

OFFICE OF ADJUDICATIONS

IN THE MATTER OF : ***BOATING DIVISION/
SUSPENSION OF SAFE
BOATING CERTIFICATE
DEP INCIDENT NO. 07-6423***

GREGORY T. SIEGE : ***OCTOBER 10, 2007***

FINAL DECISION

A hearing was held on September 7, 2007, 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. This hearing was continued to October 1, 2007 to allow for the collection of testimony from a witness who was unavailable on September 7. Through counsel, the Respondent agreed to stay any deadline for a decision until after the conclusion of the testimony on October 1, 2007 and until this decision is issued. In attendance at the proceeding on September 7, 2007 were Charles E. Tiernan, III, acting as counsel for Mr. Gregory T. Siege, Mr. Siege, Mary Lenehan, Assistant Attorney General acting as counsel for the DEP, and Sgt. Ryan Healy and Officer Raul Ramos, the arresting officers. Also present were the following officers called by the Respondent as witnesses: Captain Kyle Overturf, Sergeant Thomas Bull, Officer Joseph Ruggiero, Officer James Kane, and Officer Michael Tavares, all of the DEP Environmental Conservation (EnCon) Police. Kathryn Keenan of the DEP Boating Division and Janice Deshais of the DEP Office of Adjudications were also present to observe the proceedings. In attendance at the continued hearing on October 1, 2007 were: Attorney Tiernan, Attorney Lenehan, Trooper David Todd (Ret.) of the Connecticut State Police, and Mr. Siege. Ms. Keenan and Bob Manley of the State's Attorney Office were present to observe the proceeding.

The following exhibits were admitted into evidence:

- a) DEP-1 – State of Connecticut DEP Environmental Conservation Police Incident Report dated July 13, 2007 with attachments.
- b) DEP-2 – Vessel Operator's Chemical Test Report, dated July 8, 2007
- c) DEP-3 – Report from Department of Public Safety Controlled Substances Toxicology Laboratory including evidence receipt and urinalysis results.
- d) DEP-4 – BUI 24-Hour License Revocation and Interim Certificate
- e) RESP-1 – Photograph of Old Saybrook dock and parking area.
- f) RESP-2 – Handwritten notes of Officer Ramos from manila folder. (Copy)

- g) RESP-3 – Handwritten notes (1 pg.) from Officer Ruggiero’s field notebook.
- h) RESP-4 – Subpoena issued to Officer Ramos
- i) RESP-5 – Handwritten notes (1 pg.) from Officer Kane’s field notebook.
- j) RESP-6 – Copy of printed receipt from Intoxilyzer

Mr. Siege was arrested on July 8, 2007. General Statutes §15-133(d). A Notice of Suspension was mailed to Mr. Siege on July 20, 2007, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for said suspension. Notice of Hearing was issued to Mr. Siege on August 2, 2007. Notice of a continuance was mailed to Mr. Tiernan, as attorney for Mr. Siege, on August 2, 2007 advising him that the suspension, if affirmed, would be effective on the date of the final decision.

FINDINGS OF FACT

1. Mr. Siege was operating a vessel (identified as CT-7924 BA) on the Connecticut River in the vicinity of the railroad bridge in Old Saybrook on July 8, 2007. Based on witness statements within DEP-1, Mr. Siege fell out of the vessel he was operating at some time between 3:45 and 4:00 pm. Mr. Siege’s vessel remained underway after he was ejected from it and it began to turn in a clockwise circle. After a few turns, the vessel collided with a sailboat owned by Mr. Leland Brandes (identified as NY-1856 EJ). Mr. Siege was picked up from the water by a private third party identified as Kurt Besier. Mr. Siege’s vessel was brought under control by the combined efforts of Mr. Grant Westerson, a civilian operating the Old Saybrook police vessel, Tow Boat US, and Sea Tow approximately 15-20 minutes after he was ejected from it. Tow Boat US then towed Mr. Siege’s vessel to Between the Bridges Marina in Old Saybrook.
2. Mr. Besier brought Mr. Siege to shore at approximately 4:50 pm. Sgt. Healy and Officer Tavares each had initial contact with Mr. Siege upon his arrival at the dock. Sgt. Healy observed the odor of an alcoholic beverage from Mr. Siege as well slurred speech. Officer Tavares did not make any such observation but indicated he was focused on providing Mr. Siege with any medical assistance. Mr. Siege was asked if he needed medical attention by both Sgt. Healy and Officer Tavares, which he declined. He made reference to a bruise on his leg from falling into the water but did not indicate he needed medical attention. At approximately 5:10 pm, Officer Ramos initiated contact with Mr. Siege to conduct a series of field sobriety tests on Mr. Siege at the direction of Sgt. Healy. Sgt. Healy received approval for Officer Ramos to conduct the field sobriety tests from superior officers based on his observations of an odor of alcoholic beverage coming from Mr. Siege’s facial area, slurred speech, and bloodshot eyes. Officer Ramos conducted three field-sobriety tests, including the Horizontal Gaze Nystagmus, Walk and Turn, and the One-Leg Stand. Mr. Siege’s performance on all three tests indicated failure. Mr. Siege was then placed under arrest.

