

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 James Daniel
Campion; Citation No. 201330

**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 September 24, 2014.

Conservation Officer Kevin Neitzke appeared at the hearing for the Department of Natural Resources (DNR). James Campion (Campion) appeared at the hearing on his own behalf and without counsel. These individuals were the only witnesses. No documentary evidence was offered. The Office of Administrative Hearings (OAH) record closed on September 24, 2014.

STATEMENT OF ISSUE

The issue is whether Campion was properly issued a citation and \$100 penalty for failing to remove the drain plug from the boat he brought to Lake Marion in Lakeville, Minnesota, on July 13, 2014?

SUMMARY OF RECOMMENDATION

The ALJ concludes that Campion was properly issued a citation with a mandatory penalty of \$100 for transporting a 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. Campion's wife owns a boat that was used during a camping trip on the Mississippi River in June 2014.¹

¹ Testimony of James Campion.

2. Before moving the boat home to Lakeville, Campion instructed his wife to remove the boat's drain plug and any weeds.² There is no evidence the plug was removed.

3. The Mississippi River is a waterway heavily infested with various invasive species.³

4. Campion brought the boat home to Lakeville from the camping trip on the Mississippi River and parked it with a cover over it.⁴

5. The boat was next transported by Campion from his home to Lake Marion in Lakeville on July 13, 2014. Campion transported the boat with the drain plug in place.⁵ Campion pulled into the boat launch at 9:50 a.m.⁶

6. Officer Neitzke was at the Lake Marion boat launch on July 13, 2014, specifically to enforce invasive species laws.⁷

7. Officer Neitzke saw Campion arrive with the boat and saw that the boat's drain plug was in place.⁸ Officer Neitzke asked Campion to turn the trailered boat around and to remove the drain plug to check for water.⁹ Campion complied with the request.¹⁰

8. Officer Neitzke advised Campion that if there was no water in the boat Campion would only be given a warning for transporting the boat with the drain plug in place.¹¹

9. Water came out of the boat when the drain plug was removed, and Officer Neitzke provided Campion with a civil citation for transporting the boat with a drain plug in place.¹²

10. Campion timely appealed the citation, which was received by the Department on July 21, 2014.¹³

11. The Department initiated the hearing process on September 5, 2014.¹⁴

² *Id.*

³ Test. of Kevin Neitzke.

⁴ Test. of J. Campion.

⁵ *Id.*

⁶ *Id.*; Test. of K. Neitzke.

⁷ Test. of K. Neitzke.

⁸ *Id.*

⁹ *Id.*; Test. of J. Campion.

¹⁰ *Id.*

¹¹ Test. of K. Neitzke.

¹² *Id.*

¹³ Handwritten letter of appeal, dated July 18, 2014.

¹⁴ Letter of September 5, 2014, from Alex Gutierrez.

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.¹⁵

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.¹⁶ A civil citation for failing to have drain plugs removed or open while transporting water-related equipment requires a \$100.00 penalty.¹⁷

4. Campion transported a 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 within 15 days after receipt of the citation.¹⁸ If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.¹⁹

6. Campion timely requested a hearing.

7. The Department is required to provide an expedited hearing within 30 days of the filing of the request for a hearing.²⁰

8. The Department did not inform OAH of the need for a hearing in this case until September 5, 2014, 46 days following its receipt of Campion's appeal and request for hearing.

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

¹⁵ Minn. Stat. § 84D.10, subd. 4(b).

¹⁶ Minn. Stat. § 84D.13, subds. 3 and 4(4).

¹⁷ Minn. Stat. § 84D.13, subd. 5(a)(6).

¹⁸ Minn. Stat. § 84D.13, subd. 8.

¹⁹ *Id.*

²⁰ Minn. Stat. § 116.072, subd. 6.

RECOMMENDATION

The ALJ recommends that Invasive Species/Infested Waters Civil Citation No. 201330 issued to James Daniel Campion be AFFIRMED.

Dated: September 26, 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. Campion transported a boat in Minnesota with the drain plug in place. Campion argues that the boat was not his and that the water in the boat was from the rain, not from the river. Assuming both of these arguments are true, either is immaterial because: 1) there is no dispute Campion transported the boat with the drain plug in place; and 2) the citation was for the drain plug not being removed, not for the transportation of infested water.²¹

State law requires a civil penalty of \$100 for a civil citation for failing to have drain plugs removed while transporting water-related equipment.²² Had the citation been for transporting infested water, the penalty would have been for \$200.²³ Campion's argument that the boat was not his is without merit because the law does not require the citation to be issued to the owner of a boat, but rather, to the person transporting it.²⁴

It is noteworthy that Campion also argues that the water in the boat was rain water when: 1) he never removed the drain plug after the boat's prior use in the Mississippi River (he advised his wife to do so, but there is no evidence she did); 2) he never checked the boat for water (he testified he advised his wife to do so); and 3) he claimed in his appeal letter that he replaced the boat's drain plug before he left for Lake Marion because he wanted to be sure it was in place (the boat would not have accumulated any water from rain or river if the plug had been removed until the day he

²¹ See Minn. Stat. § 84D.13, subd. 4(5).

²² Minn. Stat. § 84D.13, subd. 5(6).

²³ Minn. Stat. § 84D.13, subd. 5(7).

²⁴ Minn. Stat. § 84D.13, subd. 4(4).

brought the boat to Lake Marion and the boat was covered while parked.) Thus, these arguments hold little water, unlike Campion's wife's boat, which disgorged water when the plug was removed when Campion arrived at the Lake Marion boat launch. Campion is fortunate he was given only one citation for \$100 rather than two totaling \$300.

It must also be noted that the Department failed to follow the law when it did not ensure Campion's appeal was timely heard. The Department is advised to put procedures in place to comply with Minnesota Statute § 116.072, subd. 6, when appeals of civil citations of Minn. Stat. § 84D.13 are made, so that hearings may be held within 30 days of the Department's receipt of appeals, in compliance with the statute. In this case, because Appellant admitted he transported the boat to Lake Marion with the drain plug in place, there is no reason to not affirm the citation.

J. R. M.