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## THE PUBLIC IN ACTION: USING STATE CITIZEN SUIT STATUTES TO PROTECT BIODIVERSITY

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Over the past several decades, environmental advocates have expended enormous effort attempting to pass laws that protect air, water, land and species.<sup>1</sup> But even the best written laws will not be effective unless they are implemented. At the federal level, most modern environmental statutes include enforcement mechanisms that allow for the active involvement of the public.<sup>2</sup> The most common of these are provisions authorizing citizen suits and public comments on proposed agency actions.<sup>3</sup> The rationale for this public involvement is simply that federal agencies sometimes do not enforce or obey the laws they are charged to uphold. For instance, without the ability of citizens to sue the federal government, many ancient forest stands in the Pacific Northwest would not exist today.<sup>4</sup> In one particularly important case, a federal judge admonished Bush administration officials for a violation of the National Forest Management Act as “a deliberate and systematic refusal by the Forest Service and the Fish and Wildlife Service to comply with laws protecting wildlife.”<sup>5</sup>

Now the conservation community is realizing that to protect biological diversity — literally the variety of all life — it must also pay greater attention

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1. Examples include the National Environmental Policy Act [hereinafter NEPA], 42 U.S.C. §§ 4321 *et seq.* (1997), the Clean Water Act [hereinafter CWA], 33 U.S.C. §§ 1251 *et seq.* (1997), the Clean Air Act [hereinafter CAA], 42 U.S.C. §§ 7401 *et seq.* (1997), and the Endangered Species Act of 1973 [hereinafter ESA], 16 U.S.C. §§ 1531 *et seq.* (1997).

2. *See, e.g.*, CWA, 33 U.S.C. § 1365; ESA, 16 U.S.C. § 1540(a) (1997).

3. *See, e.g.*, Administrative Procedure Act [hereinafter APA], 5 U.S.C. §§ 551-559 (1997).

4. The ESA of 1973 was used as a tool in many cases.

5. *Seattle Audubon Soc’y v. Evans*, 771 F. Supp. 1081, 1090 (W.D. Wash. 1991).

to governmental activity at the state and local levels.<sup>6</sup> This article seeks to take state environmental advocacy to the next level. In it, different citizen suit provisions available in various states, and the effects these provisions have had upon environmental protection, particularly with regard to the conservation of biodiversity, are described. In addition, those states with other environmental enforcement mechanisms, as well as those states with no citizen enforcement capabilities are identified. Finally, a model citizen suit law is offered as the basis for state environmental advocacy in the Twenty-first century.

The ultimate goal is to protect wildlife and other natural resources, not to file lawsuits. However, without the opportunity of citizen enforcement, environmental protection will suffer. Although the government should honor its commitment to serve as the trustee for biological diversity and all environmental values, only the public, in the end, can ensure protection of the public's interests.

## I. INTRODUCTION

### A. Citizen Suits and Their Importance

In the spring of 1971, William and Arlene Bryson received a letter from Freeborn County, Minnesota officials announcing plans to condemn a portion of the Brysons' 120-acre farm for use as a highway.<sup>7</sup> Part of the farm was a wildlife area, consisting of a natural marsh, three ponds, and relatively diverse plant and animal life.<sup>8</sup> In their role as citizens, the Brysons sued under the Minnesota Environmental Rights Act (MERA),<sup>9</sup> claiming that the proposed condemnation would damage the wildlife area.<sup>10</sup> The Minnesota Supreme Court agreed, calling the marsh "the most ancient of cathedrals," and ordered that the construction be halted.<sup>11</sup> Construction was stopped, and the Brysons were victorious, thanks to the Minnesota state citizen suit statute.<sup>12</sup>

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6. For a comprehensive description of the legal mechanisms presently available to protect biodiversity at the state level, see *Saving Biodiversity: A Status Report on State Laws, Policies and Programs*, Defenders of Wildlife and the Center for Wildlife Law (July 1996) [hereinafter *BIODIVERSITY*].

7. *County of Freeborn v. Bryson*, 210 N.W.2d 290, 292 (Minn. 1973).

8. *Id.*

9. MINN. STAT. §§ 116B.01-.13 (1997).

10. *Bryson*, 210 N.W.2d at 294.

11. *County of Freeborn v. Bryson*, 243 N.W. 2d 316, 322 (Minn. 1976).

12. *Id.*

The citizen suit, long a staple of federal environmental law<sup>13</sup> and other social regulation,<sup>14</sup> may now finally be emerging as a tool for citizen action at the state level, a generation after the Brysons' sued. Citizen suit statutes give private individuals the ability to sue on behalf of the environment, and to protect natural resources that are not otherwise protected by law, such as the Brysons' marsh, or simply to enforce environmental laws that are not being enforced by the government in their capacity as trustee for the public at large. In effect, a citizen suit acts to "deputize" citizens to bring actions to protect the environment and/or biological diversity.<sup>15</sup>

While antiquated versions of the citizen suit have been in existence for many decades, the use of state citizen suit statutes has been rare.<sup>16</sup> However, with some authority for environmental protection shifting to the states, and a growing recognition of the importance of biodiversity and habitat loss at the local level, the role of state citizen suits deserves renewed attention as we approach the Twenty-first Century. A citizen suit statute is a crucial tool for the public to ensure that native wildlife and habitat are being protected.

### B. *The Role of States*

States have a vital role to play in protecting natural resources and the environment. When the federal Environmental Protection Agency (EPA)<sup>17</sup> was established twenty-five years ago, many states shortly thereafter created parallel agencies to implement the programs and laws enacted by Congress.<sup>18</sup> Today, with responsibility for more than seven hundred delegated federal programs, dealing with everything from leaking underground storage tanks to air and water protection, states are now important implementers of the nation's environmental laws.<sup>19</sup>

States have an especially important role to play when it comes to wildlife and its habitat. With a few notable exceptions, states are primarily

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13. See, e.g., ESA, 16 U.S.C. § 1540 (1997).

14. See, e.g., Civil Rights Act of 1964, 28 U.S.C. § 1343 (1997).

15. Frank B. Cross, *Rethinking Environmental Citizen Suits*, 8 TEMPLE ENVTL. L. & TECH. J. 55 (1989) [hereinafter Cross].

16. *Id.*

17. Pub. L. No. 91-604, § 4, 84 Stat. 1676 (1970).

18. Mary E. Gade, *When the States Come Marching In*, NAT. RESOURCES & ENVIR. 3 (1996).

19. *Id.*

responsible for managing the wildlife within their borders.<sup>20</sup> States own and exert considerable control over large amounts of land. In addition, "states manage some of the nation's most biologically important lands such as riparian areas,"<sup>21</sup> and they could prevent a great deal of habitat loss and degradation, the main cause of species' extinctions.<sup>22</sup>

Because state governments are closer than the federal government to the citizenry, they have a perspective on local environmental issues that federal officials, often hundreds or thousands of miles away, do not. Similarly, citizens are often more likely than federal or state agencies to be sensitive to environmental degradation close to their homes. The recent growth of "grassroots" environmental groups is evidence of the citizenry's healthy concern for local environmental problems, particularly the loss of biodiversity.<sup>23</sup>

At the same time, some state environmental programs lack basics such as effective laws, stable funding levels, trained staff, and mechanisms for citizen participation. Adding to these problems, some states have not adequately protected wildlife and habitat.<sup>24</sup> Lured by the financial promises of short-term economic development, state agencies and lawmakers have often allowed, and perhaps abetted, harmful resource extraction practices.<sup>25</sup> Wildlife management has historically focused too narrowly on "game" species with high commercial value.<sup>26</sup>

Despite these limitations, some states have been the innovators of new and more effective policies, particularly in the areas of economic development, welfare reform, housing development, and children's programs.<sup>27</sup> In the field of environmental and natural resource protection, a small, but increasing, number of state innovations warrant closer examination and wider adoption.

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20. BIODIVERSITY, *supra* note 6, at viii.

21. *Id.* at 2.

22. *Id.* at viii.

23. Roger Schlickeison, *Role for the States*, DEFENDERS OF WILDLIFE (Fall 1994) [hereinafter Schlickeison].

24. BIODIVERSITY, *supra* note 6, at 2.

25. *Id.*

26. *Id.*

27. Schlickeison, *supra* note 23.

Four states, California,<sup>28</sup> Kentucky,<sup>29</sup> Michigan,<sup>30</sup> and New York,<sup>31</sup> have already adopted legal biodiversity policies that attempt to bring together public and private interests to conserve the whole web of species and habitats on which the states and their citizens all depend.<sup>32</sup>

### C. *Biodiversity*

While the word “environment” has traditionally included land, air and water resources, more attention is needed to the related components of wildlife: habitat and biodiversity. Indeed, biodiversity conservation is a central indicator of overall environmental protection, because biological diversity, or biodiversity, “encompasses the richness of life on earth.”<sup>33</sup> Biodiversity “includes the variety and quantity of living organisms, the genetic differences among them, the communities and ecosystems in which they occur,” and the ecological and evolutionary processes that keep them functioning.<sup>34</sup>

Scientists estimate that somewhere between five to thirty million species of plants and animals exist on our planet.<sup>35</sup> Yet, approximately fifty thousand species disappear from the planet each year.<sup>36</sup> Although extinction is a natural process, humans have greatly accelerated historical rates of extinction by one hundred to one thousand times.<sup>37</sup> The reasons for this alarming acceleration in species loss are numerous and include population pressures, rising per capita consumption of resources, destruction of habitat and over-exploitation of species.<sup>38</sup>

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28. California’s policy is entitled the “Agreement on Biological Diversity,” signed in 1991. The agreement is a memorandum of understanding between federal, state, and private entities.

