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Environmental laws only work if they are enforced

The phenomenon known as "polluter capture" is real in Minnesota.

By Don Arnosti, Margaret Levin and Laurie Schneider

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GLEN STUBBE, STAR TRIBUNE

A worker prepared a ladle filled with molten iron at Smith Foundry on Dec. 12, 2023 in Minneapolis. The EPA launched an investigation into the foundry last year that led it to agree to a partial shutdown. A coalition of environmental groups cite the case as an example of state regulators failing to police polluters.

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How much do polluters get to damage our environment and health before the Walz administration stops them?

Way too much is the current answer. This is described in the June 11 news article "[State accused of being lenient with polluters.](#)" It outlines serious harms all over Minnesota, from aquifer damage up north to air pollution in Minneapolis from the Smith Foundry, to drinking water wells in southern Minnesota poisoned by agricultural runoff.

A partnership of 16 organizations published "People Not Polluters," which [catalogs 12 case studies](#) of state agencies, heavily influenced by the industries they are supposed to regulate, failing to enforce environmental laws. It's a form of regulatory capture we call "polluter capture." In December, citizens including former Gov. Arne Carlson [wrote Gov. Tim Walz](#) sharing similar concerns.

To fix this, we met with staffers from the governor's office in January and February. We brought [specific suggestions](#), including a proposed executive order that would improve transparency around agency actions, a first step to addressing the problem. We were told that it was neither possible nor necessary, in part because not enough people had complained. (We also met with Agriculture Commissioner Thom Petersen regarding pesticide-treated seeds.) Even after we published the catalog of agency failures, the administration still refused to acknowledge its lack of enforcement. The agencies issued a statement, including the excuse that advocates had not responded to their Jan. 5 email to us. This is false. We responded by holding the three meetings described above.

Suggesting that Minnesotans haven't complained enough to get them to enforce our laws is a deflection. The right time for the Walz administration to enforce environmental laws is when those laws are being broken.

Readers do not need to trust us about this problem. State courts, independent auditors and federal agencies have repeatedly pointed out where agencies have failed and in some instances have even intervened:

- The legislative auditor said "the [Minnesota] Pollution Control Agency repeatedly failed to regulate [Water Gremlin](#), a Twin Cities manufacturer that violated its air permit for more than 15 years and spewed tons of a carcinogen into the air."
- The U.S. Environmental Protection Agency used surprise inspections (which MPCA wouldn't use) to identify air permit violations by Twin Cities-area foundries.
- The EPA also intervened to order the MPCA and the Department of Health to protect people in southeastern Minnesota from dangerous levels of nitrate contamination from farm runoff getting into their private wells.

- The U.S. Fish and Wildlife Service withheld funding for the state Department of Natural Resources because the agency mismanaged lands meant for wildlife habitat to instead benefit the timber industry.
- The Minnesota Supreme Court ruled the MPCA was "arbitrary and capricious" and engaged in irregular procedures to avoid dealing with EPA concerns when it issued wastewater permits for the proposed PolyMet mine.

The courts and federal agencies shouldn't need to step in. But they must because polluting interests get their way with agency decisionmakers.

The lack of actual law enforcement and significant sanctions reinforce that polluter capture is real. Congress and our state Legislature passed powerful laws in the 1970s to protect our health and environment. Industry responded by trying to undercut enforcement. In the Reagan era government agencies were told to behave "like businesses" and treat industries seeking pollution permits as "customers." That eventually took hold here. Still trapped in that mindset today, current agency leaders rely almost exclusively on incentives paid for by state taxpayer dollars, and voluntary compliance to rein in pollution, rather than enforcing laws. This is not working.

Agency heads answer to Walz. He could fix this if he wanted. His public response shows he likely won't. He is "proud" of his agencies. So the Legislature needs to exercise its constitutional role to conduct oversight hearings, hold agencies accountable and vet solutions. Our state Constitution does not have an asterisk that says the Legislature doesn't need to exercise oversight when the governor is from the same party.

In the last two years, the current DFL majorities have passed historic legislation which shows they are serious about climate action, environmental justice and protecting natural resources. But our environmental laws can only protect us if the administration is willing to enforce them. Minnesotans must insist on it.

Don Arnosti, Margaret Levin and Laurie Schneider are longtime environmental advocates who participated in developing the content of PeopleNotPolluters.com.