SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

STATE OF NEW YORK, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and BASIL SEGGOS, as Commissioner of New York State Department of Environmental Conservation,

DECISION AND ORDER

Plaintiffs,

Index No. 7430-18

-against-

JAMES R. LEE, individually and as principal officer of some or all co-defendants, LEE OIL COMPANY, INC., WHITESVILLE PRODUCING CORPORATION, WHITESVILLE PRODUCTION CORP., ALLEGRO OIL & GAS, INC., and ALLEGRO INVESTMENTS CORPORATION,

Defendants.

(At an All Purpose Term before the Hon. Margaret Walsh, Supreme Court Justice)

Appearances:

HON. LETITIA JAMES
Attorney General of the State of New York
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WALSH, J.:

The State of New York, New York State Department of Environmental Conservation and Basil Seggos, as Commissioner of the New York State Department of Environmental Conservation (collectively the "Plaintiffs") commenced this action to direct James R. Lee, individually and as principal officer of co-defendants Lee Oil Company, Inc., Whitesville Producing Corporation, Whitesville Production Corp., Allegro Oil & Gas, Inc. and Allegro Investments Corporation (collectively the "Defendants") to comply with article 23 of the Environmental Conservation Law ("ECL") and parts 551 and 555 of title 6 of the New York Codes, Rules and Regulations ("NYCRR"). By decision and order dated August 10, 2020, the Court found the Defendants to be in default and issued judgment directing them to comply with the ECL and applicable rules and regulations. The Defendants were also ordered to post financial security in the sum of $100,000 as required by ECL 23-0305(8)(k) and 6 NYCRR §551.4. Specifically, the Court determined upon default that the Defendants, jointly and severally, committed statutory and regulatory violations—each of which were found to be continuing—as follows:

- Failure to produce or plug each of the approximately 406 wells for at least 10 years in violation of ECL 23-0305(8)(d) and 6 NYCRR §555.1;
- Failure to file annual well reports for all approximately 406 wells for at least 10 years, in violation of ECL 23-0305(8)(f) and 6 NYCRR §551.2;
- Failure to submit organization report for at least ten years, in violation of ECL 23-0305(8)(f) and 6 NYCRR §551.1; and
- Failure to submit financial security for at least ten years, in violation of ECL 23-0305(8)(k) and 6 NYCRR §551.4.

(*see* ECL 71-1305[2][making unlawful any violation of the provisions of article 23 or failure to perform any duty imposed by article 23 or any rule or regulation promulgated thereunder as well

as violation of any order of the DEC made pursuant thereto]). All of the subject oil and gas wells are owned or operated by Mr. Lee and the corporate co-Defendants.

The fifth cause of action was severed for an inquest for the sole purpose of establishing statutory penalties for the Defendants' past and ongoing violations of ECL article 23 (*see* ECL 71-1307[1], [2]; 6 NYCRR §550.6). Following entry of judgment, the Court appointed counsel to represent the Defendant James R. Lee. In lieu of an in-person hearing, the Plaintiff and Mr. Lee submitted written proof and arguments in support of their respective arguments (*see* 22 NYCRR §202.46[b]).

The Plaintiff's Request for Penalties

In support, the Plaintiff submits the affirmation of David H. Keehn, Esq., an attorney who has served in DEC's Office of General Counsel for nearly three decades. Mr. Keehn refers to DEC's Civil Penalty Policy ("Policy") in developing the Plaintiffs' requested civil penalty (*see Keehn Aff.*, Exh. A). This Policy sets forth a multi-step process requiring the consideration of various factors noted herein (*see id.*).

