A JURISDICTIONAL GUIDE
TO LAKE MONROE

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Presented by the Bloomington Environmental Quality and Conservation Commission to the people of Bloomington, Indiana.

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FOREWORD

This handbook was prepared in order to provide a central locale for legal information on environmental law concerning Monroe Reservoir (Lake Monroe). As such, it is meant to be of aid to those who would otherwise find the legal structure too confusing. The handbook points to the various agencies which regulate the many faceted aspects of the Lake. It is obvious that the first line of action in a particular environmental problem is to seek administrative redress. Legal action is, in most cases, the last resort. This handbook is not meant to elicit court cases. However, as part of the general background, court cases deciding environmental issues and conservation problems have been included. Moreover, these cases are no guarantee of success in the future. Therefore, further legal research is necessary before actions are taken or decisions made. This is particularly true when consideration is given to bringing lawsuits in state or federal court. Consultation with an attorney skilled and experienced in the areas of environmental and administrative law is essential in all such cases.

It is further essential to note that this handbook was not prepared by a lawyer. The research and writing were done by a law student under the guidance of lawyers. The information provided in the handbook is necessarily general, especially in Chapters III and IV. The limits of time, manpower, space, and money were the chief reasons for this generality. The handbook is meant only to be an entry point to the issues of environmental law concerning Monroe Reservoir. Key agencies, statutes, regulations, cases, and legal doctrines are briefly touched upon in order to provide this entry point.

Mr. Rick Darby, a member of the Bloomington Environmental Quality and Conservation Commission and an attorney in Bloomington, Indiana, provided much of the guidance in the outlining of the form of this handbook. Mr. Rex Callaway did all of the research and the writing of the handbook and some of the organizing. Mr. Callaway is employed by the Environmental Quality and Conservation Commission as an administrative assistant under the work-study program and is a law student. Mr. Callaway received two hours of credit in law school for researching and writing the handbook. Professor Nick White of the Indiana University School of Law supervised and guided Mr. Callaway.

The following law student papers provided by Professor White were very helpful in the preparation of the handbook: Judicial Review of Agency Rulemaking in Indiana by Mr. James Knapp, Cities as Enforcers of Environmental Laws by Mr. Phil Cockerille, and Citizen's Guide to the Indiana Environmental Citizen Suit by Mr. Russell Crowder and Mr. Rex Callaway. An extremely helpful student paper prepared by Bloomington attorney Mr. Michael Spencer in 1973 entitled Who Really Controls Lake Monroe? provided much of the initial research information on regulatory agencies concerned with Monroe Reservoir. Mr. Spencer's paper has since been refined and incorporated into the Lake Monroe Land Suitability Study published by the Indiana University School of Public and Environmental Affairs. Mr. Dennis Wolkoff, an attorney in Nashville, Indiana and the Indiana Field Representative for the Nature Conservancy, reviewed the handbook in draft form and provided several insightful comments and suggestions that were incorporated into the handbook.

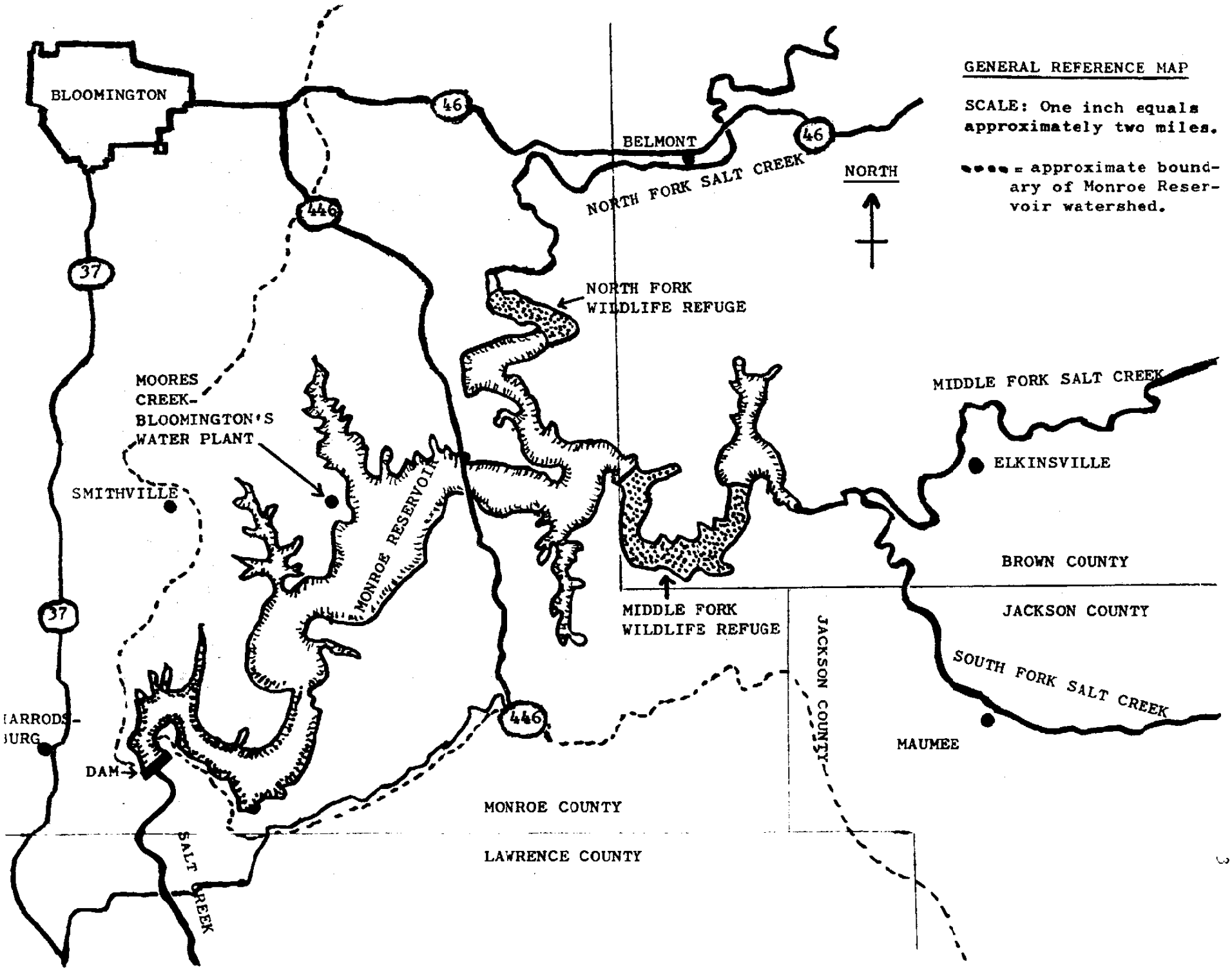
I. INTRODUCTION

There are two primary purposes served by this handbook. One purpose is to illuminate for the general public some of the environmental dangers that threaten the length of usefulness and the natural beauty of Monroe Reservoir and its immediate environment. The handbook rests upon these broad, basic premises: 1) Preservation and husbanding of the watershed lands of Monroe Reservoir in an environmentally sound manner is essential to the preservation of Monroe Reservoir and, 2) the preservation of Monroe Reservoir is a vital factor in the future economic, social and environmental well-being of Monroe and surrounding counties. The other purpose of this handbook is to outline potential legal procedures and issues that might be pursued by Bloomington and Monroe County residents in the attempt to overcome these dangers. The authors have tried to keep the legal terminology at a minimum in order to promote public understanding, yet still provide a useful beginning outline for further legal research. Helpful information such as addresses of agencies has also been included in the handbook. It is important to note at the outset that when local governmental bodies involved with issues and problems concerning Monroe Reservoir are discussed, this handbook chiefly focuses on Monroe County and Bloomington, Indiana. The actions of Brown County and Nashville, Indiana local government may be even more important than Monroe County government because Brown County contains a larger percentage of Monroe Reservoir's watershed.

Monroe Reservoir (also called Lake Monroe) was constructed in the Upper Salt Creek Valley by the United States Army Corps of Engineers. Construction was completed in late 1964 and the reservoir was filled with water in 1965. The estimated total cost of the reservoir was $14,352,000. The state paid 54% of the cost and the federal government paid 46%. The normal pool level of Monroe Reservoir is 538 feet above sea level. The reservoir is 35 to 40 feet deep at its deepest point during normal pool level. The spillway crest of the dam is 556 feet above sea level. The reservoir functions as a storage pool for flood control purposes between the levels of 556 feet and 538 feet. The basin of the reservoir from 538 feet down to 515 feet is used as storage for low flow augmentation purposes during dry weather. The basin of the reservoir below 515 feet is allocated for sediment storage. Monroe

Reservoir is the largest reservoir in the state of Indiana. Its surface covers 10,750 acres at normal pool level. The watershed drainage area of the streams flowing into Monroe Reservoir covers 441 square miles. This includes large areas of Monroe County and Jackson County and most of Brown County. The reservoir was constructed in an area of dense clay and siltstone which is excellent for the purpose of retaining a pool of water. Little water is lost to ground seepage. The Salt Creek Valley in this location is one of the few areas within a large portion of south central Indiana that is suitable for building and maintaining a reservoir of such large size.[1]

Monroe Reservoir currently serves these four important purposes with economic value: 1) flood control, 2) low flow augmentation, 3) water supply, and 4) recreation. A fifth important purpose of preserving wildlife, fish, and wilderness is served by Monroe Reservoir and surrounding publicly owned land. The Corps of Engineers has developed a comprehensive plan pursuant to Congressional instructions called the Wabash River Basin Comprehensive Study. This plan is part of a national comprehensive river basin planning program developed from recommendations in a 1961 report of the Senate Select Committee on Natural Water Resources. The plan calls for the damming and coordinated flood control operations of most of the major tributaries of the Wabash River in order to eliminate flood damage. Monroe Reservoir is operated by the Corps in conjunction with other Corps reservoirs in the watershed basin of the ~~West~~ East Fork of the White River as a part of the overall Wabash Valley flood control plan. Monroe Reservoir's retention of flood waters reduces flood damage in the lower Salt Creek valley, the valley of the ~~West~~ East Fork of the White River, and the flood plain of the lower Wabash River. Closely related to the flood control purpose of Monroe Reservoir is the low flow augmentation purpose. The purpose of low flow augmentation is to insure that towns, cities and dwellings below the dam receive adequate water during periods of drought. Stored water from the reservoir is released during these periods to maintain water supplies dependent upon stream and river water. The city of Bloomington, Indiana pumps 75-80% of its water supply from Monroe Reservoir. Griffey Lake is the other source of the city's water. The city's Monroe Reservoir water pumping and purification plant is located near Moores Creek. The City of Bloomington's water company supplies Bloomington and much of the rural area of Monroe County with


GENERAL REFERENCE MAP
SCALE: One inch equals approximately two miles.
= approximate boundary of Monroe Reservoir watershed.
NORTH
BLOOMINGTON
BELMONT
NORTH FORK SALT CREEK
NORTH FORK WILDLIFE REFUGE
MOORES CREEK-BLOOMINGTON'S WATER PLANT
SMITHVILLE
MONROE RESERVOIR
MIDDLE FORK SALT CREEK
ELKINSVILLE
BROWN COUNTY
MIDDLE FORK WILDLIFE REFUGE
JACKSON COUNTY
SOUTH FORK SALT CREEK
MAUMEE
DAM
MONROE COUNTY
LAWRENCE COUNTY
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water. Other cities and communities in the area may one day come to rely directly on Monroe Reservoir for their water supply. Monroe Reservoir and its environs receives tremendously heavy recreational use through the year. Hiking, hunting and nature study in the surrounding forest lands and boating, fishing, and waterskiing are some of the recreational attractions of the reservoir. The brisk tourist trade resulting from these attractions is an obvious benefit to the economy of the area. Monroe Reservoir is fast becoming one of the major recreation centers of the Midwest.

A non-economic value of Monroe Reservoir is its value as a preserve of natural habitat for many fish and wildlife species. Game fish species found in the reservoir include blue gill, crappie, largemouth bass, yellow bass, perch, catfish, sunfish and northern pike. Wildlife Refuges located where the Upper and Middle Forks of Salt Creek intersect the reservoir serve as nesting grounds for woodducks, mallards, and black ducks. They serve as migratory stopping points for blue winged teal, green winged teal, pin tails, mergansers, Canada geese, blue geese, and many other water fowl. Shoreline mammals such as muskrats and mink are common around the border of the reservoir. Woodland mammals such as deer, opossums, raccoons and weasels live in the forest surrounding it. Turkeys and ruffed grouse also live in these forests.

An incidental phenomenon caused by the building of a reservoir is that privately owned land that was at one time isolated and unattractive for real estate development purposes suddenly becomes very desirable. This desirability is caused by many of the factors making the area attractive for recreational use -scenery, solitude, open space, etc. A tremendous push by real estate interests for economic development of privately owned land often follows the creation of a reservoir. Local, state and federal governmental bodies often lag behind in managing, controlling or stopping the resulting growth when it is in the public's best interest to do so. This has created a number of grave environmental problems which in the past have led to the physical deterioration of reservoirs. By the time governmental bodies catch up with the growth through adequate land use controls, necessary public services and water quality controls, many of the important purposes which the reservoir was initially built to serve have been irrevocably frustrated.

Much of the watershed land of Monroe Reservoir is publicly owned and is not directly threatened by private development. This land is

mostly forested. Forests are the best protectors of a watershed. The roots of the trees hold the soil and help absorb runoff water. This prevents erosion and, hence, sedimentation of the lake. Recreational policies and facilities created by the governmental custodians of public lands have impacts upon the health of forests and watershed land. Some are harmful. Economic demands for natural resources also have great effect upon the environmental health of public lands. Timber harvesting policies and practices are a prime example.

Economic expansion and increased use of land in areas around reservoirs is often accompanied by unwise practices that leave soil bare and exposed. These practices result in gully and sheet erosion. Increased sewage and solid waste output without adequate treatment and disposal, excessive lawn fertilization, and other problems too often associated with heavy use of land lead to increasing water pollution. Erosion and pollution lead to sedimentation and eutrophication of lakes as the end products of the initial unwise practices. Reservoirs fill in with sediment and decayed organic matter. Aquatic and semi-aquatic life associated with clean water is replaced by less desirable species. Purifying water for drinking purposes becomes expensive and difficult and, eventually, impossible. Flood control and low flow augmentation benefits are lost. Even real estate values may one day be harmed, ironically. For a compilation of scientific data and information demonstrating possible future environmental problems for the Monroe Reservoir area, see the Lake Monroe Land Suitability Study, an Indiana University School of Public and Environmental Affairs publication. There is a convenient Executive Summary of this publication also available.

