

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 William Hayes
Meloche

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

This matter came before Administrative Law Judge Amy J. Chantry for a telephone prehearing conference call on August 19, 2015, pursuant to a Notice of Prehearing Conference and Notice of Hearing that was issued on June 26, 2015. Conservation Officer Traci Hanson appeared on behalf of the Minnesota Department of Natural Resources (DNR). William Hayes Meloche (Mr. Meloche) appeared on his own behalf and without legal counsel.

During the telephone conference on August 19, 2015, the parties agreed to conduct a formal hearing on the citation. Both Officer Hanson and Mr. Meloche provided sworn testimony. The parties agreed that the Administrative Law Judge could make a recommendation based on the record created during the August 19, 2015 hearing. The record closed on August 24, 2015, upon the filing of post-hearing submissions by Conservation Officer Traci Hanson.¹

STATEMENT OF THE ISSUES

1. Whether Mr. Meloche violated Minn. Stat. § 84D.05, subd. 1 (2014) by transporting a prohibited invasive species.
2. Whether \$500 is the appropriate civil penalty for the violation under Minn. Stat. § 84D.13, subd. 5(a)(3) (2014).

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that the DNR has established by a preponderance of the evidence that Mr. Meloche violated Minn. Stat. § 84D.05, subd. 1, and that a civil penalty of \$500 is appropriate. Therefore, the Administrative Law Judge

¹ See Exhibit (Ex.) 1. (A photograph depicting the one Zebra Mussel that was attached to the bottom of the boat that Mr. Meloche was transporting on May 7, 2015 and e-mail correspondence from Conservation Officer Hanson confirming that Jeannine Howland was the Aquatic Invasive Species Inspector who observed Mr. Meloche transporting one Zebra Mussel.)

recommends that the Commissioner of the Department of Natural Resources (Commissioner) affirm the citation and civil penalty.

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

FINDINGS OF FACT

1. On May 7, 2015, Jeannine Howland, an Aquatic Invasive Species Inspector (Inspector) employed by the DNR was patrolling the Maxwell Bay public access to Lake Minnetonka in Minnetonka, Minnesota.² Inspector Howland was at the landing to observe boats being launched at the public access.³

2. Inspector Howland was interested in ensuring that boats being launched into the lake followed all conservation requirements that are meant to prevent the spread of aquatic invasive species⁴ into the lake.⁵ Certain aquatic invasive species, such as Zebra Mussels and Eurasian Water Milfoil, are transportable by watercraft.⁶ Thus, to ensure invasive species are not transported from one body of water to another, Minnesota state law prohibits the transportation of prohibited invasive species.⁷ Zebra Mussels are a prohibited invasive species, as defined in Minn. Stat. § 84D.01, subd. 13 (2014).⁸

3. Mr. Meloche is the owner of Indoor Boat Storage Incorporated. As part of his business, Mr. Meloche and his employees remove boats from Lake Minnetonka in the fall. Once the boats are removed from the water, employees inspect, clean, and winterize the boats. The boats are then stored for the winter.⁹

4. Mr. Meloche acknowledges being stopped by Inspector Howland on May 7, 2015, after Inspector Howland observed one Zebra Mussel that was present on a boat that Mr. Meloche was attempting to launch back into the water.¹⁰

5. Mr. Meloche does not dispute that one Zebra Mussel was detected by Inspector Howland on the bottom of the boat he transported to Lake Minnetonka on May 7, 2015. Mr. Meloche asserts that the boat he transported on May 7, 2015 had a painted bottom. As a result, Mr. Meloche and his employees were unable to use muriatic acid to clean the bottom of the boat because it would destroy the paint on the bottom of the boat.¹¹

² Testimony (Test.) of Traci Hanson.

³ *Id.*

⁴ “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).

⁵ Test. of T. Hanson; See also, http://www.dnr.state.mn.us/invasives/index_aquatic.html.

⁶ http://www.dnr.state.mn.us/invasives/index_aquatic.html.

⁷ *Id.* See also, Minn. Stat. § 84D.05, subd. 1.

⁸ Minn. Stat. § 84D.01, subd. 13 (2014).

