

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

In the Matter of the Alleged Violations of Articles 23 and 71 of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

- by -

ORDER

DOUGLAS VANSTROM,

DEC Case No.
CO 9-20220629-53

Respondent.

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department) staff alleges that respondent Douglas Vanstrom violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2021 calendar year for a gas well, known as the Vanstrom 1 well, located in the Town of Ellicott, Chautauqua County, New York. The well is designated by American Petroleum Institute (API) Well Number 31-013-18005-00-00 and is operated by respondent.

Administrative Law Judge (ALJ) Richard A. Sherman of the Department's Office of Hearings and Mediation Services was assigned to this matter for purposes of the adjudicatory hearing and ALJ Molly T. McBride was assigned to prepare the attached default summary report, which I adopt as my decision in this matter, subject to my comments below.

As set forth in the ALJ's default summary report, respondent failed to file an answer to the complaint served by Department staff in this matter, and failed to appear for the adjudicatory hearing scheduled for January 24, 2023 (*see* Default Summary Report at 3 [Findings of Fact Nos. 7 and 10]). At the January 24, 2023 adjudicatory hearing, Department staff made an oral motion for a default judgment. ALJ Sherman reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers.

As a consequence of respondent's failure to answer or appear in this matter, the ALJ recommends that Department staff's motion for a default judgment be granted (*see* Default Summary Report at 5). I concur that staff is entitled to a judgment on default pursuant to 6 NYCRR 622.15. The pleadings and the papers submitted with and in support of the motion provide sufficient facts to enable me to determine that staff has a viable claim that respondent failed to timely file an annual well report for the 2021 calendar year for the Vanstrom 1 well and, therefore, is in violation of 6 NYCRR 551.2(b).

Department staff correctly points out that the requirement to file annual well reports is important to determining the status of the State's resources given the potential or actual environmental harm that may result from the lack of accurate, annual information about well activity. The identification of non-producing wells for plugging is significant for the prevention of groundwater contamination (*see* Motion for Default Judgment, Exhibit A, Affirmation of Anne Haas, Esq., dated March 16, 2023, ¶ 13; *see also* Affidavit of Ted Loukides, sworn to March 9, 2023, ¶ 13).

Department staff, in its papers, sought a penalty of six thousand dollars (\$6,000), and the ALJ recommended that respondent Douglas Vanstrom be directed to pay this amount. ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b).

Typically, Department staff seeks a penalty of \$1,500 for failure to submit an annual well report (*see Matter of Gilray*, Order of the Commissioner, March 4, 2015, at 2; and *Matter of Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). In those cases, a civil penalty of \$1,500 was assessed for each time that a well owner or operator failed to timely submit an annual well report. In other proceedings of this nature, Department staff has requested higher civil penalties where a respondent has a history of noncompliance (*see Matter of Sahlem*, Order of the Commissioner, May 4, 2022, at 2 [\$3,000 penalty for failure to file an annual well report for one (1) calendar year where respondent had a history of noncompliance]). As noted in the Summary Report, I have previously found that respondent failed to submit the AWR for this well in 2019 and 2020 (*see* Default Summary Report at 3 [Finding of Fact No. 11]; Exhibits D & E). Department staff has demonstrated that respondent's history of noncompliance supports a higher penalty and requests a penalty of six thousand dollars (\$6,000).

The record demonstrates that respondent Douglas Vanstrom failed to submit a timely and complete well report for the Vanstrom 1 well for the calendar year 2021. Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written reminders, this record establishes that respondent did not file the report for the 2021 calendar year (*see* Default Summary Report at 2-3 [Findings of Fact Nos. 4-6]). The civil penalty that Department staff is requesting is consistent with ECL 71-1307(1), the Department's Civil Penalty Policy (DEE-1), dated June 20, 1990, and administrative precedent (*see* Affirmation of Anne Haas, Esq., dated March 16, 2023, ¶¶ 9-16).

