

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of General Counsel, Region 4
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CERTIFIED - RETURN RECEIPT REQUESTED
7017 1070 0001 0125 8923

September 5, 2018

Jill Muratori, Esq.
95 Columbia Street
Albany, New York 12210

Re: Order on Consent
R4-2018-0312-47
Whispering Willow Wild Care

Dear Ms. Muratori:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$250 the civil penalty pursuant to Paragraph I.

Sincerely,



Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

ec: K. Parker
M. Clark
J. Rider



Department of
Environmental
Conservation

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
R4-2018-0312-47

-by-

Joyce C. Perry
Whispering Willow Wild Care
3558 Carman Road
Schenectady, NY 12303

Respondents

WHEREAS:

Jurisdiction

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 distressed wildlife for rehabilitation purposes 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. ECL 11-0515 (3) provides that "*The department may also issue a revocable license to possess distressed wildlife for rehabilitation purposes. The department may adopt regulations concerning the qualifications, appointment and duties of wildlife rehabilitators and the procedures for license issuance and revocation.*"

4. ECL 11-0515 (1) provides that *“The department may issue to any person a license revocable at its pleasure to collect or possess fish, wildlife, shellfish, crustacea, or aquatic insects, birds' nests or eggs for propagation, banding, scientific or exhibition purposes. The department in its discretion may require an applicant to pay a license fee of ten dollars, and to file a bond of two hundred dollars to be approved by the department that he or she will not violate any provisions of this article. Each licensee shall file with the department a report containing such information as the department may require. Such license shall be in force for one year only and shall not be transferable.”*

5. ECL 11-0535 provides that *“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.”*

6. Regulations at 6 NYCRR Part 184.6(a)(4) provide that the wildlife rehabilitator must *“comply with applicable provisions of the Environmental Conservation Law and rules and regulations adopted pursuant thereto and with the department's instructions concerning methods of wildlife rehabilitation, reporting requirements and any conditions contained in their license.”*

7. 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.”*

8. ECL 11-0103 (6)(c) provides that *“Protected wildlife” means wild game, protected wild birds, protected insects, species of special concern and endangered and threatened species of wildlife designated by the department pursuant to section 11-0535 of this article, species listed in section 11-0536 of this article and species protected pursuant to section 11-0311 of this article.”*

Respondents' License Authorizations

9. Respondents Joyce C. Perry and Whispering Willow Wild Care, owns/operates a rehabilitation facility for injured or orphaned wildlife which provides educational programs regarding wildlife, located at 3558 Carman Road, Schenectady, New York (Albany County) (“site”).

10. Respondents possess, through New York State Department of Environmental Conservation, an Endangered/Threatened Species License- Education/Exhibition #652 (Effective 5/19/2017 through 5/18/2018) which authorizes the facility to possess one male Short-eared Owl.

11. Respondents possess, through New York State Department of Environmental Conservation, a License to Collect or Possess – Education/Exhibition #599 (“LCPEE”) (Effective 5/19/2017-5/18/2018) which authorizes the facility to possess:

- 1 male Broad-winged Hawk
- 1 female Barn Owl
- 2 female Barred Owls
- 1 Eastern Screech Owl
- 1 male American Kestrel
- 1 female Common Raven
- 1 male and one female Great Horned Owl
- 1 female Red-tailed Hawk
- 1 male American Crow

12. Respondents possessed, through New York State Department of Environmental Conservation, a Wildlife Rehabilitation License- Class II RVS (Rabies Vector Species) License #14, (Effective 1/2/2016 through 12/31/2020), Modification #1 (Effective 6/1/2016 through 12/31/2020) which authorizes the licensee to provide rehabilitative care to injured, orphaned or distressed wildlife.

13. Effective February 18, 2018, Respondents’ Wildlife Rehabilitation License – Class II RVS license was revoked and replaced by a standard Wildlife Rehabilitation License – Class II, License No. 166, omitting the RVS provision.