⁹ Test. of William Meloche.

¹⁰ *Id.*

¹¹ Test. of W. Meloche.

6. After observing the one Zebra Mussel on the boat, Inspector Howland referred her report to Conservation Officer Traci Hanson.¹²

7. On May 12, 2015, Conservation Officer Hanson issued an Invasive Species/Infested Waters Civil Citation and \$500 civil penalty to Mr. Meloche for the transporting of a prohibited invasive species, namely one Zebra Mussel.¹³

8. Since being issued the civil citation, Mr. Meloche has hired one person who is solely responsible for checking the bottom of all boats for the presence of invasive species before the boats are transported and relaunched into the water.¹⁴

9. Mr. Meloche timely appealed the citation and requested that it be withdrawn.¹⁵

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 pursuant to Minn. Stat. §§ 14.50; 84D.13, subd. 8; 116.072, subd. 6 (2014).

2. Minn. Stat. § 84D.05, subd. 1 prohibits the transportation of a prohibited invasive species, with limited exceptions not applicable to this case.

3. Zebra Mussels are a prohibited invasive species, as defined in Minn. Stat. § 84D.01, subd. 13.

4. Conservation Officers are legally authorized to issue civil citations to persons who violate Minn. Stat. § 84D.05, subd. 1, and to impose a statutory penalty of \$500 for such violations.¹⁶

5. 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.

6. Mr. Meloche filed a timely appeal and request for a hearing.

7. Mr. Meloche violated Minn. Stat. § 84D.05, subd. 1 by transporting a prohibited invasive species, specifically one Zebra Mussel.

¹² *Id.*

¹³ Test. of T. Hanson.

¹⁴ Test of W. Meloche.

¹⁵ See Letter from Mr. Meloche to the Commissioner of Natural Resources, dated May 20, 2015.

¹⁶ Minn. Stat. § 84D.13, subds. 4, 5(a)(3).

8. 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.

9. The penalty amount of \$500 is not unreasonable, and it is the appropriate civil penalty for Mr. Meloche's violation of Minn. Stat. § 84D.05, subd. 1.

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

Based upon 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. 173902 issued to William Hayes Meloche be **AFFIRMED**.

Dated: September 22, 2015

s/Amy J. Chantry

AMY J.CHANTRY
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-.69 (2014).

MEMORANDUM

Burden of Proof

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.¹⁷ A preponderance of the evidence means that it must be established by a greater weight of the evidence.¹⁸ "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."¹⁹

¹⁷ Minn. R. 1400.7300, subp. 5 (2013).

¹⁸ 4 *Minnesota Practice*, CIVJIG 14.15 (2014).

¹⁹ *State v. Wahlberg*, 296 N.W.2d 408, 418 (Minn. 1980).

Mr. Meloche does not dispute that he transported one Zebra Mussel on May 7, 2015. Thus, a preponderance of the evidence demonstrates Mr. Meloche violated Minn. Stat. § 84D.05, subd.1. Therefore, the DNR has met its burden of proving that Mr. Meloche was in violation of Minn. Stat. § 84D.05, subd. 1.

In addition, the DNR has established that the \$500 civil penalty is reasonable. The Administrative Law Judge understands Mr. Meloche's concern over being assessed a \$500 civil penalty for the presence of only one Zebra Mussel. However, in enacting Minn. Stat. § 84D.05, subd. 1, the legislature did not draw a distinction between the number of Zebra Mussels transported and the amount of the penalty assessed. In enacting the \$500 civil penalty, the legislature determined that \$500 was an appropriate fine amount to deter the spread of aquatic species - no matter what amount of invasive species were transported. The enforcement of laws to prevent the spread of invasive species is important to the waters and natural resources of the state of Minnesota. Patrolling public accesses to state waters and issuing citations for aquatic species violations is one of the best ways the DNR can prevent the spread of invasive species to un-infested waters. Therefore, the \$500 civil penalty is reasonable in relation to the harm that the Department seeks to prevent. Thus, the Administrative Law Judge recommends that the civil citation and penalty be **AFFIRMED**.

A. J. C.