29. In 1994, the governor of Kentucky signed an executive order recognizing the importance of biodiversity and establishing a task force.

30. Michigan Biological Diversity Conservation Act, MICH. COMP. LAWS ANN. § 299.233 (repealed 1995).

31. The Biodiversity Research Institute established by statute in 1993, N.Y. EDUC. LAW § 235-a (McKinney 1997).

32. BIODIVERSITY, *supra* note 6, at 7.

33. *Id.* at viii.

34. *Id.*

35. EDWARD O. WILSON, *THE DIVERSITY OF LIFE* 133 (1992).

36. *Id.*

37. PAUL R. EHRLICH & ANN H. EHRLICH, *EXTINCTION: CAUSES AND CONCERNS* (1984).

38. Dana Clark & David Downes, *What Price Biodiversity? Economic Incentives and Biodiversity Conservation in the United States*, 11 J. ENVTL. L. & LITIG. 9, 12 (1996) [hereinafter Clark & Downes].

The natural world supplies the timber, fibers, and minerals that humans depend on for food, shelter, clothing, and transportation. Wild species are a vital source of new curative drugs.<sup>39</sup> Biodiversity also has enormous recreational value, with many local economies benefitting from the surge in wildlife viewing.<sup>40</sup> Not least important, biodiversity offers important aesthetic and emotional benefits for human beings. Natural processes such as pollination, photosynthesis, and decomposition of dead organic matter make life itself possible.

It follows that the loss of biodiversity has significant costs. For example, "deforestation leads to increased erosion and flooding, with [huge] economic and human losses."<sup>41</sup> Attempting to save species perched on the edge of extinction, instead of protecting them at healthy levels, is extremely costly.<sup>42</sup> In Hawaii, for example, scores of native plants depend for their survival on hand-cultivated specimens grown in botanical gardens.<sup>43</sup> It is estimated that Hawaii needs close to thirty million dollars to save these and other species in the state.<sup>44</sup>

Preventing ecological damage instead of responding to crises is good stewardship and sound fiscal practice.<sup>45</sup> A recent study revealed that states with the best environmental records also offer the best job opportunities and climate for long-term economic development.<sup>46</sup> It is thus becoming clearer that preserving biodiversity is in society's collective self interest and will aid in facilitating long-term economic growth. The "jobs v. environment" myth may, once and for all, be dispelled.<sup>47</sup>

Stopping, or at least slowing down, the loss of biodiversity requires action from all levels of government. The federal government alone cannot be expected to solve the crisis. Ultimately, our success and our survival will depend in large part on the active involvement and support of the citizenry, including those who will work at the state level.

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39. BIODIVERSITY, *supra* note 6, at ix.

40. *Id.*

41. BIODIVERSITY, *supra* note 6, at 3.

42. Clark & Downes, *supra* note 38, at 19.

43. Elizabeth Royte, *Hawaii's Vanishing Species*, NATIONAL GEOGRAPHIC, Sept. 1995, at 10.

44. *Id.*

45. BIODIVERSITY, *supra* note 6, at 3.

46. EHRlich, *supra* note 37, at 82.

47. *Id.*

#### D. *Why Citizen Enforcement is Necessary*

As citizens of the United States and of the states we live in, we cannot rely on economic markets alone to maintain environmental quality. Nor are the safeguards promised by the state and federal governments adequate. Without enforcement of existing laws, violations of environmental standards and degradation of natural resources will continue unabated.<sup>48</sup> Yet these laws are not effective unless individuals, businesses, and governments comply with them. Vigorous enforcement of environmental laws makes non-compliance less profitable because violators will be held financially, and possibly criminally, liable for their actions. In some instances government may simply be unable to enforce these laws. Environmental agencies are generally understaffed and underfunded, making it difficult to monitor and detect all significant violations of the law.<sup>49</sup> During the 1970s, many state legislatures gave more and more responsibilities to overburdened agencies, without providing them with additional staff or funding to implement those changes. Because of inadequate resources, Hawaii's Department of Land and Natural Resources, for example, has no accurate data as to the extent of compliance with its conservation district use permits.<sup>50</sup>

Government agencies may also be unwilling to fully enforce applicable laws, responding to either local political pressures or short-term economic opportunities.<sup>51</sup> Depending on the political leadership in the state, enforcement may even be actively discouraged. In Maryland, for example, enforcement of state environmental laws has declined sharply since the current governor took office.<sup>52</sup> Citations for wetlands violations dropped ninety percent over the past year, and the dollar amount of penalties collected, during the same period, has fallen sixty-one percent.<sup>53</sup>

Private citizen enforcement can, and sometimes must, fill this void of weak government agency enforcement and implementation. Citizen suits are also valuable because, all too often, the government itself violates the law. For instance, every listing of an endangered species in the last decade in the

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48. BIODIVERSITY AND THE LAW xix-9; 217-242 (WILLIAM J. SNAPE, III, ed. 1996).

49. David K. Frankel, *Enforcement of Environmental Laws in Hawaii*, 16 U. HAW. L. REV. 85 (1994).

50. *Id.*

51. *Id.*

52. *Environmental Enforcement Declines Under Glendening*, BALT. SUN, July 23, 1996, at 12a.

53. *Id.*



American Southwest, with only one exception,<sup>54</sup> was the result of a citizen suit against the U.S. Fish and Wildlife Service.<sup>55</sup> Private party action is often the only means of ensuring governmental compliance with environmental laws.

## II. THE ROLE OF CITIZEN SUITS

### A. The Standing Doctrine

The first hurdle that a citizen must overcome in order to gain access to the courts, at least at the federal level, is the question of "standing."<sup>56</sup> Standing is essentially the requirement that a plaintiff possess a real and personal stake in the controversy, and suffer actual injury.<sup>57</sup> The United States Supreme Court has interpreted this to mean that the plaintiff must suffer some sort of injury from the action,<sup>58</sup> that the injury must be the type of injury the statute sought to prevent,<sup>59</sup> and that the injury must be of a nature which may be redressed by favorable judicial action.<sup>60</sup>

A citizen suit provision, by itself, does not give a plaintiff standing in federal court.<sup>61</sup> The federal courts, created by Congress, only have authority to hear and decide cases for which Congress has given them jurisdiction.<sup>62</sup> Through citizen suit provisions, as well as the creation of statutory injuries, Congress gave the federal courts jurisdiction to hear cases brought by citizens under environmental statutes.<sup>63</sup> But this statutory jurisdiction given by Congress is still subject to Constitutional limitations.<sup>64</sup> Of course, the standing

54. Telephone Interview with Kieran Suckling, Southwest Center for Biological Diversity (Sept. 1996).

55. *Id.*

56. *See, e.g.,* Allen v. Wright, 468 U.S. 737 (1984).

57. Sierra Club v. Morton, 405 U.S. 727 (1972). For a discussion of different types of injury that a plaintiff can allege, *see* Randall S. Abate & Michael J. Myers, *Broadening the Scope of Environmental Standing*, 12 UCLA J. ENVTL. L. & POL'Y 345 (1994).

58. Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1976).

59. *Id.*

60. *Id.*

61. Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

62. U.S. CONST. art. III, § 1. The only (significant) exception is the U.S. Supreme Court.

63. *See supra* note 1.

64. In addition to the "case and controversy" requirement, U.S. Const. art. III, § 2, prudential limits to the standing doctrine have also been imposed by the Court. For instance, the Court has developed a cautionary rule called the "zone of interests" test. This test requires that the interest sought to be protected is within the zone of interests covered by the statute in question. *See* Association of Data Processing Service Orgs. v. Camp, 397 U.S. 150 (1970).

doctrine is always developing. Indeed, the Supreme Court recently considered whether plaintiffs with alleged economic injuries had standing to challenge a decision under section 7 of the federal ESA.<sup>65</sup>

State citizen suit statutes generally offer greater court access than citizen provisions at the federal level. While the Constitution imposes standing requirements on cases that may be heard by federal courts, it imposes no such requirements on state courts.<sup>66</sup> State courts get their authority and jurisdiction from state constitutions and statutes, not from the federal Constitution.<sup>67</sup> The standing requirements imposed by state law on cases that state courts may hear may therefore be significantly less stringent than those on the federal level. Several state courts, in fact, have explicitly held that citizen suit statutes must do precisely what they were intended to do, namely grant court access to citizens without an overly onerous demonstration of specialized personal injury.<sup>68</sup> The importance of citizen suit statutes at the state level is apparent from this aspect alone.

### B. *Citizen Enforcement in General*

Citizen action rests at the heart of American democracy, as it is the citizens of the various states that empower government to provide for the health, safety, and welfare of their communities.<sup>69</sup> Thus, citizens have the right to closely scrutinize the efficacy of the administration and enforcement of state laws. This right is the foundation of a representative and democratic government and it is important to ensure that the states remain the "laboratories of democracy."<sup>70</sup> As such, citizen participation is crucial to the progress, development, and improvement of not only state government, but also of the federal government.

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65. In March 1997, the Supreme Court decided in *Bennett v. Spear* that, at least for those provisions of the ESA that mandate economic considerations by the federal government, the broad citizen suit language of section 11 of the ESA allows non-environmental plaintiffs to challenge federal agency actions on socio-economic grounds alone. 520 U.S.—, 117 S. Ct. 1154 (1997).