License Conditions

14. License to Collect or Possess - Education/Exhibition #599 provides the following conditions:

6. Live Animal - Addition or Replacement of Animals Without Written Authorization Prohibited - *The licensee shall not add additional animals or replace listed animals without a written amendment to this license.*

11. Live Animal - Facilities Requirement - *The licensee shall provide housing, holding and transport facilities designed and constructed to ensure that the listed animals cannot escape and to ensure that the public cannot come in contact with the listed animals.*

15. Wildlife Rehabilitation License- Class II License #14 provides the following conditions:

7. WRL RVS – Approved RVS Facilities – The licensee shall only possess and rehabilitate RVS at the approved RVS facilities described by the licensee in his/her application for the authority to rehabilitate RVS.

9. **WRL RVS – Identification of Individual Species or Litters** – The licensee shall immediately, upon receipt by the licensee at his/her RVS facility, identify each individual RVS or litter with an external marker or hold in such a manner that permits positive identification of a specific animal until that animal is ready to be released from the RVS facility.

12. **WRL RVS – Possession of Over-wintered RVS Without Written Permission Prohibited** – The licensee shall not possess a RVS that has been over-wintered past May 31st in the succeeding year, except under written approval from the Special Licenses Unit.

34. **WRL – Disposition of Non-Releasable Wildlife** – Wildlife deemed to be incapable of surviving if released to the wild shall be euthanized or may be transferred to another individual who possesses a valid license to possess such live, non-releasable animal. The transfer of white-tailed deer, black bear and moose to another license for possession is prohibited as per license condition **WRL-White-tailed Deer, Black Bear and Moose Transfer for Continued Possession Prohibited**.

39. **WRL – Minimizing Habitation** – The licensee shall employ methods that prevent or minimize habitation or imprinting of wildlife on humans including limiting contact with the animals and providing caging that limits the wildlife's exposure to the licensee and other humans and domestic pets and livestock.

48. **WRL – Weekly Maintenance of Wildlife Rehabilitator Log** – The licensee shall keep and maintain an accurate record known as the Wildlife Rehabilitator Log on a weekly basis.

49. **WRL RVS – Reporting Requirement** – The licensee shall submit to the Special Licenses Unit 625 Broadway, Albany, NY 12233 (SpecialLicenses@dec.ny.gov, 518-402-8985) an accurate and complete Wildlife Rehabilitator Log and Wildlife Rehabilitator Log Tally and Rabies Vector Species Acceptance Interview sheets and Rabies Vector Species Wildlife Rehabilitation Log and Tally prior to December 1 in each year except in the year when the license expires and the licensee is renewing his or her license. In the year that the licensee is renewing his or her license, the licensee shall comply with the requirements of license condition: **GC – License Renewal**.

Violations of License to Collect or Possess - Education/Exhibition #599

16. On February 1, 2018 Department staff inspected the site and observed that Respondents possessed the following animals above the limits listed on LCPEE license, none of which were recorded on Respondents' wildlife rehabilitator log, all from unknown sources of acquisition:

- 1 Eastern Screech Owl
- 1 American Kestrel
- 2 Red-tailed Hawk
- 1 Merlin
- 1 Long-eared Owl
- 1 Common Raven

The following animals are listed on Respondents' Wildlife Rehabilitation Log however are above the limits of the LCPEE license and no longer require rehabilitative care:

- 1 Black Vulture
- 1 Fish Crow

In addition, Respondents indicated that the following animals were being held for rehabilitative care, and additionally were indicated as being non-releasable:

- 1 American Crow, received 11/28/2017
- 1 Red-tailed Hawk, received 11/26/2017
- 1 Snowy Owl, received 12/19/2017

17. Respondents' possession of the animals set forth in paragraph No. 16 above is a violation of condition No. 6 of Respondents' License to Collect or Possess - Education/Exhibition #599, as they were above the limits listed on the license, and/or none of which were recorded on the wildlife rehabilitation log, and/or were all acquired from unknown sources.

