

**State of New York
Department of Environmental Conservation**

In the Matter of the Violations 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 ("6 NYCRR") by:

ORDER ON CONSENT

**DEC Case No.
CO 3-20201203-144**

Dawn Animal Agency Inc and Amanda Brook,

Respondents.

Whereas:

1. The New York State Department of Environmental Conservation (the "Department") is responsible for enforcement of Article 11 of the Environmental Conservation Law ("ECL") and Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York. This Order is issued pursuant to the Department's enforcement authority under Article 71 of the ECL.
2. Dawn Animal Agency Inc and Amanda Brook (the "Respondents"), are subject to New York State laws and regulations governing animals regulated under ECL Article 11. Dawn Animal Agency Inc is a corporation registered in the State of New York located at 38 William Lain Road, Westtown, NY 10998. Amanda Brook is a designated agent authorized to care for the animals listed on Department permits issued for Dawn Animal Agency Inc.
3. On October 7, 2020, an authorized employee of the Department conducted an inspection of Dawn Animal Agency located at 38 William Lain Road, Westtown, NY 10998. The Department issued Notices of Violation for:
 - a. ECL Section 11-0511, Possession of seven regulated dangerous animals without a permit - one serval cat (*Leptailurus serval*); one white-handed gibbon (*Hylobates lar*); and five racoons (*Procyon lotor*);
 - b. ECL Section 11-0515, Possession of three regulated animals without a permit (one female White-tailed deer (*Odocoileus virginianus*), two male Eastern gray squirrel (*Sciurus carolinensis*); and
 - c. ECL Section 11-0535, Possession of three endangered species without a permit - one female Salmon-crested cockatoo (*Cacatua moluccensis*); one male White cockatoo (*Cacatua alba*); one female Scarlet macaw (*Ara macao*).
4. Regarding the aforesaid violations, Respondents waive their right to a hearing as provided by law and consent to the issuing and entering of this Order pursuant to Articles 11 and 71 of the ECL and agree to be bound by its terms.

5. This Order resolves all violations that have been or could be asserted by the Department against Respondents based on the events described herein. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or which occur after the effective date of this Order.
6. The existence of this Order shall not give rise to a presumption of law or finding of fact, or create any rights, or grant any cause of action, which shall inure to the benefit of any third party.

Now, being duly advised and having considered the matter, it is ordered that:

- I. Civil Penalty. With respect to the violations identified in this Order, the Department hereby assesses against the Respondents a civil penalty in the amount of one thousand dollars (\$1,000) to be paid as follows:
 - a. Payable Penalty. Two hundred dollars (\$200.00) shall be paid at the time of the execution of this Order by electronic payment <http://www.dec.ny.gov/about/61016.html#On-Line> or by check made payable to the order of the "New York State Department of Environmental Conservation" with the enclosed invoice and the Case Number of this Order written in the memo section of the check which shall be sent to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany, NY 12233-4900

- b. Suspended Civil Penalty. Eight hundred dollars (\$800) shall be paid if, within 6 months from the effective date of this Order, Respondent fails to secure necessary permits and is found to be in violation of the sections of law identified above in paragraph 3.
 - c. If the suspended civil penalty becomes due, it shall be paid by electronic payment (<http://www.dec.ny.gov/about/61016.html#On-Line>) or by check made payable to the order of the "New York State Department of Environmental Conservation" with the enclosed invoice and the Case Number of this Order written in the memo section of the check which shall be sent to:

Department of Environmental Conservation
Division of Management and Budget Services
625 Broadway, 10th Floor
Albany, NY 12233-4900

The signed Order shall be sent to:

New York State Department of Environmental Conservation
Office of General Counsel
Attn: Monica Kreshik, Esq.
625 Broadway
Albany, New York 12233-1500

- II. Standard Provisions. Respondents shall further comply with the standard provisions attached to this Order, which constitute material and integral terms and conditions of this Order and are hereby incorporated into this Order on Consent by reference. If the standard provisions conflict with the body of the Order, the terms of the body of the Order will govern.

Dated: 5/5/2021

Basil B. Seggos, Commissioner
New York State Department of
Environmental Conservation

By: 

Kelly Turturro
Region 3 Director
NYSDEC

CONSENT BY RESPONDENT

Respondents hereby consent to the issuing and entering of this Order without further notice, waives their right to a hearing, and agree to be bound by the terms, conditions and provisions contained in this Order. The undersigned further hereby declare that they have been given the authority to bind the Respondent to the requirements of this Order.

Dawn Animal Agency Inc and Amanda Brook,
Respondents

By [Signature]:

Amanda Brook

Signature of Authorized
Representative

Print Name:

Amanda Brook

Title:

Case taker

Date:

4-27-21

ACKNOWLEDGMENT
STATE OF NEW YORK)

) ss:

COUNTY OF)

On the _____ day of _____, in the year 2020, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

If you are unable to secure notarization, you must sign the statement below.

