

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF HUGHES)

**SOUTH DAKOTA GAME, FISH AND
PARKS COMMISSION**

**IN THE MATTER OF THE CONTESTED
CASE HEARING ON THE APPLICATION
OF JUSTIN ALLEN d/b/a NORTHEAST
BAIT, FOR A RESIDENT WHOLESALE
BAIT DEALER LICENSE, RESIDENT
RETAIL BAIT DEALER LICENSE, AND
EXPORT BAIT DEALER LICENSE**

GFP 17-01

**AMENDED NOTICE OF
CONTESTED CASE HEARING**

TO: JUSTIN ALLEN, d/b/a NORTHEAST BAIT, APPLICANT

NOTICE IS HEREBY GIVEN that the above-named applicant has requested a contested case hearing before the South Dakota Game, Fish and Parks Commission in connection with the denial by the South Dakota Department of Game, Fish and Parks (hereinafter “Department”) of applicant’s application for a 2017 license. Pursuant to SDCL 1-26-17, you are hereby advised as follows:

1. The contested case hearing shall be held on Thursday, June 8, 2017, commencing at 9 o’clock A.M., River Run/Wetlands meeting Room, Cedar Shores Conference Center, Cedar Shores Resort, 1500 Shoreline Drive, Oacoma, South Dakota, for the purpose of determining whether the applicant is entitled to be issued a 2017 resident wholesale bait dealer license, resident retail bait dealer license, and export bait dealer license authorized in SDCL §§ 41-6-44, 41-6-45, and 41-6-45.1, respectively.
2. The legal authority and jurisdiction of the Game, Fish and Parks Commission to conduct the hearing is granted in SDCL Chapter 1-26.
3. The hearing is held to determine whether applicant has complied with the rules adopted pursuant to SDCL § 41-2-18 by the South Dakota Game, Fish and Parks Commission to protect and perpetuate the bait and biological specimen animal resources of the state and as such whether or not a 2017 resident wholesale bait dealer license, resident retail bait dealer license, and export bait dealer license authorized in SDCL §§ 41-6-44, 41-6-45, and 41-6-45.1, respectively, should be granted.
4. Department asserts that applicant violated the provisions of ARSD 41:09:04 as follows:
 - (a) On or about January 19, 2017 in Edmunds County, South Dakota, applicant failed to empty bait traps with in a 96-hour period in violation of ARSD 41:09:04:05;
 - (b) On or about January 24, 2017 in Edmunds County, South Dakota, applicant failed to empty bait traps with in a 96-hour period in violation of ARSD 41:09:04:05;

- (c) On or about January 29, 2017 in Edmunds County, South Dakota, applicant failed to empty bait traps with in a 96-hour period in violation of ARSD 41:09:04:05;
 - (d) On or about February 2, 2017 in Edmunds County, South Dakota, applicant failed to empty bait traps with in a 96-hour period in violation of ARSD 41:09:04:05; and
 - (e) On or about between January 19, 2017 and February 2, 2017 in Edmunds County, South Dakota, applicant failed to check bait traps in violation of ARSD 41:09:04:05.
5. The Department asserts that the applicant has engaged in a course of conduct demonstrating an inability to lawfully engage in the activities associated with the exercise of applicant's resident wholesale bait dealer license, resident retail bait dealer license, and export bait dealer license, to wit:
- (a) Applicant has engaged in multiple instances of trespassing from on or about between July 15, 2011 and February 2, 2017, in order to trap bait fish;
 - (b) Applicant has failed to permit inspection of applicant's bait dealer records;
 - (c) Applicant has failed to keep accurate records; and
 - (d) Applicant has failed to timely check bait traps.
6. The Game, Fish and Parks Commission may either grant or deny the issuance to applicant of the resident wholesale bait dealer license, resident retail bait dealer license, and export bait dealer license.
7. This contested case hearing is an adversary proceeding. All parties have a right to be present at the hearing and be represented by a lawyer. These and other due process rights will be forfeited if they are not exercised at the hearing.
8. If the amount in controversy exceeds \$2,500.00 or if a property right may be terminated, any party to the contested case may require the agency to use the Office of Hearing Examiners by giving notice of the request to the agency no later than ten (10) days after service of this notice of hearing.
9. The decision of the Commission based on the hearing may be appealed to the circuit court and the State Supreme Court as provided by law.
10. SDCL 1-26-18 affords other rights to parties to a contested case which you may wish to review and be familiar. The rules of evidence in contested cases are set forth in SDCL 1-26-19.

Dated this 12th day of April, 2017.

/s/ Edward S. Hruska III
Edward S. Hruska III, Attorney for the South Dakota
Department of Game, Fish and Parks

CERTIFICATE OF SERVICE

Paul E. Bachand, Attorney for the South Dakota Department of Game, Fish and Parks, hereby certifies that a true and correct copy of the foregoing AMENDED NOTICE OF CONTESTED CASE HEARING was served upon the following person via electronic mail on the 12th day of April, 2017.

Jeffrey H. Burns
Churchill, Manolis, Freeman, Kludt, Shelton & Burns
PO Box 176
Huron, SD 57350
jeff@churchillmanolis.com

/s/ Edward S. Hruska III
Edward S. Hruska III, Special Assistant Attorney
General