

**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 -

MICHAEL J. McCAFFERY,

Respondent.

ORDER

DEC Case No.
CO 9-20220629-39

In this administrative enforcement proceeding, New York State Department of Environmental Conservation (Department or DEC) staff alleges that respondent Michael J. McCaffery violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports (AWRs) for:

- the 2020 and 2021 calendar years for three (3) oil wells operated by respondent Michael J. McCaffery and McCaffery and Krampf Oil Corporation (McCaffery & Krampf oil wells) in Chautauqua County, New York; and
- the 2021 calendar year for fifty (50) oil wells operated by respondent Michael J. McCaffery and M.J. McCaffery Oil Co. (MJ McCaffery oil wells) also in Chautauqua County, New York.

(*see* Complaint dated December 5, 2022, ¶¶ 4, 11-13; Wherefore Clause, ¶ II).

Administrative Law Judge (ALJ) Michael S. Caruso of the Department's Office of Hearings and Mediation Services was assigned to this matter and prepared the attached default summary report, which I adopt as my decision 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 6 [Findings of Fact Nos. 31 and 33]). At the January 24, 2023 adjudicatory hearing, Department staff made an oral motion for a default judgment. Presiding ALJ Richard A. Sherman reserved on the motion, and Department staff later submitted a written motion for default judgment with supporting papers. The matter was then assigned to ALJ Caruso.

I first address the status of M.J. McCaffery Oil Co. and McCaffery and Krampf Oil Corporation in this proceeding. It has been previously held that M.J. McCaffery Oil Corporation is nothing more than the assumed name under which respondent Michael J. McCaffery conducts business and the referenced corporation has no legal existence of its own (*see* Default Summary Report at 7; *see also* *Matter of Michael J. McCaffery*, Order of the Commissioner, August 17, 2022 [attached ALJ Summary Report at 9]). In addition, in this proceeding, the ALJ determined that McCaffery and Krampf Oil Corporation is nothing more than the assumed name under which respondent McCaffery does business and has no legal existence of its own (*see* Default Summary Report at 7-8). Accordingly, this matter is proceeding against respondent McCaffery, in his individual capacity.

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 10). 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 annual well reports for the 2020 and 2021 calendar years for the three McCaffery & Krampf oil wells and for the 2021 calendar year for the fifty MJ McCaffery oil wells 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, ¶ 19; *see also* Affidavit of Ted Loukides, DEC Mineral Resources Specialist 4, sworn to March 9, 2023, ¶ 35).

Department staff, in its papers, sought a penalty of nine thousand dollars (\$9,000), and the ALJ recommended that respondent Michael J. McCaffery 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; *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 the respondent had a history of noncompliance]). Here, Department staff has demonstrated that respondent's history of noncompliance supports a higher

penalty and requests that \$3,000 be assessed for each of the three AWRs that respondent failed to file.

The record demonstrates that respondent Michael J. McCaffery, who failed to submit a timely and complete report for the McCaffery & Krampf oil wells for the 2020 and 2021 calendar years and for the MJ McCaffery oil wells for the 2021 calendar year, also failed to file his 2018-2020 annual well reports for various MJ McCaffery oil wells and was the subject of a prior enforcement proceeding (*see Matter of Michael J. McCaffery*, Order of the Commissioner dated August 17, 2022). Notwithstanding the efforts of Department staff to obtain respondent's compliance, including numerous written reminders, the record establishes that respondent failed to file acceptable reports for the 2020 and 2021 calendar years (*see* Default Summary Report at 4-6 [Findings of Fact Nos. 14-30]). The history of noncompliance could warrant a civil penalty of greater than the nine thousand dollars (\$9,000) requested. However, in the circumstances of this proceeding, I adopt Department staff's recommended penalty.

Based on the record before me, the recommended penalty is authorized and appropriate. I direct that respondent submit the civil penalty of nine thousand dollars (\$9,000) 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 Michael J. McCaffery is directed to submit complete and accurate well reports for the McCaffery & Krampf oil wells for calendar years 2020 and 2021 and a complete and accurate well report for the MJ McCaffery oil wells for the 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 Michael J. McCaffery 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 Michael J. McCaffery is determined to have violated 6 NYCRR 551.2(b), by failing to timely file complete and accurate annual well reports for the 2020 and 2021 calendar years for the three (3) McCaffery & Krampf oil wells and for the 2021 calendar year for the fifty (50) MJ McCaffery oil wells, as set forth in Appendix A to this order.
- III. Within thirty (30) days of the service of this order upon respondent Michael J. McCaffery, respondent shall submit to the Department complete and accurate annual well reports for the three (3) McCaffery & Krampf oil wells for the 2020 and 2021 calendar years and a complete and accurate annual well report for the fifty (50) MJ McCaffery oil wells for the 2021 calendar year.
- IV. Respondent Michael J. McCaffery is hereby assessed a civil penalty in the amount of nine thousand dollars (\$9,000), 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 reports 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 Michael J. McCaffery 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 18, 2023
Albany, New York

