

STATE OF OHIO

ENVIRONMENTAL REVIEW APPEALS
COMMISSION

RULES

(OHIO ADMINISTRATIVE CODE SECTION 3746)

Updated as of August 14, 2020

The Environmental Review Appeals Commission is an appellate review commission which is separate and distinct from the Ohio Environmental Protection Agency.

ENVIRONMENTAL REVIEW APPEALS COMMISSION
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Chapter 3746-1
Definitions

Chapter 3746-1 Definitions

3746-1-01 Definitions: General.

As used in Chapter 3746 of the Administrative Code, except otherwise provided:

(A) "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; 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) "Agency" means the Ohio environmental protection agency or the Ohio department of agriculture, except as used in rules [3746-3-15](#) to [3746-3-19](#) of the Administrative Code.

(C) "Commission" means the environmental review appeals commission.

(D) "Day" means a calendar day.

(E) "Director" means the director of environmental protection or the director of the department of agriculture, except as used in rules [3746-3-15](#) to [3746-3-19](#) of the Administrative Code.

(F) "Intervenor" means any person admitted as a party pursuant to a motion to intervene as a participant to a proceeding before the commission.

(G) "Statutory agency" means any state or local governmental unit whose action is subject to review by the commission pursuant to the Revised Code.

(H) "Party" means any person who participated in a proceeding before the director of environmental protection, the director of the department of agriculture or a statutory agency and includes, but is not limited to:

(1) the director of environmental protection ;

(2) any branch of the state government or local governmental unit, acting under delegated authority of the director, or under its own direct statutory authority, or having been affected by the action of the director or one acting under his proper delegation;

(3) any person appealing an action of the director or one acting under the delegated authority of the director, or any person against whom an action has been taken or initiated by the director or one acting under the director's proper delegation, whether designated as an applicant, permittee, licensee, respondent, or otherwise;

(4) any person filing a verified complaint with the director pursuant to section [3745.08](#) of the Revised Code;

(5) any person who has been involved in any proceeding before the director or one acting under the delegated authority of the director; and

(6) any person permitted by the commission to intervene.

(I) "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, department of agriculture, or statutory 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.

(J) "Stay" means a suspension of the effect of an action of the director or statutory agency pending proceedings before the commission.

Effective: 2/1/2019

R.C. [119.032](#) review dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: : [3745.02](#), [3745.07](#), [3745.06](#), [3745.05](#), [3745.04](#), [3745.03](#)

Prior Effective Dates: 10/23/1973, 10/06/1998, 05/24/2001, 01/16/2004, 12/20/2008, 12/30/2013

3746-1-02 Jurisdictional bases.

The jurisdictional predicate for appellate review by the commission shall be based upon any appeal which satisfies the requisites for appeal as set forth in section [3745.04](#) or [3745.07](#) of the Revised Code.

Effective: 12/30/2013

R.C. [119.032](#) review dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#), [3745.07](#)

Prior Effective Dates: 10/23/1973, 10/06/1998, 01/16/2004, 12/20/2008, 12/30/2013

Chapter 3746-3
Internal Regulations

Chapter 3746-3 Internal Regulations

3746-3-01 Power of the commission to issue rules: procedure.

(A) The commission shall adopt rules governing procedures to be followed in proceedings before it in accordance with applicable law.

(B) A majority of the members of the commission must concur to adopt, amend, or rescind a rule.

(C) The authority of the commission to adopt rules under this chapter shall not be governed by or subject to Chapter 119. of the Revised Code.

Replaces: 3746-3-01

Effective: 2/1/2019

R.C. [119.032](#) review dates: 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.06](#), [3745.05](#), [3745.04](#), [3745.03](#)

Prior Effective Dates: 1/2/73, 10/6/98, 12/20/08

3746-3-02 Regulations; scope; promulgation.

Chapter 3746-3 of the Administrative Code shall govern the practice and procedure before the commission in its proceedings.

Replaces: 3746-3-02

Effective: 2/1/2019

R.C. [119.032](#) review dates: 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.06](#), [3745.05](#), [3745.04](#), [3745.03](#)

Prior Effective Dates: 08/24/1973, 10/06/1998, 12/20/2008

3746-3-03 Quorum.

Two members constitute a quorum. No action of the commission shall be valid unless it has the concurrence of at least two members.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/1973, 10/06/1998, 01/16/2004, 12/20/2008

3746-3-04 Case file.

(A) The commission shall maintain a case file of all cases pending before it other than cases appealed to the court of appeals.

(B) When a notice of appeal is filed with the commission:

(1) The secretary shall assign a case number to the appeal;

(2) Cases shall be numbered sequentially as filed;

(3) The secretary shall create a case file for filings relating to the case.

(C) The case file shall contain all matters relating to the pending case.

(D) Any person may examine and copy the case file during the commission's regular business hours subject to section [149.43](#) of the Revised Code.

(E) The secretary shall maintain an index to the case file.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/1973, 10/06/1998, 12/20/2008, 12/30/2013, 01/01/2018

3746-3-05 Registry.

The commission shall maintain a current registry that shall include entries of all appeals filed, hearings pending, any final order of the commission thereon, and the dates on which such filings, hearings, and final orders occurred.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 08/24/1973, 10/06/1998, 12/20/2008, 12/30/2013

3746-3-06 Trade secrets.

(A) Any material that has been designated as a trade secret by the director shall be treated as confidential by the commission.

(B) The commission, on motion by any party or intervenor, may protect trade secret information as confidential.

(C) In a hearing, any party or intervenor who seeks to introduce records, reports, or information which, if made public, would divulge methods or processes entitled to protection as a trade secret, may move the commission to keep such materials confidential. The party or intervenor may move the commission to grant that such portions of the hearing as relate to such trade secrets be closed to the public. In the absence of such a motion and the granting thereof, all material in the record shall be public.

(D) Any party or intervenor seeking confidential status for a trade secret shall have the burden of establishing the right to such status.

Effective: 2/1/2019

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.06](#), [3745.05](#), [3745.04](#), [3745.03](#)

Prior Effective Dates: 08/24/1973, 10/06/1998, 12/20/2008, 12/30/2013

3746-3-07 The secretary to the commission: duties.

(A) The commission shall appoint a secretary to hold office at its pleasure. The secretary shall be an officer of the commission and shall perform such duties as the commission prescribes, and shall receive such compensation as the commission fixes in accordance with schedules provided by law for the compensation of state employees.

(B) The secretary's principal duties and responsibilities shall be:

(1) To serve as the legal custodian of the commission's property, papers, and legal and public records.

(2) To process and certify all orders and records of the commission to the appropriate court of appeals when cases are appealed.

(3) To serve upon each party to an appeal a notice of all orders of the commission and to make a notice in the registry of the mailing. Service on a party represented by counsel shall be made on counsel.

(4) To return, upon disposition of the case, the record on appeal to the governmental agency from which it was received.

(5) To enter the findings and orders and other acts of the commission into the journal of the commission.

(6) To file rules adopted by the commission.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/1973, 10/06/1998, 12/20/2008, 12/30/2013

3746-3-08 Standards of conduct and suspension.

(A) All persons appearing before the commission shall conform to the standards of ethical conduct required in appearances in the courts of the state of Ohio.

(B) The commission shall have the authority, for good cause stated in the record, to bar from participation in a particular proceeding any person who shall refuse to comply with its directions, or who shall be guilty of disorderly conduct, dilatory tactics, or contemptuous language in the course of such proceedings.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 10/23/1973, 10/06/1998, 12/20/2008

3746-3-09 Ex parte communication.

(A) In any proceeding before the commission, no employee or agent of the director who performs any investigative or prosecuting function in connection with the proceeding, no party in the proceeding, or agent, or counsel, or anyone acting on behalf of a party, and no other person who has appeared before the commission in such proceeding shall communicate ex parte, directly or indirectly, with the commission or any member thereof, or any employee involved in the decisional process in such proceeding.

(B) In any proceeding before the commission, neither the commission nor any other person involved in the decisional process of such proceeding, shall communicate ex parte, directly or indirectly, with any employee or agent of the director who performs any investigative or prosecuting function in connection with the proceeding, with any party in the proceeding, or agent, or counsel, or anyone acting on behalf of a party, or with any other person who has appeared before the commission in such proceeding.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 01/02/1973, 10/06/1998, 12/20/2008

3746-3-10 Participation by state employees.

(A) In any proceeding before the commission, no officer, employee, or agent of the director who appears before the commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise the commission.

(B) No party, other than the state or a local governmental unit, may be represented by an attorney or other person who is at the same time an employee of the state of Ohio.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 01/02/1973, 10/06/1998, 12/20/2008

3746-3-11 Restrictions as to former employees.

Unless one year has elapsed since the termination of employment, no former employee shall appear before the commission as an attorney or other representative of any party to any proceeding or other matter, formal or informal:

(A) In which the former employee participated personally and substantially during the period of such employment; or

(B) For which the former employee was officially responsible during the period of such employment.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 01/02/1973, 10/06/1998, 12/20/2008

3746-3-12 [Rescinded].

Effective: 12/30/2013

R.C. [119.032](#) review dates: 10/01/2013

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 1/2/73, 10/6/98, 12/20/08

3746-3-13 Business day.

(A) The commission shall be open for business Monday through Friday from 8:00 a.m. until 5:00 p.m., except on legal holidays.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.02](#), [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 08/24/1973, 10/06/1998, 12/20/2008

3746-3-14 Denomination of environmental review appeals commission. [Rescinded].

