

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Appeal of the
Invasive Species/Infested Waters
Citation Issued to Steven Matthew
Bedell; Citation No. 172321

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

This matter came before Administrative Law Judge Barbara L. Neilson for a prehearing telephone conference call on June 25, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on June 14, 2013. Conservation Officer Jackie Glaser participated in the Conference on behalf of the Department of Natural Resources (DNR). Steven Matthew Bedell participated on his own behalf without counsel.

The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on June 25, 2013.

STATEMENT OF THE ISSUE

The issue presented in this matter is whether Mr. Bedell was properly issued a civil citation under Minn. Stat. § 84D.13 on May 7, 2013, for transporting zebra mussels. The Administrative Law Judge concludes that Mr. Bedell committed the violation as alleged, and recommends that the Commissioner affirm the Citation.

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

FINDINGS OF FACT

1. During the fall of 2012, Steven Bedell removed his boat from Lake Minnetonka and transported it to his residence, which is located approximately three-quarters of a mile from Lake Minnetonka. He did not clean the boat at that time. He stored the boat at his residence over the winter.¹

¹ Testimony (Test.) of Steven Bedell.

2. On May 7, 2013, Mr. Bedell took his boat out of storage and transported it on public roads from his residence to Lake Minnetonka. He did not clean the boat prior to transporting it.²

3. Nick Raishus, a Level 2 Watercraft Inspector with DNR, was at the Spring Park Bay access to Lake Minnetonka that day, along with another DNR Level 2 Watercraft Inspector. After inspecting Mr. Bedell's boat, Mr. Raishus called Conservation Officer Jackie Glaser and reported to her that Mr. Bedell's boat was full of zebra mussels.³

4. Officer Glaser arrived at the Spring Park Bay access a short time later. When she arrived, Mr. Bedell and the inspectors were in the process of cleaning Mr. Bedell's boat. Officer Glaser began to assist and saw a large number of zebra mussels attached to the back transom area of the boat. She collected a sufficient number of zebra mussels to fill a one-half gallon plastic bag.⁴

5. Officer Glaser issued Civil Citation No. 172321 to Mr. Bedell for unlawfully transporting zebra mussels on a public road. The penalty imposed was \$500.⁵

6. Mr. Bedell timely appealed the citation and asked that it be withdrawn.⁶

Based on the 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 of Natural Resources pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. Minnesota Statutes § 84D.05, subd. 1, prohibits persons from transporting or introducing a prohibited invasive species (with certain exceptions not applicable here).

3. DNR Conservation Officers are authorized to issue a citation to a person who unlawfully transports a prohibited invasive species. Effective July 1, 2012, a \$500 fine may be imposed for a violation.⁷

4. 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.

² *Id.*

³ Test. of Jackie Glaser.

⁴ *Id.*

⁵ Civil Citation No. 172321; Minn. Stat. § 84D.13, subd. 5(a)(c).

⁶ See May 17, 2013, Appeal Letter.

⁷ See Minn. Stat. § 84D.13, subd. 5(3), as amended by Minn. Laws 2012, chapter 272, section 15 (effective July 1, 2012).

5. Mr. Bedell filed a timely appeal and request for hearing.
6. The DNR has substantiated the violation. Under the circumstances of this case, it is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 172321.
7. The attached Memorandum provides further explanation of the reasons for these Conclusions and is incorporated in the Conclusions.

Based on 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. 172321 issued to Steven M. Bedell be AFFIRMED.

Dated: July 29, 2013

s/Barbara L. Neilson
BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may within those five days comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

In his appeal letter and testimony during the telephone conference call, Mr. Bedell indicated that he is a DNR-certified Lake Service Provider who removes and installs docks on Lake Minnetonka and alleged that he followed the same procedure with his boat as he follows with the docks. He maintained that his boat has been used only on Lake Minnetonka during the past nine years, and pointed out that his boat had been out of the water for more than sixty days prior to the date the Citation was issued. He also contended that the zebra mussels that were found on his boat were located in a very small area at the rear of the boat, were not obvious to the naked eye, and were dead. He contended that the watercraft inspectors repeatedly told him that this situation involved a “gray area” under the invasive species statute that perhaps was not a “ticketable offense” and questioned why the Conservation Officer did not merely give him a warning. He alleged that no inspectors were present at the Spring Park Bay access or several others during the next two days and complained that he had been the victim of selective enforcement. Mr. Bedell also said that, as a third-generation Lake Minnetonka resident, no one cares more about the lake than he does.

Officer Glaser maintained that Minnesota law prohibits the transportation of zebra mussels on public roads, regardless of whether they are dead or alive, and requires all boats to be cleaned off before they transported to a lake. She disagreed with Mr. Bedell’s assertion that the zebra mussels on his boat were difficult to detect, and testified that she could easily see them. Although Officer Glaser acknowledged that she had seen Mr. Bedell’s boat on Lake Minnetonka in prior years, she emphasized that DNR inspectors and conservation officers have no way to know or confirm where boats have been used in the past. She further indicated that Mr. Bedell’s Lake Service Provider permit does not apply to the transportation of his boat or exempt him from the requirements of state law. At the conclusion of the conference call, Officer Glaser stated that she had not heard anything that persuaded her that the citation should be withdrawn or reduced to a warning.

Under all of the circumstances, the Administrative Law Judge must recommend that the citation be affirmed. Minnesota law generally prohibits individuals from transporting invasive species⁸ and, under the DNR’s rules, prohibited invasive species are clearly defined to include zebra mussels.⁹ The statute and rules do not suggest that the prohibition applies only to live zebra mussels. Mr. Bedell does not dispute that zebra mussels were present on the boat at the time he transported it on public roads from his residence to the Spring Park Bay access on Lake Minnetonka. As a result, the DNR has made an adequate demonstration that the violation occurred.

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⁸ Minn. Stat. §§ 84D.05, subd. 1, and 84D.13, subd. 4(1).

⁹ Minn. R. 6216.0250, subp. 4(B).