

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 Civil
Citation Issued to Gregory Mark Erwin;
Citation No. 133064

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on August 17, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on July 20, 2012.

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

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 parties were placed under oath, and their testimony was taken. The hearing record closed at the end of the telephone hearing on August 17, 2012.

STATEMENT OF THE ISSUES

Did Mr. Erwin 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 June 25, 2012, Officer Block was on duty at the Sand Point access to Prior Lake.

At approximately 2:40 p.m. he saw a maroon Chevy Blazer, pulling a boat, enter the public access from Carriage Hills. Carriage Hills is a public road. Officer Block saw the drain plug was in the boat. The plug was in the boat from the time it left the public road until it entered the public access. At no time did Officer Block observe anyone put the plug in the boat. Officer Block issued Mr. Erwin a citation.

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. Erwin does not dispute the plug was in the boat and he does not dispute any of Officer Block’s testimony. Mr. Erwin testified the boat had not been in the water for two to three years. He went on to state when Officer Block pulled the plug out it was full of cow-webs and everything was dry.

Mr. Erwin testified he always pulls the plug when taking his boat out of the water. He also lives in the sub-division where the public access is located and only has to drive two blocks to get there.

Paying the fine would be a financial hardship for Mr. Erwin. He is on a fixed income and his wife does not work. His wife recently returned home after having surgery to remove a tumor from her brain. The bills are piling up and he “literally” has less than \$50.00 in his checking account to make it through the end of the month.

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. Erwin filed a timely appeal and request for hearing.

Mr. Erwin violated Minn. Stat. § 84D.10, subd. 4(b), on June 25, 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 Gregory Mark Erwin be AFFIRMED.

Dated: August 24, 2012

s/James E. LaFave

JAMES E. LAFAVE
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. Erwin does not dispute that the drain plug was in his boat when he pulled it into to the boat launch. However, he does not believe the citation was appropriate because when the plug was pulled it was full of cobwebs and it was completely dry. He points out he is a responsible boater, and always removes the plug when he leaves the lake. Mr. Erwin believes paying the fine would be a financial hardship. He is on a fixed income, his wife just got home after brain surgery, the bills are piling up and he only has \$50.000 in his checking account.

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.

J.E.L.