

TESTIMONY BY REPRESENTATIVE LOIS SHERMAN HAGARTY

Judiciary Committee Hearing, July 31, 1989

House Bill 1175 (Commonwealth Attorney's Act)

House Bill 1175 was introduced by Representative Jim Clark and myself to provide the Attorney General with original jurisdiction to prosecute crimes involving the environmental laws of the Commonwealth, including but not limited to violations of the "The Clean Streams Law" and violations of the "Solid Waste Management Act".

We deemed this action to be necessary as a result of the inaction you have heard detailed this afternoon by Representative Clark, inaction by DER in response to serious environmental violations by Lankenau Hospital. The community's continuing concern regarding the burning of infectious waste by Lankenau Hospital, the need for an independent fact-finding investigation, and the lack of public confidence in the Regional Office of the Department of Environmental Resources led to the introduction of this bill.

On January 19, 1989, we requested Attorney General Preate to initiate an investigation of environmental violations by Lankenau Hospital. We detailed the history of this case and the lack of action despite knowledge on the part of DER. We felt that it was important for the Attorney General's Office to take over this investigation because of the community's concern regarding risks to their health. Any reassurance at this point by the same agency that had shown no inclination in the past to enforce the law could not restore public confidence.

The Attorney General's Office accepted this responsibility. A preliminary investigation was initiated. While this preliminary investigation found no evidence of criminal wrongdoing it did note that the inaction of DER contributed to Lankenau's continued violation of its burning permit.

We also learned that even if criminal violations were found the Attorney General would have been powerless to prosecute the case. This was because the Commonwealth Attorney's Act as originally amended in 1980 when the Legislature first provided for an elected attorney general did not provide the AG with original jurisdiction in the investigation and prosecution of environmental crimes. Instead, that act set forth a scheme in which an investigation of an environmental crime only fell within the power of the Attorney General upon the request of a district attorney or upon the request of a Commonwealth Agency. Other rare examples of times that the Attorney General could prosecute environmental crimes would be if an investigating grand jury returned an indictment or with court permission in certain enumerated cases.

This scheme of limited powers works well in most cases because local district attorneys can and do initiate investigations. District Attorneys offices in almost all situations are well prepared and quite capable of enforcing the criminal laws of the Commonwealth. However, we felt that the complexity and far reaching nature of environmental issues were such that vesting concurrent jurisdiction to prosecute in the Attorney General's Office would insure better enforcement and punishment of wrongdoers in this growing area of criminal activity.

We believe that if our bill is enacted, the Attorney General would have a clear path to launch an investigation if and when he feels it is appropriate, and that can only improve environmental safety for the people of Pennsylvania.