took place after Department staff had reached out to Ormsby and informed him of the requirements of ECL 15-1525 (see DEC Exh H [email from Ms. Guidetti to Ormsby, dated July 20, 2021]).

Based upon the foregoing, I hereby direct that respondents Adirondack Water Systems Inc. and Todd E. Ormsby, jointly and severally, pay a civil penalty of four thousand five hundred dollars (\$4,500) for the three (3) violations committed by both respondents, and respondent Todd E. Ormsby pay, in addition, a civil penalty of ten thousand five hundred dollars (\$10,500) for the seven (7) violations committed by Ormsby alone. The civil penalty is to be paid within thirty (30) days of the service of this order upon respondents. In addition, respondent Todd E. Ormsby

is directed to submit to the Department, within thirty (30) days of service of this order upon him, a completion report for each of the three wells drilled for Adirondack Farms in Peru, New York, along with proof that a copy of each completion report was provided to Adirondack Farms.⁵

Department staff also requests that respondents be directed to apply for and obtain an annual certificate of registration for the April 1, 2022 to March 31, 2023 registration period (see Complaint, Wherefore Clause ¶ III). This request assumes that respondents engaged in water well drilling during the 2022/2023 period. Moreover, this registration period has ended. I therefore direct that, until such time that respondents are in compliance with the applicable requirements of ECL 15-1525 and the terms and conditions of this order, they may not engage in the business of water well drilling in New York State as defined in title 15 of Environmental Conservation Law article 15.

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

- I. Department staff's motion for a default judgment is granted in part and denied in part, as provided herein;
- II. Based on the record of this proceeding, respondent Adirondack Water Systems Inc. and respondent Todd E. Ormsby:
 - A. violated ECL 15-1525 (3) by failing to submit a preliminary notice for a water well drilled at 632 Dugway Road, Chesterfield, New York;
 - B. violated ECL 15-1525 (3) by failing to submit a preliminary notice for a water well drilled at 415 Fern Lake Road, Au Sable Forks, New York; and
 - C. violated ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the 2021/2022 annual registration period.
- III. In addition, based on the record of this proceeding, respondent Todd E. Ormsby:
 - A. violated ECL 15-1525 (3) by failing to submit preliminary notices and completion reports for three water wells drilled at Adirondack Farms, located at 193 Brown Road, Peru, New York in September 2020 and May 2021 (six violations); and

⁵ Inasmuch as the ALJ recommended that both respondents be directed to submit completion reports for the three wells drilled for Adirondack Farms in Peru, New York, and proof that the reports were provided to the customer (see Default Summary Report at 13), I decline to accept that recommendation in light of the lack of evidence that Adirondack Water was involved in the wells drilled for Adirondack Farms.

B. violated ECL 15-1525 (1) by failing to apply for and obtain an annual certificate of registration prior to engaging in the business of water well drilling for the 2020/2021 annual registration period.

- IV. Respondent Adirondack Water Systems Inc. and respondent Todd E. Ormsby, jointly and severally, are hereby assessed a civil penalty in the amount of four thousand five hundred dollars (\$4,500) for the violations identified in paragraph II of this order.
- V. Respondent Todd E. Ormsby is hereby assessed an additional civil penalty in the amount of ten thousand five hundred dollars (\$10,500) for the violations identified in paragraph III of this order.
- VI. Respondent Adirondack Water Systems Inc. and respondent Todd E. Ormsby shall pay the civil penalties by check, cashier's check, or money order made payable to the New York State Department of Environmental Conservation with thirty (30) days of the service of this order upon them. Such payment shall be submitted to:

Carol Conyers, Esq.
Enforcement Bureau
Office of General Counsel
NYS Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, New York 12233-1500

- VII. Within thirty (30) days of service upon him of this order, respondent Todd E. Ormsby shall submit to the Department a completion report for each of the three wells drilled for Adirondack Farms in Peru, New York, along with proof that a copy of each completion report was provided to Adirondack Farms.
- VIII. Until such time that respondent Adirondack Water Systems Inc. and respondent Todd E. Ormsby are in compliance with the applicable requirements of ECL 15-1525 and the terms and conditions of this order, they may not engage in the business of water well drilling in New York State as defined in title 15 of Environmental Conservation Law article 15.
- IX. Respondent Todd E. Ormsby shall submit the completion reports referenced in Paragraph VI of this order to:

Beth K. Guidetti
Professional Geologist 1
Division of Water
NYS Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3508

- X. Any questions or other correspondence regarding this order shall be addressed to Carol Conyers, Esq., at the address referenced in Paragraph VI of this order.
- XI. The provisions, terms and conditions of this order shall bind respondent Adirondack Water Systems Inc. and respondent Todd E. Ormsby, and their agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____ /S/
Basil Seggos
Commissioner

Dated: July 24, 2023
Albany, New York

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Alleged Violations of Article 15 of the
Environmental Conservation Law of the State of New York

-by-

**ADIRONDACK WATER SYSTEMS INC.
and TODD E. ORMSBY,**

Respondents.

