

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 Rochne Allen
Tibbetts; Citation No. 121466

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference before Administrative Law Judge Barbara L. Neilson on August 13, 2012. Rochne Allen Tibbetts and Department of Natural Resources (DNR) Conservation Officer Tony Arhart participated in the Conference. The parties agreed that no formal hearing would be needed and that the Administrative Law Judge could make a recommendation based on the record created during the Prehearing Telephone Conference. The OAH record closed at the conclusion of the conference call on August 13, 2012.

STATEMENT OF ISSUE

The issue presented in this matter is whether Rochne A. Tibbetts was properly issued a civil citation under Minn. Stat. §84D.10, subd. 4(b),¹ on February 16, 2012, for transporting his watercraft on a public road with the drain plug in place.

The Administrative Law Judge concludes that Mr. Tibbetts violated Minn. Stat. § 84D.10, subd. 4(b), on that date, and recommends that the Commissioner affirm the Citation.

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

FINDINGS OF FACT

1. DNR Conservation Officers are authorized to issue warnings or citations to a person who violates Minn. Stat. § 84D.10, subd. 4(b), by failing to remove plugs from water-related equipment before transporting that equipment.²

¹ Unless otherwise noted, all citations to Minnesota Statutes are to the 2011 edition.

² See Minn. Stat. § 84D.13, subd. 4(4).

2. On April 4, 2012, Conservation Officer Tony Arhart was stationed at the Vidas Landing site adjacent to the Rainy River. Vidas Landing is located approximately 90 miles north of Bemidji, Minnesota. Officer Arhart checked every boat and trailer that came into the Landing, including a vehicle in which Rochne A. Tibbetts was a passenger. The vehicle was pulling a boat belonging to Mr. Tibbetts. Officer Arhart noted that the boat had its drain plug in place and told the driver and Mr. Tibbetts that he would have to issue a civil citation. Mr. Tibbetts said that the citation should be issued to him because it was his boat.³

3. Officer Arhart issued Civil Citation No. 121466 to Mr. Tibbetts, in the amount of \$50.00. The Citation asserted that Mr. Tibbetts had transported a watercraft from Bemidji with the plug in place.⁴

4. Mr. Tibbetts timely appealed the Citation.⁵ In his letter of appeal and in his testimony, Mr. Tibbetts admitted that his boat had been transported with the plug in but argued that the citation should be withdrawn because many other individuals only received warnings. He also asserted that citations should not be issued at that time of year because the Rainy River is the only waterway open for walleye fishing.⁶

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Natural Resources have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 116.072, subd. 6.

2. The Department has substantiated the violation and Citation. Mr. Tibbetts admitted his boat was transported with its drain plug in place, as charged in the Citation.

3. It is appropriate that the Commissioner affirm Invasive Species Civil Citation No. 121466 and require Mr. Tibbetts to pay a \$50 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, and for the reasons set forth in the Memorandum below, the Administrative Law Judge makes the following:

³ Testimony of Officer Arhart.

⁴ Civil Citation No.

⁵ The appeal letter bears a stamp indicating that it was received by the DNR on April 18, 2012.

⁶ Appeal letter; Testimony of Rochne A. Tibbetts.

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** Invasive Species Civil Citation No. 121466 issued to Rochne A. Tibbetts on April 4, 2012.

Dated: September 10, 2012

s/Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

Reported: Digitally Recorded; No Transcript Prepared.

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 Commissioner must send a copy of the final decision to Rochne A. Tibbetts. The final order of the Commissioner may be appealed pursuant to Minn. Stat. §§ 14.63-14.69. If the Commissioner fails to act within 90 days after the record closes, this recommendation will become the final decision in this matter.

MEMORANDUM

Mr. Tibbetts argued that the citation should be withdrawn because he had spoken to several other individuals who had received only warnings that morning. Officer Arhart acknowledged that he and the other Conservation Officer working nearby may have issued some warnings, but asserted that the number of citations he had issued that day was in the “double digits.” He recalled that he issued at least three citations for transporting boats with plugs in place, and testified that he had tried to be consistent and fair in issuing citations. Although warnings were primarily given during 2011, Officer Arhart indicated that Conservation Officers had been directed by the DNR regional office to treat violations more seriously during 2012. He alleged that compliance with the statute had increased dramatically as a result of the increased issuance of citations. He also pointed out that he could have issued a misdemeanor criminal citation to Mr. Tibbetts but chose to issue a civil citation instead.

Mr. Tibbetts testified that he supports the invasive species law and agrees that drain plugs should be removed each time boats are pulled out of the water, but questioned the wisdom of requiring boats to be transported with their plugs out. He believes that Conservation Officers should only check for compliance when boats are leaving the water. Mr. Tibbetts also indicated that the Rainy River was the only place he went fishing last spring. He maintained that it did not make sense to issue citations

at that time of year because the ice was not yet out on bodies of water other than the Rainy River and, as a result, there was no risk that invasive species would be brought into the Rainy River from elsewhere.⁷ Officer Arhart agreed that lakes in the region are often iced over at the time the citation was issued, but pointed out that many fishable waters were open during April 2012 due to the mild winter and people do travel around the state to fish.⁸

Minnesota law requires the removal or opening of drain plugs during transportation of a boat on roadways, regardless of whether the transportation occurs before the boat is placed in the water or after the boat is removed from the water. Mr. Tibbetts does not contest that his boat had its drain plug in place as it was transported on the public roads approximately 90 miles from Bemidji to the Vidas Landing site. The statute does not draw any distinctions based on the time of year, the number of open waterways in the area, or the number of bodies of water used by a particular boater. Conservation Officers are given the discretion to issue citations for violations, and Officer Arhart did issue other citations that day. Under all of the circumstances, it is appropriate to recommend that Citation No. 121466 be affirmed.

B. L. N.

⁷ Appeal letter; Testimony of Mr. Tibbetts.

⁸ Testimony of Officer Arhart.