

Rollie Gets Rolled

(as seen in April 2000 Minnesota Law & Politics)

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Roland Walsh, who lives and farms in Osakis, Minnesota, about 120 miles west of the Twin Cities, always has tried to be a good citizen. He pay his taxes, goes to church in his small town and participates in the life of his community. Walsh never dreamed that one day he would find himself under attack from his own government, until in 1992, he suddenly and inexplicably found himself in the cross-hairs of an all-out assault on him and his son by the Minnesota Pollution Control Agency (MPCA).

After the MPCA conducted an inspection of his recycling company, Rollies Sales, Inc., it launched a lawsuit that had a devastating effect on his life and the life of his family. His business was destroyed, and he stood to lose everything he had worked for all his life. After four hellish years in litigation, Walsh did eventually see justice done when Douglas County District Judge Paul Ballard rules that the state's case against the Walshes had "no reasonable basis in law or fact." But by then, the damage had been done.

Besides being a farmer, Walsh is a rural entrepreneur. For nearly 40 years he has run a petroleum services business that included the installation of gas tanks for businesses in the community. When the federal government decided to rewrite the laws concerning underground tanks, Walsh volunteered to be on a committee to help write the new rules and regulations. This meant driving to the Twin Cities' MPCA office once or twice a month and "losing a day's work." Walsh thought his many years of experience in the area would be of help, and wanted to volunteer because he believes in "doing the best you can to keep the environment clean."

But Walsh also put his money where his mouth is. He invested about half a million dollars in a petroleum recycling system, and hired a small staff of geologists to maintain environmental standards. Rollies Sales picked up old tanks from customers, opened them at their site and floated off whatever product was left, using the recycled petroleum for heating fuel.

In 1992 the MPCA inspected the facility and named nine violations. This in itself was nothing unusual. The MPCA inspects dozens of sites and not infrequently finds violations in the complex environmental laws. But, until it inspected Rollies, the agency had always identified the violations and given time to the business to correct those violations. But the rules were changed for Roland Walsh. The MPCA began imposing fines as high as

\$2,500 for such trivial violations as not having the MPCA's phone number posted next to every phone in the office. When the dust cleared, the penalties totaled \$25,000 a day. It was an atom bomb dropped to kill an ant, and Walsh knew it. He knew the alleged violations were minor, and he knew that, for some reason, a selective enforcement against him was being promulgated by the MPCA.

Rollies declined to pay and was forced to shut down the recycling part of the business. In 1995, it was brought to court by the MPCA and the state attorney general's office. Besides naming Rollies Sales, the state also named Roland Walsh and his son, Dale Walsh, as defendants.

"By naming us as individuals, they tried to get our life savings, everything," Roland Walsh says. "If they would have been successful, there's no way we would have lasted ten days. . . . They not only tried to get our business closed down and break us that way, but they tried to get our farms and our houses and everything in it . . . everything we ever worked and saved for."

Roland Walsh, a small-town guy who meant no harm to anyone, found himself being crushed by the power of a government agency seemingly gone wild. With no one in Osakis to turn to, Walsh approached Joe Maternowski of the law firm of Moss & Barnett. Maternowski, who has dealt before with governmental agencies, recognized immediately the gross unfairness of the MPCA's prosecution. He agreed to represent the Walshes, fully understanding the problems that come with fighting the government.

For some months before the MPCA began seeking a \$25,000 a day penalty from Rollies, the agency itself was under attack by legislators and overseers for its lax policies and inefficient regulatory practices. In addition, it was being accused of offering preferential treatment to large businesses. For example, the MPCA is currently in the habit of granting "flexible" permits to certain large companies, which allows these companies to discharge higher levels of pollutants than would typically be allowed. Watchdog groups such as the Clean Water Action Alliance, the Minnesota Center for Environmental Advocacy and Mississippi River Revival frequently identify violations gone unnoticed or ignored by the MPCA. In 1998, in one example, Sol Simon of the Mississippi River Revival filed a letter of intent to sue, naming three large companies, Waste Management of Minnesota, GAF Building Materials, Inc., and Cenex, Inc., for noncompliance to the Clean Water Act.

