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APPEALS COMMISSION
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*Testimony of Melissa M. Shilling
Chair of the
Environmental Review Appeals Commission
Before the
House Finance and Appropriations
Subcommittee for Agriculture and Development*

February 16, 2017 at 9:00 A.M.

Chairman Thompson, Ranking Member Kelly, Members of the House Finance Subcommittee on Agriculture, Development, and Natural Resources, my name is Melissa Shilling, Chair of the Environmental Review Appeals Commission. I am pleased to appear before you today to testify on the Commission's 2018-2019 Biennial Budget.

Introduction

The Environmental Review Appeals Commission has exclusive, original jurisdiction over appeals of specified final actions taken by the Director of the Ohio Environmental Protection Agency, the Director of the Ohio Department of Agriculture, the State Fire Marshal, the State Emergency Response Commission, and approved county and local boards of health.

The Commission is a three-member body appointed by the Governor to staggered six-year terms. Members of the Commission possess significant litigation experience, environmental expertise, and extensive knowledge of the complex state and federal environmental laws.

Decisions of the Commission are directly appealable to the courts of appeals. Thus, the Commission effectively sits in lieu of a court of common pleas for environmental appeals throughout the state, allowing for the development of a consistent, statewide body of environmental law for Ohio. This statutorily created system provides the regulated community

and interested citizens an important and relatively cost-effective mechanism for independent resolution of highly technical and scientifically complex environmental actions taken by state and local agencies within the Commission's jurisdiction.

The Appeals Process

After an appeal is filed, the parties frequently attempt to resolve the matter through negotiation. If initial negotiations are unsuccessful, the parties request a case management schedule, which ranges from 12-18 months in length and includes specified periods for discovery, as well as for filing pre-hearing motions. During this process, the Commission reviews and issues written decisions on dispositive motions and a wide variety of discovery and evidentiary disputes.

Ultimately, if the parties are unable to resolve the matter, the Commission generally conducts a de novo hearing and issues a final opinion. If an adjudication hearing was held at the agency below, however, the Commission conducts an appellate-styled review, including hearing oral arguments, and issues a decision on the record.

The Commission's final opinions are legally and technically complex and require extensive research and drafting. Its opinions are statutorily required to contain comprehensive findings of fact and conclusions of law and generally range from 30 to well over 100 pages in length.

Caseload

Currently, the Commission's docket reflects 162 active cases. In fiscal year 2015, the Commission resolved 104 appeals, 7 with final decisions or final rulings, and in fiscal year 2016, the Commission resolved 108 appeals, 14 with final decisions or final rulings. Notably, no case on the Commission's docket is awaiting a decision or ruling from the Commission.

The pre-de novo hearing phase represents the majority of time a case remains on the Commission's docket. For decisions issued in 2016, the period of time required for the Commission to issue a decision represented less than 20% of the total of time a case spent on the Commission's docket. The remaining approximately 80% represents time requested by the parties to engage in settlement negotiations, complete discovery, file pre-hearing motions, and prepare for the hearing itself.

The number of appeals filed, as well as the number of hearings held each year, varies widely depending upon the number and type of final actions issued by the agencies whose actions are subject to the Commission's jurisdiction. The average de novo hearing lasts approximately one week, yet it is not uncommon for a de novo hearing to last as long as four weeks due to the complexity of the technical issues involved in these appeals.

The vast majority of the Commission's cases arise from final actions taken by the Director of the Ohio EPA, although we continue to review cases arising from actions taken by the Director of the Ohio Department of Agriculture, the State Fire Marshal, and county and local boards of health. The specific make-up of the Commission's case load varies with new developments in industry standards and changes in the regulatory landscape within the Commission's jurisdiction.

2018-2019 Biennial Budget Request

The Commission is a three line-item agency funded solely by the general revenue fund. The budget request, as recommended in H.B. No. 49 introduced by Representative Ryan Smith, will ensure that the Commission continues to satisfy its statutorily mandated duties. The Commission is not requesting any increases in funding for SFY 18 or 19.

The Commission is currently comprised of three Commissioners, an executive director, and a program administrator/staff attorney. Although the Commission has employed a significantly greater number of people in the past, the current staffing arrangement enables the Commission to effectively fulfill its statutory responsibilities.

The Commission relies on continuous improvement principles to increase its efficiency and organization. Application of these principles allows the Commission to stay within its budget and ensures responsible stewardship over the funding it receives. Indeed, during the past biennium, the Commission made significant strides:

- Improvements in internal docketing and case management practices have reduced the time required to adjudicate appeals and encouraged efficient resolutions between the parties.
- In January 2016, the Commission successfully launched its online docket, which allows parties to access and view documents filed in active appeals.
- And the second phase of this project, which the Commission anticipates will be fully implemented within the next few months, will allow parties to file documents electronically.

These examples illustrate the Commission's commitment to continuous improvement of its processes and dedication to increased efficiency.

In the upcoming fiscal years 2018 and 2019, the Commission will continue to build on the recent advancements established during its last budget appropriation and will remain dedicated to the timely, efficient, and non-partisan administration of quasi-judicial appellate review of final actions within its jurisdiction. Thus, the Commission respectfully requests that this honorable subcommittee approve the recommended budget so that the Commission may

continue to improve its functionality and its commitment to the efficient and timely resolution of environmental appeals within the State of Ohio.

Thank you for the opportunity to testify. I am pleased to answer any questions you may have regarding the Commission's budget.