Rescinded eff 12-20-08

3746-3-15 Definitions for accessing confidential personal information.

For the purposes of administrative rules promulgated in accordance with section [1347.15](#) of the Revised Code, the following definitions apply:

(A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.

(B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as the effective date of the agency rule addressing requirements in section [1347.15](#) of the Revised Code.

(C) "Computer system" means a "system," as defined by section [1347.01](#) of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.

(D) "Confidential personal information" (CPI) has the meaning as defined by division (A)(1) of section [1347.15](#) of the Revised Code and identified by rules promulgated by the agency in

accordance with division (B)(3) of section [1347.15](#) of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the agency confidential.

(E) "Employee of the state agency" means each employee of the state agency regardless of whether he/she holds an elected or appointed office or position within the state agency. "Employee of the state agency" is limited to the environmental review appeals commission.

(F) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.

(G) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.

(H) "Information owner" means the individual appointed in accordance with division (A) of section [1347.05](#) of the Revised Code to be directly responsible for a system.

(I) "Person" means a natural person.

(J) "Personal information" has the same meaning as defined in division (E) of section [1347.01](#) of the Revised Code.

(K) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section [1347.01](#) of the Revised Code. "System" includes manual and computer systems.

(L) "Research" means a methodical investigation into a subject.

(M) "Routine" means commonplace, regular, habitual, or ordinary.

(N) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section [1347.01](#) of the Revised Code means personal information relating to the agency's employees and maintained by the agency for internal administrative and human resource purposes.

(O) "System" has the same meaning as defined by division (F) of section [1347.01](#) of the Revised Code.

(P) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [1347.01](#), [1347.15](#)

Prior Effective Dates: 08/28/2010

3746-3-16 Procedures for accessing confidential personal information.

For personal information systems, whether manual or computer systems, that contain confidential personal information, the agency shall do the following:

(A) Criteria for accessing confidential personal information. Personal information systems of the agency are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the agency to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The agency shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.

(B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the agency, the agency shall do all of the following:

(1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;

(2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and

(3) If all information relates to an investigation about that individual, inform the individual that the agency has no confidential personal information about the individual that is responsive to the individual's request.

(C) Notice of invalid access.

(1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the agency shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the agency shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the agency may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system.

"Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the agency determines that notification would not delay or impede an investigation, the agency shall disclose the access to confidential personal information made for an invalid reason to the person.

(2) Notification provided by the agency shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.

(3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(D) Appointment of a data privacy point of contact. The agency director shall designate an employee of the agency to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the agency with both the implementation of privacy protections for the confidential personal information that the agency maintains and compliance with section [1347.15](#) of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.

(E) Completion of a privacy impact assessment. The agency director shall designate an employee of the agency to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [1347.15](#)

Prior Effective Dates: 08/28/2010

3746-3-17 Valid reasons for accessing confidential personal information.

Pursuant to the requirements of division (B)(2) of section [1347.15](#) of the Revised Code, this rule contains a list of valid reasons, directly related to the agency's exercise of its powers or duties, for which only employees of the agency may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system.

Performing the following functions constitute valid reasons for authorized employees of the agency to access confidential personal information:

(A) Responding to a public records request;

(B) Responding to a request from an individual for the list of CPI the agency maintains on that individual;

(C) Administering a constitutional provision or duty;

(D) Administering a statutory provision or duty;

(E) Administering an administrative rule provision or duty;

(F) Complying with any state or federal program requirements;

(G) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;

(H) Auditing purposes;

(I) Licensure or eligibility for examination purposes;

(J) Investigation or law enforcement purposes;

(K) Administrative hearings;

(L) Litigation, complying with an order of the court, or subpoena;

(M) Monitoring of disciplinary cases and/or impairment program;

(N) Human resource matters (e.g. hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);

(O) Complying with an executive order or policy;

(P) Complying with an agency policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or

(Q) Complying with a collective bargaining agreement provision.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [1347.15](#)

Prior Effective Dates: 08/28/2010

3746-3-18 Confidentiality statutes.

The following federal statute makes personal information maintained by the agency confidential and identifies the confidential personal information within the scope of rules promulgated by this agency in accordance with section [1347.15](#) of the Revised Code:

Social security numbers: 5 U.S.C. 552 a(2010), unless the individual was told that the number would be disclosed.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [1347.15](#)

Prior Effective Dates: 08/28/2010, 12/30/2013

3746-3-19 Restricting and logging access to confidential personal information in computerized personal information systems.

For personal information systems that are computer systems and contain confidential personal information, the agency shall do the following:

(A) Access restriction. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.

(B) Acquisition of a new computer system. When the agency acquires a new computer system that stores, manages or contains confidential personal information, the agency shall include a mechanism for recording specific access by employees of the agency to confidential personal information in the system.

(C) Upgrading existing computer systems. When the agency modifies an existing computer system that stores, manages or contains confidential personal information, the agency shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the agency to confidential personal information in the system.

(D) Logging requirements regarding confidential personal information in existing computer systems.

(1) The agency shall require employees of the agency who access confidential personal information within computer systems to maintain a log that records that access.

(2) Access to confidential information is not required to be entered into the log under the following circumstances:

(a) The employee of the agency is accessing confidential personal information for official agency purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(b) The employee of the agency is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(c) The employee of the agency comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(d) The employee of the agency accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual request confidential personal information about himself/herself.

(ii) The individual makes a request that the agency takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the agency may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The agency shall issue a policy that specifies the following:

(1) Who shall maintain the log;

(2) What information shall be captured in the log;

(3) How the log is to be stored; and

(4) How long information kept in the log is to be retained.

Nothing in this rule limits the agency from requiring logging in any circumstance that it deems necessary.

Five Year Review (FYR) Dates: 10/1/2018 and 10/01/2023
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [1347.15](#)
Prior Effective Dates: 08/28/2010

Chapter 3746-5
General Appellate Procedure

Chapter 3746-5 General Appellate Procedure

3746-5-01 Parties to an appeal.

(A) Any person who was a party to a proceeding in which the resulting action is appealable to the environmental review appeals commission, or who was aggrieved or adversely affected by an action that was not preceded by a proposed action, may appeal to the commission for an order vacating or modifying the action.

(B) The environmental review appeals commission has exclusive original jurisdiction over any matter that may be brought before it.

Effective: 05/30/2014

Five Year Review (FYR) Dates: 3/7/2019 and 3/7/2024

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014

3746-5-02 Denomination of parties.

A person appealing to the commission shall be known as the appellant and a party substantially supporting the finding from which the appeal is taken shall be known as the appellee.

Effective: 05/30/2014

Five Year Review (FYR) Dates: 3/7/2019 and 3/7/2024

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/02/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014

3746-5-03 Filing the notice of appeal.

Appeals filed pursuant to section [3745.04](#) or [3750.19](#) of the Revised Code shall be filed with the commission within thirty days after the notice of the action being appealed. Appeals filed pursuant to section [3745.07](#) of the Revised Code shall be filed with the commission within thirty days of the issuance, denial, modification, revocation, or renewal being appealed. All appeals shall be delivered, sent by mail, or electronic mail. The commission shall not accept filings of new notices of appeals via facsimile. Appellant shall service notice of the filing upon the appellee within three days after the appeal is filed with the commission. The filing fee of seventy dollars, which the commission may reduce if the appellant demonstrates, by affidavit, that payment of the full amount of the fee would cause extreme hardship shall be sent by mail. In the event the required filing fee is not submitted to the commission within five days of the filing of the notice of appeal, the commission may dismiss the appeal for failure to comply with section [3745.04](#) of the Revised Code.

Effective: 8/14/2020

Five Year Review (FYR) Dates: 4/21/2020

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.07](#), [3750.19](#)

Prior Effective Dates: 08/24/1973, 03/09/1999, 04/23/2002, 01/16/2004, 06/21/2009, 05/30/2014, 01/01/2018, 04/15/2020 (Emer.)

3746-5-04 Contents of the notice of appeal.

(A) The notice of appeal shall be in writing and shall set forth the name, address and telephone number of the appellant and shall include, or be accompanied by, a copy of the action being appealed.

(B) The notice of appeal shall contain the assignments of error to be presented for review and the relief sought on appeal.

Replaces: 3746-5-07

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.07](#), [3750.19](#)

Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 05/30/2014

3746-5-05 Notice of appeal - Effect of failure to comply with statute.

Failure to comply with the appeal provisions of Chapter 3745. of the Revised Code governing appeals to the commission shall be sufficient basis for dismissing the appeal.

Replaces: 3746-5-11

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.07](#), 3745.19

Prior Effective Dates: 3/15/73, 3/9/99, 5/27/04, 6/21/09, 03/07/2014

3746-5-06 Amendment of notice of appeal.

(A) Upon motion by appellant, the commission may allow the amendment of an appeal.

(B) The commission may order the filing of an amended notice of appeal.

(C) Copies of any amended notice of appeal shall be served upon all parties and filed with the commission.

Replaces: 3746-5-10

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 6/21/09, 5/30/2014

3746-5-07 Joinder.

(A) In filing an appeal with the commission, the appellant shall name as an appellee any person or persons necessary for the just adjudication of the appeal.

(B) If, after filing a notice of appeal, an appellant wishes to join a person as an appellee, appellant shall file a motion with the commission requesting permission to join such person. The motion shall set forth in detail the reasons the person should be joined as an appellee. Such motion shall be served on all parties to the appeal. In no event shall a person, which any party has moved to be joined, be served with notice of such joinder less than fifteen days prior to the hearing before the commission.

