

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Invasive Species/
Infested Water Civil Citation No.
CV 186386 Issued to Brian Joseph
Dressler

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter came before Administrative Law Judge Steven M. Bialick for a prehearing conference held by telephone on July 28, 2016, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on July 15, 2016. Water Resource Enforcement Officer Mike Scott (WREO Scott) and Conservation Officer Amber Ladd (CO Ladd) appeared on behalf of the Department of Natural Resources (Department) without counsel. Brian Joseph Dressler (Appellant) appeared on his own behalf without counsel.

On July 28, 2016, the parties agreed to treat the prehearing conference as the formal hearing on the civil citation that was issued to Appellant. Sworn testimony was taken and arguments were presented during the hearing. The record closed on July 28, 2016, upon adjournment of the hearing.

STATEMENT OF THE ISSUES

1. Did Appellant violate Minn. Stat. § 84D.09, subd. 1 (2016), by transporting aquatic macrophytes?
2. Is \$100 the appropriate civil penalty for the violation under Minn. Stat. § 84D.13, subd. 5(a)(1) (2016)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Appellant violated Minn. Stat. § 84D.09, subd. 1, and that a civil penalty of \$100 is appropriate. Therefore, the Administrative Law Judge recommends that the Commissioner of the Department (Commissioner) affirm the citation and civil penalty.

Based upon the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Appellant lives in Apple Valley, Minnesota.¹
2. In October 2015, Appellant's boat was in Lower Prior Lake, located in Prior Lake, Minnesota. At that time, there was a great deal of floating vegetation in the lake and some of it attached to Appellant's boat.²
3. In October 2015, Appellant removed his boat from Lower Prior Lake using a trailer.³
4. In October 2015, after removing his boat from Lower Prior Lake, Appellant removed some vegetation that had attached to the boat. However, Appellant did not remove some vegetation that was between the boat and the runners on the trailer.⁴
5. After removing his boat from Lower Prior Lake in October 2015, Appellant transported the boat and trailer to a storage facility in Farmington, Minnesota. Approximately one or two weeks later, Appellant transported the boat and trailer to a storage facility in Rosemount, Minnesota.⁵
6. In April or May 2016, Appellant transported his boat and trailer from the Rosemount storage facility to the Farmington storage facility. He then transported the boat and trailer to his home in Apple Valley, Minnesota.⁶
7. On May 27, 2016, Appellant was transporting his boat and trailer from his home to Cutfoot Sioux Lake near Deer River, Minnesota.⁷
8. At approximately 4:30 p.m. on May 27, 2016, Appellant was driving north on Highway 65, towing his boat and trailer. He was pulled over by conservation officers for an inspection stop at the Big Sandy wayside rest stop near McGregor, Minnesota.⁸
9. On May 27, 2016, WREO Scott inspected Appellant's boat and trailer and saw aquatic vegetation between the boat and trailer. WREO Scott removed the aquatic vegetation from Appellant's boat and trailer and identified it as aquatic macrophytes. Another conservation officer took a photograph of the vegetation.⁹

¹ Testimony (Test.) of Appellant.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*; Test. of WREO Scott; Test. of CO Ladd.

⁹ Test. of WREO Scott; Exhibit (Ex.) 1.

10. On May 27, 2016, CO Ladd issued Civil Citation No. CV 186386 (Citation) to Appellant, which assessed a \$100 penalty for transporting aquatic macrophytes. Appellant's boat was then cleaned and Appellant left.¹⁰

11. By letter postmarked June 1, 2016, Appellant mailed a request for a hearing regarding the Citation to the Department.¹¹

12. By letter dated July 14, 2016, the Department notified Appellant that the hearing he requested was being referred to the Office of Administrative Hearings, and that the Office of Administrative Hearings would be contacting him to let him know when and where the hearing would be held.¹²

13. By Notice of Prehearing Conference and Notice of Hearing dated July 15, 2016, Appellant was notified that a prehearing conference would be held on July 28, 2016, by telephone conference call.¹³

14. At the prehearing conference, the parties agreed to treat the prehearing conference as the formal hearing.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. This matter is properly before the Administrative Law Judge and the Commissioner pursuant to Minn. Stat. §§ 14.50; 84D.13, subd. 8; 116.072, subd. 6 (2016).

