

March 18, 2010

Commissioner Mark Holsten Minnesota Department of Natural Resources 500 Lafayette Road, Box 47 St. Paul, MN 55155-4047	
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**Re: *In the Matter of the Game and Fish Citation Issued to James R. Morris; OAH Docket No. 7-2000-21120-2***

Dear Commissioner Holsten:

This matter was heard in a Pre-Hearing Telephone Conference on March 16, 2010. The undersigned Administrative Law Judge, Conservation Officer Matthew Miller, and James R. Morris participated in the conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge (ALJ) would make a recommendation in this matter based on the record created during the Prehearing Conference.

On December 14, 2009, Conservation Officer Matthew Miller issued a "Demand Letter for Payment of Civil Penalty" to Mr. Morris, based on an alleged incident occurring on November 26, 2009, when two dogs belonging to Mr. Morris were observed pursuing a wounded big game animal (an 8-to-10-point buck deer).

Minn. Stat. § 97A.321, subd. 1, provides:

**Owner responsibility; penalty amount.**

The Owner of a dog that pursues but does not kill a big game animal is subject to a civil penalty of \$100 for each violation. The Owner of a dog that kills a big game animal is subject to a civil penalty of \$500 for each violation.

Conservation Officer Miller was contacted in connection with this incident by Deputy Dawn Valure of the Lake County Sheriff's Office. The Deputy reported that she was on routine patrol in Lake County from her duty station in Silver Bay on November 26, 2009. At approximately 2:30 p.m. that day, she received a call from Rex Lillis, who lives close to Mr. Miller on Highway 3 near Silver Bay, alleging he had just observed two dogs, a German Shepherd and a Great Dane, chasing a buck deer with an injured rear leg across Highway 3 in front of his vehicle and onto the land of another neighbor. Lillis recognized the two dogs as those owned by Mr. Morris. Lillis observed the dogs chase the deer into a creek bed, where the deer turned to defend itself, and saw nothing else at that time.

Deputy Valure then spoke with Mr. Morris at his house, and she saw two dogs matching Lillis's description in the driveway of the house. Mr. Morris confirmed that he owned the dogs. He also told Deputy Valure that he let his dogs run loose because he did not believe in tying them up.

When Deputy Valure informed James Morris that the dogs were seen chasing and attacking a buck, and after she informed him that the buck was injured and most likely would need to be put down, Mr. Morris allegedly stated: "That's it. That's the end of those dogs. We're getting rid of them."

Valure, Lillis, and the neighbor on whose land the chase occurred (Ben Goutermont) searched the area after Valure visited Mr. Morris. The search party found fresh tracks at the location Mr. Lillis indicated, but were unable to find the injured deer.

Although the case established by Conservation Officer Miller is largely hearsay, he was prepared to bring in Mr. Lillis, Deputy Valure and Deputy Goutermont as witnesses, should this matter go to hearing. On the presumption that those witnesses would have corroborated what they reported earlier, it is reasoned that the Department of Natural Resources has established by a preponderance of the evidence that Mr. Morris's dogs pursued a deer on November 26, 2009, in such a fashion as to make Mr. Morris liable for the civil penalty imposed by Minn. Stat. § 97A.321. Since the Department has substantiated the violation and citation, **IT IS RECOMMENDED** that the Commissioner **AFFIRM** the civil penalty imposed in the "Demand Letter for Payment of Civil Penalty" issued to James R. Morris on December 14, 2009, and require Mr. Morris to pay the \$100 fine.

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I am closing this Office's file in this matter and returning the record to you. Under Minn. Stat. § 116.072, subd. 6(e), the Commissioner must wait at least five days after receipt of the Recommendation before making a final decision. Within that time, Mr. Morris may comment on this Recommendation. The Commissioner must send the copy of the final decision to Mr. Morris. If the Commissioner fails to act within 90 days after the record before the Commissioner closes, this Recommendation will become the final decision of the Agency.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS  
Administrative Law Judge

Telephone: (651) 361-7843

RCL:mo

cc: Colonel Jim Konrad  
Conservation Officer Matt Miller  
James R. Morris