

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

In the Matter of the Invasive Species -
Infested Waters Civil Citation Issued to
Joshua Patrick Kuhn

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

Citation Number: 186167

This matter came before Administrative Law Judge LauraSue Schlatter for a telephone hearing on October 7, 2014.

Joshua Patrick Kuhn, the Appellant and watercraft owner, appeared on his own behalf and without counsel. Conservation Officer Tim Collette appeared on behalf of the Minnesota Department of Natural Resources (Department).

Conservation Officer Collette and Mr. Kuhn each testified under oath. The hearing record closed at the conclusion of the telephone conference.

STATEMENT OF THE ISSUE

Whether Mr. Kuhn transported a watercraft without removing the drain plug from it, in violation of Minn. Stat. § 84D.13?

SUMMARY OF THE CONCLUSION

The Administrative Law Judge concludes that Mr. Kuhn did transport a watercraft without removing the drain plug, in violation of Minn. Stat. § 84D.13. Accordingly, she recommends that the Commissioner of Natural Resources **AFFIRM** the citation.

FINDINGS OF FACT

1. On August 6, 2014, after fishing at Gull Lake in Cass County, Mr. Kuhn pulled his fishing boat from the lake at Government Landing in Cass County.¹

2. When he initially pulled his boat from the lake, Mr. Kuhn moved it away from the crowded landing to make room for others who were attempting to maneuver their watercraft.²

¹ Testimony (Test.) of Joshua Kuhn.

² Test. of J. Kuhn.

3. Conservation Officer Collette stopped Mr. Kuhn as he was waiting in a line of traffic to exit from the Government Landing access area onto the public road. When Conservation Officer Collette stopped Mr. Kuhn, he was approximately one-quarter mile away from the Government Landing lake access.³

4. Conservation Officer Collette inspected Mr. Kuhn's fishing boat. During his inspection, Conservation Officer Collette observed a drain plug in place in the livewell of the boat. When Conservation Officer Collette removed the plug, he found the livewell full of water.⁴

5. In his appeal request, Mr. Kuhn alleged that the landing was very crowded so he had not cleaned his boat there. He asserted he was trying to find a place to park in the overflow parking area so he could properly clean his boat when Conservation Officer Collette stopped him.⁵ However, during the hearing, Mr. Kuhn stated that he removed the drain plug when he first pulled the boat from the water and that a "plastic lure or something" floated up from the livewell and obstructed the drain plug area, preventing the water from draining properly.⁶

6. On August 16, 2014, Conservation Officer Collette issued Mr. Kuhn Citation Number 186167 for failing to remove a drain plug before transporting a watercraft.⁷

7. Mr. Kuhn timely appealed the citation.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 84D.13, subd. 8, and 116.072, subd. 6.

2. Minn. Stat. § 84D.13, subd. 4(4) authorizes conservation officers to issue warnings or citations to a person who "fails to remove plugs . . . and drain water from water-related equipment . . . when transporting water-related equipment. . . ."

3. On August 16, 2014, Mr. Kuhn unlawfully transported water-related equipment after failing to remove a drain plug and drain water from the water-related equipment in violation of Minn. Stat. § 84D.13.

Based upon the Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

³ Test. of Conservation Officer Tim Collette.

⁴ Test. of T. Collette.

⁵ J. Kuhn Appeal Request, August 21, 2014.

⁶ Test. of J. Kuhn.

⁷ Test. of T. Collette.

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of the Department of Natural Resources **AFFIRM** Citation No. 186167 issued to Joshua Patrick Kuhn.

Dated: October 10, 2014

s/LauraSue Schlatter

LAURASUE SCHLATTER
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 - 14.69.

MEMORANDUM

In his written appeal request, Mr. Kuhn claimed that he left the water area as soon as he pulled his boat from the lake because the access area was very crowded and he wanted to make room for other boaters. He stated that he drove through the full parking lot and into the equally-full overflow lot, searching for a place to park so that he could drain and clean his boat. But Mr. Kuhn's recollection changed at the hearing, at which time he claimed that a plastic lure or some other piece of detritus had stopped up the hole when he was initially draining his boat at the lake. He contended that he then drove to find an alternate place to park and finish cleaning his boat, and that that is where Conservation Officer Collette found him.

The Administrative Law Judge questioned Conservation Officer Collette specifically about whether he might have observed a lure or other piece of plastic and mistaken it for the drain plug. Conservation Officer Collette testified credibly that he inspected the drain plug and that he did not mistake some other object for it. In addition, Conservation Officer Collette testified specifically as to where Mr. Kuhn was when he was stopped. Conservation Officer Collette stated that Mr. Kuhn was well beyond all the parking areas and was in line to exit the lake area entirely when he was stopped. Based on the consistency and detail of Conservation Officer Collette's testimony, the Administrative Law Judge finds Conservation Officer Collette's recollection more credible than Mr. Kuhn's. The Department has demonstrated by a

preponderance of the evidence that Mr. Kuhn transported his boat with the drain plug in it. Therefore, the Administrative Law Judge recommends that the Commissioner affirm the citation.

L. S.