The problems just discussed are not imaginary. Admittedly, all lakes and reservoirs are only temporary features of the land. Eutrophication and sedimentation occur even in natural areas unaffected by man. Studies and experience have shown that heavy development accelerates these processes far beyond their natural rates. The original life expectancy estimates of reservoirs around the nation have been shortened by the Corps of Engineers because of these environmental problems. Because of high sedimentation rates resulting from erosion and other causes, the Corps has reduced the life expectancy of Cagles Mill Reservoir in Indiana from 460 to 150 years. Mills Creek Reservoir in Kentucky will last only 50 years as opposed to the originally predicted 100 years. Rough River Reservoir's shoreline has been heavily developed and most of its shoreline now consists of suburbs.[2]

These problems will not reach a critical point for many years. To recognize their eventual effect at the present time requires a perspective that transcends short term, economic self-interest. The environmental and economic rights of all residents and visitors to our area for all time must be considered in decisions that are made now. These decisions will have a direct impact upon the quality of their lives. The citizens and governmental bodies concerned with Monroe Reservoir's future have an opportunity to observe the mistakes made in other parts of the nation and state. They have an opportunity to prevent those mistakes from being repeated at Monroe Reservoir. Wise land use planning and regulation by governmental bodies, citizen participation in that planning, voluntary action and vigilance on the part of all will be necessary to ensure the long and healthy life of Monroe Reservoir.

Three potential local advocates of the preservation of Monroe Reservoir should be kept in mind throughout this handbook. These three are: 1) citizens or citizen groups, 2) the Bloomington Environmental Quality and Conservation Commission (E.Q.C.C.) and 3) the City of Bloomington itself. Each of these potential advocates might affect the future of the reservoir favorably in a number of ways.

Citizens or citizen groups may apply political pressure to the legislative branches of local, state and federal government and attempt to have legislation enacted reflecting policies designed to protect the environment. They may participate in various administrative agency hearings that concern and affect both Monroe Reservoir and its watershed area and raise environmental issues. Citizens or citizen groups have legal standing to intervene in any agency hearing or proceeding and to petition the courts for judicial review of any state or local agency decision in order to raise environmental issues.[3] They may monitor and investigate activity affecting the environment and report any possible violations of law or regulations to the proper local, state or federal agency. They also may go to court themselves against destroyers and disturbers of Monroe Reservoir's environment. Under the Indiana Standing to Sue Act[4] they may sue for an injunction to stop any "significant pollution, impairment or destruction of the environment of the State of Indiana". In addition to all these remedies, citizens may bring common law nuisance or trespass suits if they have suffered a sufficient degree of personal harm from environmentally destructive acts. Monetary

relief or injunctive relief may be awarded by the courts in these actions depending upon the facts of the case.

The E.Q.C.C. is another potential advocate. It is an agency of the City of Bloomington. Its powers are limited compared to citizens or the city itself. It currently has no regulatory powers. Its functions are chiefly advisory and educational.[5] It may cooperate with other local, state and federal agencies, however, and participate in and add its perspective to their decisionmaking. In order to actually bring the resources of the city against a polluter in court, the E.Q.C.C. must request that the city attorney take legal action.[6] The city attorney can not go to court in the city's name without the Mayor's consent.[7] The E.Q.C.C. may also investigate and monitor activities with environmental consequences and report any violations of state and federal law or regulations to the proper state or federal agency.

The City of Bloomington could be the most effective advocate of the preservation of Monroe Reservoir. Its water supply is inextricably intertwined with the future of the reservoir. The city has the authority under Public Law 250 to protect the city's water supply within a ten mile radius of the city limits by passing an ordinance with that purpose.[8] Nearly all of Monroe Reservoir and a large part of its immediate watershed fall within this area of potential jurisdiction. It also appears that under Public Law 250, a city agency could be given the power by ordinance to enact standards and regulations with the purpose of abating pollution. The state Stream Pollution Control Board is in fact authorized to advise and assist local governmental units in developing standards and facilities for water pollution control, so long as such standards would meet minimum state requirements.[9] This implies that the E.Q.C.C. or some other city agency could be given the power to enact standards more rigorous than the state's standards. These standards could protect the city's water supply within the ten mile radius. In addition to having the statutory authority to enact these ordinances, the city has other ways of protecting the reservoir. The city may participate as an interested party in administrative agency hearings and proceedings affecting Monroe Reservoir. It has the resources and legal standing to appeal to the courts from agency decisions. The city could bring an action for an injunction against a party harming the water quality of Monroe Reservoir under the Indiana Standing to Sue Act. A final remedy it might be able to seek is monetary

or injunctive relief against parties damaging its water supply under a common law nuisance theory if the damage was of a sufficient degree.

II. ADMINISTRATIVE FORUMS AND PROCEDURES

The legislative branches of the United States Government and the State of Indiana have delegated extensive regulatory powers concerning environmental and land-use problems to various administrative agencies and boards. While formally part of the executive branch of government, these agencies often have combined powers of all the major branches. They have the power to legislate regulations in a manner like the legislature, to adjudicate cases in a manner similar to the courts, and to enforce orders and regulations in a manner similar to the executive branch. Permit and licensing systems are also often administered by administrative agencies. Individual agencies vary greatly in their operation and function. Some do not have the law-making power. Others do not have the power to adjudicate cases. Many do not administer permit systems.

Because the general area of environmental and land-use problems is so comprehensively regulated, the regulatory agencies are one of the most effective forums in which a concerned citizen or citizen's group may attempt to influence policy choices and rules or regulations implementing those choices. This is not meant to detract from the effectiveness of lobbying for new statutes or modifications of old statutes in the legislative branch of government. Rule-making hearings, hearings on the granting of permits, and adjudicatory hearings are generally open for public participation. Some enforcement proceedings may be initiated by a citizen complaint.

Despite widespread public antagonism toward bureaucracy, these agencies cannot be ignored by interested parties. This is because of the legal doctrines of primary jurisdiction, ripeness, and exhaustion of administrative remedies. In most situations, a party cannot go to court over a particular choice of policy in a rule or a particular case that an agency has jurisdiction over without first pursuing, to their conclusion, potential remedies and appeals within the administrative system. The often-stated purposes of these doctrines are to ensure the implementation of the legislative intention to delegate substantial authority to the agencies, to ensure the honoring of agency discretion and expertise by the courts, and to save the time of the courts for other duties and problems. A key federal case concerned with the exhaustion doctrine is

Myers v. Bethlehem Shipbuilding Co. 303 U.S. 41 at 50,51 (1938). A key Indiana case is Hoosier v. Baltimore & Ohio Railroad Co. 279 F.2d 197 (1960).

This section of the handbook has been divided into two major subdivisions. The first lays out categorical areas of environmental concern with Monroe Reservoir and describes the various federal, state, and local agencies that have power and jurisdiction over each categorical area. Some of the relevant rules and regulations are briefly mentioned. The second subdivision consists of information and reference material on the procedures followed by agencies which have an important impact on Monroe Reservoir's watershed and water quality.

A. PROBLEM AREAS, JURISDICTION

1. Publicly Owned Land

Much of the watershed area from which water drains and flows into Monroe Reservoir is under the ownership of the state or federal government. The state and federal legislatures have enacted statutory guidelines for policies and practices concerning the use of these lands. These policies are to be implemented and administered by various agencies created for that purpose. In certain areas of policy decisions and rule making, the legislatures have delegated broad discretion to these agencies. Public participation in rule-making proceedings is encouraged, and public proceedings are required by law. This is a political forum where policies concerning the use of public land may be challenged.

a) Brown County State Park and Yellowwood State Forest

The upper and middle branches of Salt Creek pass through these state-owned lands, so the use made of this watershed land by the state affects Monroe Reservoir's water quality.

The Indiana Department of Natural Resources (D.N.R.) has powers relating to forestry for the care and custody of lands owned by the state, exclusive of state parks.[10] This includes state forests. It may make rules and regulations to enforce these powers.[11] The D.N.R. (see APPENDIX I: TABLE OF ABBREVIATIONS) also has powers relating to lands and waters for the care of parks and preserves of the state other than state forests.[12] This includes state parks. It may make rules and regulations to enforce those powers.[13] The D.N.R. may lease state-owned lands to private companies so that they may operate lodging and food facilities.[14] The approval of the D.N.R. is necessary for the sale of

timber from state lands.[15] The D.N.R. maintains fire-fighting organizations to protect the state's land.[16]

b) Hoosier National Forest

Hoosier National Forest comprises much of the Monroe Reservoir watershed to the south and the east of the Reservoir. The middle and south branches of Salt Creek pass through large portions of it. For that reason, the policies and practices of the United States Forest Service towards land use in Hoosier National Forest are very important in affecting the quality of water and sedimentation rate in Monroe Reservoir. The United States Congress has created a policy promoting a multiple-use, sustained yield policy for the National Forest system. Harvesting and selling timber as a "crop" is included in this policy. The Forest Service may contract with private companies for the harvesting and sale of such timber.[17] Courts have held that such contracts require the filing of environmental impact statements under the National Environmental Policy Act.[18] Courts also have recently banned clearcutting of timber from some national forests.[19]

Hoosier National Forest is controlled by the Secretary of Agriculture, acting through the Chief of the Forest Service.[20] The organizational structure of the National Forest Service divides the country into nine regions, each headed by a Regional Forester. The headquarters of the region in which Hoosier National Forest lies is in Milwaukee, Wisconsin. Hoosier National Forest itself is headed by a Forest Supervisor who is stationed in Bedford, Indiana. He has several ranger districts under his authority. The Brownstown ranger is in charge of the area around Monroe Reservoir. The Hardin Ridge Recreation Area is within Hoosier National Forest and so is under the supervision of the Forest Service. The Forest Service has a lease with the U. S. Army Corps of Engineers for the boat dock and beach at Hardin Ridge along Monroe Reservoir.

There are numerous regulations concerning all aspects of use and occupancy of national forests. Some are mentioned in other sections of this paper. They can be found in Volume 36 of the Code of Federal Regulations (C.F.R.). A particularly relevant regulation for the City of Bloomington (because of its reliance on Monroe Reservoir for its water supply) concerns management of municipal watersheds. It states: "When necessary for the protection of water supplies of...cities...the Chief of the Forest Service will enter into formal agreements with the

properly authorized officials of the ... cities or with the owners of privately owned lands within the watershed to restrict the use of the National Forest lands from which the water supplies are derived."[21]

c) Monroe Reservoir

i) Ownership and Control in General

The United States government owns the land under and around Monroe Reservoir. It was constructed by the United States Army Corps of Engineers. It reached its present average water level of 538 feet in 1965. The reservoir is under the jurisdiction of the Louisville District Engineer of the Corps. The Corps has a Resource Manager stationed in an office near the dam. He is a member of the Recreation and Resource Management Branch of the Operations Division of the Middle Wabash Area of the Louisville District of the Corps. He coordinates the flood control operations aspects of Cagles Mill Reservoir, Raccoon Creek Reservoir, and Monroe Reservoir and oversees the D.N.R.'s administration of public use regulations.

The boundary lines of the United States Reservation are clearly marked on United States Department of the Interior Geological Survey maps. These maps are available in the Indiana University Geology Building. The boundary is approximately one hundred (100) feet from the high water level of the reservoir. Exceptions are Allen's Creek, Paynetown, and Fairfax State Recreation Areas and several state boating ramps, where the boundary includes larger areas of dry land. Management of Monroe Reservoir can be classified under two categories: public use and flood control.

Public Use: Public use consists of such activities as recreation, fishing, boating, etc.[22] Enforcement of Corps regulations concerning public use was delegated to the D.N.R. when Indiana leased water storage in the reservoir in 1967. A copy of this lease is available at the Corps Resource Manager's office. The Corps has an enforcement ranger stationed at the Resource Manager's office who serves as an overseer and a check on the D.N.R.'s enforcement. He has the power to issue citations to a federal magistrate for violation of Corps regulations. He may be notified of any violation by any person. The Corps regulations governing public use are found in Title 36 of the Code of Federal Regulations.

The Indiana Department of Natural Resources (D.N.R.) was created by statute and consists of the Natural Resources Commission, the director of

the D.N.R., the two deputy directors of the D.N.R., and the staff.[23] Its responsibilities focus on the regulation of public use and management of state parks, forests, and navigable waters.[24] The D.N.R. public use regulations apply at Monroe Reservoir and are more stringent than the Corps's. The two deputy directors of the D.N.R. are each in charge of a bureau within the D.N.R. These bureaus are named the Bureau of Water and Mineral Resources and the Bureau of Land, Forest, and Wildlife Resources.[25]

Each bureau has an advisory council which acts in an advisory capacity to the Natural Resources Commission on matters pertaining to policy and administration.[26] The D.N.R. has a law enforcement division[27] which enforces both the Corps and D.N.R. regulations concerning public use of and construction around Monroe Reservoir. Citizens notifying D.N.R. officers is a good way to aid in the enforcement of the regulations.

Flood Control: The Corps Resource Manager controls the flood control and low flow augmentation operations of Monroe Reservoir dam in conjunction with the Cagles Mill Reservoir and Raccoon Creek dams. His operations are coordinated with those of other flood control operations throughout the Wabash River Basin by the Louisville District Engineer's office. These reservoirs are coordinated so as to maintain a uniform, stable flow of water through periods of excessive rainfall and drought.

Indiana has an agency called the Reservoir Coordinating Committee.[28] It is a subdivision of the D.N.R. This agency is headed by the Reservoir Coordinator.[29] Its purpose is to coordinate efforts of state and federal agencies in planning and developing the state system of reservoirs. The Coordinator is the personal representative of the Governor. Under the scheme of this agency, each reservoir shall have an advisory committee with a representative of the county commissioners of each contiguous county, a representative of the largest city in each contiguous county, appointed by its mayor, and a representative of the plan commission having jurisdiction of the largest portion of the reservoir land.[30] We have no evidence that a Reservoir Coordinating Committee has ever been convened, even though it was authorized in 1969. Its potential for influencing policy concerning the future of Monroe Reservoir is unclear. It appears to be oriented more towards creation of new reservoirs rather than preserving those that already exist.