**Default Summary Report
DEC Case No.
CO5-20220301-28**

Appearance of Counsel:

- Thomas S. Berkman, Deputy Commissioner and General Counsel (Carol Conyers, of counsel) for staff of the Department of Environmental Conservation
- No appearance for Respondents

Procedural History

Staff of the New York State Department of Environmental Conservation (Department or DEC) served respondents Adirondack Water Systems Inc. (respondent ADK Water) and Todd E. Ormsby (respondent Ormsby) with a notice of hearing and complaint, statement of readiness and staff affidavit all dated September 8, 2022, alleging fourteen violations of Environmental Conservation Law (ECL) 15-1525, relating to water well drilling in multiple locations (Complaint). The complaint seeks an order of the Commissioner:

- I. “Finding Respondents committed the fourteen (14) separate and distinct violations alleged in this Complaint;
- II. “Directing Respondents to submit completion reports for each of the seven (7) above referenced water wells along with proofs that a copy of each completion report was likewise provided to the respective customer;
- III. “Directing Respondent to apply for and obtain an annual certificate of registration for the April 1, 2022 to March 31, 2023 registration period within 60 days;
- IV. “Assessing a civil penalty in the amount of **\$21,000**; and
- V. “For such other relief as the Commissioner may deem appropriate.” (Complaint at 5).

Respondent Ormsby and respondent ADK Water are each a person as defined in ECL 15-1502(11).¹ Respondent ADK Water is an active domestic business corporation in the State of New York. Department staff served the complaint by certified mail to respondent ADK Water's address listed for service of process with the Department of State's Division of Corporations (*see* Affidavit of Service of Ellen Shupe-Bell sworn to October 19, 2022 [Shupe-Bell Aff. Service]). Respondent ADK Water received the complaint on September 14, 2022. Respondent ADK Water was also served by serving the Secretary of State (*see* Affidavit of Service of Melissa Evans sworn to September 20, 2022 [Evans Aff. Service]). Accordingly, Department staff have established service on respondent ADK Water.

Department staff served respondent Ormsby by mailing the complaint by certified mail to a post office box, P.O. Box 16, Schuyler Falls, New York (*see* Shupe-Bell Aff. Service, Exhibit B). During a conversation with respondent Ormsby and Department staff, respondent Ormsby stated that was now his legal residential mailing address (*see* Hearing Record at 54:00, Staff Affidavit² in Support of the Complaint of Beth Guidetti sworn to September 8, 2022 [Guidetti Aff.] Exhibit J, and Affidavit of Service of Environmental Conservation Officer [ECO] Christopher Lagree sworn to November 7, 2022 [Lagree Aff. Service] Exhibit B). Accordingly, Department staff have established service on respondent Ormsby.

Pursuant to the notice, the virtual adjudicatory hearing was convened via the WebEx platform on October 19, 2022. Department staff was represented by Carol Conyers, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of the respondents.

I noted for the record that respondents failed to answer the complaint and failed to appear for the adjudicatory hearing (*see* Hearing Record at 03:23 [failed to serve answer] and 02:43 and 1:06:17 [failed to appear]). Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15 and presented their case at that time.

Applicable Regulatory Provisions

ECL 15-1502(11) states “[p]erson’ shall mean any individual, public or private corporation, political subdivision, government agency, department or bureau of the state, municipality, industry, co-partnership, association, firm, trust, estate or any other legal entity whatsoever.”

ECL 15-1525(1) states “[n]o person shall engage in the business of water well drilling in the state of New York without first obtaining a certificate of registration from the department as hereinafter provided. All water well drilling shall be performed in accordance with the rules and

¹ Department cites ECL 15-0107(1) but the proper citation is to the definition in the applicable title, ECL 15-1502(11).

² Staff served the Guidetti Aff. with its Notice of Hearing and Complaint. Most of the Guidetti Aff. exhibits were also introduced at the hearing as separate Hearing Exhibits and moved into evidence. (*See* Exhibit List attached to this report.) For ease of reference, I will only be referring to the Guidetti Aff. and the exhibits as attached to it and not referencing their hearing exhibit letters.

regulations promulgated by the commissioner of health pursuant to subdivision eighteen of section two hundred six of the public health law.”

