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JUDICIAL INDEPENDENCE IN ADMINISTRATIVE ADJUDICATION: INDIANA'S ENVIRONMENTAL SOLUTION*

by

Lori Kyle Endris and Wayne E. Penrod**

I. Introduction

The term "administrative law" was coined in 1893, nearly a century after the creation of the first federal agencies.¹ "An administrative agency is a governmental authority, other than a court and other than a legislative body, which affects the rights of private parties through either adjudication or rule making."² While much has been written about the growing litigiousness of society in general,³ in controversies concerning the environment, the average citizen is most

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¹KENNETH CULP DAVIS, ADMINISTRATIVE LAW TREATISE §1.01 (1st ed. 1958); see also, KENNETH CULP DAVIS, ADMINISTRATIVE LAW TREATISE §1:6 (2d ed. 1978). The first major independent administrative agency was the Interstate Commerce Commission, created in 1887 to address issues common in the railroad industry.

²Davis, *supra*, note 2, § 1:6 (2d ed. 1978).

³See e.g., *Mass Tort Litigation Fever Running High Practitioners Say There is No Apparent Cure to this Societal Problem*, ILL. LEGAL TIMES, Jan. 1996, at col. 1; Aric Press, *Are Lawyers Burning America?* NEWSWEEK, March 20, 1995, at 32; and L. Gordon Crovitz, *Rule of The More Lawsuits the Better and Other American Notions*, THE WALL STREET JOURNAL, Apr. 17, 1991 at A15.

likely to come into contact with the administrative legal process; in fact, appearing before an Administrative Law Judge (ALJ) may be a citizen's only "day in court."⁴ "The judicialization of the administrative process, a phenomenon largely taken for granted by both lawyers and the general public in contemporary America, is probably one of the most mysterious, yet significant, features of American government."⁵ Yet, the concept of agency decision making made separate from its adjudication is not new. In a seminal article addressing due process in administrative hearings, Judge Henry J. Friendly recognized the need for an unbiased tribunal in the administrative process when he wrote, "there is wisdom in recognizing that the further the tribunal is removed from the agency and thus from any suspicion of bias, the less may be the need for other procedural safeguards. . . ."⁶

This paper will look briefly at current trends involving the administrative adjudicative process and Indiana's unique approach to assure fairness and impartiality in a complex environmental arena.

II. Current Trends

Administrative adjudication is handled in a variety of ways at the federal and state levels of government. ALJs often resolve scientifically and legally complex disputes among and between agencies, the regulated community, and the public in such diverse areas as commerce, communication, environment, health and safety, and social security.⁷ "During the 1940s and concurrent with the

⁴Then Justice Robert H. Jackson, U.S. Supreme Court, wrote, "The rise of administrative bodies probably has been the most significant legal trend of the last century and perhaps more values are affected by their decisions than by those of all the courts. . . ." *Federal Trade Commission v. Rubberoid Co.*, 343 U.S. 470, 72 S.Ct. 800 (1952).

⁵Frederick Davis, *Judicialization of Administrative Law: The Trial-Type Hearing and the Changing Status of the Hearing Officer*, 1977 DUKE L. J. 347, 389.

⁶Henry J. Friendly, *Some Kind of Hearing*, 123 U. PA. L. REV. 1267, 1291 (1975).

⁷For example, there are approximately forty (40) agencies in Indiana, some of which are exempt from IND. CODE § 4-21.5 (1993), that utilize ALJs, including the Alcoholic Beverage Commission, Board of Animal Health, Board of Tax Commissioners, Bureau of Motor Vehicles, Civil Rights Commission, Department of Administration, Department of correction, Department of Correction, Department of Education, Department

development and enactment of the Federal Administrative Procedure Act in 1946⁸, there was significant concern that the adjudication function within executive agencies both Federal and State, posed an inherent conflict of interest. The conflict is that executive agencies are creators and enforcers of policy to further their administrative and executive goals; and, that the combination of prosecutorial duties with adjudication functions created perceptions of bias and unfairness as well as actual conflicts of interest."⁹ Thus, there has been movement at both governmental levels¹⁰ to create central hearing agencies or panels, in which ALJs are not employed by the agencies whose cases they hear but by a distinct agency created solely to manage them. "Specific reasons for implementing a central panel system. . . include the. . . appearance of fairness, case management and workload efficiencies,

of Financial Institutions, Department of Insurance, Department of Labor, Department of State Revenue, Department of Transportation, Department of Workforce Development, Education Employment Relations Board, Election Commission, Family and Social Services, Agency, Health Professions Bureau, Horse Racing Commission, Indiana Gaming Commission, Indiana Parole Board, Indiana State Police, Law Enforcement Training Board, Lottery Commission, Natural Resources Commission, Office of Environmental Adjudication, Professional Licensing Agency, Public Employees Retirement Fund, State Emergency Management Agency and Fire and Building Services, State Board of Accounts, State Department of Health, State Ethics Commission, State Personnel Department, Student Assistance Commission, Teachers Retirement Fund, Utility Regulatory Commission, and Workers' Compensation Board. INDIANA ADMINISTRATIVE ORDERS AND PROCEDURES STUDY COMMITTEE MEMORANDUM RE: QUESTIONNAIRE TO STATE AGENCIES THAT USE ALJS FOR ADMINISTRATIVE ADJUDICATION, INDIANA LEGISLATIVE SERVICES AGENCY (Sept. 24, 1996).

⁸Act of June 11, 1946, ch. 324, 60 Stat 237, *repealed by* Pub. L. No. 89-554 (now at 5 U.S.C. § 551 (1994)).

⁹STATE PRACTICES COMMITTEE NATIONAL CONFERENCE OF ADMINISTRATIVE LAW JUDGES, JUDICIAL ADMINISTRATION DIVISION AMERICAN BAR ASSOCIATION, REPORT OF COMMITTEE CONCERNING PROPOSED MODEL ACT CREATING A STATE CENTRAL HEARING AGENCY at 1 (Sept. 11, 1996).

