

Connecticut Department of  
**ENERGY &  
ENVIRONMENTAL  
PROTECTION**

ENVIRONMENTAL PROTECTION  
OFFICE OF ADJUDICATIONS

***IN THE MATTER OF*** : ***SUSPENSION OF SAFE BOATING  
CERTIFICATE  
DEEP REFERENCE NO. 12-001***

***JOHN DAVID SCOTT, JR.*** : ***JULY 13, 2012***

**FINAL DECISION**

A hearing was held on July 10, 2012 at the Department of Energy and Environmental Protection (DEEP) in Hartford regarding the suspension of the above-named operator's safe boating certificate. General Statutes §15-140q. In attendance at the proceeding were John D. Scott, Timothy Delgado of the DEEP Boating Division, and EnCon Police Officer Harold Lindo.

The DEEP offered the following exhibits, which were admitted into evidence. I have assigned these exhibits the following numbers: DEEP-1 (Arrest Report); DEEP-2 (Incident Report, with printout of breathalyzer test results attached); DEEP-3 (Notice of Rights); and DEEP-4 (BUI 24-Hour License Revocation & Interim Certificate).

Mr. Scott was arrested on June 10, 2012. General Statutes §15-133(d). A Notice of Suspension was mailed to him on June 14, 2012, advising of his right to a hearing prior to the effective date of the suspension to determine probable cause for the suspension. Mr. Scott requested a hearing in a timely fashion; a Notice of Hearing was issued to him on June 27, 2012.

## **FINDINGS OF FACT**

1. Mr. Scott was operating a vessel, identified as a white center console "Mako" named "Slice of Life" with registration CT 9432 BE, on the Connecticut River on June 10, 2012. The vessel was traveling southbound towards Haddam. Officer Lindo was dispatched to respond to a possible domestic disturbance on the vessel. Officer Lindo observed Mr. Scott operating the vessel, pulled alongside and signaled for Mr. Scott to stop. After an initial refusal to do so, Mr. Scott eventually stopped his vessel near the Haddam Meadows State Park and was directed to the Park boat launch by Officer Lindo. Lindo saw Mr. Scott stumble as he reached down to start the engine of the vessel to move it to the boat launch. (Ex. DEEP -2; test. H. Lindo.<sup>1</sup>)

2. After Mr. Scott secured his vessel to the dock, Officer Lindo approached him. When he shook Mr. Scott's hand, Officer Lindo could smell a strong odor of alcohol on Mr. Scott's breath as he escorted Scott off the docks to the driveway. Officer Lindo placed Mr. Scott in handcuffs and, after checking with Mr. Scott to make sure the handcuffs were not too tight, Lindo assisted Scott in sitting on a concrete edge of a non-floating dock as Scott was having trouble standing without staggering. (Ex. DEEP-2; test. H. Lindo.)

3. After a period of rest and after additional officers arrived on scene, Officer Lindo removed Mr. Scott's handcuffs and had Mr. Scott perform a series of field sobriety tests. None of these tests required the use of Mr. Scott's legs, as he informed Officer Lindo that he was awaiting knee surgery. Mr. Scott recited the alphabet extremely slowly, pausing every three or four letters and hesitating each time before saying the next three or four letters. Mr. Scott also counted to ten very slowly and miscounted on his fingers twice and had improper finger touch when asked to count each of his fingers. Mr. Scott also failed the horizontal gaze nystagmus test. Officer Lindo informed Mr. Scott he was under arrest for boating under the influence and placed Mr. Scott in handcuffs. Mr. Scott informed Officer Lindo that the handcuffs were not too tight. (Exs. DEEP-1, 2; test. H. Lindo.)

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<sup>1</sup> The July 10, 2012 hearing testimony was 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.

4. Officers from the Middletown Police Department arrived on scene and proceeded with their investigation into the domestic disturbance complaint. Mr. Scott was transported by the officers to the Middletown Police Department and, upon arrival, was placed in a holding cell. Officer Lindo had Mr. Scott read and sign the Notice of Rights and gave a copy to him. Officer Lindo then had Mr. Scott blow into an Intoxilyzer. Mr. Scott blew a blood alcohol content (BAC) of .168, more than twice the legal limit of .08. A second test about 20 minutes later resulted in a BAC of .165. Mr. Scott was given a copy of both tests and a copy of the 24-hour license revocation and interim certificate. (Exs. DEEP-1 - 4; test. H. Lindo.)

### **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. Scott 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. Scott 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.

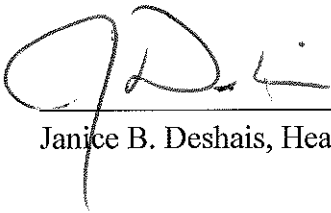
The undisputed substantial evidence in this matter establishes that: (1) Officer Lindo had probable cause to arrest Mr. Scott for operating his vessel under the influence of intoxicating liquor or drugs or both while Mr. Scott had an elevated blood alcohol content; (2) Mr. Scott was placed under arrest; (3) Mr. Scott submitted to a blood alcohol test that indicated that at the time of the alleged offense Mr. Scott had an elevated blood alcohol content; and (4) Mr. Scott was operating the vessel.

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

**ORDER**

The safe boating certificate of **John D. Scott, Jr.** is hereby suspended for 120 days (four months), *effective July 16, 2012 through November 13, 2012.* **If he has not already done so, Mr. Scott** is hereby **ordered to surrender his safe boating certificate**, by personal delivery or first class mail, to the Division of Boating, Department of Energy and Environmental Protection, 333 Ferry Road, Old Lyme, CT 06371-0280, *within 2 days of receipt of this decision.*

*Entered this 13th day of July, 2012, as a final order of the Commissioner of Energy and Environmental Protection by:*



Janice B. Deshais, Hearing Officer

**SERVICE LIST**

In the matter of John D. Scott, Jr.  
(Suspension of Boating Certificate)  
Reference No. DEP 12-001

**PARTY**

John D. Scott, Jr.  
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Higganum, CT 06441

Department of Energy and  
Environmental Protection  
Boating Division  
333 Ferry Road  
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**REPRESENTED BY**

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