

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 Michael G. Maas;
Citation No. 122501

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A hearing was held by telephone on October 1, 2012, pursuant to a Notice of Prehearing Conference and Notice of Hearing issued on September 20, 2012.

Appearances: Conservation Officer Lt. Chad Sherack, on behalf of the Department of Natural Resources (Department); Michael G. Maas, 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 on October 1, 2012, upon the filing of post hearing submissions.

STATEMENT OF THE ISSUE

Did Mr. Maas violate Minn. Stat. § 84D.13,¹ by transporting aquatic macrophytes?

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

FINDINGS OF THE FACT

1. On September 3, 2012, at approximately 1:00 p.m., Lt. Chad Sherack was on patrol near County Road 210 and Highway 65 near MacGregor, Minnesota. He observed a vehicle pulling a boat and trailer with plants hanging from the back.²

2. Lt. Sherack followed the vehicle and then pulled it over. He identified the driver as Michael G. Maas. Lt. Sherack showed Mr. Maas the vegetation and then issued him a citation.³

¹ Minnesota Statutes are cited to the 2010 Edition.

² Testimony of Lt. Sherack.

³ *Id.*

3. Lt. Sherack bagged the vegetation. He later gave the evidence to the Shallow Lakes Water Program for identification. The Shallow Lakes Water Program identified the vegetation as an “arrowhead”, an aquatic macrophyte that grows underwater.⁴

4. Minnesota Statutes § 84D.13, subd. 4(1) allows conservation officers to issue warnings or citations to a person who “unlawfully transports prohibited invasive species or aquatic macrophytes.” Minnesota Statutes § 84D.13, subd. 5(a)(1) imposes a \$100 fine for unlawfully transporting aquatic macrophytes.

5. Mr. Maas does not dispute there was a small amount of vegetation on the back of his boat. He also he does not dispute any of Lt. Sherack’s testimony.⁵

6. Mr. Maas spent the Labor Day weekend with his wife and two daughters camping and boating at Whispering Pines. He testified that after they finished boating he saw the back of his boat was covered with vegetation. Mr. Maas did his best to clean the vegetation off before starting the drive back home, but he missed a little. He was not heading to another lake. Mr. Maas testifies he is good with his boat and makes a conscious effort to keep it clean.⁶

7. Mr. Maas has never been charged with an invasive species citation before and thinks \$100 is a harsh penalty.⁷

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

CONCLUSIONS

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. Logan filed a timely appeal and request for hearing.

Mr. Logan violated Minn. Stat. § 84D.13, subd. 4(1), on August 3, 2012, by transporting an aquatic macrophyte.

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

⁴ Both Mr. Maas and Lt. Sherack submitted photographs of the vegetation in question.

⁵ Testimony of Michael Maas.

⁶ *Id.*

⁷ *Id.*

RECOMMENDATION

The Administrative Law Judge recommends that the civil citation issued to Michael G. Maas be AFFIRMED.

Dated: October 31, 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. Maas does not dispute there was a small amount of vegetation on the back of his boat when he was pulled over by Lt. Sherack. Both Mr. Maas and Lt. Sherack submitted photographs of the vegetation into evidence. The vegetation was identified as an "arrowhead", which is an aquatic macrophyte.

Mr. Maas, however, he does not believe the citation was appropriate because he is meticulous about keeping his boat clean. He cleaned his boat before heading home and he was trying to comply with the law.

The citation was properly issued. Mr. Maas admits aquatic macrophytes were transported on his boat in violation of the statute. It is appropriate to affirm the citation.

J.E.L.