The Natural Resources Commission of Indiana consists of twelve members, including the technical secretary of the Stream Pollution Control Board, the director of the D.N.R., the chairment of the two advisory councils for the Natural Resources Commission, and a representative of the Indiana Academy of Sciences.[31] It is the Natural Resources Commission that cooperates and deals with the Corps in acquiring land (through eminent domain) and funding for reservoir projects.[32] The focus of concern of the Natural Resources Commission is on flood control. Permits for construction of structures, obstructions, deposits, or excavations in floodways must be obtained from the Natural Resources Commission.[33] If a citizen or group discovers such construction occurring without a permit, that Commission should be notified.

ii) Shoreline Development

Any construction, improvement, or excavation within the boundaries of the United States Reservation at Monroe Reservoir requires the permission of the Louisville District Engineer of the Corps. This includes projects by the D.N.R. and private developments along the shore, such as boat docks. The City of Bloomington has a lease with the Corps for the intake structure and piping of Bloomington's water purification facility at Moore's Creek. The Corps has recently promulgated regulations establishing guidelines for the development of Lakeshore Management Plans for its reservoirs.[34] These regulations apply to Monroe Reservoir. In the year of 1976, the Corps has scheduled a public hearing in order to obtain public input into the Plan. The purposes of the Plan are to protect the natural shoreline, end the present lax approach to permit administration, and ensure that private development does not encroach upon public land. This hearing will be important.

The Chief Engineer of the Corps (acting through his subordinates), after notice and opportunity for public hearings, may issue permits for the discharge of dredged or fill material into Monroe Reservoir at specified disposal sites.[35] After holding such a hearing, he may prohibit such dumping if he determines that the discharge of materials into such an area will have an unacceptable adverse effect upon municipal water supplies.[36]

Indiana law requires a conservation permit from the D.N.R. for changes in the shoreline of freshwater lakes.[37] A written permit is needed from the D.N.R. for any building, dock, or structure on any land or water owned or leased by the D.N.R.[38] The Corps of Engineers must

concur in the issuance of this type of permit. Approval of the S.P.C.B. is required for proposed sewage disposal facilities for all housing developments of five lots or more when there is a change in the shoreline.[39]

The Monroe County Commissioners and Plan Commission regulate land use up to the boundaries of the United States Reservation through zoning power.[40] They cannot regulate changes in the shoreline because that is beyond their territorial jurisdiction. These two agencies will be discussed in the section on zoning.

iii) Water Surface Use

The Corps has no direct authority to regulate the discharge of pollutants from vessels in Monroe Reservoir because this authority was transferred to the Secretary of the Department of Transportation by the Federal Water Pollution Control Act of 1972.[41] As mentioned elsewhere, the D.N.R. has power to make rules and regulations concerning public use of navigable waters, such as Monroe Reservoir, in the state.[42] One of their regulations states that the D.N.R. may inspect watercraft and that the drains of all galleys shall be rendered inoperative before such watercraft will be permitted to operate in the area.[43] The D.N.R. also issues rules for watercraft safety and registers watercraft.[44] Discharges from land based sources of contaminants, as opposed to boat discharges, are covered by the N.P.D.E.S. system, which shall be discussed in a later section.

2. Public Works, Utilities, and Services

Today's complex society has many demands and needs of a broad, public scale. A healthy society demands good roads, clean water, and electricity. A healthy society requires methods of ridding itself cleanly and efficiently of its wastes. These demands and needs are presently satisfied by a system of large, privately owned (quasi-public) and publicly owned companies and agencies. One of the major problems with this system is that each of these needs is provided by separate, independently operating companies and agencies. For example, there is little or no cooperation between the Highway Commission, electric and water utilities, and sanitary departments in determining when or how to open an area for development. As a consequence, public works and services may come to an area that should be left undeveloped for any of a number of reasons. One of these reasons, in the case of Monroe Reservoir, is

protecting forested watershed lands so as to lengthen the "life" of the reservoir. Public works and services increase the marketability of land and encourage private real estate interests to purchase and develop the land. This may be to the detriment of Monroe Reservoir's health.

Indiana law requires the adoption of a master plan for development of land in cities and counties, as will be discussed in the section on zoning. This master plan is to be implemented and carried into effect by the zoning ordinance. Among the suggested subjects to be covered by the master plan are studies and plans to coordinate public services and utilities with private development.[45] This master plan could be drafted so as to keep public services and, hence, development out of areas where it is undesirable. Monroe County has a zoning ordinance but no master plan to give it meaning and make it effective. Brown County has a zoning ordinance and a master plan.

Described below are some problem areas concerning public services and the agencies and regulations dealing with them in Monroe County. Brown County government is described in less detail. These agencies' decisions have a direct effect on growth and development and, hence, on the quality of the water and environment of Monroe Reservoir. We have not discussed some of the utilities, such as the Bloomington Utilities Service Board, the Nashville Utilities Service Board, Public Service Indiana, or the Federal Power Commission because of the limits upon space in this paper. That does not mean that they are not important in their effects upon the environment and land use. I also do not discuss easements or rights-of-way for utilities. They are very important environmentally in their own right.

a) Highways and Roads

The State Highway Commission must approve all openings onto state highways (i.e., access roads).[46] Construction, maintenance, or alteration of existing state roads is under the Commission's control.[47] The Commission is also responsible for roads and parking areas on properties of the D.N.R.[48]

The Monroe County Commissioners are responsible for county roads.[49] The Monroe County Highway Department has been delegated the function of constructing, maintaining, and altering county roads by the Commissioners. Within this department, the County Highway Engineer must approve subdivision plans for roads and the entrance of access roads upon county

roads before the Monroe County Plan Commission may issue a building permit. The building permit is described in detail in the Monroe County Zoning Ordinance. The Brown County Commissioners and Brown County Highway Department are charged with the control of Brown County roads.

State highways funded with federal money may or may not be considered "major Federal actions significantly affecting the environment" and require the filing of an environmental impact statement (EIS) by the State Highway Department. This is required by the National Environmental Policy Act (NEPA).[50] County highways are often largely funded with state funds on a 90%-10% matching basis. Indiana has an Environmental Policy Act of its own which requires the filing of state EIS's for any "major state actions significantly affecting the quality of the human environment."[51] The Environmental Management Board has recently defined what constitutes a "major state action significantly affecting the human environment"[52] as it was required to. All relevant agencies must now file environmental impact statements. This statute has never been actually implemented. Agencies are not yet filing impact statements.

b) Disposal of Garbage

Facilities for the collection and disposal of refuse are under the control of the county commissioners.[53] In Monroe County, the City of Bloomington, Monroe County, and Indiana University share the use of a landfill on Anderson Road near Dolan, Indiana. This landfill is not within the Monroe Reservoir watershed but is in the Bean Blossom Creek watershed instead. It soon will be full, however, and a new site or method for refuse disposal will have to be determined. Location of a landfill in the Monroe Reservoir watershed could have a detrimental effect upon the reservoir due to pollution caused by runoff water leaching through the landfill and flowing into streams flowing into the reservoir.

The property on which the current landfill is located is owned by Indiana University. The County Commissioners have established rules and regulations governing its operation.[54] Their regulations must satisfy the standards of the State Board of Health.[55] A private contractor has been hired to operate the landfill. The performance of the private contractor is monitored by the State and County Boards of Health. Brown County disposes of its solid waste in a sanitary landfill located three miles northwest of Bean Blossom, Indiana. It is administered by a

private contractor hired by the Brown County Commissioners. This landfill has received recognition as one of the best operated in the state.

Open dumps have been declared a nuisance by the State of Indiana and are forbidden.[56] Acceptable means of disposal of refuse or garbage are burial in sanitary landfills, such as Monroe County's, incineration, composting, and garbage grinding.

The responsibility of enforcing regulations promulgated by the United States Corps of Army Engineers to govern the public use of Monroe Reservoir was delegated to the D.N.R. when the state leased water storage in the reservoir. One of these regulations states that no refuse or waste of any kind may be thrown along the roads, picnic areas, campgrounds, waters, or any land around the reservoir.[57]

Under the Federal Water Pollution Control Act of 1972 and the National Pollution Discharge Elimination System (N.P.D.E.S.), the Chief Engineer of the United States Army Corps of Engineers is authorized to allow federal licensees to use spoil (meaning wastes such as garbage) disposal areas under his jurisdiction if he deems it to be in the public interest.[58] The D.N.R. is such a federal licensee.

The Secretary of Agriculture has promulgated regulations governing the use of the national forests. One of these regulations prohibits failing to dispose of all garbage, cans, bottles, water materials and rubbish by removal from the site or area, or disposal at sites provided for such disposition.[59]

c) Major Sewage Treatment and Disposal Facilities

The Environmental Protection Agency was authorized by the Federal Water Pollution Control Act of 1972 to provide federal grants to any state, municipality, or intermunicipal or interstate agency for the construction of publicly owned waste treatment plants.[60] These plants must be constructed in accordance with rules and regulations promulgated by the E.P.A. The Bloomington Utilities Service Board is currently in the process of utilizing such E.P.A. funding for a huge regional sewage treatment plant.

The construction of such a federally funded treatment plant will, in this case, necessitate the filing of an environmental impact statement (E.I.S.) under the National Environmental Policy Act (NEPA).[61] The use of large amounts of federal money makes such a project a "major federal action."[62] In the E.I.S. procedures,[63] an environmental assessment

determination must first be made by the E.P.A. in order to determine whether the project will "significantly affect the environment." This assessment is made on the basis of plans developed by the funding applicant and comments on those plans. If it is determined in the assessment determination that the project will so affect the environment, a draft E.I.S. is drafted and circulated to all concerned agencies for comment. Public hearings are held. All environmental concerns raised by all parties are to be considered. After this process, a final E.I.S. is drafted and a determination is made on whether to proceed with the project. The Council on Environmental Quality (C.E.Q.) reviews all completed E.I.S.'s.[64] The E.I.S. may be most successfully challenged in court on procedural grounds. Many federal courts have been reluctant to overturn a decision by an agency to proceed with a project if the proper procedures for compiling the E.I.S. have been followed.[65] There are some federal court decisions that indicate that courts may be willing to review the substantive wisdom of federal agencies' decisions based on factors analyzed in an E.I.S. See Citizens to Preserve Overton Park v. Volpe 401 U.S. 40, 1 E.L.R. 20110 (1971).

On the state level, the chief agencies concerned with major sewage treatment facilities are the Environmental Management Board (E.M.B.), the Stream Pollution Control Board (S.P.C.B.), and the State Board of Health. The E.M.B. is the newest of the boards and in the area of water quality basically functions as a reviewing board for the decisions of the other two agencies. One seemingly independent power of the E.M.B., however, is its power to order any person to receive or treat sewage from another person if the E.M.B. finds it is in the public interest.[66]

The statute creating the E.M.B. took away some of the State Board of Health's earlier powers over wastewater treatment and gave them to the E.M.B.[67] These powers included the power to classify waste treatment facilities[68] and to determine and judge the qualifications of applicants for permission to construct such plants.[69] The E.M.B. is authorized by statute to transfer its duties and powers to the S.P.C.B. by resolution approved by all members of the E.M.B.[70] This has in fact been done in the area of waste treatment plant regulation, and the S.P.C.B. now performs these functions concerning waste treatment once performed by the State Board of Health. It should be noted here that the staff of the S.P.C.B. exerts a strong influence upon the Board members themselves. The staff is under the control of the Technical Secretary of the S.P.C.B.

The Technical Secretary is a full-time employee and is a graduate sanitary engineer. The staff is responsible for the day-to-day operation of the S.P.C.B. The staff is therefore more fully informed than the Board members about the business of the Board. A problem common to many administrative agencies is that the staff may manipulate the appointed or elected members of the agency through screening the type of information that reaches them.

The S.P.C.B. is also concerned with regulating the discharge of contaminants from point-sources into the waters of the state.[71] Its authority in this area was not affected by the Environmental Management Act except to subject it to the general coordinating function of the E.M.B.[72] Under Indiana law, the S.P.C.B. may order any person, corporation (i.e., a subdivision), or municipal corporation to acquire, construct, repair, or alter plants necessary for the disposal or treatment of organic or inorganic matter contributing to pollution of state waters.[73]

The E.M.B. was the agency originally designated by the Environmental Management Act[74] to administer the National Pollution Discharge Elimination System (N.P.D.E.S.).[75] This system was first administered in Indiana by the E.P.A. through its Region Five office in Chicago. Under the N.P.D.E.S. scheme, the State of Indiana had to devise a system of regulating water pollution through permits. The E.P.A. recently approved Indiana's system. Administration and enforcement of the permit system for construction of, operation of, and discharge from treatment facilities has been delegated by the E.M.B. to the S.P.C.B. S.P.C. 15 is the regulation setting out the procedure for construction permits and operation and discharge permits. It is available in the Statistician's Office in the Bloomington Service Control Center. The N.P.D.E.S. scheme is described more fully in the subsection of this handbook titled, Water Quality Regulations - N.P.D.E.S.

A significant portion of the area in the Monroe Reservoir watershed is served by sewer lines and a treatment plant owned and operated by the Bloomington Utilities Service Board (U.S.B.). Its powers and duties are described in Bloomington Municipal Code § 2.78. The U.S.B. operates the Winston-Thomas treatment plant on Old Highway 37 south of Bloomington. This plant's treated effluent is dumped into Clear Creek, which flows into Salt Creek below the Monroe Reservoir dam. The effluent is, therefore, not a factor directly affecting the water quality of the reservoir in a negative way. However, the expanded facilities of the U.S.B., to

be built with an E.P.A. sewage treatment plant grant in the near future, could have indirect adverse effects upon the water quality of the reservoir.

The U.S.B. has an agreement with the Lake Monroe Regional Waste District Board to attempt to locate the regional treatment plant where Clear Creek and Salt Creek join below the dam. A thirteen-mile outfall sewer to this plant is planned. Large sewage trunk lines are planned throughout the reservoir's immediate watershed. Residential and commercial development along these sewer lines is a consequence to be expected. The E.P.A. is considering the potential environmental consequences of this plan in its E.I.S. review procedure.

The area immediately around Monroe Reservoir has been organized into a Regional Waste District as authorized by state statute.[76] The district was created in a procedure requiring the approval of the S.P.C.B. The Lake Monroe Regional Waste District Board is authorized to construct and finance sanitary systems, sewers, and waste treatment plants. They have the power of condemnation (eminent domain) to obtain the necessary land.[77] They may require connection to the system by a person and may require the discontinuance of use of septic systems after 90 days' notice if the sewer line passes within 300 feet of the dwelling.[78] The rules and regulations promulgated by the Regional Waste District Board must be consistent with the rules and regulations of the state, State Board of Health, and S.P.C.B.

The Monroe County Board of Health has essentially the same powers and duties as the State Board of Health. They have the powers to enforce health laws, ordinances, orders, rules, and regulations of their own and superior boards of health.[79] The local rules and regulations must be consistent with the State Board of Health's.[80] A relevant Monroe County regulation requires persons living within 150 feet of a sewer system to hook up to it. This is inconsistent with the 300 feet allowed by the Lake Monroe Regional Waste District Board.

