BEFORE THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

STATE OF OHIO

GIRARD BOARD OF HEALTH	:	Case No. ERAC 786024
Appellant,	:	
v.	:	
CHRIS KORLESKI , DIRECTOR OF ENVIRONMENTAL PROTECTION, ET AL.	:	
Appellees.	:	

D E C I S I O N

Rendered on April 21, 2010

Blain & Latell Co., LPA, Kurt D. Latell, Esq.; Law Director City of Girard, Mark M. Standohar, Esq.; Ulmer & Berne LLP, Robert J. Karl, Esq. and J. Gregory Smith, Esq., for Appellant Girard Board of Health

Richard Cordray, Attorney General, Robert Eubanks, Esq. and Nicholas J. Bryan, Esq., for Chris Korleski, Director of Ohio Environmental Protection Agency

Walter & Haverfield, LLP, Michael A. Cyphert, Esq., Heather R. Baldwin Vlasuk, Esq., for Appellee Total Waste Logistics, Girard LLC.

RULING ON MOTION TO RECONSIDER ORDER DENYING APPELLEE'S MOTION TO DISMISS AND FINAL ORDER

MULRANE, COMMISSIONER

This matter comes before the Environmental Review Appeals Commission ("ERAC," "Commission") upon a Motion to Reconsider Order Denying Appellee's Motion to Dismiss filed on January 11, 2010, by Appellee Total Waste Logistics Girard LLC

("TWL," "TWLG"), and Appellant Girard Board of Health's ("Board of Health," "Board") Memorandum in Opposition thereto, filed on January 14, 2010. The action underlying the instant appeal is the Director of the Ohio Environmental Protection Agency's ("Director," "Ohio EPA") December 19, 2006 determination that, under uncodified Section 3.(A) of Amended Substitute House Bill 397 ("Am.Sub.H.B. 397"), the provisions of Revised Code ("R.C.") Chapter 3714, as they existed on July 1, 2005, should be applied by the Board of Health in its review of the application for a construction and demolition debris ("C&DD") facility license submitted by TWL on June 27, 2005. Specifically, in its Motion to Dismiss, TWL requests the Commission to dismiss the instant appeal because: 1) it was not timely filed; and 2) the Board is not affected by the action of the Director and therefore, lacks standing.

FINDINGS OF FACT

{¶1} On June 27, 2005, TWL submitted to the Board of Health a license application to establish a new C&DD facility in the city of Girard, Trumbull County, Ohio.[1] (Case File Item A [Notice of Appeal], Exhibit A.)

{¶2} On December 14, 2005, the Ohio General Assembly enacted Am.Sub.H.B. 397 as an emergency measure. The bill, which extensively amended the state's C&DD statutes found in R.C. Chapter 3714, became effective on December 22, 2005. (Am.Sub.H.B. 397, 126th General Assembly.)

{¶3} Of particular significance for purposes of the instant appeal, is uncodified Section 3.(A) of Am.Sub.H.B. 397, which states:

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[1] The Commission notes that the statutes and regulations governing C&DD facilities have been significantly amended since the submission of TWL's license application to the Board of Health. However, the provisions cited herein are those in affect at the time of TWL's submission, which will be referred to in the present tense.

> **Section 3.** (A) Notwithstanding the amendments to Chapter 3714. of the Revised Code by this act, an application for a license to establish or modify a construction and demolition debris facility submitted to a board of health or the Director of Environmental Protection, as applicable, prior to July 1, 2005 shall be reviewed and the license shall be issued or denied in accordance with the provisions of that chapter as they existed on July 1, 2005, if all of the following apply to the applicant for the license:
>
> (1) The applicant has acquired an interest in the property on which the facility will be located on or before May 1, 2005.
>
> (2) The applicant has begun a hydrogeologic investigation pursuant to section 3745-400-09 of the Ohio Administrative Code prior to submitting the application.
>
> (3) The applicant has begun the engineering plans for the facility prior to submitting the application.
>
> (4) The application submitted by the applicant would have been determined to be complete if the moratorium had not been in effect.[2]
>
> The director shall determine whether this division applies to an applicant within forty-five days after receiving an applicant's request for a determination under this division. (Am.Sub.H.B. 397, uncodified Section 3.(A).)