¹⁰Legislation was introduced to Congress that would create a Federal central hearing agency for all executive agencies. Senator Howell Heflin (D-AL) introduced S. 486 to the U.S. Senate on March 2, 1995; the bill was assigned to the Senate Committee on the Judiciary. No further action occurred. Congressman George Gekas (R-PA) introduced H.R. 1802 to the U.S. House of Representatives on June 8, 1995. The bill was referred to the House Committee on the Judiciary; a hearing on March 28, 1996, was held in the House Subcommittee on Commercial and Administrative Law. No further action occurred. *See also*, Honorable Edwin L. Felter, Jr., *The Hidden Executive Branch Judiciary: Colorado's Central Panel Experience -- Lessons for the Feds*, J. NAT'L ASSOC. ADMIN. L. JUDGES, at 95 (Spring 1994).

cost efficiencies, decisional independence, protection of hearing officers, self-policing peer review, hearing officer professionalism and satisfaction, public confidence, difference perspectives, and the elimination of *ex parte* contacts."¹¹

On the state level, in the past two decades, the number of central hearing panels in the nation has grown from eight to twenty-three.¹² Each central panel state has its own features and solutions to provide for fair, expeditious, and inexpensive administrative proceedings, but in all of the systems, the presiding officer is an ALJ who is organizationally attached to a central office of administrative hearings, not to the agency for which the hearing is conducted.¹³ Working to further ensure and fortify the judicial independence of state administrative law judges through the construct of a central panel system, the State Practice and Procedure Committee of the American Bar Association Judicial Division National Conference of Administrative Law Judges met on Friday, August 2, 1996, in

¹¹ Allen Hoberg, *Administrative Hearings: State Central Panels in the 1990s*, 46 ADMIN. L. REV. 41, 75 at 76-77 (Winter 1994) (citing *Office of Administrative Hearings: Hearings on S.B. No. 2243 Before the Committee on Judiciary*, 52d Legis. Assembly of N.D. (Jan. 14, 1991) (written testimony of Allen C. Hoberg)). See also, Duane R. Harves, *Making Administrative Proceedings More Efficient and Effective: How the ALJ Central Panel System Works in Minnesota*, 65 JUDICATURE 5, at 257 (1981) ("Most importantly, perhaps, the central panel system has resulted in a more efficient, effective administrative hearing process. costs have dropped dramatically and cases can now be both heard and decided more promptly. And, it appears that in most cases all parties are satisfied with the process and the fairness of that process even if not necessarily satisfied with the decision.") *Id.*

¹² California (1945), Florida (1974), Massachusetts (1974), Tennessee (1974), Minnesota (1975), Colorado (1976), Missouri (1978), New Jersey (1979), Washington (1981), Wisconsin (1983), Iowa (1986), North Carolina (1988), Maryland (1989), Hawaii (1990), North Dakota (1991), Texas (1991), Wyoming (1992), South Carolina (1993), South Dakota (1993), Georgia (1994), Kentucky (1994), Arizona (1995), Oregon (1995), Louisiana (1996). Information supplied by Administrative Law Judge Edward J. Schoenbaum, Editor-in-Chief, *Journal of the National Association of Administrative Law Judges*.

¹³ ADMINISTRATIVE ORDERS AND PROCEDURES STUDY COMMITTEE MEMORANDUM RE: QUESTIONNAIRE TO EACH STATE THAT USES A CENTRAL HEARING PANEL FOR ADMINISTRATIVE ADJUDICATION, INDIANA LEGISLATIVE SERVICES AGENCY, Nov. 14, 1995; see also L. Harold Levinson, *The Central Panel System: A Framework that Separates ALJs from Administrative Agencies*, JUDICATURE 5, at 245 (1981).

conjunction with the ABA Annual Meeting to complete the Committee's Model Act Creating a State Central Hearing Agency. The Act's purpose is "to facilitate and expedite removal of adjudication from the executive branch agencies, thereby separating the investigatory and prosecutory functions from the adjudicatory functions."¹⁴ The Act, approved by the Committee on August 3, 1996, is now being prepared for approval by the Judicial Division Council and will then be forwarded to the ABA Board of Governors and finally to the ABA House of Delegates; the Act is likewise being presented to the Commissioners on Uniform State Laws.¹⁵

III. Indiana's Approach

There is a long history of administrative adjudication in Indiana's environmental regulatory arena.¹⁶ Prior to Indiana's enactment of its original Administrative Adjudication Act (AAA) in 1947,¹⁷ the former State Department of Commerce and Industries had been charged with protecting the waters of the state. Petitions against an alleged violator, brought by local residents, could result in an order "to cease and abate the condition of pollution."¹⁸ The State Board of Health (BOH) professional staff served as the investigatory arm and presented the cases to members of a Pollution Hearing Board who served as hearing officers and recommended action to the full Board.¹⁹ In 1949, the BOH became the agency responsible for protecting the

¹⁴See *supra* note 10, at 5.

¹⁵*Id.* at 1, 5. A central panel was also incorporated into the 1981 revision of the Model State Administrative Procedure Act adopted by the National Conference of Commissioners on Uniform State Laws.

¹⁶On June 18, 1936, in the Indiana Supreme Court Chambers, a three-member Pollution Hearing Board, heard the appeal of a municipality to an abatement order requiring the municipality to cease and desist discharges creating a polluted condition. The original determination and order of the Department of Commerce and Industries, that the municipality was in violation of state law, was upheld by the Pollution Hearing Board on July 3, 1936. The municipality was ordered to "cease such violation and to abate and correct such condition of pollution on or before the first day of January, 1937." *Minutes of a Special Board Meeting*, Indiana Department of Commerce and Industries (July 6, 1936).

¹⁷1947 Ind. Acts, ch. 365.

¹⁸See 1935 Ind. Acts, ch. 152, § 1, 5.

¹⁹*Minutes of a Special Board Meeting*, Indiana Department of Commerce and Industries, Nov. 21, 1935.

health and life of the State's citizens and empowered with authority to make orders condemning or abating conditions causative of disease, to establish quarantines and to promulgate and enforce laws and regulations concerning water supply, disposal of sewage and sanitary features of public buildings.²⁰

In an attempt to formalize and standardize administrative procedures employed in adjudications at that time, Indiana adopted a modified version of the Model Administrative Adjudication Act.²¹ Implicit in this enactment were fundamental due process safeguards. It is unclear what role environmental controversies may have played in the enactment of the AAA in 1947, but it is clear that the judicial review of an environmental adjudication²² was a primary impetus for the General Assembly to create a committee²³ to study state administrative procedures in 1982. Three years later, the General Assembly created the Administrative Adjudication Law Recodification and Revision Commission, a bipartisan group, that studied a wide range

²⁰ 1949 Ind. Acts, ch. 157, §§ 201-12, 221-23, and 226.