According to Mr. Keehn, the Policy first requires establishing the potential statutory maximum penalty. These maximum penalties are set forth in ECL 71-1307, which provides for a maximum penalty of up to $8,000 for the first day of the offense and additional penalty of up to $2,000 for each day during which such violation continues. Mr. Keehn determined that the maximum penalty for failure to produce or plug each of the approximately 406 wells for at least ten years to be $2,966,236,000. He found the maximum penalty for failure to file annual well reports due on April 1, 2009 and every April thereafter for all 406 wells for at least the last ten years is $37,930,000. For failure to file an updated organizational report following the dissolution of defendant Lee Oil Company, Inc. on March 24, 1993 (calculated for only the ten years preceding

the commencement of this action), Mr. Keehn determined the maximum penalty to be $7,306,000. Applying this same analysis to the Defendants' failure to maintain financial security, Mr. Keehn found the maximum penalty also to be $7,306,000. Mr. Keehn determined the sum total of these statutory maximum penalties to be $3,018,778,000.

Mr. Keehn stated that Policy next requires an evaluation of the economic benefit realized by the Defendants as the result of non-compliance (*see* Policy at Section IV, C). Mr. Keehn explained that a minimum penalty should be imposed to, at the very least, remove any economic advantage of the illegal conduct (*see* Policy at III). According to Mr. Keehn, any penalty assessed below the economic benefit realized by the Defendants would reward them for their non-compliance. Mr. Keehn explained that the significant economic benefits accrued to the Defendants in the form of avoiding the expense of failing to plug the 406 wells for at least a decade. He estimates that the cost to plug the wells to be in the range of $5,000 to $50,000 each; at the low end, the Defendants avoided expending $2,030,000 (at the upper end the Defendants avoided having to pay over $20,000,000). Assuming the Defendants come into compliance following final judgment in this case, the DEC estimates they have realized an economic benefit of approximately $900,000 due to their failure to plug the wells, at an estimated cost of $2,000,000 for 10 years.[1] Mr. Keehn further noted that the Defendants have realized a second, distinct economic benefit arising from their failure to pay existing judgments to the State totaling over $800,000. The Plaintiffs' conservatively estimate that the Defendants have accrued over $1,000,000 in economic benefits as the result of their continuing violations.

[1]The DEC Commissioner's Civil Penalty Policy manual states that the benefit component should include an estimate of the present value of "permanently avoided costs which would have been expended if compliance had occurred when required."

Mr. Keehn explained that the Policy next requires an examination of the gravity of the violations. Factors in evaluating this component include (a) potential harm and actual damage caused by the violation, and (b) relative importance of the type of violation in the regulatory scheme. According to DEC's Civil Penalty Policy manual, "measures of potential harm and actual damage include: the amount and toxicity of the pollutant released into the environment, the amount and degree of misuse of a substance of concern or the amount and degree of actual or potential damage to natural resources." Of particular concern is actual or potential harm to drinking water supplies or to especially valuable natural or recreational resources. Further, the longer the violation has remained uncorrected or unremediated, the greater the risk of harm to and the loss of benefit from the natural resource and therefore "the greater the size of the gravity component." The second element—importance to the regulatory scheme—focuses on the importance of the rule violated in achieving the goal of the underlying statute.

Mr. Keehn attests that the Defendants violated one of the cornerstone controls by failing to submit annual well reports for each of the 406 wells. Without these reports, DEC has no information from which to track the status of regulated wells and to ensure that they are properly maintained, operated, and plugged. Additionally, Mr. Keehn explains that a primary goal of DEC is to ensure that oil and gas wells are plugged at the end of their lives to prevent the escape of greenhouse gases, such as methane, and to close conduits for potential soil and ground water contamination. The Defendants have failed to plug the 406 oil and gas wells for decades. The Defendants have also ignored prior orders and judgments during this time period, thereby subverting enforcement of DEC's rules and regulations and thwarting compliance. Based upon his nearly thirty years as a DEC enforcement attorney, Mr. Keehn attests that the Defendants' actions and inactions regarding their hundreds of oil and gas wells "represents the worst violations of the

oil and gas regulatory program I have ever encountered." A forceful enforcement response—i.e., a substantial monetary penalty—would serve not only to penalize the Defendants' egregious conduct but to discourage others from engaging in similar conduct in the future.