Based on the record before me, the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of six thousand dollars (\$6,000) to the Department within thirty (30) days of the service of this order upon respondent. In addition, within thirty (30) days of the service of this order upon respondent, respondent Douglas Vanstrom is directed to submit a complete and accurate well report for the Vanstrom 1 well for calendar year 2021 to the Department.

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

- I. Department staff's motion for a default judgment pursuant to 6 NYCRR 622.15 is granted. By failing to answer or appear in this proceeding, respondent Douglas Vanstrom waived his right to be heard at the hearing.
- II. Based on the pleadings and papers submitted with and in support of Department staff's motion, respondent Douglas Vanstrom is determined to have violated 6 NYCRR 551.2(b), by failing to timely file a complete and accurate annual well report for the 2021 calendar year for the Vanstrom 1 well (API Well Number 31-013-18005-00-00).
- III. Within thirty (30) days of the service of this order upon respondent Douglas Vanstrom, respondent shall submit to the Department a complete and accurate annual well report for the Vanstrom 1 well for the 2021 calendar year.
- IV. Respondent Douglas Vanstrom is hereby assessed a civil penalty in the amount of six thousand dollars (\$6,000), to be paid within thirty (30) days of the service of this order upon respondent.

Payment is to be by certified check, cashier's check or money order made payable to the New York State Department of Environmental Conservation at the address noted in paragraph V of this order.

- V. The annual well report and civil penalty payment shall be sent to the following address:

New York State Department of Environmental Conservation
Division of Mineral Resources
Oil and Gas Compliance Enforcement Section
625 Broadway, 3rd Floor
Albany, New York 12233-6500
Attn: Theodore N. Loukides, Chief.

- VI. Any questions or other correspondence regarding this order shall also be addressed to Theodore N. Loukides at the address referenced in paragraph V of this order.

- VII. The provisions, terms and conditions of this order shall bind respondent Douglas Vanstrom and respondent's agents, successors and assigns, in any and all capacities.

For the New York State Department
of Environmental Conservation

By: _____ /S/
Basil Seggos
Commissioner

Dated: May 10, 2023
Albany, New York

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

In the Matter of the Alleged Violations of Articles 23 and 71 of the New York State Environmental Conservation Law (ECL) and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR),

**DEFAULT SUMMARY
REPORT**

- by -

DEC Case No.
CO 9-20220629-53

DOUGLAS VANSTROM,

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Douglas Vanstrom (respondent) with a notice of hearing and complaint dated December 5, 2022, alleging a violation of ECL 71-1305(2) and 6 NYCRR 551.2(b), for failure to file a timely annual well report for the 2021 calendar year for a well known as the Vanstrom 1 well located in the Town of Ellicott, Chautauqua County, New York. The well is designated by American Petroleum Institute (API) Well Number 31-013-18005-00-00.

The complaint seeks an order of the Commissioner (1) finding respondent in violation of ECL 71-1305(2) and 6 NYCRR 551.2(b); (2) directing respondent to submit the missing annual well report to the Department; (3) assessing a civil penalty in the amount of six thousand dollars (\$6,000); and (4) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint was made by certified mail and was received by respondent on December 12, 2022 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing. As stated in staff's December 5, 2022 notice of hearing, a virtual adjudicatory hearing was convened before Administrative Law Judge (ALJ) Richard Sherman at 10:00 a.m. on January 24, 2023. (*See* affirmation of Anne Haas [Haas Aff.], dated March 16, 2023, ¶ 2, Exhibits B, C.) Department staff was represented by Anne Haas, Esq., Office of General Counsel, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York. No one appeared on behalf of respondent (*id.* at ¶ 4).