{¶4} On April 3, 2006, URS Corporation ("URS"), on behalf of TWL, submitted to the Director a request for a determination as to whether uncodified Section 3.(A) of Am.Sub.H.B. 397 applied to the license application TWL submitted to the Board of Health on June 27, 2005. On December 19, 2006, the Director issued his final action relative to URS' request, which provided, in relevant part:

> Ohio EPA has reviewed your request and associated information, and has determined that uncodified Section 3.(A) of Amended Substitute House Bill 397 applies to TWL. Therefore, the license application to establish a C&DD facility submitted by TWL shall be reviewed and the license shall be issued or denied pursuant to the provisions of ORC Chapter 3714 as they existed on July 1, 2005. * * * (Case File Item A, Exhibit A.)

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[2] On July 1, 2005, the Ohio General Assembly passed the State's Biennial Budget Bill that included a provision establishing a six-month moratorium, from July 1, 2005 to December 31, 2005, during which certain C&DD licenses for new facilities could not be issued. (Am.SubH.B. 66, 126th General Assembly.)

{¶5} The Director's December 19, 2006 final action was in the form of a letter addressed to Mr. Michael J. Stepic of URS. The letter indicated that copies were sent to two Ohio EPA employees, as well as the "Girard Health Department." (Case File Item A, Exhibit A.)

{¶6} On January 24, 2007, the Girard Board of Health filed a Notice of Appeal with the Commission challenging the Director's December 19, 2006 final action, which had determined that uncodified Section 3.(A) of Am.Sub.H.B. 397 applied to TWL's C&DD license application submitted to the Board of Health on June 27, 2005. (Case File Item A.)

{¶7} On February 7, 2007, the Director filed a Motion to Dismiss with the Commission based upon his assertion that the Board of Health's Notice of Appeal was untimely under both R.C. 3745.07 and R.C. 3745.04 because it was filed more than thirty (30) days after issuance (December 19, 2006) and thirty (30) days after public notice (December 21, 2006) of the Director's final action. The Director withdrew his Motion to Dismiss on February 23, 2007, based on the Board of Health's receipt of actual notice of the Director's determination on December 27, 2006 and its filing of a Notice of Appeal within thirty (30) days of that actual notice. (Case File Items J, M.)

{¶8} On March 5, 2007, TWL filed a Motion to Dismiss that rested solely on its assertion that the Board of Health's Notice of Appeal was untimely. Specifically, TWL stated, "Appellant's notice of appeal was not timely filed pursuant to the requirements of R.C. 3745.07 or R.C. 3745.04, and therefore, ERAC does not have subject matter jurisdiction to determine the merits of Appellant's appeal." (Case File Item N.)

{¶9} On March 27, 2007, the Board of Health filed a Memorandum in Opposition to Appellee Total Waste Logistics Girard LLC's Motion to Dismiss, with

attached affidavits, which established: 1) pursuant to a request by the Ohio EPA, the city of Girard Health Department ("Health Department") had supplied documents and information regarding TWL's application to operate a C&DD landfill in the city of Girard; and 2) the Board of Health first received notice on January 3, 2007, that the Director had made a determination regarding the relevance of uncodified Section 3.(A) to TWL's application. As such, the Board of Health argued that it was a party to a proceeding under R.C. 3745.04(B) because it had supplied Ohio EPA with the requested documents and information regarding TWL, and it had timely filed its' appeal within thirty (30) days after receipt of notice of the Director's action as required by that section. (Case File Item R.)

{¶10} Appellee TWL filed a Reply to the Board of Health's Memorandum in Opposition in which it reiterated its assertion that the Board of Health's Notice of Appeal was untimely. In addition, for the first time, TWL argued that the Board of Health lacked standing to bring the instant appeal because it "also cannot show that it has been 'affected' by the Director's action * * *." After conducting oral argument on the Motion to Dismiss, Memorandum in Opposition, and Reply, the Commission ruled to deny TWL's Motion to Dismiss. (Case File Items N, R, S, and U.)