(C) If the appellant has failed to join any person whom the commission determines to be necessary to the resolution of the appeal, the commission may sua sponte order the joinder of said person.

Replaces: 3746-5-03

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 6/21/09, 5/30/2014

3746-5-08 Intervention.

(A) Intervention is discretionary and subject to such terms and conditions as the commission may prescribe. The commission may grant a motion to intervene and designate the intervenor as a party to such an extent and upon such terms as the commission shall deem appropriate for the disposition of the appeal.

(B) A motion to intervene must set forth the interest of the movant in the proceeding and demonstrate all of the following:

(1) The movant's participation will assist in the determination of the issues in question;

(2) The intervention will not unnecessarily delay the proceeding;

(3) The position of the movant is substantially supporting or not supporting the action or lack of action in the proceeding from which the appeal has been taken so that the commission may designate the movant as an appellant or an appellee; and

(4) The reasons why the movant could not have earlier become a party.

(C) The commission shall notify movant of its decision relative to joinder by certified mail. All other parties shall be notified by regular mail.

Replaces: 3746-5-04

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/2014

3746-5-09 Consolidation of proceedings.

(A) Where two or more persons filing an appeal have common interests such as to make joinder practicable, they may file a joint notice of appeal, or they may file a motion to consolidate the appeals after separate timely notices of appeal have been filed. Appeals may be consolidated by order of the commission upon its own motion, or on the motion of any party. If the commission orders consolidation of the appeals, the appeals will thereafter proceed as a single case.

(B) Where the director has consolidated verified complaints under section [3745.08](#) of the Revised Code, the commission, for good cause shown, may order the complaints separated for independent proceedings before the commission.

Replaces: 3746-5-26

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 1/2/73, 3/9/99, 5/27/04, 6/21/09, 5/30/2014

3746-5-10 Substitution of parties.

Any person may motion the commission to substitute any party for good cause shown.

Replaces: 3746-5-27

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 1/2/73, 3/9/99, 5/27/04, 5/30/2014

3746-5-11 Answer to the notice of appeal.

(A) An appellee shall file a notice of appearance and an answer with the commission within seven days of receipt of the notice of appeal.

(B) The answer of the appellee shall respond to each assignment of error by indicating that it is admitted, denied, or that the appellee is without knowledge or information sufficient to form a belief as to the truth of an averment as contained within an assignment of error.

Replaces: 3746-5-8

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 3/15/73, 3/9/99, 5/27/04, 6/27/09, 5/30/2014

3746-5-12 Appearances and withdrawals.

(A) Except as prohibited by section [4705.01](#) of the Revised Code, any party may appear on his own behalf, or may be represented by an attorney at law admitted to practice before the supreme court of Ohio or by an attorney admitted to practice by the commission pursuant to a motion to appear pro hac vice. In circumstances deemed to be appropriate, the commission may require that a party be represented by an attorney.

(B) Entries of appearance shall be filed with the commission and served upon all other parties to the proceeding.

(C) Any attorney withdrawing as a representative of a party to an appeal before the commission must notify the commission within three days of the withdrawal. A copy of such notice shall be served by the attorney on the party whom he had represented before the commission and on all other parties.

Replaces: 3746-7-03

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/27/73, 4/28/00, 4/23/02, 7/26/10, 4/28/15

3746-5-13 Certification of record to the commission.

(A) Within seven days after receipt of the notice of appeal, the director or statutory agency shall prepare and certify to the commission the record of proceedings out of which the appeal arises. The record certified to the commission shall be available for inspection and reproduction by any person. Costs of reproduction shall be borne by the requester.

(B) Content of record

(1) The record on appeal shall include, but not be limited to, all papers, exhibits, documents, correspondence, and the transcript of proceedings, if any, including exhibits relating to the action from which the appeal arises.

(2) Where a party alleges that the whole record has not been certified, the party shall specify, insofar as he is able, the material allegedly omitted and shall request its inclusion in the record through the filing of a request with the director or statutory agency for the supplementation of the certified record. If the request is denied, the party shall file a motion with the commission requesting production of the omitted materials. If the commission concludes such material should be included, the commission shall order it included in the record. The commission may conclude material has been omitted from the certified record and shall order its inclusion in the record through supplementation.

(3) All transcripts filed as part of the record below shall be certified as correct and state whether they are complete or partial.

(4) If a question arises as to whether the certified record accurately reflects what transpired in a proceeding below, the commission shall request an explanation that shall be certified as part of the record. If anything material is omitted from the record, or is misstated therein, a party may move that the omission or misstatement be corrected.

(C) If more than one appeal is taken by different parties to the same action, the director or statutory agency may move the commission to allow a single certification of record in those appeals.

(D) The director or statutory agency may file the record of proceedings with the commission on paper or as a digital document.

(1) If filed on paper, the record shall be bound and accurately indexed.

(a) Each item in the record shall be numbered.

(b) The binding shall be of the type and size commonly used to hold papers of the dimensions eight and one-half by eleven inches.

(i) The director or statutory agency shall notify the commission if the record contains documents of unusual bulk or weight and physical exhibits other than documents. Such documents shall not be transmitted unless, after notification, the commission directs the director or statutory agency to do so. The director or statutory agency must make advance arrangements with the commission for the transportation and receipt of exhibits of unusual bulk or weight.

(ii) Each container holding such items shall have an index of its contents. The index shall list the number of each item and a brief description of its contents. To the extent possible, the index shall be organized chronologically.

(c) If possession of the documents comprising the record, or any part thereof, is required by the director or statutory agency for the day-to-day operations of the agency, the director or statutory agency may move the commission to issue an order allowing the director or statutory agency to retain the record or parts thereof.

(2) If filed digitally, the record shall be submitted as a PDF document on one or more compact discs.

(a) To the extent possible, the record shall be contained within a single PDF document. Each item in the record shall be numbered and bookmarked accordingly within the PDF document.

(b) Each PDF document shall have an index of its contents. The index shall list the number of each item and a brief description of its contents. To the extent possible, the index shall be organized chronologically.

(3) Transmission of the certified record is effected when it is mailed or otherwise forwarded to the commission. The transmittal date shall be endorsed on the face of the certified record.

(E) The commission shall mail notice of the receipt of the certified record to counsel for the parties on the date the record is received at the offices of the commission.

Replaces: 3746-5-12

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-14 Record address.

Every person who files a document in a proceeding before the commission shall, at the time of the initial filing in the matter, provide an address. Any change in address shall be filed with the commission, along with an indication of the case number to which the change of address applies. If a person fails to furnish a record address as required in this section, the person will not be entitled to notice in connection with the proceedings in the matter.

Replaces: 3746-5-22

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-15 Designation of lead counsel.

Where a party is represented in a proceeding before the commission by more than one counsel of record, the party shall designate one counsel of record as lead counsel. All notifications and communications from the commission may be sent to the designated lead counsel only.

Replaces: 3746-5-31

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 1/2/73, 3/2/77, 12/10/77, 3/9/99, 5/27/04, 5/30/14

3746-5-16 Filing and service of documents.

(A) Except as otherwise provided in this chapter, a filing may be accomplished by delivery, mail addressed to the commission, electronic mail, or through the commission's electronic case management system.

(B) Except as otherwise prescribed, copies of all papers filed with the commission shall, at or before the time of filing, be served on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(C) Except as otherwise agreed upon by the parties, service upon parties may be in person or by mail, by facsimile transmission, or by electronic mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. Service by facsimile or electronic mail is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

(D) Documents presented for filing shall contain an acknowledgment of service or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Documents filed with the commission shall not be considered until proof of service is endorsed thereon or separately filed.

Effective: 8/14/2020

Five Year Review (FYR) Dates: 4/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/02/1973, 03/09/1999, 04/28/2000, 07/29/2005, 06/21/2009, 05/30/2014, 01/01/2018, 04/15/2020 (Emer.)

3746-5-17 Requirement for signature.

(A) When a party to an appeal, a person moving to intervene in an appeal, or an amicus curiae files any document, that person or his authorized representative shall identify himself.

(B) In the case of notices of appeal, if the person appealing or moving is a corporation, unincorporated association, or governmental entity, the person signing the document must indicate in the document his authority to so act. Further processing of the appeal is to be in accordance with section [4705.01](#) of the Revised Code.

(C) Signing a document constitutes a representation that the signer has read it, that to the best of the signer's knowledge, information, and belief the statements made therein are true, and that it is not interposed for delay. If a document is not signed, or the signature is not identified, or it is signed with intent to defeat the purpose of this section, it may be stricken and the proceeding may go forward as though the document had not been filed.

Replaces: 3746-5-21

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-18 Electronic filing.

(A) Except as otherwise provided in this rule, any person may electronically file documents in an existing appeal through the commission's electronic case management system. New appeals shall be filed with the commission in accordance with rule [3746-5-03](#) of the Administrative Code.

(B) Documents submitted to the electronic case management system on or before 11:59 p.m. EST shall be deemed filed on the day submitted.

(C) Documents for which privileged, protective, or confidential status is asserted shall not be filed through the electronic case management system. Such documents shall be filed as paper documents by mail or in person at the offices of the commission.

(D) Any document filed through the electronic case management system shall comply with applicable formatting requirements contained in Chapter 3746-5 of the Administrative Code.

(E) Signatures:

(1) Documents filed through the electronic case management system that require a signature shall contain a scanned version of the filer's original signature or an electronic signature in the following format: "/s/ (name)".

(2) Documents containing signatures of third-parties (e.g., affidavits) shall be filed only as scanned documents (e.g., PDF).