APPENDIX A

| <u>WELL NUMBER</u> | <u>WELL NAME¹</u> |
|--------------------|------------------------------|
| 31-009-19142-00-00 | Horse Shoe 2 |
| 31-009-19363-00-00 | Horse Shoe 3 |
| 31-009-19954-00-00 | McCaffery Brothers 19 |
| 31-009-19129-00-00 | Hill Lease 2 |
| 31-009-19130-00-00 | Hill Lease 1 |
| 31-009-19362-00-00 | Hill Lease 4 |
| 31-009-56123-00-00 | Hill U-1 |
| 31-009-56160-00-00 | McCaffrey 98 |
| 31-009-62210-00-00 | Roggenbaum 1 |
| 31-009-62211-00-00 | Roggenbaum 2 |
| 31-009-62212-00-00 | Roggenbaum 3 |
| 31-009-62213-00-00 | Roggenbaum 4 |
| 31-009-62214-00-00 | Roggenbaum 5 |
| 31-009-62215-00-00 | Roggenbaum 6 |
| 31-009-62218-00-00 | Roggenbaum 9 |
| 31-009-62219-00-00 | Roggenbaum 10 |
| 31-009-62220-00-00 | Roggenbaum 11 |
| 31-009-62221-00-00 | Roggenbaum 12 |
| 31-009-62222-00-00 | Roggenbaum 13 |
| 31-009-62223-00-00 | Roggenbaum 14 |
| 31-009-62224-00-00 | Roggenbaum 15 |
| 31-009-62225-00-00 | Roggenbaum 16 |
| 31-009-62226-00-00 | Roggenbaum 17 |
| 31-009-62227-00-00 | Roggenbaum 18 |
| 31-009-62228-00-00 | Roggenbaum 19 |
| 31-009-62229-00-00 | Roggenbaum 20 |
| 31-009-66398-00-00 | Hill a |
| 31-009-66399-00-00 | Hill 1 |
| 31-009-66400-00-00 | Hill 2 |
| 31-009-66401-00-00 | Hill 3 |
| 31-009-66402-00-00 | Hill 4 |
| 31-009-66403-00-00 | Hill 5 |
| 31-009-66404-00-00 | Hill 6 |
| 31-009-66405-00-00 | Hill 7 |
| 31-009-66406-00-00 | Hill 8 |
| 31-009-66407-00-00 | Hill 9 |
| 31-009-66408-00-00 | Hill 10 |
| 31-009-66409-00-00 | Hill 11 |
| 31-009-66410-00-00 | Hill 12 |

¹ The first three oil wells – Horse Shoe 2, Horse Shoe 3 and McCaffrey Brothers 19 – are registered to McCaffery & Krampf Oil Co. (McCaffery & Krampf oil wells), and the remaining fifty oil wells are registered to M.J. McCaffery Oil Co. (M.J. McCaffery oil wells).

| | |
|--------------------|---------|
| 31-009-66411-00-00 | Hill 13 |
| 31-009-66412-00-00 | Hill 14 |
| 31-009-66413-00-00 | Hill 15 |
| 31-009-66414-00-00 | Hill 16 |
| 31-009-66415-00-00 | Hill 17 |
| 31-009-66416-00-00 | Hill 18 |
| 31-009-66417-00-00 | Hill 19 |
| 31-009-66418-00-00 | Hill 20 |
| 31-009-67343-00-00 | Sue 21 |
| 31-009-67344-00-00 | Sue 22 |
| 31-009-67345-00-00 | Sue 23 |
| 31-009-67348-00-00 | Sue 40 |
| 31-009-67349-00-00 | Sue 41 |
| 31-009-67350-00-00 | Sue 44 |

**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 -

MICHAEL J. McCAFFERY,

DEC Case No.
CO 9-20220629-39

Respondent.

Procedural History

Staff of the New York State Department of Environmental Conservation (Department) served respondent Michael J. McCaffery (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 timely an annual well report for the 2021 calendar year for 50 oil wells operated by respondent Michael J. McCaffery and M.J. McCaffery Oil Co. (MJ McCaffery wells) and failure to timely file annual well reports for the 2020 and 2021 calendar years for 3 oil wells operated by respondent Michael J. McCaffery and McCaffery and Krampf Oil Co. (McCaffery & Krampf wells) in Cattaraugus County, New York.

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 reports to the Department; (3) assessing a civil penalty in the amount of nine thousand dollars (\$9,000); and (4) granting such other relief as the Commissioner may deem appropriate.