ALJ Sherman noted for the record that respondent had failed to answer the complaint and failed to appear for the adjudicatory hearing. Department staff moved orally for a default judgment pursuant to 6 NYCRR 622.15. ALJ Sherman reserved on the oral motion, allowing the

record to remain open for Department staff to submit the documentation required by 6 NYCRR 622.15(b). By cover letter dated March 20, 2023, staff submitted a written motion for a default judgment with supporting papers (*see* Appendix A, attached hereto [listing documents submitted on motion]). Department staff served the motion and supporting papers on respondent by first class mail on or about March 16, 2023 (*see* affidavit of service of Melissa Evans, sworn to March 20, 2023). Respondent did not respond to the motion.

Applicable Regulatory Provisions

Section 551.2 Production and purchase reports.

* * *

“(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.”

* * *

Findings of Fact

1. Respondent Douglas Vanstrom maintains an address at 400 Glengrove Drive, Youngstown, New York. (*See* affidavit of Ted Loukides [Loukides Aff.], sworn to March 19, 2023, Exhibits 2, 3.)
2. Respondent Douglas Vanstrom operates the well designated as API Well Number 31-013-18005-00-00 and known as the Vanstrom 1 well, located in the Town of Ellicott, Chautauqua County, New York. (*See* Loukides Aff. ¶¶ 4, 5, 6, Exhibits 1, 2, 3.)
3. Respondent is required to file annual well reports (AWRs) with the Department for each calendar year for each well respondent operates on a form supplied by the Department, as typified by Loukides Aff. Exhibit 4 (AWR sent to respondent for the 2021 calendar year). (*See* Loukides Aff. ¶¶ 4, 8, Exhibit 4.)
4. On January 12, 2022, Department staff mailed respondent a cover letter and AWR form for the 2021 calendar year, pre-printed with respondent’s name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2022. Respondent failed to submit the 2021 AWR by March 31, 2022. (*See* Loukides Aff. ¶¶ 8, 9, Exhibit 4.)
5. On May 4, 2022, Department staff mailed respondent a notice of violation (NOV) advising respondent that respondent had failed to file an acceptable AWR by March 31, 2022. On July 12, 2022, Department staff mailed respondent a second NOV advising

respondent that respondent had failed to file an acceptable AWR by March 31, 2022. Included with the NOV was an order on consent to settle the matter within thirty days. The NOV advised respondent of the potential penalties for failing to submit the required AWR along with the signed order on consent. Respondent failed to submit the missing AWR or respond to the July 12, 2022 notice. The notice of violation and consent order were mailed by certified mail return receipt requested and were received by respondent on July 16, 2022. (*See Loukides Aff.* ¶ 10, Exhibits 5, 7.)

6. On August 9, 2022, Department staff contacted respondent by email and advised respondent that the Department had still not received respondent's 2021 AWR, and that if respondent wished to settle the matter, he must return the completed AWR, signed order on consent and penalty payment. (*See Loukides Aff.* ¶ 11.)
7. Respondent did not answer the complaint. (*See Haas Aff.* ¶ 3.)
8. Ted Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department's Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division's Bureau of Resource Development and Reclamation. Mr. Loukides's duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all AWRs submitted to the Department. (*See Loukides Aff.* ¶¶ 1-3.)
9. As shown by the affidavit of service of Melissa Evans, sworn to February 27, 2023, Department staff served the notice of hearing and complaint, statement of readiness, order on consent and invoice, on respondent by certified mail, pursuant to 6 NYCRR 622.3(a)(3), which was received by respondent on December 12, 2022. (*See Haas Aff.* Exhibit C.)
10. Respondent failed to appear at the January 24, 2023 hearing. (*See Haas Aff.* ¶ 4; hearing record.)
11. Respondent has two previous violations for failure to submit an AWR with Orders entered May 26, 2021 and May 4, 2022. (*See Haas Aff.* ¶ 9, 16, Exhs. D & E, Orders of the Commissioner dated May 26, 2021 and May 4, 2022).

Discussion

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

[“A respondent’s ... failure to appear at the hearing or the pre-hearing conference ... constitutes a default and waiver of respondent’s right to a hearing”]).

