

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 Civil Citation No.
CV 182096 Issued To Daniel Kenneth
Watson

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

This matter came before Administrative Law Judge Steven M. Bialick for a Prehearing Conference held by telephone conference call on December 4, 2014, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on November 10, 2014. Conservation Officer Don Bozovsky (CO Bozovsky) appeared on behalf of the Department of Natural Resources (Department) without counsel. Daniel Kenneth Watson (Appellant) appeared on his own behalf without counsel.

On December 4, 2014, the parties agreed to treat the Prehearing Conference as the formal hearing on the civil citation that was issued to Appellant. Sworn testimony was taken and arguments were presented during the hearing. The record was held open until 5:00 p.m. on December 5, 2014, to allow Appellant to submit photographs to the undersigned Administrative Law Judge and to allow CO Bozovsky to respond to that submission. Appellant submitted photographs, with additional comments, by e-mail. CO Bozovsky responded to the photographs and comments by e-mail, and he did not object to the receipt of the photographs into evidence. The photographs and e-mail comments were received into evidence, and the record was closed on December 5, 2014 at 5:00 p.m.

STATEMENT OF THE ISSUES

1. Whether Appellant violated Minn. Stat. § 84D.10, subd. 4(b) (2014), by failing to have a drain plug or similar device removed or opened while transporting water-related equipment.
2. Whether \$100 is the appropriate civil penalty for the violation, under Minn. Stat. § 84D.13, subd. 5(a)(6) (2014).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Appellant violated Minn. Stat. § 84D.10, subd. 4(b), and that a civil penalty of \$100 is appropriate. Therefore, the Administrative Law Judge recommends that the Commissioner affirm the citation and civil penalty.

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

FINDINGS OF FACT

1. On September 1, 2014, Appellant was driving on or near Highway 169 in St. Louis County, Minnesota, and was transporting his 2005 Lund Fisherman boat, when he was pulled over by CO Bozovsky.¹

2. At the time Appellant was pulled over, the drain plug in his boat was installed, and was not removed or opened.²

3. After Appellant was pulled over, CO Bozovsky issued a civil citation to Appellant, which imposed a \$100 civil penalty, for failing to have a drain plug or similar device removed or opened while transporting water-related equipment.³

4. Appellant timely appealed the citation by sending a letter to the Commissioner of Natural Resources, dated September 3, 2014.⁴

5. Appellant was not aware of the law requiring the plug to be out while transporting a boat.⁵

6. Appellant admitted that he failed to have the drain plug on his boat removed or opened while he was transporting it on September 1, 2014, at the time CO Bozovsky pulled him over.⁶

Based on the foregoing 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 (Commissioner) pursuant to Minn. Stat. §§ 14.50; 84D.13, subd. 8; 116.072, subd. 6 (2014).

2. Minn. Stat. § 84D.10 (2014) requires drain plugs, bailers, valves, and other devices used to control the draining of water from ballast tanks, bilges, and live wells to be removed or opened while transporting water-related equipment.⁷

3. Conservation Officers are legally authorized to issue civil citations to persons who violate Minn. Stat. § 84D.10, subd. 4(b), and to impose a statutory penalty of \$100 for such violations.⁸

¹ Letter from Appellant to Commissioner of Natural Resources, dated September 3, 2014 (September 3, 2014 letter).

² September 3, 2014 letter, Testimony (Test.) of Appellant, Test. of CO Bozovsky.

³ Civil Citation No. CV 182096 (citation).

⁴ September 3, 2014 letter.

⁵ September 3, 2014 letter, Test. of Appellant.

⁶ September 3, 2014 letter, Test. of Appellant.

⁷ Minn. Stat. § 84D.10, subd. 4(b).

⁸ Minn. Stat. § 84.13, subds. 4, 5(a)(6) (2014).

4. 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.

5. Appellant filed a timely appeal and request for hearing.

6. Appellant violated Minn. Stat. § 84D.10, subd. 4(b), by transporting a boat without opening or removing its drain plug.

7. 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 the amount of the penalty is unreasonable.

8. The penalty amount of \$100 is not unreasonable, and it is the appropriate civil penalty for Appellant's violation of Minn. Stat. § 84D.10, subd. 4(b).

9. For purposes of Minn. Stat. § 116.072, subd. 6(d), Appellant's request for hearing was not solely for purposes of delay and was not frivolous.

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

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. CV 182096 and the \$100 civil penalty issued to Appellant be **AFFIRMED**.

Dated: December 31, 2014

s/Steven M. Bialick

STEVEN M. BIALICK
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 in the manner provided in Minn. Stat. §§ 14.63 - .69 (2014).

MEMORANDUM

In an appeal of a civil citation, the burden of proof is on the Department to prove by a preponderance of the evidence that a violation of law occurred.⁹ In this case, a preponderance of the evidence establishes that Appellant transported his boat while its drain plug was inserted. Appellant admits that he did so. Therefore, the Department has met its burden of proving that Appellant violated Minn. Stat. § 84D.10, subd. 4(b).

It appears that Appellant made an effort to comply with the laws related to aquatic invasive species, but that he was not aware of that part of the law that states the drain plug must be out whenever a boat is being transported. However, ignorance of the law is no excuse for its violation.¹⁰

While a \$100 penalty is significant, it is the amount specified by Minn. Stat. § 84D.13, subd. 5(a)(6), and is reasonable in relation to the harm that the Department seeks to prevent. The civil citation and penalty should be affirmed.

Appellant argued that CO Bozovsky's testimony was not truthful regarding whether water came out of Appellant's boat after the drain plug was removed when the citation was issued. Appellant also argued that CO Bozovsky could not have seen the drain plug when he turned on his lights to pull Appellant over. Appellant also argued that the citation was not filled out completely and that the location of the violation was the intersection of Highways 169 and 37 rather than Highways 169 and 73 as stated in the citation. However, those issues do not affect the Administrative Law Judge's recommendation in this proceeding, because Appellant admits he failed to have the drain plug in his boat removed or opened while he was transporting the boat, and it was undisputed that the violation occurred on a highway in St. Louis County, Minnesota.

S. M. B.

⁹ Minn. R. 1400.7300, subp. 5 (2013).

¹⁰ *State of Minnesota v. King*, 257 N.W.2d 693, 697-98 (Minn. 1977).