Service of the notice of hearing and complaint was made by personal service on respondent on December 21, 2022 (*see* 6 NYCRR 622.3[a][3]). Respondent failed to answer the complaint as directed in the notice of hearing but respondent mailed a series of documents to the Department that pre-dated the complaint and did not address the complaint (*see* affirmation of Anne Haas [Haas Aff.], dated March 16, 2023, ¶¶ 3 and 4, Exhibit D). Pursuant to the December 5, 2022 notice of hearing, a virtual adjudicatory hearing was convened before administrative law judge (ALJ) Richard A. Sherman at 1:00 p.m. on January 24, 2023 (*see* Haas Aff. ¶ 2, Exhibit B; Hearing Record.) 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 (Haas Aff. at ¶ 5; Hearing Record).

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) (*see* Hearing Record). 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]). The matter was then assigned to me. Department staff served the motion and supporting papers on respondent by first class mail on March 16, 2023 (*see* affidavit of service of Melissa Evans, sworn to March 20, 2023). Respondent submitted documents to Department staff but did not directly address the motion. Respondent also submitted two documents to me that were received on April 10, 2023. (*See* Appendix A).

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 Michael J. McCaffery (respondent) maintains an address at 1875 Chipmonk Road, Allegany, New York. (*See* Haas Aff. Exhibits C, D; affidavit of Ted Loukides, [Loukides Aff.], sworn to March 9, 2023, Exhibits 2, 3, 8, 13, 15, 21.)
2. Theodore Loukides is an employee of the Department and is a Mineral Resources Specialist 4 in the Department’s Division of Mineral Resources. Mr. Loukides is the Section Chief of the Oil and Gas Compliance and Enforcement Section in the Division’s Bureau of Resource Development and Reclamation. Mr. Loukides’ duties include the administration of the provisions of ECL article 23 and 6 NYCRR part 550, *et seq.* including reporting requirements. Mr. Loukides has access to and is custodian of Department records relating to the operation of oil and gas wells, including all annual well reports (AWRs) submitted to the Department. (*See* Loukides Aff. ¶¶ 1-3.)
3. M.J. McCaffery Oil Co. is an unincorporated company that is not registered as a business entity with the New York State Department of State. (*See* Haas Aff. ¶ 6.)
4. Respondent Michael J. McCaffery does business as M.J. McCaffery Oil Co. (*See* Haas Aff. ¶¶ 6, 8; Loukides Aff. ¶¶ 4, 5, 7; Exhibit 2.)

5. McCaffery and Krampf Oil Co. is an inactive domestic corporation that was dissolved on January 9, 1991. (See Haas Aff. ¶ 7, Exhibit E.)

6. Respondent Michael J. McCaffery does business as McCaffery and Krampf Oil Co. (See Haas Aff. ¶¶ 7, 8; Loukides Aff. ¶¶ 4, 6, 7, Exhibit 3.)

7. Respondent operates the following MJ McCaffery wells known as:

- | | | | |
|-----------------|----------------------|-----------|----------------------|
| • Hill Lease 2 | (31-009-19129-00-00) | • Hill 2 | (31-009-66400-00-00) |
| • Hill Lease 1 | (31-009-19130-00-00) | • Hill 3 | (31-009-66401-00-00) |
| • Hill Lease 4 | (31-009-19362-00-00) | • Hill 4 | (31-009-66402-00-00) |
| • Hill U-1 | (31-009-56123-00-00) | • Hill 5 | (31-009-66403-00-00) |
| • McCaffery 98 | (31-009-56160-00-00) | • Hill 6 | (31-009-66404-00-00) |
| • Roggenbaum 1 | (31-009-62210-00-00) | • Hill 7 | (31-009-66405-00-00) |
| • Roggenbaum 2 | (31-009-62211-00-00) | • Hill 8 | (31-009-66406-00-00) |
| • Roggenbaum 3 | (31-009-62212-00-00) | • Hill 9 | (31-009-66407-00-00) |
| • Roggenbaum 4 | (31-009-62213-00-00) | • Hill 10 | (31-009-66408-00-00) |
| • Roggenbaum 5 | (31-009-62214-00-00) | • Hill 11 | (31-009-66409-00-00) |
| • Roggenbaum 6 | (31-009-62215-00-00) | • Hill 12 | (31-009-66410-00-00) |
| • Roggenbaum 9 | (31-009-62218-00-00) | • Hill 13 | (31-009-66411-00-00) |
| • Roggenbaum 10 | (31-009-62219-00-00) | • Hill 14 | (31-009-66412-00-00) |
| • Roggenbaum 11 | (31-009-62220-00-00) | • Hill 15 | (31-009-66413-00-00) |
| • Roggenbaum 12 | (31-009-62221-00-00) | • Hill 16 | (31-009-66414-00-00) |
| • Roggenbaum 13 | (31-009-62222-00-00) | • Hill 17 | (31-009-66415-00-00) |
| • Roggenbaum 14 | (31-009-62223-00-00) | • Hill 18 | (31-009-66416-00-00) |
| • Roggenbaum 15 | (31-009-62224-00-00) | • Hill 19 | (31-009-36417-00-00) |
| • Roggenbaum 16 | (31-009-62225-00-00) | • Hill 20 | (31-009-66418-00-00) |
| • Roggenbaum 17 | (31-009-62226-00-00) | • Sue 21 | (31-009-67343-00-00) |
| • Roggenbaum 18 | (31-009-62227-00-00) | • Sue 22 | (31-009-67344-00-00) |
| • Roggenbaum 19 | (31-009-62228-00-00) | • Sue 23 | (31-009-67345-00-00) |
| • Roggenbaum 20 | (31-009-62229-00-00) | • Sue 40 | (31-009-67348-00-00) |
| • Hill a | (31-009-66398-00-00) | • Sue 41 | (31-009-67349-00-00) |
| • Hill 1 | (31-009-66399-00-00) | • Sue 44 | (31-009-67350-00-00) |

