

1 AN ACT concerning wetlands.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Wetlands Protection Act.

6 Section 5. This Act does not apply to property within a
7 municipality with a population greater than 500,000 nor to
8 property within the incorporated or unincorporated area of a
9 county with a population greater than 3,000,000.

10 Section 10. Definitions. For the purposes of this Act:

11 "ADID" means those aquatic sites identified by the United
12 States Environmental Protection Agency and the United States
13 Corps of Engineers as areas generally unsuitable for disposal
14 of dredged or fill material in accordance with 40 CFR Part
15 230.80.

16 "Affected property" means any property upon which a
17 regulated activity is conducted.

18 "Agency" means the Illinois Environmental Protection
19 Agency.

20 "Avoidance" means any action taken in a manner such that
21 a regulated activity will not occur.

22 "Board" means the Illinois Pollution Control Board.

23 "Bog" means a peat-accumulating wetland that has no
24 significant inflows or outflows and supports acidophilic
25 mosses, particularly sphagnum, resulting in highly acidic
26 conditions.

27 "Commencing such a regulated activity" means any steps
28 taken in preparation of conducting a regulated activity that
29 may impact the affected property, such as cutting, filling,
30 pumping of water, and earth movement.

1 "Committee" means the Illinois Wetlands Advisory
2 Committee.

3 "Contiguous" means a wetland that is delineated on the
4 affected property and extends beyond the boundary of that
5 property.

6 "Converted wetland" means a wetland that has been
7 drained, dredged, filled, leveled, or otherwise manipulated
8 (including the removal of woody vegetation or any activity
9 that results in impairing or reducing the flow and
10 circulation of water) for the purpose of or to have the
11 effect of making possible the production of an agricultural
12 commodity without further application of the manipulations
13 described herein if: (i) such production would not have been
14 possible but for such action, and (ii) before such action the
15 land was a wetland, farmed wetland, or farmed-wetland pasture
16 and was neither highly erodible land nor highly erodible
17 cropland.

18 "Corps of Engineers" or "COE" means the United States
19 Army Corps of Engineers.

20 "Cypress swamp" means forested, permanent or
21 semi-permanent bodies of water, with species assemblages
22 characteristic of the Gulf and Southeastern Coastal Plains
23 and including bald cypress, and that are restricted to
24 extreme southern Illinois.

25 "Delegation agreement" means a written document executed
26 between the COE and the Agency that authorizes the Agency to
27 assume all of the COE's authority under the federal Clean
28 Water Act regarding activities in wetlands. Such delegation
29 agreement shall include federal funding sufficient to allow
30 the Agency to carry out its responsibilities under such
31 agreement.

32 "Director" means the Director of the Illinois
33 Environmental Protection Agency.

34 "Fen" means a wetland fed by an alkaline water source

1 such as a calcareous spring or seep.

2 "Floristic quality index" means an index calculated using
3 the Floristic Quality Assessment Method of assessing
4 floristic integrity or quality.

5 "Incidental fallback" means the redeposit of small
6 volumes of dredged material that is incidental to excavation
7 activity in waters of the State when such material falls back
8 to substantially the same place as the initial removal.

9 "Incidentally created" means created as a result of any
10 normal or routine activity coincidental with the conduct of
11 legitimate business enterprises, except that a wetland or
12 depression created as mitigation for any activity affecting
13 wetlands is not "incidentally created".

14 "Isolated wetlands" means those areas that are inundated
15 or saturated by surface or ground water at a frequency or
16 duration sufficient to support, and that under normal
17 circumstances do support, a prevalence of vegetation
18 typically adapted for life in saturated soil conditions, and
19 that are not regulated under the federal Clean Water Act (33
20 U.S.C. 1251-1387).

21 "Panne" means wet interdunal flats located near Lake
22 Michigan.

23 "Person" means an individual, partnership,
24 co-partnership, firm, company, limited liability company,
25 corporation, association, joint stock company, trust, estate,
26 political subdivision, state agency, or other legal entity,
27 or their legal representative, agent, or assign.

28 "Prior converted cropland" means a converted wetland
29 where the conversion occurred prior to December 23, 1985, an
30 agricultural commodity has been produced at least once before
31 December 23, 1985, and as of December 23, 1985, the converted
32 wetland did not support woody vegetation and met the
33 following hydrologic criteria: (i) inundation was less than
34 15 consecutive days during the growing season or 10 percent

1 of the growing season, whichever is less, in most years (50
2 percent chance or more); and (ii) if a pothole, playa, or
3 pocosin, ponding was less than 7 consecutive days during the
4 growing season in most years (50 percent chance or more) and
5 saturation was less than 14 consecutive days during the
6 growing season most years (50 percent chance or more).

7 "Regulated activity" means the discharge of dredged or
8 fill material into a wetland, the drainage of a wetland, or
9 excavation of a wetland that results in more than incidental
10 fallback.