Mr. Keehn states the next step of the Policy requires consideration of factors that may lead to adjustments to the civil penalty. These factors include the responsible party's culpability, cooperation, history of non-compliance and ability to pay. The Court has already found the Defendants jointly and severally liable for the violations of article 23 of the ECL and corresponding regulations as set forth in the Plaintiffs' complaint. Mr. Keehn attests that none of the Defendants has offered to cooperate, as evidenced by their failure to comply with DEC's enforcement efforts spanning decades. Of note, Mr. Keehn observes that the State already has obtained judgments against the Defendants totaling over $800,000 for prior environmental malfeasance; however, none of the judgments has prompted the Defendants' compliance.

Regarding ability to pay, the Policy provides that "if the violator fails to provide sufficient credible information, Department staff should disregard this factor." Mr. Keehn notes that, while the Defendants have not provided any financial information to either DEC staff or to the Court, DEC is aware that the Defendants may have limited financial resources and that consideration of same is one reason the recommended penalties "are on the very low end of the acceptable spectrum." Based upon the foregoing analysis, the Plaintiffs request the Court to impose penalties between $1,250,000 and $2,966,236.

Opposition of Defendant James R. Lee

Mr. Lee proffers his affidavit in which he requests that no penalty be imposed, chiefly due to an inability to pay.

According to Mr. Lee, all wells have been "shuttered" by DEC's order in 1993 and have not generated any revenue since that time. Mr. Lee provides an abbreviated history concerning the corporate Defendants. He states that Allegro Oil & Gas, Inc., was duly formed under the laws of the State of New York in 1981, but that the corporation has been inactive since September 27, 1995. Allegro Investments Corporation was incorporated under the laws of New York State in 1984 but has been inactive since March 24, 1993. Lee Oil Company, Inc. was formed and incorporated pursuant to New York State law in 1986, but also has been inactive since March 24, 1993. Mr. Lee avers that Lee Oil Company, Inc., is the registered operator of the 406 oil and natural gas wells in Cattaraugus and Steuben Counties. Whitesville Producing Corporation was incorporated under New York State law on February 28, 2017 and "has exercised sole responsibility and control over all drilling and subsequent remediation operations." The similarly-named Whitesville Production Corporation—"inadvertently" created by Mr. Lee's ex-partner—was incorporated in 1985 but has likewise been inactive since March 24, 1993. As for corporate assets, Mr. Lee avers that none of the co-defendant corporations owns any freehold real property interests. He notes that Whitesville Producing is lessee to eight oil and gas drilling locations, but that these properties are burdened by approximately $300,000 in unpaid taxes. He notes that the corporate co-Defendants collectively have approximately $500 in cash.

Mr. Lee states that he has never personally owned or leased the rights to any mineral estate for the parcels of land on which the wells are located. Mr. Lee asserts that the wells have not been operational since 1993 and therefore have not since generated any revenue. He states that any profits earned while he worked in the oil and gas industry were used predominantly to pay attorneys' fees defending actions brought by DEC against him. He is 78 years old; his sole source of income is $800 per month in Social Security benefits used for his living expenses. Title to the

home he shares with his wife is in her name. He has no retirement or investment accounts and does not own any tangible assets. He does not own any insurance policies. His only asset consists of a one-eighth interest in Lee Acres, Inc., which is co-owned with his siblings, and whose sole asset consists of 160 acres of real property in Chautauqua County. Mr. Lee explains that he is in poor health, having been diagnosed with cancer that led to the surgical removal of his right eye. He suffers from other ailments including high blood pressure, heart disease and diabetes.

Plaintiffs' Reply

The Plaintiffs dispute that Mr. Lee has fully disclosed all assets, including corporate assets. Notably, the Plaintiffs discovered in filings with the New York State Public Service Commission ("PSC") that Lee Oil Company, Inc. has leased or given an option to lease its property in connection with the proposed Eight Points Wind Energy Center project. These filings also disclose that Lee Oil Company, Inc. has received or will receive payments for use of the surface parcels in compensation for the placement of wind turbines or transmission lines on the property. Mr. Keehn further noted that the commencement of this action was in part prompted by Mr. Lee's attempt to list the surface parcels for sale in December 2018.

