

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

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

ORDER

- by -

DEC Case No.
1039-2015DK

**TURTLE OIL CO., INC.,
WILLIAM DIBBLE,**

Respondents.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondents Turtle Oil Co., Inc. and William Dibble (respondents) violated:

- 6 NYCRR 551.2(b), for failure to file timely annual well reports for the 2006 through 2012 and 2014 production years for one well (known as the Phillips 1 well);
- 6 NYCRR 555.3(c), for failure to plug the Phillips 1 well respondents owned in the State of New York; and
- 6 NYCRR 551.4, for failure to maintain financial security on the Phillips 1 well. The well is designated by American Petroleum Institute (API) Well Number 31-003-19181-00-00 and is located in the Town of Bolivar in Allegany County.

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

As set forth in the ALJ's hearing report, respondents failed to file an answer to the complaint served by Department staff in this matter, but appeared at the September 29, 2015 and the September 16, 2016 hearings (see Hearing Report at 2).

At the September 16, 2016 hearing, Department staff orally moved to amend the complaint to change the violation noted in the second cause of action from a violation of 6 NYCRR 555.3(c) (temporary abandonment) to 6 NYCRR 555.2(c) (shut-in wells). The ALJ granted staff's motion to amend, concluding there would be no prejudice to respondents in correcting the violation cited because the relief for each violation is the same. I concur.

At hearing, staff proved its case by a preponderance of the evidence against respondent Turtle Oil Co., Inc. Staff's proof demonstrates that respondent Turtle Oil Co., Inc. failed to submit timely reports for the Phillips 1 well for the 2006 through 2012 and 2014 production years, and, notwithstanding the efforts of Department staff to obtain respondent's compliance, it was not until August 2015 that respondent submitted the AWRs for the 2006 through 2012 production years (see Hearing Report at 4 [Finding of Fact No. 17]). The AWR for the 2014 production year was submitted in September 2015 (see Hearing Report at 4 [Finding of Fact No. 18]).

Moreover, Department staff's proof demonstrates that respondent Turtle Oil Co., Inc. failed to permanently plug and abandon the Phillips 1 well in violation of 6 NYCRR 555.2(c). The record demonstrates that the Phillips 1 well has been unproductive and abandoned since 2000 (see Hearing Report at 3 [Finding of Fact No. 6]). Staff's proof also demonstrates that respondent Turtle Oil Co., Inc. failed to maintain financial security on the well in violation of 6 NYCRR 551.4 (see Hearing Report at 5 [Finding of Fact No. 20]). Accordingly, staff is entitled to a judgment based on a preponderance of record evidence against respondent Turtle Oil Co., Inc.

Respondents moved to dismiss the complaint against respondent Dibble. The ALJ recommended that respondents' motion to dismiss be granted because staff failed to plead or prove respondent Dibble was liable as a responsible corporate officer (see Hearing Report at 7 and 10.). Based on the record before me and for the reasons set forth in the ALJ's Hearing Report (see Hearing Report at 6-7), I agree that the complaint against respondent William Dibble should be dismissed, without prejudice.

Department staff, in its papers, sought a penalty of five thousand dollars (\$5,000), and the ALJ recommended that respondent Turtle Oil Co., Inc. be directed to pay this amount. ECL 71-1307 provides for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. The record reflects that respondent Turtle Oil Co., Inc. has not been in compliance for many years (see e.g. Hearing Report at 4 [Finding of Fact No. 16]). The recommended penalty is authorized and appropriate.

I have considered the recommendations of the ALJ for respondent Turtle Oil Co., Inc.:

- to submit the annual well reports for the Phillips 1 well for the 2006 through 2012 production years;
- to post a two thousand five hundred dollar (\$2,500) financial security for the Phillips 1 well;
- to submit a notice of intention to plug and abandon the Phillips 1 well;
- to submit an updated organizational report for the Phillips 1 well;
- to engage a registered New York State plugging contractor to plug and abandon those wells; and
- to submit a plugging report no later than thirty (30) days after completion of plugging operations.

In addition, the ALJ recommends that respondent Turtle Oil Co., Inc. be directed to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the State for well plugging expenditures required at respondent's well.