11 "Threatened or endangered species" means those species
12 that have been designated as threatened or endangered by the
13 Illinois Endangered Species Protection Board pursuant to the
14 Illinois Endangered Species Protection Act and those species
15 that have been designated as threatened or endangered by the
16 U.S. Fish and Wildlife Service pursuant to the Endangered
17 Species Act (35 U.S.C. 1531-1544).

18 "Upland" means non-wetland, when used to describe a
19 particular land use, or non-hydric, when used to describe a
20 soil type.

21 "Wetlands" means those areas that are inundated or
22 saturated by surface or ground water at a frequency or
23 duration sufficient to support, and that under normal
24 circumstances do support, a prevalence of vegetation
25 typically adapted for life in saturated soil conditions.

26 Section 15. Exemptions.

27 (a) As long as they do not have as their purpose
28 bringing a wetland into a use to which it was not previously
29 subject, the following are not prohibited by or otherwise
30 subject to regulation under this Act:

31 (1) Normal farming, silviculture, and ranching
32 activities, such as plowing, seeding, cultivating, minor
33 drainage, harvesting for the production of food, fiber,

1 and forest products, or upland soil and water
2 conservation practices.

3 (2) Maintenance, including emergency reconstruction
4 of recently damaged parts, of currently serviceable
5 structures, such as dikes, dams, levees, groins, riprap,
6 breakwaters, causeways, and bridge abutments or
7 approaches, and transportation structures.

8 (3) Construction or maintenance of farm or stock
9 ponds or irrigation ditches or the maintenance of
10 drainage ditches.

11 (4) Construction of temporary sedimentation basins
12 on a construction site that does not include any
13 regulated activities within a wetland.

14 (5) Construction or maintenance of farm roads,
15 forest roads, or temporary roads for moving mining
16 equipment, where such roads are constructed and
17 maintained, in accordance with best management practices,
18 to assure that flow and circulation patterns and chemical
19 and biological characteristics of the wetland are not
20 impaired, that the reach of the wetland is not reduced,
21 and that any adverse effect on the aquatic environment
22 will be otherwise minimized.

23 (6) Unless they are to be conducted in Class IA or
24 Class IB wetlands, activities for the placement of
25 pilings for linear projects, such as bridges, elevated
26 walkways, and power line structures.

27 (7) Installation and maintenance of signs,
28 lighting, and fences and the mowing of vegetation within
29 existing maintained rights-of-way.

30 (8) Repair and maintenance of existing buildings,
31 facilities, lawns, and ornamental plantings.

32 (9) Construction projects that have obtained any
33 necessary building permits from applicable local
34 jurisdictions prior to the effective date of this Act.

1 (10) Application of media, including deicing media,
2 on the surface of existing roads for purposes of public
3 safety.

4 (11) Non-surface-disturbing surveys and
5 investigations for construction, planning, maintenance,
6 or location of environmental resources.

7 (12) Wetland management practices on lands that are
8 used primarily for the management of waterfowl or other
9 migratory water birds or furbearers if such practices
10 took place on these lands prior to the effective date of
11 this Act. This includes vegetation management that may
12 include the use of fire, chemical, or mechanical
13 (hydro-axe, bulldozer, roto disk, or similar equipment)
14 removal of invading woody or herbaceous vegetation to
15 maintain a preferred successional stage. Use of chemicals
16 must be by a certified applicator and chemicals must be
17 registered for appropriate use. Clearing or removal of
18 woody vegetation shall be limited to 4-inch dbh or
19 smaller material for the purpose of establishing or
20 maintaining the successional stage of a wetland as a
21 herbaceous wetland vegetated by native moist soil plants
22 or selected wildlife food plants.

23 (b) Any exemption authorized by and pertaining to
24 wetlands that are subject to regulation under the federal
25 Clean Water Act (33 U.S.C. 1251-1387) or rules adopted
26 thereunder shall also be an exemption for the purpose of this
27 Act.

28 (c) The following are not wetlands for purposes of this
29 Act:

30 (1) Waste treatment systems, including treatment
31 ponds or lagoons, designed to comply with water quality
32 standards of the State or to remediate a site in
33 accordance with an approved Agency program, and former
34 waste treatment systems that have ceased operations less

1 than 33 years before the date the permit application is
2 received by the Agency or that are undergoing remediation
3 in accordance with an approved Agency program.

4 (2) A drainage or irrigation ditch.

5 (3) An artificially irrigated area that would
6 revert to upland if the irrigation ceased.

7 (4) An artificial lake or pond created by
8 excavating or diking upland to collect and retain water
9 for the primary purpose of stock watering, irrigation,
10 wildlife, fire control, or ornamentation or landscaping
11 or as a settling pond.