3. Upon being arrested, Mr. Siege was taken to Old Saybrook Police Department for processing. He was advised of his Miranda rights and provided an opportunity to contact an attorney. Mr. Siege was also asked to submit to a chemical alcohol test and advised of the consequences of failing the test or refusing to submit to the test. Officer Ramos decided that a urine test should be conducted. Trooper David Todd of the Connecticut State Police observed Mr. Siege provide the urine sample and properly collected both samples, one at 5:56 pm and the second at 6:30 pm and sealed them for further analysis in the evidence kit. The results from the toxicology lab indicate that Mr. Siege has a blood alcohol content of 0.17 of one percent as indicated by the first sample and 0.15 of one percent as indicated by the second sample. The first sample indicates a level more than 0.16 of one percent. Both tests indicate an elevated blood alcohol content. After the samples were collected, Mr. Siege was provided with the printout from the Intoxilyzer (Resp-6) and his 24-hour license revocation and interim boating certificate. He was charged with reckless operation of a vessel in the first degree while boating under the influence of intoxicating liquor or drugs. He was then released on a promise to appear in New London Superior Court (G.A. 10).

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. Siege 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, commenced within two hours of the time of operation, and the results of such test or analysis indicated that at the time of the alleged offense that Mr. Siege 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 evidence disputing the facts that: (1) Mr. Siege was operating his vessel on July 8, 2007; (2) Mr. Siege was placed under arrest; and (3) the officer had probable cause to arrest Mr. Siege for operating his vessel under the influence of intoxicating liquor or drugs or both while Mr. Siege had an elevated blood alcohol content. As a result of the following, these three elements of the statutory inquiry are answered in the affirmative:

- (1) Witness statements within DEP-1, most notably that of Kurt Besier, clearly establish that Mr. Siege was at the controls of his vessel on the Connecticut River in the vicinity of the Amtrak railroad bridge on July 8, 2007 and in fact was the sole operator of the vessel before he was ejected from it.
- (2) The report (DEP-1) and testimony of Officer Ramos establish that Mr. Siege was arrested, advised of his constitutional rights, and afforded an opportunity to contact an attorney.
- (3) The report (DEP-1) and testimony of Officer Ramos and Sergeant Healy establish that there was probable cause for Officer Ramos to arrest Mr. Siege.

Sgt. Healy observed that there was an odor of alcoholic beverage from Mr. Siege's facial area, that his eyes were bloodshot, and that his speech was slurred. Further, Mr. Siege failed three separate field sobriety tests conducted by Officer Ramos and observed by Sgt. Healy. There is no evidence that Mr. Siege had any medical condition or injury that caused an inability to perform the tests as instructed.

The element at issue is whether the chemical alcohol testing was commenced within *two* hours of Mr. Siege's *operation of the vessel*. General Statutes § 15-140q(c). This is a critical issue. I cannot base my decision on the results of the chemical analysis unless it was commenced within two hours of operation. See *Tuttle v. Commissioner of Motor Vehicles*, 1996 Conn. Super. Lexis 1657 (1996). 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 when Mr. Siege ceased operation of his vessel for the purpose of determining the timeliness of the chemical alcohol test. 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, 579 A.2d 20 (1990) quoting *Greenwich v. Liquor Control Commission*, 191 Conn. 528, 536-37, 469 A.2d 382 (1983); *Danbury v. Corbett*, 139 Conn. 379, 384, 94 A.2d 6 (1953). Section 15-133 provides a clear definition of "operate" for the purpose of these proceedings. The law requires that I use this definition.