3. Restrictions on the Use of Privately Owned Land

Much of the Monroe Reservoir watershed area is under private ownership. The use made of this land, as with publicly owned land, has a direct effect on Monroe Reservoir's water and environmental quality. Obviously, there is a great diversity of ownership of private land. For that reason, an environmentally concerned citizen does not have the advantage of dealing with a single, theoretically responsive owner of a

large parcel of land in influencing land use policy as he does with publicly owned land. This is not to imply, however, that a private owner of land can use his land in any manner he chooses. Because the use a private owner of land makes of his land affects the property and lives of those around him, state and local governments have seen fit to regulate to varying degrees certain aspects of private land use under the authority of their general police powers. This regulation chiefly takes the form of zoning regulations. Also, much of Monroe Reservoir's watershed lies in Brown and Jackson Counties. This means that there are three groups of county agencies that make zoning decisions affecting private land use in the watershed. The federal government has not yet enacted any nationwide legislation, but passage of some type of national land-use bill appears eminent.

Not long ago, local regulations and duties concerned with land use in Monroe County were scattered among several local agencies. Some of these have been mentioned. Recently, several of these functions in the Monroe County government were coordinated and further developed in the Monroe County zoning ordinance. Brown County also has a zoning ordinance.

a) Drainage and Erosion

The Monroe County Drainage Board has jurisdiction over open and tiled ditches in Monroe County constituting legal drains.[81] This board consists of the County Commissioners and the County Surveyor.[82] Any actions affecting existing legal drains must be reviewed by the Drainage Board.[83] New drains affecting lands of others require the Board's approval.[84] In practice, this board is said to be inactive today. Its function has largely been taken over by the Monroe County Plan Commission in operating the new zoning ordinance. Plan Commission approval of drainage plans is an element required before issuance of a building permit.

The D.N.R. may require written approval for the construction of ditches intersecting or even coming near streams or lakes. The concern of these regulations appears to be to ensure ditches do not divert water or lower the level of the stream or lake.[85]

Erosion problems are the chief concern of the Monroe County Soil and Water Conservation District. Upon request, this agency will provide engineering and technical assistance to help prevent soil erosion and to control runoff water. This assistance will help prevent stream and reservoir sedimentation.[86] The agency may provide this assistance on state owned or private land.

This county agency is assisted by the United States Soil Conservation Service District office for Monroe County. This office is a branch of the U. S. Department of Agriculture. It is a technical organization and chiefly furnishes knowledge and manpower in assisting the local soil conservation district. Under Monroe County's zoning ordinance, before the County Plan Commission may approve a subdivision plan, a drainage analysis is required to be done by the U. S. Soil and Water Conservation District office.[87] The U. S. Soil Conservation Service also has an office in Brown County.

As a final comment on this section, discharges of uncontaminated storm runoff by drains and ditches do not require N.P.D.E.S. discharge permits. They are an exception to the rule covering most "point source" discharges.[88]

b) Single Residence Sewage Disposal

The Monroe County Commissioners are empowered to enact ordinances governing private sewage systems such as septic tanks, holding tanks, absorption pools, and cesspools.[89] Included in the Monroe County zoning ordinance is the provision that an adequate septic system is a condition of sale of subdivision lots if public or subdivision collection facilities are not available.[90] To be adequate, the septic system must satisfy the relevant standards. The Stream Pollution Control Board has set standards controlling septic systems, as has the Monroe County Board of Health. These are available in the Monroe County Courthouse Annex. The Monroe County Board of Health chiefly enforces the requirements. The Brown County Board of Health operates in a manner similar to Monroe County's. Anyone (except plumbers) servicing or maintaining septic tanks or cesspools as a living must have a license from the State Board of Health.[91] Waste from such septic systems may be dumped in municipal disposal facilities.[92]

c) Zoning

The Monroe County Commissioners have, among their powers and duties, the power to enact zoning ordinances.[93] Zoning is the chief means of governmental supervision over the use of private land and will have a very substantial effect on the future of Monroe Reservoir. The Commissioners, working with the Monroe County Plan Commission, have promulgated a zoning ordinance which is available at the Monroe County Courthouse Annex. This ordinance controls land use up to a two-mile fringe around

the Bloomington city limits.[94] The Bloomington Plan Commission has jurisdiction over zoning within the city and the two-mile fringe.[95] The county zoning ordinance is administered and enforced by the Monroe County Plan Commission.[96] The County Commissioners were authorized by state law to divide the county into districts limited to certain types of land use.[97] They have done so in the current zoning ordinance. The classifications of districts are: agricultural, forest reserve, residential, business, industrial, and special areas within existing zoning districts. In the last named category, the Monroe County Commissioners may designate specific areas for Planned Unit Development (P.U.D.). The purpose of this category appears to be to facilitate large-scale developments by making an exception to the other categories. Subdivision plans and plats within the P.U.D. must, however, meet the several specifications provided for in the zoning ordinance and the particular P.U.D. development plan. Individual variances from zoning regulations may be obtained from the Monroe County Board of Zoning Appeals in a manner provided for in the Monroe County Zoning Ordinance.[98] An interesting aspect of the zoning ordinance is that in the event of a development that is large in scope and/or near to natural areas, the Plan Commission may request that an environmental impact statement be filed.[99]

Another power the Plan Commission has over development is through its improvement location building permit system. Plans for building and development meeting the zoning ordinance specifications and permits from all relevant agencies and departments are required before the building permit may be granted.

Anyone aggrieved of a Plan Commission order, determination, requirement, or decision may appeal to the Monroe County Board of Zoning Appeals for a variance.[100] The creation of the Board of Zoning Appeals was mandated by state law.[101] The procedures it follows are described in the Monroe County Zoning Ordinance. A person aggrieved of a Board of Zoning Appeals decision or determination may further appeal by filing to a county circuit or superior court.[102]

Brown County has a similar zoning ordinance. It was developed by the Brown County Plan Commission and adopted by the Brown County Commissioners. The Commissioners must approve all P.U.D.'s. The Plan Commission works with the Planning Department on the improvement location permit system. There is a Board of Zoning Appeals. The Brown County Plan Commission oversees development in all of Brown County, including

Nashville. Nashville does not have its own plan commission. A state statute specifically authorizes such an arrangement.[103] The Cordry Sweetwater Conservancy District[104] located in eastern Brown County helps the Plan Commission administer the zoning ordinance in that part of the county.

Indiana state law requires that the Plan Commission develop a comprehensive master plan for the county, along with the zoning ordinance.[105] This master plan may contain maps and studies concerning several very important aspects of the environment.[106] The suggested emphasis of the master plan is on rational, long-range planning of land use and on containing future problems before they arise. Monroe County does not have such a plan, despite the fact that it appears to be required by state statute. There is some case law interpreting the state zoning enabling statute to say that a master plan is required before a zoning ordinance can be valid.[107] Other cases say that such a plan may be embodied in the zoning ordinance itself.

4. Special Areas of Concern with Monroe Reservoir

The water quality regulations and the N.P.D.E.S. discharge permit system are very important for Monroe Reservoir. They concern polluting discharges from such facilities as industry and sewage treatment facilities. No sewage or contaminant may be dumped directly into the reservoir without satisfying these regulations and without a permit. Environmental problems affecting the water of Monroe Reservoir, such as drainage, erosion, agricultural pollution, boat discharges, or pollution from landfills, are not covered by these regulations. Fishing and hunting regulations are included in this section because of their importance to wildlife and wilderness.

a) Water Quality Regulations - N.P.D.E.S.

This section deals with water pollution, specifically with the regulation of the levels of contaminants flowing into the waters of Monroe Reservoir through "point-sources." A "point-source" is defined as "any discernible, confined, and discrete conveyance," i.e., pipes, drains, or ditches. As discussed in the subsection on Major Sewage Treatment and Disposal Facilities, the S.P.C.B. has recently begun administering the N.P.D.E.S. system in Indiana. The way the system is set up, the S.P.C.B. as an agency of the State of Indiana will be enforcing and applying water quality standards[108] developed in a manner prescribed on the federal

level of government by the E.P.A.[109] The water quality standards to be implemented under the N.P.D.E.S. are set out in S.P.C. IR-3.

An applicant for a discharge and operation permit might be a city, a residential subdivision, or a Forest Service or D.N.R. recreational facility which had earlier obtained a construction permit to build treatment facilities and now desires to discharge treated water. The application for a permit must be made 180 days before plans to begin discharge, or immediately if the party is already discharging. A draft permit is first prepared by the S.P.C.B. and applying party. Public notice of the application then goes out in local or generally circulating newspapers and periodicals. Interested parties who have requested that their names be put on a mailing list are notified by mail.[110] The proper concerned agencies are notified by letter. Public hearings are held upon request or petition. The Technical Secretary of the S.P.C.B. presides at the hearings. After the permit is granted or denied, it is sent on to the Region Five E.P.A. administrator in Chicago to be reviewed.[111] If the permit is granted, the permittee may be required to install monitoring equipment, monitor and keep records of the effluent level in his discharge. The permits are valid for a maximum of five years and then must be renewed. Civil actions, criminal fines, and agency orders are provided to remedy noncompliance with standards and terms of the permit. Under Indiana law, the S.P.C.B. may initiate an investigation of an alleged violation of water standards or permit terms upon the receipt of information from a citizen.[112] The state had a permit system before the implementation of the N.P.D.E.S.[113] It has now been replaced by the joint federal-state system. All permits issued by the state prior to the E.P.A. approval of the S.P.C.B. plan must now be re-issued.[114]

Current holders of N.P.D.E.S. discharge permits for wastewater treatment facilities that discharge directly into Monroe Reservoir are Ransburg Boy Scout Camp, Hoosier Trails Boy Scout Camp, Hardin Monroe Incorporated, Hardin Ridge Recreation Area, Salt Creek Services Corporation, Fairfax State Recreational Area, and Paynetown State Recreational Area. The City of Nashville, Indiana has an N.P.D.E.S. permit to discharge into the North Fork of Salt Creek several miles upstream from Monroe Reservoir. Nashville has outgrown its present sewage treatment plant and has been a source of bacterial pollution in Salt Creek in the recent past. Nashville is currently working toward building an expanded treatment facility.

Another major agency involved with water quality is the State Board of Health. It has prohibited the discharge of untreated sewage or garbage into lakes.[115] It may control pollution of any water supply when jurisdiction is not possessed by the S.P.C.B.[116]

From the subsection on Water Surface Use of Monroe Reservoir, the reader will recall that the D.N.R. controls boat waste discharges. The D.N.R. also has the power to make investigations to protect the purity of Monroe Reservoir from pollution.[117]

b) Fishing and Hunting Regulations

The Bureau of Sport Fisheries and Wildlife, a division of the Department of the Interior, has power over hunting seasons, methods of hunting, and other restrictions pertaining to migrating birds in the Monroe Reservoir area.[118] The Secretary of Agriculture, acting through the National Forest Service, controls fishing, hunting, trapping, and protection of wildlife in the national forests and wildlife refuges.[119]

The Indiana D.N.R., through its Bureau of Land, Forest, and Wildlife Resources, controls fish and wildlife through protection, reproduction, management, and regulations.[120] Hunting and fishing licenses are regulated by the D.N.R. Permits are required for fur buyers, game breeders, scientific collectors, bait dealers of minnows and crawfish, and other activities.[121] The D.N.R. may set aside and regulate nature preserves as it has at Monroe Reservoir.[122]

B. PROCEDURES, RESEARCH INFORMATION

1. In General

The procedures of administrative agencies in Indiana are generally controlled by the state's Administrative Adjudication Act (A.A.A.)[123] and an act governing Administrative Rules and Regulations, Method of Making, Promulgating, Filing, and Publishing.[124] Any conflicts in procedures between these acts and the specific enabling legislation for an agency would likely be resolved in favor of the enabling legislation. If an important aspect of procedure is not covered by the enabling act, the general acts are controlling.[125] County and other local agencies are not covered by these acts,[126] so their effects are limited to state agencies and boards.

Under Indiana's Anti-Secrecy Act,[127] a citizen of the state may inspect public records[128] and be permitted to observe public proceedings

of agencies.[129] Agencies of the state and of political subdivisions (such as counties) are covered by this act.[130] Confidential records and records of executive sessions of agencies are excepted from this act.[131] Penalties are provided for noncompliance by agencies.[132]

Procedures of federal agencies are regulated in general by the federal Administrative Practice and Procedure Act (A.P.P.).[133] There is language scattered through the A.P.P. stating that it applies to an agency's procedure unless expressly provided otherwise by the agency's enabling legislation.

The federal government also has a Freedom of Information Act.[134] It requires that federal agencies make available to the public information on their procedures, organizaton, rules, and regulations by publishing those in the Federal Register. Some materials, such as opinions in adjudicatory cases, are required to be made available for public inspection if they are not published. Remedies for noncompliance are provided, and several exceptions to the coverage of the act are listed.

Generally speaking, the public may participate in the rule-making procedures of federal and state agencies. This assures that the rules are created in a representative, democratic manner that is consistent with a free and open society. Adjudicatory hearings (as opposed to rule-making) are more limited to "aggrieved" or "adversely affected" parties with personal, often economic, interests in the outcome of the hearing. This is because of the legal doctrine of standing. This doctrine is discussed more fully in the section on judicial review. Recently, legal standing and the right to intervene in adjudicatory and certain licensing proceedings have been extended to persons or groups asserting a public interest in the outcome of the proceeding, based on public policy. A key federal case asserting this is Office of Communications of the United Church of Christ v. F.C.C. 359 F2d 994 (1966). A key Indiana case often cited is Insurance Commissioners v. Mutual Medical Insurance, Inc. 251 Ind. 296, 241 N.E. 2d 56,59 (1968). The public's interest in a clean and healthy environment should be a valid basis for the standing of a citizen or citizen's group to intervene in an agency proceeding.

The Indiana Standing to Sue Act has tremendous potential to increase the participation of public interest groups and concerned citizens in agency proceedings affecting the environment. It is a statutory mandate from the legislature directing the courts to broaden

the concept of legal standing in order to give environmental values their day in the agencies and courts of the state. This act is more fully discussed in a later chapter.

2. Procedure and Information Charts

The purpose of these charts is to give an overview of many of the functions and procedures of the more important agencies having an impact on the environmental quality of Monroe Reservoir and to provide easy access to the agencies and basic information that may lead to further research. Because of space limitations, all of the functions were not listed. The charts were created from information obtained from the specific enabling legislation for these agencies, the telephone book, the Code of Federal Regulations (C.F.R.), and from talking with various administrative officials.