ECL 15-1525(3) states “[t]he certificate of registration shall require that, before the commencement of drilling of any well or wells, the water well driller shall file a preliminary notice with the department; it shall also provide that upon the completion of the drilling of any water well or water wells, a completion report be filed with the department, giving the log of the well, the size and depth thereof, the capacity of the pump or pumps attached or to be attached thereto, and such other information pertaining to the withdrawal of water and operation of such water well or water wells as the department by its rules and regulations may require. ... The commissioner shall promulgate a water well completion report form which shall be utilized by all water well drillers in satisfying the requirements of this section and any other provision of state or local law which requires the submission of a water well completion report or water well log.”

Findings of Fact

The following facts are found based upon the pleadings and upon the preponderance of evidence presented at the hearing, *see* 6 NYCRR 622.11(c):

1. Respondent Ormsby is a person under ECL 15-1502(11). Respondent Ormsby is the president of Adirondack Water Well Systems, Inc. (*See* Guidetti Aff. ¶¶ 14-16.)
2. Respondent ADK Water is a domestic business corporation, organized and existing under and by virtue of the laws of the State of New York, and a person under ECL 15-1502(11). (*See* Guidetti Aff. ¶ 13.)
3. Respondent ADK Water was issued a certificate of registration as a NYS water well drilling company for the years 2005/06 through 2016/17.³ (*See* Supplemental Staff Affidavit in Support of the Complaint of Beth Guidetti sworn to November 4, 2022 [Supp. Guidetti Aff.] ¶¶ 3-5 and Appendix A.)
4. Respondent Ormsby is the sole employee certified to drill wells for respondent ADK Water. (*See* Supp. Guidetti Aff. ¶¶ 5-7 and Appendix A; Hearing record 14:55 to 15:42).
5. Respondent Ormsby also signed annual certification applications from 2005/2006 through 2016/2017 as “president” of respondent ADK Water. (*See* Supp. Guidetti Aff. ¶¶ 2 -8 and Appendix A).

³ Department staff supplied the applications of respondent ADK Water for the New York State Water Well Program Registration Form. They did not provide the actual certificates of registration issued to respondent ADK Water. ECL 15-1525(3) states that the registration from the Department shall require the well driller to send the Department the preliminary notifications and the completion reports. These registrations should be included with the Department’s proof when they allege failure to submit preliminary notices or completion reports as the statute directly refers to the certificate of registration for when and how to submit the notices and reports.

6. Respondent Ormsby as president is the only “owners, partners, officers” listed on the applications submitted to the Department for certification of registration for respondent ADK Water. (*See* Supp. Guidetti Aff. Appendix A.)
7. Respondent Ormsby and respondent ADK Water (hereinafter respondents) filed a preliminary notice for drilling a well in Saranac Lake, New York, dated June 26, 2016. (*See* Guidetti Aff. ¶ 19⁴ and Exhibit B; Hearing Record 18:10 to 20:37.)
8. Respondents filed a preliminary notice for drilling a well in Lake Placid, New York, dated October 20, 2016. (*See* Guidetti Aff. ¶ 20 and Exhibit C; Hearing Record at 20:51 to 22:40.)
9. Based upon emailed information including invoices, Department staff determined that respondents drilled three wells at some point in 2020 on Adirondack Farms located in Peru, New York. (*See* Guidetti Aff. ¶ 21 and Exhibit D; Hearing Record 22:45 to 27:15.)
10. Department staff determined that respondents did not file preliminary notices for the three wells drilled in Peru, New York, on Adirondack Farms with the Department. (*See* Guidetti Aff. ¶ 21 and Exhibit D; Hearing record 22:45 to 27:15.)
11. Department staff determined that respondents did not file completion reports for the three wells drilled in Peru, New York, on Adirondack Farms with the Department. (*See* Guidetti Aff. ¶ 21 and Exhibit D; Hearing Record 22:45 to 27:15.)
12. On August 12, 2021, respondents’ drilling equipment was found at 632 Dugway Road in Chesterfield, New York. (*See* Guidetti Aff. ¶ 26 and Exhibit H; Hearing Record at 33:45 to 38:14.)
13. On August 12, 2021, ECO Jeffery Hovey visited 632 Dugway Road and observed the well drilling equipment labeled “Adirondack Water Systems”. ECO Hovey talked with the resident who stated Mr. Todd Ormsby had hit a rock while drilling approximately two weeks before and was waiting for his other truck to be repaired to finish the well. (*See* Guidetti Aff. Exhibit H⁵; Hearing Record at 33:45 to 38:14.)
14. Department staff determined that respondents did not file a preliminary notice with the Department for a well being drilled at 632 Dugway Road in Chesterfield, New York, in August 2021. (*See* Guidetti Aff. Exhibit H; Hearing Record at 33:45 to 38:14.)

