

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Violation of Article 11
of the Environmental Conservation Law (ECL)
of the State of New York and Title 6 of the
Official Compilation of the Codes, Rules
and Regulations of the State of New York
(6 NYCRR) by:

- by -

ORDER ON CONSENT
File No.: R4-2008-1119-164

Francis Lehman,

Respondent

WHEREAS:

1. The New York State Department of Environmental Conservation (the "Department") is authorized pursuant to Article 11, Title 5, of the Environmental Conservation Law ("ECL") to regulate the possession of wild animals as pets in the State of New York. This Order on Consent ("Order") is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.

2. Pursuant to Article 3, Title 3 of the ECL, the Commissioner of the Department has the power to promote and coordinate management of water, land, fish, wildlife and air resources to assure their protection, enhancement, provisions, allocation and balanced utilization consistent with the environmental policy of the State.

3. Francis Lehman ("Respondent") is an individual residing at 1520 Foster Ave, Schenectady, N.Y. ("Property").

4. The Respondent is in possession of a burmese python ("Tiny"), which is a wild animal as that term is defined under ECL 11-0103(6)(e) and, therefore, regulated by the Department. Respondent has been in possession of this animal since September of 1997 and it is being kept at that property as a pet and not for any regulated scientific, educational or exhibition purposes.

5. ECL §11-0512 provides that "no person shall knowingly possess, harbor, sell, barter, transfer, exchange or import any wild animal as a pet in New York State, except as provided in subdivision three of this section."

6. ECL §11-0512(3) provides in part that, "any person who possesses or harbors a wild animal for use as a pet at the time that this section takes effect may retain possession of such animal for the remainder of its life, provided that such person . . . applies to the department within six months of the effective date of this section, and obtains from the department, a license"

7. ECL §11-0512(8) provides in part that, "the department . . . is hereby authorized to enforce the provisions of this section and issue notices of violation to persons in violation of this section, and shall have the authority to seize any wild animal held in violation of this section."

8. The provisions of ECL §11-0512 took effect on January 1, 2005.

9. Commencing on July 1, 2005, Respondent was in violation of ECL §11-0512 by possessing a burmese python pet (hereinafter referred to as "the wild animal") without a license from the Department. Respondent has indicated that he was not aware of the requirement to obtain a license for the possession of the wild animal prior to this proceeding.

10. Respondent continues to possess the wild animal as a pet as of the effective date of this Order and the Department believes that the wild animal was acquired prior to January 1, 2005.

11. Respondent has certified to the Department in writing, a copy of which Certification is attached hereto as Appendix A, the following:

- a) The wild animal was acquired by the Respondent prior to January 1, 2005.
- b) Respondent was not aware of the requirement to obtain a license for the possession of the wild animal (ECL §11-0512) prior to this proceeding.
- c) Respondent is twenty-one years of age or older.
- d) Respondent has not been convicted of any offense relating to cruelty to animals or under a judicial order prohibiting possession of animals.
- e) The wild animal has been kept inside and has never attacked, bitten or otherwise harmed any member of the public.
- f) Ownership of the wild animal complies with all applicable federal, state and local laws, including any ordinance, rule or regulation adopted by a local board of health.
- g) Respondent has notified the clerk of the city, town or village in which the wild animals are owned, possessed or otherwise harbored of those animals' presence in that municipality pursuant to General Municipal Law Section 209-cc. Respondent acknowledges that such report shall be filed on an annual basis.
- h) The location in which the wild animal shall be kept complies with all appropriate standards of care and at minimum complies with the standards for animal care set forth in the Federal Animal Welfare Act and other applicable federal, state and local standards, including, but not limited to, housing, temperature, ventilation, drainage, sanitation, food, water, exercise and veterinary care appropriate to the species and sufficient to maintain the wild animals in good health.

i) Respondent has retained the services of a veterinarian who has agreed to provide any necessary medical treatment for the wild animal.

12. Respondent waives his right to a hearing or to otherwise contest the Department's allegations, consents to the issuance of this Order and agrees to be bound by its terms.

NOW, THEREFORE, HAVING CONSIDERED THIS MATTER AND BEING DULY ADVISED, IT IS ORDERED THAT:

I. POSSESSION

A. Respondent shall retain possession of the wild animal, subject to the terms of the Certification attached hereto as Appendix A, and subject to the following conditions:

- 1) The wild animal shall not, at any time, be housed outdoors or allowed to roam at large. Further, the wild animal shall not be brought to any public establishment or otherwise exposed to public contact except when transported to and from a veterinarian or veterinary clinic.
- 2) The wild animal shall not be bred, sold, traded, bartered or exchanged. The animal shall also not be released to the wild under any circumstances.
- 3) The Respondent shall, at all times, exercise due care in safeguarding the public from attack by the wild animal and acknowledges that the failure to do so is a crime under Section 370 of the Agriculture and Markets Law.
- 4) Respondent shall immediately contact the local health authority and the Department's Special Licenses Unit and Regional Office in the event that the wild animal bites or otherwise harms any member of the public.
- 5) Respondent shall immediately report any escape of the wild animal immediately to the local police authority, local animal control facility, and the Department's Special Licenses Unit and Regional Office.
- 6) Respondent shall immediately report the death of any wild animal subject to this Order, where the cause of death is an unknown or suspected disease, to the local health authority and to the Department's Special Licenses Unit and Regional Office within 24 hours of discovery or during normal business hours of the next business day.
- 7) In the event that the wild animal dies while subject to this Order, Respondent shall notify the Department's Special Licenses Unit and Regional Office within 72 hours of the wild animal's death, subject to the requirements of I(A)(8) above.

