

## ENVIRONMENTAL ALERT

### COURT ORDERS STATE TO PAY ATTORNEY FEES IN PRECEDENT SETTING ENVIRONMENTAL CASE

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The words "Equal Justice Under Law" are carved in stone above the main entrance to the U.S. Supreme Court building. Judges are charged with protecting the rule of law and ensuring that constitutional protections and laws are equally applied to all citizens.



How does "Equal Justice Under Law" apply to federal and state agencies including those that administer environmental laws? Agencies have the power to regulate, but their authority is not unchecked. Agencies may act, but only if they have explicit authority to do so from the legislative branch. Businesses and individuals that are subject to regulation are afforded fundamental legal protections including the right to a hearing. When environmental agencies act without proper authority, businesses and individuals may turn to the judicial system to seek relief.

In a precedent-setting decision, Moss & Barnett successfully challenged a Minnesota Pollution Control Agency ("MPCA") order that involved alleged stormwater violations on a 19-acre residential development in Eyota, Minnesota, located south of Rochester, Minnesota. Olmsted County District Court Judge Lawrence Collins determined that the MPCA had no basis to issue the order. Judge Collins turned the tables on the state directing the MPCA to pay our client \$111,525 in attorney fees.

#### Background

The case arose out of an August, 2000, MPCA inspection in response to a complaint that stormwater and sand were creating nuisance conditions on a neighboring field. The developer, Alfred Schumann, a former state representative and former mayor of Eyota, relied on his engineer and the city engineer who earlier had advised him that no pond was required.

The MPCA sent Mr. Schumann a letter of warning concluding that Mr. Schumann had violated state regulations and ordering him to immediately construct a stormwater pond. Mr. Schumann attempted to comply with the MPCA's order even though lots had been sold and homes were under construction. The MPCA rejected Mr. Schumann's proposals and instead issued an order demanding a \$4,450 penalty and directing Mr. Schumann to finance a regional stormwater pond. Cost estimates to build the pond were as high as \$100,000.

#### WHEN ENVIRONMENTAL AGENCIES ACT WITHOUT PROPER AUTHORITY, BUSINESSES AND INDIVIDUALS MAY TURN TO THE JUDICIAL SYSTEM TO SEEK RELIEF.

We sought judicial review of the MPCA's order on behalf of our client. Judge Collins reviewed the MPCA's actions and granted summary judgment. Because there was no stormwater discharge to the waters of the state, the court found that the MPCA did not have the

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authority to require a permit or to order Mr. Schumann to build or finance a stormwater pond. Judge Collins rescinded the order and directed the MPCA to take no further actions against Mr. Schumann. The MPCA decided to pay the unprecedented attorney fees award.

### **Equal Access to Justice Act**

Since the MPCA had no basis to issue the order that required the construction of a stormwater pond, Judge Collins decided that an award of fees was warranted under the Minnesota Equal Access to Justice Act (MEAJA). In 1986 the Minnesota Legislature enacted MEAJA to allow eligible small businesses and their owners to seek awards of attorney fees and costs in cases where they prevail against the state. MEAJA, which is patterned after a similar federal law, is designed to “level the playing field” for small business owners who find themselves in court facing the state and its substantial litigating resources.

### **Court Findings**

In ruling for Mr. Schumann, Judge Collins found that: “In this case the MPCA acted without sufficient basis. At least elemental investigation, simple calculations, and enlistment of scientific-based support — none of which was done here — would have spared Petitioners from the attorney’s fees and expenses they have unnecessarily incurred.”

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## **THE MINNESOTA EQUAL ACCESS TO JUSTICE ACT IS DESIGNED TO “LEVEL THE PLAYING FIELD” FOR SMALL BUSINESS OWNERS WHO FIND THEMSELVES IN COURT FACING THE STATE AND ITS SUBSTANTIAL LITIGATING RESOURCES.**

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Judge Collins held that: “The MPCA acted from the inception without sufficient basis taking and persisting in positions adverse to Petitioners without substantial justification.” Judge Collins directed the state to pay \$89,017.00 of Mr. Schumann’s attorney fees and \$22,508.99 of costs.

### **Legal Protections for Small Businesses and Their Owners**

MEAJA entitles small businesses, their owners and officers to an award of attorney fees and costs when they can prove that the state’s case against them was not “substantially justified.” The term “substantially justified” means that the state’s position had a reasonable basis in law and fact, based on the totality of circumstances before and during the litigation. Parties eligible for MEAJA awards include small businesses, partnerships and sole

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## **THE LAW ENTITLES SMALL BUSINESSES, THEIR OWNERS AND OFFICERS TO AN AWARD OF ATTORNEY FEES AND COSTS WHEN THEY CAN PROVE THAT THE STATE’S CASE AGAINST THEM WAS NOT “SUBSTANTIALLY JUSTIFIED.”**

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proprietors that meet certain requirements. Awards are available in contested administrative proceedings and in cases filed in state district court involving state agency actions.

The attorney fees award, totaling \$111,525, represents the largest amount ever obtained by a private party from the state under MEAJA. Joseph Maternowski, who helped lead a team of Moss & Barnett attorneys and staff in this case, previously served as counsel in another contested MPCA matter where another judge ordered the MPCA to pay a record \$66,000 attorney fees award to a small business and its owners.

In 2000, at the request of the National Federation of Independent Business (NFIB), Mr. Maternowski testified before the Minnesota Legislature in support of amendments, which expanded the availability of attorney fees recoveries under MEAJA. The law was amended to expand the number of eligible parties and to permit the recovery of the reasonable cost of tests and studies. Judge Collins applied the amended law ordering the state to pay \$15,000 of the costs of tests and studies related to the contested MPCA order.

The result in the Schumann matter was particularly gratifying because the client — Alfred Schumann — is the father of Moss & Barnett shareholder, Glen Schumann.



**Joseph G. Maternowski** is a shareholder at Moss & Barnett, P.A. in Minneapolis, practicing in the areas of environmental and administrative law. He formerly served as a Special Assistant Attorney General representing the MPCA and other state agencies. He has been in private practice since 1991. As Chair of Moss & Barnett’s Environmental Law Practice Group, Mr. Maternowski advises clients about compliance with environmental health and safety laws in areas ranging from

commercial and real estate transactions to litigation, enforcement and permitting matters.

If you would like to receive a copy of the court’s decision or if you have questions about compliance issues, please contact Mr. Maternowski at 612.347.0286 or [MaternowskiJ@moss-barnett.com](mailto:MaternowskiJ@moss-barnett.com) or visit his [www.EnviroAttorney.net](http://www.EnviroAttorney.net) web site.

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