



STATE OF OHIO
ENVIRONMENTAL REVIEW
APPEALS COMMISSION

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Testimony of Melissa M. Shilling
Chair of the
Environmental Review Appeals Commission
Before the
Senate Finance – General Government and Agency Review Subcommittee

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Chairman Jordan, Vice-Chair O'Brian, Members of the Senate Finance - General Government and Agency Review Subcommittee, 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 132 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.

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.

Until the funding changes received in FY 12-13 and FY 14-15, the members of the Commission performed all research and wrote all opinions and decisions. But with the addition of the Program Administrator/Staff Attorney and an Executive Director with a legal background, the Commission members have been able to rely on in-house expertise to assist with the workload.

2018-2019 Biennial Budget Request

The Commission relies on continuous improvement principles to increase its efficiency and organizational tasks. 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 in several areas:

- 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.

The Commission has one program with three line items. Approximately 20% of the Commission's non-payroll expense arises directly from services provided by the state itself, such as biannual audits, rent, internet access, email accounts, server expenses, and postage, etc. The Commission's payroll expenses, 77% of the Commission's budget, are mandated by statute or fixed by state contract. Accordingly, the Commission has few

programs or expenses that can be reduced or altered, and no other source of funding is available to the Commission to offset its expenses.

A new expense for the Commission will be the on-going maintenance cost of the electronic filing system, which consists of cloud hosting from DAS/OIT, IT support from DAS/OIT, and miscellaneous contract expenses for maintenance of and upgrades to the electronic filing software.

The Commission's proposed budget of \$620,617, as set out in the as-introduced version of H.B. No. 49, will allow the Commission to continue implementing and improving the substantial changes effectuated during the previous and current biennium. Importantly, the Commission will be able to maintain the newly implemented electronic filing system.

Notably, a budget reduction may result in an inability to maintain the Commission's newly implemented electronic filing system. Under a reduced budget, the Commission may be forced to redirect funds currently marked for the electronic filing system and allocate them to DAS to pay for rent and other services. This redirection of funding would cause the Commission to abandon the electronic filing system, resulting in a waste of resources previously allocated to this newly implemented and well-received project.

As in the past, the Commission will continue to build on 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 budget as recommended by the Governor and delineated in the as-introduced version of H.B. No. 49. With its budget secured, the Commission can ensure its dedication to improving its functionality and 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.