The Plaintiffs also take issue with Mr. Lee's characterization of DEC's Civil Penalty Guidance by focusing primarily on ability to pay. The Plaintiffs assert that the penalty range sought does not "shock one's sense of fairness" but rather considers all relevant factors as set forth in DEC's Civil Penalty policy and is reasonable and proportionate under the circumstances presented. Mr. Keehn notes that the U.S. Environmental Protection Agency expended nearly $5,000,000 to plug other of the Defendants' wells that are not the subject of this action. Mr. Keehn also notes that penalty precedence is important to prevent a recurrence of the type of violations for which the Defendants are being held to account. He explains that, regarding the economic benefit factor, Mr.

Lee erroneously focuses on the shuttered status of the wells and his expenditure of monies in the form of legal fees defending against DEC's prior enforcement actions. Mr. Keehn additionally notes that the potential penalties, when reduced to judgments, are likely uncollectible and unlikely to cause any actual prejudice to the Defendants; however, they will allow the State to secure liens on the Defendants' properties or garnish non-exempt income. Moreover, Mr. Keehn observes that Mr. Lee's characterization of lack of assets is highly suspect as he failed to include an interest in a lease or option to lease surface property to a wind farm project proposed by Nextera Energy. In short, the Plaintiffs submit that the range of penalties proposed is consonant with DEC's policy and represent a small fraction of what could be imposed against the Defendants.

Discussion

The Court's authority to impose sanctions for any violation of any provision of article 23 of the ECL is found in ECL 71-1307(1) and (2). Subsection one states that any person determined to be in violation shall be liable to the State for a civil monetary penalty not to exceed $8,000 and an additional penalty of $2,000 for each day on which such violation occurs. Among the overall objectives of DEC's promulgated rules and regulations of oil and gas resources within the State is the "full protection of the correlative rights of all owners and the rights of all persons, including landowners and the general public" (6 NYCRR §550.1[c]). Indeed, article 23 of the ECL "is concerned with the Department's regulation and authority regarding the safety, technical and operational aspects of oil and gas activities across the State" (*Matter of Wallach v. Town of Dryden*, 23 NY3d 728, 749 [2014]).

"'[A] court has broad discretion in choosing the amount of such a penalty so long as the court explains its choice and it is not disproportionate to the offense'" (*Matter of Lake George Park Commn. v. Salvador*, 72 AD3d 1245, 1248 [3d Dept. 2010], quoting *Tatta v. State of New*

York, 20 AD3d 825, 826 [2005], *lv denied* 5 NY3d 716 [2005]). In his opposition Mr. Lee does not take issue with the use or application of DEC's Policy and its guidelines, although he urges greater emphasis of, or consideration of additional circumstances relating to, certain factors. The Policy states that it is applicable not only to administrative enforcement actions but to civil enforcement referrals to the Department of Law, as was done in this case (*see* 71-1307[2][authorizing commissioner to refer any violation to the attorney general who is empowered to bring a civil suit seeking any sanctions described in subdivision 1]). The Court discerns no reason not to refer to guidelines set forth in the Policy as it provides a relevant framework from which to consider a civil penalty. The Court is also mindful that a civil penalty should not be "'so disproportionate to the offense as to be shocking to one's sense of fairness'" (*Matter of Giambrone v. Grannis*, 88 AD3d 1272, 1273-1274 [4th Dept. 2011], quoting *Matter of Waldren v. Town of Islip*, 6 NY3d 735, 736 [2005]; *see also Matter of Mt. Hope Asphalt Corp. v. Zagata*, 248 AD2d 540, 540 [2d Dept. 1998]).