These recommendations are appropriate, with the following modification. With respect to the engaging of a contractor to plug and abandon these wells, the recommendation is for that contracting to occur within one hundred eighty days (180) of the service of this order upon respondent Turtle Oil Co., Inc. I am providing that the time period may be extended by Department staff upon written application and a demonstration of sufficient good cause by respondent Turtle Oil Co., Inc. The financial security must satisfy the requirements of 6 NYCRR 551.4 and be filed with the Department.

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

- I. Respondents' motion to dismiss the complaint against respondent William Dibble is granted without prejudice.
- II. Based upon a preponderance of record evidence, it is adjudged that:
 - A. Respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006 through 2012 and 2014 production years for the Phillips 1 well (API Well Numbers 31-003-19181-00-00).
 - B. Respondent Turtle Oil Co., Inc. violated 6 NYCRR 555.2(c) by failing to permanently plug and abandon the Phillips 1 well after the well had been shut-in for more than one year.
 - C. Respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.4 by failing to maintain adequate financial security for respondent's Phillips 1 well.
- III. Within thirty (30) days of the service of this order upon respondent Turtle Oil Co., Inc.:
 - A. Respondent Turtle Oil Co., Inc. shall submit an updated organizational report reflecting the current personnel for the operator(s) of the well;
 - B. Respondent Turtle Oil Co., Inc. shall submit complete and acceptable annual well reports for the 2006 through 2012 production years for the Phillips 1 well to the Department; and
 - C. Respondent Turtle Oil Co., Inc. shall post a two thousand five hundred dollar (\$2,500) financial security for the Phillips 1 well that satisfies the requirements of 6 NYCRR 551.4 and which shall be filed with the Department.
- IV. Respondent Turtle Oil Co., Inc. is hereby assessed a civil penalty in the amount of five thousand dollars (\$5,000). Respondent shall pay the penalty 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 VIII of this order.

- V. Within thirty (30) days of the service of this order upon respondent Turtle Oil Co., Inc., respondent shall submit a notice of intention to plug and abandon the Phillips 1 well (API Well No. 31-003-19181-00-00).
- VI. Within one hundred eighty (180) days of the service of this order upon respondent Turtle Oil Co., Inc., respondent shall contract with a registered New York State plugging contractor to plug and abandon the Phillips 1 well in accordance with ECL article 23 and 6 NYCRR part 555 and shall notify Department staff of the execution of the contract. Department staff may extend this time period upon written application of respondent and a demonstration of sufficient good cause.
- VII. Within thirty (30) days after the completion of the plugging operations, respondent Turtle Oil Co., Inc. shall submit a plugging report to the Department.
- VIII. The organizational report, the financial security, the notice of intention to plug and abandon the Phillips 1 well, the plugging report, and the civil penalty payment shall be sent to the following address:
- New York State Department of Environmental
Conservation
Division of Mineral Resources
Oil and Gas Compliance Enforcement Section
625 Broadway, 3rd Floor
Albany, New York 12233-6500
Attn: Theodore N. Loukides, Chief.
- IX. Respondent Turtle Oil Co., Inc. shall reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the State for well plugging expenditures required at respondent's well. Upon completion of any such plugging of respondent's well, the State shall notify respondent of the costs so incurred by the State and respondent shall pay these costs within thirty (30) days of receipt of such notification.

- X. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph VIII of this order.
- XI. The provisions, terms and conditions of this order shall bind respondent Turtle Oil Co., Inc. and its agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____/s/_____
Basil Seggos
Commissioner

Dated: February 13, 2017
Albany, New York

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

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

HEARING REPORT

DEC Case No.
1039-2015DK

- by -

**TURTLE OIL CO., INC.,
WILLIAM DIBBLE,**

Respondents.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondents Turtle Oil Co., Inc. and William Dibble (respondents) with a notice of hearing and complaint dated August 21, 2015, alleging violations of:

- 6 NYCRR 551.2(b), for failure to file timely annual well reports for the 2006 through 2012 and 2014 production years for one well (known as the Phillips 1 well);
- 6 NYCRR 555.3(c) for failure to plug the Phillips 1 well respondents owned in the State of New York; and
- 6 NYCRR 551.4 for failure to maintain financial security on the Phillips 1 well.

The well is designated by American Petroleum Institute (API) Well Number 31-003-19181-00-00.

