

STATE OF NEW YORK
LAKE GEORGE PARK COMMISSION

IN THE MATTER OF THE APPLICATION OF
LAKE GEORGE PARK COMMISSION,

Petitioner,

ORDER ON CONSENT

-against-

LE-056-19

JDQ ENTERPRISES, INC., d/b/a LAKE GEORGE
PARASAILING ADVENTURES,

Respondent.

WHEREAS

1. JDQ Enterprises, Inc. d/b/a Lake George Parasailing Adventures ("Respondent"), having a principal place of business at 2 Kurosaka Lane, Lake George, New York, operates a commercial parasail business on the waters of Lake George pursuant to a permit issued by the Lake George Park Commission (the "Commission") pursuant to Article 43 of the Environmental Conservation Law and 6 NYCRR Parts 645 and 646 (the "Permit").
2. Respondent's Permit was issued on March 12, 1993 and was renewed most recently on November 27, 2018.
3. Respondent's Permit number is 5222-46-18.
4. By Notice of Violation, dated July 29, 2019, the Commission commenced a Uniform Enforcement Proceeding against Respondent pursuant to Article 43 of the Environmental Conservation Law.
5. The Commission's Complaint alleged that Respondent committed the following

violations of its Permit:

✓ a. General Permit Condition 4 requires, "The permittee is responsible for obtaining any other permits, approvals, land easements, and rights-of-way which may be required for this activity" On June 15, 2019, Respondent operated two (2) vessels without the proper registration.

✗ b. Permit Parasail Condition 14a requires, "Each operator shall maintain a crew of at least two (2), including a pilot and an observer on the tow craft at all times during operation. The observer on the tow craft must be at least sixteen (16) years of age. The observer must maintain visual contact with the parasail at all times while the parasail is in the air." On June 15, 2019, for multiple flights Respondent failed to have an observer on the tow craft at all times and failed to have an observer maintain visual contact with the parasail at all times while the parasail was in the air.

✓ c. Permit Parasail Condition 19 requires, "The facility from where this activity is operated must have a Class A marina permit from the Commission which specifically authorizes parasail operation. Each year by no later than May 15 the permittee shall provide written notice to the Commission of what land based facility will be used in conjunction with this business enterprise." Respondent failed to notify Commission by May 15, 2019 of the land based facility which was to be used in conjunction with the parasail enterprise for the 2019 season.

✗ d. Special Condition 23b requires, "The permittee shall implement and maintain all equipment and operation modifications as listed below (b) . . . Respondent's shore side establishment shall actively monitor the local weather via the National Weather Service.

Operators must check the weather forecast each time prior to leaving the dock and every half-hour during operation.” On June 15, 2019, Respondent’s booth attendants at the shore side establishment were not tasked with and failed to monitor the local weather via the National Weather Service.

e. Special Condition 23c provides “. . .No parasail vessel shall operate when wind is in excess of 20 mph in the area of operation. . .”On June 15, 2019, Respondent operated a vessel in wind exceeding 20mph.

f. Special Condition 23d provides “Respondent’s parasail operation including all vessels utilized in said operation shall be covered by a bond or policy of insurance through an insurance company licensed and authorized by the New York State Department of Insurance, in the aggregate amount of not less than one million dollars (\$1,000,000.00) per occurrence for claims of bodily injury or death of any person arising out of the parasail operation. . . On an annual basis and no later than June 1st of each year, the Respondent shall file proof of the bond or insurance policy with the Commission.” Respondent failed to file proof of the bond or insurance policy with Commission by June 1, 2019.

6. Respondent denies some of these allegations, specifically those listed in paragraphs 5(b); 5(d); 5(e); and 5(f) above. Respondent acknowledges that there are factual bases supporting the allegations listed in paragraphs 5(a) and 5(c) and above. Respondent now seeks to resolve this matter by executing this Consent Order.
7. Respondent stipulates that the Commission has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against

Respondent. Respondent waives any defenses it might have as to jurisdiction and venue.

