



Ohio Revised Code

Section 3745.04 Appeals to review commission.

Effective: September 29, 2007

Legislation: House Bill 119 - 127th General Assembly

(A) As used in this section, "any person" means any individual, any partnership, corporation, association, or other legal entity, or any political subdivision, instrumentality, or agency of a state, whether or not the individual or legal entity is an applicant for or holder of a license, permit, or variance from the environmental protection agency, and includes any department, agency, or instrumentality of the federal government that is an applicant for or holder of a license, permit, or variance from the environmental protection agency.

As used in this section, "action" or "act" includes the adoption, modification, or repeal of a rule or standard, the issuance, modification, or revocation of any lawful order other than an emergency order, and the issuance, denial, modification, or revocation of a license, permit, lease, variance, or certificate, or the approval or disapproval of plans and specifications pursuant to law or rules adopted thereunder.

(B) Any person who was a party to a proceeding before the director of environmental protection may participate in an appeal to the environmental review appeals commission for an order vacating or modifying the action of the director or a local board of health, or ordering the director or board of health to perform an act. The environmental review appeals commission has exclusive original jurisdiction over any matter that may, under this section, be brought before it. However, the director has and retains jurisdiction to modify, amend, revise, renew, or revoke any permit, rule, order, or other action that has been appealed to the commission. The modification, amendment, revision, renewal, or revocation is subject to applicable public participation and public notice requirements and is subject to an appeal under this section or section 3745.07 of the Revised Code, as applicable. Not later than thirty days after the issuance of the modification, amendment, revision, renewal, or revocation, the director shall file with the commission and serve on each party to the existing appeal a statement notifying the commission and the party that the appealed action was revoked or describing how the appealed action was modified, amended, revised, or changed as part of a renewal, as applicable. A party to the existing appeal is deemed to have appealed such a modification, amendment, revision, renewal, or revocation upon filing with the commission and



serving on all parties an objection to the modification, amendment, revision, renewal, or revocation. The objection shall be filed with the commission not later than thirty days after the director files the statement with the commission regarding the modification, amendment, revision, renewal, or revocation. The objection shall state any new grounds of appeal resulting from the modification, amendment, revision, renewal, or revocation. The commission shall not charge a fee for the filing of such an objection.

A person appealing to the commission shall be known as appellant, and the director and any party to a proceeding substantially supporting the finding from which the appeal is taken shall be known as appellee, except that when an appeal involves a license to operate a disposal site or facility, the local board of health or the director of environmental protection, and any party to a proceeding substantially supporting the finding from which the appeal is taken, shall, as appropriate, be known as the appellee. Appellant and appellee shall be deemed to be parties to the appeal.

(C) The director may appeal an action of a local board of health conducted under Chapter 3714. or 3734. of the Revised Code to the environmental review appeals commission for an order vacating or modifying the action of the board or may appeal to the commission for an order requiring the local board of health to perform an act.

(D) An appeal shall be in writing and shall set forth the action complained of and the grounds upon which the appeal is based.

The appeal shall be filed with the commission within thirty days after notice of the action. Notice of the filing of the appeal shall be filed with the appellee within three days after the appeal is filed with the commission.

The appeal shall be accompanied by a filing fee of seventy dollars, which the commission, in its discretion, may reduce if by affidavit the appellant demonstrates that payment of the full amount of the fee would cause extreme hardship.

Within seven days after receipt of the notice of an appeal filed under division (B) of this section, the director or local board of health, as applicable, shall prepare and certify to the commission a record of the proceedings out of which the appeal arises, including all documents and correspondence, and a



transcript of all testimony.

Upon the filing of an appeal, the commission shall fix the time and place at which the hearing on the appeal will be held. The commission shall give the appellant and the appellee at least ten days' written notice thereof by certified mail. The commission shall hold the hearing within thirty days after the notice of appeal is filed. The commission may postpone or continue any hearing upon its own motion or upon application of the appellant or of the appellee.

The filing of an appeal does not automatically suspend or stay execution of the action appealed from. Upon application by the appellant, the commission may suspend or stay the execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

(E) As used in this section and sections 3745.05 and 3745.06 of the Revised Code, "director of environmental protection" and "director" are deemed to include the director of agriculture and "environmental protection agency" is deemed to include the department of agriculture with respect to actions that are appealable to the commission under Chapter 903. of the Revised Code.