66. U.S. CONST. art. III, § 2.

67. *See, e.g.*, N.M. CONST., art. VI, § 2.

68. *See, e.g.*, Florida Wildlife Fed'n v. State Dept. of Envtl. Regulation, 390 So. 2d 64 (Fla. 1980). *But see* Gerst v. Marshall, 549 N.W.2d 810 (Iowa 1996) (citizen suit statute implicitly includes causation requirement).

69. U.S. CONST. preamble.

70. Schlickeison, *supra* note 23.

### C. *Citizen Suits in Action*

With varying degrees of success, citizens have participated in environmental protection through our judicial system for decades.<sup>71</sup> Somewhat remarkably, the concept of public participation in enforcement of environmental statutes can be traced back at least six hundred years.<sup>72</sup> In 1388, Richard II with the English parliament enacted a water pollution law designed to deal with "Dung and Filth . . . put in Ditches, Rivers and other Waters."<sup>73</sup> The 1388 Water Pollution Act permitted either public officials or others who felt themselves "grieved" or who "would complain," to bring enforcement actions to enforce this law.<sup>74</sup> This type of private enforcement was common because any violation of community rules was the business of the entire community and all its members.<sup>75</sup>

"By the dawn of the industrial revolution,"<sup>76</sup> private enforcement of social standards continued to grow. "In the mid-eighteenth century, the view was widespread in England that the country was suffering from an epidemic of crime"<sup>77</sup> largely caused by the growing urban lower class. As a result, "informers actions" became common.<sup>78</sup> These actions provided "that parties assisting in the apprehension and conviction of violators would share in the fines collected as a result" of the action.<sup>79</sup> Informers actions thus served to put the citizenry to use "in the enforcement process by making private prosecution"<sup>80</sup> financially rewarding. Unfortunately, "class bias and paternalism"<sup>81</sup> in informers statutes inspired resentment among those who were being regulated.<sup>82</sup> Eventually, a "disrespect for the laws themselves"<sup>83</sup> grew

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71. Barry Boyer & Errol Meidinger, *Privatizing Regulatory Enforcement: A Preliminary Assessment of Citizen Suits Under the Federal Environmental Laws*, 34 BUFF. L. REV. 833 (1985) [hereinafter Boyer].

72. *Id.*

73. *Id.* at 947.

74. *Id.*

75. *Id.* at 948-49.

76. Boyer, *supra* note 71, at 952.

77. *Id.*

78. Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, Injuries, and Article III*, 91 MICH. L. REV. 163, 174 (1992) [hereinafter Sunstein].

79. Boyer, *supra* note 71, at 953.

80. *Id.*

81. *Id.* at 954.

82. *Id.* at 953.

83. *Id.* at 954.

along with “contempt for those who enforced them.”<sup>84</sup> In the end, the actions were abolished.<sup>85</sup>

In the early decades of this century, Congress created a mechanism similar to the informers action.<sup>86</sup> The *qui tam* action requires the plaintiff to state that he or she is suing for himself or herself “as well as for the state.”<sup>87</sup> The purpose is to give citizens a right to bring civil suits to help in the enforcement of federal criminal law by allowing a citizen to sue offenders of the law, with part of the penalty going to the person who brought the action.<sup>88</sup> *Qui tam* provisions have been found in many statutes, including those prohibiting certain trade with Indian tribes and criminalizing slave trade with foreign countries.<sup>89</sup> Unfortunately, early efforts to use *qui tam* actions to enforce pollution control statutes were unsuccessful.<sup>90</sup> More recently, Congress has authorized the use of *qui tam* actions under the False Claims Act, which seeks to prevent individuals from defrauding the government.<sup>91</sup> At least one commentator has noted that the False Claims Act’s *qui tam* provisions could be used against people who use public lands in violation of federal permits.<sup>92</sup>

Citizens continue to rely on a variety of legal actions to protect our environmental resources. Private litigants possess a number of federal and state statutory and common law theories of environmental recovery to choose from. Common law nuisance claims, based on acts that are damaging to property, have been used in all fifty states to deal with everything from water pollution to obnoxious odors.<sup>93</sup> Many states also have statutes that make public nuisances a violation of law.<sup>94</sup>

Other common law claims include trespass, negligence, and inverse condemnation, though these claims do not always yield a completely effective

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84. Boyer, *supra* note 71, at 954.

85. *Id.*

86. Sunstein, *supra* note 78, at 175.

87. BLACK’S LAW DICTIONARY 1251 (6th ed. 1990).

88. Sunstein, *supra* note 78, at 175.

89. *Id.*

90. Connecticut Action Now v. Roberts Plating Co., 457 F.2d 81 (2d Cir. 1972).

91. 31 U.S.C. §§ 3729-3733; the CAA, § 113(f), and the ESA, § 11(d), are other examples of reward provisions.

92. Edward Baird, *The Use of Qui Tam Actions to Enforce Federal Grazing Permits*, 72 WASH. U.L.Q. 1407 (1994).

93. James A. Sevinsky, *Public Nuisance: A Common-Law Remedy Among the Statutes*, 5 NAT. RES. & ENVT. 29 (1990).

94. *See, e.g.*, N.M. STAT. ANN. § 30-8-8 (Michie 1997).

remedy.<sup>95</sup> Each of these claims is limited to specific factual circumstances, and cannot be used to sue for any damage to the environment. A trespass claim, for example, requires a physical invasion of property.<sup>96</sup> Thus, to recover damages, a party must show injury to his or her property.<sup>97</sup> Negligence requires the failure to use reasonable care, and so excludes those actions that a jury finds reasonable.<sup>98</sup> Inverse condemnation is limited to actions against the government to recover the value of property taken by an agency.<sup>99</sup> Although state administrative procedure acts may also be the basis for citizen involvement, these lawsuits are usually limited to actions for violations of procedure.<sup>100</sup> Finally, some federal provisions provide citizens with a means to enforce federal law.<sup>101</sup>

#### D. *The Federal Framework*

The citizen suit has become a staple of federal environmental law, as nearly every major environmental statute provides for citizen suits.<sup>102</sup> In general, these provisions allow "any citizen"<sup>103</sup> to sue "any person"<sup>104</sup> to enforce the specific requirements or limitations of the environmental protection statute. The main difference between citizen suit provisions at the state and federal level is that all federal provisions limit the actions to violations of existing law.<sup>105</sup> In addition, they are found in individual environmental statutes,<sup>106</sup> while some state provisions are in distinct citizen suit laws and cover

95. Shay S. Scott, *Combining Environmental Citizen Suits and Other Private Theories*, 8 J. ENVTL. L. & LITIG. 369 (1993) [hereinafter Scott].

96. RESTATEMENT (SECOND) OF TORTS § 158 (1977).

97. *Id.*

98. W. PAGE KEETON, ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 86 (5th ed. 1984).

99. ROGER A. CUNNINGHAM, ET AL., THE LAW OF PROPERTY 522-530 (1993).

100. *See, e.g.*, MISS. CODE ANN. §§ 25-43-1 to -19 (1997).

101. Most federal environmental statutes authorize citizen suits. Notable exceptions include the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136-136(y) (1990); NEPA, 42 U.S.C. §§ 4321-4369 (1995); and the Marine Mammal Protection Act (MMPA), 16 U.S.C. §§ 1361-1421(h) (1994). Even with these statutes, however, use of the APA's citizen suit provision, 5 U.S.C. §§ 551-559, enables individuals to challenge substantive actions under other environmental statutes.

102. *Id.*

103. *Id.*

104. *Id.*

105. *See, e.g.*, CWA 33 U.S.C. § 1365 (1997).

106. *Id.*

a variety of environmental violations.<sup>107</sup>

Because the federal statutes differ somewhat in intent and purpose, the scope of their enforcement varies. The NEPA, which requires federal agencies to consider the impact of their activities on the environment, allows citizens to demand compliance based on federal question jurisdiction.<sup>108</sup> However, the NEPA addresses environmental impacts only prospectively because the law provides scant relief once projects have been approved and commenced.<sup>109</sup> The statute is also limited to “major” “federal” actions that “significantly” affect the environment.<sup>110</sup> The CAA, by contrast, provides for rigorous judicial enforcement, allowing citizen suits for past as well as future violations.<sup>111</sup> Similarly, the ESA also possesses strong enforcement levers, and precludes federal agencies from committing resources on an action that would jeopardize listed species before ESA compliance is determined with respect to the action in question.<sup>112</sup>

Federal environmental statutes reflect Congress’s recognition of the importance of citizen suit enforcement. These statutes have driven the federal government’s own oversight and enforcement of environmental protection, and have allowed private individuals to actively perform the role of enforcer when the federal government has failed to compel compliance on its own.<sup>113</sup> Yet the role of the citizen in federal environmental and regulatory law has recently been called into question.<sup>114</sup> The importance of state statutes has thus been heightened by the decline in federal legal protection of the environment, evidenced both by the conservative attitude of the Supreme Court and reduction in funding for environmental protection programs. For example, the 1992 Supreme Court case *Lujan v. Defenders of Wildlife*<sup>115</sup> added another set of obstacles before a citizen can enter through the courtroom door. In the last two decades, the Supreme Court has held that the comprehensive federal pollution control laws and their citizen suit provisions have foreclosed the operations of

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107. See Appendix A.