Even though each of these businesses was conducting the required monthly water sample tests and submitting them to the MPCA (with the exception of Cenex, which was erroneously sending the samples elsewhere),

its violations were not scrutinized by the MPCA. The agency was also being criticized for conflict of interest in the granting of permits for factory farms – some members of the agency at the time who granted such permits owned similar facilities themselves. The MPCA has granted 160 such permits to date, despite protests and questions raised about air quality and ground contamination.

The seemingly arbitrary enforcement by the MPCA made the agency look flaky, at best, and protective of its friends, at worst. It's difficult to discern the logic behind the MPCA's decision to inspect and then pursue action against certain companies while allowing others to commit blatant violations. It's not always a case of big business versus small. There are at least a half-dozen other small facilities in the state that recycle tanks as Rollies did; each was inspected, each had violations similar to Rollies, and each was issued either a Notice of Violation or a Letter of Warning without the fines or legal actions that were levied against Rollies.

Maternowski and Roland Walsh looked into a rationale behind what seemed to be the bullying and singling out of Rollies. After some investigation, they found something: one unique fact in the Rollies case that again suggests a conflict of interest within the ranks of the MPCA.

In 1989, a few years before the Rollies inspection, an MPCA employee named Roger Stead approached Rollies and said he could be hired to prepare permit applications for fuel storage tank areas. Rollies hired Stead, who turned out to be the employee in charge of approving such permits. One of Rollies clients, Green Giant, became aware of the scheme and reported Stead to the attorney general's office. The MPCA fired Stead and eventually the attorney general's office filed and prosecuted a felony complaint charging Stead with bribery. Roland Walsh and his wife, Clara Jane, were both called to offer testimony against Stead; Roland was the state's key witness. Ultimately, Stead was found not guilty, but because he had been fired by the MPCA, he was unable to return to state employment, and eventually left the state.

Rollies attorney, Joseph Maternowski, says, "I am not certain that the Stead matter influenced the actions of the state. However, it is possible that someone at the MPCA remembered Rollies or Roland Walsh, particularly after the finding that Stead was not guilty.

"W ultimately learned at our trial that an MPCA employee was the person who triggered the inspection of Rollies facility. This struck me as a very curious fact. Normally, MPCA inspections are triggered by citizen complaints, competitors, environmental groups or a routine review of records filed with the state. My clients believe that someone at the MPCA

may have remembered Rollies role in the Roger Stead case and was trying to even the score. Stead worked in the Hazardous Waste Division that pushed the Rollies case.”

In 1996, Judge Ballard imposed a small fine of \$3,400 against Rollies for “minor” violations but dismissed all fines against Rolland Walsh or his son. By then, even the MPCA itself had conceded that the lawsuit brought against Rollies by the state was based on violations that presented very little potential harm to the environment. With the dismissal of the case (after Walsh had paid more than \$150,000 in legal fees) attorney Joe Maternowski petitioned the Court for an award of attorneys’ fees, under a seldom-used law known as the Minnesota Equal Access to Justice Act (MEAJA).

Judge Ballard ordered the state of Minnesota to pay Walsh and his son nearly \$66,000 in fees, the largest award granted since MEAJA was enacted in 1986 by the Minnesota State Legislature. As an ironic note to this tale, Maternowski represented the MPCA when serving as a special assistant attorney general in the Minnesota Attorney General’s office before entering private practice.

Walsh is no longer the same small-town guy he was before this chain of events. “Before this,” he says, “I always looked at government as a partner with business in doing the right thing. I have no problems with rules about containing hazardous waste. I have no problems with doing the best you can to keep the environment [clean]. I think I did a better job than these people who were giving me all this trouble; I certainly spent more money and tried harder than they did.

“People and the Legislature have to do something about these types of things, letting people and businesses do their job, and quit running up the expense of everything because of the bureaucracy,” he continues. “Sure, there has to be a few rules and regulations, but I have to say I think they caused more trouble than they helped, without a doubt. The people who pump gas and have gas stations, they’re all cooperative. They just want to stay in business while they’re being cooperative. I don’t know of anyone who went out and wasted or spilled. Show them what they’re doing wrong, show them why it’s causing a problem, and they’ll fix it.”

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