

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

- by -

ORDER ON CONSENT

File No. R4-2009-0223-32

Domenico Flavoni
29 Club Drive
Massapequa, NY 11758

Respondent

WHEREAS:

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.
2. Michael Pennella, co-owner of parcel tax map number #27.00-4-7.1 and Swiscode #0194200 applied on September 22, 2008 for a landowner preference point ("parcel").
3. Respondent, Domenico Flavoni, applied on September 22, 2008 for a deer management permit ("DMP") based on ownership of the parcel.

Regulations

4. Regulations at 6 NYCRR 120(a) sets forth the purpose of deer management permits ("permits"): "A deer management permit (DMP) is a special permit issued to an individual or group of individuals allowing the holder to take a deer in a specified wildlife management unit (WMU) in addition to any deer an individual may otherwise legally take. WMUs are defined in Section 4.1 of this Title."
5. Regulations at 6 NYCRR 120(c) provides, in part, that : "Approximately 50 percent of the DMP issuance target for each WMU shall first be available to persons or spouses of persons owning 50 acres or more in one or more parcels, which share a common boundary, in the same WMU..When a parcel of land is jointly owned, only one of the co-owners may apply for landowner preference as the landowning member."
6. Regulations at 6 NYCRR 120(i) Any person who makes a false statement in the application for a DMP is in violation of ECL 71-0921. A DMP obtained by fraud is void. A DMP is void if the applicant offered false statements or information in the application.

Violation

7. The Respondent submitted a DMP application for an ineligible parcel which is a violation of 6 NYCRR 120(i).

Civil Penalty

8. ECL Section 71-4003 provides that a: “person who violates any provision of the environmental conservation law, or any rule, regulation or order promulgated pursuant thereto, or the terms or conditions of any permit issued thereunder, shall be liable to a civil penalty of not more than five hundred dollars, and an additional civil penalty of not more than five hundred dollars for each day during which each such violation continues. Any civil penalty provided for by this chapter may be assessed following a hearing or opportunity to be heard. “

Waiver of Hearing

9. In settlement of Respondent’s liability for the aforesaid violations, Respondent has waived his right to a hearing herein as provided by law and has 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 has 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 TWO HUNDRED FIFTY DOLLARS (\$250) 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: March _____, 2009
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 without further notice, waives ____ right to a hearing herein, and agrees to be bound by the terms, conditions and provisions contained in this Order.

(Signature): _____

Date: _____

ACKNOWLEDGMENT

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

On the ____ day of ____ in the year _____ before me personally came to me known, who, being by me duly sworn, did depose and say that he/she resides in _____; that he/she is the person described in and which executed the above instrument; and that he/she signed his/her name thereto.

Notary Public
Signature

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.

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.