⁴ The complaint ¶11 mistakenly lists June 21, 2016, but the actual preliminary notice clearly states June 26, 2016 in exhibit B to Guidetti Aff.

⁵ ECO Hovey’s email in exhibit H lists jpg attachments, but no photographs were included with his email.

15. ECO Matthew LaCroix observed drilling equipment with “Adirondack Water Systems” on it at 415 Fern Lake Road in Au Sable Forks, New York, on November 17, 2021. (*See* Guidetti Aff. Exhibit I; DEC Hearing Exhibit L⁶; Hearing Record at 38:15 to 50:16.)
16. Department staff determined that respondents did not file a preliminary notice with the Department for a well being drilled at 415 Fern Lake Road in Au Sable Forks, New York, in November 2021. (*See* Guidetti Aff. Exhibit I; DEC Hearing Exhibit L; Hearing Record at 38:15 to 50:16.)
17. Department staff served respondent Ormsby with a notice of hearing and complaint and attached papers dated September 8, 2022 by certified mail return receipt requested, which respondent Ormsby signed for on September 16, 2022. (*See* Hearing Record at 02:26; *see also* Shupe-Bell Aff. Service.)
18. Department staff served respondent ADK Water with a notice of hearing and complaint and attached papers dated September 8, 2022 by certified mail return receipt requested mail, which were signed for on September 14, 2022. (*See* Hearing Record at 02:19; *see also* Shupe-Bell Aff. Service.)
19. Department staff also served Respondent ADK Water by serving the New York State Secretary of State on September 8, 2022. (*See* Evans Aff. of Service.)
20. Respondents did not serve an answer to the complaint. (*See* Hearing Record at 03:23.)
21. Respondents did not appear at the hearing. (*See* Hearing Record at 02:43 and 1:06:17.)

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. When made orally at a scheduled hearing, 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;

⁶ The photographs attached to Guidetti Aff. Exhibit I were not originally attached, but were offered at the hearing, marked as DEC Hearing Exhibit L, and admitted.

- (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; [and]
- (5) a statement of authority and support for any penalty or relief requested...” (6 NYCRR 622.15[b][1] - [5]).

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, Department 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.) Department staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that Department staff has a viable claim (*see Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018, 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 ADK Water on September 14, 2022 and respondent Ormsby on September 16, 2022; (ii) respondents failed to file an answer to the complaint within 20 days, as directed in the cover letter and notice of hearing served with the complaint; (iii) staff’s papers and testimony provide proof of the facts sufficient to support some of the alleged violations and that staff has a viable claim for some of its causes of action as detailed below; (iv) staff’s papers and testimony include a concise statement of relief requested; and (v) staff’s papers and testimony include a statement of authority and support for the penalty and relief requested. Based upon the foregoing, the Department is entitled to a default judgment on some of its causes of action as discussed below.

Liability – Responsible Corporate Officer

“A corporate officer can be held personally liable for violations of the corporate entity that threaten the public health, safety, or welfare (*Matter of Galfunt*, Order of the Commissioner, May 5, 1993, at 2 [citing *United States v Park*, 421 US 658 (1975); *United States v Dotterweich*, 320 US 277 (1943); and *United States v Hodges X-Ray, Inc.*, 759 F2d 557 (6th Cir 1985)]). A corporate officer need only have responsibility over the activities of the business that caused the violations (*see id.*). *Galfunt* established that it was unnecessary to determine if the corporate officer made any specific decisions concerning the conduct alleged in the violations, only that the officer had direct responsibility for operations and was in a position to prevent the violations (*see id.*).

For the reasons that follow, I find respondent Ormsby is a responsible corporate officer of respondent ADK Water.⁷ Respondent Ormsby is the sole exam-certified employee listed to drill wells for respondent ADK Water (*see* Supp. Guidetti Aff. ¶¶ 5-7 and Appendix A; Hearing record at 14:55 – 15:42). As such, he is the only person qualified to drill wells for respondent ADK Water and must be on site and oversee all work (*see* Supp. Guidetti Aff. ¶¶ 5-7). Respondent Ormsby also signed as “president” on all annual certification applications for 2005/2006 through 2016/2017 submitted to the Department for respondent ADK Water (*see* Supp. Guidetti Aff. ¶¶ 2 -8 and Appendix A). Respondent Ormsby is also the only “owners, partners, officers” listed on said applications (*see* Supp. Guidetti Aff. Appendix A). Respondent Ormsby is the named well driller on preliminary notices filed with the Department (*see* Guidetti Aff. Exhibits B and C).