(See Exhibit B, Complaint, Attachment A; Haas Aff. ¶¶ 6, 8; Loukides Aff. ¶¶ 4, 5, 7-13, Exhibits 1, 5-8.)¹

8. The United States Environmental Protection Agency plugged respondent's Roggenbaum 5, 17 and 18 wells and four other oil wells operated by respondent to ensure protection of the waters of the United States. (See *Matter of Michael J. McCaffery*, Order of the Commissioner, August 17, 2022; Summary Report at 19.)

9. Respondent operates the McCaffery & Krampf wells known as the Horseshoe 2,

¹ American Petroleum Institute (API) Well Numbers provided in parenthesis.

Horseshoe 3, and McCaffery Brothers 19 wells. The wells are designated by API Well Numbers 31-009-19142-00-00, 31-009-19363-00-00, and 31-009-19954-00-00, respectively. (See Exhibit B, Complaint, Attachment A; Haas Aff. ¶¶ 7, 8; Loukides Aff. ¶¶ 4, 6, 7, 17, Exhibits 1, 11.)

10. Respondent is required to file annual well reports (AWRs) with the Department for each calendar year, by March 31 of the following year, for each well respondent operates on a form supplied by the Department. (See Haas Aff. ¶ 9; Loukides Aff. ¶ 18.)
11. By request for well transfer received August 15, 2016, respondent sought approval from the Department to transfer well responsibilities for certain MJ McCaffery wells to Asomeo LLC. (See Loukides Aff. ¶ 15, Exhibit 9.)
12. On April 10, 2018, Department staff denied respondent's transfer request because: i) the wells to be transferred were not clearly identified in the request, ii) there were multiple ongoing violations at the wells that were identified, and iii) there was no financial security posted by the proposed transferee. Respondent did not appeal the denial or submit further transfer requests. (See Loukides Aff. ¶ 16, Exhibit 10.)
13. Respondent remains the authorized operator of the MJ McCaffery wells. (See Loukides Aff. ¶ 16.)
14. On January 22, 2021, Department staff mailed respondent a cover letter and AWR form for the 2020 calendar year for the McCaffery & Krampf wells, pre-printed with respondent's name, address and well information. The cover letter reminded respondent to file the completed AWR by March 31, 2021. (See Loukides Aff. ¶ 19, Exhibit 12.)
15. On March 12, 2021, respondent submitted an AWR for the McCaffery & Krampf wells, but failed to complete the form. Respondent wrote on the AWR that "McCaffery & Krampf Oil Co. is out of business" and enclosed a letter to staff that he could not sign the certification statement on the AWR forms because he did not own the land where the wells were located. (See Loukides Aff. ¶ 20, Exhibit 13.)
16. On March 25, 2021, Department staff mailed respondent a cover letter explaining why the submitted 2020 AWR was unacceptable and advised respondent that respondent was responsible for the listed wells until a request for well transfer was submitted and approved by the Department. The letter further requested that respondent submit a corrected and acceptable AWR by March 31, 2021. (See Loukides Aff. ¶ 21, Exhibit 14.)
17. Respondent submitted a second AWR for the McCaffery & Krampf wells, dated March 31, 2021. Respondent did not provide production information for the wells and again noted that "McCaffery & Krampf Oil Co. is out of business." In addition, respondent crossed out the certification provision. Department staff determined the second AWR was unacceptable. (See Loukides Aff. ¶¶ 22, 23, Exhibit 15.)

