

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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

ORDER ON CONSENT

File No. R4-2008-0519-71

-By-

William Hoffman
Bly Hollow Road
Berlin, NY 12022

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 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.

2. Respondent, William Hoffman, resides at Bly Hollow Road in the Town of Berlin, Rensselaer County, New York ("residence").

3. Respondent is in possession of venomous snakes, including cottonmouths and copperheads, which are wild animals as that term is defined under ECL 11-0103(6)(e)(5) and, therefore, regulated by the Department.

4. Respondent is also in possession of a timber rattlesnake which is classified as a threatened species in New York State pursuant to regulations at 6 NYCRR §182.6.

First Violation

5. ECL §11-0511 provides that "subject to provisions of section 11-0512 of this article, no person shall, except under a license or permit first obtained from the department containing the prominent warning notice specified in subdivision nine of section 11-0917 of this article, possess, transport or cause to be transported, imported or exported any live wolf, wolfdog, coyote, coydog, fox, skunk, venomous reptile or raccoon, endangered species designated pursuant to section 11-0535 of this title, species named in section 11-0536 of this title or other species of this title or other species of native or non-native live wildlife or fish where the department finds that possession, transportation, importation or exportation of such species of wildlife or fish would present a danger to the health or welfare of the people of the state, an individual resident or indigenous fish or wildlife population. Environmental conservation officers, forest rangers and members of the state police may seize every such animal possessed without such license or permit. No action for damages shall lie for such seizure, and disposition of seized animals shall be at the discretion of the department."

6. Respondent is in possession of venomous snakes which he was not eligible to possess under a permit.

7. Respondent violated regulations at ECL §11-0511 by possessing venomous snakes without a permit.

Second Violation

8. ECL §11-0535 (1) provides that "for the purposes of this section , "endangered species" shall mean those species of fish, shellfish, crustacea and wildlife designated by the department, by regulation filed with the Secretary of State, as seriously threatened with extinction, and "threatened species" shall mean those species of fish and wildlife designated by the department , by regulation filed with the Secretary of State, which are likely to become endangered species within the foreseeable future throughout all or a significant portion of their range. Such regulation shall include, but not be limited to, endangered and threatened species as so designated by the Secretary of the Interior, provided, however, that such regulation shall take effect sixty days after it has been filed with the Secretary of State, and provided, further, that the commissioner may exclude any such species as the commissioner may determine after investigation to be no longer endangered or threatened from the restrictions of this section. (2) Notwithstanding any other provision of this chapter, the taking, importation, transportation, possession or sale of any endangered or threatened species of fish, shellfish, crustacea or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered or threatened species of fish, shellfish, crustacea or wildlife is prohibited, except under license or permit from the department."

9. Respondent is in possession of a timber rattlesnake which is classified as a threatened species in New York State as well as a venomous snake.

10. Respondent violated regulations at ECL §11-0535 (1) by possessing a timber rattlesnake which is a threatened species in New York State.

11. Regulations at ECL Section 71-0925 (13) provides for a civil penalty of up to \$1,000 and an additional penalty of up to \$250 for each fish, bird or animal involved in the violation of ECL §11-0512(8).

12. Regulations at ECL Section 71-0925 (1) provides for a civil penalty of \$200 and an additional penalty of \$100 for each fish, bird or animal involved in the violation of ECL § 11-0511.

Waiver of Rights

13. Respondent affirmatively waives his right to notice and hearing in the manner provided by law, consents to the issuance of this Order, agrees to be bound by the terms, provisions and conditions contained in this Order, and agrees not to appeal this Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

Civil Penalty

I. With respect to the aforesaid violations, a civil penalty in the amount of TWO HUNDRED FIFTY DOLLARS(\$250) is hereby assessed against the Respondent. Payment of the civil penalty is due upon the return of a signed and notarized copy of this Order to the Department. The civil penalty shall be paid by certified or bank check made payable to the NYS DEC.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for it.

III. The terms of this Order shall not be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers, either at common law or as granted pursuant to statute or regulation.

IV. 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 name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

V. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

VI. Respondent shall allow duly authorized representatives of the DEC access to the site without proper notice, at such times as may be desirable or necessary in order for the DEC to

inspect and determine the status of Respondent's compliance with this Order, the ECL and regulations promulgated thereunder.

VII. The Schedule of Compliance is incorporated into the Order and is enforceable thereunder.

VIII. All communications except where otherwise specifically directed should be sent to:

For Department:
Regional Natural Resources Engineer
New York State Department
of Environmental Conservation
Region 4
1130 N. Westcott Road
Schenectady, New York 12306

IX. This Order is deemed effective on the date signed by the Department.

X. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondent for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns; and

C. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department provided, however, that Respondent waives all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

XI. Compliance with the terms and conditions of this Order, including the Schedule of Compliance, shall be in full civil settlement of the violations alleged in this Order.

DATED: _____, 2008
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 .

William Hoffman

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

SCHEDULE OF COMPLIANCE

1. Within five business days of the effective date of this Order, Respondent shall surrender to the Department, all of the venomous snakes in his ownership and/or his possession. Respondent shall deliver the snakes in secured and safe enclosures, to the Wildlife Pathology Laboratory located at Five Rivers in the town of New Scotland, NY. Respondent shall notify Al Breisch of the NYS DEC (402-8855 or 478-7827) no less than 24 hours prior to his arrival.

2. Respondent shall at the time that he surrenders the venomous snakes, provide Department Staff with a certification attesting that he has surrendered all of the venomous snakes in his ownership and/or his possession.