

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 Civil
Citation No.CV 133056 issued to
Garett Stainbrook

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

This matter came before Administrative Law Judge Steve M. Mihalchick for a prehearing telephone conference call on September 19, 2013, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on September 9, 2013. Conservation Officer Adam Block (CO Block) appeared on behalf of the Department of Natural Resources (DNR) without counsel. Appellant Garett Stainbrook appeared on his own behalf without counsel.

During the telephone conference on September 19, 2013, the parties agreed to treat the telephone conference as the formal hearing on the citation. Sworn testimony was taken and argument was presented during the hearing. The record closed that day upon adjournment of the hearing.

STATEMENT OF THE ISSUES

Whether Appellant violated Minn. Stat. §§ 84D.10, subd. 4(b), by failing to have a drain plug removed or open when transporting water-related equipment.

Whether \$100 is the appropriate civil penalty for the violation under and 84D.13, subd. 5(a)(6).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Appellant committed a violation of Minn. Stat. § 84D.10, subd. 4(b), and that a civil penalty of \$100 is not unreasonable. Therefore, the Administrative Law Judge recommends that the Commissioner affirm the citation and fine.

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

FINDINGS OF FACT

1. At approximately 8:00 a.m., on Sunday, August 4, 2013, Appellant drove his vehicle and boat and trailer into the entrance of St. Croix Bluffs Regional Park with the boat's bilge drain plug in place. The park is in Washington County in Minnesota. It is a popular spot for launching boats. Conservation Officers were working at the park entrance and along the road to the access ramp that day watching for violations of laws related to transporting aquatic invasive species in boats and other water-related equipment in Minnesota.¹

2. Appellant was observed entering the park with the drain plug in by Conservation Officer Vuthy Pril, who radioed the information to the other Conservation Officers, including CO Block. As he continued on and approached the access, Appellant was stopped by CO Block and another Conservation Officer. CO Block explained to Appellant that he was being stopped because he had driven into the access area with the bilge drain plug installed, in violation of Minn. Stat. § 84D.10, subd. 4(b).²

3. Appellant admitted at the time, and during the telephone hearing, that he had indeed driven into the park with the drain plug installed in his boat. He did so because he lives less than five miles from the park and knows how congested weekend traffic is entering the park and launching boats. Therefore, to save time at the access, he made sure his boat was clean and dry at home, put the bilge plug in at home, then drove to the park. His boat was clean and dry when he was stopped by CO Block, but he had the plug in well before he reached the access.³

4. Appellant stated that he understands the purpose of the law, but felt that he deserved some leniency, perhaps just a warning citation, because his boat was clean and dry as he headed for the water. He also stated that he is a working man with two children and the \$100 fine is a considerable hardship for him.⁴

5. Based upon the report from CO Pril and his own observations, CO Block issued Civil Citation No. 133056 to Appellant for failure to open or remove a drain plug while transporting water-related equipment.⁵ The penalty imposed was \$100.⁶

6. Appellant timely appealed the citation in a letter to the Commissioner of the DNR.⁷

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

¹ Citation No. CV 133056 attached to DNR request for assignment of an Administrative Law Judge; Testimony (Test.) of A. Block and G. Stainbrook.

² Test. of A. Block and G. Stainbrook.

³ Test. of G. Stainbrook.

⁴ Appeal letter and Test. of G. Stainbrook.

⁵ Citation No. CV 133056; Test. of A. Block and G. Stainbrook.

⁶ Citation No. CV 133056.

⁷ DNR request for assignment of an Administrative Law Judge.

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, 84D.13, subd. 8, and 116.072, subd. 6.

2. Minnesota Statutes section 84D.10, subdivision 4(b) requires that drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment. "Water-related equipment" includes boats.⁸

3. Conservation Officers are authorized to issue warnings or civil citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b).⁹ If a civil citation is issued, the statutorily-prescribed fine for a violation of Minn. Stat. § 84D.10, subd. 4(b) is \$100.¹⁰ The civil citation and penalty issued by CO Block to Appellant was authorized by law.

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be brought under the procedures set forth in Minn. Stat. § 116.072, subd. 6, provided that a hearing is requested within 15 days after receipt of the citation.

5. Appellant filed a timely appeal and request for hearing.

6. At a hearing on a violation of Minn. Stat. ch. 84D, the burden is on the DNR to show by a preponderance of the evidence that the appellant violated the statute cited.¹¹

7. Appellant violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

8. Under 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, based upon the factors in subdivision 2,¹² the amount of the penalty is unreasonable.

9. The penalty amount of \$100 is not unreasonable.

10. 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.

⁸ Minn. Stat. § 84D.02, subd. 18a (2012).

⁹ Minn. Stat. § 84.13, subd. 4 (2012).

¹⁰ Minn. Stat. § 84D.13, subd. 5(a)(6) (2012).

¹¹ Minn. R. 1400.7300, subp. 5 (2012).

¹² Minn. Stat. § 116.072, subd. 2 (2012), provides that, in determining the amount of penalty, the commissioner may consider: (1) the willfulness of the violation; (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state; (3) the history of past violations; (4) the number of violations; (5) the economic benefit gained by the person by allowing or committing the violation; and (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.

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. CV 133056 issued to Appellant be **AFFIRMED**.

Dated: October 15, 2013

s/Steve M. Mihalchick

STEVE M. MIHALCHICK
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 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 an appeal of a DNR civil citation, the burden of proof is on the Conservation Officer to prove by a preponderance of the evidence that a violation of law occurred.¹³ A preponderance of the evidence means that it must be established by a greater weight of the evidence.¹⁴ "It must be of a greater or more convincing effect and ... lead you to believe that it is more likely that the claim...is true than...not true."¹⁵ The preponderance of the evidence standard is less than the clear and convincing standard, and less than the proof beyond a reasonable doubt standard used in criminal trials.¹⁶

Here, a preponderance of the evidence establishes that Appellant transported his boat into the public access while its bilge plug was inserted. He was observed doing so by CO Pril and CO Block. Appellant admits that he did so. Therefore, the DNR has met its burden of proving that Appellant violated Minn. Stat. § 84D.10, subd. 4(b).

Appellant admitted that he drove to the park from his nearby home with the drain plug in, but argued that he should have received only a warning because his boat was

¹³ Minn. R. 1400.7300, subp. 5.

¹⁴ 4 Minnesota Practice, CIV JIG 14.15 (2012).

¹⁵ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

¹⁶ *State v. Shamp*, 422 N.W.2d 520, 525 (Minn. Ct. App. 1988), *citing Weber v. Anderson*, 269 N.W.2d 892, 895 (Minn. 1978), *review denied* (Minn. June 10, 1988).

clean and dry and he was transporting no aquatic invasive species. He also argued that he would much prefer to do some volunteer work with the DNR rather than paying a monetary fine.

The choice between issuing a warning and a civil penalty is given to the Conservation Officer by Minn. Stat. § 84D.13, subd. 4. The violation was sufficiently significant to justify the civil citation. Moreover, the DNR has moved to a campaign of check point enforcement to make the law more well-known to boaters.

While a \$100 fine is a significant “sting” to Appellant, it is the amount specified by Minn. Stat. § 84D, subd. 5(a)(6), and is reasonable in relation to the harm that the DNR seeks to prevent. The civil citation and fine should be affirmed.

S. M. M.