2. Minn. Stat. § 84D.09, subd. 1, prohibits the transportation of aquatic macrophytes, with limited exceptions not applicable to this case.

3. Minn. Stat. § 84D.01, subd. 2 (2016), defines "aquatic macrophyte" as "a macroscopic nonwoody plant, either a submerged, floating leafed, floating, or emergent plant that naturally grows in water."

4. Conservation officers are legally authorized to issue civil citations to persons who violate Minn. Stat. § 84D.09, subd. 1, and to impose a statutory penalty of \$100 for such violations.¹⁴

5. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation.

¹⁰ Test. of CO Ladd; Test. of WREO Scott.

¹¹ Request for hearing from Appellant; Letter from Department to Appellant dated July 14, 2016.

¹² Letter from Department to Appellant dated July 14, 2016.

¹³ Notice of Prehearing Conference and Notice of Hearing dated July 15, 2016.

¹⁴ Minn. Stat. § 84D.13, subds. 4, 5(a)(1) (2016).

6. Appellant filed a timely appeal and request for hearing.
7. In an appeal of a civil citation, the burden of proof is on the Department to prove by a preponderance of the evidence that a violation of law occurred.¹⁵
8. The preponderance of evidence standard requires that, to establish a fact, it must be more probable that the fact exists than that the contrary exists.¹⁶
9. The Department has proved by a preponderance of the evidence that Appellant violated Minn. Stat. § 84D.09, subd. 1, by transporting aquatic macrophytes.
10. Pursuant to Minn. Stat. § 116.072, subd. 6(c), the Administrative Law Judge may not recommend a change in the amount of the proposed penalty unless the judge determines that the amount of the penalty is unreasonable.
11. The penalty amount of \$100 is not unreasonable and it is the appropriate civil penalty for Appellant's violation of Minn. Stat. § 84D.09, subd. 1.
12. For purposes of Minn. Stat. § 116.072, subd. 6(d), Appellant's request for hearing was not solely for purposes of delay and was not frivolous.

Based upon the Conclusions of Law, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. CV 186386 and the \$100 civil penalty issued to Appellant be **AFFIRMED**.

Dated: August 11, 2016



STEVEN M. BIALICK
Administrative Law Judge

Reported: Digitally recorded

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five (5) days after the Commissioner receives the Report of the Administrative Law Judge. The persons to whom this Report is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the

¹⁵ Minn. R. 1400.7300, subp. 5 (2015).

¹⁶ *City of Lake Elmo v. Metro Council*, 685 N.W.2d 1, 4 (Minn. 2004).

comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63-.69 (2016).

MEMORANDUM

Minn. Stat. § 84D.09, subd. 1, prohibits the transportation of aquatic macrophytes, with limited exceptions not applicable to this case.

Appellant admits there was vegetation on the boat and trailer he was transporting on May 27, 2016, but he does not know if it was aquatic macrophytes.¹⁷

WREO Scott has been a conservation officer for 15 years and he has dealt with aquatic vegetation since 2007. He identified the vegetation Appellant was transporting on May 27, 2016 as aquatic macrophytes, as defined in Minn. Stat. § 84D.01, subd. 2.¹⁸

Appellant argues that he did everything he could reasonably do to remove the vegetation from his boat and trailer when the boat was removed from Lower Prior Lake in October 2015. He also argues that his boat had been out of the water for seven months and that the vegetation on it was dead.

Minn. Stat. § 84D.09, subd. 1, prohibits the transportation of aquatic macrophytes. Minn. Stat. § 84D.01, subd. 2, defines what constitutes an aquatic macrophyte. Neither statute distinguishes living aquatic macrophytes from dead ones. Further, Minn. Stat. § 84D.09, subd. 1, does not contain an exception which allows a person to transport aquatic macrophytes simply because that person used his or her best efforts to remove it.

Appellant transported aquatic macrophytes on May 27, 2016, in violation of Minn. Stat. § 84D.09, subd. 1, and is subject to the \$100 civil penalty set forth in Minn. Stat. § 84D.13, subd. 5(a)(1). That penalty is reasonable in relation to the harm the Department seeks to prevent.

For the reasons discussed in this Report, the Administrative Law Judge recommends that the civil citation and penalty issued to Appellant be affirmed.

S. M. B.

¹⁷ Test. of Appellant.

¹⁸ Test. of WREO Scott.