

City of Lancaster, Ohio, Storm Water Utility Program, Fact Witness Project, Year 2010

Environmental Rate Consultants, Inc., (ERC) was hired by the City of Lancaster, Ohio legal counsel, Bricker & Eckler LLP, to provide storm water utility fact witness testimony and consultation services. From 2001 through 2003, ERC assisted the City of Lancaster with establishing a storm water utility program with the first billings mailed January 2004 with a \$4.64 monthly rate per ERU that was in place for five years. ERC assisted the City with implementing a revised 5 year rate that increased from \$5.00 to \$7.50 per month per ERU for the years 2009 through 2013.

During 2009 with the revised five rate increases, a non-residential mobile home / manufactured home site owner started legal action against the storm water utility program with the assertion that their property does not drain into the city's storm water system. . All areas of the program were challenged included the rate, the ERU, the program ordinance, the definition of storm water, the definition of the storm water system etc. The legal challenge spanned over 2 years and finally went to trial in May 2010.

The judge in the case, heard testimony from the plaintiff during the first day of the trial and was completed in the morning of day 2. The judge took over a 1 hour break to consider all of the evidence, testimony and motions provided during the 1 1/2 day process, and concluded without proceeding to hear the defendants testimony, that the plaintiff had not presented convincing evidence that their property does not drain into the city storm water system. The judge declared that the non residential property owner, does drain into the system and therefore, is required by law (local storm water ordinance) to pay the storm water fee.

Environmental Rate Consultants, Inc., (ERC) was the consultant that established the storm water utility and was requested to assist the City with defending the storm water program, therefore, ERC was hired as the "fact" witness versus an "expert" witness which is typically hired to challenge the program without stake in the results of the case.