²¹ MODEL STATE ADMIN. PROCEDURE ACT (1946). The Indiana General Assembly enacted the Model Act pursuant to 1947 Ind. Acts, ch. 365. Indiana's AAA was codified at IND.CODE §4-22-1-1 to - 30 and *repealed by* Pub. L. No. 31-1985, § 50.

²² The administrative adjudication, begun in 1981, concerned the Town of Bremen. *Indiana Environmental Management Board v. Town of Bremen*, 458 N.E.2d 672 (Ind.App. 1984) "involved construction and operation permits for a sanitary landfill granted by the Indiana Environmental Management Board (EMB). The town and several private citizens sought to obtain judicial review of the permit issuance and to enjoin its effectiveness pending review. The trial court eventually ordered that the EMB's actions be set aside and vacated. The Indiana Court of Appeals found that the town and the citizens were entitled to pursue administrative remedies under the AAA, including the opportunity for settlement and for an adjudicatory hearing. More significantly perhaps, the court found 'that the AAA required the agency to notify all 'affected persons' by registered (or certified) mail or in person of its initial determination. The *Bremen* court found that an agency's failure to provide the appellees with their due process rights under the AAA rendered the permits void *ab initio*." Kathleen G. Lucas, *Administrative Adjudication - Revised and Recodified*, 20 IND. L. REV. 8 (1987).

²³ Pursuant to IND. CODE § 2-5-5-1 (1982), the General Assembly created the Natural Resources Advisory Committee (through amendment in 1985, the name was changed to the Natural Resources Study Committee IND. CODE § 2-5-5-1 (Supp. 1986)) in an effort to address problem areas in the AAA.

of administrative agency issues.²⁴ One of the members of the Commission introduced House Bill 1339 to replace the AAA with the enactment of the Administrative Orders and Procedures Act (AOPA).²⁵

Article 21.5 of the AOPA is divided into six chapters: definitions, application, adjudicative proceedings, special proceedings (emergency and temporary orders), judicial review and civil enforcement. Chapter 2 is particularly interesting in that it describes the AOPA's application by stating that article 21.5 "creates minimum procedural rights and imposes minimum procedural duties."²⁶ An agency may grant additional procedural rights to persons as long as the rights conferred upon other persons are not substantially prejudiced or are not inconsistent with the AOPA.²⁷ To further afford participants due process, the General Assembly codified certain procedural safeguards provided by the Trial Rules.²⁸ An additional procedural

²⁴Pub. L. No. 361-1985.

²⁵Public Law 18-1986 repealed Ind. Code § 4-22-1 *et seq.* and replaced it with the AOPA, codified at Ind. Code § 4-21.5, enacted effective July 1, 1987. Pub. L. No. 18-1986 also established a committee to study the efficacy of creating a pool of administrative law judges and to study the effect of the Act on issues such as the adequacy of public notice of proceedings, and to propose any appropriate legislation. Pub. L. No. 18-1986, §§ 5-6 (noncode sections).

²⁶IND. CODE § 4-21.5-2-1 (1993).

²⁷*Id.* at § 4-21.5-3-35 (1993).

²⁸The General Assembly enacted under IND. CODE § 4-21.5-3-2 (1993) the language of IND. R. TR. P. 6(a), "which provides that when the last day of a designated time period falls on a weekend or holiday, the time period is extended to the next business day. Further, if the time period allowed is less than seven days, weekends and holidays are excluded from the calculation. . . . It [further] provides that three days are added to any required period when notice is served by mail." Lucas, *supra*, note 23 at 5.

The General Assembly likewise enacted summary judgment provisions under IND. CODE § 4-21.5-3-23 (1993). "Because an ALJ can entertain motions for summary judgment, which presuppose the absence of a genuine issue as to any material fact, the legislature clearly intended that agencies may decide legal issues. . . . With the exception of challenges to the constitutionality of a legislative act, it appears that all other questions of law arising out of agency adjudications are to be decided in the administrative forum, subject to judicial review. The codification. . . provides a mechanism for agencies to decide those purely legal questions within their jurisdiction." Lucas, *supra*, note 23 at 6. In sum, the ALJ will not entertain argument as to the constitutionality of statutes and presumes the validity of the rules properly adopted by the Boards, thereby adhering to the ruling in *Sunshine Promotions, Inc. v. Ridlin*, 483 N.E.2d 761 (Ind.App. 1985).

safeguard was provided in the way of intervention.²⁹ The AOPA continued to prescribe criminal penalties for the ALJ and persons who aid, induce or cause the ALJ to violate ethical requirements of the statute.³⁰ Lastly, the AOPA prescribed the qualities of an ALJ, those acts constituting/prohibiting *ex parte* communication and those resulting in disqualification.³¹

With respect to the administration of environmental laws, "Indiana was a partner in early regional attempts to address water pollution concerns"³² prior to the enactment of the National Environmental Policy Act.³³ Following the creation of the United

²⁹Prior to a hearing, mandatory intervention is recognized for persons granted an unconditional right to intervene by any other statute. Permissive intervention exists for those who demonstrate that they may be substantially prejudiced or who have a conditional right to intervene under another statute. During a hearing, intervention may be allowed if the petitioner has a conditional right to intervene or presents a common question of law or fact. The ALJ must also determine [whether] allowing intervention after the hearing as begun will not impair either the interests of justice or the prompt conduct of the proceedings." Lucas, *supra* note 23, at 11.

³⁰See e.g., IND.CODE §§ 4-21.5-3-36 and 4-21.5-3-37 (1993).

³¹See IND.CODE § 4-21.5-3-9, 4-21.5-3-10, 4-21.5-3-11, and 4-21.5-3-12 (1993).

At that time, ALJs were subject to Indiana's [state employee] Code of Ethics, and the attorneys' Rules of Professional Conduct. Currently, ALJs are subject to the Code of Judicial Conduct as well.

³²INDIANA LEGISLATIVE SERVICES AGENCY, ENVIRONMENTAL REGULATION IN INDIANA SUNSET AUDIT OF THE DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND RELATED BOARDS, Vol. 1, at 1-1 (1988).