The general procedural statutes (A.A.A. and A.P.P.), Freedom of Information Acts, and especially the Indiana Standing to Sue Act (see later chapter) should be kept in mind when examining the charts. Many of the gaps in partially filled vertical columns would be covered by these general acts. If a vertical column is empty, that function is not performed by that particular agency, as far as could be determined. As far as local agencies are concerned, blanks in partially filled vertical columns would be governed by the flexible concept of procedural due process. This is a constitutional principle embodied in the due process clause of the Fourteenth Amendment of the United States, which requires fairness on the part of government. The two major requirements of due process are adequate notice of proceedings and opportunity to be heard in them.

UNITED STATES ARMY CORPS OF ENGINEERS

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Whenever sufficient public interest to justify. 36 C.F.R. §209.200(h).	*	*
ADDRESS OF AGENCY	Resource Manager RR#4 Box 293 Bloomington, Indiana Phone: 812-824-9136	*	*
RULEMAKING HEARINGS	Regular public meetings 36 C.F.R. §209.405 -convenient location 36 C.F.R. §209.405(h).	*	*
LICENSING HEARINGS	*	Permits for discharge into navigable waters required. 36 C.F.R. §209.131.	*
ADJUDICATORY HEARINGS	*	*	Citation to U.S. magistrate for violation of public use reg's. 36 C.F.R. §327.27.
TIME OF NOTICE OF HEARING	Minimum of 10 days for interested party to file views. 36 C.F.R. §209.200(g).	Thirty (30) days before hearing. 36 C.F.R. §209.131(k)(3)(ii).	*
TYPE OF NOTICE OF HEARING	Written notice to known interested parties 36 C.F.R.§209.200(g)	Public notice for 5 days in local newspaper. 36 C.F.R. §209.131(i)(4).	*
PARTICIPANTS	Public hearing if suffic. public interest and controversy. 36 C.F.R.§209.200(h).	Public hearings. 36 C.F.R.§209.131(k).	*
RECORD OF PROCEEDINGS	Public meetings-stenographic and tape records. 36 C.F.R.§209.405(1).	Transcript will be part of the record. 36 C.F.R.§209.131(k)(4).	*
AVAILABILITY OF RULES AND REGULATIONS	May be obtained from Louisville District Engineer or Resource Manager of reservoir.	*	*

*Not applicable or no information found.

UNITED STATES FOREST SERVICE

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	*	*	*
ADDRESS OF AGENCY	Hoosier National Forest -Supervisor 1615 J. Street Bedford, Indiana	*	*
RULEMAKING HEARINGS	Authorized by 16 U.S.C §471 I assume that 5 U.S.C. §553 governs procedure.	*	*
LICENSING HEARINGS	*	Special Use Permits -36 C.F.R. §251.1. Power Line Right of Way Permit -§251.65.	*
ADJUDICATORY HEARINGS	*	*	36 C.F.R. §211.20 to §211.37. 36 C.F.R. §211.101 to §211.119.
TIME OF NOTICE OF HEARING	A.P.P. -5 U.S.C.§553.	Thirty days before hearings. 36 C.F.R. §211.24(d).	Thirty days before hearings. 36 C.F.R. §211.24(d).
TYPE OF NOTICE OF HEARING	A.P.P. -5 U.S.C. §553 Notice of rulemaking in Federal Register.	In writing to parties -personal notice. 36 C.F.R. §211.24(d).	In writing to parties -personal notice. 36 C.F.R. §211.24(d).
PARTICIPANTS	Any interested person may petition for issuance of a rule. A.P.P.-5 U.S.C.§553(e	Parties + any person adversely affected. 36 C.F.R. §§211.21 and 211.30(e).	Parties + any person adversely affected. 36 C.F.R. §§211.21 and 211.30(e).
RECORD OF PROCEEDINGS	A.P.P. -5 U.S.C.§553.	Available w/ exceptions. 36 C.F.R. §200.5. Appeal if info. denied 36 C.F.R. §200.10.	Available w/ exceptions. 36 C.F.R. §200.5. Appeal if info. denied 36 C.F.R. §200.10.
AVAILABILITY OF RULES AND REGULATIONS	Forest Supervisor has copies of the Forest Service Manual. 36 C.F.R. §200.7	*	*

*Not applicable or no information found.

INDIANA ENVIRONMENTAL MANAGEMENT BOARD

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Once every two (2) months + special meetings. I.C.13-7-2-5.	*	*
ADDRESS OF AGENCY	1330 West Michigan Indianapolis, Indiana Phone:317-633-4420	*	*
RULEMAKING HEARINGS	I.C.13-7-7-1 says I.C.4-22-2-1 to 11 governs procedures.	*	*
LICENSING HEARINGS	*	Procedure outlined in I.C.13-7-10-1 to 5.	*
ADJUDICATORY HEARINGS	*	*	Investigation upon complaint of violation. I.C.13-7-11-1. Hearing governed by A.A.A.
TIME OF NOTICE OF HEARING	Twenty days before scheduled date. I.C.13-7-7-4(a).	Five days before hearing. See I.C.4-22-1-24 and I.C.4-22-1-6.	Five days notice upon determining a possible violation. I.C.4-22-1-6 and I.C.13-7-11-2(a).
TYPE OF NOTICE OF HEARING	Indianapolis Star and paper in area where hearing is held. I.C.13-7-7-4(a)	Written personal notice. I.C.4-22-1-6.	Written notice to alleged violator. I.C.13-7-11-2(a). Newspaper optional with E.M.B.
PARTICIPANTS	Open to public. I.C.13-7-7-4(b) Anyone may propose rules-I.C.13-7-7-3.	Public if deemed appropriate. I.C.13-7-10-1. Hearing on request if permit refused §10-4.	"all interested persons" I.C.4-22-1-4.
RECORD OF PROCEEDINGS	Transcript taken stenographically.	Available at Technical Secretary of S.P.C.B. office. I.C.13-7-6-6.	Copy of transcript open to public. I.C.13-7-11-3(b).
AVAILABILITY OF RULES AND REGULATIONS	Proposed rules and present rules available before hearing at agency office. I.C.4-22-2-4.	*	*

*Not applicable or no information found.

INDIANA STREAM POLLUTION CONTROL BOARD

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Six regular meetings per year + regular meetings. I.C.13-1-3-3.	*	*
ADDRESS OF AGENCY	1330 West Michigan Indianapolis, Indiana Phone: 317-633-5467	*	*
RULEMAKING HEARINGS	I.C.13-1-3-7, I.C.13-7-7-1, and I.C.4-22-2-1 to 11 govern procedure.	*	*
LICENSING HEARINGS : N.P.D.E.S.	*	I.C.13-7-10-1 to 5 governs procedure. N.P.D.E.S. procedure is in S.P.C. 15.	*
ADJUDICATORY HEARINGS	*	*	Enforcement of final order to cease pollution. I.C.13-1-3-11.
TIME OF NOTICE OF HEARING	Twenty days before scheduled date. I.C.13-7-7-4(a).	Thirty days allowed for written comments from public. S.P.C. 15, Part3,§6(a)	When possible violation ascertained, notice to alleged offender. I.C.13-1-3-9.
TYPE OF NOTICE OF HEARING	Indianapolis Star and newspaper in area where addit. hearings held. I.C.13-7-7-4(a).	Public notice in Blgtn. Daily Herald-Telephone. Mailing List: S.P.C.15,Part 3,§6(a).	Written personal notice to alleged offender. I.C.13-1-3-9.
PARTICIPANTS	Public may take part. I.C.13-7-7-4(b). Anyone may propose rules. I.C.13-7-7-3.	Public hearing upon request of party. S.P.C.15, Part 3,§12. I.C.13-7-10-4.	Stream Board and alleged offender. I.C.13-1-3-9.
RECORD OF PROCEEDINGS	Transcript available to the public. I.C.13-7-7-4(b).	Records available in discretion of the Technical Secretary. S.P.C.15, Part 3,§10.	Full transcript available to parties for appeal to courts. I.C.13-1-3-9.
AVAILABILITY OF RULES AND REGULATIONS	Filed of record at the office of the Stream Board. I.C.13-1-3-7.	*	*

*Not applicable or no information found.

INDIANA DEPARTMENT OF NATURAL RESOURCES

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Four regular meetings a year + special meetings as needed.	*	*
ADDRESS OF AGENCY	Room 608 State Office Building Indianapolis, Indiana Phone: 317-633-6344	*	*
RULEMAKING HEARINGS	"promulgated pursuant to law"-I.C.14-3-2-1. See I.C.4-22-2-2 to 11.	*	*
LICENSING HEARINGS	*	Mineral and other permits. I.C.14-3-2-4.	*
ADJUDICATORY HEARINGS	*	*	Law Enforcement Div. Police Powers- I.C.14-3-4-9. Fines: I.C.14-3-2-3.
TIME OF NOTICE OF HEARING	Ten (10) days before hearing. I.C.4-22-2-4.	*	*
TYPE OF NOTICE OF HEARING	In newspaper of general circulation in Marion County. I.C.4-22-2-4.	*	*
PARTICIPANTS	"any interested party" I.C.4-22-2-4.	*	*
RECORD OF PROCEEDINGS	*	*	*
AVAILABILITY OF RULES AND REGULATIONS	Twelve copies to clerk of county circuit court 10 days before effective. I.C.14-3-2-3	*	*

*Not applicable or no information found.

MONROE COUNTY COMMISSIONERS

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Twice a month. First Mon.- 9:00 a.m. Third Mon.- 7:30 p.m.	*	*
ADDRESS OF AGENCY	Monroe County Courthouse Bloomington, Indiana	*	*
RULEMAKING HEARINGS	Procedure for enacting ordinances. I.C.17-2-22-5.	*	*
LICENSING HEARINGS	*	*	*
ADJUDICATORY HEARINGS	*	*	*
TIME OF NOTICE OF HEARING	Seven days before hearing. I.C.17-2-22-5.	*	*
TYPE OF NOTICE OF HEARING	In the Bloomington Daily Herald-Telephone I.C.17-2-22-5.	*	*
PARTICIPANTS	Open to the public. I.C.17-1-14-13.	*	*
RECORD OF PROCEEDINGS	Carefully kept. Open to public inspection. I.C.17-1-14-12.	*	*
AVAILABILITY OF RULES AND REGULATIONS	Available at Monroe County Plan Commission Office in Courthouse Annex at 211 E. Sixth Street.	*	*

*Not applicable or no information found.

MONROE COUNTY PLAN COMMISSION

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Third Tuesday each month or when a controversy arises.	*	*
ADDRESS OF AGENCY	611 E. Sixth Street Bloomington, Indiana Phone:812-332-1631	*	*
RULEMAKING HEARINGS	Plan Comm. drafts zoning ordinance subject to approval by County Commissioners I.C.18-7-5-64.	*	*
LICENSING HEARINGS	*	Improvement Location (Building) Permit. I.C.18-7-5-55.	*
ADJUDICATORY HEARINGS	*	*	Plan Comm. approval of subdivision plat necessary. I.C.18-7-5-54.
TIME OF NOTICE OF HEARING	Ten days before. I.C.18-7-5-39.	Ten days notice. -local rule.	Ten days notice. -local rule.
TYPE OF NOTICE OF HEARING	Newspaper of general circulation in county. I.C.18-7-5-39.	Written notice to parties, public notice in local newspaper. I.C.18-7-5-48.	Written notice to parties, public notice in local newspaper. I.C.18-7-5-48.
PARTICIPANTS	Public may participate in final hearing on zoning ordinance. I.C.18-7-5-64.	Public may participate in building permit hearing. -local rule.	Public may participate. -local rule.
RECORD OF PROCEEDINGS	*	Required to keep record of all proceedings. I.C.18-7-5-28(5).	Required to keep record of all proceedings. I.C.18-7-5-28(5).
AVAILABILITY OF RULES AND REGULATIONS	Zoning ordinance available at Courthouse Annex. I.C.18-7-5-28(9).	*	*

*Not applicable or no information found.

MONROE COUNTY BOARD OF ZONING APPEALS

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Fourth Tuesday each month at 1:00 p.m.	*	*
ADDRESS OF AGENCY	611 E. Sixth Street Bloomington, Indiana Phone:812-332-1631	*	*
RULEMAKING HEARINGS	Board shall adopt rules governing its own procedure. I.C.18-7-5-81.	*	*
LICENSING HEARINGS	*	*	*
ADJUDICATORY HEARINGS	*	*	Appeals from Plan Commission decisions. I.C.18-7-5-82.
TIME OF NOTICE OF HEARING	*	*	"within a reasonable time" I.C.18-7-5-82. Ten days in advance under a local board rule.
TYPE OF NOTICE OF HEARING	*	*	Public notice by newspaper. Personal notice to litigating parties. I.C.18-7-5-84.
PARTICIPANTS	*	*	Adverse parties, public may watch or intervene.
RECORD OF PROCEEDINGS	*	*	All records of proceeding open to the public. I.C.18-7-5-81.
AVAILABILITY OF RULES AND REGULATIONS	Available at 611 E. Sixth Street Bloomington, Indiana	*	*

*Not applicable or no information found.

LAKE MONROE REGIONAL WASTE DISTRICT

	RULEMAKING FUNCTION	LICENSING FUNCTION	ADJUDICATORY FUNCTION
FREQUENCY OF REGULAR MEETINGS	Third Wesnesday each month at 1:30 p.m.	*	*
ADDRESS OF AGENCY	No full time office. Meetings held in Courthouse Annex. Phone:812-332-1631 for information.	*	*
RULEMAKING HEARINGS	Power to adopt own rules and regulations as it sees fit. I.C.19-3-1.1-9	*	*
LICENSING HEARINGS	*	*	*
ADJUDICATORY HEARINGS	*	*	Rules and regulations re sewage hook-up and disposal are enforceable in court. I.C.19-3-1.1-10.
TIME OF NOTICE OF HEARING	Ten days notice. -a local rule.	*	*
TYPE OF NOTICE OF HEARING	Public notice in Bloomington Daily Herald-Telephone. -local rule.	*	*
PARTICIPANTS	Public?	*	*
RECORD OF PROCEEDINGS	Record?	*	*
AVAILABILITY OF RULES AND REGULATIONS	I.C.19-3-1.1-10(d) says open to inspection in District's office but rules currently are scattered among members.	*	*

*Not applicable or no information found.