8. Respondent has waived its right to a hearing in this matter as provided by law, and, has, of its own volition, and/or with the advice of counsel, consented to the issuing and entering of this Order on Consent pursuant to the provisions of the Environmental Conservation Law and 6 NYCRR §645-4.8.
9. By Order on Consent dated November 7, 2016 (LE-011-16), the Commission stayed TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) of the FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) penalty, “provided the Respondent complies with the terms of this Order on Consent and commits no further violations for a period of 3 years”. By the above-listed violations, Respondent has violated the stay provision of LE-011-16, and the Commission hereby revokes the suspension and requires payment of the remaining \$2,500.
9. By Order on Consent dated November 7, 2016 (LE-048-16), the Commission stayed FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) of the ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00) penalty, “provided the Respondent complies with the terms of this Order on Consent and commits no further violations for a period of 3 years”. By the above-listed violations, Respondent has violated the stay provision of LE-048-16, and the Commission hereby revokes the suspension and requires payment of the remaining \$500.

NOW, having considered this matter and having been duly advised,

IT IS HEREBY:

ORDERED, that Respondent shall pay to the Commission a penalty in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000); and it is further

ORDERED, that Respondent shall pay to the Commission the suspended penalty from LE-011-16 in the amount of TWO THOUSAND FIVE-HUNDRED AND NO/100 DOLLARS (\$2,500); and it is further

ORDERED, that Respondent shall pay the suspended penalty from LE-048-16 in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500); and it is further

ORDERED, that the full amount of the above-ordered penalties of FOUR THOUSAND AND NO/100 DOLLARS (\$4,000) shall be immediately due and payable upon the effective date of this Order on Consent; and it is further

ORDERED, that the full amount of the above-ordered penalties of FOUR THOUSAND AND NO/100 DOLLARS (\$4,000) shall be paid by certified funds or money order to the "Lake George Park Commission" and delivered to the Commission at its address- 75 Fort George Road, P.O. Box 749, Lake George, New York 12845; and it is further

ORDERED, that Respondent shall fully comply with the Compliance Conditions set forth in Schedule A, attached hereto and incorporated herein, in the operation of Respondent's commercial parasail business; and it is further

ORDERED, that the Compliance Conditions set forth in Schedule A shall, to the extent they are inconsistent with the compliance conditions set forth in Schedule A to any prior Orders on Consent entered into between Respondent and the Commission, supersede such earlier compliance conditions; and it is further

ORDERED, that to the extent this Order on Consent constitutes an amendment to Respondent's Permit for commercial parasail operations, the Permit shall be considered automatically modified from the effective date of this Order on Consent to reflect the terms and conditions provided herein; and it is further

ORDERED, that the Respondent shall not knowingly commit any further violations of its Permit, this Order on Consent, the Environmental Conservation Law, the Navigation Law or the Commission's Regulations; and it is further

ORDERED, that Respondent shall permit any duly designated officer, employee, consultant or agent of the Commission to inspect Respondent's commercial parasail operation for the purpose of monitoring Respondent's compliance with the terms of this Order on Consent; and it is further

ORDERED, that Respondent shall indemnify and hold the Commission, the State of New York, and their representatives and employees harmless of, for and from all claims, suits,

actions, damages, and costs of every name, nature and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order on Consent by Respondent, or any of Respondent's respective servants, agents, successors or assigns; and it is further

ORDERED, that the effective date of this Order on Consent shall be the date of execution by the Chairman of the Commission.

Dated: 3-4, 2020

LAKE GEORGE PARK COMMISSION

By: Bruce Young
Bruce Young, Chairman

I am the President of J D Q Enterprises, Inc. d/b/a Lake George Parasailing Adventures and I am authorized to enter into this Order on Consent. I have read and stipulate to all of the contents of this Order on Consent.

JDQ ENTERPRISES, INC. d/b/a
LAKE GEORGE PARASAILING ADVENTURES

By: James D Quirk Jr.
Dennis Quirk, Owner

STATE OF NEW YORK
COUNTY OF Warren

On the 28 day February, in the year 2020 before me, the undersigned personally appeared Dennis Quirk, 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 executed the same in his capacity, and that by his signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Dannae Bock
Notary Public

DANNAE BOCK
Notary Public, State of New York
No. 01BC00223-2
Qualified in Saratoga County
Commission Expires April 5, 2023

SCHEDULE A

Compliance Conditions for Order on Consent And Modifications to LGPC permit #5222-46-18 (JDQ Enterprises, Inc. d/b/a Lake George Parasailing Adventures)