{¶11} On January 11, 2010, TWL filed a Motion to Reconsider Order Denying Appellee's Motion to Dismiss Appeal. Although TWL's arguments in the Motion to Reconsider were consistent with the arguments in its original Motion to Dismiss and Reply, i.e., the Notice of Appeal was untimely and the Board of Health lacked standing, in its Motion to Reconsider, TWL expanded its line of reasoning relative to the claim that the Board of Health lacked standing to bring the present appeal because it was not

affected by the Director's action. In particular, relative to its standing argument, TWL asserted the following:

> In *City of Olmsted Falls* [152 Ohio App.3d 282 (10th Dist. 2003)] the Court of Appeals held that 'merely being a city does not confer standing without demonstrating the adverse impact or injury resulting from [a] Director's letter. *Olmsted Falls*, supra. The *Olmsted Falls* court further held that there must be demonstration of an 'actual injury' and not just 'the potential effects of a violation.' Id. Similarly, an injury must be 'concrete, rather than abstract or suspected.' *Merkel v. Jones*, ERAC Case No. 185274, 2003 WL 22908206, at ¶9.
>
> In this case, Appellant's status as a licensing authority does not confer standing without a demonstration of an adverse impact or injury resulting from the Director's decision. See *Olmsted Falls*, supra. Appellant generally claims that it is affected by the Director's action because 'it must review the application submitted by [Total Waste Logistics] under the appropriate laws and regulations' and 'it seeks to have [Total Waste Logistics] comply with the new more stringent C&DD regulations * * * as opposed to the old less stringent C&DD landfill rules and regulations.' * * * Appellant's desire to review Total Waste Logistic's C&DD application under one set of validly promulgated laws (the pre-H.B. 397 laws), does not produce ***any*** injury, let alone a '***concrete*** injury.' (Emphasis added.) *Merkel*, supra. Rather, the Ohio State Legislature specifically directed licensing authorities, such as Appellant, to review certain applications under the pre-H.B. 397 laws; that was the exact legislative purpose and language of uncodified Section 3.(A) of the Act. * * * (Case File Item TT.)

{¶12} The Board of Health filed a Memorandum in Opposition to TWL's Motion to Reconsider, in which it restated its earlier arguments regarding the timeliness of its Notice of Appeal and set forth the following assertions relative to the manner in which it was affected by the Director's action:

> * * * The Board of Health cannot issue TWLG a license unless all applicable requirements are met. R.C. 3714.06 and OAC 3745-37-03. The Board of Health cannot issue or deny a license application which has been deemed to be incomplete. OAC 3745-37-04(D). The Board of Health was affected by the Director's action because it dictates which statutes and rules apply to the review and issuance or denial of the TWLG license application. * * *
>
> With respect to the TWLG license application covered by the Section 3.(A) request, the Board of Health had determined the license application incomplete, but the Director contradicted the determination by determining that Section 3.(A) applies to TWLG, a determination that includes the conclusion that the license application would have been deemed complete as of December 22, 2005. The

Board of Health has a specific interest in defending its determination of incomplete. * * * (Case File Item EEE.)

CONCLUSIONS OF LAW

{¶14} The Ohio Revised Code provides two avenues for filing appeals with the Commission: Revised Code 3745.04 authorizes appeals of final actions for "[a]ny person who was a party to a proceeding before the director," while R.C. 3745.07 authorizes appeals by an officer of an agency of the state or political subdivision or any person who would be "aggrieved or adversely affected" by the action of the Director, where the action was not preceded by a proposed action. Notices of appeal brought under R.C. 3745.04 must be filed with the Commission within thirty (30) days after notice of the action, and notices of appeal brought under R.C. 3745.07 must be filed with the Commission within thirty (30) days of issuance of the action. The Board's Notice of Appeal did not specify whether the appeal was being filed under R.C. 3745.04 or R.C. 3745.07; however, in its memoranda the Board of Health has consistently asserted that it possesses standing solely under R.C. 3745.04, and therefore, the Commission will confine its analysis to R.C. 3745.04.

{¶15} In its Motion to Dismiss, TWL asserts that the Board of Health's Notice of Appeal must be dismissed because: 1) the Notice of Appeal filed by the Board of Health was untimely; and 2) the Board of Health does not possess the requisite standing to pursue the instant appeal. The Commission will first address TWL's assertions relative to the Board of Health's lack of standing.