3) Helpful Addresses and Phone Numbers of Agencies in Addition to Those Listed on the Procedural Charts

Region 5 E.P.A. Office
230 S. Dearborn
Chicago, Illinois 60604

Department of the Army
U.S. Army Engineer District, Louisville
Corps of Engineers
P.O. Box 59
Louisville, Kentucky 40401

U.S. Forest Service
U.S. Department of Agriculture
Washington, D.C. 20205

U.S. Forest Service, Eastern Region
U.S. Department of Agriculture
Washington, D.C. 20205

Soil Conservation Service
U.S. Department of Agriculture
226 N. College Avenue
Bloomington, Indiana 47401
Phone: 812-339-9636

State Information Center
Call Toll Free: 800-382-1563

State Board of Health
1330 W. Michigan
Indianapolis, Indiana 46206

Environmental Management Board
1330 W. Michigan
Indianapolis, Indiana 46206
Phone: 317-633-5467

Department of Natural Resources -Division of Water
Room 605, State Office Building
100 N. Senate
Indianapolis, Indiana
Phone: 317-633-5267

Department of Natural Resources
Monroe Reservoir Headquarters
R.R.3 Box 214
Bloomington, Indiana 47401
Phone: 812-837-9546

U.S. Forest Service
U.S. Department of Agriculture
Hardin Ridge Ranger District Office
R.R.1
Heltonville, Indiana
Phone: 812-837-9453

Department of Natural Resources
Brown County State Park - Superintendent
State Road 46
Nashville, Indiana
Phone: 812-988-2825

Department of Natural Resources
Yellowwood State Forest - Superintendent
Duncan Road
Nashville, Indiana
Phone: 812-988-7945

Monroe County Highway Department
Monroe County Courthouse
Bloomington, Indiana 47401
Phone: 812-332-2827

Monroe County Health Department
211 E. 6th Street
Bloomington, Indiana 47401
Phone: 812-332-1721

Monroe County Surveyor
Monroe County Courthouse
Bloomington, Indiana 47401
Phone: 812-336-4062

Brown County Plan Commission
P.O. Box 401
Nashville, Indiana 47401
Phone: 812-988-7200

Brown County Health Department
Courthouse Annex
Nashville, Indiana
Phone: 812-988-2255

Brown County Highway Department
State Road 46 East
Nashville, Indiana
Phone: 812-988-4545

Cordry - Sweetwater Conservancy District
R.R. 1
Nineveh, Indiana
Phone: 812-933-2893

Brown County Office
U.S. Soil and Conservation Service
U.S. Department of Agriculture
Jefferson Street
Nashville, Indiana
Phone: 812-988-4493

Geological Survey - Publications(Maps)
Indiana University
Bloomington, Indiana 47401
Phone: 812-337-7636

III. COURT CONTROL OF ADMINISTRATIVE AGENCIES - JUDICIAL REVIEW (APPEALS)

A. STATUTES CONTROLLING JUDICIAL REVIEW

1. Introduction

Judicial review is the process whereby courts follow statutorily specified procedures in reviewing the decisions, orders and determinations of administrative agencies upon the appeal of an "aggrieved party". This review is not a strict review and leaves a great deal of latitude for agency discretion in the choice of solutions to specific or general problems. The major reasons for court reversal and remand of agency decisions are procedural errors.[135] There are some federal cases, however, that utilize a stricter review where environmental problems are concerned.[136]

Two major issues involved with judicial review are whether the appealing party has legal standing (is an "aggrieved party") and whether the appealing party has exhausted administrative remedies before appealing to the courts. The exhaustion doctrine was discussed earlier in the introduction to Chapter II, ADMINISTRATIVE FORUMS AND PROCEDURES.

2. Who May Appeal - Standing

Standing is a legal doctrine based on the legal principle that there must be a case or controversy involving rights protected by law before a party can have access to the courts. It has a basis in constitutional law. The issue of standing is a threshold issue in any law suit, intervention in current agency or court proceedings, or appeal to courts from agency decisions. This section focuses on standing to appeal, but its reasoning also applies to intervention and standing to sue.

Great changes were made in the late 1960's and early 1970's in the federal courts in broadening concepts of standing. This was especially true in the area of environmental law. Before this period of time, it was generally true that a person had to have a "legally protected interest" involved in a controversy in order to have standing to appeal. The purpose of this requirement was to ensure that any person going to the courts would have an important enough stake in the outcome to ensure that he would vigorously pursue his appeal.[137] "Legally protected interests" were usually limited to economic stakes in the outcome or threats to civil

liberties. Money and liberty were considered to be the surest insurers of vigorous adversary proceedings. Environmental values were generally not protected by the law or a subject of great public concern. Public interest groups have changed this.

Sierra Club v. Morton 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972) is the major case that changed the old formulae for standing on the federal level in the area of environmental law. The Supreme Court in Sierra Club (supra) applied a test for standing developed in Association of Data Processing v. Camp 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). This test says that for a person to have standing to appeal an administrative action as an "aggrieved party" under 5 United States Code §702, two criteria must be met:

> 1) Plaintiffs must allege that the challenged action caused them "injury in fact," economic or otherwise.
>
> 2) The interest sought to be protected must be arguably "within the zone of interest" regulated by an applicable statute or constitutional guarantee.

Criticism was made in this case of the old "legally protected interest" test as being a superficial pre-determination of the merits of a case without a full trial. This new test has opened up standing to various public interest groups who do not have "legally protected" private rights in the strict sense. They may get into federal courts now and raise important issues where they were barred from doing so before. In Sierra Club (supra), the Supreme Court held that changes to aesthetic and ecological characteristics of the environment of an area are harms which may amount to an "injury in fact" sufficient to lay a basis for standing if members of a citizens' group actually use and enjoy the area in question. For a discussion of the case and its implications, see Sierra Club v. Morton: Standing Trees in a Thicket of Justiciability, by Patrick L. Baude, 48 Indiana Law Journal 197. Monroe County and Bloomington citizens and citizen groups who use the area around Monroe Reservoir for recreational purposes would now probably have standing to go to federal court and appeal decisions of the Corps and the Forest Service.

Indiana courts have not yet followed the federal courts in broadening the old concepts of standing. Indiana's case law dealing with the issue of standing still adheres to the "legally protected interest" concept. Indiana's Trial Rule 17 says that every action shall be prosecuted by the

"real party in interest." The "real party in interest" has generally been held to be the party with a "legally protected" or "justiciable" interest under a statute. The Indiana Administrative Adjudication Act uses the language, "Any party of person aggrieved by an order or determination made by any such agency shall be entitled to a judicial review."[138] This language was recently held to limit standing for judicial review to those parties with "legally protected" or "justiciable" claims and to make Indiana's Trial Rule 17 apply to administrative proceedings.[139] This could bar environmentally concerned citizens or citizen groups from appealing agency decisions to Indiana courts. Despite the conservative stance of the Indiana courts, the Indiana Standing to Sue Act[140] has great potential to change the conservative Indiana common law doctrine of standing in judicial review of agency decisions having a detrimental effect upon the environment. It will be discussed in detail in a later chapter.

3. Statutes Generally Controlling the Procedures of Judicial Review

a) State

The Indiana Administrative Adjudication Act[141] sets forth the procedures and standards for judicial review of state and local agency determinations in adjudicatory hearings.[142] The purpose of this Act is to create uniformity in the procedures followed by state government agencies in reaching decisions and court review of such agency decisions.[143] Where no judicial review is provided for in a particular state government agency's enabling legislation, this statute has been held to provide for it.[144] If an agency is not among the exceptions to the application of the Act named in Indiana Code 4-22-1-2, then that agency's procedure is controlled by the Act.[145]

Licensing proceedings within the agency may follow the procedures outlined by the legislation creating that particular agency.[146] However, the Administrative Adjudication Act (A.A.A.) provides the exclusive method for judicial review of such proceedings.[147]

The A.A.A. does not provide for a uniform procedure for judicial review of local agency determinations. The particular enabling statutes controlling the procedure for each particular local agency, along with 14th Amendment due process requirements, would govern.

There is no provision in Indiana statutes or case law for immediate judicial review of rules or regulations created by administrative agencies before an actual case arises. The implication from this omission is that a rule could only be challenged in an enforcement or adjudicatory

proceeding. A challenge to rules or regulations could possibly be made under the Indiana Uniform Declaratory Judgment Act.[148] That act makes provisions for judicial interpretation of statutes before an actual case or controversy arises. Statutes are in many ways analogous to agency rules and regulations and are given the same force of law by courts in most situations. Both are classes of prospective rules of law oriented towards guiding future conduct. Persuasive arguing by analogy could persuade a court to issue a declaratory judgment interpreting a rule or regulation before an actual enforcement or adjudicatory proceeding. Indiana courts in the past have not been sympathetic to this reasoning, it should be noted.[149]

b) Federal

Judicial review of federal agency determinations in adjudicatory, licensing, and rulemaking proceedings all falls within the scope of the Administrative Practice and Procedure Act's judicial review chapter.[150] That chapter applies to agency proceedings except where: 1) statutes preclude judicial review, or 2) agency action is committed to agency discretion by law.[151]

The major difference between the federal system of regulating judicial review by statute and Indiana's system is in regard to direct judicial review of rules and regulations without waiting for an actual case or controversy involving the rule or regulation. Federal courts have given standing for judicial review to parties whose interests are affected or will be affected by the rule's operation. The Supreme Court of the United States has held that such an affected party was one "suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a relevant statute" under 5 United States Code §702.[152]

The Supreme Court of the United States has also held that in the absence of specific legislative provision for judicial review, "we start with the presumption that aggrieved persons may obtain judicial review of administrative decisions unless there is 'persuasive reason to believe' that Congress had no such purpose (to preserve judicial review)..."[153]

4) Scope for Review

State and federal courts under the Indiana A.A.A. and the federal A.P.P. acts apply nearly identically worded standards in reviewing agency

decisions.[154] Traditionally, these standards allow a large degree of discretion to the agencies in their decision-making. The agency decision must be "arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law" or fail to satisfy other criteria listed in the statutes before a court will reverse it.

State and federal courts could potentially use this standard in differing ways in the area of environmental law, however. The Indiana Supreme Court in a case involving the Stream Pollution Control Board said that under the Indiana A.A.A., "...the court is only to examine the record of the board's proceedings to ascertain if the board has acted within its jurisdiction and has complied with procedural requirements of the act, and that its decision is supported by substantial evidence and is not contrary to legal principles, including those specified in the act."[155] "Substantial evidence" may be only minimal evidence in actuality. "Legal principles" specified in an enabling act are often so vague and general that it is difficult to say that agencies have not complied with them in a particular case. Indiana courts give agencies broad discretion.

Federal courts, on the other hand, have tightened their control of agency decisions involving environmental issues while retaining the language of the federal A.P.P. judicial review standard. They have done this by forcefully instructing agencies to consider and give weight to environmental factors in their decisions and remanding the agency decision for reconsideration in line with the court's instructions.[156] This comes close to the courts substituting their judgment for that of the federal agency instead of giving the agency broad discretion.

B. NON-STATUTORY, COMMON LAW DOCTRINES FOR CONTROLLING ADMINISTRATIVE AGENCIES

This subsection is essentially concerned with old common law forms of judicial control of agencies that pre-date the Indiana A.A.A. and the federal A.P.P. The common law is law created by the courts on a case-by-case basis as opposed to law created by the legislature in the form of a statute. These old common law forms of judicial control are based on principles of equity that protect parties aggrieved by agency action from official harshness or arbitrariness. Common criteria of these common law actions are that the aggrieved party must be threatened with immediate and/or irreparable harm to a property or civil right and have

no adequate remedy at law. The two most important common law remedies are the injunction and the writ of mandamus or mandate. An injunction in this context is a prohibitive writ forbidding certain activities. It is enforceable by contempt proceedings. Injunctions may be issued by the courts to prevent unauthorized or unconstitutional acts of administrative agencies that threaten irreparable harm to a right of the aggrieved party. Unauthorized acts by agencies threatening irreparable harm to the public's interest in a healthy environment may be grounds for an injunction. The threat of harm must be immediate so that orderly courses of appeal are too time consuming and are, therefore, inadequate. A writ of mandamus or mandate is usually used to compel performance of a duty by an administrative official that the official has no discretion not to perform. There must be no adequate remedy at law for the party aggrieved by the administrative official's failure to perform. This failure must threaten immediate and irreparable harm. The mandamus action must be brought in the name of the state. Other non-statutory remedies worth naming are the writs of habeus corpus, quo warranto, and prohibition.

The Indiana A.A.A. and the federal A.P.P. appeals procedures are generally considered to provide adequate remedies at law, and therefore, cut off non-statutory, common law remedies. It should be noted that the Indiana A.A.A. specifically provides that, "Unless a proceeding for (judicial) review is commenced by so filing such petition within fifteen (15) days, any and all rights of judicial review and all rights of recourse to the courts shall terminate."[157] "All rights of recourse to the courts" must refer to non-statutory, common law remedies. It is questionable, however, whether the courts of Indiana would allow a statute to limit their equitable powers under harsh circumstances.

Recall that the Indiana A.A.A. judicial review provisions do not apply to any proceedings by local agencies. Non-statutory, common law remedies are, therefore, the only way to challenge those types of agency proceedings in court.

IV. COURT REMEDIES

A. INTERVENTION AS AMICUS CURIAE

Intervention in the role of an amicus curiae is a very useful vehicle for participating in a law suit in which environmental issues are important without taking the risk of being a party that loses. These risks include paying court costs and sometimes attorney's fees for the opposing party. An amicus curiae or "friend of the court" may file legal briefs, argue the case, and introduce evidence in Indiana courts.[158] Intervention as an amicus curiae in state or federal court proceedings is a privilege subject to the complete discretion of the judge. There is no enforceable right to file such a brief. If a petition to intervene is denied, there is no right to appeal, for no rights have been denied. An amicus curiae plays a limited role compared to full parties to the law suit. "An amicus curiae must accept a case as he finds it."[159] He cannot argue or raise questions of law that have not already been raised by the actual parties. The role that an amicus curiae may play is to inform and aid the judge when the judge is in doubt or mistaken as to a question of law that has already been raised.[160] Public interest groups such as the Sierra Club have used the amicus curiae status with great effect in the federal courts. An amicus curiae brief can be instrumental in persuading a judge to choose one interpretation of an environmental statute or regulation over another.