1. Respondent shall implement all equipment and operation modifications as listed below.
 - A. Staff Requirements: (a) Each operator shall maintain a crew of at least three (3), including a pilot, a crew member for operational assistance (eg. outfit customers with harnesses), and a designated observer on the tow craft at all times during operation. The crew members must be at least sixteen (16) years of age. The designated observer must maintain visual contact with the parasail at all times while the parasail is in the air. In lieu of a third crew member for operational assistance, the operator shall have a written protocol approved by the Commission that identifies how compliance with the designated observer may be achieved with two crew members (eg. all customers outfitted with harnesses and life jackets prior to entering the parasail vessel).
 - B. Granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent, permit, or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, N.Y.S. Office of General Services, N.Y.S. Department of Environmental Conservation, N.Y.S. Department of Health, Adirondack Park Agency, or any other local, state, or federal government agency which may be required.
 - C. Reportable Incidents. Reportable Incidents involving parasail operations shall be reported in writing by the owner or operator to the Commission within twenty-four (24) hours after such incident. Reportable Incidents shall include but not be limited to vessel collisions, parasail water landings, detachment of the sail from the boat, injury to crew or passengers, and suspended operations. Reportable incidents shall relate to all aspects of the operation including passenger transport / shuttling.
 - D. All parasail vessels must have on board a marine VHF radio that is capable of communicating with Respondents' shore side establishment and receiving weather information. All parasail vessels shall actively monitor marine channel 16. Respondents' shore side establishment shall actively monitor the instantaneous weather conditions as well as the weather forecast for the upcoming 60-minute interval at Floyd Bennett Memorial Airport in Queensbury, NY via the National Weather Service, National Oceanic and Atmospheric Administration, or from such source and location as authorized by the Commission. Operators must receive the weather conditions and the weather forecast from the shore side establishment each time prior to leaving the dock and every hour during operation. The shore side establishment shall maintain a written weather log documenting compliance with the above weather and forecast monitoring requirements on such forms as the Commission may provide. Copies of the log shall be maintained for three (3) years and be available on site during the season. They shall be made available upon request by the Commission. The weather log shall include date, time, wind direction, sustained wind speed, wind gust speed, wave height, and sky condition.

- E. No parasail vessel shall operate under any of the following conditions:
- a. If there is a severe weather "warning" issued within the next hour for the area of operation. Operations shall remain suspended until the severe weather "warning" is lifted or expires.
 - b. In seas in excess of 3 feet.
 - c. When the actual or forecasted wind speed (aka sustained wind) within the next hour is 16mph or greater as recorded or forecasted at the National Weather Service station at Floyd Bennett Memorial Airport in Queensbury, NY or from an alternate location as authorized by the Commission.
 - d. When the actual or forecasted wind gust speed within the next hour is greater than 20mph as recorded or forecasted at the National Weather Service station at Floyd Bennett Memorial Airport in Queensbury, NY or from an alternate location as authorized by the Commission.
 - e. No parasail operator shall use a chute or any equipment in a manner that exceeds ASTM standards or the manufacturer's recommended specifications.
 - f. If lightning is present within 7 miles of the area of operation.
 - g. If heavy fog is present in the area of operation.
 - h. If thunder is audible in the area of operation.

Parasail operations, suspended as a result of weather conditions or weather forecasts as enumerated above, shall remain suspended until the monitored weather condition and weather forecast are again below the thresholds listed above.

- F. By June 1 of each year, the permittee shall provide a copy of the operation's written protocol for water retrieval in incidences of unplanned passenger water landings.
- G. Passenger shuttling shall be undertaken in compliance with ASTM Standards.
- H. All captains and crew shall have their Blood Alcohol Concentration tested prior to work each day using a commercially available breathalyzer not more than 10yrs old. Anyone testing higher than 0.00 shall not be allowed to participate in parasail operations. Results of the daily testing shall be recorded on such forms as may be provided by the Commission.
- I. Vessel operators shall maintain a log of parasail operations on such forms as the Commission may provide. The log shall include but not be limited to date, time, crew members, weather, weather forecast, number of passengers, number of rides, passengers per ride, reportable incidents.
- J. The owner or operator must maintain written records that the requirements contained in 646-1.4(c) have been complied with. Written records shall be maintained on such forms as may be provided by the Commission. The records are subject to inspection by the Commission upon reasonable notice.