As an initial matter, the Court rejects Mr. Lee's argument that insufficient proof was presented that the co-Defendants are his alter-egos such that he cannot be personally liable for a civil penalty. This issue was already determined upon the Defendants' default (*see Woodson v. Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003][a defaulting defendant is "deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them"]; *Nationstar Mtge., LLC v. Hilpertshauser*, 156 AD3d 1052, 1053 [3d Dept. 2017]). Among other things, Mr. Lee was determined to be the principal or sole decision-maker of all substantive decisions on behalf of or for the corporate Defendants. He owns, operates, maintains control of, and historically produced, sold, or transported oil and gas from the 406 wells. It was further established that each corporate co-Defendant was under the direct control of and was the

legal alter ego of Mr. Lee. The Court determined that Mr. Lee and his corporate alter-egos have repeatedly violated the State's environmental statutes and regulations, culminating in money judgments exceeding $800,000. Of note, administrative orders were imposed by the Plaintiffs upon Mr. Lee and his co-Defendants in 1989, 1990 and 1993. A 1994 Settlement Stipulation specifically required Mr. Lee and his co-Defendants to either produce or plug and permanently abandon the 406 oil and gas wells, but they failed to comply. The Court also determined that these oil and gas wells owned or operated by Mr. Lee and the co-Defendants pose ongoing public health and environmental risks to the people of the State of New York; indeed, several of these wells have discharged oil to surface and land waters. The Court found that Mr. Lee and the co-Defendants are jointly and severally liable for their long-standing failures to plug wells, submit annual well reports, submit organizational reports, and remit financial security, all as required by the applicable statutes and regulations as well as the Settlement Stipulation. Mr. Lee as corporate owner and officer of the co-Defendants has had knowledge of and the ability to prevent or ameliorate these violations which pose and have posed a public health hazard for decades (*see State of New York v. C&J Enters., LLC*, 179 AD3d 1200, 1203 [3d Dept. 2020]). As a responsible owner and officer of the corporate defendants and because of his personal involvement in these violations, Mr. Lee may be held personally liable (*see State of New York v. C&J Enters., LLC*, supra at 1202-1203; *Matter of Lake George Park Commn. v. Salvador*, 72 AD3d 1245, 1247-1248 [3d Dept. 2010]; *State of New York v. Markowitz*, 273 AD2d 637, 642 [3d Dept. 2000], *lv denied* 95 NY2d 770 [2000]; *Matter of Colella v. New York State Dep't of Envtl. Conservation*, 196 AD2d 162, 169 [3d Dept. 1994]; *cf. Matter of RGLL, Inc. v. Grannis*, 90 AD3d 1221, 1222 [3d Dept. 2011]).

Turning to the merits, the Court finds that a civil penalty in the amount of $2,000,000 must be imposed upon all Defendants jointly and severally. None of the corporate Defendants has

proffered any opposition to the Plaintiffs' request for civil penalties,[2] and the record on this inquest supports a forceful penalty although less than the upper amount sought by the Plaintiffs.

The Court adopts the initial maximum penalty calculations determined by Mr. Keehn, consonant with the Policy manual for the reasons he articulates in his supporting affirmations (*compare Matter of Vito v. Jorling*, 197 AD2d 822, 824 [3d Dept. 1993]). Although Mr. Lee describes the oil and gas wells as being "shuttered," such terminology is not tantamount to plugging and permanently abandoning them as required by 6 NYCRR Part 555. Mr. Lee (or the corporate Defendants) does not otherwise proffer any evidence of any compliance with the environmental statutes and regulations. These violations have been ongoing for a significant period of time.

The Defendants have realized an economic benefit arising from their failure to comply. Regarding plugging and abandoning the 406 wells, the Plaintiffs estimate this benefit in the amount of $900,000. The Court notes this estimate is likely very conservative in light of the EPA's expenditure of approximately $5,000,000 of Federal taxpayer funds to plug and abandon Defendants' 80 "of the worst wells" (and not covered by this enforcement action) located in the same areas of the subject wells in Cattaraugus and Steuben Counties. The Defendants have realized a second, distinct economic benefit arising from their failure to pay existing judgments to the State totaling over $800,000. The Court concurs that the Defendants have accrued over $1,000,000 in economic benefits as the result of their continuing violations.