B. COMMON LAW REMEDIES

The common law (law created by courts on a case-by-case basis over long periods of time) provided the only remedies for harm to the environment for centuries. These remedies are characterized as applying in situations involving immediate, economic injury to landowner's property. These remedies are still viable legal doctrine and apply in the proper circumstances. The relevant common law remedies include a number of traditional causes of action: trespass, negligence, and nuisance. Trespass can basically be explained as a physical invasion of an interest in the possession of land. Historically, trespass contained a punitive element and required that the invasion be intentional. A negligence suit requires not only what is commonly characterized as carelessness, but

the breach of a duty of care owed to the property of the complaining party that causes damage to the property. Nuisance is an unreasonable interference by the offending party with an interest in the use and enjoyment of the property of the complaining party. Because intent is not an element in a nuisance case, the defendant is strictly liable for his actions. In essence, the concern here is limiting a landowner's interest in the use of his property to a reasonable use in the light of corresponding rights of neighboring landowners to the use and enjoyment of their property. In determining what a nuisance is, the test is whether the alleged nuisance produces conditions that, in the judgment of reasonable men, are naturally productive of actual harm or discomfort to persons of ordinary sensibilities.[161]

Nuisance itself is divided into two categories. These are private and public nuisances. Private nuisance involves a substantial and unreasonable harm or interference with the complaining party's use or enjoyment of his property. Thus, the complaining party must allege a specific harm to his person or property. A public nuisance is one which affects an indefinite number of persons, or all of the residents of a locality, though its effect upon each may be unequal. One who sues for the prevention of a public nuisance must show that he has suffered some special or particular injury different from that suffered by the public generally.[162]

Common law remedies suffer from several fundamental defects when viewed from the perspective of preserving environmental quality. Common law actions are brought after the damage has occurred and, therefore, are not effective in preventing environmental degradation. Private common law actions are appropriate for compensating for damages caused by environmentally noxious activities in a specific area easily identifiable as being caused by a single source or group of sources in close proximity. They are appropriate for compensating for substantial harm to property in an economic sense. However, they are much less effective in a regional context. This is because of the difficult and expensive task of proving that one source of pollution, etc., is the proximate cause of regional environmental problems and the difficulty of convincing a court to cast the blame for regional problems on a single offender whose contribution to the problem may be small when compared to the magnitude of the entire problem.

Probably the most fundamental flaw of the common law remedies is their failure to grant injunctive relief (a prohibitive writ forbidding certain action enforceable by contempt proceedings) in the majority of cases. The willingness of courts to grant monetary damages and reluctance to grant injunctive relief actually halting the polluting acts under the common law causes of action fails to meet the urgent needs of environmental protection. A realization of this fact by the Indiana legislature is evident in their passing of the Indiana Standing to Sue Act, creating the new remedy of the citizen's suit.

C. ENVIRONMENTAL CITIZEN'S SUITS

1. The Indiana Standing to Sue Act[163]

a) In general

This act has revolutionary potential in the field of environmental litigation in Indiana. The act authorizes injunctive actions to be brought in circuit or superior courts of Indiana by any citizen or other legal entity of the state of Indiana against a broad range of possible defendants who might significantly pollute, impair, or destroy the environment of the state. Strangely, this act has been in the law books for four years and has been used only once.[164]

The relevant wording of the act is: "... any citizen ... may maintain an action for declaratory and equitable (injunctive) relief in the name of the state of Indiana against ... (any of a number of listed possible defendants), for the protection of the environment of the state from significant pollution, impairment, or destruction."[165] The language of the act includes among the possible defendants agencies making decisions which could have an adverse effect upon the environment, industry, cities, and many others. As we have discussed, common law actions against polluters and other environmental offenders were limited mostly to actions for monetary damages against neighboring landowners and rarely allowed injunctive relief as this act does. This act could remedy the basic inadequacy of the common law for dealing with environmental problems.

Before injunctive relief may be sought in court, any agency with jurisdiction over the environmental problem must first be given 180 days in which to act. This act places the initiative upon citizens to take polluters or other harmers of the environment directly to court in the event an agency with jurisdiction is not fulfilling its responsibilities

and taking action. This fulfills the dual purposes of stimulating better agency performance of duties through fear of embarrassment and of ensuring that acts or decisions significantly harming the environment do not go unchallenged if the agency fails to act. The citizen is given the status of a "private attorney general" by the statute.

b) Effect Upon Standing

This act could have potentially far reaching effects upon traditional concepts of standing in Indiana. In Subsection III(A)(2), we discussed the traditional notion in Indiana that only a real party in interest had standing to enforce his legally protected interests in court. A party had to be a party authorized by statute and had to have suffered economic injury or injury to personal liberty in order to maintain an action. He had to be a real party in interest and have a "legally protected interest." This standard is explicitly described in Indiana Trial Rule 17. Many cases interpreted under this test contain language such as "interested party," "aggrieved party," and "adversely affected party." These phrases have been held to be equivalent to "real party in interest." The Standing to Sue Act uses the different language, "any citizen." Considering the legislative choice of language in the act and the overall purpose and context of the act, it seems reasonable to conclude that "any citizen" means any citizen of the state. There is no requirement of a "legally protected interest." A mere assertion of the public's interest in preventing harm to the environment would appear to suffice to give standing. If the legislature had meant otherwise, they would have used language such as "interested citizen," "aggrieved citizens," or "real party in interest." In the field of environmental law, this statute could broaden standing even beyond the Sierra Club v. Morton (Ibid) federal standard of "injury in fact - arguable zone of interest of statute" described earlier. There is nothing to indicate that complainants even need to personally enjoy or use the area in which the environmental problem exists and so suffer an "injury in fact." Indiana courts could interpret the language of this act broadly or narrowly, of course. We have stressed the broad interpretation.

The Standing to Sue Act not only provides for very broad standards for standing to bring citizens' environmental suits for injunctive relief, it also expressly broadens the standards for the standing of a member of

the public to intervene in any administrative or licensing proceeding or action for judicial review thereof.[166] The only prerequisite for intervening is the filing of a verified pleading asserting that the proceeding involves conduct, programs, or products which may have the effect of significantly impairing, polluting, or destroying the environment of the state. This act gives any citizen or citizens' group in the state the right to intervene in or appeal from any court or agency proceeding concerning Monroe Reservoir.

c) Procedure

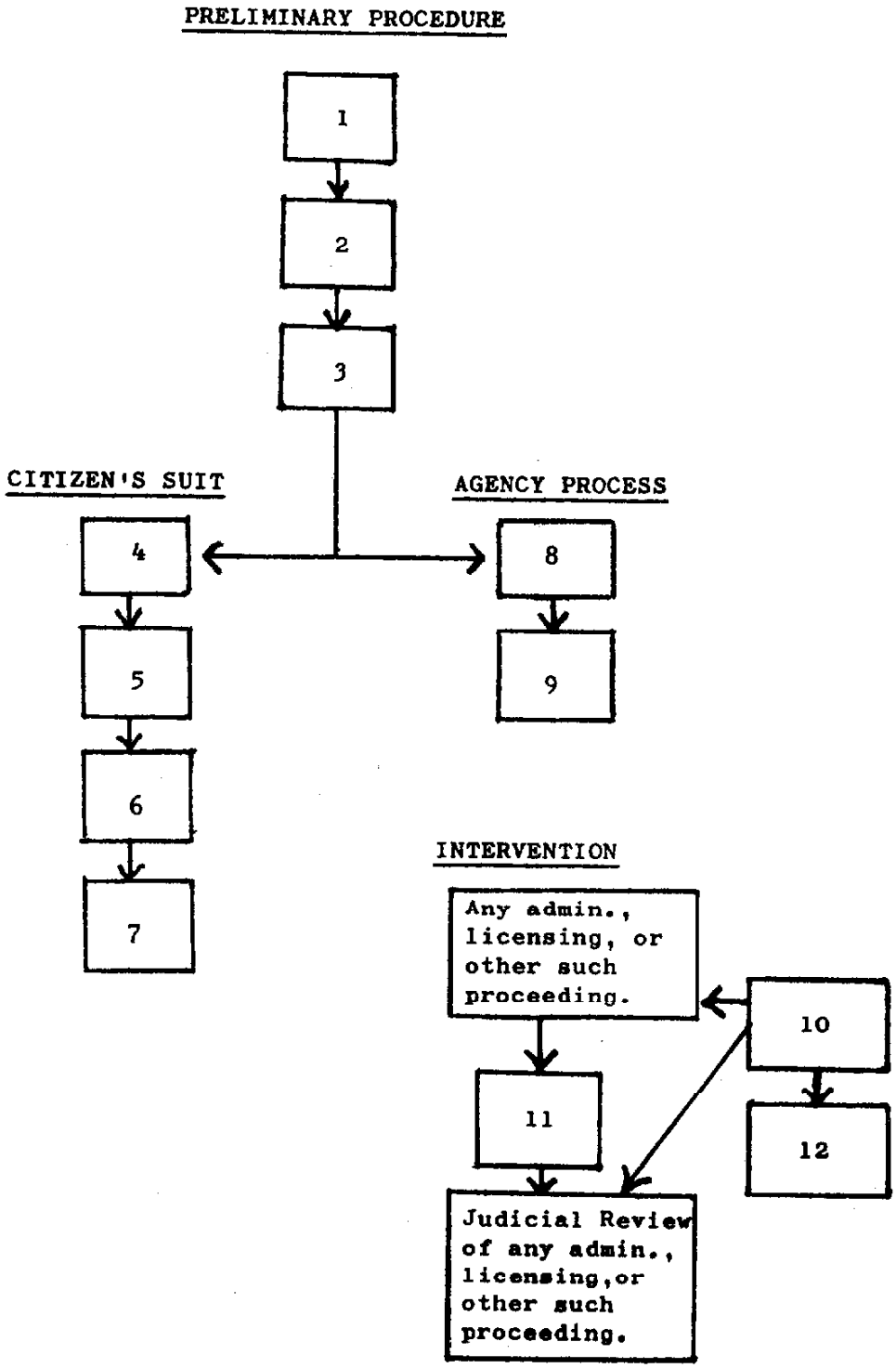
The first step in bringing a citizen's suit is to determine the feasibility of success in the action. Some important considerations in this decision are whether you (the complaining party) have standing (are a resident of the state), whether there are any applicable agency rules or regulations governing the alleged violator's conduct, whether the alleged violator is in compliance with or in violation of agency rules or regulations, and the potentially great cost of hiring an attorney, expert witnesses, research, investigation, and court costs.

If the decision is made to proceed with the action, the next step is very important. As an essential condition precedent to the citizen's suit, the complaining party must send notice by registered or certified mail to: 1) the Department of Natural Resources, 2) the State Board of Health, and 3) the Attorney General of Indiana. The Attorney General then sends a notice to all state agencies having jurisdiction over the subject matter of the dispute. No citizen's suit may be maintained in court unless the administrative agency with jurisdiction (if there is one) refuses or fails to reach a final determination within 180 days of the date when the Attorney General receives notice.[167] If the agency fails to act, the citizen's suit may be brought in the circuit court in the county in which the alleged pollution, impairment, etc., occurred.

At trial, the burden of initially going forward with the evidence is upon the complaining party. He must make a prima facie showing that the alleged violator is significantly polluting, impairing, etc. When he has made that showing satisfactorily to the judge, the burden of going forward with the evidence shifts to the alleged violator. Where there is an applicable agency rule or regulation, the alleged violator may make a prima facie defense to the complaining party's showing by demonstrating compliance with the regulation or rule. If he fails to

make such a showing of compliance, he does not make his defense and loses the case. If there is no applicable rule or regulation, the alleged violator must demonstrate great public necessity for his conduct in the light of the state's "paramount concern" for protecting the environment, in order to make his prima facie defense. Upon the making of the alleged violator's defense in either of these two ways, the burden of going forward with the evidence returns to the complaining party, where it remains. The complaining party has the ultimate burden of proving his case against the alleged violator. The fact that the complaining party still may go forward with the evidence even if the alleged violator is in compliance with agency regulations suggests that the judge has discretion not to honor agency expertise in promulgating regulations and to substitute his own judgment of what pollution, impairment, etc., is significant for the judgment of the agency. Injunctive relief could possibly be granted against an alleged violator who is in full compliance with regulations. This aspect of the Standing to Sue Act has revolutionary potential of its own. It could give the courts the powers over the environment currently possessed by administrative agencies. Upon completion of the trial, if the court finds that the alleged violator is polluting, etc., it may grant declaratory and equitable relief as it sees fit.

d) STANDING TO SUE ACT -FLOW CHART



FLOW CHART KEY

1. I.C.13-6-1-1(a). Citizen or other complaining party decides to maintain action in name of state for declaratory and equitable relief against alleged violator.

2. I.C.13-6-1-1(a). As an essential condition precedent to the "citizen's suit", citizen sends notice by registered or certified mail to:
   a) Department of Natural Resources
   b) State Board of Health
   c) Attorney General
   The Attorney General then notifies all state agencies having jurisdiction.

3. I.C.13-6-1-1(b). No action may be maintained unless admin. agency to whom notice was sent fails to investigate or hold a hearing.

4. I.C.13-6-1-1(b). If agency fails to hold hearing and reach final determination within 180 days, then citizen may go directly to court.

5. I.C.13-6-1-3. Action brought in court in county in which alleged pollution, etc. occurred.

6. I.C.13-6-1-2. Burden of proof at trial:
   a) Prima facie case for complaining citizen.
   b) Prima facie case for defendant,
      1) If there is an applicable regulation.
      2) If there is no applicable regulation.
   c) Burden of going forward w/ evidence on complaining citizen.

7. I.C.13-6-1-4. The court may apportion costs of special master as justice requires.
   I.C.13-6-1-5. If court finds defendant is in violation, it may grant declaratory and equitable relief as it sees fit.

8. I.C.13-6-1-1(c). If agency holds hearing and reaches final determination within 180 days and rules against complaing citizen, appeal may be taken through judicial review procedures of I.A.A.A.(I.C.4-22-1-1) and I.E.M.A. (I.C.13-7-16-3).

9. I.C.13-6-1-1(f). In any action for judicial review of the above proceedings, the court shall grant review of claims thatthe conduct, etc. under review has, or is reasonably likely to impair, significantly pollute or destroy the environment.

10. I.C.13-6-1-1(d). Any citizen shall be permitted to intervene as a party in any proceedings upon filing a verified pleading asserting that the proceeding or the action for judicial review involves conduct, etc. which may have the effect of significantly polluting, etc.

11. I.C.13-6-1-1(a). In any admin., licensing or other such procedure, the agency shall consider alleged significant pollution, etc. of the environment of the state, and no conduct, program or product shall be permitted to continue which does, or is reasonably likely to have such effect so long as there is a feasible and prudent alternative.

