

Statement in support of House Bill 1175
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Lower Merion Township Board of Health.

I speak in support of House Bill 1175 which gives the Commonwealth's Attorney General the authority to prosecute criminal violations of the environmental laws.

Lacking legal expertise, I am not aware whether the Attorney General already has this authority, but if he does not, I believe it is desirable for him to have it. At present primary authority for enforcing the environmental laws of the Commonwealth lies with the DER (Department of Environmental Resources), and I believe control is best exerted through such a regulatory agency which has the appropriate expertise and can prospectively monitor compliance with the laws by conducting periodic inspections. However, if for any reason the DER is unwilling or unable effectively to enforce those laws, and I will shortly describe such an occasion, then it is desirable to have another avenue of redress.

I believe there are three major advantages to be gained from such authority residing in the Attorney General's office:

1. It would provide a mechanism for dealing with violations of environmental laws when the agency having primary jurisdiction fails, for whatever reason, to deal with the problem.
2. It establishes a threat of sanction against violators which provides greater incentive to obey the law, especially if the regulatory agency is perceived as ineffectual.
3. It provides an inducement for the regulatory agency to be diligent in promoting compliance with the environmental laws.

I would now like briefly to describe a situation which developed in our township which illustrates the current problem. It involves a local community hospital which had been disposing of hospital waste by means of an on-site incinerator. The incinerator was approved by the DER and it was operating under permits approved and continued by DER. By way of background, the DER has two divisions responsible for incinerator inspections, the air quality division and the solid waste management division, each of which inspects and provides a separate permit for incinerator operation.

From 1982 through 1986 there appear to have been no deficiencies in the incinerator operation found by DER. During 1987 some violations of operational standards, not of a major nature, were uncovered by DER inspections (by both the air quality and solid waste divisions). Three months later the DER found that these violations had been corrected.

During this period of time the local citizens residing in the community adjacent to the hospital began to object to operation of the hospital's incinerator. Concerns were expressed that the incinerator did not meet standards for best available technology and that there was a health hazard in its operation.

During the next year and a half inspections by the air quality division found no violations, but there were no inspections by the solid waste division of DER. The citizen's agitation and opposition to the incinerator accelerated during this period and the citizen's group uncovered allegations of seriously deficient practices by the hospital.

Finally, on 19 Dec. 1988 the solid waste division conducted an inspection and found serious deficiencies (on the same day the air quality division found no deficiencies on inspection.) As a result the hospital voluntarily shut down its incinerator operation. By this time citizen agitation had reached a high pitch, fanned by inflammatory news coverage. The three legislators from our community made a special request for the Attorney General's office to investigate the matter. It was amazing how soon after the Attorney General's investigation began the DER suspended the hospital's permits.

By way of follow up the Attorney General found no criminal activity on the part of the hospital. The DER imposed a considerable fine on the hospital for the deficiencies uncovered. The hospital's incinerator is still shut down while it applies for a permit to upgrade to best available technology. In fairness to the hospital it should be stated that it did not appear the violations were the result of willful misconduct, although there may have been sloppy management. There was evident confusion about what the hospital was permitted to burn, resulting from ambiguous communications from DER and changes in their standards. In addition the Board of Health has found no convincing evidence of a significant health hazard.

In the course of the situation I have just described one of the major problems was the frustration of the local citizens in their attempts to obtain action to resolve a perceived threat to their health. Regardless of whether that perception was valid (the Board of Health does not believe so), the fact is the DER was the only source of redress for them. Township officials did not have the legal authority to deal with the problem. The Township's Board of Health did not have the expertise to carry out an investigation of the alleged infractions and did not have the authority to deal with them. The agency primarily involved, the DER, apparently was unable or unwilling effectively to deal with the issue until forced to do so by public pressure and the entry of the Attorney General's office. I do not mean to imply that there was willful avoidance of the issue by DER - through underfunding or short staffing they may have been unable to perform frequent enough or adequate inspections. Nevertheless, there should be a mechanism which provides investigatory and prosecutorial authority which can bypass a regulatory agency that fails adequately to perform its function. I believe the proposed House Bill 1175 would provide this mechanism.