18. During the inspection, an Eastern Screech Owl and Black Vulture were observed uncaged in Respondents' basement. Furthermore, there was evidence that the Virginia Opossum in Respondents' possession was allowed to roam freely in the basement of her home. Respondent Joyce Perry admitted that she had previously had a skunk roaming freely in her home. By allowing these animals to roam freely in the home and not properly securing them, Respondents were in violation of condition No. 11 of their License to Collect or Possess - Education/Exhibition #599.

Violations of Wildlife Rehabilitation License- Class II RVS License #14

19. At the time of the February 1, 2018 inspection, Respondent Joyce Perry confirmed that she had acquired a skunk in 2016 and allowed it to roam freely in her home and did not report the animal as required by her license conditions. Respondent Joyce Perry did not release the skunk until December 2, 2017.
20. A skunk is a rabies vector species.
21. Respondents violated Conditions No. 7, 9, and 12, of their Wildlife Rehabilitation License - Class II RVS License #14 by failing to adhere to the RVS conditions of their license during the time that they possessed the skunk.
22. Respondents violated Condition No. 34 of their Wildlife Rehabilitation License - Class II RVS License #14 by failing to euthanize or transfer the wildlife in their care that were deemed to be incapable of surviving if released.
23. Respondents violated Condition No. 39 of their Wildlife Rehabilitation License - Class II RVS License #14 by failing to minimize habituation with respect to the Black Vulture, skunk and Virginia Opossum.
24. Respondents violated Condition No. 48 of their Wildlife Rehabilitation License - Class II RVS License #14 by failing to maintain an accurate record of the wildlife in their care as required to be documented weekly in the Wildlife Rehabilitation Log.
25. Respondents violated Condition No. 49 of their Wildlife Rehabilitation License - Class II RVS License #14 by failing to report to the Special Licenses Unit, the RVS (skunk) in their possession as well as other wildlife in their care.
26. Respondents possessed the following wildlife which are considered protected pursuant to ECL 11-0103:
 - 2 Barred Owls
 - 5 Screech Owls
 - 1 American Kestrel
 - 3 Red-tailed Hawks
 - 1 Broad-winged Hawk
 - 1 Black Vulture
 - 1 Fish Crow
 - 1 Merlin
 - 1 Long-eared Owl
 - 1 American Crow
 - 1 Great Horned Owl
 - 1 Snowy Owl
 - 1 Common Raven
 - 1 Virginia Opossum

27. Respondents violated ECL 11-0107(2) by possessing the protected wildlife listed in paragraph 26 above, without being permitted to do so.

28. ECL §71-4003 provides for a civil penalty of up to \$1,000 per day and an additional penalty of up to \$1,000 for each day during which each such violation occurs.

29. Respondents affirmatively waive their right to notice and hearing in the manner provided by law, consents to the issuance of this Order, agree to be bound by the terms, provisions and conditions contained in this Order, and agree not to appeal this Order.

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

I. In respect of the aforesaid alleged violations, a civil penalty in the amount of TWO THOUSAND DOLLARS (\$2,000) of which TWO HUNDRED FIFTY DOLLARS (\$250) shall be payable to the New York State Department of Environmental Conservation by money order, or check at the time this Order is signed, notarized and returned to the Department.

The balance ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750) shall be suspended so long as Respondents shall comply with the Schedule of Compliance.

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

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

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

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. Respondents shall indemnify and hold harmless the Department, the State of New York, and its 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 Respondents, their 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 Department access to the site without proper notice, at such times as may be desirable or necessary in order for the Department 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 Supervisor
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 Respondents 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 Respondents, their agents, their servants, their employees, their successors and their assigns; and

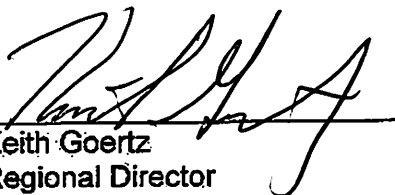
C. Respondents' right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State, the Department, or any third party, provided, however, that Respondents waive all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that he 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 Respondents.