In Indiana, some of the earliest statutes dealt with environmental issues. The list of major state environmental statutes from 1881-1982 are as follows:

1881	State Board of Health	1881 Ind. Acts, ch. 19.
1909	Public Water Supply Statute	1909 Ind. Acts, ch. 24.
1913	Public Water Supply Statute	1913 Ind. Acts, ch. 35.
1927	Stream Pollution Control Law	1927 Ind. Acts, ch. 45.
1943	Stream Pollution Control Board	1943 Ind. Acts, ch. 214.
1949	Public Health Code of Indiana	1949 Ind. Acts, ch. 157.
1961	Air Pollution Control Board	1961 Ind. Acts, ch. 171.
1971	Prohibition of Phosphate Detergent	1971 Ind. Acts, Pub. L. No. 174
1971	Confined Feeding Control Law	1971 Ind. Acts, Pub. L. No. 175
1972	Environmental Management Board	1972 Ind. Acts, Pub. L. No. 100, § 1.

³³42 U.S.C. §§ 4321-4370d (1988 & Supp. V 1993). NEPA established as the "continuing policy of the Federal Government. . . to use all practicable means and measures. . . to create and maintain conditions under which man and nature can exist in productive

States Environmental Protection Agency (EPA) in 1970³⁴ and the enactment of comprehensive Federal environmental statutes,³⁵ the BOH acted as the state's designated agency to receive and administer the federal funds (supplemented by State funds) provided to carry out those mandates.³⁶ The late 1960s and early 1970s saw markedly rapid growth in the regulatory responsibilities of the environmental programs administered by the BOH.³⁷ For example, due to national concerns of eutrophication in the Great Lakes, nonbiodegradable detergents were

harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

³⁴Reorganization Plan No. 3 of 1970, 5 U.S.C. § 903 app. 1 (1988). In his message to Congress accompanying the reorganization plan, former President Nixon stated:

As concern with the condition of our physical environment has intensified, it has become increasingly clear that we need to know more about the total environment--land, water and air. It also has become increasingly clear that only by reorganizing our Federal efforts can we develop that knowledge, and effectively ensure the protection, development and enhancement of the total environment itself.

The Government's environmentally-related activities have grown up piecemeal over the years. The time has come to organize them rationally and systematically.

42 U.S.C. § 4321 app. (1988).

³⁵Following the enactment of NEPA, Congress enacted the Clean Air Act, 42 U.S.C. §§ 7401-7671q (1988 & Supp. V 1993) (enacted 1970); Federal Water Pollution Control Act, 33 U.S.C. §§ 1251-1387 (1988 & Supp. V 1993) (enacted 1972); Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y (1988 & Supp. V 1993) (enacted 1972); Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26 (1988 & Supp. V 1993) (enacted 1974); Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992k (1988 & Supp. V 1993) (enacted 1976); Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692 (1988 & Supp. V 1993) (enacted 1976); Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-0675 (1988 & Supp. V 1993) (enacted 1980).

³⁶1972 Ind. Acts, Pub. L. No. 100.

³⁷The State went from simply checking smoke discharge opacity to constructing complex air quality models, from beyond measuring fish kills to analyzing water for conventional pollutants which lead to human disease or atrophied waters, from checking dumps for blowing paper and controlling open burning, to closing open dumps, regulating the proper transportation, treatment, storage and disposal of all domestic and industrial waste and addressing the problems of improperly disposed chemicals. ENV'T'L. POLICY COMM'N, FINAL REPORT OF THE ENV'T'L POLICY COMM'N., at 6 (Dec. 1984). Moreover, "in the early 1970s, the Black Creek study in the Maumee Basin was among the first efforts in the country to address nonpoint pollution systematically." Indiana Environmental Institute, Inc., INDIANA ENVIRONMENTAL SOURCE BOOK, part 1 (Draft 1996).

banned.³⁸ Indiana enacted legislation to control the construction and operation of confined feeding operations,³⁹ resulting in the protection of soil and receiving streams from unapproved discharges of runoff, waste and manure. In 1972, when the General Assembly enacted the first comprehensive environmental statute,⁴⁰ it established the former Indiana Environmental Management Board,⁴¹ which was charged with the "duty...to...evolve and keep constantly updated a comprehensive, long-term program for the state for the development and control of the environment to ensure for the present and future generations the best possible air, water, and land quality."⁴²

Part of the State's earliest agreements with EPA for authorization to administer the federal programs included a performance evaluation of how many programs were developed, rules written, permits issued, enforcement actions taken, or grants administered.⁴³ Because early BOH staffing levels always lagged behind the Federal mandates, a serious staffing problem arose at the

³⁸1971 Ind. Acts, Pub. L. 174.

³⁹1971 Ind. Acts, Pub. L. 175.

⁴⁰Ind. Code § 13-7-1-1 (formerly Acts 1972, Pub. L. No. 100, § 1) read, "The purpose of this article is to provide for evolving policies for comprehensive environmental development and control on a statewide basis; and to unify, coordinate, and implement programs to provide for the most beneficial use of the resources of the state and to preserve, protect, and enhance the quality of the environment so that, to the extent possible, future generations will be ensured clean air, clean water, and a healthful environment." *Id.*

⁴¹IND. CODE § 13-7-2-1 (1972).

⁴²IND. CODE § 13-7-3-1 (1976).

⁴³The earliest agreements were in the form of Memoranda of Agreement, Memoranda of Understanding, and Delegation Agreements. See e.g., UNITED STATES ENVIRONMENTAL PROTECTION AGENCY/INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, ENVIRONMENTAL PERFORMANCE PARTNERSHIP AGREEMENT (Draft September 26, 1996); see also, INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT, FACT SHEET: INDICATORS OF THE ENVIRONMENT, (Draft September 1996). The IDEM now utilizes environmental indicators (measurable features used to show environmentally significant trends, to relate changes in human welfare to changes in environmental conditions, or to represent environmental stresses, conditions, and management responses) that "relate IDEM's corrective and preventive activities to measurable changes in environmental quality." Cindy Clendenon, *IDEM Measures Success with Indicators*, INDIANA ENVIRONMENT, Spring 1996 at 1 (quoting Bruce Palin, Branch Chief, Solid Waste Compliance, Office of Solid and Hazardous Waste Management).