(F) The Commission may reject any document filed through the electronic case management system deemed inappropriate, including but not limited to: pornographic material, spam or junk mail, illegally reproduced material, material containing confidential personal information such as social security numbers, and material that is otherwise unlawful.

(G) Unless otherwise agreed upon by the parties, the filer shall be responsible for serving copies of the document upon the parties to the appeal in accordance with rule [3746-5-16](#) of the Administrative Code.

(H) The person making an e-filing shall bear all risk of transmitting a document, including but not limited to, all risk of equipment, electric, or internet failure.

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

3746-5-19 Computation of time.

(A) In computing any period of time prescribed for filing and serving a document, the date of the underlying act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday. When the time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

(B) Any request for an extension of time must be filed within the time allowed for the filing or serving of the document with the commission.

Replaces: 3746-5-20

Effective: 1/1/2018

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Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-20 Extension of time for filings.

The commission, upon motion and for good cause shown, may extend the time for the filing of pleadings, motions, and briefs, other than the notice of appeal. Such motion shall be served upon all parties and filed with the commission.

Replaces: 3746-5-9

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 5/30/14

3746-5-21 Stays.

(A) The filing of an appeal does not suspend or stay execution of the action being appealed. Upon motion by appellant and for compelling reasons justifying it, the commission may suspend or stay such execution pending immediate determination of the appeal without interruption by continuances, other than for unavoidable circumstances.

(B) A motion for stay may be filed with the commission at any time during the proceeding and shall set forth the specific reasons for which it is being requested. In granting a stay, the commission may impose such conditions as are warranted by the circumstances including, where appropriate, the filing of a bond or other security as provided for in rule [3746-5-23](#) of the Administrative Code.

Replaces: 3746-5-13

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 8/24/73, 3/9/99, 5/27/04, 5/30/14

3746-5-22 Expedited stays.

(A) At any time before the commencement of the hearing, any party may move the commission to hold a hearing or oral argument for a stay of the action under appeal pursuant to the expedited procedures set forth in this rule. Such motion shall be in writing and shall contain a concise statement of the basis for its request. Upon the receipt of such motion, the commission shall immediately notify all parties in writing. The director or statutory agency and any other party shall respond within three days after receipt of the notice of such motion.

(B) The commission shall schedule a hearing or oral argument upon twenty-four hours notice to the parties. The hearing on the motion for expedited stay shall be scheduled to occur no sooner than eight days after the date on which the motion is received by the commission.

(C) In extraordinary circumstances, the commission may schedule a hearing or oral argument at any time after the motion is received upon twenty-four hours notice to the parties. In such a case, answers may be offered orally at the hearing.

(D) In such a proceeding, the commission shall issue its decision without delay upon the conclusion of the hearing or oral argument and without awaiting receipt of a transcript of the testimony if, in its opinion, an unreasonable delay would result.

Replaces: 3746-5-14

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-23 Bonds.

(A) If the commission determines a stay is necessary, it may order the posting of a bond. Prior to setting bond, the commission shall take evidence upon affidavit or at hearing as to the pecuniary losses, or required expenditures to prevent losses, during the time interval of the appeal before the commission. The total value of any project involved in an appeal is not determinative of the amount of the bond to be set by the commission, nor shall potential revenue loss to a governmental unit be considered the same as pecuniary damage to a private party, nor shall the ordinary on-going expenses of the project being appealed be considered as pertinent to the determination of bond. The amount of the bond shall be determined exclusively by extraordinary expenditures or losses incident to the suspension of the project resulting from the commission's order to stay.

(B) The commission will not require bond where it would have the effect of denying appellants their right to review of administrative actions appealable to the commission under Chapter 3745. of the Revised Code. The considerations of administrative difficulty, delay in the effectuation of permits or other actions of the director or statutory agency, or economic cost incident to such general delay as is part of the review process shall not serve as a basis for the setting of bond by the commission.

(C) A bond may be in the form of a pledge of property or security owned by the person required to post bond by the commission or the providing a promise of surety by some person other than the one required to post bond who shall provide the commission with evidence of his fiscal responsibility. In either situation, the commission must be offered assurance that the face sum of the bond shall be paid in the event of forfeiture.

(D) All bonds required by the commission shall be filed with the executive secretary of the commission and kept in his custody. The secretary shall list in the registry, under the registry number of the case in which the bond has been required, the fact that a bond has been called for by the commission, its amount, and the type of security offered, including the name and address of any person acting as surety.

(E) A bond shall be released when it expires by its own terms as set by the commission or when the commission orders its release. In the event it becomes necessary to collect upon the bond, the commission shall take evidence as to whether all or only a part of the bond is to be paid, to whom payment shall be made, and to whom unexpended portions shall be returned.

(F) The executive secretary of the commission shall note in the registry the date of the bond's release, payment, or expiration.

Replaces: 3746-5-15

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Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/73, 3/9/99, 527/04, 6/21/09, 5/30/14

3746-5-24 Prehearing conference.

(A) At any time prior to the commencement of the hearing, the commission may direct the parties or their counsel to participate before one or more members of the commission in a prehearing conference to consider the following:

- (1) Simplification and clarification of the issues.
 - (2) Necessity or desirability of amending the notice of appeal.
 - (3) Obtaining stipulations relative to undisputed facts or the contents and authenticity of documents.
 - (4) Issuance of and response to subpoenas.
 - (5) Taking of depositions and the use of depositions in the proceeding.
 - (6) Agreements limiting the number of expert and other witnesses and limiting the scope of testimony.
 - (7) Disclosure of the names and addresses of witnesses and the exchange of documents intended to be offered into evidence.
 - (8) A summary of expert testimony intended to be introduced at the hearing.
 - (9) Any other matter that may simplify the issues or expedite the proceedings, including the avoidance of undue repetition or complication in the presentation of evidence or argument.
- (B) Whenever a prehearing conference is held, the commission shall issue an order that memorializes the matters discussed, the agreements reached, and the rulings made as a result of the prehearing conference. The order is to be served on the parties and shall be filed in the record of proceedings of the commission.

Replaces: 3746-5-25

Effective: 1/1/2018

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Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-25 Form of motions, memoranda, and other filings.

- (A) Motions, memoranda, and other filings shall be either typewritten or printed by standard typographic or other mechanical printing process that produces a clear black image on single-sided white paper, although exception may be made for parties allowed to proceed pro se.
- (B) Motions, memoranda, and other filings shall be bound and consist of pages of eight and one-half by eleven inches. Filings shall be double-spaced except quoted matter which shall be single-spaced. Where necessary, documents attached to the filing may exceed eight and one-half by eleven inches, but in no event shall such documents exceed eight and one-half by fourteen inches. Where documents accompanying a filing exceed eight and one-half by fourteen inches unfolded, such documents shall not be attached to the filing, but shall accompany it and shall be clearly marked for reference.

(C) All filings shall be produced in the manner prescribed in paragraph (A) of this rule. Motions, memoranda, and other filings shall contain a caption setting forth the name of the commission, the parties to the appeal, the case number, and a brief title.

Replaces: 3746-5-16

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Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-26 Motions.

(A) Unless another form is prescribed by these rules, a motion shall be made with proof of service on all other parties. The motion shall state with particularity the grounds on which it is based and shall set forth the relief sought. If a motion is supported by briefs or other documents, they shall be served and filed with the motion. Any party may file a response in opposition to a motion within fourteen days after service of the motion. Any reply memorandum shall be filed and served within ten days after service of the response in opposition. The commission may adjust the time for responding to any motion.

(B) Motions not importing finality may be acted upon by the commission at any time, without awaiting a response thereto. Any party adversely affected by such action may move for reconsideration, vacation, or modification of such action.

(C) Upon its own motion or motion of any party, the commission may allow oral argument if, in its opinion, oral argument will clarify the issues and will not unnecessarily delay the proceedings.

(D) If a motion for oral argument is granted, the procedure set forth in rule 3746-7-14 of the Administrative Code shall be followed.

Replaces: 3746-6-09

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Prior Effective Dates: 8/24/73, 4/28/00, 7/29/05, 8/15/11, 5/24/16

3746-5-27 Format of briefs.

(A) The front cover of the brief shall contain:

(1) The name of the governmental agency in which the matter originated and the number of the case;

(2) The title of the case;

(3) The nature of the proceeding (e.g., appeal from adoption of a regulation or granting of a permit, etc.);

(4) The title of the document (e.g., "Brief of Appellant"); and

(5) The name(s) and address(es) of counsel representing the party on whose behalf the document is filed.

(B) The brief of appellant shall contain the following, under appropriate headings and in the order indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the assignments of error presented for review.

(3) A statement of the case and facts. The statement shall first briefly state the nature of the case, the course of proceedings, and its disposition below. There shall follow a statement of the facts relevant to the assignments of error presented for review, with appropriate references to the record.

(4) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the assignments of error presented, and the reasons therefore, with citations to any authorities, affidavits, and precise parts of the evidence or testimony relied upon.

(5) A short conclusion stating the relief sought.

(C) The brief of the appellee shall conform to the requirements of paragraphs (A) to (B) of this rule, except that a statement of the case or of the facts relevant to the assignments of error need not be made unless the appellee is dissatisfied with the statement contained in the brief filed by the appellant.

(D) Appellant may file a reply brief to the brief of appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the assignments of errors presented by the cross-appeal. No further briefs may be filed except with leave of the commission.

(E) If determination of the assignments of error presented requires the consideration of provisions of statutes, ordinances, rules, regulations, or case law, a complete copy of the provision or case shall accompany the brief.