{¶16} It is well-accepted that "[s]tanding is a threshold jurisdictional issue that must be resolved before an appellant may proceed with an appeal to ERAC." *Helms v. Koncelik*, 10th Dist. No. 08AP-323, 2008 Ohio 5073, P22, citing *New Boston Coke Corp.*

v. Tyler (1987), 32 Ohio St.3d 216, 217, 513 N.E.2d 302. Further, appellant bears the burden of demonstrating standing. *City of Olmsted Falls.*

{¶17} An early evaluation of the standing requirements of R.C. 3745.04 can be found in *Cincinnati Gas & Elec. Co. v. Whitman* (Nov. 19, 1974), 10th Dist. No. 74AP-151, 1974 Ohio App. LEXIS 3290. In *Cincinnati Gas & Elec. Co.*, the court determined that the phrase "party to a proceeding before the director" in R.C. 3745.04 encompassed "any person affected by the proposed action who appears in person, or by his attorney, and presents his position, arguments, or contentions orally or in writing, or who offers or examines witnesses or presents evidence tending to show that said proposed rule, amendment or rescission, if adopted or effectuated, will be unreasonable or unlawful." Building upon the analysis in *Cincinnati Gas & Elec. Co.*, the Tenth District Court of Appeals developed a two-prong test for determining if a person is a party under R.C. 3745.04 and thus, eligible to pursue an appeal under this statute. Specifically, to qualify as a party under R.C. 3745.04: 1) the person must appear before the Director and present arguments in writing or otherwise; and 2) the person must be affected by the action or proposed action of the Director. *Stark-Tuscarawas-Wayne Solid Waste Mgt. Dist. v. Republic Waste Services of Ohio II, LLC, et al.*, 2009 Ohio 2143, P22.

{¶18} The Board asserts it satisfies the first prong required to establish standing under R.C. 3745.04 because, pursuant to a request by Ohio EPA, the Health Department supplied the Director with documents and information regarding TWL's application to operate a C&DD landfill in the city of Girard. Conversely, TWL contends the first prong has not been satisfied because there was no proceeding at which the

Board of Health could have appeared and there was no submission of evidence or legal arguments by the Board to the Director.

{¶19} Although the Board of Health's position requires a very expansive reading of the first prong of R.C. 3745.04, in order to resolve the instant motion the Commission is willing to accept, based on the factual circumstances presented herein, that the Health Department's submission of documents and information to the Ohio EPA satisfies the requirement that the Board of Health appeared before the Director and presented arguments in writing or otherwise regarding TWL's request to the Director for a determination under uncodified Section 3.(A).

{¶20} As to the second prong,"[e]ven assuming arguendo that appellant appeared before the director, we may not escape the import of the words in *Cincinnati Gas*, i.e., that a person must be 'affected.'" *Martin v. Schregardus* (Sept. 30, 1996), 10th Dist. No. 96APH04-433, 1996 Ohio App. LEXIS 4288. Further, it is well-settled that "[a]ppeal lies only on behalf of a party aggrieved by the final order appealed from." *Lee v. Lee*, 2001 Ohio 2309, 2311; 2001 Ohio App. LEXIS 4837. In *Stark-Tuscarawas-Wayne Solid Waste Mgt. Dist.*, the court succinctly addressed this aspect of the standing requirement of R.C. 3745.04, as follows:

> This court has employed the same analysis in determining whether an appellant has been or will be 'affected' under R.C. 3745.04(B) or has been or will be 'aggrieved or adversely affected' under R.C. 3745.07. Under either section, the appellant bears the burden of demonstrating that it has standing. *Olmsted Falls v. Jones*, 152 Ohio App.3d 282, 2003 Ohio 1512, P21, 787 N.E.2d 669. 'In order to establish standing, a person must demonstrate that the challenged action has caused or will cause him or her injury in fact, economic or otherwise, and that the interest sought to be protected is within the sphere of interests protected or regulated by the statute in question.' *Johnson's Island*, citing *Franklin Cty. Regional Solid Waste Mtg. Auth. v. Schregardus* (1992), 84 Ohio App.3d 591, 599, 617 N.E.2d 761. 'The alleged injury must be concrete, rather than abstract or suspected; a party must show he or she has suffered or will suffer a "specific injury, even if slight, from the challenged action or inaction, and that this injury is likely to be redressed if the court invalidates the action or inaction."' *Johnson's*

> *Island*, quoting *State ex rel. Connors v. Ohio Dept. of Transp.* (1982), 8 Ohio App.3d 44, 46-47, 8 Ohio B. 47, 455 N.E.2d 1331. 'A party who alleges a threatened injury, however, must demonstrate a realistic danger arising from the challenged action.' Id., citing *Babbitt v. United Farm Workers Natl. Union* (1979), 442 U.S. 289, 298, 99 S. Ct. 2301, 60 L. Ed.2d 895.