18. On May 3, 2021, Department staff mailed respondent a cover letter explaining why the unacceptable AWR was being returned and again informed respondent that respondent was responsible for the wells until a request for well transfer was submitted and approved by the Department. Department staff advised respondent that the March 31, 2021 deadline for submitting an acceptable AWR had passed and directed respondent to submit a corrected AWR as soon as possible. (See Loukides Aff. ¶ 24, Exhibit 16.)
19. By letter dated May 7, 2021, Department staff advised respondent that respondent had failed to submit an acceptable 2020 AWR, and that failure to do so may result in penalties assessed against respondent. Department staff also advised respondent that the May 7, 2021 notice was a final notice, and staff provided respondent with a blank 2020 AWR form. (See Loukides Aff. ¶ 25, Exhibit 17.)
20. On January 12, 2022, Department staff mailed respondent cover letters and AWR forms for the 2021 calendar year for the 50 MJ McCaffery wells and the 3 McCaffery & Krampf wells, pre-printed with respondent's name, address and well information. The respective cover letters reminded respondent to file the completed AWRs by March 31, 2021. Department staff also enclosed AWR instructions highlighting changes to annual well reporting for the 2021 calendar year. (See Loukides Aff. ¶ 26, Exhibit 18.)
21. Respondent submitted a 2021 AWR form for 30 of the MJ McCaffery wells dated March 30, 2022. Respondent did not provide production information for 27 of the wells. Respondent crossed out many of the listed wells and noted that he was no longer the operator and noted that the operator was Asomeo LLC. Respondent also crossed out the certification statement on each AWR form. Department staff had not approved any well transfer for the MJ McCaffery wells. (See Loukides Aff. ¶ 27, Exhibit 19.)
22. On April 6, 2022, Department staff mailed respondent a cover letter explaining why the submitted 2021 AWR for the MJ McCaffery wells was unacceptable. The letter further requested that respondent submit a corrected and acceptable AWR as soon as possible. (See Loukides Aff. ¶ 28, Exhibit 20.)
23. Respondent failed to file a corrected 2021 AWR for the MJ McCaffery wells or respond to the request. (See Loukides Aff. ¶ 28.)
24. Respondent submitted a 2021 AWR form for the McCaffery & Krampf wells dated March 30, 2022. Department staff determined that the AWR was unacceptable because respondent had crossed out the certification statement, and respondent had again noted that "McCaffery & Krampf Oil Co. is out of business." Respondent also noted on the AWR that the wells and lease were up for sale and that permission from the landowner was required to access lease lands. (See Loukides Aff. ¶ 29, Exhibit 21.)
25. By letter dated April 6, 2022, Department staff notified respondent that the 2021 AWR for the McCaffery & Krampf wells was unacceptable and requested that respondent submit a corrected AWR as soon as possible. (See Loukides Aff. ¶ 30, Exhibit 22.)

26. Respondent failed to file an acceptable 2021 AWR for the McCaffery & Krampf wells or respond to the request. (See Loukides Aff. ¶ 30.)
27. On May 4, 2022, Department staff mailed respondent notices of violation (NOVs) advising respondent that respondent had failed to file acceptable 2021 AWRs for the MJ McCaffery wells and McCaffery & Krampf wells by the March 31, 2022 deadline. The NOVs were sent by certified mail and were received by respondent on May 20, 2022. The NOVs advised respondent of the potential penalties for failing to submit the required AWRs. Respondent failed to submit the missing AWRs or respond to the May 4, 2022 notices. (See Loukides Aff. ¶ 31, Exhibits 23, 24.)
28. On July 12, 2022, Department staff mailed respondent second NOVs for failing to submit the required 2021 AWRs for the MJ McCaffery wells and McCaffery & Krampf wells. Department staff enclosed orders on consent with the NOVs in an attempt to settle the matters, and advised respondent that the settlement offer would expire on August 15, 2022. The second NOVs were sent by certified mail and were returned as unclaimed. (See Loukides Aff. ¶ 32, Exhibits 25, 27.)
29. On August 9, 2022, Department staff emailed respondent reminders that staff had not received the missing 2021 AWRs for the MJ McCaffery wells and McCaffery & Krampf wells. The emails further reminded respondent that staff's offer to settle the matters would expire on August 15, 2022. (See Loukides Aff. ¶ 33, Exhibit 26.)
30. As of March 9, 2023, respondent has not filed acceptable AWRs for 2020 and 2021 for the McCaffery & Krampf wells and has not filed an acceptable AWR for 2021 for the MJ McCaffery wells. (See Loukides Aff. ¶ 34.)
31. Respondent did not answer the complaint. (See Haas Aff. ¶ 3.)
32. As shown by the affidavit of service of Environmental Conservation Officer Jason Powers, affirmed on December 21, 2022, Department staff served the notice of hearing and complaint, statement of readiness, order on consent and invoice, on respondent by personal service on December 21, 2022. (See Haas Aff. Exhibit C.)
33. Respondent failed to appear at the January 24, 2023 hearing. (See Haas Aff. ¶ 5; Hearing Record.)