program level in conducting adjudications for permitting and enforcement cases. Staff attorneys were utilized to develop and present enforcement and permit cases as well as serve as Hearing Officers presiding over the cases. Even though the same staff attorney never advocated and presided over the same case, an obvious appearance problem resulted. The State Personnel job description simultaneously prescribed both advocacy and adjudication as responsibilities of the staff attorney position. The staff attorneys filed formal personnel grievances to rectify this "appearance" problem, but State Personnel alone could not provide an administrative remedy. Ultimately, a settlement was reached with the BOH, the Attorney General, and State Personnel and resulted in the creation of two separate job descriptions: Staff Attorney and Environmental Hearings Officer.⁴⁴

Through the mid-1980s, however, Hearings Officers were still presiding over non-adjudicatory rulemaking hearings and recommending rule language for adoption by the Boards.⁴⁵ The regulated community took exception to having the same person recommend language at the draft stage and subsequently review the applicability or meaning of the same rule in an adjudicatory proceeding. Thus, when the Indiana Department of Environmental Management (IDEM) was created,⁴⁶ the statute creating the Office of Hearings

⁴⁴Benchmark descriptions for the Environmental Hearing Officer position were established July, 1979 by the State Personnel Board.

⁴⁵The Air Pollution Control Board (Acts 1961, c. 171, § 3, as amended by Acts 1981, Pub. L. No. 24, § 7, codified at IND. CODE §13-1-1-3(1976)), Environmental Management Board (formerly Acts 1972, Pub. L. No. 100, § 1, codified at IND. CODE § 13-7-2-1 (1976)) and the Stream Pollution Control Board (formerly Acts 1943, c. 214, § 1, codified at IND. CODE § 13-1-3-1, repealed Pub. L. No. 143-1985, § 12).

⁴⁶An interim legislative committee, formed to evaluate Indiana's solid and hazardous waste management program, recommended that the legislature establish an environmental policy commission that could address issues involving environmental policy. See ENV'T. POLICY COMM'N, *supra*, note 38 at 1. "Because of the need to move swiftly so that the recommendations of such a commission could be reported to the legislature in a timely manner, and yet to ensure that the commission would have adequate time to receive testimony and hold public hearings, [then] Governor Orr, [by Exec. Order No. 16-83] established the Environmental Policy Commission." *Id.* at 1. The Commission recommended, after a year-long study in 1984, that a new state agency be established to address environmental regulation. The Commission concluded among other things that despite "many positive accomplishments, the management of the expanding, interrelated,

specifically prohibited the hearings officers from "participat[ion] in investigation or enforcement activities, . . . the preparation of proposed rules, or in any other department activity that might compromise their independence."⁴⁷

The Office of Hearings at the IDEM, although separated from the agency's legal counsel and its criminal investigation and enforcement personnel, reported directly to the Commissioner, a gubernatorial appointee. Thereafter, in 1989, the Office came under the supervision of a Deputy Commissioner who served at the pleasure of the Commissioner. The ALJs, who were subject to agency efficiency ratings, discipline, and compensation status, heard the cases, created the initial administrative record, and then issued Recommended Orders. The Recommended Orders would then be placed on the agenda of one of four citizen environmental boards,⁴⁸ which would issue a Final Order for purposes of judicial review.

Since its inception, the relationship between the IDEM, the regulated community, the environmental groups, and the special

and complex environmental programs does [sic] not meet the current needs of the State of Indiana." *Id.* at 6. The Indiana Environmental Policy Commission was established formally by the General Assembly, pursuant to P.L. 143-1985 §179 (codified at IND.CODE § 2-5-4-6 repealed by Pub. L. No. 13-1993, § 33).

At that time, forty percent (40%) of the Indiana State Board of Health's employees and budget were dedicated to environmental programs, that staff became the staff of the IDEM. The IDEM was created pursuant to Pub. L. No. 143-1985, § 74.

⁴⁷*Id.* at §99. In 1994, the words "Hearing Officer" were changed to "Administrative Law Judge". Pub. L. No. 1-1994, §72.

⁴⁸The Air Pollution Control Board (Pub. L. No. 143-1985, § 3 as amended by Pub. L. No. 2-1992, § 2, now codified at IND.CODE §13-1-1-3 (1993)), the Underground Storage Tank Financial Assurance Board (Pub. L. No. 13-1993, §13-1993 and Pub. L. No. 34-1993, § 11, codified at IND.CODE §13-7-20-35 (1993)), the Solid Waste Management Board (Pub. L. No. 143-1985, § 49 as amended by Pub. L. No. 2-1992, § 186, codified at IND.CODE §13-1-12-6 (1993)), and the Water Pollution Control Board (Pub. L. No. 143-1985, § 14 as amended by Pub. L. No. 2-1992, § 137, codified at IND.CODE §13-1-3-2). Under the IDEM, all of the Boards until July 1, 1995, had two primary functions: rulemaking and administrative review.

interest groups⁴⁹ was challenging. A state's interest in promoting industrial development without subjecting that development to undue regulation is often incompatible with the state's interest in protecting the health and welfare of its citizens and the integrity of its natural resources.⁵⁰ In Indiana, a relatively small state, the challenge is especially queersome due to the combination of the State's geographical attributes and natural resources mixed with a large industrial and commercial base and a significant agricultural component.⁵²

⁴⁹The Hoosier Environmental Council was established in 1983 and has grown from a handful of individual members to an umbrella representative of 65 organizations. Other groups include the Indiana Nature Conservancy, Indiana Wildlife Federation, Citizens Action Coalition, and the Central Indiana Land Trust.

⁵⁰Ellen C. Siakotos, *Citizens Standing in Environmental Licensing Procedures: Not in My Neighborhood!*, 18 IND. L. REV. 989, 1024 (1985).

⁵¹The area of Indiana is 36,185 square miles; less than ten percent (10%) is developed. Indiana Environmental Institute, *supra* note 38, at part 1. According to the Indiana Department of Natural Resources (IDNR), total public recreation land ownership equals 709,646 acres. IDNR, *1994 Statewide Comprehensive Outdoor Recreation Plan*.

