



*Testimony of Melissa Shilling
Chair of the
Environmental Review Appeals Commission
Before the
House Finance Subcommittee on
Agriculture, Development, and Natural Resources
February 24, 2021 at 3:00 P.M.*

Chairman Kick, Ranking Member O'Brien, Members of the House Finance Subcommittee on Agriculture, Development, and Natural Resources, my name is Melissa Shilling, Chair of the Environmental Review Appeals Commission ("Commission"). I am pleased to appear before you today to testify on the Commission's 2022-2023 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 with 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 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.

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 9-12 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 is a "hands on" commission; it employs no hearing examiners. The Commission's final opinions are legally and technically complex and require extensive research and drafting. The opinions are statutorily required to contain findings of fact and conclusions of law, which generally range from 30 to well over 100 pages in length.

The Commission's staff consists of an Executive Director and a Program Administrator/Staff Attorney, both of whom have legal and environmental knowledge and expertise.

Caseload

Currently, the Commission's docket reflects 80 active cases. Notably, the Commission has no backlog of cases awaiting a decision or ruling.

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.

During the COVID-19 pandemic, new appeal filings and requests for in-person hearings (trials) for the first half of 2020 decreased significantly. Since July 2020, however, new appeal filings have returned to pre-pandemic levels. Thus, we expect the demand for in-person hearings (trials) will return to pre-pandemic levels in 2021.

2022-2023 Biennial Budget Request

The Commission is a one line-item agency funded solely by the general revenue fund. The budget request of \$651,000 for state fiscal year 2022 and for state fiscal year 2023, as recommended in HB 110 introduced by Representative Scott Oelslager, will allow the Commission to satisfy its statutorily mandated duties. The requested budget is a zero percent increase from the Commission's fiscal year 2021 budget.

The vast majority of the Commission's expenses arise from services obtained from the Department of Administrative Services ("DAS"), such as office rent and information technology support. Outside of payroll, rent is the Commission's largest operational expense.

Additionally, 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.

Several years ago, the Commission launched an online docket. By January 2018, the Commission fully implemented e-filing for all active appeals. Parties can now file documents electronically, thus greatly improving access for the regulated community and the public. This high-functioning electronic filing system and online docket management system was critical to the Commission's response to the virus protocols established by the state of Ohio. Parties were able to seamlessly pursue matters pending before the Commission, while having access to active case files at their fingertips through the online docket. The enhanced online capability also enabled the

Commission to smoothly transition to working remotely with no diminution of the Commission's normal operations. The Commission's requested budget is necessary to continue to provide e-filing to the public. Proper maintenance of this important service is vital to Commission's mission and illustrates the Commission's commitment to continuous improvement of its processes and dedication to increased efficiency.

In addition, several other factors make the Commission's budget request difficult to predict and articulate:

- The first factor is an operational expense. The yearly licensing fee for the e-filing software, other necessary software licensing fees, and any on-going maintenance expenses for the e-filing program are established by the vendors. Although the Commission can approximate software licensing expenses for state fiscal years '22 and '23, it cannot fully predict all of the maintenance costs associated with the e-filing program. Some of the on-going maintenance costs include fees for servers and other IT support from DAS/OIT, along with contract expenses for software maintenance or upgrades, when needed.
- The second factor is an auditing expense. During the upcoming biennium, the Commission will again face an audit fee but does not yet know the precise amount.
- The last factor is payroll expenses. Ohio statutes and state contracts set salary and benefit schedules for Commission employees. Therefore, the Commission is unable to fully predict the precise numbers that will be associated with this expense.

Thus, as outlined above, it is our respectful belief that the Commission has no program expenses that should be altered. And importantly, no other funding is available to the Commission to offset its expenses.

In the upcoming biennium, 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.