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

DATED: *September 9* , 2018
Rotterdam, New York

Basil Seggos
Commissioner
New York State Department of
Environmental Conservation

BY:


Keith Goertz
Regional Director
Region 4

SCHEDULE OF COMPLIANCE

1. Effective immediately, Respondents shall pursue appropriately licensed individuals/facilities to accept all non-licensed and all non-releasable wildlife (as mentioned in Paragraph Nos. 16 and 26 above with the exception of the eight birds listed in Paragraph No. 6 below) in their possession. Respondents shall, upon finding what they deem an appropriate recipient of such wildlife, contact the Special Licenses Unit for its approval, prior to any transfer.
2. Within 45 days of the effective date of this Order, Respondents shall transfer to appropriately licensed individuals/facilities or euthanize, all non-licensed and all non-releasable wildlife (as mentioned in Paragraph Nos. 16 and 26 above with the exception of the eight birds listed in Paragraph No. 6 below and birds that have been released or previously transferred) in their possession. In the event that Respondents need assistance in finding appropriately licensed individuals/facilities for placement of the non-releasable wildlife, they shall contact the Department's Regional Wildlife Manager at (518) 357-2152.
3. Within 72 hours of transfer, Respondents shall notify the Special Licenses Unit (SpecialLicenses@dec.ny.gov) of the date of transfer for each animal and the name of the licensed individual/facility to whom the animal(s) was/were transferred. Alternatively, in the event that the animal(s) is/are euthanized, Respondents shall notify the Special Licenses Unit of the dates and places of euthanasia.
4. Within seven (7) days of the effective date of this Order, Respondents shall permanently relinquish their Wildlife Rehabilitation License – Class II (License No. 166). Once this license is relinquished, continued possession or rehabilitation of wildlife is a violation of the terms of this Order and will result in the full payment of the suspended penalty. Possession or rehabilitation of wildlife without a valid license also constitutes a violation of ECL 11-0512 and ECL 11-0515 (3) for which separate penalties may be assessed.
5. Within seven (7) days of the effective date of this Order, any and all wildlife currently in Respondents' rehabilitative care shall be transferred to a licensed wildlife rehabilitator or shall be released.
6. Respondents are permitted to keep in their possession, the wildlife provided for in their existing License to Collect or Possess – Education/Exhibition #599 and Endangered/Threatened Species License- Education/Exhibition #652.

7. Within 30 days of the effective date of this Order, Respondents shall provide for an inspection of their facilities by DEC staff. Provided that a determination is made by staff that adequate wholesome facilities are in place to house and care for such animals pursuant to this Order on Consent, Respondents shall be allowed to maintain in their possession (LCPEE license # in parentheses):

- 1 Black Vulture (599)
- 1 Long-eared Owl (599)
- 1 Snowy Owl (599)
- 1 Red Phase Screech Owl (599)
- 1 Raven (599)
- 1 Merlin (599)
- 1 Red-tailed hawk (599)
- 1 Peregrine Falcon (652)

IT IS INCUMBENT UPON THE RESPONDENT TO CONTACT WILDLIFE MANAGER MIKE CLARK AT 518 357-2152 TO SET UP A TIME FOR THE INSPECTION TO OCCUR, PRIOR TO 30 DAYS FROM THE EFFECTIVE DATE OF THIS ORDER.

Respondent must make an application to the Special Licenses Unit (SpecialLicenses@dec.ny.gov) to add these animals to their LCPEE #599 and LCPEE #652) immediately after the inspection by contacting the Special Licenses Unit.

8. No additional animals shall be added to Respondents' License to Collect or Possess - Education/Exhibition ("LCPEE") #599 and #652 except for those eight animals identified in paragraph #7 above, provided that the stated condition in paragraph #7 is met. This may be waived only with written approval by the Regional Wildlife Manager.