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Client Alert:
Ohio Supreme Court Expands Scope of Appealable Actions

In Trans Rail America, Inc. v. Enyeart, 123 Ohio St.3d 1 (2009), the Ohio Supreme Court held that a letter from a county health department informing an applicant for a Construction and Demolition ("C&D") Landfill permit for the fourth time that its application was incomplete may constitute an action appealable to the Ohio Environmental Review Appeals Commission.

In Trans Rail, Trans Rail applied to the Trumbull County Health Department for a license to construct a C&D Landfill in May 2004. In July 2004, the Health Department advised Trans Rail that the application was incomplete and identified the aspects that were incomplete. Thereafter, in response to Trans Rail's efforts to complete the application, Trumbull issued 2 additional letters, in December 2005 and February 2006, again indicating that Trans Rail's application was incomplete. Finally, after Trans Rail's third attempt, on May 31, 2006, the Health Department again concluded that the application was incomplete. In response, Trans Rail filed an appeal of the May 31, 2006 Health Department letter.

The Court stated that the key decision in determining whether a particular decision is appealable is "whether it is in some sense a final decision that substantially affects the appellant's property or other legal rights, even if it is not designated as final." 123 Ohio St.3d at 7. As applied to the May 31, 2006 letter, the Court further reasoned that the requirement of a final decision does not mean that a licensing entity can evade appellate review by "simply deeming the application incomplete and repeatedly and unreasonably requesting additional information" before it will consider the application. 123 Ohio St.3d at 8. The standards the licensing entity must follow in determining whether an application is complete will be an important factor in deciding whether a determination that an application is incomplete is justified.

Ultimately, the Ohio Supreme Court remanded the decision back to the Court of Appeals to determine whether the Health Department's action constituted an appealable final decision. However, the potential impact of the Supreme Court's decision could be significant. It serves as notice to all departments and agencies making decisions on permit applications that their decision that an application is incomplete must have a reasonable basis and that they cannot hide behind an incomplete application determination to deny an application. It also serves to protect permit applicants against such activity. This decision will be particularly important where the permit application is controversial and the permitting agency wants to avoid making a decision. Ultimately, this decision may provide permit applicants with the leverage needed to force the agency into a decision, which can then be appealed if it is adverse.

To learn more about this matter or MacDonald Illig's environmental law practice, please contact Mark Shaw at 814-870-7607 or mshaw@mijb.com.

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MacDonald, Illig, Jones & Britton LLP is one of the largest law firms in Northwest Pennsylvania. Our offices are located in Erie, PA. For more than a century, the firm has provided sophisticated legal counsel to clients in the region.