Replaces: 3746-5-17

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3746-5-28 Issue briefing.

(A) The commission may order a party to brief an issue prior to the issuance of a final order of the commission. The commission shall state in its order for briefs the date said briefs are due.

(B) Parties may move the commission for extensions of time for the filing of an issue brief. Extensions under this rule shall be allowed only upon motion to the commission and for good cause shown.

(C) If a party fails to file an issue brief within the time set by the commission, the party will not be heard at any subsequent oral argument except by permission of the commission upon a showing of good cause submitted in writing at least twenty-four hours prior to argument.

Replaces: 3746-5-18

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Prior Effective Dates: 10/23/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-29 View of premises.

(A) Any party may file a motion requesting the commission to conduct a site view.

(B) The commission may, upon reasonable notice and at reasonable times, inspect any site, including any body of water, industrial plant, building or other premises, when the commission determines that such a viewing would have probative value in any matter pending before the commission.

(C) All parties shall have prior notice of such a viewing, and shall be informed of the right to be present, and the right to subsequently present written statements concerning said viewing.

(D) A court reporter, supplied by the party requesting the view, shall accompany the commission at said viewing and shall record all questions and answers. No argument or independent oral statement shall be permitted at said view.

(E) The commission may order the taking of photographs or videos of the site and shall charge the costs to the party initiating the request for a site visit. Any photographs or videos that are taken shall be included in the record of the proceeding.

Replaces: 3746-5-24

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Prior Effective Dates: 1/2/73, 3/9/99, 5/27/04, 6/21/09, 5/30/14

3746-5-30 Dismissal of actions.

(A) An appellant may dismiss an appeal by written motion to the commission at any stage of a proceeding.

(B) All rulings granting a motion to dismiss shall be with prejudice to refile and all rulings of the commission granting dismissal shall be entered in the journal.

(C) Where an appellant fails to pursue an appeal or fails to comply with these rules or orders of the commission, the commission, upon motion of appellee or upon its own motion, may, after notice to the appellant, dismiss an appeal for want of prosecution.

Replaces: 3746-5-28

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3746-5-31 [Rescinded] Notice to counsel.

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Chapter 3746-6
Discovery

Chapter 3746-6 Discovery

3746-6-01 Discovery.

(A) Scope of discovery:

(1) The purpose of this rule is to encourage the prompt and expeditious use of prehearing discovery to facilitate thorough and adequate preparation for participation in appeals before the commission.

(2) Except as otherwise provided in this chapter, any party to an appeal may discover any matter, not privileged, which is relevant to the subject matter of the appeal. It is not grounds for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Discovery may be obtained through one or more of the following methods: interrogatories, requests for the production of documents, electronically stored information or things; depositions; and requests for admission. A party need not provide discovery of electronically stored information when the production imposes undue burden or expense. On motion to compel discovery or for protective order, the party from whom electronically stored information is sought must show the information is not reasonably accessible because of undue burden or expense. If a showing of undue burden or expense is made, the commission may nonetheless order production of electronically stored information if the requesting party shows good cause. The frequency of using these discovery methods is not limited unless the commission orders otherwise under rule [3746-6-07](#) of the Administrative Code.

(3) Any party may require any other party to identify each expert witness expected to testify at the hearing and to state the subject matter on which the expert is expected to testify. Thereafter, any party may discover from the expert, or other party, facts or data known or opinions held by the expert which are relevant to the stated subject matter.

(4) All parties have an obligation to supplement or correct discovery responses in the following circumstances:

(a) Any question directly addressed to the identity and location of persons having knowledge of discoverable matters, and the identity of each person expected to be called as an expert witness at the de novo hearing and the subject matter on which the expert is expected to testify.

(b) It becomes apparent that a response was incorrect when given; or

(c) An order of the commission or agreement of the parties provides for the supplementation of responses.

(B) The commission may order the parties to submit a case management schedule establishing discovery deadlines.

(C) Discovery requests shall be served upon the party from whom discovery is sought. Responses to discovery requests shall not be filed with the commission, unless the party intends to offer such discovery documents as evidence in a hearing. If relief is sought by a party concerning discovery requests, that party shall file with the commission copies of the portions of the documents which are in dispute contemporaneously with any motion filed under rule 3746-06-07 of the Administrative Code or rule 3746-06-08 of the Administrative Code.

(D) Nothing in this rule precludes parties from conducting discovery by mutually agreeable methods or by stipulation.

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Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 4/28/00, 7/29/05, 8/15/2011

3746-6-02 Depositions.

(A) At any time after the filing of an appeal and subject to such discovery deadlines as the commission may order, any party may take the deposition of any other party or person upon oral examination with respect to any matter within the scope of discovery set forth in rule [3746-6-01](#) of the Administrative Code. The attendance of witnesses and production of documents may be compelled by subpoena as provided in rule [3746-6-06](#) of the Administrative Code.

(B) Any party desiring to take the deposition of any person upon oral examination shall serve notice in writing to the deponent and all parties. The notice shall state the time and place for the taking of the deposition and the name and address of each person to be examined, if known, or if the name is not known, a general description sufficient for identification. If a subpoena duces tecum is to be served upon the person to be examined, a designation of the materials to be produced thereunder shall be attached to, or included in, the notice.

(C) Upon a failure of agreement as to the time and place for the taking of a deposition, an appropriate order of the commission may be obtained by the party seeking to take the deposition.

(D) If any party demonstrates he was unable with the exercise of due diligence to obtain counsel to represent him or her at the taking of a deposition, the deposition may not be used against such party.

(E) Depositions shall be recorded stenographically unless otherwise agreed to by the parties or ordered by the commission.

(F) Depositions may be taken before any person authorized to administer oaths under the laws of the jurisdiction in which the deposition is taken, or before any person appointed by the commission. Unless all of the parties expressly agree otherwise, no deposition shall be taken before any person who is a relative, employee, or attorney of any party, or a relative or employee of such attorney.

(G) The officer before whom the deposition is to be taken shall put the witness under oath or affirmation, and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. Examination and cross-examination may proceed as permitted in commission hearings.

(H) All objections made at the time of the examination shall be noted upon the deposition by the officer. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope upon the party taking the deposition, who shall transmit them to the officer, who in turn shall propound them to the witness and record the answers verbatim.

(I) At any time during the taking of a deposition, the commission may, upon motion of any party or the deponent and upon a showing that the examination is being conducted in bad faith or in such a manner as to unreasonably annoy, embarrass, or oppress the deponent or party, order the person conducting the examination to cease taking the deposition, or limit the scope and manner of the taking of the deposition as provided in rule [3746-6-07](#) of the Administrative Code. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for such an order.

(J) When the testimony is fully transcribed, the deposition shall be submitted and read by the deponent, unless examination and reading are waived by the deponent and by the parties. Any changes in form or substance that the deponent desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the deponent for making the changes. The deposition shall then be signed by the deponent, unless the signing is expressly waived by the parties or the deponent is ill or cannot be found or refuses to sign. If the deposition is not signed by the deponent within thirty days after its submission, the officer shall sign it and explain the reason for the lack of signature for the record. The deposition may then be used as fully as though signed, unless on a motion to suppress, the commission holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(K) The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the statement given by the deponent.

(L) Documents and things produced for inspection during the examination of the deponent shall, upon request of any party, be marked for identification and annexed to the deposition, except that:

(1) The person producing the materials may substitute copies to be marked for identification, if all parties are afforded a fair opportunity to verify that the copies are identical to the originals; and

(2) If the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them. The materials may then be used in the same manner as if annexed to the deposition.

(M) Depositions may be used in commission hearings to the extent permitted in civil actions in courts of record. Unless otherwise ordered for good cause shown, any depositions to be used as evidence must be filed with the commission at least one day prior to the commencement of the hearing.

(N) The notice to a party deponent may be accompanied by a request made pursuant to rule [3746-6-04](#) of the Administrative Code for the production of documents or tangible things at the taking of the deposition.

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[3746-6-03 Interrogatories.](#)

(A) Subject to the scope of discovery set forth in rule [3746-6-01](#) of the Administrative Code, and such discovery deadlines as the commission may order, any party may serve upon any other

party up to forty written interrogatories, to be answered by the party served. A party serving interrogatories shall provide the party served with both a printed and an electronic copy of the interrogatories. The electronic copy shall be useable for word processing and provided on a computer disk, by electronic email, or by means agreed to by the parties. A party who is unable to provide an electronic copy of the interrogatories may seek leave of the commission to be relieved of this requirement. A party shall not propound more than forty interrogatories to any other party without leave of the commission. Upon motion, and for good cause shown, the commission may extend the number of interrogatories that a party may serve upon another party. For purposes of this rule, any subpart propounded under an interrogatory shall be considered a separate interrogatory. If the party served is a corporation, partnership, association, government agency, or political subdivision, it shall designate one or more of its officers, agents, or employees to answer the interrogatories, who shall furnish such information as is known or is available to the party. Each interrogatory shall be answered separately and fully, in writing and under oath, unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer. The answers shall be signed by the person making them, and the objections shall be signed by the attorney or other person making them. The party upon whom the interrogatories have been served shall serve a copy of the answers or objections upon the party submitting the interrogatories within twenty-eight days after the service thereof, or within such shorter or longer time as the commission may order. The party submitting the interrogatories may move for an order under rule [3746-6-08](#) of the Administrative Code with respect to any objection or other failure to answer an interrogatory.

(B) Subject to the scope of discovery set forth in rule [3746-6-01](#) of the Administrative Code, interrogatories may elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served.