B. Respondent shall, every two years from the effective date of this Order, re-certify to the Department in writing that the statements made in the original Certification, attached hereto as Exhibit A, remain true and correct and that the wild animal is alive and in Respondent's possession. Such certification shall be made by completing and submitting to the Department a "Re-Certification" form, which may be obtained from the Department's Special Licenses Unit or Regional Office, along with payment to the Special Licensing Unit, for the applicable penalty as set forth in section III herein, to:

NYS Department of Environmental Conservation
Special Licenses Unit
625 Broadway
Albany, New York 12233

Respondent acknowledges that the failure to do so shall result in the termination of this Order.

II. COMPLIANCE

The Respondent shall be immediately bound as provided by this Order. Respondent's failure to comply fully with any provision of this Order, including the Schedules, shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL. Further, upon a violation, Respondent must either (1) transfer the wild animal to an appropriate permitted facility, that is approved by the Department, to permanently house the wild animal, with all costs to be paid by Respondent; (2) surrender the animal to the Department or an authorized agent thereof at a location designated by the Department to be disposed of in accordance with applicable laws, which costs shall be paid by Respondent; or (3) provide proof that the wild animal has been humanely euthanized according to American Veterinary Medical Association standards by a licensed veterinarian. Respondent is solely responsible for all costs associated with the disposition of the wild animal.

III. CIVIL PENALTY

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

A. A civil penalty is assessed in the amount of EIGHT HUNDRED SEVENTY FIVE DOLLARS (\$875) of which ONE HUNDRED SEVENTY FIVE DOLLARS (\$175) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department. The payable civil penalty represents the license fee that would otherwise have been paid had Respondent applied for and received the appropriate license for the period of July 1, 2005 to July 1, 2009. In addition, beginning July 1, 2009, Respondent shall pay a civil penalty of \$175.00 per animal, made payable to the NYS Department of Environmental Conservation, every two years along with Respondent's Re-Certification form, as set forth in Paragraph I above, for the life of the wild animal.

B. The balance of the penalty, SEVEN HUNDRED DOLLARS (\$700), shall be suspended, and shall not be payable, provided that Respondent complies with the terms of this Order. In the event that the Respondent violates any of the conditions of this Order described in Section I above, the entire portion of the suspended penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties and relief for violations of this Order by Respondent. Respondent shall deliver the suspended penalty amount to the Department within ten business days after receipt of such written notice to the Respondent.

IV. DURATION

The obligations set forth under this Order and Schedules shall take effect immediately upon execution of this document by the Commissioner or his designee and shall last for the lives of the wild animal, or until this Order is terminated, whichever occurs first.

V. RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Order, this document settles only claims for civil and administrative penalties concerning the specific violations described in this Order that occurred on or before the effective date hereof against Respondent and its successors and assigns. Any failure by Respondent to fully comply with the terms of this Order may subject Respondent to further enforcement for the events of non-compliance described herein, including, but not limited to, an action to seek recovery of any and all costs incurred by the Department related to the seizure, transfer and/or euthanization of the wild animal if required in accordance with ECL §11-0512.

B. Except as provided above, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, waiving or in any way affecting any of the civil, administrative, or criminal rights of the Department or of the Commissioner or the Commissioner's designee (including, but not limited to, the rights to recover natural resources damages and the exercise of any summary abatement powers) or authorities with respect to any party, including Respondent.

C. Compliance with this Order shall not excuse nor be a defense to charges of any event of non-compliance with the ECL or any regulation or permit issued thereunder which may occur subsequent to the effective date of this Order.

D. Further, this Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or notice and the Department reserves the right to require Respondent to take any additional measures deemed necessary by the Department to protect human health or the environment.

VI. INDEMNIFICATION

Respondent shall indemnify and hold harmless the Department, the State of New York, and their representatives and employees for all claims, suits, actions, damages and costs of every nature and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order by Respondent and her successors (including successors in title) and assigns.

VII. COMMUNICATIONS

Except as otherwise provided herein, any reports or submissions required by this Order shall be made to: Department of Environmental Conservation, Special Licenses Unit, 625 Broadway, Albany, New York 12233.

VIII. ACCESS

For purposes of monitoring or determining compliance with this Order, and to seize the wild animal if necessary, employees and/or agents of the Department shall be provided access to the Property, including residence, and any records owned or maintained by Respondent.

IX. ENTIRE ORDER

The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning the resolution of the violations identified in this Order.

X. EFFECTIVE DATE

The effective date of this Order is the date that the Commissioner or his designee signs it. The Department will provide Respondent with a fully executed copy of this Order as soon as practicable after the Commissioner or his designee signs it.

Dated: _____, 2009
Rotterdam, New York

Alexander B. Grannis,
Commissioner
New York State Department of
Environmental Conservation

BY:

Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives his right to a hearing herein, and agrees to be bound by the provisions, terms and conditions contained herein. Any false statement made therein shall be punishable pursuant to Section 210.45 of the Penal Law, and as may be otherwise authorized by law.

Francis Lehman

DATE : _____

STATE OF NEW YORK)
) ss.:
COUNTY OF _____)

On the ____ day of _____ in the year 200__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public, State of New York