

October 28, 2004

Gene Merriam, Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155-4047

Re: In the Matter of the Appeal of the All-Terrain Vehicle Citation
Issued to Amy C. Grahek
Citation No. 66353
OAH Docket No. 3-2000-16191-2

Dear Commissioner Merriam:

On October 25, 2004, a prehearing conference was held by telephone on the trespass citation listed above. Conservation Officer Colleen Adam and Amy Grahek participated in the conference. During the conference, the parties agreed that an evidentiary hearing was not necessary and that my recommendation would be based on the factual record developed in the prehearing conference.

The relevant facts are not disputed. Amy Grahek and her family borrowed an all-terrain vehicle (ATV) for a weekend of four-wheeling with family members in the Paul Bunyon State Forest. While preparing to depart, they noticed the registration was expired. Ms. Grahek picked up the current registration decal from the owners before driving to the family cabin. When they got to the cabin, she could not find the decal. After looking for it unsuccessfully, they went out on the trails with the expired decal. Conservation Officer Adam noticed the expired registration, and Ms. Grahek explained that she had the current one but had misplaced it. Officer Adam allowed Ms. Grahek time to look for it, and she also called her dispatch office to have the dispatcher attempt to verify the renewed registration. When Ms. Grahek could not locate the registration, and the dispatcher could not confirm that the ATV registration had been renewed, Officer Adam issued a civil citation for violation of Minn. Stat. § 84.922, subd. 2. Approximately 30 minutes later, after Officer Adam had left, Ms. Grahek found the registration inside a lunch box on the ATV.

Minn. Stat. § 84.922, subd. 2(c), provides that a registration number must be affixed to an ATV "in a manner prescribed by the commissioner." Rules adopted by the Department of Natural Resources require that the current ATV registration numbers and decal "must be displayed on a plate not less than four inches high and 7-1/2 inches wide, which is clearly visible on the back of the vehicle, at least 12 inches from the ground." In addition, the decal must be displayed in the upper-left section of the plate.

The plate, registration numbers, and registration decal must be maintained in a clear and legible condition. ^[1]

Based on the record, I find that Ms. Grahek committed the violation for which she was cited. Therefore, Civil Citation No. 66353 was properly issued and should be affirmed.

The law requires the final decision in this matter to be made by the Commissioner or his designee. The law^[2] further requires that the Commissioner wait at least five days after receipt of this recommendation before making that final decision and allow Ms. Grahek to submit comments to the Commissioner on this recommendation within that five-day period. The Commissioner must send a copy of his final decision to Ms. Grahek. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this recommendation will become the final decision in this matter.^[3]

I am closing our file in this matter. The record is enclosed.

Sincerely,

/s/ Kathleen D. Sheeny

KATHLEEN D. SHEEHY
Administrative Law Judge
612-341-7602

cc: Amy Grahek
Conservation Officer Colleen Adam
Pat Holt, DNR Enforcement

^[1] Minn. R. 6102.0010, subp. 3.

^[2] Minn. Stat. § 116.072, subd. 6(e).

^[3] Minn. Stat. § 14.62, subd. 2a.