

**OFFICE OF ADJUDICATIONS**

**IN THE MATTER OF**

**: BOATING DIVISION/  
SUSPENSION OF RIGHT TO  
OPERATE VESSEL  
Ref. #05-005**

**PAUL A. OBERMANN**

**: AUGUST 16, 2005**

**FINAL DECISION**

A hearing was held on August 12, 2005 at the Department of Environmental Protection Marine Headquarters in Old Lyme regarding the suspension of the right of Paul A. Obermann to operate a vessel in the waters of the State. General Statutes §15-140q. Attorney Paul Chinigo, counsel for Mr. Obermann, and Stonington police officers Holt and Howard were present, as was John Annino of the DEP Boating Division.

Officer Holt arrested Mr. Obermann on July 12, 2005 for operating a boat under the influence (BUI) after Obermann and a male passenger were brought to the Stonington Town Dock by the Coast Guard and Westerly Rescue following a boating accident. A Notice of Suspension was mailed to Mr. Obermann on July 25, 2005, advising him of his right to a hearing.

Mr. Obermann was injured in the accident and was subsequently brought to Lawrence and Memorial Hospital in New London for treatment. While at the hospital, Mr. Obermann refused to take either a blood or urine test, resulting in this administrative action to suspend his right to operate in Connecticut waters due to his refusal to submit to a chemical alcohol test. §15-140q(c).

At the hearing, Attorney Chinigo argued that §15-140q does not permit the suspension of Mr. Obermann's privilege to operate because his refusal to submit to chemical tests was allegedly made more than two hours after he was operating his vessel.

**FINDINGS**

Following this hearing, I find the following:

- (1) There was probable cause to arrest Mr. Obermann for operating a vessel while under the influence of intoxicating liquor;
- (2) Mr. Obermann was placed under arrest;
- (3) Mr. Obermann was operating the vessel; and
- (4) Mr. Obermann refused to submit to chemical tests or analysis; and
- (5) This was Mr. Obermann's first offense.

The claim that more than two hours passed between the time of Mr. Obermann's operation of his vessel and his refusal to submit to chemical tests has no impact on this administrative suspension of Obermann's privilege to operate due to that refusal. An administrative suspension for failing a blood or urine test requires that the test be administered within two hours of the operation of a vessel by the accused. §15-140q(c). The obligation of the accused to submit to a test is independent of this timing requirement for suspension due to failure of a test. See *Glenn A. Tuttle v. Commission of Motor Vehicles*, Superior Court, Judicial District of Hartford, CV 95 055 55 32 (June 28, 1996) (The obligation of a driver to submit to a chemical test is separate from the provisions of law relating to the timing of the test and the test results.)

This conclusion is reinforced by the language of §15-140q itself. Subsection (g) describes the issues to be determined at a hearing, including: "... (3) whether such person (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 such person had an elevated blood alcohol content." (Emphasis added.)

Finally, 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 the accused to avoid his obligation and the consequences of refusing to submit to chemical testing through the mere passage of time would lead to a result that must be, and is, rejected.

### **CONCLUSION AND ORDER**

I find that there is probable cause to suspend Mr. Obermann's privilege to operate a vessel in the waters of the State of Connecticut. Therefore, under the provisions of General Statutes §15-140q, as of the date of this decision, the Commissioner of Environmental Protection hereby suspends the right of Paul A. Obermann to operate a vessel in the waters of the State for *90 days*, from *August 16, 2005 to November 13, 2005*.

Through a copy of this decision, the DEP Division of Law Enforcement is hereby directed to advise any other appropriate law enforcement agencies of the suspension of Mr. Obermann's right to operate a vessel in the waters of the State.

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

8/16/05 \_\_\_\_\_  
Date

/s/ Janice B. Deshais \_\_\_\_\_  
Janice B. Deshais, Hearing Officer

**PARTY LIST**

Final Decision in the matter of State of Connecticut vs. Paul A. Obermann  
(Suspension of Right to Operate)

**PARTY**

**REPRESENTED BY**

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