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

- “(1) proof of service upon respondent of the notice of hearing and complaint or such other document which commenced the proceeding;
 - “(2) proof of respondent's failure to appear or failure to file a timely answer;
 - “(3) consistent with CPLR 3215(f), proof of the facts sufficient to support the violations alleged and enable the ALJ and commissioner to determine that staff has a viable claim;
 - “(4) a concise statement of the relief requested;
 - “(5) a statement of authority and support for any penalty or relief requested; and
 - “(6) proof of mailing the notice required by [6 NYCRR 622.15(d)], where applicable.”
- (see 6 NYCRR 622.15[b][1] - [6] [effective September 16, 2020]).

As the Commissioner has held, “a defaulting respondent is deemed to have admitted the factual allegations of the complaint and all reasonable inferences that flow from them” (*Matter of Alvin Hunt, d/b/a Our Cleaners*, Decision and Order of the Commissioner, July 25, 2006, at 6 [citations omitted]). In addition, in support of a motion for a default judgment, staff must “provide proof of the facts sufficient to support the claim[s]” alleged in the complaint. (*Matter of Queen City Recycle Center, Inc.*, Decision and Order of the Commissioner, December 12, 2013, at 3.) Staff is required to support its motion for a default judgment with enough facts to enable the ALJ and the Commissioner to determine that staff has a viable claim (see *Matter of Samber Holding Corp.*, Order of the Commissioner, March 12, 2018 [*Samber*], at 1 [citing *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 (2003)]; see also 6 NYCRR 622.15[b][3], CPLR 3215[f]).

The record establishes that: (i) Department staff served the notice of hearing and complaint upon respondent; (ii) respondent failed to file an answer to the complaint, as directed in the cover letter and notice of hearing served with the complaint, and respondent failed to appear for the adjudicatory hearing scheduled on January 24, 2023, as directed in the notice of hearing; (iii) Department staff’s papers provide proof of the facts sufficient to support the violations alleged and enable me to determine that staff has a viable claim; (iv) Department staff’s papers include a concise statement of the relief requested (see motion for default judgment, wherefore clause; Haas Aff. Exhibit B [complaint]); (v) staff’s motion includes a statement of authority and support for the penalty and relief requested (see Haas Aff. ¶¶ 9-16); and (vi) Department staff provided proof of service of the motion papers on respondent (see affidavit of service of Melissa Evans, sworn to March 20, 2023). Respondent did not file or serve a response to staff’s motion. Based upon the foregoing, the Department is entitled to a default judgment in this matter pursuant to the provisions of 6 NYCRR 622.15.

Department staff’s submissions in support of the motion for a default judgment provide proof of facts sufficient to enable me to determine that staff has a viable claim that respondent failed to timely file a complete and accurate AWR for the 2021 calendar year for respondent’s Vanstrom 1 well, in violation of 6 NYCRR 551.2(b).

Staff's complaint requested a total civil penalty of six thousand dollars (\$6,000). Staff's submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department's Civil Penalty Policy, *DEE-1*, administrative precedent concerning similar violations (*see* Haas Aff. ¶¶ 9-16)¹, as well as prior Commissioner's Orders which found respondent liable for failure to timely file AWRs for calendar years 2019 and 2020. Department staff asserts that reporting requirements, such as those at issue here, provide the Department with important information about the status of the State's resources. According to Department staff, the failure to timely submit AWRs may result in potential and actual environmental harm. Staff explains that the AWRs identify non-producing wells for plugging, and that the failure to plug non-producing wells may result in contamination of groundwater with petroleum products, and the release of harmful greenhouse gases. In addition, Department staff transmits production information to affected State agencies and local governments for real property tax purposes. (Haas Aff. ¶ 13; Loukides Aff. ¶ 13.)