108. 42 U.S.C. §§ 4321-4370(d) (1997).

109. NEPA, 42 U.S.C. §§ 4321 *et seq.* (1997).

110. Fourteen states have enacted “little NEPAs.” BIODIVERSITY, *supra* note 6.

111. 42 U.S.C. §§ 7601 *et seq.* (1997).

112. 16 U.S.C. §§ 1536(d), 1538 (1997).

113. Cross, *supra* note 15, at 68.

114. *Id.*

115. 112 S. Ct. 2130 (1992).

federal common law and other federal private remedies from the pollution field.<sup>116</sup> Similar limitations have not cropped up yet at the state level, because various state citizen suit statutes also allow plaintiffs to sue for any damage to the environment, regardless of whether a law was violated.<sup>117</sup>

### III. *THE STATE OF THE STATES*

Communities affected by environmental degradation do not need to rely solely on the common law or limiting federal and state statutes to redress their grievances. Since the 1970s, some state legislatures have enacted broad citizen suit laws to mirror the public enforcement mechanisms evident in federal law.<sup>118</sup> These state laws solidify the standing of citizens to sue for environmental violations, provide a variety of remedies, and even provide for the award of attorney's fees for the citizen in certain instances.

Currently, fifteen states have environmental citizen suit statutes on the books.<sup>119</sup> In general, these statutes give citizens, or "any person" the right to sue the state, a private party, or both, to protect the state's environment.<sup>120</sup> Some citizen suit statutes provide only for injunctive relief to stop harmful activity<sup>121</sup> or to force the state to act,<sup>122</sup> while one authorizes the award of money damages as well.<sup>123</sup> Whether a citizen filing the lawsuit can recover attorney's fees and litigation costs is another variation among the statutes.<sup>124</sup> Finally, rarely are the terms "natural resource" or "environment" defined.<sup>125</sup>

116. See *City of Milwaukee v. Illinois*, 451 U.S. 304 (1981); *Middlesex County Sewer Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1 (1981).

117. See, e.g., Connecticut Environmental Protection Act of 1971, CONN. GEN. STAT. §§ 22A-14 *et seq.* (1997).

118. See Appendix A.

119. *Id.*

120. *Id.*

121. See, e.g., CONN. GEN. STAT. §§ 22a-14 (1997).

122. See, e.g., LA. REV. STAT. ANN. § 30:2026 (West 1997).

123. See, e.g., FLA. STAT. ANN. 403.412 (West 1996).

124. See, e.g., N.J. Stat. §§ 2A:35A-1 to -14 (1997) (costs awarded at the court's discretion); HAW. CONST. art. XI, § 9 (no provision for costs).

125. *But see* N.D. CENT. CODE §§ 32-40-01 to -11 (1997) ("environmental statute" includes wildlife); MINN. STAT. §§ 116B.01-.13 (1997) ("natural resources" includes animals).

A. *The Parent State*

The Michigan Environmental Protection Act of 1970 (MEPA)<sup>126</sup> was the first modern state citizen suit statute. In the late 1960s, a citizen's organization approached University of Michigan Law School Professor Joseph Sax with the idea of drafting an environmental protection statute. This law has been used by citizen groups in Michigan, and it has also been used as a model by groups in other states.<sup>127</sup>

The MEPA contains broad provisions under which citizens can sue. Its language reads:

The attorney general or any person may maintain an action . . . for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction.<sup>128</sup>

The MEPA does not provide for money damages, and only allows for costs "if the interests of justice require."<sup>129</sup> The MEPA does allow citizens to sue to protect the state's natural resources *whether or not* a law has been broken.<sup>130</sup> The act's legislative history paints a clear picture of the intent behind this broad provision. Both chambers of the Michigan legislature considered requiring a certain degree of harm that a plaintiff must show, such as a violation of a statute.<sup>131</sup> However, both chambers deliberately excluded such a requirement despite lobbying by interest groups such as the Chamber of Commerce.<sup>132</sup>

The MEPA is a powerful tool precisely because it provides an independent cause of action allowing citizens to sue when no other state laws are being violated. In a 1975 Michigan Supreme Court case, the court found that the MEPA "imposes a duty on individuals and organizations both in the public and private sectors to prevent or minimize degradation of the

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126. MICH. COMP. LAWS ANN. §§ 324.1701-1706 (West 1997).

127. South Dakota's statute is most similar to the MEPA (S.D. CODIFIED LAWS ANN. §§ 34A-10-1 to -17 (Michie 1992 & Supp. 1997)).

128. MICH. COMP. LAWS ANN. § 324.1701(1) (West 1997).

129. *Id.* § 324.1703(3).

130. Robert H. Abrams, *Thresholds of Harm in Environmental Litigation: The Michigan Environmental Protection Act as Model of a Minimal Requirement*, 7 HARV. ENVTL. L. REV. 107, 112 (1983).

131. *Id.* at 110.

132. *Id.*



environment which is caused or is likely to be caused by their activities."<sup>133</sup> Thus, once a plaintiff demonstrates that a defendant's actions are harming the environment, the defendant must prove that "no feasible and prudent" alternatives exist.<sup>134</sup>

The independent cause of action created by the MEPA contrasts sharply with other citizen suit provisions.<sup>135</sup> In many states, citizens are authorized to sue, but only for violations of a law. In Arizona, for example, citizens can sue for violations of water quality standards established by law.<sup>136</sup> Water quality degradation below those statutory standards cannot be addressed by a citizen group.

The MEPA, on the other hand, would provide a remedy in this situation. The MEPA acts essentially as a codification of the common law doctrine of nuisance, allowing lawsuits to stop actions that may be offensive but do not technically violate a law.<sup>137</sup> The doctrine of nuisance has allowed citizens over the years to sue to abate actions that damage both public and private property interests.<sup>138</sup> Nuisance actions have challenged nearly all activities that are today the subject of comprehensive regulation and have been described as the "backbone of modern environmental . . . law."<sup>139</sup>

The MEPA puts into statutory form this powerful doctrine. In *Lincoln Township v. Manley Brothers*,<sup>140</sup> a MEPA count was added to a complaint alleging that a unique dune area near the Kalamazoo Nature Center would be destroyed by a sand mining operation.<sup>141</sup> This was the only statutory cause of action available because the defendants were not otherwise violating any applicable state law. The trial judge stopped the defendant from mining nearly two-thirds of its 96.8 acres of sand-bearing property, in part due to the MEPA.<sup>142</sup> Subsequently, a state law protecting sand dunes was passed, partially

133. *Ray v. Mason County Drain Comm'r*, 224 N.W.2d 883, 888 (Mich. 1975).

134. *Id.*

135. See the Appendices to this article for a description and comparison of citizen suit statutes.

136. ARIZ. REV. STAT. ANN. § 49-264 (West 1997).

137. A federal version of this concept was introduced in the Senate in September of 1996. Senators Ron Wyden (D-OR) and John Warner (R-VA) introduced legislation that would allow homeowners to sue for compensation for actions adversely affecting the value of their homes, such as filling wetlands or emitting pollution. The bill, S. 2070, was defeated in committee.

138. WILLIAM H. RODGERS, JR., ENVIRONMENTAL LAW 112 (1994).

139. *Id.* at 113.

140. No. 74-001113-CE (Mich. Cir. Ct. 1974).

141. *Id.*

142. *Id.*

as a result of this citizen suit case.<sup>143</sup>

The MEPA has been used to address increasingly diverse environmental threats, although it does not contain a definition of which “natural resources” can be protected.<sup>144</sup> During an early six-year study of MEPA cases, from 1970 to 1976, most of the eighty-one cases filed during that time were found to involve industrial air pollution, water pollution treatment systems, and homesite construction.<sup>145</sup> Other cases included sand dune mining, wetlands protection, park management, and leasing of Great Lakes bottomlands.<sup>146</sup> The lack of a definition of “natural resources” does not appear to have limited the types of cases that can be brought, and the MEPA has been regarded as a success as it has evolved with the times.<sup>147</sup>

### B. *Other States with Citizen Suit Provisions*

Although other statutes were modelled after the MEPA, most are considerably different.<sup>148</sup> Almost all of the states with statutes allow suits against “any party,” though some are limited to actions against only the state.<sup>149</sup> Half of the statutes do not require a violation of law for a suit to be filed. Half allow equitable relief only, while two others also provide for penalties and monetary damages, and the rest are silent on this issue.<sup>150</sup> Only a very few provide for costs to the prevailing party.<sup>151</sup> Finally, only two states actually define the words “environment” or “natural resources.”<sup>152</sup>

Of the fifteen existing state citizen suit statutes, thirteen allow actions against “any party,” including the state.<sup>153</sup> Illinois’ provision is typical, allowing suits against both the state and private parties. It provides that “[a]ny person may enforce this right against any party, public or private, through

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143. Sand Dune Protection and Management Act, MICH. COMP. LAWS ANN. §§ 324.35301-.35326 (West 1997).

144. MICH. COMP. LAWS §§ 324.1701-.1706 (West 1997).

145. Jeffrey K. Haynes, *Michigan’s Environmental Protection Act in its Sixth Year: Substantive Environmental Law from Citizen Suits*, 53 J. URBAN LAW 589 (1976) [hereinafter Haynes].

146. *Id.*

147. *Id.* at 589, 595.