Department staff has demonstrated that respondent Ormsby had sole decision making authority related to all well drilling done by respondent ADK Water. He had from 2005/2006 through 2016/2017 applied for and received annual certificates of registration for respondent ADK Water to drill water wells in New York State. He failed to apply for or receive them for any following years. He filed preliminary notices before drilling in at least 2016, and therefore knew preliminary notices needed to be filed before drilling. As the sole employee certified to drill wells, respondent Ormsby was also required to file completion reports for each well completed to the Department and the customer. Based on the above, I conclude Department staff has demonstrated by a preponderance of the evidence that respondent Ormsby was a corporate officer who was directly responsible for the operations of respondent ADK Water and was in a position to prevent the violations.

Respondent ADK Water is the corporation performing well drilling acts. As the sole employee certified to perform water well drilling for respondent ADK Water, respondent Ormsby is the responsible corporate officer of respondent ADK Water.

First Cause of Action

In its complaint, Department staff alleged that respondents failed to file a completion report for a well staff received a preliminary notice for in Saranac Lake, New York, in June 2016. Department staff provided the preliminary notice for the well (*see* Guidetti Aff. Exhibit B; Hearing Record 18:10 to 20:37). Department staff did not provide any proof that the well had been drilled or completed.

Department staff has not provided any documentation that a well was drilled. Department staff did provide the preliminary notice that a well would be drilled (*see* Guidetti Aff. ¶ 19 and Exhibit B; Hearing Record 18:10 to 20:37; Finding of Fact # 7). At hearing, Ms. Guidetti testified for the Department that staff assumes the well is drilled if the preliminary notice is filed and not revoked (*see* Hearing Record 20:03 to 20:37). Department staff’s assumption that a well is drilled if a preliminary notice is filed with the Department is not proof

⁷ All of this information was provided in papers either served upon respondents or provided after the hearing to myself and respondents but was never discussed in oral testimony at the hearing, with the sole exception that respondent Ormsby has taken the required exam. This should have been detailed at the hearing by a witness on the record.

that a well was drilled, which is the event that triggers the requirement that a completion report be filed with the Department.

Department staff's testimony and papers in support of the oral motion for default do not provide proof of facts sufficient to enable me to determine that the Department has a viable claim that respondents failed to file a completion report for an allegedly drilled well in Saranac Lake, New York, sometime after June 2016, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 19 and Exhibit B; Hearing Record 18:10 to 20:37; Finding of Fact # 7).

Second Cause of Action

In its complaint, Department staff alleged that respondents failed to file a completion report for a well staff received a preliminary notice for in Lake Placid, New York, in October 2016. Department staff provided the preliminary notice for the well (*see* Guidetti Aff. Exhibit C; Hearing Record 20:50 to 22:40). Department staff did not provide any proof that the well had been drilled or completed.

Department staff failed to document that a well was drilled. Department staff provided the preliminary notice that a well would be drilled (*see* Guidetti Aff. ¶ 20 and Exhibit C; Hearing Record 20:50 to 22:40; Finding of Fact # 8). At hearing, Department staff testified that they assume that the well was drilled if the preliminary notice is filed and not revoked (*see* Hearing Record 21:50 to 22:40). As stated above, Department staff's assumption that a well is drilled if a preliminary notice is filed with the Department is not proof that a well was drilled, which is the event that triggers the requirement that a completion report be filed with the Department.

Department staff's testimony and papers in support of the oral motion for default judgment do not provide proof of facts sufficient to enable me to determine that the Department has a viable claim that respondents failed to file a completion report for an allegedly drilled well in Lake Placid, New York, sometime after October 2016, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 20 and Exhibit C; Hearing Record 20:50 to 22:40; Finding of Fact # 8).

Third Cause of Action

In its complaint, Department staff alleged that respondents failed to file preliminary notices for three wells drilled in Peru, New York, on Adirondack Farms. Department staff provided invoices from respondent Ormsby and payment information from Adirondack Farms for the wells drilled sometime during the summer or fall of 2020 (*see* Guidetti Aff. Exhibit D; Hearing Record 22:45 to 27:15). Respondent ADK Water is not liable as Department staff has not provided any evidence that respondent ADK Water was involved in the drilling. The invoices provided have respondent ADK Water's name crossed out and respondent Ormsby's name handwritten in. (*See* Guidetti Aff. Exhibit D page 2 [ADK Water's name crossed out] and page 3 [Todd Ormsby handwritten in on invoice].)

Department staff's testimony and papers in support of the oral motion for default judgment provide proof of facts sufficient to enable me to determine that Department staff has a viable claim that respondent Ormsby failed to send the Department preliminary notice of the

intent to drill three wells at a property called Adirondack Farms in Peru, New York, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 21 and Exhibit D; Hearing Record 22:45 to 27:15; Findings of Fact # 9, 10). Therefore, the Department should have received three preliminary notices, but no notices were found in Department's records.