The complaint seeks an order of the Commissioner (1) finding respondents in violation of 6 NYCRR 551.2(b) and 551.4; (2) finding respondents in violation of 6 NYCRR 555.3(c); (3) assessing a civil penalty in the amount of five thousand dollars (\$5,000); (4) directing respondents to comply with the schedule of compliance included in the papers served on respondents; and (4) granting such other and further relief as the Commissioner shall deem just and appropriate.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent Turtle Oil Co., Inc. on August 27, 2015 and by respondent William Dibble on August 27, 2015 (see 6 NYCRR 622.3[a][3]). Respondents did not answer the complaint, but respondents, through their attorney, appeared at the September 29, 2015 hearing in the Department's Region 9 offices located at 270 Michigan Avenue, Buffalo, New York. The matter was adjourned at the request of the parties.

The Office of Hearings and Mediation Services served a notice of hearing dated August 9, 2016 on respondents and their attorney by first class mail advising respondents that the hearing in this matter would be reconvened on September 16, 2016 at 10:00 a.m. at the Department's Central Office at 625 Broadway, Albany, New York 12233. At 1:20 p.m. on September 16, 2016, the adjudicatory hearing was reconvened before the undersigned at the Department's Central Office in room 919.

Department staff was represented by David H. Keehn, Esq., Associate Attorney, Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233-1500. Respondents were represented by Hopkins Sorgi & Romanowski PLLC (Peter J. Sorgi, Esq., of counsel). Mr. Sorgi and William Dibble appeared by telephone conference call.

Department staff called one witness, Christopher J. McKelvey, Mined Land Reclamation Specialist 3, Division of Mineral Resources. Previously, Mr. McKelvey was a Mineral Resources Specialist 3 in the Division of Mineral Resources. In all, nine (9) exhibits were received in evidence. Respondents did not call any witnesses.

Findings of Fact

1. Respondent Turtle Oil Co., Inc. (Turtle Oil) has a mailing address of Streeter Brook Road, Little Genesee, New York 14754. (Staff Exhibits A, B, C, D, E, H and I; Testimony of Christopher J. McKelvey.)
2. Respondent William Dibble is the president of respondent Turtle Oil and has a mailing address of Streeter Brook Road, Little Genesee, New York 14754. (Staff Exhibits A, B, C, and D; Testimony of Christopher J. McKelvey.)
3. Respondent Turtle Oil owns and operates the well designated as API Well Number 31-003-19181-00-00 and known as the Phillips 1 well located in the Town of Bolivar, Allegany County, New York. (Staff Exhibits A, D, and F.)

4. Respondent Turtle Oil was dissolved by proclamation on September 26, 1990 and is listed as an inactive domestic business corporation by the New York State Department of State. (Staff Exhibit I.)
5. Respondent Turtle Oil continues to conduct business in the State of New York. (Staff Exhibits E and F; Testimony of Christopher J. McKelvey.)
6. The Phillips 1 well is inactive and has had no production since at least 2000. (Staff Exhibits D and F; Testimony of Christopher J. McKelvey.)
7. Respondent Turtle Oil is required to file annual well reports (AWRs) with the Department for each production year for each well respondent owns on a form supplied by the Department, as typified by Department staff's Exhibit D, AWRs filed by respondent Turtle Oil for the production years 2013 and 2014. (Testimony of Christopher J. McKelvey; Staff Exhibit D.)
8. The Department supplies the AWR form to owners or other responsible parties by regular mail in January of each year immediately following the production year for which the AWR is required. The AWR must be filed by March 31 of that year. As a courtesy, if the Department does not timely receive the required AWR, it sends out a letter reminding the owners or other responsible parties of their obligation to file the AWRs, and enclosing another copy of the AWR form. (Testimony of Christopher J. McKelvey; Staff Exhibit E [January 9, 2013 and July 15, 2013 correspondence to Turtle Oil Co., Inc.])
9. Each AWR form filled in by the owner or other responsible party and filed with the Department must be signed by them on the signature line indicated in the form. (Testimony of Christopher J. McKelvey; Staff Exhibits D and E.)
10. Above the signature line in the AWR form is the following certification made by the person executing the form:
"Certification: I understand that Environmental Conservation Law (ECL) Sec. 23-0305 requires me to file complete and accurate well records on a form provided by NYSDEC and that ECL Sec. 71-1307 provides that knowingly violating ECL Sec. 23-0305 is punishable as a misdemeanor. I certify under penalty of perjury that the information provided above is complete and accurate." (Staff Exhibits

D and E.)