148. See Appendix B for a comparison of these statutes.

149. See Appendix A.

150. *Id.*

151. *Id.*

152. N.D. CENT. CODE § 32-40-01 (1997); MINN. STAT. § 116B.01 (1997).

153. See Appendix B.

appropriate legal proceedings.”<sup>154</sup> In Connecticut, by contrast, actions can be brought only against “the state or political subdivision thereof.”<sup>155</sup>

Nine states allow citizens to sue not only for violations of the law, but for any “unreasonable pollution, impairment, or destruction.”<sup>156</sup> These provisions give citizens the opportunity to challenge environmentally harmful activities whether or not a violation of an existing state law has occurred.<sup>157</sup> Conversely, some statutes only allow actions for violations of law. For example, in Louisiana, civil actions can be brought only for violations of environmental quality laws.<sup>158</sup> The Florida Environmental Protection Act is doubly restrictive in that it allows citizens to bring actions only to compel government authorities to enforce existing environmental laws, rules, and regulations.<sup>159</sup>

The types of remedies allowed by statute also vary. The New Jersey Environmental Rights Act, for example, authorizes injunctive relief when a defendant’s conduct violates an environmental statute or regulation, as well as when the conduct is otherwise harmful to the environment.<sup>160</sup> In addition, the act authorizes civil penalties “as provided by law.”<sup>161</sup> In South Dakota, only declaratory and other equitable relief is allowed.<sup>162</sup> Iowa does not state what remedies are allowed, rather, the language authorizes “civil actions.”<sup>163</sup>

Only half of the state statutes examined provide for the award of attorney’s fees and costs, such as the cost of experts, office expenses, and filing fees.<sup>164</sup> In addition, courts have the discretion in some states to require that a citizen group post a bond if the lawsuit could substantially interfere with an ongoing project.<sup>165</sup> These fees and costs can be exorbitant and often deter citizen lawsuits.<sup>166</sup> In the states allowing for these fees and costs, however,

154. ILL. CONST., art. XI, § 2.

155. CONN. GEN. STAT. § 22a-16 (1997).

156. See Appendix B.

157. *Id.*

158. LA. REV. STAT. ANN. § 30:2026 (West 1997).

159. FLA. STAT. ANN. § 403.412 (West 1996).

160. N.J. STAT. ANN. §§ 2A:35A-1 to -14 (West 1996).

161. *Id.* § 2A:35A-10.

162. S.D. CODIFIED LAWS ANN. §§ 34A-10-1 *et seq.* (Michie 1992 & Supp. 1997).

163. IOWA CODE § 455B.111 (1997); see *Gerst v. Marshall*, 549 N.W.2d 810 (Iowa 1996) (action for damages brought against petroleum company but dismissed on other grounds).

164. See Appendix A.

165. See, e.g., FLA. STAT. ANN. § 403.412(2) (West 1996) (“good and sufficient security bond or cash”).

166. BIODIVERSITY, *supra* note 6, at 4.

payment is left to the discretion of the court.<sup>167</sup> And different states define “costs of litigation” differently.<sup>168</sup> In Iowa, these costs include “reasonable attorney and expert witness fees.”<sup>169</sup> Yet Nevada does not define the term “costs.”<sup>170</sup> Virtually all federal legislation authorizing citizen suits provides for the award of attorney’s fees and costs.<sup>171</sup>

As with Michigan, citizen suit statutes are typically designed to protect a state’s environment and its natural resources. Traditionally, it was understood that these terms included the protection of land, air, and water against pollution.<sup>172</sup> What is not as clear today is whether other resources, such as wildlife and its habitat, are also entitled to protection.

Two states deal with this ambiguity by providing a definition in the statute itself. In North Dakota, citizens can sue for violations of any “environmental statute.”<sup>173</sup> This has been defined to mean “any statute for the protection of the air, water, natural resources, including land, minerals, *and wildlife*.”<sup>174</sup>

Minnesota also provides a definition in the statute. Under the Minnesota Environmental Rights Act (MERA), natural resources are defined as “all mineral, animal, botanical, air, water, land, timber, soil, quietude, recreational, and historical resources.”<sup>175</sup> In a recent Minnesota Supreme Court case, the court held that bald eagles and the trees in which they roost are a “natural resource” under the meaning of the MERA, and that pollution, impairment or destruction of the eagles or their roosts was likely to have a material adverse effect on the environment in violation of the MERA.<sup>176</sup> Previous cases in Minnesota have also confirmed this wide definition. Under two state supreme court cases, wetlands and a wildlife marsh were found to be within the meaning of “natural resources.”<sup>177</sup> In addition, the law has been

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167. See, e.g., NEV. REV. STAT. §§ 41.540-.570 (1995).

168. See Appendix A.

169. IOWA CODE § 455B.111 (1997).

170. NEV. REV. STAT. § 41.541 (1995).

171. See, e.g., 16 U.S.C. § 1540 (1996).

172. Haynes, *supra* note 145, at 609.

173. N.D. CENT. CODE § 32-40-06 (1997).

174. *Id.* (emphasis added).

175. MINN. STAT. § 116B.02 (1997).

176. *Minnesota ex rel. Wacouta Township v. Brunka Hardwood Corp.*, 510 N.W.2d 27 (Minn. 1993).

177. *County of Freeborn v. Bryson*, 210 N.W. 2d 290 (Minn. 1973); *Minn. Pub. Interest Research Group v. White Bear Rod and Gun Club*, 257 N.W. 2d 762 (Minn. 1977).

used to limit snowmobile trails, and to oppose expansion of a timber operation.<sup>178</sup>

The remaining states have simply left the meaning up to the courts. In New Jersey, for instance, a court decision has narrowed the definition from its original scope under the state's Environmental Rights Act.<sup>179</sup> Under the act, citizens are given standing to prevent "pollution, impairment, and destruction" of the state's environment.<sup>180</sup> The court found that a challenge to the adoption of wetlands regulations was not an action about "pollution" as defined by the act.<sup>181</sup>

In all other states, key terms have simply gone undefined. Neither the legislatures nor the courts have yet tackled the issue of whether wildlife and its habitat, or biodiversity, are covered by their citizen suit statute. In order to offer comprehensive protection, the terms "environment" and "natural resources" must include plants, animals, and their habitat. By failing to include biodiversity, these statutes are neglecting a critical element of the environment.

### C. *States Without Citizen Suit Provisions*

The vast majority of the states, thirty-five, do not have a general citizen suit statute.<sup>182</sup> In these states, other less effective alternatives have been used. In some, individual environmental statutes allow for citizen actions.<sup>183</sup> In others, citizens can file a complaint with the attorney general, who then decides whether to pursue an action.<sup>184</sup> The public trust doctrine is being expanded in some states as well.<sup>185</sup> And in the remainder of the states, common law remedies are the only fall-back.<sup>186</sup>

Some states follow the federal approach of having separate provisions

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178. Telephone Interview with Lee Padock, Minnesota Office of the Attorney General (June 1996).

179. Appeal of adoption of N.J.A.C. 7:7A-1.4, 573 A.2d 162, 167 (N.J. Super. Ct. App. Div. 1989).

180. N.J. STAT. § 2A:35A-2 (West 1996).

181. *Appeal of adoption of N.J.A.C.*, 573 A.2d at 163.

182. See Appendix A for a review of the states with a citizen suit statute.

183. See, e.g., WIS. STAT. ANN. § 293.89 (1996 Supp.) (citizen suit statute for violation of mining law).

184. See, e.g., N.M. STAT. ANN. § 11-9A-2 (Michie 1995).

185. The public trust doctrine has traditionally addressed questions of public use of tidal lands and waters for navigation, fishing, and commerce. See, e.g., Joseph Sax, *The Public Trust Doctrine in Natural Resources: Effective Judicial Intervention*, 68 MICH. L. REV. 471 (1970). See also Appendix C.

186. Scott, *supra* note 95, at 379-380.

in select statutes. For example, Arkansas has no general citizen suit statute, but citizens can file actions under individual state statutes such as the Arkansas Solid Waste Management Act,<sup>187</sup> the Hazardous Waste Management Act,<sup>188</sup> and the Remedial Action Trust Fund Act.<sup>189</sup> In Wisconsin, citizens can sue for violations of state mining laws.<sup>190</sup> It is important to note that citizens in these states cannot, for instance, sue for violations of their state's endangered species act, because they do not contain a citizen suit provision.<sup>191</sup>

California is one of several states that utilizes a private attorney general provision.<sup>192</sup> Under this provision, a court is authorized to award attorney's fees to a successful party "in any action which has resulted in the enforcement of an important right affecting the public interest."<sup>193</sup> While this provides an avenue for recouping attorney's fees, it does not address the problem of standing left open without a citizen suit statute in this state.

Some states rely on their constitution to gain access to the courts. However, relying solely on constitutional provisions may be ineffective. Hawaii has a strong constitutional amendment giving "each person the right to a clean and healthful environment."<sup>194</sup> The amendment gives "any person" the ability to enforce that right "against any party, public or private, through appropriate legal proceedings."<sup>195</sup> However, one federal district court has held that the provision does not give individuals a right to sue, at least under the state's endangered species act.<sup>196</sup> The effect of this holding is to preclude all lawsuits under the constitutional provision unless a statute specifically authorizes citizen suits. Another limitation of Hawaii's constitutional provision is that it creates a right to enforce existing rights, but it does not add any new rights.

All but six states have recognized, to varying degrees, the public trust doctrine in court cases.<sup>197</sup> Under a progressive view, the basis of the public trust doctrine is that natural resources are held in trust for the people by the

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187. ARK. CODE ANN. § 8-6-206 (Michie 1995).

