



Public Law & Finance

Tucker Ellis & West LLP

State Commission Wields Considerable Power over Environmental Enforcement and Permit Actions

There are numerous boards and commissions in State government, which although obscure, have substantial impact on businesses in Ohio. One such board is the Environmental Review Appeals Commission or ERAC. ERAC has original, exclusive jurisdiction over all appeal actions taken by the Ohio EPA. All permits, orders or regulations issued by Ohio EPA must be appealed directly to ERAC, rather than challenged in court.

Action taken by the EPA may be appealed by the parties identified in the action, but may also be appealed by any party who is aggrieved or adversely affected by the EPA's action. For example, if a business receives a permit from EPA for its operations, such as a water discharge permit, an air permit, or for construction of a new facility, the issuance of that permit can be appealed to ERAC by neighbors, citizens group, or the local political subdivision in which the business is located. In other words, even favorable decisions by EPA can be challenged, thereby affecting your business. It is important to be prepared for such challenges with a strategy and team capable of handling the ERAC appeals process.

ERAC consists of three members appointed by the Governor, who each serve rotating six year terms. Under the statute, not more than two of the

commissioners may be members of the same political party. ERAC is empowered by statute to conduct full evidentiary hearings and render decisions, the same as a trial court.

Most ERAC decisions are appealed directly to the Franklin County Court of Appeals in Columbus, or if the action involves an alleged violation of law, then the decision can be appealed to the county in which the alleged violation occurred.

There is a common misconception that appeals to ERAC stay the action being appealed. Although ERAC does have the authority to stay an action pending an appeal, they have asserted such authority only a handful of times over the last several decades.

In other words you must be prepared to comply with EPA orders, regulations, permit decisions, even while on appeal, or negotiate with EPA in advance on such matters.

ERAC handles a very large docket and often times it can be many months, if not longer, between the time an initial appeal is filed and the appeal is finally resolved. As a result, there is typically great incentive to reach a negotiated resolution and settlement of the appeal with the EPA and/or other challengers. Experienced counsel is critical to

effectively navigate the process and reduce the risk of adverse consequences to your business.

TEW's Environmental Group with offices in Cleveland and Columbus handles a wide variety of EPA actions and ERAC appeals throughout the State of Ohio. For more information please contact Martin Lewis at martin.lewis@tuckerellis.com (216) 696-5657