

Water Logged
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Lawsuit of the Year
Alfred Schumann v. Minnesota Pollution Control Agency

When Alfred Schumann drained a temporary pond on his residential development in Eyota he had no idea it would cost him his job. As former mayor of Eyota, Schumann turned to the city engineer to determine if a pond was required on the property. He was told it was not. In August 2000, Schumann's neighbor filed a complaint with the Minnesota Pollution Control Agency (MPCA) when a small amount of water and sand flowed onto his property after the temporary pond was drained. After an inspection, the MPCA determined that Schumann had violated state regulations and ordered him to reconstruct a stormwater pond. However, the MPCA rejected Schumann's proposals for a new pond and ordered him to pay a \$4,450 penalty and to provide additional funding for a regional stormwater pond.

"In our initial correspondence and in subsequent meetings with the MPCA we maintained that it did not have the factual or legal basis to proceed against Mr. Schumann," says Schumann's lawyer, Joseph Maternowski of Moss & Barnett. "We informed the MPCA orally and in writing that if the MPCA pursued a case, we would seek an award of attorney fees and expenses on behalf of our client under the Minnesota Equal Access to Justice Act (MEAJA)."

Adding more drama to the case was the fact that Alfred Schumann was serving as mayor of Eyota, Minn., on August 25, 2000, the date of the MPCA's initial inspection of the residential development that was under construction. "We later learned that the MPCA's complainant was one of Mr. Schumann's political opponents," Maternowski says. On September 6, 2000, the MPCA sent a letter of warning to Mr. Schumann finding a "clear violation," directing Schumann to construct the pond and threatening "additional enforcement actions" including monetary penalties and/or legal actions to compel compliance.

"During the mayoral campaign, Mr. Schumann's opponents circulated unsigned campaign literature that raised concerns about stormwater flows," Maternowski says. On October 18, 2000, prior to the election, the complainant wrote to the MPCA encouraging the agency to "move forward in a punitive sense" against Schumann for the alleged violations. Ultimately, Schumann lost the election. The MPCA's penalty order, which included the demand that Schumann construct a stormwater pond, was issued after the election.

As the case proceeded over three years, attorney fees and expenses continued to be incurred. "In the end, District Court Judge Lawrence Collins agreed with our position and found that because the MPCA's position was not substantially justified both before and during the litigation, an award of attorney fees and expenses totaling \$111,525.99 under MEAJA was warranted," Maternowski says.: