

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

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

ORDER

DEC Case No.
525-2012DK

- by -

BUFFALO CHINA, INC.,

Respondent.

This administrative enforcement proceeding addresses the allegation of New York State Department of Environmental Conservation ("Department") staff that respondent Buffalo China, Inc. violated ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2. The alleged violation involves respondent's failure to file a complete and accurate annual well report for the 2009 production year for a gas well it owned in New York State (West Seneca well, American Petroleum Institute ["API"] Well No. 31-029-13702-00-00).

Department staff served respondent with a notice of hearing and complaint dated June 21, 2012 by certified mail in accordance with 6 NYCRR 622.3(a)(3). Staff also provided additional service by first class mail and by personal service on the New York State Department of State. Respondent Buffalo China, Inc. failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled for September 13, 2012, as directed in the notice of hearing.

Department staff proceeded to hearing on this matter on July 30, 2013 which was convened before Administrative Law Judge ("ALJ") Michael S. Caruso of the Department's Office of Hearings and Mediation Services. ALJ Caruso prepared the attached hearing report, which I adopt as my decision in this matter, subject to my comments below.

As a consequence of respondent's failure to answer or appear in this matter, Department staff moved for a default judgment. The ALJ recommends that Department staff's motion for default judgment be granted (see Hearing Report, at 7), and I concur that staff is entitled to a default judgment pursuant to 6 NYCRR 622.15. Furthermore, at the hearing, Department staff presented a prima facie case on the merits, and demonstrated by a preponderance of the evidence that respondent failed to timely file a report for the West Seneca well for production year 2009 (see id.). Accordingly, staff is entitled to a judgment based on record evidence.

Information was provided at the hearing that Buffalo China, Inc. had requested that responsibilities for the West Seneca well be transferred to Think Solutions Inc. That request, however, was not received by the Department until December 2010, approximately nine months after the report was due (see Hearing Exhibit G). The transfer request was approved by the Department on April 12, 2011 (see id.). Think Solutions Inc. subsequently filed an annual well report for the West Seneca well for production year 2009 which the Department received on July 9, 2012 (see Hearing Exhibit F). This late filing of the well report by Think Solutions Inc. does not absolve respondent Buffalo China, Inc. of its liability.

Department staff sought a penalty of one thousand five hundred dollars (\$1,500) and requested that respondent Buffalo China, Inc. be directed to submit a report for production year 2009 to the Department. At the time of the violation, ECL 71-1307 provided for a penalty of up to five thousand dollars (\$5,000) for the first day of violation and up to one thousand dollars (\$1,000) per day for each day the violation continues.¹ Although the report for production year 2009 has been received, the timely filing of complete and accurate well reports is critical to the regulatory requirements of this program. Based on this record, Department staff's request for a civil penalty of one thousand five hundred dollars (\$1,500) is authorized and appropriate. Because the subsequent well owner, Think Solutions Inc., submitted a report for production year 2009 to the Department and no indication exists in the record

¹ECL 71-1307 was subsequently amended in 2010 to provide 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.

that the report was deficient in the production and other information provided, I decline to direct respondent Buffalo China, Inc. to resubmit the report.

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 Buffalo China, Inc. waived its right to be heard at the hearing.
- II. Moreover, based upon record evidence, respondent Buffalo China, Inc. is adjudged to have violated ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2, for failure to file a complete and accurate annual well report for the 2009 production year for the West Seneca gas well, designated as API Well No. 31-029-13702-00-00.
- III. Within fifteen (15) days of the service of this order upon respondent, respondent Buffalo China, Inc. shall pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500) by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation.
- IV. The penalty payment shall be sent to the following address:

New York State Department of Environmental
Conservation
Division of Mineral Resources
Bureau of Resource Development and Reclamation
625 Broadway, 3rd Floor
Albany, New York 12233-6500
Attn: John Dahl, Director.
- V. Any questions or other correspondence regarding this order shall also be addressed to John Dahl at the address referenced in paragraph IV of this order.