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[2] CPLR 321(a) requires a corporation to be represented by an attorney in civil legal proceedings (*see* **Error! Main Document Only.***Center for Jud. Accountability, Inc. v. Cuomo*, 167 AD3d 1406, 1409 [3d Dept. 2018], *app dismissed*, 33 NY3d 993 [2019]). To the extent Mr. Lee attempts to controvert the factual allegations against the corporate co-Defendants, his opposition must be deemed a nullity (*see Boente v. Peter C. Kurth Off. of Architecture & Planning*, P.C., 113 AD3d 803, 804 [2d Dept. 2014]).

The Court credits Mr. Keehn's analysis concerning the gravity of the Defendants' violations. Among other things, the Defendants have, on a continuous basis, refused to submit critical information in the form of annual well reports to enable the Plaintiffs to track the status of the 406 wells and ensure they are properly maintained, operated and plugged. As noted in the underlying decision and order, the Plaintiffs were unable to locate 44 wells registered to Defendant Lee Oil Company, preventing the Plaintiffs from inspecting and ensuring these wells' integrity. As Mr. Keehn observed, a primary goal of article 23 of the ECL and its corresponding regulations is to ensure that wells are plugged at the end of their lives. These wells number in the hundreds and cover territory extending into two counties in Western New York. Already several of these wells have discharged oil to surface and land waters. The remainder of these wells, in their current unplugged states, pose very serious risks to the environment, as they may leak methane gas and act as conduits for contaminants that threaten the soil and groundwater. The gravity of these circumstances is, again, underscored by the fact that contamination already occurred and necessitated the EPA's intervention to plug and abandon the 80 wells as described above. Mr. Keehn opined that this case was the worst he had seen in his nearly thirty-year career with the Plaintiffs.

Despite the absence of annual well reports, the Plaintiffs wer, able to locate and inspect the majority of the Defendants' wells. Their inspections, conducted between March 2015 and February 2017, showed that none of the 330 wells had been plugged and permanently abandoned, and their conditions varied greatly. Leaks were detected at many of the well sites. The Plaintiffs did not, however, adduce any further specific information beyond these facts in support of their request for imposition of a substantial penalty. No information was provided about how many wells were found to be leaking, what such leaking entailed, and whether any such leaking necessitated

remediation efforts. The Plaintiffs also did not provide any detailed information about the condition of the rest of the wells apart from their lack of plugging. No definitive information was provided as to whether methane gas was, in fact, escaping from any of the wells. The absence of proof of the foregoing warrants a downward adjustment from the upper end of the penalty sought by the Plaintiffs (*see Matter of Vito v. Jorling*, 197 AD2d at 824 [reduction of penalty warranted in view of, *inter alia*, lack of affirmative evidence of actual leaks from underground storage tanks]), although certainly the Court is keenly aware of the potential for damage in the wells' current unplugged, unabandoned state.

The Court does accord significance to the fact that the Defendants, despite their actual knowledge of these violations, have blatantly flouted the statutes, regulations, orders, and judgments over the course of decades. Mr. Lee does not dispute his noncompliance or that of his corporate co-Defendants. If the Defendants are not adequately sanctioned, others who similarly seek to resist the Plaintiffs' enforcement efforts will be emboldened and will less likely be deterred from engaging in similar behavior.

Factors that may warrant further adjustments to the requested penalty range include culpability, cooperation, history of non-compliance and ability to pay. Regarding culpability, the Court determined the Defendants' liability underlying decision and order on their default. Neither Mr. Lee nor the corporate co-Defendants refute responsibility for failing to comply. Neither Mr. Lee nor the corporate co-Defendants deny the long-standing history of non-compliance with the environmental statutes, regulations, orders and judgments. Neither Mr. Lee nor the corporate co-Defendants offer any indicia of past or present cooperation with the Plaintiffs.[3] Neither Mr. Lee

[3] The Court notes, as set forth in the complaint and deemed admitted, that the State received one payment of $20,163 from a foreclosure proceeding. It does not, however, appear that any of the Defendants tendered this payment.

nor the corporate co-Defendants offer any proof of any attempts to take corrective action (*see Matter of Howard v. Cahill*, 290 AD2d 712, 716 [3d Dept. 2002]).