(C) Where the answer to an interrogatory may be derived or ascertained from public documents on file in this state, from documents previously furnished to the party submitting the interrogatory, or from the business records, including electronically stored information, of the party upon whom the interrogatory has been served, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and, if the documents have not already been produced, afford the party submitting the interrogatory a reasonable opportunity to examine, audit, or inspect such records.

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Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 4/28/00, 8/15/2011

[3746-6-04 Production and inspection of documents.](#)

(A) Subject to the scope of discovery set forth in rule [3746-6-01](#) of the Administrative Code and such discovery deadlines as the commission may order, any party may serve upon any other party a written request to:

(1) Produce or permit the inspection of, and/or copy any designated documents or electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained that are in the possession, custody, or control of the party upon whom the request is served;

(2) Produce for inspection, copying, sampling, or testing any tangible things in the possession, control, or custody of the party upon whom the request is served.

(B) Without leave of the commission, the request may be served within the timeframe set forth in the case management schedule. Any request pursuant to this rule shall set forth the items to be produced or inspected either by individual item or by category and shall describe each category with reasonable particularity. The request may specify the form or forms in which electronically stored information is to be produced, but may not require the production of the same information in more than one form.

(C) The party upon whom the request is served shall serve a written response within twenty-eight days after the service of the request, or within such shorter or longer time as the commission may order. The response shall state, with respect to each item or category, that the production or inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated. If an objection is made to part of an item or category, that part shall be specified. If objection is made to the requested form or forms for producing electronically stored information, or if no form was specified in the request, the responding party must state the form or forms it intends to use. The party submitting the request may move for an order under rule [3746-6-08](#) of the Administrative Code with respect to any objection or other failure to respond to a request or any part thereof, or any failure to permit inspection as requested.

(D) At the request of any party, the commission may examine in camera the documents sought for the purpose of determining which documents or portions thereof are not available for discovery.

(E) Where a request calls for the production of a document previously furnished to the party submitting the request, it is a sufficient response to specify the circumstances under which the document was previously furnished to the party submitting the request.

(F) The commission may order the production of documents on its own motion.

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Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 4/28/00, 8/15/2011

[3746-6-05 Requests for admission.](#)

(A) Any party may serve upon any other party a written request for the admission of the truth of any specific matter within the scope of discovery set forth in rule [3746-6-01](#) of the Administrative Code and subject to such discovery deadlines as the commission may order, including the genuineness of any documents described in the request. Copies of any such documents shall be served with the request unless they have previously been furnished for inspection or copying. A party serving a request for admission shall provide the party served with both a printed and an electronic copy of the request for admission. The electronic copy shall be reasonably useable for word processing and provided by means agreed to by the parties. A party who is unable to provide an electronic copy of a request for admission may seek leave of the commission to be relieved of this requirement.

(B) Each matter for which an admission is requested shall be separately set forth. The matter is admitted unless, within twenty-eight days after the service of the request, or within such shorter or longer time as the commission may order, the party to whom the request is directed serves

upon the party requesting the admission a written answer or objection, signed by the party or by his attorney. If an objection is made, the reasons therefore shall be stated. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully make an admission or denial.

(C) Any party who has requested an admission may move for an order pursuant to rule [3746-6-08](#) of the Administrative Code with respect to any answer or objection. Unless it appears that an objection is justified, the commission shall order that an answer be served.

(D) Unless otherwise ordered by the commission, any matter admitted under this rule is conclusively established against the party making the admission, but such admission may be rebutted by evidence offered by any other party. An admission under this rule is an admission for the purposes of the pending proceeding only and may not be used for any other purpose.

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Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 4/28/2000, 7/29/2005, 8/15/2011

[3746-6-06](#) Discovery subpoenas.

(A) Issuance; form; notice

(1) Upon written request of any party, the commission may issue a subpoena for a witness to attend and give testimony at a deposition or a subpoena duces tecum to produce and permit inspection of documents, electronically stored information, or tangible things at a deposition. The executive director shall issue a subpoena, signed for the commission but otherwise in blank, to the requesting party, who shall fill it in before service. An attorney who has filed an appearance on behalf of a party in an action may also sign and issue a subpoena on behalf of the commission.

(2) The request for subpoena shall be filed with the commission at least fourteen days prior to the date specified in the subpoena.

(3) Every subpoena issued by the commission shall state the name of the commission, title of the action, case number, and shall command each person to whom it is directed to attend and give testimony or produce documents or electronically stored information at a time and place specified in the subpoena.

(4) A command to produce and permit inspection of documents, electronically stored information, or tangible things may be joined with a command to attend and give testimony, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced but may not require the production of the same information in more than one form.

(5) A subpoena may not be used to obtain the attendance of a party or the production of documents by a party in discovery. Rather, a party's attendance at a deposition may be obtained only by notice under rule [3746-6-02](#) of the Administrative Code and documents or electronically stored information may be obtained from a party in discovery only pursuant to rule [3746-6-04](#) of the Administrative Code.

(6) A party on whose behalf a subpoena is issued under paragraph (A)(1) of this rule shall serve prompt written notice, including a copy of the subpoena, on all other parties.

(B) Service

(1) A subpoena shall be served and returned in the same manner as allowed by the court of common pleas in criminal cases.

(2) The fees and mileage shall be the same as those allowed by the court of common pleas in criminal cases. The fee and mileage expenses of the witness being subpoenaed shall be paid in advance by the party requesting the subpoena.

(C) Contempt citations

In the case of disobedience or neglect of any subpoena served on any person, or the refusal of any witness to testify to any matter that the witness may be lawfully interrogated, the court of common pleas of the county in which the disobedience, neglect, or refusal occurs, or any judge thereof, on application of the commission, may compel obedience by finding the person to whom the subpoena is directed in contempt.

Replaces: 3746-6-06

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3746-6-07 Protective orders.

(A) Upon motion of any party or person from whom discovery is sought and for good cause shown, the commission may issue any order which is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such a protective order may provide that:

(1) Discovery may not be had;

(2) Discovery may be had only on specified terms and conditions;

(3) Discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) The scope of discovery be limited or prohibited, regarding certain matters;

(5) Discovery be conducted with no one present except persons designated by the commission;

(6) A trade secret or other confidential research, development, commercial, or other information not be disclosed or be disclosed only in a designated way; or

(7) Information acquired through discovery be used only for purposes of the pending proceeding, or that such information be disclosed only to designated persons or classes of persons.

(B) A motion for a protective order shall be accompanied by:

(1) A memorandum in support, setting forth the specific basis of the motion and citations to any authorities relied upon;

(2) Copies of any specific discovery request that are the subject of the request for a protective order; and

(3) An affidavit of counsel, or of the person seeking a protective order if such person is not represented by counsel, setting forth the efforts that have been made to resolve any differences with the party seeking discovery.

(C) If a request for a protective order is denied in whole or in part, the commission may require the party or person seeking the order to provide or permit discovery on such terms and conditions as are just.

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Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 4/28/2000, 7/29/2005, 8/15/2011

3746-6-08 Motions to compel discovery.

(A) Any party, upon reasonable notice to all other parties and any persons affected thereby, may move for an order compelling discovery, with respect to any failure of a party to comply with a discovery request pursuant to this chapter.

(B) No motion to compel discovery shall be filed under this rule until the party seeking discovery has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

(1) A memorandum in support, setting forth:

(a) The specific basis of the motion, with copies of any statutes, ordinances, or case law relied upon;

(b) A brief explanation of how the information sought is relevant to the pending proceeding; and

(c) Responses to any objections raised by the party or person from whom discovery is sought.

(2) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto; and

(3) An affidavit of counsel, or of the party seeking to compel discovery if such party is not represented by counsel, setting forth the efforts that have been made to resolve any differences with the party or person from whom discovery is sought.

(C) The commission may grant or deny the motion in whole or in part. If the motion is denied in whole or in part, the commission may issue such protective order as would be appropriate under rule [3746-6-07](#) of the Administrative Code.

(D) If a party fails to comply with the discovery requirements set forth in this chapter, the commission may:

- (1) Order that the matter at issue be admitted for purposes of the pending proceeding;
- (2) Order that an amended answer be served; or
- (3) Determine that final disposition of the matter should be deferred until a prehearing conference is held or some other designated time prior to the commencement of the hearing.

(E) Absent exceptional circumstances, the commission will not consider that a party failed to comply with discovery requirements for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Five Year Review (FYR) Dates: 05/24/2016 and 05/24/2021

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 8/24/1973, 4/28/2000, 7/29/2005, 8/15/2011

3746-6-09 [Rescinded] Motions.

Effective: 1/1/2018

Five Year Review (FYR) Dates: 10/11/2017

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.05](#), [3745.04](#)

Prior Effective Dates: 8/24/73, 4/28/00, 7/29/05, 8/15/11, 5/24/16

Chapter 3746-7
Hearings

Chapter 3746-7 Hearings

3746-7-01 Requisites for de novo hearings.

(A) If no adjudication hearing was conducted in accordance with sections [119.07](#) to [119.10](#) of the Revised Code, the commission shall conduct a de novo hearing on the appeal.

(B) If, in the notice of appeal or answer thereto, an issue is raised as to the manner of hearing the commission should conduct due to a question of whether an adjudication hearing was held in accordance with sections [119.07](#) to [119.10](#) of the Revised Code, the commission shall decide the issue before conducting further proceedings. The commission may hold a separate hearing on this issue.