⁵²Indiana ranks as the 9th largest manufacturing state: 83.7 billion dollars worth of goods were produced by 9,646 manufacturing plants in 1993. Currently, Indiana is the largest steel producer, making 22 percent of all steel made in America. Indiana is also the largest producer in other categories including mobile homes, motor homes, travel trailers and campers, truck and bus bodies, radios and television sets and refrigerators. Automobile production is significant as well, and auto-related occupations account for almost 18 percent of all Indiana manufacturing jobs. The extraction of natural resources has also played an important part in the state's development. Limestone (5%), coal (27%), sand and gravel (29%), crushed stone (39%), and gypsum (one of the nation's largest commercial deposits of gypsum is found in southwest Indiana) are all extracted. Oil and gas are produced in a wider range of counties than coal, but the economic impact on the state is much lower. See Indiana Environmental Institute, *supra* note 50 at part 2. Exports of Indiana products accounted for \$9.26 billion in sales during 1994. Don W. Miller, Jr., *Indiana Ports Support New Trade Group*, INDIANA PORTSIDE (Fall 1996).

Indiana, known as the Crossroads of America, carries heavy commercial traffic; it has three international ports, Burns International Harbor on Lake Michigan, Clark Maritime Centre in Jeffersonville and Southwind Maritime Centre near Evansville, which, along with an Indianapolis location, have been authorized as Foreign Trade Zones by the U.S. Department of Commerce. Indiana is served by all eastern railroads and by some from the south and west; there are 4,400 miles of mainline track owned by 39 different railroads. Indiana has approximately 1,138 miles of completed interstate routes and 92,375 miles of

In 1993, the State experienced a budget crisis; certain state agencies were required to make cutbacks and layoffs so that a budget deficit could be avoided.⁵³ The IDEM, even though it was understaffed and underfunded to meet its mandates, was one of those agencies.⁵⁴ The following year, due to the funding issues, then Governor Evan Bayh announced⁵⁵ that Indiana would return the federally delegated NPDES and RCRA permitting programs to EPA. This crisis served as a backdrop for the 1994 legislative session and the beginning of a more constructive dialogue between the IDEM, those it regulated, the environmentalists, and other stakeholders.⁵⁶

highways and roads. Indiana ranks seventh in the nation for air transportation, with more than 500 airports (110 public-use) with nine major carriers. Indiana Chamber of Commerce, *HERE IS YOUR INDIANA GOVERNMENT* at 3-4 (1995-1996).

The combination of cropland and pasture land constitutes sixty-six (66%) percent of 23,158,000 available acres in Indiana. In 1994, Indiana, while 38th in land size among the 50 states, ranked 12th in the U.S. in cash receipts from the sale of all commodities (crops and livestock). Some of the rankings, which demonstrate the agricultural impacts include: Indiana ranks 1st in the production of popcorn and ducks; 3rd in tomatoes; 4th in soybeans, chicken excluding broilers and total eggs produced; 5th in corn for grain and all hogs and 7th in turkeys. Office of the Commissioner of Agriculture, *INDIANA AGRICULTURE*, at 22. (1996). Total metric tonnage of major agricultural products through Indiana's ports in 1995 equaled 1,828,000. Don Miller, *supra*.

⁵³Indiana Chamber of Commerce, *supra*, note 51 at 37. Indiana's Constitution prohibits the enactment of laws that would "authorize any debt to be contracted, on behalf of the State. . . ." *INDIANA CONSTITUTION*, art 10, § 5. Thus, the cut-backs and lay-offs occurred to comply with the Constitutional prohibition.

⁵⁴See Joyce M. Martin, L. Kyle Endris, Nancy M. King and Andrea R. Need, *Funding State Environmental Programs: Indiana's Solution*, 1995 *THE ENVIRONMENTAL LAWYER* 435, 445.

⁵⁵On September 8, 1993, Governor Bayh forwarded Carol Browner, EPA Administrator, a letter which stated in part:

[T]he Indiana Department of Environmental Management (IDEM) cannot meet the staffing and administrative demands of permitting functions in both the Resource Conservation and Recovery Act (RCRA) and the National Pollutant Discharge Elimination System (NPDES) because of inadequate funding. Therefore, I have directed Kathy Prosser, the Commissioner of the IDEM, to work closely with EPA Region V to immediately begin the process of voluntarily returning federally delegated program responsibilities in these programs pursuant to 40 CFR 271.23(a) (RCRA) and 40 CFR 123.64(a) (NPDES). This letter therefore serves as the notice to EPA required by federal law and regulations.

⁵⁶Dr. William Beranek, Jr., founded the Indiana Environmental Institute, Inc., a not-for-profit corporation, in October 1990, to provide technical analysis and policy research and analysis, and to improve communication among those involved in

In addition to addressing the specific funding needs,⁵⁷ and compromises for meeting those needs,⁵⁸ the stakeholders discussed shifting the focus of environmental regulation from "command and control"⁵⁹ to a more service-oriented and compliance-friendly approach.⁶⁰ The General Assembly created an Environmental Quality Service Council, whose function was to "develop systems to evaluate the attainment of the following by the [IDEM]: improvement in the timeliness of the review and issuance of permits, improvement in the consistency of issuing permits to avoid overregulation, efficient and effective implementation of federal and state laws, effective technical assistance capability, development."⁶¹ The IDEM undertook many steps to effectuate the shift including: the employment of Total Quality

environmental issues. The Environmental Quality Control, Inc., a not-for-profit corporation, was formed in 1970 when then Governor Edgar Whitcomb foresaw difficulties between industry and the newly formed EPA. EQC provides information to businesses that assist them to operate at a profit while complying with the law.

⁵⁷See Martin et al., *supra* note 55, at 447-449. S.E.A. 417, Pub. L. No. 16-1994 and H.E.A. 1182, Pub. L. No. 82-1994 provided for massive funding and environmental restructuring.

⁵⁸*Id.* at 449-456. S.E.A. 417, Pub. L. No. 16-1994, established new permit review time periods for many IDEM programs to provide assurance to permit applicants that IDEM would make decisions in a timely fashion to meet their needs.

⁵⁹Under an environmental "command and control" approach, agencies issue specific pollution control commands to the regulated community and then monitor those regulated to ensure that the commands are followed. PERCEIVAL, ENVIRONMENTAL REGULATION LAW, SCIENCE AND POLICY 796 (1992).

⁶⁰"Getting smarter about regulation requires a shift from strictly adversarial, command and control mechanisms to the consideration of alternative mechanisms for regulation. These include self-regulatory systems, involvement of third-party associations, the use of sunset procedures and legislative review, professional certification and licensing, stakeholder regulation, and the adoption of more 'common sense principles' in the regulatory process." Indiana Economic Development Council, Inc., 1995 Economic Report to the Governor Improving Competitiveness Through Compliance-Friendly Regulation, (Report from a Cross-Sector Roundtable Facilitated and Reported by Lawrence J. Lad, *Smart Regulation: Compliance Friendly and Consumer Fair (Report from a Cross-Sector Roundtable)* at 13 (1995).