{¶21} The matter under appeal herein is the Director's determination that subsections (1) through (4) of uncodified Section 3.(A) of Am.Sub.H.B. 397 had been satisfied by TWL, and therefore, the provisions of R.C. Chapter 3714 as they existed on July 1, 2005, should be applied by the Board of Health in its review of TWL's license application. Specifically, uncodified Section 3.(A) provides:

> **Section 3.** (A) Notwithstanding the amendments to Chapter 3714. of the Revised Code by this act, an application for a license to establish or modify a construction and demolition debris facility submitted to a board of health or the Director of Environmental Protection, as applicable, prior to July 1, 2005 shall be reviewed and the license shall be issued or denied in accordance with the provisions of that chapter as they existed on July 1, 2005, if all of the following apply to the applicant for the license:
>
> (1) The applicant has acquired an interest in the property on which the facility will be located on or before May 1, 2005.
>
> (2) The applicant has begun a hydrogeologic investigation pursuant to section 3745-400-09 of the Ohio Administrative Code prior to submitting the application.
>
> (3) The applicant has begun the engineering plans for the facility prior to submitting the application.
>
> (4) The application submitted by the applicant would have been determined to be complete if the moratorium had not been in effect.
>
> *The director shall determine whether this division applies to an applicant* within forty-five days after receiving an applicant's request for a determination under this division. (Emphasis added.)

{¶22} Appellee TWL contends the Board of Health was not affected, i.e., "injured," by the Director's determination under uncodified Section 3.(A), and therefore, the Board lacks the requisite standing to pursue the present appeal. In response, the

Board of Health asserts that it was affected by the Director's determination in two distinct ways. First, the Board contends it was affected by the Director's determination because "it dictates which statute and rules apply to the review and issuance or denial of the TWLG application." And second, the Board argues it was affected by the Director's finding under subsection (4) of uncodified Section 3.(A) that TWL's application was complete because this conclusion conflicts with the Board of Health's determination that the license application was incomplete, and "[t]he Board of Health has a specific interest in defending its determination of incomplete."

{¶23} The Girard Board of Health is on the list of approved health districts under R.C. 3714.09. As such, it carries out certain delegated powers of the Director of Ohio EPA relative to the issuance or denial of C&DD licenses for facilities located within its jurisdiction. More specifically, R.C. 3714.06(A) states, in part:

> (A) No person shall establish, modify, operate, or maintain a construction and demolition debris facility without a construction and demolition debris facility installation and operation license issued by the board of health of the health district in which the facility is or is to be located * * *. Each person proposing to open a new construction and demolition debris facility or to modify an existing facility shall, at least ninety days before proposed operation of the facility, submit an application for a license with accompanying plans, specifications, and information regarding the facility and its method of operation to the board of health of the health district in which the facility is located or proposed for approval *as complying with the rules adopted under section 3714.02 of the Revised Code and the standards set forth in divisions (A) and (B) of section 3714.03 of the Revised Code* * * *. If the board of health * * * finds that the proposed facility or modification *complies with those rules and standards,* the board * * * shall issue a license for the facility. * * * (Emphasis added.)

{¶24} Thus, R.C. 3714.06(A) requires a board of health to review C&DD license applications to determine whether they comply with "the rules adopted under section 3714.02 of the Revised Code and the standards set forth in divisions (A) and (B) of section 3714.03 of the Revised Code * * *."