188. *Id.* § 8-7-201.

189. ARK. CODE ANN. § 8-7-501 (Michie 1995).

190. *See supra* note 183.

191. *See* Appendix B.

192. California Environmental Quality Act, CAL. CIV. PRO. CODE § 1021.5 (West 1996).

193. *Id.*

194. HAW. CONST. art. XI, § 9.

195. *Id.*

196. *Stop H-3 Assoc. v. Lewis*, 538 F. Supp. 149 (D. Haw. 1982).

197. *See* Appendix B.

government, and any environmental degradation is actionable unless it is sanctioned by specific legislation.<sup>198</sup> However, rarely have states expanded the doctrine beyond its traditional boundaries of commercial water and the lands beneath them.<sup>199</sup> California is an exception, having expanded the doctrine to include protection of wildlife that depend on navigable waters or their tributaries.<sup>200</sup> In addition, a court may or may not choose to recognize the doctrine as a basis for standing.<sup>201</sup>

In Alabama, there is no citizen suit statute, but the state does have a statute that gives the right of intervention to any person having an interest that is or may be adversely affected by the state's action with regard to its environmental or wildlife laws.<sup>202</sup> The law is currently being used by a group of landowners downstream of a municipality to abate water pollution.<sup>203</sup>

Mississippi is a prime example of where citizens can sue on environmental issues using a state administrative procedure act.<sup>204</sup> However, damages awarded under the Mississippi act are limited to procedural violations of an environmental law, rather than substantive ones.<sup>205</sup> Similarly, the North Carolina's administrative procedure act imposes procedural duties on the government that could be used to challenge state agency actions involving wildlife.<sup>206</sup>

New Mexico is one of several states with a statute that codifies public nuisance.<sup>207</sup> Citizens can sue to abate a public nuisance, defined as "a knowing injury to public health, safety, or welfare, or public rights in property."<sup>208</sup> Wisconsin also has several statutes that codify public nuisance.<sup>209</sup> Under one statute, the violation of environmental laws has been deemed to be a public

198. See *supra* note 185.

199. Ralph W. Johnson & William C. Galloway, *Can the Public Trust Doctrine to Prevent Extinctions?*, BIODIVERSITY AND THE LAW 157, 161 (William J. Snape, III, ed. 1996).

200. National Audubon Soc'y v. Superior Court of Alpine County, 658 P.2d 709 (Cal. 1983), cert. denied, 464 U.S. 977 (1983).

201. See, e.g., Selkirk-Priest Basin Assoc. v. Idaho, 899 P.2d 949 (Idaho 1995).

202. ALA. CODE § 22-22A-5 (1996).

203. Telephone Interview with Craig Knessel, Alabama Office of the Attorney General (June 1996).

204. MISS. CODE ANN. §§ 25-43-1 to -19 (1997).

205. *Id.*

206. N.C. GEN. STAT. §§ 150B-1 to -52 (1997).

207. N.M. STAT. ANN. § 30-8-8 (Michie 1997).

208. *Id.*

209. See, e.g., WIS. STAT. ANN. §§ 281.57, 30.294, 29.03, 31.25, 84.31 (West Supp. 1996).

nuisance.<sup>210</sup> Interestingly, the statute has been used to protect wildlife. Recently, a Wisconsin citizen group sued a developer who was building on a lake and damaging fish habitat.<sup>211</sup> The group won, obtaining an injunction, as well as, money damages targeted for fish restoration.<sup>212</sup>

Wisconsin had, until recently, an innovative program for helping citizens to sue. The Public Intervenor's office, established during the 1960s under then Governor Knowles, represented citizens with environmental concerns through the state's Department of Justice.<sup>213</sup> However, the office was recently moved to the Department of Natural Resources where it serves only to answer citizen questions about environmental issues.<sup>214</sup>

Opinion about the need for a state citizen suit statute varies among state agency personnel, depending on to whom one speaks. Kansas has no citizen suit statute, and according to one agency staffer from the Department of Health and Environment, none is needed.<sup>215</sup> This staffer's perspective is that the state is "doing pretty well" on environmental and wildlife issues.<sup>216</sup> However, he acknowledged that other groups might not feel the same.<sup>217</sup> Similarly, in Nebraska, no legislation for a citizen suit statute has been proposed in the state. Indeed, the Attorney General's office seemed singularly uninterested in such legislation.<sup>218</sup> "Leave it up to the creative plaintiffs' attorneys" was his response when asked about the need for a citizen suit statute.<sup>219</sup>

Conversely, the New Mexico Attorney General's office believes that while the public nuisance law is helpful, a citizen suit provision for all environmental laws would be more useful.<sup>220</sup> A grassroots organization in the state that has used the existing law feels that the absence of an overall citizen

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210. WIS. STAT. ANN. § 281.57 (West Supp. 1996).

211. Telephone Interview with JoAnne Kloppenberg, Wisconsin Office of the Attorney General (June 1996).

212. *Id.*

213. Telephone Interview with Jeff Schoepke, Wisconsin Governor's Office (Sept. 1996).

214. *Id.*

215. Telephone Interview with Ron Hammerschmidt, Kansas Dept. of Health and Environment (June 1996).

216. *Id.*

217. *Id.*

218. Telephone Interview with William Howland, Nebraska Office of the Attorney General (June 1996).

219. *Id.*

220. Telephone Interview with Letty Belin, New Mexico Office of the Attorney General (June 1996).



suit puts low-income communities at a great disadvantage.<sup>221</sup>

The interest in state citizen suits is not limited to New Mexico. In Maine, which has no statute, a bill is proposed yearly but has never been passed.<sup>222</sup> Some see such actions as possibly infringing on the property rights of individuals.<sup>223</sup> Legislation in New Hampshire was introduced in 1993 but similarly failed.<sup>224</sup> In Illinois, a 1992 Attorney General's Task Force on Environmental Legal Resources presented to the Illinois General Assembly a report that included a call for citizen suit legislation.<sup>225</sup> A key recommendation was that a bill be passed to enable private citizens to bring citizens' suits to enforce the state's environmental laws, as well as to recover attorney, expert, and witness fees when the citizens are the prevailing parties in environmental lawsuits.<sup>226</sup> To date, no such legislation has been enacted.

New York is considering a citizen suit statute, though similar proposals have been introduced for years.<sup>227</sup> Governor Pataki has endorsed the idea and there has been talk in committee of proposing a bill.<sup>228</sup> The bill would allow citizens to sue under state environmental conservation laws. The politics behind the Governor's endorsement of the bill is that he and the legislature are both advocating for the downsizing of government, and the amount of money and resources available to the attorney general's office has decreased.<sup>229</sup> This decrease in resources could cause the enforcement of environmental and wildlife protection laws to suffer.<sup>230</sup> Thus, at least in one instance, the trend toward government downsizing squarely intersects with increased citizen involvement.

Another example of a separate citizen suit provision was proposed in Oregon as part of a 1996 ballot initiative. Citizens in that state proposed the

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221. Telephone Interview with Doug Meicklejohn, New Mexico Environmental Law Center (June 1996).

222. Telephone Interview with Jeffery Pidot, Maine Office of the Attorney General (June 1996).

223. *Id.*

224. Telephone Interview with Anne Renner, New Hampshire Office of the Attorney General (June 1996).

225. Roland W. Burris & Diane L. Rosenfeld, *The Role of the Illinois Attorney General in Environmental Enforcement*, 13 N. ILL. U. L. REV. 563, 576 (1993).

226. *Id.* at 579.

227. Telephone Interview with James H. Ferriera, New York Office of the Attorney General (June 1996).

228. *Id.*

229. Telephone Interview with James H. Ferriera, New York Office of the Attorney General (June 1996).

230. *Id.*

“Oregon Clean Stream Initiative” which contained a citizen suit provision allowing any person to sue in state court to enforce its provisions.<sup>231</sup> The initiative would have prohibited livestock in and along polluted rivers and streams until plans were in place to protect water quality.<sup>232</sup> The initiative did not pass.<sup>233</sup>

#### IV. *LOOKING AHEAD*

##### A. *The Continuing Challenge of Citizen Empowerment*

As history has shown, not only have citizen suits been a successful policy tool in their own right, but private enforcement will continue to be a significant force in environmental regulation.<sup>234</sup> The overall effect of these suits has been to increase sensitivity to enforcement by the various state and federal environmental agencies.<sup>235</sup> But because environmental agencies face shrinking resources and declining regulatory capacity, a renewed look at citizen empowerment is now critical.<sup>236</sup>

Without a citizen suit statute, private organizations are at a great disadvantage when it comes to protecting the environment. In Idaho, for example, a state without a citizen suit statute, several environmental groups challenged a state agency’s decision to sell timber on school trust lands arguing that logging would result in erosion and damage to the land.<sup>237</sup> The groups relied on the public trust doctrine and a state declaratory judgment act, but the district court ruled that the plaintiffs lacked standing.<sup>238</sup> The Idaho Supreme Court affirmed, concluding the group did not have standing to challenge the sale.<sup>239</sup> A citizen suit statute could have established standing for these plaintiffs.

In states with citizen suit statutes, a significant limitation is the lack of

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231. Oregon Clean Stream Ballot Initiative (Nov. 1996) <<http://www.mediamaker.com/orwf/streamtwo.html>>.