11. Respondent William Dibble executed AWR forms as the president of respondent Turtle Oil for the Phillips 1 well containing the certification indicated in Finding of Fact No. 10 for the production years 2000 through 2004, 2013, 2014 and 2015, and filed the AWRs with the Department. (Testimony of Christopher J. McKelvey; Staff Exhibits D and F.)
12. The Department provided respondent Turtle Oil with AWR forms in January 2013 for the AWR due for the 2012 production year for the well indicated in Finding of Fact No. 3, above. (Testimony of Christopher J. McKelvey; Staff Exhibit E.)
13. The Department sent a letter to respondent Turtle Oil in July 2013 reminding respondent to file the required AWR for the 2012 production year. (Testimony of Christopher J. McKelvey; Staff Exhibit E.)
14. Christopher McKelvey is an employee of the Department and is a Mined Land Reclamation Specialist 3 in the Department's Division of Mineral Resources. Mr. McKelvey's duties include the care, custody, and maintenance of the records pertaining to the oil, gas and solution mining program of the State of New York. These records are kept in a database maintained by the Department and include all AWRs filed pursuant to 6 NYCRR 551.2. (Testimony of Christopher J. McKelvey.)
15. On July 29, 2015 and September 12, 2016, Christopher McKelvey searched the Department's oil, gas and solution mining database for all AWRs filed by respondent Turtle Oil. (Testimony of Christopher J. McKelvey; Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibit F.)
16. As a result of his search, Christopher McKelvey determined that respondent Turtle Oil had not timely filed the AWRs for the 2005 through 2012 and 2014 production years for his Phillips 1 well. (Testimony of Christopher J. McKelvey; Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibit F.)
17. Also as a result of his search, Christopher McKelvey determined that respondent Turtle Oil had filed the AWRs for the 2005 through 2012 production years for respondent's

Phillips 1 well in August 2015. The late filed AWRs showed no production from the well. (Testimony of Christopher J. McKelvey; Staff Exhibits D and F.)

18. The AWRs filed by respondent Turtle Oil for the production years 2013 (due March 31, 2014) and 2014 (due March 31, 2015) were received by the Department on August 18, 2014 and September 3, 2015 respectively. (Staff Exhibit D.)
19. Respondent Turtle Oil's Phillips 1 well has been unproductive and abandoned since at least 2000. (Staff Exhibit A, Affidavit of Christopher J. McKelvey, sworn to August 21, 2015; Staff Exhibits D and F; Testimony of Christopher J. McKelvey.)
20. As a result of his search, Christopher McKelvey determined that respondent Turtle Oil has not maintained financial security on the well. (Testimony of Christopher J. McKelvey.)
21. The Phillips 1 well has not been properly plugged and abandoned. (Testimony of Christopher J. McKelvey.)
22. As shown by the affidavits of service of Keisha Rivera sworn to September 25, 2015, Department staff served the notice of hearing and complaint, order on consent, statement of readiness and affidavit of Christopher McKelvey, on respondents by certified mail, pursuant to 6 NYCRR 622.3(a)(3), that were delivered on August 27, 2015. (Staff Exhibit B.)
23. Respondents failed to file an answer to the complaint. (Hearing Record.)

Discussion

Department staff's complaint alleges respondents are the operator and owner of the Phillips 1 well and responsible for filing annual well reports, plugging the well and posting financial security for the well. At hearing, respondents' counsel objected to respondent Dibble being named as a respondent in this matter because respondent Dibble does not own the well and nothing in the record demonstrates he is the owner. Respondents argued that Turtle Oil Co., Inc. is the owner of the well and should be the only respondent in this matter. Respondents also maintained that finding Mr. Dibble liable for violations committed by the corporate respondent would ignore

corporate case law, and therefore, the matter should be dismissed against respondent Dibble.

In response, Department staff stated the evidence would demonstrate that respondent Dibble exercised complete control over respondent Turtle Oil Co., Inc. and that respondent Dibble is personally liable as a result. In effect, staff argued the evidence would demonstrate that respondent Dibble was liable under the responsible corporate officer doctrine. As staff had not yet put on its case, I allowed the matter to go forward against both respondents and noted that staff still had to meet its burden of proof. At the close of the hearing, respondents moved to have the matter dismissed against respondent William Dibble.