In signing this document, I acknowledge under penalty of perjury that I understand the contents and purpose of this document; the signature above is my own and I signed willingly. I have also submitted state-issued identification verifying my identity. I am aware that any false statement made herein is punishable as a class A misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

Amanda Brook

Signature

Amanda Brook

Printed name

Standard Provisions

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.

Binding Effect. The provisions, terms, and conditions of this Order shall be deemed to bind Respondent, its heirs, its employees, servants, agents, successors and assigns, and all persons, firms, and corporations acting subordinate thereto.

Communications. Except as otherwise specified in this Order, any reports, submissions, and notices herein required shall be made to the Regional Director of the Region 8 office of the Department, located at 6274 East Avon-Lima Road, Avon, New York 14414.

Default of Payment. The penalty assessed in the Order on Consent constitutes a debt owed to the State of New York. Failure to pay the assessed penalty, or any part thereof, in accordance with the schedule contained in the Order on Consent, may result in referral to the New York State Attorney General for collection of the entire amount owed (including the assessment of interest, and a charge to cover the cost of collecting the debt), or referral to the New York State Department of Taxation and Finance, which may offset by the penalty amount any tax refund or other monies that may be owed to you by the State of New York. Any suspended and/or stipulated penalty provided for in this Order on Consent will constitute a debt owed to the State of New York when and if such penalty becomes due.

Effective Period of this Order and Termination. This Order shall take effect when it is signed by the Commissioner of the Department or the Commissioner's designee, and shall expire when all the requirements imposed by the Order are completed to the Department's satisfaction.

Entirety of Order. The provisions of this Order constitute the complete and entire Order issued to the Respondent, concerning resolution of the violations identified in this Order. Terms, conditions, understandings or agreements purporting to modify or vary any term hereof shall not be binding unless made in writing and subscribed by the party to be bound, pursuant to the "Modifications" provision. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by the Respondent shall be construed as relieving the Respondent of his/her obligations to obtain such formal approvals as may be required by this Order.

Failure, Default, and Violation of Order. The failure of Respondent to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and shall be deemed to be a violation of both this Order and the ECL. In addition, Respondent's failure to comply fully and in timely fashion with any provision, term, or condition of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL and shall constitute sufficient grounds for revocation of any permit, license, certification, or approval issued to the Respondent by the Department.

Force Majeure. If Respondent cannot comply with a deadline or requirement of this Order on Consent, because of natural disaster, war, terrorist attack, strike, riot, judicial injunction, or other, similar unforeseeable event which was not caused by the negligence or willful misconduct of Respondent and which could not have been avoided by the 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. Respondent shall include in such application the measures taken by Respondent to prevent and/or minimize any delays. Failure to give such notice constitutes a waiver of any claim that a delay is not subject to penalties. Respondent shall have the burden of proving that an event is a defense to a claim of non-compliance with this Order on Consent pursuant to this subparagraph.

Indemnification. Respondent shall indemnify and hold the Department, the State of New York, and their representatives, employees, agents and contractors harmless 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 order by the Respondent, its employees, servants, agents, successors (including successors in title) and assigns.

Modifications. No change to 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.

Multiple Respondents. If more than one Respondent is a signatory to this Order, use of the term "Respondent" in these Standard Provisions shall be deemed to refer to each Respondent identified in the Order.

Not a Permit or Permit Modification. This Order on Consent is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Unless otherwise allowed by statute or regulation, Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. Respondent's compliance with this Order on Consent shall be no defense to any action commenced pursuant to any laws, regulations, or permits, except as set forth herein.

Reservation of Rights. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting any right of the Department to seek natural resource damages from Respondent or others; or to directly perform, to engage others to perform on its behalf, or to direct others including Respondent to perform, any additional measures that are authorized by law to protect human health, safety or the environment, including the summary abatement powers of the Department, either at common law or as granted pursuant to statute or regulation.

Scope of Settlement and Violations Addressed. This Order shall be in full settlement of all claims for civil and administrative penalties that have been or could be asserted by the Department against Respondent, their trustees, officers, employees, successors and assigns for the above-referenced violations. This Order shall not be construed as being in settlement of events regarding which the Department lacks knowledge or which occur after the effective date of this Order.

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.



Department of Environmental Conservation

RECEIPT

634979

Region Number 3

Date 4/28/2021

Location _____ Division LE

Received of Dawn Animal Agency, Inc

In the amount of Two hundred and no/100 \$ 200.

For Article 11

Cash Department Representative [Signature]

Check Number 36929 Title AAI

Money Order

ORIGINAL