12. I.C.13-6-1-6. In any action where a complaining citizen or intervenor has failed to intervene in any admin., licensing or other such proceeding, the court may remit such party to such proceedings for amplification of the record and may order the granting of intervention or of review; Provided, that where intervention was available in such proceeding and the complaining party wilfully failed to intervene, the court may dismiss the action with prejudice to the complainant.

2) The Federal Water Pollution Control Act's Citizen Suit Provision[168]

This act parallels the Indiana Standing to Sue Act's citizen suit provision in several ways and differs in several ways. According to the literal language of the federal act, "any citizen" may bring a citizen suit action. This is the same as Indiana's act. However, contrary to the plain meaning of the language, the federal courts have held that the narrower Sierra Club v. Morton (supra) standards for standing apply.[169] "Any citizen" must be a person with an interest (including an interest in protecting the environment) which is or may be adversely affected.[170] As was discussed in the last section, Indiana's act may be read more broadly than this.

The Federal Water Pollution Control Act's citizen suit is limited to cases involving non-compliance with federal water quality regulations. Indiana's Standing to Sue Act's citizen suit covers all types of environmental problems. The federal act's citizen suit is obviously relevant as far as the water quality of Monroe Reservoir is concerned. The federal citizen suit uses the language "civil action" instead of "equitable action" in describing the types of relief it authorizes. "Civil action" includes both actions for monetary damages and equitable, injunctive relief. This federal act is limited to bringing actions against those actually in violation of agency regulations or orders, unlike the Indiana citizen suit. However, an action may be brought against both the administrator in charge of the agency that has failed to perform its duty and against the polluter. This ability to join the administrator as a defendant in the suit is an improvement over Indiana's citizen suit. More efficient agency performance may be stimulated by the threat of a law suit against the administrator. Sixty (60), not 180, days' notice to the proper parties is all that is required by the federal act before bringing an action. The administrator of the agency with jurisdiction (the E.P.A.), the state in which the alleged violation occurs, and the alleged violator must receive this notice. The costs of litigation may be awarded to either party, as the court deems appropriate.

APPENDIX I: TABLE OF ABBREVIATIONS

1) A.A.A. - Administrative Adjudication Act (Indiana)

2) A.P.P. - Administrative Practice and Procedure Act (Federal)

3) C.E.Q. - Council on Environmental Quality (Federal)

4) Corps - United States Army Corps of Engineers (Federal)

5) D.N.R. - Department of Natural Resources (Indiana)

6) E.I.S. - Environmental Impact Statement (Indiana and Federal)

7) E.M.B. - Environmental Management Board (Indiana)

8) E.P.A. - Environmental Protection Agency (Federal)

9) N.E.P.A. - National Environmental Policy Act (Federal)

10) N.P.D.E.S. - National Pollution Discharge Elimination System (Federal)

11) P.U.D. - Planned Unit Development (Local)

12) S.P.C.B. - Stream Pollution Control Board (Indiana)

13) U.S.U. - Utilities Service Board (Bloomington)

APPENDIX II: FOOTNOTES

1. Much information in this paragraph has been obtained from a paper composed by Mrs. Libby Frey in 1970 entitled, "The Fate of Lake Monroe?".
2. See paper entitled, "The Fate of Lake Monroe?". Also, article entitled, "Corps Moves to Limit Lakefront Development" by David Ross Stephens in June 15, 1975 Sunday Louisville Courier-Journal and Times, page D8.
3. Indiana Code 13-6-1-1 et seq.
4. Indiana Code 13-6-1-1 et seq.
5. Bloomington Municipal Ordinance 2.72.070.
6. Bloomington Municipal Ordinance 2.72.070.
7. Indiana Code 18-2-3-1.
8. Indiana Code 18-1-1.5-9.
9. Indiana Code 13-7-15-2 and 18-1-1.5-22.
10. Indiana Code 14-3-1-13(1).
11. Indiana Code 14-3-1-13(2).
12. Indiana Code 14-3-1-14(1).
13. Indiana Code 14-3-1-14(2).
14. Indiana Code 14-3-9-1 to 14-3-9-8.
15. Indiana Code 14-5-4-1.
16. Indiana Code 14-5-5-1.
17. 16 United States Code §§ 528-531.
18. 42 United States Code § 1331 et seq. West Virginia Conservancy v. Island Creek Coal Co. 441 F. 2d 232, 11 ALR 549 (4th Circ., 1971). Wyoming Outdoor Co-ord. Council v. Butz 484 F. 2d 1244, 1249 (10th Circ., 1973).
19. West Virginia Division of the Izaak Walton League of America, Inc. v. Butz 367 F. Supp. 422 (N.D. W. Va., 1973). Izaak Walton League v. Butz 8 E.R.C. 1076 (4th Circ., 1975).
20. 16 United States Code § 471.
21. 36 Code of Federal Regulations § 251.9.
22. 36 Code of Federal Regulations § 327.0.
23. Indiana Code 14-3-3-2.
24. Indiana Administrative Rules and Regulations § (60-718) et seq. (Burns).
25. Indiana Code 14-3-3-5 and 6.
26. Indiana Code 14-3-3-10.
27. Indiana Code 14-3-4-1 to 14-3-4-10.
28. Indiana Code 13-2-10-2.

29. Indiana Code 13-2-10-3.
30. Indiana Code 13-2-10-6.
31. Indiana Code 14-3-3-3.
32. Indiana Code 13-2-22-11 and 12.
33. Indiana Code 13-2-33-13.
34. 36 Code of Federal Regulations § 327.30.
35. 33 United States Code § 1344(a).
36. 33 United States Code § 1344(c).
37. Indiana Code 13-2-11-2.
38. Indiana Administrative Rules and Regulations § (60-718)3(c) (Burns).
39. Indiana Code 13-2-11-4.
40. Indiana Code 18-7-5-58.
41. 33 United States Code § 1322(b)(1).
42. Indiana Code 14-3-1-14(9).
43. Indiana Administrative Rules and Regulations § (60-718)9 (Burns).
44. Indiana Code 14-1-1-1 to 14-1-1-63; 14-1-2-1 to 14-1-2-10.
45. Indiana Code 18-7-5-37.
46. Indiana Code 8-13-4-3; Indiana Administrative Rules and Regulations § (47-2127)4 (Burns).
47. Indiana Code 8-13-5-2.
48. Indiana Code 8-13-17-1.
49. Indiana Code 17-4-6-11.
50. 42 United States Code § 1331 et seq.
51. Indiana Code 13-1-10-1 to 13-1-10-8.
52. Indiana Code 13-1-10-3(c), Regulation EMB-2.
53. Indiana Code 19-2-1-6.
54. Indiana Codd 13-2-1-7.
55. Indiana Code 19-2-1-31.
56. Indiana Code 19-2-1-31.
57. 36 Code of Federal Regulations § 327.9.
58. 33 United States Code § 1341(c).
59. 36 Code of Federal Regulations § 291.4.
60. 33 United States Code § 1281.
61. 42 United States Code § 1331 et seq.
62. 33 United States Code § 1371(c).
63. 40 Code of Federal Regulations §§ 6.30, 6.56.
64. 40 Code of Federal Regulations §§ 6.23, 6.24.
65. Calvert Cliffs Coordinating Committee v. U. S. Atomic Energy Commission 499 F. 2d 1109, 2 E.R.C. 1779 (D.C. Circ., 1971).

66. Indiana Code 13-7-15-1.
67. Indiana Code 13-7-6-1.
68. Indiana Code 13-1-6-1.
69. Indiana Code 13-1-6-7.
70. Indiana Code 13-7-6-4.
71. Indiana Code 13-1-3-4.
72. Indiana Code 13-7-6-3; 13-7-2-9.
73. Indiana Code 13-1-3-5.
74. Indiana Code 13-7-5-1(e).
75. 33 United States Code § 1342(a)(5).
76. Indiana Code 19-3-1.1-1 to 13-3-1.1-5.
77. Indiana Code 19-3-1.1-8(o).
78. Indiana Code 19-3-1.1-8(g).
79. Indiana Code 16-1-4-2.
80. Indiana Code 16-1-4-25.
81. Indiana Code 19-4-1-3.
82. Indiana Code 19-4-1-4.
83. Indiana Code 19-4-1-10.
84. Indiana Code 19-4-2-1.
85. Indiana Code 13-2-17-1 to 13-2-17-6; 13-2-18.5-1 to 13-2-18.5-10.
86. Indiana Code 13-3-1-2.
87. Monroe County Zoning Ordinance § 7.9(M).
88. Indiana Administrative Rules and Regulations § 35-5236 (Burns).
89. Indiana Code 17-2-22-5.
90. Monroe County Zoning Ordinance § 9.41.
91. Indiana Code 25-35-1-2.
92. Indiana Code 25-35-1-5.
93. Indiana Code 18-7-5-58.
94. Indiana Code 18-7-5-34.
95. Bloomington Municipal Code, Title 20.
96. Indiana Code 18-7-5-1.
97. Indiana Code 18-7-5-58(6) and 18-7-5-59.
98. Monroe County Zoning Ordinance § 12.3.
99. Monroe County Zoning Ordinance § 7.9(N).
100. Indiana Code 18-7-5-82.
101. Indiana Code 18-7-5-69.
102. Indiana Code 18-7-5-87; Bloomington Municipal Code § 21.04.130(e).
103. Indiana Code 18-7-5-25, 26, and 27.

104. Indiana Code 19-3-2-1, et seq.

105. Indiana Code 18-7-5-82.

106. Indiana Code 18-7-5-37.

107. Fasano v. Board of County Comm. ___ Ore. ___, 507 P. 2d 23 (1973).

108. Indiana Administrative Rules and Regulations § (35-5235 to 5237) (Burns); also known as S.P.C. 15.

109. 33 United States Code §§ 1311, 1312, 1313(c), 1316, and 1317.

110. S.P.C. Part III, § 6(c).

111. 33 United States Code § 1342(b).

112. Indiana Code 13-7-11-1.

113. Indiana Administrative Rules and Regulations § (35-5236) (Burns).

114. Indiana Administrative Rules and Regulations § (35-5337)1(f) (Burns).

115. Indiana Administrative Rules and Regulations § (35-213)3 (Burns).

116. Indiana Code 16-1-3-13(2).

117. Indiana Code 14-3-1-14(8).

118. 50 Code of Federal Regulations § 10 et seq.

119. 36 Code of Federal Regulations §§ 241, 261.8, 261.9.

120. Indiana Code 14-2-3-2.

121. Indiana Code 14-2-7-1 to 14-2-7-30.

122. Indiana Code 14-4-5-1 to 14-4-5-12.

123. Indiana Code 4-22-1-1 to 4-22-1-30.

124. Indiana Code 4-22-2-1 to 4-22-2-11.

125. Indiana Code 4-22-1-28, 4-22-1-30, and 4-22-2-2.

126. Indiana Code 4-22-1-2 and 4-22-2-3.

127. Indiana Code 5-14-1-1 and 5-14-1-6.

128. Indiana Code 5-14-1-3.

129. Indiana Code 5-14-1-4.

130. Indiana Code 5-14-1-2.

131. Indiana Code 5-14-1-5.

132. Indiana Code 5-14-1-6.

133. 5 United States Code §§ 301-304, 500-503, 551, 553-558.

134. 5 United States Code § 552.

135. Mann v. City of Terre Haute 240 Ind. 245, 249, 163 N.E. 2d 577, 579 (1960).

136. Citizens to Preserve Overton Park v. Volpe 401 U.S. 40, 1 E.L.R. 20110 (1971).

137. Baker v. Carr 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed. 2d 663, 678 (1962).

138. Indiana Code 4-22-1-14.

139. Insurance Commissioners v. Mutual Medical Insurance, Inc. 251 Ind. 296, 301, 241 N.E. 2d 56, 59 (1968). Bowen v. Metropolitan Board of Zoning Appeals in Marion County ___ Ind. ___, 317 N.E. 2d ~~1973~~ 193, footnote 3A at 198 (1974).

140. Indiana Code 13-1-6-1 to 13-1-6-6.

141. Indiana Code 4-22-1-1 to 4-22-1-30.

142. Indiana Code 4-22-1-14 and 4-22-1-18.

143. Indiana Code 4-22-1-1 and 4-22-1-3.

144. City of Plymouth v. Stream Pollution Control Board 238 Ind. 439, 151 N.E. 2d 626 (1958).

145. State ex rel. Rainey v. Board of Trustees 245 Ind. 693, 201 N.E. 2d 564 (1964).

146. Indiana Code 4-22-1-24.

147. State ex rel. Calumet National Bank v. McCord 243 Ind. 626, 189 N.E. 2d 583 (1963).

148. Indiana Code 34-4-10-1 et seq.

149. Pitzer v. East Chicago 222 Ind. 93, 51 N.E. 2d 479 (1943).

150. 5 United States Code § 701-706.

151. 5 United States Code § 701.

152. Abbott Laboratories et al v. Gardner 387 U.S. 136, 87 S.Ct. 1507, 18 L.Ed. 2d 281 (1967).

153. City of Chicago v. United States 396 U.S. 162, 164 90 S.Ct. 309, 311, 24 L.Ed. 2d 340 (1969).

154. Indiana Code 4-22-1-14 and 4-22-1-18; 5 United States Code § 706.

155. City of Plymouth v. Stream Pollution Control Board 238 Ind. 439, 151 N.E. 2d 626, 629 (1958).

156. Citizens to Preserve Overton Park v. Volpe 401 U.S. 40, 1 E.L.R. 20110 (1971).

157. Indiana Code 4-22-1-14.

158. In re Perry 148 N.E. 163, 83 Ind. App. 456 at 462 (1925).

159. City of Indianapolis v. Wynn 159 N.E. 2d 572 at 573, 239 Ind. 567 (1959), citing C.J.S. Amicus Curiae § 3(c).

160. In re Perry 148 N.E. 163, 83 Ind. App. 456 at 462 (1925).

161. Cox v. Schacter 147 Ind. App. 530, 262 N.E. 2d 550 (1970).

162. N.I.P.S. v. Vesey 210 Ind. 338, 200 N.E. 620 (1938).

163. Indiana Code 13-6-1-1 to 13-6-1-6.

164. Secherez v. United States Steel Corporation 316 N.E. 2d 413, 62 F.R.D. 31 (1975).

165. Indiana Code 13-6-1-1(a).

166. Indiana Code 13-6-1-1(d).

167. Indiana Code 13-6-1-1(b) and 13-7-11-2(b).

168. 33 United States Code § 505.

169. Montgomery Environmental Coalition v. Fri 366 F. Supp. 261 (1973).

170. 33 United States Code § 505(g).