

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 Jeffery James
Dagen; Citation No. 182762

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

This matter came on for a hearing, conducted via telephone, before Administrative Law Judge Jim Mortenson. The hearing was held on October 6, 2015, following the agreement of the parties to proceed directly to hearing without further notice.

Conservation Officer Greg Verkuilen (Verkuilen) appeared at the hearing for the Department of Natural Resources (Department). Jeffery James Dagen (Dagen) appeared at the hearing on his own behalf and without counsel.

The Department presented three witnesses: Inspector Aimee Hand (Hand); Conservation Officer Randy Posner (Posner); and Conservation Officer Verkuilen. Mr. Dagen testified on his own behalf. The Office of Administrative Hearings (OAH) record closed on October 6, 2015.

STATEMENT OF ISSUE

Mr. Dagen appeals the Invasive Species/Infested Waters Civil Citation No. 182762 for unlawfully possessing or transporting a prohibited invasive species other than an aquatic macrophyte.

SUMMARY OF RECOMMENDATION

Civil Citation No. 182762 was properly issued. Mr. Dagen transported a prohibited invasive species other than an aquatic macrophyte. Therefore, the Judge recommends that the Commissioner affirm the citation and the mandatory penalty.

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

FINDINGS OF FACT

1. On August 8, 2015, Inspector Aimee Hand was assisting another Department Inspector at the Bay Lake Landing in Crow Wing County when Dagen and another man, Alan Wilson, arrived in a vehicle towing a pontoon boat.¹

2. Hand inspected the boat and trailer and found two weeds on the trailer, one of which had zebra mussels attached.²

3. Following removal of the weeds on the trailer, Hand permitted the boat to be launched.³

4. Hand did not advise Dagen or Wilson that law enforcement would be contacted about the zebra mussels.⁴ Hand did turn over the zebra mussels to Conservation Officer Posner, who confirmed they were zebra mussels.⁵

5. Hand provided the vehicle and boat registration information from the August 8, 2015, inspection to Conservation Officer Verkuilen, who confirmed the boat belonged to Dagen.⁶ Verkuilen contacted Dagen and informed him of the violation and that he would be cited.⁷ This conversation occurred three weeks after the inspection.⁸

6. Citation No. 182762 was issued to Dagen on August 31, 2015, for unlawfully possessing or transporting a prohibited invasive species other than an aquatic macrophyte.⁹ The citation included a \$500 penalty.¹⁰ Dagen appealed the citation in a letter dated September 14, 2015.¹¹

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, 116.072, subd. 6 (2014).

¹ Testimony (Test.) of Jeffery Dagen; Test. of Aimee Hand; Notice of Civil Citation No. 182762 (Citation).

² Test. of A. Hand; Test. of Randy Posner; Test. of J. Dagen.

³ Test. A. Hand.

⁴ Test. of J. Dagen; Test. of A. Hand.

⁵ Test. of A. Hand; Test. of R. Posner.

⁶ Test. of Gregory Verkuilen.

⁷ *Id.*

⁸ Test. of J. Dagen.

⁹ Citation.

¹⁰ *Id.*

¹¹ Letter of Dagen, dated September 14, 2015.

2. Conservation officers are authorized to issue citations to a person who unlawfully transports prohibited invasive species.¹² The zebra mussel is a prohibited invasive species.¹³

3. The legislature requires a civil penalty of \$500.00 for unlawfully possessing or transporting a prohibited invasive species other than an aquatic macrophyte.¹⁴

4. Dagen transported a prohibited invasive species and was properly issued a civil citation with a \$500.00 penalty.

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

RECOMMENDATION

The Administrative Law Judge recommends that Invasive Species/Infested Waters Civil Citation No. 182762 issued to Jeffery James Dagen be AFFIRMED.

Dated: October 9, 2015

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, .69 (2014).

MEMORANDUM

The material facts of this case are not in dispute. Dagen admits zebra mussels were found on his boat trailer prior to launching his pontoon boat in Bay Lake.

There is a dispute about the extent of the conversation between Dagen and Hand. Dagen's position is that Hand did not talk to him about a citation for the zebra mussels. While Inspector Hand acknowledges that she did not make mention of the fact that she would refer the matter to conservation officers, she advised Dagen that transporting the zebra mussels was a violation. Dagen believes there should have been more "conversation" at the boat launch. Hand testified that it often does not "go well" when she

¹² Minn. Stat. § 84D.13, subd. 4(1) (2014).

¹³ Minn. R. 6216.0250, subp. 4(E) (2015).

¹⁴ Minn. Stat. § 84D.13, subd. 5(a)(3) (2014).

tells people who have violated the invasive species laws that law enforcement will be notified, and so she does not do so without other officers present. While this explains Hand's general rule, it must be noted that there is no evidence that Dagen posed any danger to Hand. However, these facts are not material to the outcome of this matter.

While Mr. Dagen's frustration over how his violation and penalty were communicated to him is understandable, there is no evidence the Department committed any legal errors. Thus, there is no basis to determine the citation was erroneously issued. The civil penalty included is legislatively mandated. It is respectfully recommended that the citation be affirmed.

J. R. M.