

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

In the Matter of the Invasive  
Species/Infested Waters Citation  
#185382 Issued to Ardwin J. Hamer

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on August 15, 2012. Administrative Law Judge (ALJ) Richard C. Luis, Conservation Officer Jeremy Woinarowicz, and Ardwin J. Hamer participated in the Conference. The parties agreed that no formal hearing would be needed and that the ALJ could make a recommendation based on the record created during the Prehearing Telephone Conference. To that end, Officer Woinarowicz and Ardwin J. Hamer both testified under oath. The OAH record closed at the conclusion of the Prehearing Conference/Hearing.

**STATEMENT OF ISSUE**

Whether Ardwin J. Hamer violated Minn. Stat. § 84D.10, subd. 4(b), when he transported his watercraft on a public road with the drain plug in place?

The Administrative Law Judge concludes that Ardwin J. Hamer violated Minn. Stat. § 84D.10, subd. 4(b), on July 16, 2012. Accordingly, the Administrative Law Judge **RECOMMENDS** that the Commissioner **AFFIRM** the Citation.

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

**FINDINGS OF FACT**

1. Department of Natural Resources (Department, 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.<sup>1</sup>

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<sup>1</sup> See Minn. Stat. § 84D.13, subd. 4(4).

2. On July 16, 2012, Conservation Officer Jeremy Woinarowicz was stationed at a DNR checkpoint south of Baudette, along Highway 72 in Lake of the Woods County. The Officer checked a vehicle and boat trailer driven by Ardwin J. Hamer. Mr. Hamer's boat had two drain plugs in place during the time it was being transported, one that drained his live well and another in the boat's stern.<sup>2</sup>

3. Officer Woinarowicz issued Civil Citation No. 185382 to Mr. Hamer, in the amount of \$100.00.<sup>3</sup> The Citation asserted that Mr. Hamer transported a watercraft on a public road with the drain plugs (one in a live well and one on the boat's exterior) in place.<sup>4</sup>

4. Mr. Hamer timely appealed the Citation.<sup>5</sup> He testified that he was not aware of the 2011 Statute that prohibits transportation of a boat without pulling the boat's drain plug. He admits he violated that Statute on July 16, 2012, but noted that he left the plug in the live well in order to keep water from backing into the well, which he uses only to store food supplies while he is on the water.<sup>6</sup>

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. Hamer admitted he was transporting a boat with plugs in, as charged in the Citation.

3. It is appropriate that the Commissioner affirm Invasive Species Civil Citation #185382 and require Mr. Hamer to pay a \$100 fine for violating Minn. Stat. § 84D.10, subd. 4(b).

Based on the Conclusions, the Administrative Law Judge makes the following:

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<sup>2</sup> Testimony of Officer Woinarowicz.

<sup>3</sup> Effective July 1, 2012, the civil penalty amount for violation of the drain plug statute went from \$50 to \$100. Minnesota Laws 2012, ch. 272, sec. 15.

<sup>4</sup> Citation 185382.

<sup>5</sup> Appeal Letter July 23, 2012.

<sup>6</sup> Testimony of Ardwin J. Hamer.

## RECOMMENDATION

**IT IS RECOMMENDED** that the Commissioner of Natural Resources **AFFIRM** the Citation issued to Ardwin J. Hamer on July 16, 2012.

Dated: August 27th, 2012

/s/ Richard C. Luis  
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RICHARD C. LUIS  
Administrative Law Judge

Reported: Recorded Digitally

## 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 Ardwin J. Hamer. 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. Hamer noted that his boat had been inspected by the DNR three times at Lake Minnetonka this summer, all before July 16. He had received no tickets. Officer Woinarowicz noted that many inspections of the sort described by Mr. Hamer are performed by “non-sworn” DNR employees, who do not have authority to issue Citations. When asked by Woinarowicz if any of the inspection personnel wore green uniforms (worn only by Conservation Officers), Mr. Hamer recalled seeing one such person. This exchange suggests that any prior inspections of Mr. Hamer’s boat may have been performed by people who lacked the authority to issue him a Citation.

In any event, Mr. Hamer does not contest he was in violation of Minn. Stat. § 84D.10, subd. 4(b) while driving on Highway 72 south of Baudette on July 16, 2012, so it is appropriate to affirm Citation #185382.

**R. C. L.**