Fourth Cause of Action

In its complaint, Department staff alleged that respondents failed to file completion reports for three wells drilled in Peru, New York, on Adirondack Farms. Department staff provided invoices from respondent Ormsby and payment information from Adirondack Farms for the wells drilled sometime during the summer or fall of 2020 (*see* Guidetti Aff. Exhibit D; Hearing Record 22:45 to 27:15). Respondent ADK Water is not liable as Department staff has not provided any evidence that respondent ADK Water was involved in the drilling. The invoices provided have respondent ADK Water's name crossed out and respondent Ormsby's name handwritten in. (*See* Guidetti Aff. Exhibit D page 2 [ADK Water's name crossed out] and page 3 [Todd Ormsby handwritten in on invoice].)

Department staff's testimony and papers in support of the oral motion for default judgment provide proof of facts sufficient to enable me to determine that Department staff has a viable claim that respondent Ormsby failed to send the Department completion notices after drilling three wells at a property called Adirondack Farms in Peru, New York, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 21 and Exhibit D; Hearing Record 22:45 to 27:15; Findings of Fact # 9, 11). Therefore, the Department should have been sent three completion reports, but no reports were found in Department's records.

Fifth Cause of Action

In its complaint, Department staff alleged that respondents failed to file a preliminary notice for a well drilled in Chesterfield, New York, in the summer of 2021. Department staff provided photographs of respondents' well equipment at the location and an email from ECO Hovey also witnessing the drilling equipment (*see* Guidetti Aff. Exhibit H; Hearing Record 33:45 to 38:14).

Department staff's testimony and papers in support of the oral motion for default judgment provide proof of facts sufficient to enable me to determine that Department staff has a viable claim that respondents failed to send the Department preliminary notice of the intent to drill a well at a property in Chesterfield, New York, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 26 and Exhibit H; Hearing Record 33:45 to 38:14; Findings of Fact # 12-14). Photographs in Exhibit H clearly show a well in the process of being drilled. As such, a preliminary notice should have been filed with the Department prior to the start of drilling, but no notice was found in Department's records.

Sixth Cause of Action

In its complaint, Department staff alleged that respondents failed to file a completion report for a well drilled in Chesterfield, New York, in the summer of 2021. Department staff

provided photographs of respondents' well equipment at the location and an email from ECO Hovey also witnessing the drilling equipment (*see* Guidetti Aff. Exhibit H; Hearing Record 33:45 to 38:14). Department staff did not provide proof the well was completed.

While Department staff offered photographs of an in-progress drilling of a well and a report from ECO Hovey that respondents were in the progress of drilling a well when the equipment broke, there is no evidence on the record that the well was ever completed.

Department staff's testimony and papers in support of the oral motion for default motion do not provide proof of facts sufficient to enable me to determine that the Department has a viable claim that respondents failed to file a completion report for a drilled well in Chesterfield, New York, sometime after August 2021, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 26 and Exhibit H; Hearing Record 33:45 to 38:14; Findings of Fact # 12, 13).

Seventh Cause of Action

In its complaint, Department staff alleged that respondents failed to file a preliminary notice for a well drilled in Au Sable Forks, New York, in the fall of 2021. Department staff provided photographs from ECO LaCroix of well equipment at the location and a well in process of being drilled in November 2021 (*see* Guidetti Aff. Exhibits I and L; Hearing Record 38:15 to 50:16).

Department staff's testimony and papers in support of the oral motion for default judgment provide proof of facts sufficient to enable me to determine that Department staff has a viable claim that respondents failed to send the Department a preliminary notice of the intent to drill a well at a property in Au Sable Forks, New York, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 27 and Exhibits I and L; Hearing Record 38:15 to 50:16; Findings of Fact # 15, 16). Photographs in Exhibit L clearly show a well in the process of being drilled. As such, a preliminary notice should have been filed with the Department prior to the start of drilling, but no notice was found in Department's records.

Eighth Cause of Action

In its complaint, Department staff alleged that respondents failed to file a completion report for a well drilled in Au Sable Forks, New York, in the fall of 2021. Department staff provided photographs from ECO LaCroix of well equipment at the location and a well in process of being drilled in November 2021 (*see* Guidetti Aff. Exhibits I and L; Hearing Record 38:15 to 50:16).

While Department staff offered photographs of an in-progress drilling of a well and reports from ECO LaCroix that respondents were in the progress of drilling a well, there is no evidence on the record that the well was ever completed.

Department staff's testimony and papers in support of the oral motion for default do not provide proof of facts sufficient to enable me to determine that the Department has a viable claim that respondents failed to file a completion report for a drilled well in Au Sable Forks, New York, sometime after November 2021, in violation of ECL 15-1525(3) (*see* Guidetti Aff. ¶ 27 and Exhibits I and L; Hearing Record 38:15 to 50:16; Findings of Fact # 15).

