

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 Daniel Joseph
Lundquist, Citation No. 172263

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

This matter came before Administrative Law Judge Ann O'Reilly for a prehearing telephone conference call on September 26, 2014, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on September 12, 2014. Conservation Officer Steve Walter appeared on behalf of the Minnesota Department of Natural Resources (DNR). Appellant Daniel Lundquist (Appellant or Lundquist) appeared on his own behalf and without counsel.

During the telephone conference on September 26, 2014, the parties agreed to conduct a formal hearing on the citation. Both Officer Walter and Appellant provided sworn testimony. The parties agreed that the Administrative Law Judge could make a recommendation based on the record created during the September 26, 2014 hearing. The record closed on that date, at the conclusion of the hearing.

STATEMENT OF THE ISSUE

The issue presented in this matter is whether Appellant was properly issued a civil citation under Minn. Stat. §§ 84D.10, subd. 4(b) and 84D.13, subd. 5(a)(6) for failing to have the drain plug removed or open when transporting water-related equipment.

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the DNR has established by a preponderance of the evidence that Appellant committed a violation of Minn. Stat. § 84D.10, subd. 4(b), and, therefore, 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. On July 12, 2014, Conservation Officer Steve Walter was working as part of a three-officer DNR team patrolling the Gray's Bay public access to Lake Minnetonka in Minnetonka, Minnesota.¹ Conservation Officers Walters, Thephong Le, and Brent Grewe were at the landing to observe the boats being launched or removed at the access.²

2. The conservation officers were particularly interested in ensuring that boats being launched into or removed from the lake follow all conservation requirements to ensure that aquatic invasive species³ not be transported by water-related equipment into or out of the lake.⁴ Certain aquatic invasive species, such as Zebra Mussels and Eurasian Water Milfoil, are transportable in the bilge water of watercraft.⁵ Thus, to ensure invasive species are not transported from one body of water to another, Minnesota state law requires that drain plugs on boats be open or removed when the boat is being transported, so as to let all water drain from the boat before the boat is launched in other waters.⁶

3. At approximately 10:30 a.m. on July 12, 2014, Officer Walter observed a vehicle pull into the public access from Highway 101.⁷ The vehicle was hauling a white Sea Ray boat with Minnesota registration number 7486HX.⁸

4. As the vehicle and boat drove past, Officer Walter observed that the drain plug on the back of the watercraft was not removed.⁹

5. Officer Walter approached the vehicle and spoke with the driver, Appellant Daniel Lundquist, who was preparing the boat for launch into the lake.¹⁰ Lundquist stated that the boat belonged to his father-in-law Richard Wagner who lived nearby in Minnetonka.¹¹ Lundquist was using the boat for the day.¹²

6. Lundquist explained that his father-in-law advised him to insert the bilge plug before transporting the boat to the landing so as not to forget and flood the boat.¹³

¹ Testimony (Test.) of Steve Walter.

² *Id.*

³ "Invasive species" are defined as "[N]onnative species that: (1) causes or may cause economic or environmental harm or harm to human health; or (2) threatens or may threaten natural resources or the use of natural resources in the state." Minn. Stat. § 84D.01, subd. 9a (2014).

⁴ Test. of S. Walter. See also, http://www.dnr.state.mn.us/invasives/index_aquatic.html.

⁵ *Id.*

⁶ *Id.* See also, Minn. Stat. § 84D.10, subd. 4(b) (2014).

⁷ Test. of S. Walter; Citation No. 172263.

⁸ *Id.*

⁹ Test. of S. Walter.

¹⁰ *Id.*

¹¹ Test. of S. Walter; Test. of Daniel Lundquist; Letter from Daniel Lundquist to the Commissioner of Natural Resources, Tom Landwehr (July 24, 2014).

¹² Test. of D. Lundquist.

¹³ *Id.*

7. Officer Walter checked the boat's registration and learned that the watercraft was registered to Debra K. Wagner.¹⁴

8. Lundquist then removed the plug and no water came out of the boat.¹⁵ Officer Walter concedes that the boat's bilge was dry and that no water was being transported by the boat.¹⁶

9. Officer Walter advised Lundquist that it was unlawful to transport a boat if the drain plug is not open or removed, even if no water is left in the boat.¹⁷ Lundquist requested that he be issued a warning rather than a citation.¹⁸

10. Despite Lundquist's request, Officer Walter issued Lundquist a Civil Citation, No. 172263, for failing to open or remove a drain plug while transporting water-related equipment.¹⁹ The penalty imposed was \$100.²⁰

11. Both Officer Walter and Lundquist noted that the exchange was professional and courteous.²¹

12. Lundquist timely appealed the citation and requested that it be withdrawn.²²

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, 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.²³

3. DNR conservation officers are authorized to issue citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b).²⁴

¹⁴ Test. of S. Walter.

¹⁵ Test. of S. Walter; Test. of D. Lundquist.

¹⁶ *Id.*

¹⁷ Test. of S. Walter.

¹⁸ Test. of D. Lundquist.

¹⁹ Civil Citation No. 172263.

²⁰ *Id.* See also, Minn. Stat. § 84D.13, subd. 5(a)(5).

²¹ Test. of S. Walter; Test. of D. Lundquist.

²² See Letter from Lundquist to the Commissioner of Natural Resources (July 24, 2014).

²³ Minn. Stat. § 84D.02, subd. 18a (2014).

²⁴ Minn. Stat. § 84.13 (2014).

4. Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be brought pursuant to 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. The 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.²⁵

7. The DNR has established by a preponderance of the evidence that the Appellant violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

8. The Administrative Law Judge, therefore, finds that it is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 172263.

9. The statutorily-prescribed fine for a violation of Minn. Stat. § 84D.10, subd. 4(b) is \$100.²⁶

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, based upon the factors in subdivision 2,²⁷ the amount of the penalty is unreasonable.

