

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

In the Matter of the Invasive  
Species/Infested Waters Civil Citation of  
Stephen John Leicher

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

The above-entitled matter came before Administrative Law Judge Barbara Case for a hearing on September 26, 2014. The record closed on September 26, 2014.

Conservation Officer Lieutenant Robert Haberman (Officer) appeared on behalf of the Minnesota Department of Natural Resources (Department). Respondent Stephen John Leicher (Respondent) appeared on his own behalf.

**STATEMENT OF THE ISSUES**

The issue presented in this matter is whether Stephen John Leicher was properly issued a civil citation under Minn. Stat. § 84D.05, subd. 1, on July 23, 2014 for unlawfully transporting his watercraft with one or more zebra mussels attached.

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that the Department established by a preponderance of the evidence that Respondent violated Minn. Stat. § 84D.05, subd. 1, and therefore recommends that the Commissioner uphold the fine of \$500.

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

**FINDINGS OF FACT**

1. On July 23, 2014 Respondent was boating with a 20 foot pontoon boat on Lake Ossawinnamakee in Crow Wing County.<sup>1</sup>
2. Wanting to boat on nearby Cross Lake, Respondent pulled his boat out of the water and transported it by trailer approximately two miles to the southwest public

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<sup>1</sup> Testimony of Stephen Leicher.

access landing at Cross Lake. After pulling the boat out of the water, he checked the boat but did not notice any weeds or invasive species on the boat at that time.<sup>2</sup>

3. Respondent proceeded to the public landing area at Cross Lake and pulled his boat through the horseshoe shaped drive. Once there, he was approached by two Department watercraft inspectors, Inspector Connor (Connor) and Inspector Foley (Foley).<sup>3</sup>

4. Both Connor and Foley are trained watercraft inspectors. They are trained to, among other things, identify prohibited invasive species.<sup>4</sup> Foley is extremely knowledgeable about invasive species and specifically about zebra mussels.<sup>5</sup>

5. The zebra mussel (*Dreissena* spp.) is a prohibited invasive species.<sup>6</sup>

6. Connor and Foley use an identical survey for every boater they question. The survey questions are loaded onto a laptop which also allows them to take one picture of the watercraft of concern. Connor and Foley approached Respondent and asked him the survey questions.<sup>7</sup> As a result of asking the questions, they learned that the boat had been in Lake Ossawinnamakee for approximately two months. Lake Ossawinnamakee is known to be contaminated with zebra mussels. Cross Lake is also known to be contaminated with zebra mussels.<sup>8</sup>

7. Connor and Foley identified zebra mussels on Respondent's pontoon boat. There were between 10 and 15 zebra mussels that were between one-quarter to one inch long.<sup>9</sup>

8. Respondent takes seriously his responsibility to not transport invasive species. He inspected his boat for weeds and zebra mussels after he removed it from Lake Ossawinnamakee and he found none. He was surprised that zebra mussels were found attached to his boat and he did not knowingly or willfully transport them.<sup>10</sup>

9. Connor and Foley explained to Respondent that before he launched his boat it would have to be cleaned. Respondent allowed the inspectors to clean the boat for him with equipment they had for that purpose at the boat landing. The inspectors allowed Respondent to launch his boat and continue boating after they had cleaned the boat.<sup>11</sup>

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<sup>2</sup> Test. of S. Leicher.

<sup>3</sup> *Id.*

<sup>4</sup> Testimony of Inspector Jessamyn Foley.

<sup>5</sup> Test. of J. Foley.

<sup>6</sup> Minn. R. 6216.0250, subp. 4.E.

<sup>7</sup> Test. of J. Foley.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> July 31, 2014 letter and Test. of S. Leicher.

<sup>11</sup> *Id.*

10. Later the same day, Foley called her supervisor, Water Resource Enforcement Officer Robert Haberman, to report the results of the inspection.<sup>12</sup>

11. On July 23, 2014, Officer Haberman issued to Respondent, by mail, Civil Citation No. 201302. The citation assessed a \$500 penalty for transporting prohibited invasive species.<sup>13</sup>

12. On July 31, 2104 Respondent filed a timely appeal of the citation. In his testimony he emphasized that he agrees with the need to correctly manage invasive species and takes his obligation to comply with the law seriously. However, he asserted that the fine imposed was excessive and urged that the citation be reduced or withdrawn.<sup>14</sup>

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 section 84D.05, subdivision 1, prohibits persons from transporting prohibited invasive species.

3. 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. Respondent filed a timely appeal and request for hearing.

4. Under the facts of this case, it is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 118077.

5. Pursuant to Minn. Stat. § 84D.13, subds. 3, 4 and 5, Conservation Officers may choose to charge a boater who transports zebra mussels with a misdemeanor or with warning or civil citation. If a civil citation is chosen the penalty amount must be \$500.

Based on the Conclusions of Law, and for the reasons set forth in the Memorandum below which is incorporated in the Conclusions, the Administrative Law Judge makes the following:

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<sup>12</sup> Test. of J. Foley.

<sup>13</sup> Civil citation 201302; Test. of Robert Haberman and S. Leicher.

<sup>14</sup> Test. of S. Leicher.

## RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 201302 issued to Stephen John Leicher be **AFFIRMED** and the penalty be upheld.

Dated: October 15, 2014

s/Barbara J. Case  
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BARBARA J. CASE  
Administrative Law Judge

Reported: Digitally Recorded  
No transcript prepared

## 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 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 citation, the burden of proof is on the conservation officer to prove by a preponderance of the evidence that a violation of law occurred.<sup>15</sup> Here, a preponderance of the evidence establishes that Respondent transported his boat to the Cross Lake public access with zebra mussels attached to his boat. Therefore, the Department has met its burden of proving that Respondent was in violation of Minn. Stat. § 84D.05, subd. 4(b). In addition, the \$500 fine is required by statute.

As Respondent acknowledged, the enforcement of laws to prevent the spread of aquatic invasive species is important to the state of Minnesota, its waters and natural resources, and to its people and economy. Patrolling public accesses to state waters is one of the best ways the Department can prevent the spread of invasive species. The Respondent questioned the amount of the penalty and argued that Officer Haberman had the option to issue a warning or to issue a \$300.00 fine and a citation for a misdemeanor. Officer Haberman issued the fine because the fine is set forth in statute where a civil citation has been issued, and because the legislature established the fine in order to address an increase in zebra mussels and in violations related to them. Further, Officer Haberman assumed that most individuals would prefer a civil citation with a higher fine to a criminal citation with a lower fine. Respondent did not correct or

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<sup>15</sup> Minn. R. 1400.7300, subp. 5.

contradict that assumption at the hearing. While a \$500 fine is significant to an individual cited, it is reasonable in relation to the harm that the Department seeks to prevent. Accordingly, it is respectfully recommended that the citation and fine be affirmed.

**B. J. C.**