The record indicates that Mr. Siege fell out of his vessel at approximately 3:50 pm. The vessel continued its forward progress for at least 15 minutes after he was ejected. At the conclusion of this 15-minute period, his boat was brought under control and towed to a marina. Knowing that his vessel was not moored, docked, or anchored as of 4:05, I find that Mr. Siege had not ceased "operating" the vessel until 4:05 at the earliest. The record shows that the testing process began at 5:56, or less than two hours from the time Mr. Siege ceased operation. As a result, I find that the testing was commenced within two hours of the time of operation.

It is a rule of statutory construction that statutes and regulations are to be interpreted to avoid unintended illogical consequences or bizarre results. *Ensign-Bickford Realty Corp. v. Zoning Commission of Simsbury*, 245 Conn. 257 (1998). In this case, interpreting the provisions of §15-140q to allow Mr. Siege to avoid the consequences of operating with an elevated blood alcohol content because he fell out of the vessel that he was operating would lead to a result that must be, and is, rejected. The vessel for which Mr. Siege was responsible continued its forward progress for at least 15

minutes after he fell out of it. It continued to operate and since he set the vessel in motion, it is reasonable to conclude that he remains responsible for its operation.

The definition of operate in the context of boating under the influence and stated in § 15-133 contemplates that boating is unique when determining the time at which operation ceased for the purpose of starting the clock on the two-hour time period in which to commence a chemical analysis for blood alcohol content. It may take a certain period of time to remove a boater and his or her vessel from the water once probable cause is established to conduct the additional field sobriety testing and decide whether probable cause exists to arrest someone for boating under the influence. In addition and in fairness to the operator, field sobriety testing can only take place on shore and after a certain time period has passed to acclimate the operator to firm ground. It would not make sense that the legislature intended this statute to have such a limited effect on operators that are initially stopped offshore or, as in this case, fell out of their boat. Any other interpretation would make the two-hour time period in which to commence an analysis of an operator's blood alcohol content difficult, if not impossible to meet in such a situation. One can envision operators falling into the water purposely, jeopardizing their personal and public safety if they know that it would be determinative of the time that they ceased operation for the purposes of calculating the two-hour time limit in which to commence the test. The legislature did not intend such an illogical consequence or bizarre result.

This administrative record contains substantial evidence to support my findings of fact and the reasonable conclusions I draw from those facts.¹ It is undisputed that Mr. Siege was operating a vessel on July 8, 2007. Sgt. Healy and Officer Ramos, trained and experienced officers, made observations of Mr. Siege that indicated possible intoxication, including odor of an alcoholic beverage from Mr. Siege's facial area, slurred speech, and an inability to perform a battery of field sobriety tests. These observations were later confirmed when Mr. Siege was given two timely blood alcohol tests that revealed he was intoxicated while operating that vessel. The toxicology report admitted into evidence shows that Mr. Siege had a blood alcohol content of .17 of 1% and .15 of 1%, in two separate tests respectively, given 34 minutes apart.

Having found in the affirmative on the four factors enumerated in General Statutes §15-140q, and, pursuant to the authority delegated to me by the Commissioner of Environmental Protection, §22a-2, **I find that the safe boating certificate of Gregory T. Siege should be suspended.**

¹ *Pizzo v. Commissioner of Motor Vehicles*, 62 Conn. App. 571, 577 (2001), quoting *Murphy v. Commissioner of Motor Vehicles*, 254 Conn. 333, 343 (2000) (standard of review of an administrative decision is whether there is substantial evidence in record to support agency's findings of fact and whether conclusions drawn from facts are reasonable).

ORDER

The safe boating certificate of **Gregory T. Siege** is hereby suspended for 120 days, ***effective October 10, 2007 through February 7, 2008***. **Gregory T. Siege** 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 this 10th day of October, 2007, as a final order of the Commissioner of Environmental Protection by:

/s/ Kenneth M. Collette
Kenneth M. Collette
Hearing Officer

October 10, 2007
Date

PARTY LIST

In the matter of Gregory T. Siege
(Suspension of Boating Certificate)
Incident No. 07-007

PARTY

Gregory T. Siege
69 Cottage Road
Madison, CT 06443

REPRESENTED BY

Charles E. Tiernan, III, Esq.
Lynch, Traub, Keefe & Errante, PC
52 Trumbull Street
P.O. Box 1612
New Haven, CT 06506-1612

Department of Environmental Protection
Boating Division
333 Ferry Road
Old Lyme, CT 06371-0280

Mary Lenehan - Assistant Attorney General
Kathryn Keenan – DEP Boating Division