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Ulmer & Berne Prevails in Ohio Supreme Court Decision *Court Defines Scope of ERAC Jurisdiction*

Representing an amicus curiae nonprofit environmental group, Ulmer & Berne LLP attorneys Robert J. Karl and Sherry L. Hesselbein recently prevailed in a significant decision before the Ohio Supreme Court regarding the scope of the jurisdiction of the Environmental Review Appeals Commission (ERAC).

At issue in the case was whether ERAC could hear an appeal from a decision of the local board of health that a construction and demolition debris facility license application was incomplete. A rail company had applied to the Trumbull County Health Department for a facility license. The health department reviewed the application and informed the rail company that it could not process the application because it did not contain all the information required under the law. The health department requested additional information from the rail company, but the company's follow-up submittals did not fully address the information requested.

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The rail company appealed to ERAC the health department's decision that the application was incomplete. ERAC determined that it lacked jurisdiction to hear the appeal on the basis that the incomplete determination was not a "final action" of the health department. On appeal, the Tenth District Court of Appeals held that a "final action" was not necessary for ERAC to have jurisdiction of the appeal. The Trumbull County Health Department appealed the Tenth District's decision to the Ohio Supreme Court.

The Ohio Supreme Court reversed the Tenth District's decision and held that a "definite and identifiable action will give rise to an appeal to ERAC," therefore confirming that only "final actions" may be appealed to ERAC. This case represents the first time that the Ohio Supreme Court has conclusively defined the jurisdiction of ERAC and will become the primary cited precedent in appeals before ERAC. Additionally, the recent state budget bill included a provision that ERAC now must decide all appeals within one year of filing. The Ohio Supreme Court's decision in this case will aid ERAC in dismissing appeals that have been prematurely filed.