Mr. Lee requests a downward adjustment of the proposed penalty to $0 based upon his limited income, lack of assets and frail health. While the Court is to be sure sympathetic to his diagnoses and physical ailments, Mr. Lee's present circumstances represent just one consideration and do not overshadow the entirety of circumstances leading to this enforcement proceeding. The Court is also unwilling to ignore, to the detriment of the taxpayer, the costs incurred and potential costs to be incurred by the Plaintiffs for, *inter alia*, monitoring, inspecting and remediating the 406 oil and gas wells. As discussed at length herein, Mr. Lee and his corporate co-Defendants have an extensive history of violations that have gone unremedied, evincing a complete disregard of the State's environmental laws and regulations and of the Plaintiffs' long-standing attempts to bring the Defendants into compliance. Further, the Plaintiffs have called into question the veracity of Mr. Lee's financial information, in light of the evidence proffered that one parcel owned by co-Defendants Lee Oil Company/Whitesville Producing Company[4] on which some of the subject wells are located is part of an approved siting for a large-scale wind energy farm.[5] It appears that Mr. Lee and/or the corporate co-Defendants have received or will receive remuneration for use of this parcel. In any event, as to Mr. Lee, a monetary judgment will be ineffective as to his retirement income and other assets exempted from collection.

Conclusion

[4] Notably, Mr. Lee averred that Whitesville Producing Company was incorporated on February 28, 2017.
[5] See Public Service Commission Order filed on June 21, 2022 (case no. 16-F-0062) at NYSDPS-DMM: Matter Master.

For the reasons explained above, the Court finds that a civil penalty in the amount of $2,000,000 is warranted and that such penalty shall be imposed jointly and severally among the Defendants. The Court concludes that this amount is proportionate to the nature of the offenses committed by the Defendants, based upon careful and thorough evaluation of the foregoing factors (*see Matter of New York Site Dev. Corp. v. New York State Dep't of Envtl. Conservation*, 217 AD2d 699, 701 [2d Dept. 1995]). Such award will empower the Plaintiffs to investigate the subject wells and allow the State to recover costs expended and to be expended to continue to monitor, inspect and remediate the Defendants' oil and gas wells.

Those arguments not specifically addressed herein were found to be unpersuasive or were otherwise rendered academic.

Based upon the proof submitted and duly considered, it is

ORDERED and ADJUDGED, that the fifth cause of action is sustained, and the Plaintiffs' application for civil penalties is GRANTED; and it is therefore

ORDERED and ADJUDGED, that the Defendants shall be jointly and severally liable to the Plaintiffs in the sum of Two Million and no/100 Dollars ($2,000,000). The Plaintiffs shall submit a proposed judgment, on notice, within fifteen days of notice of entry.

The constitutes the *Decision and Order* of the court. The original *Decision and Order* and *Order and Judgment* signed by the Hon. Margaret Walsh, Supreme Court Justice is being returned to Attorney General. A copy of this *Decision and Order* and *Order and Judgment* and all other original papers submitted on this motion are being delivered to the Albany County Clerk's Office for filing. The signing of this *Decision and Order* and *Order and Judgment* shall not constitute entry or filing under CPLR 2220. Counsel is not relieved from the applicable provision of that section with respect to filing, entry and notice of entry.

Dated: July 15, 2022
Albany, New York

Margaret Walsh
Supreme Court Justice

ENTER:

Papers considered:

(1) *Affirmation* of Meredith G. Lee-Clark, Esq., filed October 5, 2020, with Exhibits A through C annexed; *Affirmation* of David H. Keehn, Esq. in support, affirmed on October 1, 2020, with Exhibit A annexed; *Memorandum of Law*; affidavits of service;

(2) *Affidavit in Opposition* of James R. Lee, sworn to on October 29, 2021; *Memorandum of Law in Opposition*; affidavit of service;

(3) *Reply Affirmation* of David H. Keehn, Esq., filed on November 23, 2021, with Exhibits A and B annexed; Plaintiffs' *Reply Memorandum of Law*; affidavit of service.