Standard of Review

In this enforcement proceeding, the party bearing the burden of proof must sustain that burden by a preponderance of the evidence (see 6 NYCRR 622.11[c]). Department staff bears the burden of proof on the charges and matters asserted in the complaint and at hearing, and must establish factual matters by a preponderance of the evidence (see 6 NYCRR 622.11[b]).

The respondents in this proceeding bear the burden of proof regarding all affirmative defenses. Any party making a motion bears the burden of proof on that motion (see 6 NYCRR 622.11[b]).

Liability of William Dibble

Contrary to respondents' arguments, it is well settled that the responsible corporate officer doctrine may be applied to find liability of corporate officers. To establish liability under the responsible corporate officer doctrine, it must be shown that the corporate officer had responsibility over activities of the business that caused the violations and was in a position to prevent the violations (see Matter of Supreme Energy Corp., Decision and Order of the Commissioner, April 11, 2014, at 25-26).

In this matter, the complaint does not describe any individual actions by Mr. Dibble that would support the causes of action against him. Department staff's proof demonstrates that Mr. Dibble is the president of the corporation and as such signed and submitted AWRs on behalf of the corporation (see Staff Exhibit D). Mr. Dibble signed the organizational report as the "owner" of respondent Turtle Oil (see Staff Exhibit H).

The documentary evidence demonstrates that respondent Turtle Oil is the owner and operator of the Phillips 1 well (see Staff Exhibits D, E and F). Staff's witness testified Mr. Dibble was the only person the Department communicated with regarding the Phillips 1 well, and only Mr. Dibble submitted documents to the Department. Although a strong inference may be drawn that Mr. Dibble had the responsibility to keep the corporation in compliance with environmental laws and was in a position to prevent the violations, I conclude more is needed.

Where a complaint contains no allegations, and staff offers no proof, that an individual respondent had direct responsibility for the operations, directed noncompliant activities to take place, was the sole officer and shareholder of the corporation, or that he alone made the decisions that are the subject of the violations, liability under the responsible corporate officer doctrine will not be found (see Matter of Seymour Excavating Inc., Order of Commissioner, September 29, 2014, adopting Hearing Report at 5-6). Staff's complaint does not plead that respondent Dibble is a responsible corporate officer or that he controlled the corporation or could have prevented the violations from occurring. Staff did not call Mr. Dibble as a witness.

Even if Department staff had made the required showing, the fact remains that staff's complaint did not provide notice to respondents that staff sought to hold Mr. Dibble liable as a responsible corporate officer. Nor did staff move to conform the pleadings to the proof. I refrain from sua sponte conforming the pleadings to the proof when, as here, there is no indication in staff's complaint that respondent Dibble was to be held individually liable as a responsible corporate officer.

Therefore, I conclude staff has not pleaded facts or submitted proof sufficient to support its causes of action against William Dibble. Respondents' motion to dismiss the complaint against respondent Dibble is granted.

Liability of Turtle Oil Co., Inc.

Staff's proof demonstrates that respondent Turtle Oil was dissolved by proclamation on September 26, 1990. It is well settled that a corporation that has been dissolved by proclamation due to the corporation's failure to file biennial statements or franchise tax returns, continues its corporate existence for purpose of winding up the corporate affairs including paying liabilities or obligations, for being sued, and for participating in administrative proceedings in its corporate

name, even if the activities giving rise to liability occurred after corporate dissolution (see Matter of AMI Auto Sales Corp., Decision and Order of the Commissioner, February 16, 2012, at 5). In this matter, the violations giving rise to liability occurred after dissolution.

A corporation may be held liable for violations that occur or accrue after its dissolution if the corporation continued its operations, operated its premises and held itself out as a de facto corporation, notwithstanding its being dissolved by proclamation (see Bruce Supply Corp. v New Wave Mechanical, Inc., 4 AD3d 444 [2d Dept 2004]; see also D & W Central Station Alarm Co., Inc. v Copymasters, Inc., 122 Misc2d 453 [Civ Ct, Queens County 1983].) In this matter, staff's proof demonstrates that respondent Turtle Oil continued to conduct business in the corporate name and held itself out as a de facto corporation for twenty-six years after it was dissolved by proclamation (see Findings of Fact Nos. 5, 7, 11, 17 and 18). I conclude respondent Turtle Oil may be held liable for the violations alleged against it.