{¶25} Similarly, under the unambiguous language of uncodified Section 3.(A), the Ohio General Assembly has granted the Director exclusive authority to determine whether subsections (1) through (4) have been satisfied by an applicant for a C&DD license and, consequently, whether that license application should be reviewed in accordance with the provisions of R.C. Chapter 3714 as they existed on July 1, 2005. Stated another way, it is evident from the plain language of uncodified Section 3.(A) that the legislature intended to entrust determinations regarding which version of R.C. Chapter 3714 should be applied in any specific instance solely to the Director, while the authority of a board of health is confined to an evaluation and determination as to whether a license application complies with the version of R.C. Chapter 3714 that the Director has deemed appropriate. Thus, contrary to the Board of Health's suggestion that it has some vested interest in which version of law should be applied to TWL's license application, the Ohio General Assembly's adoption of uncodified Section 3.(A) makes it unequivocal that a board of health must simply apply that version of the law which the Director believes to be appropriate after his review and consideration of subsections (1) through (4) of uncodified Section 3.(A). Accordingly, the Commission finds no merit in the Board of Health's claim that it has been affected, i.e., injured, by the Director's determination under uncodified Section 3.(A) that resulted in the Board of Health being required to apply the provisions of R.C. Chapter 3714 as that chapter existed on July 1, 2005.

{¶26} The Commission similarly rejects the Board of Health's assertion that it was affected by the Director's determination that TWL's application was complete for purposes of uncodified Section 3.(A) because this conclusion was in conflict with the Board of Health's determination that the license application was incomplete. A board of

health's determination regarding the completeness of a license application is guided by Ohio Adm.Code 3745-37-02(A)(2) and (3), which provide:

> (2) An incomplete application shall not be considered. Within thirty days of the receipt of an incomplete application or sixty days in the case of an incomplete construction and demolition debris facility license application, the applicant shall be notified of the nature of the deficiency and of refusal by the * * * board of health to consider the application until the deficiency is rectified and the application completed; and
>
> (3) For construction and demolition debris facilities, if the licensing authority determines that information in addition to that required by this rule is necessary to determine whether the application satisfies the requirements of Chapters 3745-400 and 3745-37 of the Administrative Code, the license applicant shall supply such information as a precondition to further consideration of the license application.

{¶27} The Commission previously analyzed what constitutes a "complete" application in *Cecos Internatl., Inc. v. Shank*, Case No. EBR 131844 (Sept. 7, 1989), affirmed in part, reversed in part on other grounds (1991), 74 Ohio App.3d 43, 598 N.E.2d 40. Specifically, in *Cecos Internatl.* the Commission stated, as follows:

> 3. The mere fact that the Director or staff of the Ohio EPA does not agree with the information or the fact that the information submitted may not be adequate to demonstrate that the applicant is either in compliance or entitled to the permit applied for, is not, in itself, determinative of whether the application as submitted is complete.
>
> 4. An application will be deemed to be complete when it is determined that all the statutorily and regulatorily enumerated and mandatory components of the application have been reasonably and fully answered, submitted or responded to by the applicant and that any required attachments, exhibits and appropriate data have been included. The fact that the application may ultimately be denied by the reviewing authority on the basis of the quality of the information contained in the application or that the [reviewing authority] would want other information, is not necessarily relevant in determining completeness.
>
> 5. The record in the present case demonstrates that while the Director and the employees of the Ohio EPA did not agree with portions of the material submitted by Appellant with its application and in support of it, the essential statutory and regulatory requirements of the application had been met and fulfilled. The record demonstrates that the Director had in the application its voluminous attachments and exhibits responses to all aspects of the statutes and regulations controlling applications. While there were vast differences of opinion

> regarding the quality of the information and while a permit might ultimately be granted or denied based on the quality of the information submitted, all areas of the application had been reasonably addressed by Appellant.

{¶28} The Tenth District Court of Appeals subsequently reviewed and applied this portion of the Commission's decision in *Cecos Internatl.* in a case concerning the completeness of a C&DD application filed with the Morrow County Board of Health. (*Harmony Environmental Ltd. v. Morrow Cty. Dist. Bd. of Health; Washington Envrionmental Ltd. v. Morrow Cty. Dist. Bd. of Health*, 2005 Ohio 3146, P12, 2005 Ohio App. LEXIS 2920.) In *Harmony Environmental*, the court commented, "[a]s the [Commission] points out, paragraphs three, four, and five from *Cecos Internatl. draw a distinction between the completeness of an application versus the quality of the information included in the application.*" (Emphasis added.)