VI. The provisions, terms and conditions of this order shall bind respondent Buffalo China, Inc., and its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

/s/
By: _____
Joseph J. Martens
Commissioner

Dated: Albany, New York
October 27, 2013

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

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

HEARING REPORT

DEC Case No.
525-2012DK

- by -

BUFFALO CHINA, INC.,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation ("Department") served respondent Buffalo China, Inc. ("respondent") with a notice of hearing and complaint dated June 21, 2012, alleging a violation of ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2, for failure to file a complete and accurate annual well report for the 2009 production year for a gas well respondent owned in the State of New York, known as the West Seneca well and designated by American Petroleum Institute ("API") Well Number 31-029-13702-00-00. The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 23-0305(8)(f) and 6 NYCRR 551.2; (2) assessing a civil penalty in the amount of one thousand five hundred dollars (\$1,500); (3) directing respondent to file the required well report with the Department within fifteen (15) days of the service of the Commissioner's order upon respondent; and (4) granting such other and further relief as the Commissioner may deem just and proper.

Inasmuch as respondent is an active domestic business corporation in the State of New York, personal service of the notice of hearing and complaint was made on the New York Secretary of State on July 3, 2012. Department staff also served the notice of hearing and complaint on respondent by certified mail delivered on June 27, 2012 (see 6 NYCRR

622.3[a][3]). Consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on June 26, 2012. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on September 13, 2012, as directed in the notice of hearing.

As stated in the notice of hearing, on September 13, 2012, an adjudicatory hearing was convened before Administrative Law Judge ("ALJ") Richard R. Wissler of the Department's Office of Hearings and Mediation Services ("OHMS") at the Department's Region 9 office, 270 Michigan Avenue, Buffalo, New York 14203. Department staff was represented by David H. Keehn, Esq., Associate Counsel, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. No one appeared on behalf of respondent.

Department staff indicated that it was prepared to proceed with the hearing, proffering a program staff witness. Noting for the record that respondent had failed to answer the complaint, and failed to appear for the adjudicatory hearing, Department staff orally moved for a default judgment pursuant to 6 NYCRR 622.15. The ALJ reserved on the default motion, allowing the record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). Moreover, the ALJ noted Department staff's readiness for hearing and noted the failure of respondent to appear. The ALJ advised that the hearing would be convened on a subsequent date.¹

On July 30, 2013, the adjudicatory hearing was convened before ALJ Michael S. Caruso at the Department's Central Office, 625 Broadway, Albany, New York 12233. Department staff was once again represented by Mr. Keehn. Department staff orally renewed its motion for a default judgment, and also sought judgment on the merits.

Department staff called one witness, Theodore Loukides, Chief, Compliance and Enforcement Section, Division of Mineral Resources. In all, nine (9) exhibits were received in evidence.

¹ Upon respondent's failure to appear for the hearing on September 13, 2012, it waived its right to notice of any subsequent proceedings in this matter, including any hearing in absentia. Department staff proceeded to hearing on this matter on July 30, 2013.

Applicable Regulatory Provision

Section 551.2 Production and purchase reports.

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

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

"(c) (1) All records or reports and any information obtained under the provisions of this section are only for the confidential use of the department and other departments, agencies, and officers of the State government until six months after the period to which those records or reports apply, unless the person furnishing them expressly agrees to an earlier publication or availability to the general public.

"(2) The provisions of this subdivision shall not be construed to prevent the use of those records, reports or information by any department, agency or officer of the State government in compiling or publishing analyses or summaries relating to the general condition of the industry, the economy or the condition of the natural resources of the State, provided that those analyses or summaries do not involve the publication of records, reports or information relating to a single firm or business enterprise."

