

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 Paul Kenneth
Bergquist; Citation No. 123604

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

This matter came on for a hearing, conducted via telephone, before Administrative Law Judge Jim Mortenson (ALJ) on July 10, 2014.

Conservation Officer Lt. Brent Speldrich appeared at the hearing for the Department of Natural Resources (DNR). Paul Bergquist (Bergquist) appeared at the hearing on his own behalf and without counsel. The Office of Administrative Hearings (OAH) record closed upon confirmation of receipt of all exhibits on July 14, 2014.

STATEMENT OF ISSUE

Whether Bergquist was properly issued a citation and \$100 penalty for failing to remove the drain plug from his boat?

SUMMARY OF RECOMMENDATION

The ALJ concludes that Bergquist was properly issued a citation with a mandatory penalty of \$100 for transporting his boat with the drain plug in place and recommends that the Commissioner affirm the Citation.

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

FINDINGS OF FACT

1. Bergquist owns a small boat that he has only used in Canada for the last ten years.¹ The boat was in the water at Finlayson Resort at Atikokan, Ontario, in May 2014, and the motor was not working properly as a result of hitting a rock.² Bergquist removed the boat from the water on May 26, 2014.³ He drained the boat and replaced

¹ Testimony of Paul Bergquist.

² *Id.*

³ *Id.*

the drain plug before returning to Minnesota on May 26, 2014.⁴ The boat was dry when he transported it home in Saginaw, Minnesota, from Canada.⁵

2. On May 27, 2014, Bergquist took his boat from his home to Superior, Wisconsin for repairs.⁶ The boat was covered with a tarp and it rained considerably during the time the boat was in Superior.⁷ The boat cover permitted water to leak into the boat well.⁸

3. On June 5, 2014, following the completion of repairs to the boat motor, Bergquist picked up his boat and was returning to home in Minnesota.⁹ He was pulled over by Lt. Speldrich on Stebner Road in Hermantown, Minnesota, because the boat's drain plug was in.¹⁰

4. Bergquist advised Lt. Speldrich that he was unaware that the drain plug must be removed when transporting a boat.¹¹ He also advised Lt. Speldrich that he was bringing the boat back from having the motor repaired, that the boat was last in the water in Canada, and that the cover had been on the boat since he removed it from Canada.¹²

5. Lt. Speldrich asked Bergquist to remove the drain plug, which he did, and between three and five gallons of water came out of the boat.¹³ Green and black substances, appearing to be mold or aquatic plants, also came out of the boat.¹⁴

6. Bergquist advised Lt. Speldrich that the water in the boat was likely from being in the rain.¹⁵

7. Lt. Speldrich gave Bergquist a civil citation for failing to remove the drain plug.¹⁶ The citation incorrectly cited Minn. Stat. § 84D.10 subd. 4(a) (failure to drain water-related equipment holding water by removing the drain plug) rather than Minn. Stat. § 84D.10 subd. 4(b) (transporting water-related equipment with a drain plug in place).¹⁷ The citation included a penalty of \$100.00.¹⁸

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*; Exhibits 5 and 100.

¹⁰ Test. of Brent Speldrich.

¹¹ *Id.*; Test. of P. Bergquist; Ex. 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Ex. 6, Ex. 8.

¹⁷ *Id.*

¹⁸ Ex. 8.

8. Bergquist timely appealed the citation on June 12, 2014.¹⁹

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. 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.²⁰

3. DNR conservation officers are authorized to issue warnings, citations, or criminal penalties to a person who fails to remove plugs from water-related equipment when transporting that equipment.²¹ A civil citation for failing to have drain plugs removed or open while transporting water-related equipment requires a \$100.00 penalty.²²

4. Bergquist transported his boat with the drain plug in place and was properly issued a civil citation with a \$100.00 penalty.

5. Appeals of civil citations must be made by notifying the Commissioner of DNR of a request for a hearing with 15 days after receipt of the citation.²³ If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.²⁴

6. Bergquist timely requested a hearing, appealing the civil citation he received on June 5, 2014.

Based on the Conclusions, and for the reasons set forth in the Memorandum below which is incorporated in the Conclusions, the ALJ makes the following:

¹⁹ Handwritten letter of appeal, dated June 12, 2014; Letter from Kanieski to Bergquist, dated June 24, 2014.

²⁰ Minnesota Statutes § 84D.10, subd. 4(b).

²¹ Minn. Stat. § 84D.13, subds. 3 and 4(4).

²² Minn. Stat. § 84D.13, subd. 5(a)(6).

²³ Minn. Stat. § 84D.13, subd. 8.

²⁴ *Id.*

RECOMMENDATION

The ALJ recommends that Invasive Species/Infested Waters Civil Citation No. 123604 issued to Paul Kenneth Bergquist be AFFIRMED.

Dated: July 16, 2014

s/Jim Mortenson

JIM MORTENSON
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

The material facts of this case are not in dispute. Bergquist had his drain plug in while transporting his boat in Minnesota. Bergquist's primary argument is that the water in the boat was from the rain, not from a lake. Assuming this is true, it is immaterial because the citation was for the drain plug not being removed, not for the transportation of infested water.²⁵

The citation provided to Bergquist specifically states it is for the failure "to remove drain plug." It incorrectly cites to the provision of law requiring a drain plug to be removed, and the water drained, from water-related equipment when leaving the waters of the state.²⁶ The correct citation is the subsequent provision prohibiting the transportation of water-related equipment without the drain plug removed.²⁷ Bergquist's boat was not in a Minnesota lake in the past ten years, so he has not had the opportunity to leave "waters of the state" without draining the boat, which is the precursor of the violation in Minn. Stat. § 84D10, subd. 4(a). This minor error is immaterial given that not only had Lt. Bergquist advised Bergquist that the plug could not be in while transporting the boat, but that the citation specifically refers to the failure to remove the plug. Thus, there are no errors warranting a reversal of the citation and mandatory penalty provided to Bergquist.

J. R. M.

²⁵ See Minn. Stat. § 84D.13, subd. 4(5).

²⁶ Minn. Stat. § 84D.10, subd. 4(a).

²⁷ See Minn. Stat. § 84D.10, subd. 4(b).