The proof staff presented at the hearing demonstrates by a preponderance of the evidence that respondent Turtle Oil failed to timely file complete and accurate AWRs for the 2006 through 2012 and 2014 production years, in violation of 6 NYCRR 551.2(b). Additionally, staff's proof demonstrates that respondent Turtle Oil failed to maintain financial security on the well, in violation of section 551.4. Staff also proved that respondent Turtle Oil Co., Inc. failed to timely file the AWR for the 2005 production year, but staff did not plead that violation in the complaint or move to amend the complaint. Accordingly, I cannot recommend that respondent be held liable for failing to file the AWR for the 2005 production year.

At hearing, Department staff moved to amend the complaint to change the violation noted in the second cause of action from a violation of 6 NYCRR 555.3(c)(temporary abandonment) to 6 NYCRR 555.2(c)(shut-in wells). Both sections require the offending wells be permanently plugged and abandoned. As the relief for exceeding the regulatory period that a well is allowed to be temporarily abandoned or shut-in without Department approval is the same, there is no prejudice to respondent in correcting the violation noted in the second cause of action. Respondents did not object to the staff's motion to amend the complaint. Accordingly, I grant staff's motion. The proof demonstrates that the Phillips 1 well has been shut-in and abandoned for years and has not been permanently plugged and abandoned, in violation of 6 NYCRR 555.2(c).

The Department has established its entitlement to judgment against respondent Turtle Oil by a preponderance of the record evidence.

Civil Penalty

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

Remedial Relief

Department staff's schedule of compliance requests that respondents be ordered to file the required AWRs, submit the required \$2,500 of financial security and submit payment of the \$5,000 penalty immediately upon the effective date of the Commissioner's order. Department staff testified that respondent Turtle Oil filed the AWRs for the production years 2005 through 2012 in August 2015. The record, however, does not reflect whether those late filed AWRs were acceptable to the Department. Therefore, I recommend that respondent Turtle Oil be directed to file complete and acceptable AWRs. Staff also testified that the financial security for the Phillips 1 well, based on the depth of the well, should be \$5,000. Staff did not move to amend the relief requested, therefore I decline to increase the amount of financial security requested in the complaint without proof of the depth of the well and a motion to amend the pleadings.

In addition, Department staff requests that the Commissioner order respondent to:

1. file updated organizational reports reflecting the current personnel for the operator of the well;
2. submit a notice of intent to plug and abandon each well listed in the appendix to the complaint within thirty days of the effective date of the order;
3. contract with a NYS-registered plugging contractor to plug and abandon the listed wells in accordance with ECL

- article 23, 6 NYCRR and the permit issued for the plugging within 180 days of the effective date of the order;
4. submit a plugging report within thirty days of completion of the plugging operations; and
 5. reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the State for well plugging expenditures required at respondents' wells.

At hearing, Department staff introduced respondent Turtle Oil's request to transfer the well to another company, and testified that staff did not approve the transfer of wells that were in violation of the regulations. Respondent Turtle Oil did not request that the transfer be approved if the well was brought into compliance as an alternative to plugging the well. Accordingly, I refrain from making such a recommendation to the Commissioner.

Conclusions of Law

1. By failing to timely file the annual well reports for the 2006 through 2012 and 2014 production years for the Phillips 1 well, respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.2(b).
2. By shutting in the Phillips 1 well for more than one year without permanently plugging and abandoning the well, respondent Turtle Oil Co., Inc. violated 6 NYCRR 555.2(c).
3. By failing to maintain financial security on the Phillips 1 well, respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.4.