(C) The director, the local board of health, the state fire marshal, or state emergency response commission shall forward the certified record to the commission in accordance with rule 3746-5-13 of the Administrative Code. By agreement of the parties, the commission may order an indefinite extension for the filing of the certified record so long as such extension will not prejudice any party or unduly delay the proceedings.

(D) At the hearing, the commission shall have before it the certified record, shall hear such evidence as presented by the parties, and may hear closing statements. A record of the hearing shall be taken.

(E) Upon request of any party, the commission may allow oral argument under rule 3746-7-12 of the Administrative Code or permit the parties to file briefs on any issues raised in the hearing.

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 08/13/1973, 04/28/2000, 07/29/2005, 07/26/2010, 07/20/2015, 01/01/2018

3746-7-02 Notice and time of hearing.

Upon the filing of the 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, unless the commission sets a later date.

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/1973, 04/28/2000, 07/26/2010

3746-7-03 Expedited hearings.

(A) Upon motion by any party and for good cause shown, the Commission may place an appeal on an expedited case management schedule.

(B) Hearings or oral arguments held pursuant to an expedited case management schedule shall be conducted without interruption by continuances, other than for unavoidable circumstances.

(C) Upon motion by any party, or on the commission's own motion, the commission may amend an expedited case management schedule or place the appeal on a joint status reporting track.

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/01/2018

3746-7-04 Attendance of witnesses and production of documents at hearing.

(A) For the purpose of conducting a de novo hearing, or where the commission has granted a request for the admission of additional evidence, the commission may on its own motion require the attendance of witnesses and the production of written or printed materials.

(B) A party may move the commission for the issuance of a subpoena to require the attendance of witnesses and the production of documents at the de novo hearing. Except in extraordinary circumstances and upon leave of the commission, such a motion shall be made at least seven business days prior to the scheduled hearing date. Subpoenas requested for the attendance of witnesses or production of records at the de novo hearing shall be issued by the commission pursuant to section [3745.05](#) of the Revised Code.

(C) A witness at any hearing shall testify under oath or affirmation, which any member of the commission may administer. Upon request, a witness shall be permitted to be accompanied, represented, and advised by an attorney, whose participation in the hearing shall be limited to the protection of the rights of the witness.

(D) The refusal of a witness at any a hearing before the commission to answer any question which has been ruled proper shall, in the discretion of the commission, be grounds for:

(1) Striking all testimony given by the witness on related matters; or

(2) Instituting contempt proceedings in the court of common pleas.

(E) The commission may, on its own motion or on the motion of any party, provide for the separation of witnesses during the hearing.

(F) At the discretion of the commission, sworn testimony may be submitted in support of any relevant fact or in lieu of live testimony.

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 08/24/1973, 10/23/1973, 04/28/2000, 07/29/2005, 07/26/2010

3746-7-05 Postponements and continuances.

(A) The commission may postpone or continue any hearing upon its own motion or upon motion of a party. The motion for a postponement must state in detail the reasons why a postponement is necessary. A motion for postponement must be served upon all parties to the proceeding and filed with the commission at least ten days prior to the date of the hearing.

(B) Postponements of hearings will not be allowed except upon a showing of good cause.

(C) A motion for postponement served or filed less than ten days in advance of the hearing shall not be granted unless the moving party demonstrates that an extraordinary situation exists which could not have been anticipated and which would justify granting a postponement. In any such situation, if time does not permit for the filing of such motion prior to the hearing, it may be made orally at the hearing.

(D) If a motion for a postponement is based upon the unavailability of a witness, the motion shall set forth the substance of the testimony of the absent witness.

(E) Continuances of hearings may be ordered by the commission in situations where a hearing cannot be concluded within the time initially set.

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 08/24/1973, 04/28/2000, 07/29/2005, 07/26/2010

3746-7-06 Failure to appear for hearing.

(A) Any appellant who fails to appear for hearing may be subject to dismissal for want of prosecution in accordance with rule [3746-5-28](#) of the Administrative Code. Alternatively, in the discretion of the commission, such appellant may be deemed to have submitted the case to the commission based on the record before it and such additional evidence and testimony as may be submitted at the hearing.

Any appellee who fails to appear for hearing shall be deemed to have submitted the case to the commission based on the record before it and such additional evidence and testimony as may be submitted at the hearing.

(B) Upon a showing of good cause, the commission may excuse the failure to appear at a hearing and reschedule the hearing.

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/1973, 04/28/2000, 07/26/2010, 07/20/2015

3746-7-07 Hearing may be waived.

Upon agreement of all parties, a hearing may be waived and the matter submitted to the commission for a decision based on briefs, joint stipulations, affidavits, or such other evidence as the parties may submit.

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/02/1973, 04/28/2000, 07/26/2010

3746-7-08 Burden of proceedings.

(A) The burden of proceeding shall rest with the party asserting the affirmative of any issue, except where the commission orders another party to bear the burden of proceeding because the commission determines that party possesses or should possess knowledge of facts relevant to the issue not available to the party asserting the affirmative.

(B) The director or statutory agency shall have the burden of proceeding in the following cases, unless otherwise ordered by the commission:

(1) Where it has revoked a license or permit;

(2) Where it orders a party to take affirmative action to abate air or water pollution, or any other condition or nuisance; or

(3) Where it seeks to engage in activities that are objected to as environmentally harmful.

(C) A private party appealing a final action shall have the burden of proceeding in the following cases, unless otherwise ordered by the commission:

(1) Where there is a refusal to grant, issue, or reissue any license or permit, or to approve or disapprove any plans, standards, regulations, specifications, or actions;

(2) Where there is a refusal to grant a variance from any regulation, or the granting of any conditional, temporary, or supplementary permit, dealing with air or water quality standards or other situations in which variances of such special permits are possible;

(3) Where a party who is not the applicant or holder of a license or permit from the director or statutory agency protests its issuance or continuation; or

(4) Where a party appeals or objects to the settlement of a matter between the director or statutory agency and a private party.

(D) The commission may take official notice that a given activity normally causes or creates a substantial possibility of environmental damage, and the burden of rebutting such presumption shall be upon the party seeking to show otherwise.

Replaces: 3746-5-30

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/02/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014, 01/01/2018

3746-7-09 Evidence.

(A) A party may object to the admission of any evidence, and the commission shall rule on the objection. If the commission refuses to admit evidence, the party offering the same may make a proffer thereof, and such proffer shall be made a part of the record of the hearing.

(B) Parties shall have the right to present evidence, cross-examination, objection, motion, and argument. The commission may limit the number of witnesses upon any issue and may require any party to present additional evidence on any issue. All witnesses shall be sworn or shall affirm the truthfulness of their testimony.

(C) Written testimony (on numbered lines in either narrative or question-and-answer form) of any witness may be admitted into evidence, provided the witness is present and sworn or affirmed. A copy of the testimony shall be served upon and received by all other parties at least three days prior to the hearing.

(D) Copies of any exhibit to be offered into evidence shall be provided to each commission member and all parties at the time it is identified as an exhibit, unless otherwise ordered by the commission.

(E) If any person objects to the admission or rejection of any evidence or to other limitations of the scope of any examination or cross-examination, the party shall state briefly the grounds for such objection on the record. A ruling by the commission on any such objection shall also be a part of the record.

Replaces: 3746-5-23

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014, 01/01/2018

3746-7-10 Record to be made.

(A) A record of the testimony and other evidence submitted shall be taken by an official court reporter or by any other means approved by the commission. The record shall include all of the testimony, other evidence, and rulings regarding the admissibility thereof, presented at the hearing.

(B) Parties desiring copies of any transcript of a hearing may obtain such copies from the official reporter upon payment of the costs of the copies. Parties shall also have the opportunity to review a copy of the transcript on file with the commission. Any objections to the accuracy of the

work of the reporter shall be filed with the commission. The commission, if convinced of the validity of the objections, shall order the work of the reporter be corrected.

Replaces: 3746-5-29

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 01/02/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014, 01/01/2018

3746-7-11 Stipulations before the commission.

- (A) A stipulation before the commission must have the concurrence of all parties to the appeal.
- (B) Stipulations shall be made in writing or, in the discretion of the commission, may be made orally at a hearing.
- (C) A stipulation is binding upon the parties and upon the commission and may serve as a basis of any final order of the commission.
- (D) The commission cannot alter any part of a stipulation. The commission may, in an order, state its understanding of the meaning and content of the stipulation, which shall be binding upon all parties and the commission if no objection is made within five days of the receipt of said order or as otherwise directed by the commission.
- (E) The commission may refuse to accept a stipulation or may request that the parties clarify or explain their stipulations.

Replaces: 3746-7-08

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 10/23/1973, 04/28/2000, 07/29/2005, 07/26/2010, 01/01/2018

3746-7-12 Oral argument procedure.

- (A) The commission may, on its own motion or on a motion of any party, order oral argument.
- (B) All the parties shall be advised of the time and place at which oral argument will be heard.
- (C) Unless otherwise ordered, each side will be allowed fifteen minutes for argument. A party is not required to use all of the time allowed, and the commission may terminate the argument whenever, in its judgment, further argument is unnecessary.
- (D) Any party relying on authority not already provided shall provide the commission and all parties with copies of any such authority in advance of the oral argument.

(E) Pamphlets, charts, maps, exhibits, and other material may be presented to the commission at oral argument. All such material shall be limited to the issues being argued.

Replaces: 3746-7-09

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 08/24/1973, 04/28/2000, 07/29/2005, 07/26/2010, 01/01/2018

3746-7-13 Participation by amicus curiae.