H.E.A. 1182, Public Law 82-1994, §32 established a twenty-one member Environmental Quality Service Council that serves as an oversight and advisory body to represent all of the IDEM stakeholder groups. The Council was originally scheduled to sunset on December 31, 1995; however S.E.A. 138, Pub. L. No. 248-1996, continues the Council through December 31, 2000.

⁶¹S.E.A. 417, Pub. L. No. 16-1994, § 14.

Management⁶² and the principles espoused in Stephen Covey's *The Seven Habits of Highly Effective People*®;⁶³ the restructure of its Offices; and the establishment of an Operational Planning Task Force to "facilitate the creation of logical, consistent and customer-driven permitting systems that [would] ensure the timely processing of new applications, eliminate backlogs, and improve external relationships."⁶⁴

Members of the regulated community and the environmentalists also approached the General Assembly with their concerns regarding the appearance of partiality and conflict of interest involving the Office of Hearings. The Office's structure, under the direct supervision of upper management and its physical location within the agency, had fueled questions of fairness and objectivity. And too, because most of the members of the citizen boards were not legally trained, and the boards had the "ultimate authority" in administrative adjudications,⁶⁵

⁶²The Federal Quality Institute defines Total Quality Management (TQM) as "a strategic, integrated management system for achieving customer satisfaction" which "involves all managers and employees and uses quantitative methods to improve continuously an organization's processes." FEDERAL QUALITY INSTITUTE, *Preface to INTRODUCTION TO TOTAL QUALITY MANAGEMENT IN THE FEDERAL GOVERNMENT* at iii (1991). The IDEM has instituted TQM since 1992. Nancy Cotterill, *Managing Indiana's Environment*, INDIANAPOLIS C.E.O., Apr. 1994, at 44. As of October 1, 1996, ninety-five percent (95%) of the IDEM's employees have taken the TQM basic course.

⁶³In the pre-work to his *The Seven Habits of Highly Effective People*® workshop, Stephen R. Covey states, "We believe the best way to improve the organization is to improve yourself; the best way to empower the organization is to empower yourself. This Inside-Out™ approach starts with you. ...The Seven Habits of Highly Effective People provide a holistic, integrated approach to personal and interpersonal effectiveness. As you learn and apply the habits, you will increase your power, influence, and unity with others." The Seven Habits include: (1) Be Proactive; (2) Begin With The End In Mind; (3) Put First Things First; (4) Think Win-Win; (5) Seek First To Understand, Then To Be Understood; (6) Synergize; (7) Sharpen the Saw.

⁶⁴See Indiana Department of Environmental Management Operational Planning Task Force, *Organization and Management Improvement Plan* (June 1995). Then Commissioner Kathy Prosser was instrumental in the effectuation of the shift. Her efforts were recognized by GOVERNING, Dec. 1996, at X, in its annual Public Officials of the Year Awards.

⁶⁵"Ultimate Authority" is defined in Ind.Code §4-21.5-1-15 as "an individual or panel of individuals in whom final authority of an agency is vested by law or executive order." The Commission drafting the new law, "referred to the ultimate authority as that

many among the regulated community and the environmental groups believed that the complex legal issues underlying the cases were beyond the legal competence of the members of the Boards; some even questioned the Board's efficacy.

Public Law No. 16-1994⁶⁶ established an Environmental Rulemaking Study Committee to evaluate the existing environmental Board structure and the feasibility of replacing the existing Boards with two: one for rulemaking and policy, and the other for adjudication.⁶⁷ Although bills were introduced in both houses of the General Assembly in 1995 to establish a three attorney member administrative adjudication board, the conference committee ultimately recommended that an independent state agency, the Office of Environmental Adjudication, be established⁶⁸ and that the Office be made the ultimate authority for all of the decisions of the IDEM Commissioner.⁶⁹

In addition to establishing the Office, Public Law No. 41-1995 also established a twelve member Administrative Orders and Procedures Study Committee⁷⁰ to study whether the public interest would be best served by implementing a centralized pool of administrative law judges or adopting uniform procedural rules for all of the agencies and whether the adoption of alternative dispute

entity whose decision was ripe for judicial review." Kathleen G. Lucas, *Working with Administrative Agencies*, INDIANA ADMINISTRATIVE PRACTICE, at 10 (1990).

⁶⁶See S.E.A. 417, Pub. L. No. 16-1994, 1994 Ind. Legis Serv. No. 3 (West).

⁶⁷The committee's function was to "study issues concerning the organization and rulemaking procedures of the air pollution control board, the solid waste management board and the water pollution control board and the feasibility of replacing the [three environmental boards] with two independent boards that concern (1) rulemaking and development of environmental policy, and (2) adjudicatory matters related to environmental law." *Id.* at § 13(f)

⁶⁸See S.E.A. 156, Pub. L. No. 41-1995. In addition to creating the Office, the statute authorized rulemaking for procedural rules. The procedural rules, when promulgated, will be found in Title 315 of the Indiana Administrative Code.

⁶⁹Effective July 9, 1996, Michael O'Connor became the Commissioner of IDEM.

⁷⁰The specific charge to the Committee was to study "[w]hether the public interest and interest of litigants require that procedures for state agencies under IC 4-21.5 be made more consistent by implementing a basic set of rules." Pub. L. No. 41-1995, § 12.

resolution would facilitate administrative adjudication.⁷¹ The Committee initiated a survey to those states having Central Panels to ascertain feasibility. At the end of its first year, the Committee recommended that legislation be enacted to open up state administrative proceedings to mediation procedures.⁷² Thereafter, the Committee continued to meet to consider the feasibility of uniform procedural rules. The Committee is scheduled to sunset on December 31, 1996; it is unclear whether that deadline will be extended.

