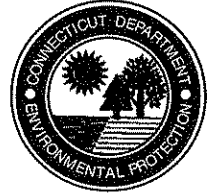


**STATE OF CONNECTICUT  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**



***OFFICE OF ADJUDICATIONS***

***IN THE MATTER OF*** : ***SUSPENSION OF SAFE BOATING  
CERTIFICATE  
DEP REFERENCE NO. 10-007***

***WILLIAM H. JOHNSON*** : ***JULY 22, 2010***

***FINAL DECISION***

A hearing was held on July 20, 2010, at the Department of Environmental Protection (DEP) Marine Headquarters in Old Lyme regarding the suspension of the above-named operator's safe boating certificate. General Statutes §15-140q. In attendance at the hearing were Mr. Johnson, Tim Delgado of the DEP Boating Division, and Officers Stephen Stanko and John Hey of the Environmental Conservation Police. Eleanor Mariani of the DEP Boating Division was also in attendance to observe the proceeding.

The following exhibit was admitted into evidence:

DEP-1 – BUI Arrest and Alcohol Test Report and Narrative Incident Report dated June 30, 2010 with attachments.

Mr. Johnson was arrested on June 27, 2010. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Johnson on July 1, 2010, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for said suspension. The Notice of Hearing was issued to Mr. Johnson on July 7, 2010.

***FINDINGS OF FACT***

1. On June 26, 2010, Officer Stanko and Officer Hey observed a vessel while on patrol in the Echo Bay area of Candlewood Lake. The vessel, with registration CT 3064AE, was drifting toward a residential dock with several vessels tied to it. It was not anchored or moored. The officers approached the vessel and secured it to prevent it from drifting closer to the residential dock or shore. After securing the vessel, the officers observed an individual, later identified as

William Johnson, asleep on the floor of the vessel. (Ex. DEP-1; test. 7/20/10, S. Stanko, W. Johnson.)<sup>1</sup>

2. After waking Mr. Johnson, Officer Stanko observed several signs that Mr. Johnson was under the influence of alcohol. He stumbled and needed to hold himself up, he slurred his words, and he had a strong odor of alcoholic beverages about him. Mr. Johnson was asked to perform a battery of field sobriety tests and failed all of them. When asked about his alcohol consumption, Mr. Johnson admitted to consuming about six beers and a shot of Goldschlager liquor. Mr. Johnson was brought to shore to perform a second battery of field sobriety tests which he also failed. (Ex. DEP-1; test. S. Stanko.)

3. Mr. Johnson was placed under arrest and advised of his rights. He submitted to two alcohol breath tests. The first test result showed a blood alcohol content (BAC) of 0.152 and the second test showed a BAC of 0.136. The legal limit is 0.08. (Ex. DEP-1; test. S. Stanko.)

#### *CONCLUSIONS OF LAW*

To suspend a safe boating certificate under the provisions of §15-140q, I must find: (1) that the peace officer had probable cause to arrest Mr. Johnson for operating the vessel while under the influence of intoxicating liquor or drugs, or both, or while he had an elevated blood alcohol content; (2) that he was placed under arrest; (3) that he (A) refused to submit to such test or analysis, or (B) submitted to such test or analysis and the results of such test or analysis indicated that at the time of the alleged offense that Mr. Johnson had an elevated blood alcohol content; and (4) that he was operating the vessel. If these questions are answered affirmatively, then I am required to affirm the operator's suspension.

There is no credible evidence disputing the facts that: (1) the officer had probable cause to arrest Mr. Johnson for operating his vessel under the influence of intoxicating liquor or drugs or both or while Mr. Johnson had an elevated blood alcohol content; (2) Mr. Johnson was operating his vessel on June 26, 2010; (3) Mr. Johnson was placed under arrest; and (4) the results of a chemical alcohol test initiated indicated that he had an elevated BAC level at the time of operation.

During his testimony, Mr. Johnson indicated his belief that he was not operating the vessel because he had decided to lie down and take a nap and the boat was not "on". Mr.

---

<sup>1</sup> The testimony and proceedings in this matter were recorded. No written transcript has been prepared. The audio recording of this hearing is on file with the Office of Adjudications and is the official record of this proceeding.

Johnson acknowledged that he was “drifting” and was not moored, anchored, or docked at the time he was approached by the officers.

For purposes of § 15-140q, the word “operate” means that the vessel is underway or aground and not moored, anchored or docked.” General Statutes § 15-133(d). I take notice of the fact that the word “operate” as it pertains to boating in general is defined elsewhere in the General Statutes as “to navigate or otherwise use a vessel.” General Statutes § 15-127. Section 15-127 clearly indicates, however, that the definitions in that section are to be used unless “the context requires otherwise.” §15-127. Section 15-133 clearly indicates that for the purposes of certain specific sections pertaining to operating under the influence, including §15-140q, “‘operate’ means that the vessel is underway or aground and not moored, anchored or docked.” Therefore, the definition from §15-133 applies in the context of determining whether Mr. Johnson was operating the boat while it was drifting freely on open water. Where “the legislation itself contains a specific definition, the courts are bound to accept that definition.” *Plasticrete Block and Supply Corp. v. Commissioner of Revenue Services* 216 Conn. 17, 27(1990) quoting *Greenwich v. Liquor Control Commission*, 191 Conn. 528, 536-37 (1983); *Danbury v. Corbett*, 139 Conn. 379, 384 (1953). Section 15-133 provides a clear definition of “operate” for the purpose of these proceedings. The law requires that I use this definition. In applying this legal definition to the facts of this matter, Mr. Johnson was operating the vessel for the purposes of this inquiry because the boat was underway and not moored, anchored, or docked.

### **CONCLUSION AND ORDER**

There is probable cause to suspend the Connecticut Safe Boating Certificate of William Johnson and it is hereby ORDERED suspended for a period of *ninety (90) days, effective August 1, 2010 through October 30, 2010*. If it is still in his possession, **William H. Johnson** is hereby **ordered to surrender his safe boating certificate**, by personal delivery or first class mail, to the Division of Boating, Department of Environmental Protection, 333 Ferry Road, Old Lyme, CT 06371-0280, *within 2 days of receipt of this decision*.

*Entered as a final order of the Commissioner of Environmental Protection by:*

  
\_\_\_\_\_  
Kenneth M. Collette, Hearing Officer

PARTY LIST

Final Decision in the matter of William Johnson, DEP Reference No. 10-007  
(Suspension of Safe Boating Certificate)

PARTY

REPRESENTED BY

William H. Johnson  
1 Sherman Lane  
New Fairfield, CT 06812  
(Via Certified Mail and First Class Mail)

Himself

---

Department of Environmental Protection  
Division of ENCON Police  
79 Elm Street  
Hartford, CT 06106  
(Via E-mail)

Officer Stephen Stanko

---

DEP Boating Division  
333 Ferry Road  
Old Lyme, CT 06371  
(Via e-mail)

Tim Delgado