Ninth Cause of Action

In its complaint, Department staff allege that respondents failed to obtain annual certifications of registration for 2020/2021 and 2021/2022. Department staff provided the applications previously submitted by respondents from 2006 through 2016 (*see* Supp. Guidetti Aff. Appendix A; Hearing Record at 13:30 to 15:42).

Department staff's testimony and papers in support of the oral motion for default judgment provide proof of facts sufficient to enable me to determine that Department staff has a viable claim that respondent Ormsby failed to apply for and receive the annual certificates of registration in the years 2020/2021 and 2021/2022, in violation of ECL 15-1525(1) (*see* Guidetti Aff. ¶ 28; Supp. Guidetti Aff. ¶¶ 3-5, Appendix A; Hearing Record at 13:30 to 15:42; Finding of Fact # 3). Department staff also has a viable claim that respondent ADK Water failed to apply for and receive the annual certificate of registration for the year 2021/2022. Respondents had applied for and received the annual certification of registration for well drilling in the past. Respondent Ormsby was drilling wells in 2020 (three in Peru) and both respondents were drilling wells in 2021 (one in Chesterfield and one in Au Sable Forks) without a certificate of registration (*see* Findings of Fact # 9, 13, and 15).

Penalty

In its complaint, Department staff requests a total civil penalty of twenty-one thousand dollars (\$21,000) for the fourteen violations included in the nine causes of action. ECL 71-1115 provides for a civil penalty of up to one thousand five hundred dollars (\$1,500) per violation. Department staff's submissions and testimony on the motion for default judgment elaborate on the requested civil penalty (*see* Hearing Recording at 59:35 to 1:01:45). In her affidavit, Ms. Guidetti also provides a breakdown of the requested civil penalty (*see* Guidetti Aff. ¶¶ 32-34).

Given that I did not find the Department provided proof of facts sufficient to enable me to determine that the Department has a viable claim for four causes of action (first, second, sixth and eighth), I cannot award the full \$21,000 requested here. Subtracting four causes of action multiplied by the \$1,500, gives me the penalty amount of \$15,000. Respondents Ormsby and ADK Water are jointly and severally liable for the fifth, seventh, and ninth violation in 2021/2022 only, for a total of \$4,500. Respondent Ormsby is additionally liable for the third and fourth violations, plus the ninth violation in 2020/2021, for an additional \$10,500.

Department staff explains the importance of a penalty when violations of the Department's regulations are found, especially when it comes to respondents drilling wells for water usage. Respondents have consistently ignored Department staff when staff reached out to respondents in an attempt to get respondents into compliance (*see* Guidetti Aff. ¶¶ 29-31).

Respondents also were fully aware of the regulations governing well drilling, as they were in compliance in the past.

The fifteen-thousand-dollar (\$15,000) total penalty for the violations detailed in the third, fourth, fifth, seventh, and ninth causes of actions is supported and authorized by the Department's penalty policies, applicable provisions of the ECL, and administrative precedent, as allocated above. The requested corrective actions are also authorized and appropriate.

CONCLUSIONS OF LAW

Respondent Ormsby violated ECL 15-1525(3) for failing to file preliminary notices and completion reports for multiple wells at Adirondack Farms, specifically the third and fourth causes of action. Both respondents ADK Water and Ormsby violated ECL 15-1525(3) for failing to file preliminary notices at various locations, specifically the fifth and seventh causes of action. Respondents also violated ECL 15-1525(1) by failing to obtain an annual certificate of registration for years 2020/2021 (respondent Ormsby only) and 2021/2022 (both respondents Ormsby and ADK Water).

RECOMMENDATIONS

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

1. Granting Department Staff's motion for default on the third, fourth, fifth, seventh, and ninth causes of actions.
2. Holding that, based upon the proof provided in Department staff's papers and at hearing, respondent Ormsby:
 - a. Failed to file preliminary notices of well drilling for three wells drilled in Peru, New York on Adirondack Farms in violation of ECL 15-1525(3);
 - b. Failed to file completion reports on three wells drilled in Peru, New York on Adirondack Farms in violation of ECL 15-1525(3);
 - c. Failed to apply for and receive from the Department the annual certificate of registration for water well drilling in 2020/2021, in violation of ECL 15-1525(1).
3. Additionally, holding jointly and severally that, based upon the proof provided in Department staff's papers and at hearing, respondents Ormsby and ADK Water:
 - a. Failed to file a preliminary notice of well drilling for a well drilled in Chesterfield, New York in violation of ECL 15-1525(3);
 - b. Failed to file a preliminary notice of well drilling for a well drilled in Au Sable Forks, New York in violation of ECL 15-1525(3); and
 - c. Failed to apply for and receive from the Department the annual certificate of registration for water well drilling in 2021/2022, in violation of ECL 15-1525(1).
4. Directing respondent Ormsby to pay a civil penalty of \$10,500, within 30 days of service of this order.