Discussion

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

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

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

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

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

As an initial matter, Department staff’s allegations regarding the liability of respondent Michael J. McCaffery must be addressed. I previously held that Department staff’s proof demonstrated M.J. McCaffery Oil Co. is nothing more than the assumed name under which respondent McCaffery conducts business and has no legal existence of its own, and that Department staff made a prima facie showing that respondent McCaffery is the only one who has represented M.J. McCaffery Oil Co. in person or by correspondence with the Department (see *Matter of Michael J. McCaffery [McCaffery]*, Order of the Commissioner, August 17, 2022, at 5; Summary Report at 9-10). The record in that matter clearly demonstrated that M.J. McCaffery Oil Co. is the assumed name by which respondent McCaffery does business. Accordingly, I held respondent McCaffery liable for the violations alleged by Department staff including failure to submit AWRs for the 2018, 2019 and 2020 calendar years for the MJ McCaffery wells. In addition, I held that respondents’ putative answer to the complaint and response to the motion in that matter were contradicted by the record (see *McCaffery*, Summary Report at 10).

In this matter, I also find that McCaffery and Krampf Oil Co. is nothing more than the assumed name under which respondent McCaffery does business and no longer has a legal existence of its own. As in the *McCaffery* matter, Department staff has demonstrated here that respondent McCaffery is the only one who has represented McCaffery and Krampf Oil Co. and signed DEC required documents on behalf of the corporation, including after the dissolution of

the corporation in 1991. Accordingly, I conclude that McCaffery and Krampf Oil Co. is nothing more than the assumed named under which respondent McCaffery does business and has no legal existence of its own, and respondent is liable as the operator of the wells listed as McCaffery and Krampf Oil Co. wells, in addition to those listed as M.J. McCaffery Oil Co. wells.

I must also address respondent's submissions in response to the complaint and motion in this matter. The papers submitted by respondent do not address the allegations of the complaint or motion. Notably, all of respondent's submissions pre-date the complaint and motion. The documents, some of which respondent included in the *McCaffery* matter, attempt to demonstrate that respondent's business entities no longer exist or assert that someone else is responsible for respondent's wells because the wells were sold or transferred to another party. As noted in *McCaffery* and demonstrated in Department staff's papers here, Department staff has not approved the transfer of respondent's wells to any other person or entity. More importantly, respondent did not appear at the January 24, 2023 hearing and has not offered a reasonable excuse for failing to appear or shown a meritorious defense to Department staff's motion for a default judgment. By failing to appear at the hearing, respondent defaulted and waived his right to a hearing in this matter.

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 but instead served unresponsive documents on Department staff, 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. ¶¶ 16-22); 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 but submitted documents unrelated to the allegations of the complaint and the motion papers. Respondent's repeated attempts to demonstrate that he sold some or all of the wells or transferred operation of wells to other parties do not relieve respondent of the obligation to comply with the law and regulations and file acceptable AWRs as the operator of those wells. Any claims to the contrary are baseless as a matter of law because Department staff has not approved any transfer of respondent's wells. Moreover, respondent's attempts to shield himself by claiming M.J. McCaffery Oil Co. and McCaffery and Krampf Oil Co. no longer exist is irrelevant because M.J. McCaffery Oil Co. never legally existed and McCaffery and Krampf Oil Co. ceased to exist in 1991. In other words, respondent has been operating the MJ McCaffery and McCaffery & Krampf oil wells for many years under those fictitious names without legal authority to use those names. In addition, respondent repeatedly refused to sign the AWRs, or repeatedly crossed out the certification provision, because he disagrees with the access language contained in the certification. The language of the certification acknowledging that Department staff has the right to enter

properties for the purpose of inspection, however, is consistent with 6 NYCRR 550.5(a), which provides that the “department, including its employees, agents and representatives, shall have the right at all reasonable times to go upon or into and inspect any oil and gas property, tank farm, pump station, pipeline, gasoline plant, refinery and underground gas storage project for the purpose of making any investigation or tests to ascertain whether the provisions of the rules and regulations of the department are being complied with.” Accordingly, I find upon review of respondent’s submissions that respondent has not answered the complaint or responded to staff’s motion, and that respondent’s submissions do not provide a reasonable excuse for respondent’s default and do not constitute a meritorious defense to the allegations of the complaint.

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 complete and accurate AWRs for the 2020 and 2021 calendar years for respondent’s McCaffery & Krampf wells, and failed to file a complete and accurate AWR for the 2021 calendar year for respondent’s MJ McCaffery wells, in violation of 6 NYCRR 551.2(b).

Staff’s complaint requested a total civil penalty of nine thousand dollars (\$9,000). Staff’s submissions on the motion for a default judgment elaborate on the requested civil penalty, discussing the Department’s Civil Penalty Policy, *DEE-1*, and administrative precedent concerning similar violations as well as respondent’s history of noncompliance (*see* Haas Aff. ¶¶ 16-22). 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. ¶ 19; Loukides Aff. ¶ 35.)

