

**[J-63-2010] [M.O. - Orie Melvin, J.]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION,	:	No. 74 MAP 2009
	:	
Appellee	:	Appeal from the Order of Commonwealth Court at No 611 MD 2007 dated 07/08/09, exited 07/09/09
	:	
v.	:	
	:	
CROMWELL TOWNSHIP, HUNTINGDON COUNTY,	:	
	:	
Appellant	:	ARGUED: September 15, 2010

**CONCURRING OPINION**

**MR. JUSTICE SAYLOR**

**DECIDED: November 23, 2011**

With regard to jurisdiction, I do not see how it can be that a new party (Mr. Booher, individually) may be effectively brought onto the record in an enforcement proceeding, found to be in contempt, and incarcerated, without an available appeal as of right. See PA. CONST., art. V, §9. It may be that the Court did not have the foresight, in PHRC v. School District of Philadelphia, 557 Pa. 126, 732 A.2d 578 (1999), to anticipate the full repercussions of its ruling. Nevertheless, in the face of those presented here, I, for one, am certainly willing to reconsider the decision's appropriate parameters and/or continuing viability. Notably, commentators have identified the strong conceptual difficulties with treating enforcement proceedings in which an agency is seeking non-statutory, judicial redress as appellate jurisdiction matters:

The supreme court has not yet identified . . . the order that is appealed to the commonwealth court, when the appeal period begins, how the “appellant” agency is aggrieved by its own order and thus has standing to appeal, or what the commonwealth court’s scope and standard of review are. The ramifications of this unusual approach to enforcement proceedings are an aspect of the appeal currently pending in Department of Environmental Protection v. Township of Cromwell.

Kristen W. Brown and Blair T. Preiser, Jurisdiction of the Commonwealth Court – Forty Years of Proving the Drafters Right, 20 WIDENER L.J. 5, 23 (2010).

Ideally, the Legislature should be clearer in establishing its contemplated scheme for enforcement of the Department’s administrative orders, thus solidifying the jurisdictional underpinnings. In the absence of such prescription, where, as here, an agency has averred that it is without an adequate remedy at law and seeks non-statutory remedies to enforce its own directives from a court of law, the only conceptually stable conclusion is that the court’s original jurisdiction is implicated. At the very least, when the agency seeks additional remedies against members of a governing body as “individual[s],” Petition for Contempt, R.R. at 7a, either original jurisdiction must be recognized or the agency’s effort must be regarded as an impermissible attempt to join additional parties on the “appeal.” See PHRC, 557 Pa. at 132, 732 A.2d at 581 (“The parties to an enforcement proceeding are limited to the parties before the administrative agency.”). In either event, I support the majority’s decision disapproving the sanction, albeit for different reasons.

Mr. Justice Baer and Madame Justice Todd join this concurring opinion.