

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

In the Matter of the Civil Citation Issued
to David J. Burroughs

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on June 22, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on June 8, 2012.

Appearances: Conservation Officer Adam Block, on behalf of the Department of Natural Resources (Department); David Burroughs, on his own behalf.

The parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on June 22, 2012.

STATEMENT OF THE ISSUES

Did Mr. Burroughs violate Minn. Stat. § 84D.10, subd. 4(b),¹ by transporting a boat without the drain plug removed or opened?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

SUMMARY OF THE FACTS

On May 13, 2012, Officer Block and other officers were conducting a check of boats at a public access in Prior Lake, Minnesota, as part of the Department's effort to enforce the laws intended to deter the spread of invasive species. The Department has broadly advertised the law that requires drain plugs to be open or removed while a boat is transported. Prior to the fishing opener, the Department had directed its officers that citations should be issued for violations. On this date, Officer Block was checking drivers as they entered the landing to be sure that the plugs were not in the boats as they were being transported. He observed that Mr. Burroughs' plug was in the boat, approached him to discuss the violation and issued a citation. Officer Block saw Mr. Burroughs' vehicle enter the landing area from the street. He never lost visual contact and did not see Mr. Burroughs or anyone else exit the vehicle to insert the drain plug once they were at the landing.

¹ Minnesota Statutes are cited to the 2010 Edition.

Minnesota Statutes § 84D.10, subd. 4(b) states: “Drain plugs, bailers, valves, or other devices used to control the draining of water from ballast tanks, bilges, and live wells must be removed or opened while transporting water-related equipment.”

Mr. Burroughs is aware of the law that requires that plugs be open or removed during transport. He lives just a block away from the public access. Because he lives near the boat launch, and because it was a busy day, he prepared his boat at his home, and then pulled it into the park and up to the boat launch when he saw that there was an opening. He did this to prevent a back-up at the launch.

Mr. Burroughs disputes Officer Block’s testimony that he was able to observe Mr. Burroughs from the time he left the street because Officer Block was not at the street entrance but partially down the boat launch. He believes that a warning would have been sufficient under the circumstances.

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

CONCLUSION

Pursuant to Minn. Stat. § 84D.13, subd. 8, an appeal of a civil citation shall be considered under the procedures in Minn. Stat. § 116.072, subd. 6, if the person who received the citation requests a hearing within 15 days after receipt of the citation. Mr. Burroughs filed a timely appeal and request for hearing.

Mr. Burroughs violated Minn. Stat. § 84D.10, subd. 4(b), on May 13, 2012, by transporting a boat without removing or opening the drain plug.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to David J. Burroughs be AFFIRMED.

Dated: June 26, 2012

s/Raymond R. Krause

RAYMOND R. KRAUSE
Administrative Law Judge

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 final order of the Commissioner may be appealed, pursuant to Minn. Stat. §§ 14.63 and 14.69.

MEMORANDUM

Mr. Burroughs admits that the drain plug was in his boat when he pulled it from his home to the boat launch. He does not believe the citation was appropriate because his home is just a block away from the boat launch and, in order to help speed the process at the boat launch, he prepared his boat at home and then moved it to the boat launch.

Mr. Burroughs is aware of the Department's efforts to deter the spread of invasive species, and he emphasizes that because of the proximity of his home to the launch area he was just trying to speed up the process by putting in the plug at home. He believes that a warning would have been more appropriate under the circumstances.

The citation was properly issued. It is within the discretion of the commissioner to affirm the citation or to reduce the citation to a warning.

R.R.K.