

**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 -

Debbie Giumarra,

Respondent

**MODIFICATION OF
ORDER ON CONSENT**

File No. R4-2008-0226-26M

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 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. Debbie Guimarra ("Respondent") is an individual residing at 2127 Fiero Street, Rotterdam, N.Y. ("Property").
4. Respondent is subject to Order on Consent R4-2008-0226-26 (effective February 28, 2008). This Modification supercedes Order on Consent No. R4-2008-0226-26.
5. An inspection of the property on January 29, 2007 by an Environmental Conservation Officer revealed that Respondent possesses ONE JAVA MACAQUE MONKEY AND ONE CAPUCHIN MONKEY, which are wild animals as that term is defined under ECL 11-0103(6)(e) and, therefore, regulated by the Department. Respondent stated that she purchased the animals on or about August 9, 2003 (Java Macaque Monkey)/November 26, 2004 (Capuchin Monkey "Jeter") and that they are being kept at that property as pets and not for any regulated scientific, educational or exhibition purposes. Respondent acquired Capuchin Monkey "Austin" on August 30, 2008.

6. 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."

7. 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"

8. 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."

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

10. Commencing on July 1, 2005, Respondent was in violation of ECL §11-0512 by possessing ONE JAVA MACAQUE MONKEY AND TWO CAPUCHIN MONKEYS as pets (hereinafter referred to as "the wild animals") without a license from the Department. Respondent has indicated that she was not aware of the requirement to obtain a license for the possession of the wild animals prior to this proceeding.

11. Respondent continues to possess the wild animals as pets as of the effective date of this Order and has submitted proof acceptable to the Department that two of the wild animals ("Kobe" and "Jeter") were acquired prior to January 1, 2005. Capuchin Monkey "Austin" was acquired after January 1, 2005.

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

a) Two of the wild animals were acquired by the Respondent prior to January 1, 2005 and one was acquired subsequent to that date.

b) Respondent was not aware of the requirement to obtain a license for the possession of the wild animals (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 animals have been kept inside and have never attacked, scratched, clawed, bitten or otherwise harmed any member of the public since July of 2006.

f) Ownership of the wild animals 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 animals 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 animals. Within 15 days of the effective date of this Order, Respondent shall provide a Veterinarian Certification confirming such care on the form attached hereto as Appendix B.

13. Respondent waives her right to a hearing or to otherwise contest the Department's allegations, consents to the issuance of this Modification 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 animals, subject to the terms of the Certification attached hereto as Appendix A, and subject to the following conditions:

1) Within 15 days of the effective date of this Modification, Respondent shall provide a Veterinarian Certification to the Department using the form attached hereto as Appendix B.

2) The wild animals shall not, at any time, be tied, tethered, or chained outdoors or allowed to run at large. Further, the wild animals 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.

3) The wild animals shall not be bred, sold, traded, bartered or exchanged. The animals shall also not be released to the wild under any circumstances.

4) The Respondent shall, at all times, exercise due care in safeguarding the public from attack by the wild animals and acknowledges that the failure to do so is a crime under Section 370 of the Agriculture and Markets Law.

5) The wild animals shall be individually and uniquely marked with a 125 kHz Passive Integrated Transponder (PIT) tag. If a veterinary reason exists not to mark the wild animals with a PIT tag, an alternative method of marking that is acceptable to the Department shall be used.

6) Respondent shall immediately contact the local health authority and the Department's Special Licenses Unit and Regional Office in the event that the wild animals bite, scratch, claw or otherwise harms any member of the public.

7) Respondent shall immediately report any escape of the wild animals to the local police authority, local animal control facility, and the Department's Special Licenses Unit and Regional Office.

8) Respondent shall immediately report the death of any wild animals subject to this Modification, 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.

9) In the event that the wild animals die while subject to this Modification, Respondent shall notify the Department's Special Licenses Unit and Regional Office within 72 hours of the wild animals' death, subject to the requirements of I(A)(8) above.

B. Respondent shall, every two years from the effective date of this Modification, 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 animals are 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 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 Modification.

II. COMPLIANCE

The Respondent shall be immediately bound as provided by this Modification. Respondent's failure to comply fully with any provision of this Modification, including the Schedules, shall constitute a default and a failure to perform an obligation under this Modification and shall be deemed to be a violation of both this Modification and the ECL. Further, upon a violation, Respondent must either (1) transfer the wild animals to an appropriate permitted facility, that is approved by the Department, to permanently house the wild animals, with all costs to be paid by Respondent; (2) surrender the animals 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 animals have 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 animals.

III. CIVIL PENALTY

A. Respondent shall pay a civil penalty in the amount of \$175.00.

B. On or by July 1, 2009, Respondent shall pay \$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(s).

IV. DURATION

The obligations set forth under this Modification 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 animals, or until this Modification is terminated, whichever occurs first.

V. RESERVATION OF RIGHTS

A. Upon completion of all obligations created in this Modification, this document settles only claims for civil and administrative penalties concerning the specific violations described in this Modification 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 Modification 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 animals if required in accordance with ECL §11-0512.

B. Except as provided above, nothing contained in this Modification 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 Modification 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 Modification.

D. Further, this Modification 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 Modification by Respondent and her successors (including successors in title) and assigns.

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Modification, waives her 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.

Debbie Giumarra

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