

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

In the Matter of the Appeal of the
Trespass Citation Issued to
Robert M. Soule.

**NOTICE OF PREHEARING
CONFERENCE AND HEARING**

PLEASE BE ADVISED that a prehearing conference will be held by telephone conference call on June 18, 2003, beginning at 9:30 a.m. and continuing as long as necessary.

Participating in the prehearing conference telephone call will be Kathleen D. Sheehy, the undersigned Administrative Law Judge, 100 Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone number 612/341-7602; the officer who issued the citation, Dave Rodahl, telephone number 320/256-7639; and the appellant herein, Robert M. Soule, telephone number 320/732-4233. The Judge will place the call. If you must change the time or telephone number, please contact the Judge immediately at the telephone number listed above.

The purpose of the prehearing conference telephone call is to determine the nature of the dispute that caused the appeal, and to determine the best way to resolve it. The telephone call is expected to last about fifteen (15) minutes, and no more than thirty (30) minutes. If the appeal cannot be resolved during the telephone call, then the Judge will set a time for hearing. The Judge will also decide whether the hearing shall be held by telephone or in person.

The citation that was issued is being appealed pursuant to Minn. Stat. § 97B.002. Subdivision 3 of that statute provides that if a person requests a hearing in order to appeal a citation, the hearing shall be held pursuant to procedures set forth in section 116.072, subd. 6. That statute provides an expedited administrative hearing process, and refers to Minnesota Rules, parts 1400.8510 to 1400.8612. These are the rules that will govern the conduct of this appeal. Copies of the statutes and rules may be obtained from the Documents Section of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155. Statutes and rules may also be found at county law libraries and many other public libraries in the State. The statutes may also be found at www.revisor.leg.state.mn.us/stats/. The rules may be found at www.revisor.leg.state.mn.us/arule/ or at www.oah.state.mn.us.

It is not necessary to have an attorney in order to participate in this case. A party may, however, choose to be represented by legal counsel or any other representative.

The only participants in the prehearing conference telephone call with the judge will be Officer Rodahl and Mr. Soule and his representative, if any. If a hearing is necessary, they will be the only two "parties." Any other person who would like to become a party to this case must submit a timely petition to intervene pursuant to Minn. Rules pt. 1400.8570. This petition must show how his or her legal rights, duties and privileges may be determined or affected by the decision in this case. The petition shall describe the statutory right to intervene if there is one. Any person may offer testimony or other evidence that is relevant to the case, but generally, only parties may question other witnesses.

If a hearing is held, the Administrative Law Judge will issue a recommendation based only on factual information or evidence that is part of the hearing record. Persons participating in the hearing should have available all documents, records, witnesses and any other evidence they need to present their position. Subpoenas are available to compel the attendance of witnesses or other production of documents. See Minnesota Rules pt. 1400.8601 for the procedures regarding subpoenas.

A copy of the Administrative Law Judge's recommendation will be sent to each party and to the Commissioner of Natural Resources. After allowing at least five days to pass, the Commissioner will issue a final order. During the five-day period, the parties may file comments with the Commissioner regarding the recommended decision.

If the person who received the citation fails to participate in the prehearing conference telephone call or fails to appear at the hearing, the citation may be upheld and the fine must be paid within thirty (30) days of the issuance of the Commissioner's final decision. There will be no other opportunities for administrative appeal. If no officer supports the citation, it may be dismissed.

It is likely that an appeal hearing will cost the taxpayers more than the amount of the fine imposed by the citation. Appeal hearings should be limited to cases where there is a legitimate, good faith disagreement about the facts or the law. The statute (§ 116.072, subd. 6(d)) provides that if the Administrative Law Judge finds that a hearing was requested solely for purposes of delay or that the hearing request was frivolous, the costs of holding the hearing may be added to the amount of the fine.

Questions concerning settlement of this matter may be directed to the Administrative Law Judge at 612/341-7602 or Pat Watts, Policy/Legal Analyst, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, Minnesota 55155-4047, telephone (651) 296-4883.

Dated this 30th day of May, 2003.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge