

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Civil Citation Issued
to Thomas John Tindall
Citation No. 133084

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A prehearing was held by telephone on August 13, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on July 20, 2012.

Appearances: Conservation Officer Jackie Glaser, on behalf of the Department of Natural Resources (Department); Thomas John Tindall, did not appear, nor did anyone appear on his behalf. The hearing record closed at the end of the telephone hearing on August 13, 2012.

STATEMENT OF THE ISSUES

Did Mr. Tindall 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:

FINDINGS OF FACTS

1. On July 20, 2012, Mr. Tindall was served by U.S. Mail with the Notice of Prehearing Conference and Notice of Hearing.²

2. The Notice of Prehearing Conference and Notice of Hearing, scheduled a telephone prehearing conference on Monday August 13, 2012, beginning at 2:00 pm. The Notice also contained the telephone number and other information to participate in the call.³

3. The Notice of Prehearing Conference and Notice of Hearing contained the following warning:

¹ Minnesota Statutes are cited to the 2010 Edition.

² Nancy J. Hansen, Certificate of Service July 20, 2012.

³ July 20, 2012, Notice of Prehearing Conference and Notice of Hearing.

If the person who received the citation fails to call into the prehearing conference telephone call or fails to appear at the hearing, the citation will be upheld and the fine will have to be paid within thirty (30) days of the issuance of the Commissioner's final decision, with no further opportunities for administrative appeal.⁴

4. Mr. Tindall did not appear at the August 13, 2012, hearing, nor did he make a prehearing request to the Administrative Law Judge to be excused from appearing at the hearing or to have the hearing rescheduled for a later date.

5. Because Mr. Tindall failed to join the prehearing conference telephone call he is in default.

6. Pursuant to Minn. R. 1400.8560, the allegations contained in the citation are taken as true and incorporated into these Findings of Facts.

Based on the Finding of Facts, 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. §§15.50 and 116.072, subd. 6.

2. 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. Tindall filed a timely appeal and request for hearing.

3. Mr. Tindall 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 Civil Citation No. 133084 issued to Thomas John Tindall be AFFIRMED.

Dated: August 30, 2012

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

Reported: Digitally Recorded

⁴ *Id.* Bold face in the original.

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

On July 1, 2012, Conservation Officer Jackie Glaser issued an Invasive Species/Infested Waters Civil Citation to Mr. Tindall. The Citation alleged Mr. Tindall failed to remove the drain plug from his boat in violation of Minn. Stat. § 84D.10. Mr. Tindall timely appealed the citation but, despite proper notice, failed to participate in the prehearing telephone conference.

Mr. Tindall is in default. By law, the allegations in the citation are taken as true without further evidence. The citation was properly issued and should be upheld.

J.E.L.