232. *Id.*

233. DEFENDERS OF WILDLIFE, BIODIVERSITY, CITIZENS, AND THE STATES: 1996 BALLOT INITIATIVES (Nov. 1996).

234. DANIEL RIESEL, CITIZEN SUITS AND THE AWARD OF ATTORNEY’S FEES IN ENVIRONMENTAL LITIGATION (1994).

235. *Id.*

236. Boyer, *supra* note 71, at 837.

237. Selkirk-Proest Basin Ass’n v. Idaho, 899 P.2d 949 (Idaho 1995).

238. *Id.*

239. *Id.*; see also Idaho Conservation League v. Idaho, 911 P.2d 748 (Idaho 1995).

definition of specific terms. Without a definition of "environment" that includes plants, animals, and habitat, protection may be unavailable. Most state endangered species acts, for example, currently have no mechanism for citizen enforcement.<sup>240</sup> Of the forty-three state endangered species acts, none provide for citizen suits, even though some of the acts were modelled after the federal act. With talk at the federal level of turning over some aspects of endangered species protection to the states and the current administrative actions currently doing so, these acts are becoming increasingly important. In addition to being a complement to federal wildlife protection, a state ESA can also protect species that are not listed federally, but that are still in need of protection within a state's borders.

Because citizen suits are unavailable to enforce the state ESAs, conservation organizations are being forced to rely on other measures. In Oklahoma, to protect the state-endangered Ozark Cave grey fish, citizen groups have purchased the caves and surrounding land in which the fish is found.<sup>241</sup> In Indiana, activist groups trying to protect the spotted salamander and other wetland species have managed to arrange monthly meetings with the Department of Natural Resources.<sup>242</sup> Litigation remains unavailable as an option in these cases because of the lack of legal authority.

Exotic species control is another issue ripe for enforcement under citizen suit statutes. In general, exotic species control laws and regulations do not contain citizen suit provisions.<sup>243</sup> Harmful exotic species are doing significant damage to ecosystems throughout this country and are a major cause of biodiversity loss.<sup>244</sup> Louisiana may be the proving ground for such an exotic case. Nutria, a species of mammal, was introduced from Brazil. They have no natural predators in the state and have proliferated throughout the South, causing much harm.<sup>245</sup> Currently, the Louisiana Fish and Wildlife Department is contemplating hunting as a means to control their numbers.<sup>246</sup> If these measures prove inadequate, a citizen suit may result that will be the test case for determining whether such actions fall within the state's environmental

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240. BIODIVERSITY, *supra* note 6.

241. Telephone Interview with Mark Howery, Oklahoma Dept. of Wildlife Conservation (June 1996).

242. Telephone Interview with Indiana Wildlife Federation Staff (July 1996).

243. BIODIVERSITY, *supra* note 6.

244. OFFICE OF TECHNOLOGY ASSESSMENT (OTA), U.S. GOV'T. PRNTG. OFFICE, HARMFUL NON-INDIGENOUS SPECIES, PUB. NO. OTA-F-5651 (1993).

245. Telephone Interview with Mike Wascom, Louisiana Sea Grant Legal Program (June 1996).

246. *Id.*

quality standards.<sup>247</sup>

In addition to endangered species protection and control of exotic species, other non-traditional areas of environmental and natural resources law could be served by citizen suits. Conservation of biodiversity entails many components, ranging from habitat acquisition to management of state-owned lands.<sup>248</sup> Yet none of these components have enforcement mechanisms to ensure their implementation.<sup>249</sup> Thus, in states without a general citizen suit statute or relevant individualized statute, protection in these key areas can fall by the wayside.

Citizen suit statutes should define “environment” and “natural resources” to include wildlife and habitat, or “biodiversity.”<sup>250</sup> By utilizing such a definition, the protection of plants, animals, and habitat will be bolstered, and the ecosystems upon which they depend will also be better protected. Citizen suit statutes should also contain a provision authorizing the award of costs and attorney’s fees if the citizen wins. Without such a provision, individuals and grassroots organizations may be deterred from filing a needed lawsuit because of limited resources. In the case of a citizen suit, the citizen is, in effect, acting as an attorney general with salaried attorneys to carry out enforcement.<sup>251</sup> It does not make sense for citizens not to be able to recoup attorneys’ fees if they are successful in enforcing an environmental law that should have been enforced by the government itself.

Another deterrent to filing these suits are countersuits called Strategic Lawsuits Against Public Participation (SLAPP). SLAPPs are civil suits filed against political opposition, commonly alleging discrimination, defamation, conspiracy, or interference with a contract.<sup>252</sup> A typical SLAPP involves a real estate developer suing a citizen’s group or individuals who have spoken out against the developer’s project.<sup>253</sup> For example, a retired wildlife biologist in Minnesota was sued recently when he spoke out against a developer’s plan to

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247. Telephone Interview with Mike Wascom, Louisiana Sea Grant Legal Program (June 1996).

248. BIODIVERSITY, *supra* note 6, at 3.

249. *Id.* at 2-3.

250. *See supra* Part III.B.

251. Cross, *supra* note 15.

252. George W. Pring, *SLAPPs: Strategic Lawsuits Against Public Participation*, 7 *PACE ENVTL. L. REV.* 39 (1989).

253. Geoffrey P. Huling, *Tired of Being Slapped Around: States Take Action Against Lawsuits Designed to Intimidate and Harass*, 25 *RUTGERS L.J.* 401, 402 (1994).

build townhouses across the lake from a wildlife sanctuary.<sup>254</sup> While citizens should be subject to restraints against coercive and intimidating actions, the free speech of citizen groups must also be protected.<sup>255</sup> SLAPPs tend to stifle participation by deterring groups from speaking out.<sup>256</sup> Some states have passed laws making it easier to get SLAPP suits dismissed and collect reimbursement for attorney fees as well as punitive damages.<sup>257</sup>

Finally, state citizen suit statutes should allow for suits against any and all parties. By restricting these actions to only those against governmental entities, an entire segment of violators may go unchecked. And all forms of civil relief should be available, rather than simply equitable relief to stop an action. Money damages need to be available as an option to begin restoring our damaged ecosystems. True equity demands nothing less.

### B. *A Model Law*

A proposed model for an environmental citizen suit statute:

- (1) Each person, including future generations, has the right to a healthful environment. Each person may enforce this right against any party through appropriate legal proceedings, including declaratory and equitable relief, civil penalties, and restoration damages.
- (2) Environment includes, but is not limited to, all the state's natural resources including land, air, and water resources, and plant and animal species, and the habitat upon which they depend.
- (3) The court may award the full costs of litigation, including but not limited to reasonable expert witness and attorney's fees, to the prevailing party.
- (4) This act is supplementary to existing rights and procedures provided by law.

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254. Amy Kvebelbeck, *Some Say First Amendment Taking A Beating*, ROCKY MOUNTAIN NEWS, Aug. 14, 1994, at 12A [hereinafter Kvebelbeck].

255. U.S. CONST., amend. I.

256. Kvebelbeck, *supra* note 254.

257. *See, e.g.*, CAL. CIV. PRO. CODE § 425.16 (West Supp. 1997). Other states with similar laws are Delaware, Minnesota, Nevada, Oklahoma, Rhode Island, and Washington.

## V. CONCLUSION

Weak enforcement of environmental laws has led to serious degradation of our natural surroundings. Native species are disappearing throughout the country.<sup>258</sup> Human behavior threatens valuable land and water ecosystems, with a great potential for irreversible damage. One crucial solution to environmental harm is better enforcement of existing environmental laws, and greater enforcement must come, at least in part, from citizens.

Not only can citizen suit statutes offer protection for the environment, but their use should expand to include valuable ecological resources. Wetlands protection, exotic species control, and conservation of threatened and endangered species are important areas of environmental concern in which environmental citizen suit statutes should be used to protect our nation's dwindling resources.

All states should possess a strong citizen suit statute. Where provisions already exist, they have proven to assist government enforcement efforts. If the states are to receive any additional legal authority over the nation's biological diversity from the federal government, a concerted effort to improve citizen enforcement of sound natural stewardship is needed both at the state and local level. This article is meant to educate states and their citizens of the tools their sister states are using to improve the protection of natural values. Hopefully, this article will continue to educate the general public about the central importance of biological diversity.

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258. ENDANGERED ECOSYSTEMS: A STATUS REPORT ON AMERICA'S VANISHING HABITAT AND WILDLIFE, DEFENDERS OF WILDLIFE (Dec. 1995).