5. Directing respondents Ormsby and ADK Water to jointly and severally pay a civil penalty of \$4,500, within 30 days of service of this order.
6. Directing respondents to perform the following corrective actions to address the violations within 30 days of the date of a Commissioner's Order:
 - a. Directing respondents to submit completion reports for each of the three (3) above referenced water wells drilled in Peru, along with proofs that a copy of each completion report was likewise provided to the respective customer; and
 - b. Directing respondents to apply for and obtain an annual certificate of registration for the current registration period, prior to any water well drilling. I cannot recommend respondents apply for a registration for 2022/2023 because that registration period has ended.

/S/
Jennifer M. Ukeritis
Administrative Law Judge

Dated: July 6, 2023
Albany, New York

Exhibit List
Matter of Adirondack Water Systems Inc. and Todd E. Ormsby
DEC Case No. CO5-20220301-28
Motion for Default Judgment

1. Notice of Hearing dated September 8, 2022.
2. Complaint dated September 8, 2022.
3. Statement of Readiness dated September 8, 2022.
4. Staff Affidavit of Beth K. Guidetti in support of Complaint, sworn to September 8, 2022, attaching:
 - Exhibit A – NYS Department of State Corporate Entity Search.
 - Exhibit B – 6/26/2016 Preliminary Notice – Saranac Lake (also DEC Hearing Exhibit B).
 - Exhibit C – 10/20/2016 Preliminary Notice – Lake Placid (also DEC Hearing Exhibit C).
 - Exhibit D – 7/19/2021 Competitor’s email complaint with invoices – email (also DEC Hearing Exhibit D).
 - Exhibit E – 7/20/2021 Email from Captain Darrah (also DEC Hearing Exhibit E).
 - Exhibit F – 7/20/2021 Email from Mike Ormsby (also DEC Hearing Exhibit F)
 - Exhibit G – 7/20/2021 DEC Warning Letter and Email.
 - Exhibit H – 8/21/2021 Second Competitor’s Complaint - email; 8/12/2021 Email from ECO Hovey; and 8/12/2021 DEC Warning Email – follow up (also DEC Hearing Exhibit H).
 - Exhibit I – November 17, 2021: Email from ECO LaCroix; ECO LaCroix’s incident report; ECO complaint re: Registration; and ECO Complaint re: Preliminary Notice (also DEC Hearing Exhibit I).
 - Exhibit J – 12/21/2021: Affidavit of Service for DEC Notice of Violation; DEC Notice of Violation; ECO LaCroix’s 2 updated incident reports (also DEC Hearing Exhibit J).
 - Exhibit K – 6/1/2021 Returned Consent Order; 6/14/2021 Affidavit of Service of Consent Order (also DEC Hearing Exhibit K).
5. DEC Hearing Exhibit L – Photographs from ECO LaCroix Email in DEC Hearing Exhibit I.
6. Staff Affidavit of Service of Ellen Shupe-Bell, sworn to October 19, 2022, attaching:
 - Exhibit A – Cover letter of papers mailed, dated September 8, 2022.
 - Exhibit B – USPS electronic green card for respondent ADK Water, Department of State Corporate Entity Information for respondent ADK Water (2 copies), and USPS electronic green card for respondent Ormsby.
7. Staff Affidavit of Service of Melissa Evans, sworn to September 20, 2022.

8. Supplemental Affidavit of Beth K. Guidetti in Support of Complaint, sworn to November 4, 2022, attaching three appendices:
 - Appendix A – Respondents’ applications for annual certifications from 2006 through 2016.
 - Appendix B – Certificate of Incorporation of Respondent Adirondack Water Systems, Inc.
 - Appendix C – Photographs from ECO Hovey’s 8/12/2021 email in DEC Hearing Exhibit H.

9. Supplemental Affidavit of Environmental Conservation Officer Christopher Lagree, sworn to November 7, 2022, attaching four appendices:
 - Appendix A – Photograph of ECO Lagree having taped the envelope with the notice of hearing, Complaint, and Staff Affidavit to respondent Ormsby’s door.
 - Appendix B – DMV report of respondent Ormsby’s driver’s license listing the post office box as address.
 - Appendix C – Clinton County tax record for 166 Silver Lake Road listing respondent Ormsby as owner with a Kerri Ormsby.
 - Appendix D – DMV report on owner of truck in respondent Ormsby’s driveway, listing respondent Ormsby as owner.