{¶29} Applying the rationale discussed in *Cecos Internatl.* and *Harmony Environmental* to the factual scenario presented herein, the Commission concludes that the Director's determination that TWL's license application was complete for purposes of uncodified Section 3.(A) is not binding or dispositive of the Board of Health's distinct resolution on this same issue. The Commission believes that a careful reading of uncodified Section 3.(A) reveals that the type and extent of review required by the Director under this provision is far less detailed than the review of a license application necessarily taken by a board of health. A board of health reviews a C&DD license application to confirm that the application complies not only quantitatively, but also qualitatively, with all applicable statutes and regulations. As such, the list of items that must be included in a C&DD license application filed with, and carefully reviewed by, a board of health is extensive and detailed. See Ohio Adm.Code 3745-37-02(E) and Ohio Adm.Code Chapter 3745-400. Conversely, under uncodified Section 3.(A) the Director

is broadly instructed to confirm whether the applicant has "acquired an interest in the property," "begun a hydrogeologic investigation," etc. Thus, the review required by the Director under uncodified Section 3.(A) appears designed only to ensure that an applicant was actively and legitimately pursuing a C&DD license prior to the commencement of the moratorium enacted by Am.Sub.H.B. 66. The Director's review is not intended to circumvent or replace the much more thorough review necessarily conducted by a board of health, it is merely to determine which version of R.C. Chapter 3714 the board of health should apply.

{¶30} Accordingly, the Director's conclusion under uncodified Section 3.(A) notwithstanding, the Commission finds that the Board of Health continues to retain the explicit authority under Ohio Adm.Code 3745-37-02 to request any additional information it deems necessary to ascertain whether TWL's license application complies with the applicable statutes and regulations. As such, the Board of Health was not affected or injured by the Director's determination that TWL's license application was complete for purposes of uncodified Section 3.(A).

{¶31} In sum, the Commission finds that the Board of Health was not "affected," as that term has been judicially interpreted for purposes of standing analysis, by the Director's determination that uncodified Section 3.(A) applies to the application submitted by TWL to the Board of Health on June 27, 2005; nor was the Board of Health "affected" by the Director's conclusion that TWL's application was complete for purposes of uncodified Section 3.(A). In light of the Commission's conclusion that the Board of Health was not affected by the Director's final action, we concomitantly find that the Board of Health lacks standing to pursue the instant appeal. In view of the

Commission's finding that the Board of Health lacks standing, we need not address TWL's challenge to the timeliness of the Board's Notice of Appeal.

ESCHLEMAN AND SHILLING, COMMISSIONERS, CONCUR:

FINAL ORDER

Based on the foregoing, TWL's Motion to Reconsider Order Denying Appellee's Motion to Dismiss Appeal is GRANTED and ERAC Case No. 786024 is hereby DISMISSED.

The Commission, in accordance with Ohio Adm.Code 3746-13-01, informs the parties that:

> Any party adversely affected by an order of the commission may appeal to the Court of Appeals for Franklin County, or, if the appeal arises from an alleged violation of 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 the director or other statutory agency. 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.

THE ENVIRONMENTAL REVIEW APPEALS COMMISSION

Lisa L. Eschleman, Chair

Toni E. Mulrane, Vice-Chair

Melissa M. Shilling, Member

Entered into the Journal of the Commission this 21st day of April, 2010.

COPIES SENT TO:

GIRARD BOARD OF HEALTH	[CERTIFIED MAIL]
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Nicholas J. Bryan, Esq.	
Robert Eubanks, Esq.	

DECISION

Case No. ERAC 786024

CERTIFICATION

I hereby certify that the foregoing is a true and accurate copy of the RULING ON MOTION TO RECONSIDER ORDER DENYING APPELLEE'S MOTION TO DISMISS AND FINAL ORDER in **Girard Board of Health v. Chris Korleski, Director of Ohio Environmental Protection, et al.** Case No. ERAC 786024 entered into the Journal of the Commission this 21st day of April, 2010.

Mary J. Oxley

Mary J. Oxley, Executive Secretary

Dated this 21st day of
April, 2010, at Columbus, Ohio.