Findings of Fact

1. Respondent Buffalo China, Inc. maintains offices at 163-181 Kenwood Avenue, Oneida, New York 13421 and 500 Bailey Avenue, Buffalo, New York 14210. (Staff Exhibits D, F, H and I.)
2. Respondent is an active domestic business corporation in the State of New York. (Staff Exhibit I.)
3. Respondent owned the gas well designated as API Well Number 31-029-13702-00-00 and known as the West Seneca well. (Staff Exhibits B and D.)
4. The well is productive. (Staff Exhibits D, F and G.)
5. Respondent is required to file annual well reports ("AWRs") with the Department for each production year for each well it owns on a form supplied by the Department, as typified by Department Staff's Exhibit D, an AWR filed by respondent for the production year 2008. (Testimony of Theodore Loukides; Staff Exhibit D.)
6. The Department supplies the AWR form to owners or other responsible parties by regular mail in January of each year immediately following the production year for which the AWR is required. The AWR must be filed by March 31st of that year. As a courtesy, if the Department does not timely receive the required AWR, it sends out a letter reminding the owners or other responsible parties of their obligation to file the AWRs, enclosing another copy of the AWR form. (Testimony of Theodore Loukides; Staff Exhibit E.)
7. Each AWR form filled in by the owner or other responsible party and filed with the Department must be signed by them on the signature line indicated in the form. (Testimony of Theodore Loukides; Staff Exhibit D.)
8. Above the signature line in the AWR form is the following certification made by the person executing the form:
"Certification: I understand that Environmental Conservation Law (ECL) Sec. 23-0305 requires me to file complete and accurate well records on a form provided by NYSDEC and that ECL Sec. 71-1307 provides that knowingly violating ECL Sec. 23-0305 is punishable as a misdemeanor. I certify under penalty of perjury that the information provided above is complete and accurate." (Staff Exhibit

- D.)
9. Respondent executed an AWR form containing the certification indicated in Finding of Fact 8 for the production year 2008 and filed it with the Department. (Testimony of Theodore Loukides; Staff Exhibit D.)
 10. Respondent was provided with AWR forms in January 2010 for the AWR due for the production year 2009 for the well indicated in Finding of Fact 3, above. (Testimony of Theodore Loukides; Staff Exhibit E.)
 11. Respondent was sent letters in June and November 2010 reminding it to file the required AWR for the 2009 production year. (Testimony of Theodore Loukides; Staff Exhibit E.)
 12. Theodore Loukides is an employee of the Department and is Chief of the Compliance and Enforcement Section of the Department's Division of Mineral Resources. Mr. Loukides's duties include the care, custody, and maintenance of the records pertaining to the oil, gas and solution mining program of the State of New York. These records are kept in a database maintained by the Department and include all AWRs filed pursuant to 6 NYCRR 551.2. (Testimony of Theodore Loukides.)
 13. On July 30, 2013, Theodore Loukides searched the Department's oil, gas and solution mining database for all AWRs filed by respondent. (Testimony of Theodore Loukides.)
 14. As a result of his search, Theodore Loukides determined that respondent had not filed an AWR for the 2009 production year for its West Seneca well, API Well Number 31-029-13702-00-00. (Testimony of Theodore Loukides; Staff Exhibits E, F, and H.)
 15. Only respondent and its named agents are authorized to sign submittals to the Department with respect to well No. 31-029-13702-00-00. (Testimony of Theodore Loukides; Staff Exhibit H.)
 16. The database search did reveal that an unauthorized entity, Think Solutions Inc., filed an AWR for 2009 claiming it was the well owner. The AWR was received by the Department on July 9, 2012, more than two years after it was due.

(Testimony of Theodore Loukides; Staff Exhibit F.)

17. Respondent submitted a request to the Department to transfer well responsibilities to Think Solutions Inc. dated May 26, 2009, but it was not received by the Department until December 7, 2010. The transfer was approved April 12, 2011. (Testimony of Theodore Loukides; Staff Exhibit G.)
18. Respondent remained responsible for filing annual well reports until the transfer was approved by the Department. (Testimony of Theodore Loukides; Staff Exhibit G.)
19. Respondent was responsible for filing the 2009 annual well report and to date has not done so. (Testimony of Theodore Loukides.)
20. As shown by Receipt for Service No. 201207110119 issued by the New York State Department of State, respondent was personally served, on July 3, 2012, pursuant to section 306 of the Business Corporation Law with a notice of hearing and complaint dated June 21, 2012, alleging a violation of ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2, together with a supporting affidavit of John Dahl, for failure to file a complete and accurate AWR for its West Seneca well. Pursuant to 6 NYCRR 622.3(a)(3), Department staff also served the notice of hearing and complaint on respondent by certified mail delivered on June 27, 2012, and, consistent with CPLR 3215(g)(4), Department staff also provided additional service by sending the notice of hearing and complaint to respondent by first class mail on June 26, 2012. (Staff Exhibits A, B and C.)
21. Respondent failed to file an answer to the complaint and failed to appear for the adjudicatory hearing scheduled in the matter on September 13, 2012, as directed in the notice of hearing. (Staff Exhibit A; Hearing Record.)