11. The Administrative Law Judge finds that the penalty amount of \$100 is not unreasonable.

12. The attached Memorandum provides further explanation of the reasons for these Conclusions and is incorporated herein.

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

²⁵ Minn. R. 1400.7300, subp. 5 (2014).

²⁶ Minn. Stat. § 84D.13, subd. 5(a)(6) (2014).

²⁷ Minnesota Statutes section 116.072, subdivision 2 (2014), 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.

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 172263 issued to Daniel Lundquist be **AFFIRMED**.

Dated: October 14, 2014

s/Ann C. O'Reilly

ANN C. O'REILLY
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 (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 comments. The final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

In support of his appeal, Lundquist makes the following arguments:

- (1) He was not the owner of the boat;
- (2) The owner of the boat advised him to put the plug in the boat before transporting the watercraft to the public landing;
- (3) The boat's bilge was dry and there was no risk that the boat was carrying invested water;
- (4) The boat was only transported a short distance to the public access; and
- (5) He was unaware of regulations requiring that the plug be inserted while transporting a boat to a landing.²⁸

²⁸ Test. of D. Lundquist; Lundquist letter dated July 24, 2014.

Ownership of the Watercraft

The record establishes that Lundquist is not the owner of the boat that he was transporting.²⁹ However, the law does not require that a citation be issued only to the owner of the watercraft.

Minnesota Statutes section 84D.10, subdivision 4 provides that all persons transporting water-related equipment remove or open all drain plugs, regardless of who holds title to the equipment. The subdivision contains two separate requirements. Subdivision 4(a) requires that the drain plugs be removed when leaving waters of the state and before transporting the water-related equipment off the water access site or riparian property. Subdivision 4(b) requires that drain plugs be removed or open anytime that the equipment is being transported.³⁰ Appellant was cited for the violation of subdivision 4(b).

Under both parts of Minn. Stat. § 84D.10, subd. 4, the obligation is on the party transporting the water-related equipment, not the owner of such equipment. Consequently, the fact that Lundquist was not the owner of the boat does not relieve him of liability for the drain plug violation. Because he was the party transporting the boat to the public access, Lundquist was the proper party cited for the violation of Minn. Stat. § 84D.10, subd. 4(b).

Lack of Knowledge of the Law

Lundquist next asserts that he should not be found responsible for the violation because he was instructed by the owner of the boat to put the plug in place before driving to the public access. According to Lundquist, his father-in-law advised him to replace the plug before transporting the boat to the landing because the law only requires that the plug be removed when removing the boat from the water.³¹ Lundquist's father-in-law's understanding of the law was incorrect.

As set forth above, Minn. Stat. § 84D.10, subd. 4 requires that drain plugs be removed or opened at all time while transporting the equipment to or from a water access. Thus, it is not enough that the plug be opened or removed when the boat is taken out of the water. The plug must remain open when transporting the boat.

The fact that Lundquist was misadvised by his father-in-law does not negate his responsibility. Nor does Lundquist's ignorance of the law relieve him of his legal obligation. As the party transporting the watercraft, Lundquist was required to remove or open the drain plug while the boat was being transported.

²⁹ Test. of D. Lundquist; Test. of S. Walter.

³⁰ Minn. Stat. § 84D.10, subd. 4(a) and (b) (2014).

³¹ Test. of D. Lundquist.

Potential for Transmission of Aquatic Invasive Species

Finally, Lundquist asserts that he should not be held responsible for a violation of Minn. Stat. § 84D.10, subd. 4(b), because the boat's bilge did not contain water. According to Lundquist, the purpose of the law is to prevent boats from transporting infested waters from one lake to another. Because his boat was dry, he was not transporting infested waters and, thus, should not be cited for a violation of the law.

While it is true that the boat's bilge was dry, the law does not provide any exceptions to the drain plug rules. The law requires that all persons transporting water-related equipment remove or open drain plugs while the watercraft is being transported. There are simply no exceptions to that requirement.

The express language of the statute requires that *all* water-related equipment have drain plugs open or removed during transport. In order to prevent the spread of harmful invasive species, it is necessary that the law apply uniformly and consistently to all water-related equipment. Thus, there are no exceptions to the requirement that all boats being transported have their drain plugs open or removed. After all, it takes only one boat to infest an entire lake.

Although Lundquist asserts mitigating facts as to why his violation of law did not present a risk to Lake Minnetonka, he has not established any evidence to rebut the fact that he was, indeed, transporting a boat with its drain plug intact. Accordingly, the facts support the issuance of the citation and the imposition of the fine.

The DNR Satisfied its Burden of Proof

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.³² A preponderance of the evidence means that it must be established by a greater weight of the evidence.³³ "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."³⁴ 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.³⁵

Here, a preponderance of the evidence establishes that Lundquist transported his boat to a public access while its bilge plug was inserted. Therefore, the DNR has met its burden of proving that Lundquist was in violation of Minn. Stat. § 84D.10, subd. 4(b).

In addition, the DNR has established that the \$100 fine is reasonable. The enforcement of laws to prevent the spread of aquatic invasive species is important to the waters and natural resources of the State, and to the people and economy of

³² Minn. R. 1400.7300, subp. 5 (2014).

³³ 4 Minnesota Practice, CIV JIG 14.15 (2014).

³⁴ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

³⁵ *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).

Minnesota. Patrolling public accesses to state waters is one of the best ways the DNR can prevent the spread of invasive species to uninfested waters. While a \$100 fine has a certain “sting” to an individual cited, it is reasonable in relation to the harm that the DNR seeks to prevent. Accordingly, it is respectfully recommended that the citation and fine be affirmed.

A. C. O.