(A) The commission may allow the filing of briefs, and in extraordinary circumstances, permit oral argument at hearing by an amicus curiae.

(B) A person wishing to participate in an appeal as an amicus curiae shall move the commission for permission to participate. Such a motion shall identify the interest of the person filing, shall state the reasons why his participation as an amicus curiae is desirable, and indicate whether he wishes to file a brief, present oral argument, or both.

(1) The motion shall be served upon the parties and filed with the commission.

(2) A party may file an objection to the granting of such motion in accordance with rule [3746-5-26](#) of the Administrative Code. The party shall set forth in detail his reasons for objecting to participation by an amicus curiae.

(C) An amicus brief and all briefs in response shall be filed at the time specified by the commission.

Replaces: 3746-5-05

Effective: 1/1/2018

Five Year Review (FYR) Dates: 4/28/2020 and 04/28/2025

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#)

Prior Effective Dates: 08/24/1973, 03/09/1999, 05/27/2004, 06/21/2009, 05/30/2014, 01/01/2018

Chapter 3746-9
Appeal from an Adjudication Hearing

Chapter 3746-9 Appeal from an Adjudication Hearing

3746-9-01 Requisites of appeals from adjudication hearings.

(A) If an adjudication hearing was conducted by the director or other statutory agency, in accordance with sections [119.09](#) and [119.10](#) of the Revised Code, the commission is confined to the record as certified to it pursuant to rule [3746-5-12](#) of the Administrative Code, except as provided in rule [3746-9-02](#) of the Administrative Code.

(B) When the appeal is from an adjudication hearing the commission shall hold a hearing as required by sections [3745.04](#) and [3745.05](#) of the Revised Code.

(C) The hearing shall be held by the commission in the form of oral arguments upon the issues raised in the notice of appeal, and any cross-appeal.

(D) In issuing the order granting a hearing on an appeal from an adjudication hearing, the commission shall state the date, time, and place of the hearing. The commission may also allocate the amount of time allowed to each party for argument. A record of the hearing shall be taken.

(E) Upon agreement of the parties, a hearing may be waived and the matter submitted to the commission for decision based on briefs, stipulations, affidavits, or such other evidence as the parties may jointly submit or the commission may order.

Five Year Review (FYR) Dates: 05/24/2016 and 05/24/2021

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 5/24/01, 8/17/06, 8/15/2011

3746-9-02 Admission of newly discovered evidence.

(A) The commission may grant a motion for the admission of additional evidence when satisfied that such additional evidence is newly discovered and could not with reasonable diligence have been ascertained prior to the adjudication hearing before the director or other statutory agency.

(B) If the commission, in its discretion, grants a party's motion for the admission of newly discovered evidence, the commission shall state in their order granting such motion the method by which the newly discovered evidence is to be transmitted to the commission.

(C) All additional evidence shall be presented to the commission in accordance with the rules contained in Chapter 3746-7 of the Administrative Code.

Five Year Review (FYR) Dates: 05/24/2016 and 05/24/2021

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 5/24/01, 8/17/06,

3746-9-03 Commission may require production of witnesses and documents.

Where the commission has granted a motion for the admission of additional evidence, the commission may exercise its power under Chapter 3746-7 of the Revised Code to require the production of witnesses and documents. Unless otherwise specified in the order, the procedures stated in Chapter 3746-7 of the Revised Code shall govern the production of witnesses and documents in an appeal from an adjudication hearing.

Replaces: 3746-9-05

Five Year Review (FYR) Dates: 05/24/2016 and 05/24/2021

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 5/24/01, 8/17/2006

3746-9-04 Briefs relating to additional evidence. [Rescinded].

Rescinded eff 8-17-06

3746-9-05 Commission may require production of witnesses and documents. [Rescinded].

Rescinded eff 8-17-06

Chapter 3746-11
Decisions by the Commission

Chapter 3746-11 Decisions by the Commission

3746-11-01 Decisional standard.

Upon completion of a hearing or review, if the commission finds that the action appealed from was lawful and reasonable, it shall make a written order affirming the action. If the commission finds that the action was unreasonable or unlawful, it shall make a written order vacating or modifying the action under appeal.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

3746-11-02 Action of commission.

- (A) All rulings and orders of the commission shall be signed by at least two members of the commission.
- (B) The original of all rulings and orders of the commission shall be maintained in the case file.
- (C) Copies of the commission's rulings and orders shall be sent by regular mail to all parties or, if a party is represented by counsel, to their counsel. Regular mail shall mean service via the United States postal service and/or interoffice mail available to departments and agencies of the state of Ohio.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

3746-11-03 Written orders.

- (A) Every final order made by the commission shall contain written findings of the facts upon which the order is based.
- (B) A certified copy of every final order shall be sent by certified mail to each party to the appeal. The final order shall include a statement of the time and method by which an appeal of the final order may be taken.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022
Promulgated Under: [111.15](#)
Statutory Authority: [3745.03](#)
Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)
Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

3746-11-04 Expedited decisions.

Upon motion by any party and for good cause shown, the commission may expedite the final written order required to be issued in a matter pursuant to rule [3746-11-01](#) of the Administrative Code.

Replaces: 3746-11-04

Effective: 1/1/2018

Five Year Review (FYR) Dates: 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.05](#), [3745.04](#)

Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 2/25/13

3746-11-05 Settlement agreements and dismissals.

(A) A settlement agreement may be entered into at any stage of the proceedings prior to the issuance of a final order by the commission.

(B) When any proceeding is dismissed prior to adjudication, the journal shall be marked accordingly. All dismissals shall be with prejudice.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.04](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

3746-11-06 Final order to vacate and return.

(A) If the commission issues a final order to vacate and return any matter to the director or statutory agency for further action, such order may specify the time period within which the director or statutory agency shall act upon the order.

(B) Within seven days after the issuance of the final order provided for in paragraph (A) of this rule the director or statutory agency may move the commission for an extension of the time period specified in the final order. Such motions may be granted upon a demonstration of compelling reasons.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 2/25/2013

3746-11-07 Actions by the director or statutory agency after final order issued.

After a final order issued pursuant to rule [3746-11-06](#) of the Administrative Code, the director or statutory agency shall furnish the commission with the following:

(A) The date on which the ordered action is to be taken; and

(B) The date on which hearings, if any, will be held.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

Chapter 3746-13
Appeal to the Courts

Chapter 3746-13 Appeal to the Courts

3746-13-01 Procedure.

(A) Any party adversely affected by an order of the commission may appeal to the court of appeals of Franklin County, or if the appeal arises from an alleged violation of a law or regulation, to the court of appeals of the district in which the violation was alleged to have occurred. The party so appealing shall file with the commission a notice of appeal designating the order from which an appeal is being taken. A copy of such notice shall also be filed by the appellant with the court, and a copy shall be sent by certified mail to all other parties to the appeal. Such notices shall be filed and mailed within thirty days after the date upon which appellant received notice from the commission of the issuance of the order. No appeal bond shall be required to make an appeal effective.

(B) Filing a notice of appeal shall not operate as a suspension of the order of the commission.

(C) Within twenty days after receipt of the notice of appeal, the commission shall prepare and file in the court the complete record of proceedings out of which the appeal arises, including any transcript of testimony and other evidence submitted to the commission. The expense of preparing and transcribing the record shall be taxed as a part of the costs of the appeal.

(D) Any matter remanded to the commission by the court shall be disposed of in accordance with the order of the court.

Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022

Promulgated Under: [111.15](#)

Statutory Authority: [3745.03](#)

Rule Amplifies: [3745.03](#), [3745.04](#), [3745.05](#), [3745.06](#)

Prior Effective Dates: 10/23/73, 4/23/02, 7/27/07, 02/25/2013

Chapter 3746-15
Public Meetings

Chapter 3746-15 Public Meetings

3746-15-01 Notice of public meetings.

(A) Any person may ascertain the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings of the commission by:

- (1) Consulting the commission's web site at www.erac.ohio.gov;
- (2) Contacting the commission via telephone, (614) 466-8950, during normal business hours;
- (3) Consulting the bulletin board located in the statehouse press room; or
- (4) Consulting the notice in the "Ohio EPA Weekly Review;"

(B) A representative of the news media may obtain notice of all special meetings by written request. Such notice will only be given to one representative of any media organization. A request for notification of all special meetings shall be addressed to the commission at the address listed in paragraph (A)(1) of this rule. The request shall include the following: the name of the media representative to be contacted, a mailing address, a telephone number, and an email address. The commission shall maintain a list of all media representatives who have requested notice of special meetings.

(C) In the event of a special meeting not of an emergency nature, the commission shall notify all media representatives on the notification list through one of the following:

- (1) Mailing written notice to such representatives no later than two calendar days prior to the day of the special meeting;
- (2) Notifying such representatives by telephone no later than twenty-four hours prior to the special meeting. Telephone notice shall be deemed complete if a message has been left for the representative; or
- (3) Electronic communication to such representatives no later than twenty-four hours prior to the special meeting. Electronic communication shall be deemed complete upon sending.

(D) In the event of a special meeting of an emergency nature, the commission shall notify all media representatives on the notification list by either the notice described in paragraph (C) of this rule, or by notifying the clerk of the statehouse press room. In such event, twenty-four hour notice prior to the meeting is not required, but notice shall be given as soon as possible.

(E) The commission shall have regularly scheduled meetings every Tuesday, Wednesday, and Thursday starting at nine-thirty a.m. and concluding at eleven-thirty a.m., except for designated state holidays.

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Five Year Review (FYR) Dates: 04/21/2017 and 04/21/2022

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