Recommendation

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

1. granting respondents' motion to dismiss the complaint against respondent William Dibble;
2. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2006

through 2012 and 2014 production years for its Phillips 1 well (API Well Number 31-003-19181-00-00);

3. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Turtle Oil Co., Inc. violated 6 NYCRR 555.2(c) by failing to permanently plug and abandon the Phillips 1 well (API Well Number 31-003-19181-00-00) after the well had been shut-in for more than one year;
4. holding that, based upon the proof adduced at the adjudicatory hearing, respondent Turtle Oil Co., Inc. violated 6 NYCRR 551.4 by failing to maintain adequate financial security for respondent's Phillips 1 well;
5. directing respondent Turtle Oil Co., Inc. to file complete and acceptable annual well reports for the 2006 through 2012 production years with the Department within thirty (30) days of the service of the Commissioner's order upon respondent;
6. directing respondent Turtle Oil Co., Inc. to file an updated organizational report within thirty (30) days of the service of the Commissioner's order upon respondent;
7. directing respondent Turtle Oil Co., Inc. to pay a civil penalty in the amount of five thousand dollars (\$5,000) within thirty days (30) of the service of the Commissioner's order upon respondent;
8. directing respondent Turtle Oil Co., Inc. to post a two thousand five hundred dollar (\$2,500) financial security for the Phillips 1 well within thirty (30) days of the service of the Commissioner's order upon respondent;
9. directing respondent Turtle Oil Co., Inc. to submit a notice of intention to plug and abandon the Phillips 1 well within thirty days (30) of the service of the Commissioner's order upon respondent;
10. directing respondent Turtle Oil Co., Inc. to contract with a registered New York State plugging contractor to permanently plug and abandon the Phillips 1 well in accordance with ECL article 23 and 6 NYCRR part 555 within one hundred eighty (180) days of the service of the Commissioner's order upon respondent;

11. directing respondent Turtle Oil Co., Inc. to submit a plugging report within thirty (30) days after completion of plugging operations;
12. directing respondent Turtle Oil Co., Inc. to reimburse the oil and gas account referenced at ECL 23-1903(1)(a), in accordance with ECL 23-0305(8), the full amount of any and all expenditures made by the State for well plugging expenditures required at respondent's Phillips 1 well; and
13. directing such other and further relief as he may deem just and appropriate.

_____/s/_____
Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
January 23, 2017

EXHIBIT CHART – OIL & GAS WELL EXPEDITED PROCEEDINGS

Matter of Turtle Oil Co., Inc., William Dibble – Town of Bolivar, Allegany County, New York – DEC Case No. 1039-2015DK
 September 16, 2016 – Central Office
 Edrol File No. 030224101929

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
A	Cover Letter from David H. Keehn, Esq. to Turtle Oil Co., Inc. and William Dibble, with Notice of Hearing and Complaint, Order on Consent, Statement of Readiness, all dated August 21, 2015, Affidavit of Christopher McKelvey sworn to August 21, 2015, Schedule of Compliance and List of Wells.	✓	✓	Department Staff	
B	Affidavits (2) of Service of Keisha Rivera, sworn to September 25, 2015, including USPS attachments.	✓	✓	Department Staff	
C	Notice of Hearing, dated August 9, 2016.	✓	✓	Department Staff	
D	Annual Well Reports for 2013 and 2014 production years certified by Willam Dibble, President of Turtle Oil Co., Inc. on August 11, 2014 and August 15, 2015 respectively and received by Department staff on August 18, 2014 and September 3, 2015 respectively.	✓	✓	Department Staff	

Exhibit No.	Description	ID'd?	Rec'd ?	Offered By	Notes
E	Letter to Turtle Oil Co., Inc. from Donald J. Drazan, dated January 9, 2013 transmitting annual well report form for 2012 production year and reminding respondent to submit by March 31, 2013 with Commercial Well Example form attached; and Letter to Turtle Oil Co., Inc. from John K. Dahl, dated July 15, 2013, regarding missing 2012 Annual Well Report.	✓	✓	Department Staff	
F	Annual Well Production Data for Turtle Oil Co., Inc., Phillips 1 well for years 2000 through 2004 and 2013 through 2015, generated on September 12, 2016.	✓	✓	Department Staff	
G	Handwritten Fax to David H. Keehn, Esq. from Bill Dibble dated September 15, 2016 with Request for Well Transfer attached.	✓	✓	Department Staff	
H	Organizational Report affirmed by "William Dibble, Owner of Turtle Oil Co., Inc." on June 19, 1984, received by Department staff on June 26, 1984.	✓	✓	Department Staff	
I	NYS Department of State Entity Information for Turtle Oil Company, Inc., current through September 21, 2015.	✓	✓	Department Staff	