Discussion

Department staff's proof presents a prima facie case demonstrating that respondent failed to file a complete and accurate AWR for the 2009 production year for the West Seneca gas well, being that gas well set forth in Finding of Fact 3, above, in violation of ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2.

The record shows that Department staff duly served the notice of hearing and complaint upon respondent; and that respondent failed to file an answer to the complaint; and failed to appear for the adjudicatory hearing scheduled in the matter on September 13, 2012, as directed in the notice of hearing. The Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Moreover, the proof adduced at the hearing, conducted in respondent's absence, demonstrates by a preponderance of the evidence that respondent failed to file a complete and accurate AWR for the 2009 production year for the West Seneca gas well (API Well Number 31-029-13702-00-00), in violation of ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2. The Department is entitled to judgment upon the facts proven.

Department staff's proposed civil penalty of \$1,500 is consistent with the Department's penalty policy as well as applicable provisions of ECL article 71.

Recommendation

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

1. granting Department staff's motion for default, finding respondent in default pursuant to the provisions of 6 NYCRR 622.15;
2. holding respondent violated ECL 23-0305(8)(f) and its implementing regulation, 6 NYCRR 551.2, by failing to file a complete and accurate annual well report for the 2009 production year for the West Seneca well, API Well Number 31-029-13702-00-00;
3. directing respondent to file the required annual well report with the Department within fifteen (15) days of the service of the Commissioner's order upon respondent;

4. directing respondent to pay a civil penalty in the amount one thousand five hundred dollars (\$1,500); and
5. directing such other and further relief as he may deem just and proper.

/s/

Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
August 1, 2013

EXHIBIT CHART – GAS WELL AWR EXPEDITED PROCEEDINGS

Matter of Buffalo China, Inc. – Oneida, New York – DEC Case No. 525-2012DK
July 30, 2013 – Central Office
Edirol File No. 040829091845

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
A	Cover Letter from David H. Keehn, Esq. to respondent, dated June 21, 2012 with Notice of Hearing and Complaint, dated June 21, 2012, and Statement of Readiness, dated June 21, 2012.	✓	✓	Department Staff	
B	Affidavit of John Dahl, dated June 21, 2012.	✓	✓	Department Staff	
C	Affidavit of Service of Jenna Dott, sworn to September 12, 2012, including USPS attachments. Affidavit of Service of Edward H. Clarke, dated July 17, 2012, including NYS DOS Receipt for Service, dated July 3, 2012.	✓	✓	Department Staff	
D	Annual Well Report for production year 2008, received May 27, 2009.	✓	✓	Department Staff	

E	Cover Letter, reminder to submit Annual Well Report, from Donald J. Drazan to respondent, dated January 14, 2010. Cover Letter, notice of missing 2009 Annual Well Report, from Donald J. Drazan to respondent, dated June 11, 2010. Cover Letter, notice of missing 2009 Annual Well Report, from Jack Dahl to respondent, dated November 5, 2010.	✓	✓	Department Staff	
F	Annual Well Report for production year 2009, received July 9, 2012. Annual Well Report for production year 2008, received May 27, 2009.	✓	✓	Department Staff	
G	Request for Well Transfer, dated May 22, 2009, approved April 12, 2011.	✓	✓	Department Staff	
H	Organizational Report, dated June 1, 1999.	✓	✓	Department Staff	
I	NYS DOS Corporate Entity Search, dated July 24, 2013.	✓	✓	Department Staff	