



STATE OF OHIO  
ENVIRONMENTAL REVIEW  
APPEALS COMMISSION

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MIKE DEWINE, GOVERNOR

*Testimony of Melissa M. Shilling  
Chair of the  
Environmental Review Appeals Commission  
Before the  
Senate General Government  
and Agency Review Committee*

*April 30, 2019 at 10:30 A.M.*

Chairman Schuring, Ranking Member O'Brien, Members of the Senate General Government and Agency Review Committee, 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 2020-2021 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 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, however, an adjudication hearing was held at the agency below 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 100 active cases. In state fiscal year 2017, the Commission resolved 87 appeals, and in state fiscal year 2018, the Commission resolved 61 appeals. 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. Typically, the period of time required for the Commission to issue a decision represents less than 20% of the total of time a case spends 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, is dependent 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.

### **2020-2021 Biennial Budget Request**

The Commission is a one line-item agency funded solely by the general revenue fund. The budget request, as recommended in HB 166 introduced by Representative Scott Oelslager, will allow the Commission to satisfy its statutorily mandated duties.

The Commission has identified two unexpected and unplanned items that will impact its 2020-21 biennial expenditures. Currently, the Commission has two members, one vacancy, an executive director, and a program administrator/staff attorney. We are awaiting the appointment of a third member to fill the vacancy, which could affect the Commission's budget request. Also,

just this past Friday, OIT informed the Commission of an upcoming security project that will increase the Commission's costs. OIT was unable to provide an estimate for that increase. Notably, neither expense can be modified by the Commission.

To increase efficiency and organization, the Commission relies on continuous improvement principles. 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.
- Several years ago, the Commission launched an online, viewable docket. In January 2018, the Commission implemented e-filing for all active appeals. Parties can now file documents electronically, thus greatly improving access for the regulated community and the public.

In the upcoming state fiscal years 2020 and 2021, 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.

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