**APPENDIX A**  
**Summaries of Existing State Citizen Suit Statutes**

State and Title	Citation	Standing	Remedies	Costs	Definition
Connecticut Connecticut Environmental Protection Act of 1971	CONN. GEN. STAT. §§ 22a-14 to 20 (1997).	"any person . . . association, organization . . . may maintain an action for declaratory and equitable relief against the state or political subdivision thereof for the protection of the public trust in the air, water, and other natural resources of the state from unreasonable pollution, impairment, or destruction"	declaratory or equitable relief	none stated	none stated
Florida Environmental Protection Act of 1971	FLA. STAT. ANN. § 403.412 (West 1996).	"The Department of Legal Affairs, any political subdivision or municipality of the state, or a citizen of the state may maintain an action for injunctive relief against any government agency charged by law with the duty of enforcing laws, rules, and regulations for the protection of the air, water, and other natural resources of the state [or any person]."	injunctive relief	prevailing party is entitled to costs and attorney fees unless action is a NPDES action.	none stated

State and Title	Citation	Standing	Remedies	Costs	Definition
Hawaii	HI. CONST. art. XI, § 9	"Each person has the right to a clean and healthful environment as defined by laws relating to environmental quality, including . . . conservation, protection, and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings . . . ."	none stated	none stated	none stated
Illinois	IL. CONST. art. 11, § 2	"Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings . . . ."	none stated	none stated	none stated
Indiana	IND. CODE. ANN. §§ 13-30-1-1 to -12 (Michie 1997).	"A state, city, town, county, local agency, officer, a citizen of Indiana, corporation . . . company, partnership, or association may bring an action for declaratory and equitable relief in the name of the state against any legal entity including estates and trusts for the protection of the environment of Indiana from significant pollution, impairment, or destruction"	temporary or permanent declaratory or injunctive relief	none stated	none stated



State and Title	Citation	Standing	Remedies	Costs	Definition
Iowa	IOWA CODE § 455B.111 (1996).	"A person shall have standing to commence an action...if the person is adversely affected by the alleged violation or alleged failure to perform a duty or act."	none stated	Court may award costs of litigation, including reasonable attorney and expert witness fees, to any party	none stated
Louisiana	LA. REV. STAT. ANN. § 30:2026 (West 1997).	"[A]ny person having an interest, which is or may be adversely affected, may commence a civil action on his own behalf against any person whom he alleges to be in violation of this subtitle (Environmental Quality)."	temporary or permanent injunctive relief; civil damages not to exceed ten thousand dollars for each day of the continued non-compliance	attorney's fees, expert witness fees, actual damage and penalties for continuing violations at court's discretion	none stated
Maryland Environmental Standing Act	MD. CODE. ANN. NAT. RES. § 1-503 (1997).	(a) "The following persons have standing to bring and maintain an action . . . in the courts of equity of this State . . .  (3) Any other person, regardless of whether he possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to him is threatened . . . ."	writ of mandamus; equitable relief including declaratory relief against any officer or agency of the state or political subdivision for failure . . . to perform a non-discretionary ministerial duty imposed upon them under an environmental statute, ordinance, rule, regulation . . . for the protection of air, water, or other natural resources of the state	none stated	none stated

State and Title	Citation	Standing	Remedies	Costs	Definition
Michigan Environmental Protection Act	MICH. COMP. LAWS §§ 324.1701-.1706 (West 1996).	"any person may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction"	declaratory and equitable relief	costs may be apportioned to the parties if the interest of justice require	none stated
Minnesota Environmental Rights Act	MINN. STAT. §§ 116B.01-.13 (1997).	"Any person residing within the state . . . partnership, association, organization, or other entity having shareholders, members, partners or employees residing in the state may maintain a civil action against any person in the name of the state of MN for the protection of the air, water, land, or other natural resources located within the state, whether publicly or privately owned from, pollution, impairment, or destruction."	declaratory or equitable relief	none stated	"Natural Resources" includes but is not limited to, all mineral, animal botanical, air, water, land, timber, soil, quietude, recreational and historical resource

State and Title	Citation	Standing	Remedies	Costs	Definition
Nevada	NEV. REV. STAT. §§. 41.540-.570 (1995).	"Any person who is a resident of this state may commence an action in any district court of this state where any violation is alleged to have occurred, to enforce compliance with any statute, regulation, or ordinance for the protection of the air, water, and other natural resources from pollution, impairment, or destruction if such person has first given 30 days written notice of his intent to file suit."	temporary or permanent injunctive relief or an order to enforce compliance with any statute, regulation, or ordinance for the protection of the air, water, and other natural resources from pollution, impairment or destruction	costs may be apportioned to the parties if the interest of justice require	none stated
New Jersey Environmental Rights Act	N.J. STAT. ANN. §§ 2A:35A-1 to -14 (West 1996).	"Any person may commence a civil action in a court of competent jurisdiction against any other person alleged to be in violation of any statute, regulation, or ordinance which is designed to prevent or minimize pollution, impairment, or destruction of the environment."	injunctive or other equitable relief to compel compliance with a statute, regulation, ordinance; civil penalties as provided by law	attorney's and expert witness fees at the discretion of the court	none stated

State and Title	Citation	Standing	Remedies	Costs	Definition
North Dakota Environmental Law Enforcement Act of 1975	N.D. CENT. CODE §§ 32-40-01 to -11 (1997).	"Any state agency, with the approval of the attorney general; any person; or any county, city, township, or other political subdivision, aggrieved by the violation of any environmental statute, rule, or regulation of this state may bring an action . . . either to enforce such statute, rule or regulation, or to recover any damages that have occurred . . . ."	money damages, and equitable relief	court may apportion costs as the interest of justice require	"Environ- mental statute" means any statute for the protection of the air, water, natural resources, including land, minerals, and <u>wildlife</u> from pollution, impair- ment, or destruc- tion.
South Dakota	S.D. CODIFIED LAWS ANN. §§ 34A-10-1 to -17 (Michie 1992 & Supp. 1997).	"any person . . . organization or other legal entity may maintain an action . . . . for declaratory and equitable relief against the state, any political subdivision thereof, any instrumentality or agency of the state . . . . for the protection of air, water and other natural resources and the public trust therein from pollution, impairment or destruction."	declaratory and equitable relief	none stated	none stated

State and Title	Citation	Standing	Remedies	Costs	Definition
Wyoming Environmental Quality Act	WYO. STAT. § 35-11-904 (Michie 1997).	"[A]ny person having an interest which is or may be adversely affected, may commence a civil action on his own behalf to compel compliance with this act only to the extent that such action could have been brought in federal district court under section 520 of P.L. 95-87 as that law is worded on August 3, 1977 . . . against any governmental entity [or any other person] for alleged violations of any provision of the Environmental Quality Act."	none stated	litigation costs including attorney and expert witness fees in discretion of the court	none stated

**APPENDIX B**  
**State-By-State Citizen Suit Checklist**

"Umbrella" Citizen Suit Statute Checklist						
State	Yes/No		Against Any Person/ Against State Only		For Any Threat to the Environment/ For Violation of Laws Only	
Alabama		X				
Alaska		X				
Arizona		X				
Arkansas		X				
California		X				
Colorado		X				
Connecticut	X			X	X	
Delaware		X				
Florida	X		X			X
Georgia		X				
Hawaii	X		X		X	

"Umbrella" Citizen Suit Statute Checklist						
State	Yes/No		Against Any Person/ Against State Only		For Any Threat to the Environment/ For Violation of Laws Only	
	Idaho		X			
Illinois	X		X		X	
Indiana	X		X		X	
Iowa	X		X			X
Kansas		X				
Kentucky		X				
Louisiana	X		X		X	X
Maine		X				
Maryland	X			X	X	
Massachusetts		X				
Michigan	X		X		X	
Minnesota	X		X		X	
Mississippi		X				
Missouri		X				

"Umbrella" Citizen Suit Statute Checklist						
State	Yes/No		Against Any Person/ Against State Only	For Any Threat to the Environment/ For Violation of Laws Only		
Montana		X				
Nebraska		X				
Nevada	X		X			X
New Hampshire		X				
New Jersey	X		X			X
New Mexico		X				
New York		X				
North Carolina		X				
North Dakota	X		X			X
Ohio		X				
Oklahoma		X				
Oregon		X				
Rhode Island		X				
South Carolina		X				



"Umbrella" Citizen Suit Statute Checklist						
State	Yes/No		Against Any Person/ Against State Only		For Any Threat to the Environment/ For Violation of Laws Only	
	South Dakota	X		X		X
Tennessee		X				
Texas		X				
Utah		X				
Vermont		X				
Virginia		X				
Washington		X				
West Virginia		X				
Wisconsin		X				
Wyoming	X		X			X

**APPENDIX C**  
**Other State Citizen Empowerment Tools**

<b>Other State Citizen Empowerment Tools</b>			
<b>State</b>	<b>Progressive Public Trust</b>	<b>Individual Citizen Suit Statutes</b>	<b>State Constitutional Environmental Provision</b>
Alabama			X
Alaska	X		X
Arizona	X	X	
Arkansas		X	
California	X		X
Colorado	X		X
Connecticut			
Delaware			
Florida	X		X

Other State Citizen Empowerment Tools			
State	Progressive Public Trust	Individual Citizen Suit Statutes	State Constitutional Environmental Provision
Georgia			
Hawaii	X	X	
Idaho	X	X	
Illinois			X
Indiana			
Iowa			
Kansas			
Kentucky			
Louisiana	X	X	X
Maine			
Maryland	X	X	
Massachusetts		X	X
Minnesota			
Mississippi	X		

Other State Citizen Empowerment Tools			
State	Progressive Public Trust	Individual Citizen Suit Statutes	State Constitutional Environmental Provision
Missouri			
Montana	X		
Nebraska			
Nevada			
New Hampshire	X		
New Jersey			X
New Mexico			X
New York			X
North Carolina	X	X	
North Dakota		X	
Ohio			
Oklahoma			
Oregon	X		
Pennsylvania		X	X

Other State Citizen Empowerment Tools			
State	Progressive Public Trust	Individual Citizen Suit Statutes	State Constitutional Environmental Provision
Rhode Island	X	X	X
South Carolina		X	X
South Dakota			
Tennessee			
Texas			X
Utah			
Vermont	X	X	
Virginia			
Washington	X	X	
West Virginia		X	
Wisconsin	X	X	
Wyoming			