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 nine thousand dollars (\$9,000) 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). In addition, the record demonstrates that respondent’s history of noncompliance is rooted in respondent’s intractable unwillingness to cooperate with Department staff. Accordingly, I conclude that the penalty of nine thousand dollars (\$9,000) requested by Department staff, is supported and appropriate.

Conclusion of Law

By failing to timely file complete and accurate annual well reports for the 2020 and 2021 calendar years for the three (3) McCaffery & Krampf oil wells and for the 2021 calendar year for the fifty (50) MJ McCaffery oil wells, respondent Michael J. McCaffery violated 6 NYCRR 551.2(b).

Recommendation

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

1. granting Department staff's motion for default;
2. holding that respondent Michael J. McCaffery violated 6 NYCRR 551.2(b) by failing to timely file complete and accurate annual well reports for the 2020 and 2021 calendar years for respondent's three (3) McCaffery & Krampf wells;
3. holding that respondent Michael J. McCaffery 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 fifty (50) MJ McCaffery wells;
4. directing respondent Michael J. McCaffery to submit a complete and accurate annual well report for the 2020 and 2021 calendar years for the three (3) McCaffery & Krampf wells and the 2021 calendar year for the fifty (50) MJ McCaffery wells, within thirty (30) days of the service of the Commissioner's order upon respondent;
5. directing respondent Michael J. McCaffery to pay a civil penalty in the amount of nine thousand dollars (\$9,000) within thirty days (30) of the service of the Commissioner's order upon respondent; and
6. directing such other and further relief as he may deem just and appropriate.

/S/
Michael S. Caruso
Administrative Law Judge

Dated: Albany, New York
April 11, 2023

APPENDIX A

Matter of Michael J. McCaffery
DEC Case No. CO 9-20220629-39
Motion for Default Judgment

Department staff's Papers

- Cover letter, dated March 20, 2023, from Anne Haas, Esq., filing and attaching staff's motion papers.
- Notice of Motion for Default Judgment, dated March 16, 2023.
- 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-F;
 - B. Cover letter, Notice of Hearing, Complaint, and Statement of Readiness all dated December 5, 2022, and proposed Order on Consent and Invoice;
 - C. Affidavit of Service of Environmental Conservation Officer Jason Powers, affirmed December 21, 2022;
 - D. Various documents submitted by Michael J. McCaffery to Department staff, received on January 10, 2023
 - Unsigned certification document, dated August 10, 2022;
 - Unsigned and undated certification document;
 - Correspondence from Michael J. McCaffery to Mr. Keehn, dated August 30, 2022;
 - Correspondence from Michael J. McCaffery to David McCoy, dated April 7, 2022;
 - Correspondence from Michael J. McCaffery to Mr. Loukides, dated March 10, 2021;
 - Correspondence from Michael McCaffery to Kelly Smith, dated April 15, 2019;
 - Document entitled "Law of the Land;" and
 - Open letter to all NYSDEC attorneys and staff from Michael J. McCaffery, dated January 6, 2023;
 - E. Department of State, Division of Corporations Entity Information regarding McCaffery and Krampf Oil Corporation; and

- F. *Matter of Michael J. McCaffery, et al*, Order of the Commissioner, August 17, 2022.
- Affidavit of Ted Loukides, sworn to March 9, 2023, attaching Exhibits 1-27:
 1. List of wells operated by respondent with Tax Parcel Maps depicting location of wells on property operated by M.J. McCaffery Oil Co. and McCaffery & Krampf Oil Co.;
 2. Organizational Report for M.J. McCaffery Oil Co. and Michael J. McCaffery, sworn to September 30, 2013;
 3. Organizational Report for McCaffery & Krampf Oil Co., sworn to May 28, 2013;
 4. Notice of Transfer of Well Plugging Responsibilities to Michael J. McCaffery, DBA M.J. McCaffery Oil Co. for 18 Hill Lease wells, sworn to May 16, 1997;
 5. Request for Well Transfer to M.J. McCaffery Oil Co. for Hill 2 well;
 6. A.P.I. Well Identification Number Request Forms from M.J. McCaffery Oil Co. for Roggenbaum 1, 2, 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20 wells, affirmed March 26, 1984;
 7. Applications for A.P.I. Well Identification Number from M.J. McCaffery Oil Company for McCaffery Sue 21, 22, 23, 40, 41, and 44 wells, affirmed March 15, April and 22, 1988;
 8. Annual Well Reports for 2016, 2017, 2018, 2019, and 2020 submitted by M.J. McCaffery Oil Co.;
 9. Request for Well Transfer from M.J. McCaffery Oil Co. to Asomeo LLC, sworn to August 12, 2016 with list of wells attached;
 10. Denial of Request for Transfer, dated April 10, 2018;
 11. Applications for Permit to Drill, Deepen, Plug Back or Convert a Well from McCaffery & Krampf Oil Co. for Horseshoe 2, Horseshoe 3, and McCaffery Brothers 19 wells with Well Drilling and Completion Reports;
 12. Cover letter from Division of Mineral Resources to McCaffery & Krampf Oil Co., dated January 22, 2021 with enclosed 2020 Annual Well Report form and instructions;