ECL 71-1307(1) provides that any person who violates any provision of ECL article 23 or commits any offense described in ECL 71-1305 shall be liable for a penalty of up to eight thousand dollars (\$8,000) for the first day of violation and up to two thousand dollars (\$2,000) per day for each day the violation continues. ECL 71-1305(2) provides that it is unlawful for any person to violate any rule or regulation promulgated pursuant to ECL article 23, which would include the regulatory requirement at issue here -- 6 NYCRR 551.2(b). Department staff's proposed civil penalty of six thousand dollars (\$6,000) is consistent with the Department's Civil Penalty Policy (DEE 1, issued June 20, 1990) as well as applicable provisions of ECL article 71 and prior Commissioner orders. Furthermore, staff demonstrated the importance of AWRs to the regulatory scheme. The Commissioner has previously held that "the timely filing of complete and accurate AWRs is critical to the regulatory requirements of this program" (*see Buffalo China, Inc.*, Order of the Commissioner, October 27, 2013, at 2). Accordingly, I conclude that the penalty of six thousand dollars (\$6,000) requested by Department staff, is supported and appropriate.

Conclusion of Law

By failing to timely file complete and accurate annual well reports for the 2021 calendar year for the Vanstrom 1 well, respondent Douglas Vanstrom violated 6 NYCRR 551.2(b).

Recommendation

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

1. granting Department staff's motion for default;

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

2. holding that respondent Douglas Vanstrom violated 6 NYCRR 551.2(b) by failing to timely file a complete and accurate annual well report for the 2021 calendar year for respondent's Vanstrom 1 well (API Well Number 31-013-18005-00-00);
3. directing respondent Douglas Vanstrom to submit a complete and accurate annual well report for the 2021 calendar year within thirty (30) days of the service of the Commissioner's order upon respondent;
4. directing respondent Douglas Vanstrom to pay a civil penalty in the amount of six thousand dollars (\$6,000) within thirty days (30) of the service of the Commissioner's order upon respondent; and
5. directing such other and further relief as he may deem just and appropriate.

/S/
Molly T. McBride
Administrative Law Judge

Dated: Albany, New York
April 12 , 2023

APPENDIX A

Matter of Douglas Vanstrom
DEC Case No. CO 9-20220629-53
Motion for Default Judgment

1. Cover letter, dated March 21, 2023, from Anne Haas, Esq., filing and attaching staff's motion papers.
2. Notice of Motion for Default Judgment, dated March 16, 2023.
3. Motion for Default Judgment, dated March 16, 2023, attaching Exhibit A and affidavit of Ted Loukides;
 - A. Affirmation of Anne Haas, Esq., dated March 16, 2023, attaching Exhibits B-E;
 - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated December 5, 2022, and proposed Order on Consent and Invoice; and
 - C. Affidavit of Service of Melissa Evans, sworn to February 27, 2023, attaching United States Postal Service (USPS) electronic proof of delivery.
4. Affidavit of Ted Loukides, sworn to March 9, 2023, attaching Exhibits 1-7;
 1. Tax Parcel Map depicting location of well on property operated by Douglas Vanstrom;
 2. Organizational Report for Douglas Vanstrom, sworn to February 8, 2013;
 3. Request for Well Transfer to Douglas Vanstrom, sworn to January 14, 2013;
 4. Cover letter from Theodore N. Loukides to Douglas Vanstrom, dated January 8, 2022, with enclosed 2021 Annual Well Report form;
 5. Letter from Theodore N. Loukides to Douglas Vanstrom, dated May 4, 2022 (re: Notice of Violation – Failure to File Annual Well Report) with proposed order on consent, invoice and 2021 Annual Well Report form enclosed.
 6. USPS electronic receipt of delivery of May 4, 2022 letter on May 6, 2022.

7. Letter from Theodore N. Loukides to Douglas Vanstrom, dated July 12, 2022 (re: Second Notice of Violation – Failure to File Annual Well Report) with proposed order on consent, invoice and 2021 Annual Well Report form enclosed.
8. USPS electronic receipt of delivery of July 12, 2022 letter on July 16, 2022.
9. Email to respondent from DEC Division of Mineral Resources dated August 9, 2022.