To the uninitiated, environmental law is a legal and scientific maze. The Environmental Policy Commission, established to address "long-term environmental policy matters and undertake an ongoing evaluation of the total environmental program of the state of Indiana"⁷³ found that

[i]n general, environmental regulations attempt to mitigate risks which are, at best, difficult to assess. Pollution control involves sophisticated sampling and analytical capabilities in order to measure a wide variety of chemical pollutants. Setting scientifically defensible limits is difficult; quantifying and incorporating the public's feelings about what constitutes acceptable environmental risk compounds this difficulty. The assessment of exposure involves computer modeling and a detailed understanding of geohydrology, meteorology and toxicology. Determining appropriate pollution control technologies and evaluating the performance of these technologies require advanced industrial and environmental expertise.⁷⁴

Thus, part of the challenge facing the new Office involves promoting understanding of the administrative adjudication system and assisting

⁷¹1995 Ind. Legis. Serv. 1, ANNUAL REPORT OF THE ADMINISTRATIVE ORDERS AND PROCEDURES STUDY COMMITTEE. The Section establishing the Committee under Pub. L. No. 41-1995, expires January 1, 1997.

⁷²S.E.A. 241, Pub. L. No. 16-1996.

⁷³IND. CODE § 2-5-4-6(b); *see also, supra*, note 47.

⁷⁴*See* ENV'T'L. POLICY COMM'N, *supra*, note 38 at 7.

the public through that maze. Just as important a part, however, is restoring public faith in the environmental adjudication process. Becoming "user friendly" is critical when so many of the cases are brought forward by citizens *pro se*. Because the process is so legally and technically complex, it is important that the citizens have access to information that will assist them in their adjudicative review.

The Office, one of the state's smallest agencies with three employees,⁷⁵ has its physical location separate from the IDEM. The Office remains within the Executive branch, reporting to the Governor, who will appoint any successor to the Director.⁷⁶ Since its inception, over 350 new cases have been docketed.⁷⁷ The Office hears cases covering approximately sixty different subject areas;⁷⁸ therefore, it is critical that the ALJs remain professionally competent and current with developments in judicial administration and environmental law.⁷⁹

⁷⁵The positions include the Director/ Chief Administrative Law Judge, an Environmental Law Judge, and an Administrative Assistant, Cathy Couden.

⁷⁶Pub. L. No. 41-1995, § 4(b).

⁷⁷From July, 1986, (the date the Office's precursor, the IDEM's Office of Hearings was established), to July, 1995, approximately 1300 adjudications had been docketed. The majority of cases involve the review of permits.

⁷⁸The subject matter hearing types under the jurisdiction of the Office include: confidentiality claims; enforcement; excess liability fund claim denials; fee assessments; permit: Air (open burning variances, fugitive dust, construction, Title V, operation, emission limits, New Source Performance Standards, asbestos accreditation certification/revocation); Emergency Response (responsible party property transfer, spills, underground storage tanks); Hazardous Waste (waste classification, remedial action plans, incineration, operator certification/revocation); Solid Waste (construction, operating permits, landfill, transfer station, disposal/special waste, Good Character disclosures, capacity/closure design, operator certification/revocation); Water (wetland dredge and fill, NPDES - general, industrial, municipal, grant change order/denials, operator (wastewater) certification/revocation, septage waste licensure/revocation, sewer ban/land ban, variances, confined feeding approvals/denials, land application (wastewater/sludge), construction (wastewater)); and Public Water Supply (operator certification/revocation, construction).

⁷⁹Founded as an activity of the American Bar Association in 1963, The National Judicial College, located on the campus of the University of Nevada, Reno, since 1965, provides the preeminent forum for the achievement of justice through quality judicial education and collegial dialogue. Both of the Office's ALJs have received continuing education training and have been asked to participate as facilitators for administrative law courses. With respect to technical training, both ALJs attend up-date conferences provided by a variety of organizations.

With respect to becoming "user friendly", the Office has contracted with the State Internet Commission, Access Indiana Information Network, to provide on-line electronic access for all of the Office's non-confidential, public data records.⁸⁰ The Office contemporaneously is upgrading its Information Technology system to enhance case management practices and to facilitate the delivery of data files to Access Indiana. While this project is in its preliminary stages, the Office is in the process of designing and installing a Local Area Network and a Paradox®-based case tracking system. The LAN will incorporate an imaging/scanning capability and permit the digital storage of the Office's public data records. Upon completion, selected portions of these records may be electronically accessible to the public on-site. It is anticipated that files will be searchable by multiple features including filing date, cause number, parties' names, facility name, city or county, program source, type of case (permit, enforcement, fund claim), type of permit, scheduling calendar, date of closure, disposition, and statute or rule involved. Moreover, final orders, both those of the Judges and those disposing of cases on judicial review, will be available on Access Indiana.

The Office is establishing the means to analyze its performance and to identify the efficiency of its use of resources; it is anticipated that performance surveys will likewise be available on Access Indiana.

Through the addition of the technology and the means to provide feedback, the Office will be able to restore the public's faith in the environmental adjudication process.

IV. Conclusion

The movement toward greater judicial independence in administrative adjudication and the implementation of compliance-friendly agency regulation are national trends that have dramatically merged in the environmental arena in Indiana. Adversarial posturing is giving way to proactive, broad based, participatory dialogue.

⁸⁰ Access Indiana may be located at URL: <http://www.ai.org>.

Addressing the complex issues that surround economic development and quality of life is a shared responsibility. Customer-oriented policy alternatives in rule promulgation, permitting and enforcement are being examined and employed to create an effective, efficient and fair regulatory climate which affords both market competition and environmental safekeeping. Permittees that have a clear vision of the public's expectations, through elected and appointed officials, are better able to comply with the laws and fulfill their part of the social contract. Cities, towns, and counties who are afforded the necessary fiscal flexibility to finance environmental infrastructure will be better prepared to correct deficiencies, protect the public health and welfare and respond to the demands placed upon them by a growing global economy. And last, but not least, an independent forum for environmental adjudication enhances the perception of a fair, efficient, and effective dispute resolution component within the regulatory arena and carries out its mission⁸¹ to safeguard the environment for the citizens of Indiana.

⁸¹The Mission Statement of the Office is as follows: The Office of Environmental Adjudication is entrusted by the citizens of the State with providing an impartial statewide forum in which petitioning parties who believe they may be adversely affected by the permitting, enforcement and other determinations of the Commissioner of the Indiana Department of Environmental Management may be timely heard and their objections fairly considered. As ultimate authority in the administrative review of these regulatory decisions the Office must ensure compliance with statutory mandates, provide its services in a fiscally responsible manner and safeguard the best interests of the public.

