

Fine Print

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OHIO BUSINESSES CAN APPEAL OHIO EPA DECISIONS

by Charles R. Dyas, Jr.

As a small business you may be adversely affected by a decision of the Ohio EPA. If so, you may have the right to appeal the EPA's decision. An official EPA decision might include the following "acts" or "actions":

- adopting or modifying of a rule or regulation;
- issuing, modifying, or revoking an order;
- issuing, denying, modifying, or revoking a license or permit;
- approving or disapproving any plans or designs.

Any decision by the EPA director that determines a controversial right or privilege is an official act or action of the EPA. The director's refusal to decide on a matter or the EPA's sending out of correspondence or notices may not be an official act or action of the EPA.

If you are adversely affected by an official EPA act or action, you may appeal the EPA's decision to the Ohio Environmental Review Appeals Commission ("ERAC"), a three-member panel appointed by the governor. ERAC is independent of the Ohio EPA and is charged with hearing appeals that spring from EPA decisions. Your appeal must be filed with ERAC no later than 30 days from the time the EPA issues its official decision, and during the appeal you must dem-

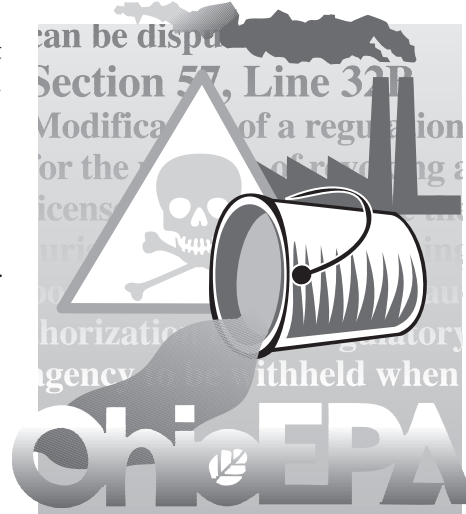
onstrate that the EPA's decision was unlawful and unreasonable. ERAC may accept any evidence deemed relevant, though it is not authorized to rule on constitutional questions.

Your appeal to ERAC does not automatically stop or delay whatever act or action is adversely affecting your business. The ERAC will issue a written order stating either that the Ohio EPA's action is lawful and reasonable or that it is unlawful and unreasonable. If the latter happens, the

ERAC may modify the act or action or set aside the EPA's decision and send the matter back to the EPA.

You may appeal ERAC's decision to the Franklin County Court of Appeals. ERAC's decision will be reversed if it is found to be unlawful and unsupported by reliable, probative and substantial evidence.

Because the Ohio EPA is concerned with the impact its decisions and regulations have on small businesses in Ohio,
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BILL COLLECTION: HOW TO GET THE MONEY YOU'RE OWED

by Christopher Ernst

Q: I own a small business and my accounts receivable increase every month. I have sent my customers statements and many sternly-worded letters to little effect. What can I do?

A: You can begin collection proceedings against your customers by first getting a judgment in court, and then "executing" on that judgment by garnishing bank accounts or wages, filing liens against their homes, or ordering certain assets to be seized.

Q: If I have decided I have no choice but to sue my customers, what should I do next?

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OSBA

For additional copies of Fine **Print**, or further information, please contact OSBA Public Relations, 1700 Lake Shore Drive, Columbus, Ohio 43216-6562, or by phone, 800/282-6556 and 614/487-2050. Articles appearing in this newsletter are intended to provide broad, general information about the law. Before applying this information to a specific legal problem, readers are urged to seek advice from an attorney.

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a Small Business Assistance Office has been created. The Small Business Assistance Office provides newsletters and other notices to small business as well as training and assistance in understanding and complying with Ohio EPA's laws and regulations. Ohio EPA's Small Business Assistance Office can be reached at (614) 728-8573 or (800) 329-7518.

If your business is either directly involved with Ohio EPA or adversely impacted by an EPA decision, you have a right to be heard. However, if you do not exercise your rights, you may not be able to make objections in the future. You can obtain advice about the Ohio EPA's laws and regulations from your legal counsel or from a member of the Ohio State Bar Association Environmental Law Committee.

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A: It may be easier to retain an attorney to file these lawsuits, but if you have only a few customers to sue and the amount you are owed is small enough, you might be able to file a lawsuit yourself in small claims court.

Q: If I sue my customers and receive judgments against them, they will be forced to pay me, won't they?

A: Many people do not realize that a judgment is only an official acknowledgment that money is owed to you and not a directive for money to transfer hands. It is your job to try to collect that money. The easiest way to do this is to garnish the debtor's bank accounts or wages. To garnish someone's wages, you must file paperwork asking the court to seize the money from the judgment debtor's bank account or wages. The debtor, in turn, will have a chance to be heard by the court before any garnishment is granted.

Q: How does the wage garnishment work?

A: A person's wages can be garnished

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only up to 25% per pay. If, however, the person is paying other court-ordered deductions such as child support, the amount that can be garnished will be reduced. Garnishments are continuous orders, meaning that once you file paperwork, employers must

withhold funds from an employee's paycheck until your judgment is satisfied.

Unfortunately, if another creditor is already garnishing the debtor's wages, you may have to wait as long as six months until the other garnishment is complete.

Q: Are there any other options for collections?

A: Yes. For instance, you may take your judgment and file it as a lien against a person's house and foreclose upon it. Also, you may ask the court to seize tangible items (e.g., jewelry,

computers, equipment) and sell them at auction, then give you the proceeds. These are fairly complex procedures which are difficult to do without a lawyer's advice.

Christopher M. Ernst, an attorney with the Cleveland firm of Weston Hurd Fallon Paisley & Howley LLP, is a member of the Ohio State Bar Association.

IN THE HOPPER

Pending state legislation that could affect small business

House Bill 287, effective May 17, 2002, is a product of the OSBA Corporation Law Committee, and makes some important, cutting-edge changes in Ohio's corporation law. The act:

- expands the power of corporate directors to amend the articles of incorporation in limited circumstances without shareholder approval;
- permits Ohio corporations to use modern means of communications, such as the Internet, when communicating with shareholders; and
- makes some technical changes in certain filing requirements.

House Bill 349, also a product of the OSBA Corporation Law Committee, would modify the Uniform Partnership Law. Specifically, it would:

- change the standard of care owed to a limited partnership by its general partners;
- require a partner to make specific notices and disclosures about "self dealing";
- modify the accounting a partner must make a the partnership.

Also, and for the first time in Ohio, the bill would allow a general partnership to merge with one or more other

general partnerships or with other entities such as corporations, partnerships, limited partnerships, or limited liability companies. This bill would bring Ohio in line with Delaware, Illinois and Maryland, enabling Ohio businesses to have the same flexibility as other leading commercial states.

To review these bills, visit www.legislature.state.oh.us/

From the OSBA Office of Government Relations