

October 4, 2011

Tom Landwehr, Commissioner
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

**Re: *In the Matter of Trespass Civil Citation #46105 Issued to Alex Pelkey;*
OAH Docket No. 7-2000-22229-2**

Dear Commissioner Landwehr:

This matter came on for a Prehearing Telephone Conference call on September 20, 2011. The Administrative Law Judge, Conservation Officer Matt Frericks, and Alex Pelkey participated in the Conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge (ALJ) could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the Prehearing Conference on September 20, 2011.

It is clear from the evidence presented during the Conference that Mr. Pelkey trespassed on posted land on or about June 10, 2011, by continuing to drive on a private road to a small clearing along a lake, which road was the property of United Taconite Company. This trespass was captured by a camera that recorded vehicles moving past the place of the posting, and traveling several hundred feet more to the shore.

Mr. Pelkey's defense, that he presumed the beach was a public access point, and that United Taconite did not own the road (only the land surrounding the road) is insufficient, in the mind of the ALJ, to overcome the fact of the trespass. Mr. Pelkey alleges that the landowner should make it more obvious that moving closer to the lake on the road from the place where the signage is posted would in fact be a trespass, but the facts are (and Mr. Pelkey does not challenge them), that the posting was proper, and he did advance his vehicle past the position where the "No Trespassing" sign was posted.

October 4, 2011
Page 2

Mr. Pelkey's trespass constitutes a violation of Minn. Stat. § 97B.001 (TRESPASS).

IT IS RECOMMENDED that the \$50.00 citation issued to Mr. Pelkey on June 15, 2011, be **AFFIRMED**, pursuant to Minn. Stat. § 97B.002.

With the mailing of this letter, the file at the Minnesota Office of Administrative Hearings is closed.

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. Mr. Pelkey 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. § 14.63-14.69.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

Telephone: (651) 361-7843

RCL:mo
Encls.

cc: Colonel Jim Konrad
Captain John Hunt
Conservation Officer Matt Frericks
Alexander Pelkey
Pat Watts