

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

In the Matter of the Invasive  
Species/Infested Waters Civil Citation of  
Mark Irving Kaiser

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

This matter came on for a telephonic Prehearing Conference before Administrative Law Judge Jeffery Oxley at 9:30 a.m. on August 13, 2015.

Conservation Officer Scott Arntzen participated in the conference on behalf of the Minnesota Department of Natural Resources (Department or DNR). Mark Irving Kaiser (Appellant) participated on his own behalf and without counsel.

The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Conference. The Office of Administrative Hearings (OAH) record closed at the conclusion of the conference call on August 13, 2015.

**STATEMENT OF THE ISSUES**

Whether Appellant was properly issued a citation and \$100 penalty for transporting his boat with the drain plug in place?

**SUMMARY OF RECOMMENDATION**

The Administrative Law Judge concludes that Appellant was properly issued a citation with a mandatory penalty of \$100 for transporting his boat with the drain plug in place and recommends that the Commissioner affirm the citation.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On June 9, 2015, Conservation Officer Scott Arntzen was on the north public access to Big Marine Lake in Washington County when he observed a white pickup pulling a black fiberglass boat turn into the access from the roadway. Appellant,

who was driving the truck, continued to the boat ramp and began backing his boat into the water.<sup>1</sup>

2. Officer Arntzen asked the Appellant if the drain plug was in the boat. Appellant, in response, stated that he should put the plug in.<sup>2</sup>

3. Appellant continued backing his boat into the water. The Officer asked again about the drain plug. Appellant responded that the plug was already in the boat. Appellant stated that he had put the drain plug in at home.

4. Officer Arntzen informed Appellant that it was illegal to transport his boat with the drain plug in. The Officer asked Appellant to pull his boat out of the water and remove the drain plug in order for the Officer to see if Appellant had transported any water.<sup>3</sup>

5. Appellant did not comply with the Officer's request and left the boat access area, pulling onto the public roadway with the drain plug in place.<sup>4</sup>

6. Officer Arntzen got into his squad car and initiated a traffic stop of Appellant. He then had Appellant remove the drain plug. The Officer issued Appellant a citation for transporting his boat without removing the drain plug.<sup>5</sup>

7. Appellant admitted that he was breaking the literal letter of the law by transporting his boat with the plug in, but asserted that he was not transporting water in his boat that day.<sup>6</sup>

8. The drain plug in Appellant's boat is located in the center of the board under the engine. Each time Appellant will use the boat, he will risk being burned when he removes the plug.<sup>7</sup>

9. By letter postmarked June 18, 2015, and mailed to the Commissioner, Appellant appealed the citation.<sup>8</sup>

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

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<sup>1</sup> Test. of Scott Arntzen.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Test. of Appellant.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Handwritten letter from Appellant to the Commissioner of the Department, postmarked June 18, 2015.

## CONCLUSIONS OF LAW

1. The Minnesota Department of Natural Resources and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6 (2014).

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.<sup>9</sup>

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.<sup>10</sup> A civil citation for failing to have drain plugs removed or open while transporting water-related equipment requires a \$100.00 penalty.<sup>11</sup>

4. Appeals of civil citations must be made by notifying the Commissioner of DNR of a request for a hearing with 15 days after receipt of the citation.<sup>12</sup> If a hearing is not requested within the 15-day period, the citation becomes a final order not subject to further review.<sup>13</sup>

5. Appellant timely appealed the citation he received on June 9, 2015.

6. Appellant transported his boat with the drain plug in place. The required civil penalty for such a violation is \$100.00.

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

## RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 172451 issued to Mark Irving Kaiser be AFFIRMED.

Dated: August 25, 2015

s/Jeffery Oxley

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JEFFERY OXLEY

Administrative Law Judge

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<sup>9</sup> Minn. Stat. § 84D.10, subd. 4(b) (2014).

<sup>10</sup> Minn. Stat. § 84D.13, subd. 4(4) (2014).

<sup>11</sup> *Id.* at subd. 5(a)(6) (2014).

<sup>12</sup> *Id.* at subd. 8 (2014).

<sup>13</sup> *Id.*

## NOTICE

Pursuant to Minn. Stat. § 116.072, subd. 6(e) (2014), 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-.69 (2014).

## MEMORANDUM

The facts of this case are not in dispute. Appellant admits that he transported his boat with the drain plug not removed on June 9, 2015.

Appellant has been conscientious about the dangers posed by invasive species to the health of Minnesota lakes. Appellant credibly asserts that he has never transported water in his boat from one lake to another.

Appellant advanced several concerns he wished would be addressed in this appeal. First, Appellant contends the law should not require fining a person who is not transporting water in his boat but merely has the plug in place, or at a minimum, the law should distinguish between a harmless violation (plug in place, but no water in boat) and a potentially harmful violation (plug in place, water in boat).

Second, Appellant's drain plug is located under the engine such that pulling the plug when the engine is hot could cause burns. Appellant believes that the law should recognize a safety exception in cases such as his. He is concerned that he may have to sell the boat because of the difficulty he will face in complying with the law given his boat's design.

Third, Appellant is aware of many types of boats that do not drain completely even with the drain plug removed but contends that their owners are not cited. He argues that such boats pose a greater danger to the health of lakes than Appellant does with his boat and asserts that the law should focus on preventing real risks to the lakes.

Appellant raises reasonable policy concerns, but they are beyond the scope of this proceeding. The Administrative Law Judge must apply Minnesota law as it stands today. Minnesota law requires the removal or opening of drain plugs during transportation of a boat, regardless of whether the boat contains any water and regardless of how easy, difficult, or potentially dangerous removing the plug might be.<sup>14</sup>

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<sup>14</sup> Minn. Stat. § 84D.10, subd. 4(b).

The fact that some boats may transport water even with the drain plug removed is concerning, as is the fact that Appellant risks burns when removing the plug in his boat if the engine is hot. The Administrative Law Judge encourages Appellant to raise his concerns about the statute at issue in this proceeding with his legislators.

**J. J.O.**