

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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In the Matter of Violations of  
Article 11 of New York State Environmental  
Conservation Law

- by -

**ORDER ON CONSENT**  
File No. R4-2009-0304-51

Petsmart, Inc.  
19601 N. 27<sup>th</sup> Avenue  
Phoenix, Arizona 85027

Respondent

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WHEREAS:

Jurisdiction

1. The New York State Department of Environmental Conservation (the "Department") is a department of the State of New York which, pursuant to Title 1 and 10 of Article 11 of the Environmental Conservation Law (ECL), is authorized to protect wildlife in the State of New York.

Respondent

2. Respondent, Petsmart, Inc., 19601 N. 27th Avenue, Phoenix, Arizona 85027, owns pet stores at 161 Washington Avenue Ext., Albany, New York ("Albany store") and 241 Route 9W, Glenmont, New York ("Glenmont store")

Laws

3. Environmental Conservation Law ("ECL") § 11-0107(2) provides that: "No person shall, at any time of the year, buy, sell, offer or expose for sale, transport, or have in his possession any fish protected by law, game, protected wildlife, shellfish, harbor seals, crustacea protected by law, or part thereof, or protected insect, whether taken within the state or coming from without the state, except as permitted by the Fish and Wildlife Law. "

Violations

4. On February 25, 2009, Department staff inspected the Albany and Glenmont stores and observed one painted turtle (protected wildlife) for sale in the Albany store and one painted turtle for sale in Glenmont store.

5. Respondent violated ECL § 11-0107(2) by offering the painted turtles for sale.

### Civil Penalties

6. ECL § 71-0925 provides that penalties referred to in section 71-0919, to which a person is liable upon violation of provisions of the Fish and Wildlife Law or any order, rule or regulation of the department, shall be: 1. Unless another penalty is specifically provided for in this subdivision or elsewhere in the Fish and Wildlife Law, two hundred dollars and an additional penalty of one hundred dollars for each fish, bird or animal or part thereof, other than shellfish or crustacea, involved in the violation; an additional penalty of one hundred dollars for each bushel of shellfish or each crustacean, including lobster, or part thereof, plus an amount equal to the market value or actual price paid, whichever is greater, of the shellfish or crustacea involved in the violation.

### Waiver of Hearing

7. In settlement of Respondent's liability for the aforesaid violations, Respondent has waived their right to a hearing herein as provided by law and have consented to the issuing and entering of this Order on Consent ("Order") pursuant to the provisions of Articles 11 and 71 of the ECL, and have agreed to be bound by the provisions, terms and conditions herein.

NOW, being duly advised and having considered this matter, THE COMMISSIONER OF THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION HEREBY ORDERS THAT:

#### **I. PENALTIES**

Respondent is hereby assessed a civil penalty in the amount of FOUR HUNDRED DOLLARS (\$400) for the violations stated herein payable with the return of the signed and notarized Order by bank or certified check or money order made out to the Department of Environmental Conservation.

#### **II. STANDARD PROVISIONS**

Respondent shall further comply with the standard provisions which are attached, and which constitute material and integral terms of this Order and are hereby incorporated into this document.

DATED: \_\_\_\_\_, 2009  
Rotterdam, New York

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

By: \_\_\_\_\_  
Eugene J. Kelly  
Regional Director  
Region 4



## STANDARD PROVISIONS

**Communications.** Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to:

Department of Environmental Conservation  
Region 4, Attn: Regional Attorney- Richard Ostrov, (518-357-2048)  
1130 North Westcott Drive  
Schenectady, NY 12306

**Effective Date and Duration.** The effective date of this Order is the date that by the Commissioner of Environmental Conservation, or her designee, signs it; and this Order shall expire when Respondent has fully complied with the requirements of this Order.

**Access.** For the purpose of monitoring or determining compliance with this Order, employees and agents of the Department shall be provided access to any facility, site, or records owned, operated, controlled or maintained by Respondent, in order to inspect and/or perform such tests as the Department may deem appropriate, to copy such records, or to perform any other lawful duty or responsibility.

**Force Majeure.** If Respondent cannot comply with a deadline or requirement of this Order, because of an act of God, war, strike, riot, catastrophe, or other condition which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by Respondent through the exercise of due care, Respondent shall apply in writing to the Department within a reasonable time after obtaining knowledge of such fact and request an extension or modification of the deadline or requirement.

**Indemnity.** Respondent shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages and costs resulting from the acts and/or omissions of Respondent, intentional, negligent, or otherwise, of every nature and description, arising out of or resulting from the compliance or attempted compliance with the provisions of this Order by Respondent or its employees, servants, agents, successors or assigns.

**Modifications.** No change in this Order shall be made or become effective except as specifically set forth by written order of the Commissioner, being made either upon written application of Respondent, or upon the Commissioner's own findings after notice and opportunity to be heard have been given to Respondent. Respondent shall have the burden of proving entitlement to any modification requested pursuant to this Standard Provision or the "Force Majeure" provision, *supra*. Respondent's requests for modification shall not be unreasonably denied by the Department, which may impose such additional conditions upon Respondent as the Department deems appropriate.

**Schedule of Compliance.** Respondent shall comply with the Schedule of Compliance.

**Settlement and Reservation of Rights.** A. Upon completion of all obligations created in this Order, this Order settles only all claims for civil and administrative penalties concerning the violations described in this Order against Respondent and its successors (including successors in title) and assigns.

B. Except as provided in paragraph –A above, nothing contained in this Order shall be construed as barring, diminishing, adjudicating 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, nor exemplified by, the rights to recover natural resources damages and to exercise any summary abatement powers) or authorities with respect to any party, including Respondent.

**Entire Agreement.** This Order shall constitute the entire agreement of the Department and Respondent with respect to settlement of those violations specifically referenced herein.

**Binding Effect.** The provisions, terms, and conditions of this Order shall be deemed to bind Respondent and Respondent's heirs, legal representatives, receivers, trustees in bankruptcy, successors and assigns.

**Service.** If Respondent is represented by an attorney with respect to the execution of this Order, service of a duly executed copy of this Order upon Respondent's attorney by ordinary mail shall be deemed good and sufficient service.

## SCHEDULE OF COMPLIANCE

1. With 10 days of the effective date of this Order, Respondent shall submit to the Department documentation that the painted turtles were returned to their distributor(s).