

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Invasive
Species/Infested Waters Citation
#124645 Issued to David Norris Pierce

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a Prehearing Telephone Conference on October 9, 2012. Administrative Law Judge (ALJ) Manuel J. Cervantes, Conservation Officer Aaron Kahre (Officer), and David Norris Pierce (Respondent) 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, both the Officer and Respondent testified under oath. The OAH record closed at the conclusion of the Prehearing Conference.

STATEMENT OF ISSUE

Did Respondent violate Minn. Stat. § 84D.10, subd. 4 (b) when he transported his boat from his home to the boat ramp at Grays Bay, Lake Minnetonka?

The ALJ concludes that Respondent violated Minn. Stat. § 84D.10, subd. 4 (b), on July 21, 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. On July 21, 2012, at approximately 11:50 a.m., the Officer observed Respondent pulling his trailer and boat towards a public boat access at Grays Bay on Lake Minnetonka. The Officer viewed the boat as it approached, but did not see the drain plugs dangling open from the boat.¹

2. The Officer approached the Respondent and pointed this out to him. Respondent acknowledged that he knew that the plugs were in. He said he replaced the plugs before leaving his home. Respondent had told the Officer that his boat was

¹ Testimony of the Officer.

empty of any fluids. The Officer issued Respondent a citation based on violation of Minn. Stat. § 84D.10, subd. 4 (b).²

3. At the hearing, the Respondent said, "I agree with everything the Officer said (testified)." Respondent indicated that he agrees with the law that requires minimizing the proliferation of invasive species and that he did not contribute to their proliferation on this day. He felt that a warning would have been appropriate rather than a citation and that the penalty was harsh.³

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. Minn. Stat. § 84D.10, reads:

Subd. 4. Persons transporting water-related equipment.

(a) When leaving waters of the state a person must drain water-related equipment holding water and live wells and bilges by removing the drain plug before transporting the water-related equipment off the water access site or riparian property.

(b) 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.

3. The Officer observed the violation of transporting his boat with the valves closed and Respondent has not denied any of the material facts in this matter.

4. The Department has substantiated the violation by a preponderance of the evidence.

5. It is appropriate that the Commissioner affirm Civil Citation #124645 and require Respondent to pay a \$100 fine for violating Minn. Stat. § 84D.10, subd. 4 (b) within 30 days of this Recommendation.

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

² *Id.*, Citation No.124645, contained in file.

³ Rspdt. Test.

RECOMMENDATION

IT IS RECOMMENDED that the Commissioner of Natural Resources **AFFIRM** the citation issued to David Norris Pierce on July 21, 2012.

Dated: October 10, 2012



MANUEL J. CERVANTES
Administrative Law Judge

Reported: Not Recorded

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 the parties. 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

Respondent does not deny that he transported his boat with his boat valves closed, contrary to Minnesota law. The facts and law in this case support affirmation of Respondent's Citation.

M. J. C.