13. 2020 Annual Well Report submitted by McCaffery & Krampf Oil Co. (unsigned and undated), with letter from Michael J. McCaffery to Mr. Loukides, dated March 10, 2021 attached;
14. Letter from Kelly Smith to McCaffery & Krampf, dated March 25, 2021 returning unacceptable 2020 Annual Well Report;
15. 2020 Annual Well Report submitted by Michael J. McCaffery, dated March 31, 2021, with letter from Michael J. McCaffery to Mr. Loukides, dated March 10, 2021 attached;
16. Letter from Kelly Smith to McCaffery & Krampf Oil Co., dated May 3, 2021 returning unacceptable 2020 Annual Well Report;
17. Letter from Theodore N. Loukides to McCaffery & Krampf Oil Co., dated May 7, 2021 re: final notice to submit an acceptable annual well report for 2020;
18. Cover letter from Theodore N. Loukides to M.J. McCaffery Oil Co., dated January 12, 2022 with enclosed 2021 Annual Well Report form and instructions, and cover letter from Theodore N. Loukides to McCaffery & Krampf Oil Co., dated January 12, 2022 with enclosed 2021 Annual Well Report form and instructions;
19. 2021 Annual Well Report submitted by Michael J. McCaffery for M.J. McCaffery Oil Co., dated March 30, 2022;
20. Letter from Grace R. Gallagher to M.J. McCaffery Oil Co., dated April 6, 2022 returning unacceptable 2021 Annual Well Report;
21. 2021 Annual Well Report submitted by Michael J. McCaffery for McCaffery & Krampf Oil Co., dated March 30, 2022;
22. Letter from Grace R. Gallagher to McCaffery & Krampf Oil Co., dated April 6, 2022 returning unacceptable 2021 Annual Well Report;
23. Letter from Theodore N. Loukides to Michael J. McCaffery, M.J. McCaffery Oil Co., dated May 4, 2022 re: Notice of Violation-Failure to Submit Annual Well Report, and Letter from Theodore N. Loukides to McCaffery & Krampf Oil Co., dated May 4, 2022 re: Notice of Violation-Failure to Submit Annual Well Report;
24. USPS Tracking receipts and delivery confirmation (for Exhibit 23);
25. Letter from Theodore N. Loukides to Michael J. McCaffery, M.J. McCaffery Oil Co., dated July 12, 2022 re: Notice of Violation-Failure to

Submit Annual Well Report with order on consent and invoice enclosed, and Letter from Theodore N. Loukides to McCaffery & Krampf Oil Co., dated July 12, 2022 re: Notice of Violation-Failure to Submit Annual Well Report with order on consent and invoice enclosed;

26. Emails from Division of Mineral Resources to M.J. McCaffery Oil Co. and McCaffery & Krampf Oil Co., dated August 9, 2022; and
 27. USPS Tracking receipts demonstrating items (Exhibit 25) were unclaimed and returned to sender.
- Affidavit of Service of Melissa Evans, sworn to March 20, 2023 (default motion papers).

Respondent's Papers

- Respondent's documents received by Department staff on March 27, 2023;
 1. Notice, dated August 22, 2022, to NYSDEC that McCaffery Oil Co. has shut down and a new company B.S. Beaver Company will take over the lease operation;
 2. Agreement and Sale, dated September 20, 2022, selling three Hill Lease wells (31-009-19130-00-00, 31-009-19120-00-00, and 31-009-19360-00-00), and McCaffery well 98 (31-009-56160-00-00) from M J McCaffery Oil Co. to B S Beaver Co.;
 3. Map showing unidentified well;
 4. Page with older and newer AWR certifications;
 5. Correspondence from Michael J. McCaffery to Kelly Smith, dated April 15, 2019;
 6. Consent Agreement from Rob Mazza, attention: NYSDEC Staff, dated August 15, 2022;
 7. Organizational Report for Peter H. Dieteman, sworn to February 23, 2005;
 8. Oil & Gas Lease Agreement between Michael J. McCaffery and MJ McCaffery Oil Company (lessor) and ASOMEO LLC (lessee), dated May 14, 2018;
 9. Correspondence from M J McCaffery Oil Co. to David H. Keehn, Esq, dated March 30, 2022; and

10. Bill of Sale Agreement between Michael J. McCaffery, M J McCaffery Oil Co. (seller) and ASOMEEO LLC (buyer), dated June 29, 2018, with list of wells attached.

OHMS Record

- Correspondence from ALJ Richard A. Sherman to Michael J. McCaffery and Anne Haas, Esq, dated January 11, 2023 with notice of hearing dated December 5, 2022 attached; and
- Recording of Hearing held January 24, 2023 at 1:00 PM.