12 (5) Except for wetlands created pursuant to mining
13 activities described in item (7), an incidentally created
14 water-filled depression, unless (i) ownership of the
15 property containing the depression has been transferred
16 away from the party who incidentally created the
17 water-filled depression, (ii) the ownership transfer
18 occurred more than 12 months prior to the commencement of
19 an otherwise regulated activity, (iii) the use of the
20 property has changed from the use that existed when the
21 property was transferred from the party who incidentally
22 created the water-filled depression, (iv) the resulting
23 body of water meets the definition in this Act of a
24 wetland, (v) the ownership of the property has not
25 transferred from the party who created the incidentally
26 created water-filled depression, and (vi) the depression
27 was not created more than 33 years before the date the
28 permit application is received by the Agency.

29 (6) Stormwater or spill management systems,
30 including retention and detention basins, ditches and
31 channels, and former stormwater or spill management
32 systems that have ceased operations less than 33 years
33 before the date the permit application is received by the
34 Agency or that are undergoing remediation in accordance

1 with an approved Agency program.

2 (7) Waters that undergo mining activities conducted
3 pursuant to a federal, State, regional, or local permit
4 that requires the reclamation of the affected wetlands if
5 the reclamation will be completed within a reasonable
6 period of time after completion of activities at the site
7 and, upon completion of such reclamation, the wetlands
8 will support functions generally equivalent to the
9 functions supported by the wetlands at the time of
10 commencement of such activities.

11 (8) Prior converted cropland.

12 Section 20. Applicability. The requirements of this Act
13 shall apply to all isolated wetlands as that term is defined
14 in this Act. In the event that an isolated wetland ceases to
15 meet that definition because it becomes subject to regulation
16 under the federal Clean Water Act, the wetland shall no
17 longer be subject to the provisions of this Act.

18 On and after July 1, 2007, the requirements of this Act
19 shall apply to wetlands, if and only if by that date the COE
20 has entered into a delegation agreement with the Agency;
21 provided, however, that the provisions of this Act shall
22 continue in full force and effect as applied to isolated
23 wetlands. The delegation agreement shall provide, at a
24 minimum, that all delineation, classification, notification,
25 and permitting requirements shall be at least as stringent as
26 those contained in this Act.

27 Section 25. Wetland delineation; classification;
28 notification; permits.

29 (a) The requirements of this Section apply beginning on
30 the effective date of the rules required under Section 40 or
31 18 months from the effective date of this Act, whichever
32 occurs earlier. The procedures and regulatory criteria for

1 the delineation, classification, notification, and permitting
2 for wetlands shall be conducted in accordance with the
3 provisions of this Section.

4 (b) Any person who intends to conduct a regulated
5 activity within the State may request a determination from
6 the Agency as to the existence, location, and surface area of
7 any wetlands on or contiguous to the affected property.
8 Nothing in this Section shall require the person to seek such
9 a determination, however, failure to seek and obtain a
10 determination shall not be a defense against a violation of
11 this Act.

12 The person seeking a determination shall provide the
13 Agency with sufficient information to render such a
14 determination. The information shall include a wetland
15 delineation made in accordance with the COE Wetlands
16 Delineation Manual, Technical Report Y-87-1. Delineation of
17 the portion of a contiguous wetland not on the affected
18 property shall be made to the extent reasonably possible, and
19 methods other than physical on-site evaluations shall be
20 considered by the Agency.

21 The Agency shall provide notice to the applicant as to
22 whether a submitted application is complete. Unless the
23 Agency notifies the applicant that the application is
24 incomplete within 15 days of receipt of the application, the
25 application shall be deemed complete. The Agency may request
26 additional information as needed to make the completeness
27 determination. The Agency shall, within 30 days after receipt
28 of a complete determination request, provide the person with
29 a determination as to the existence, location, and surface
30 area of wetlands located on or contiguous to the affected
31 property.

32 If the Agency determines that there are no wetlands on
33 the affected property, any otherwise regulated activity
34 conducted on the property shall not be subject to the

1 provisions of this Act.

2 If the Agency determines that there is one or more
3 wetlands on or contiguous to the affected property, the
4 person may apply to the Agency for classification of such
5 wetlands.

6 Any determination of a wetland by the Agency is a final
7 decision for purposes of appeal to the Board.

8 (c) If a person intends to conduct a regulated activity,
9 the person may, prior to commencing the regulated activity,
10 request that the wetland be classified as a Class IA, Class
11 IB, Class II, or Class III wetland in accordance with the
12 provisions of this Section. Nothing in this Section shall
13 require the person to seek such a classification, however any
14 wetlands not so classified shall be considered Class IA
15 wetlands for purposes of this Act.

16 The person seeking a classification shall provide the
17 Agency with sufficient information to render such a
18 classification. The information shall include a wetland
19 delineation made in accordance with the COE Wetlands
20 Delineation Manual, Technical Report Y-87-1.

21 Unless the Agency notifies the applicant that the request
22 for classification is incomplete within 15 days after receipt
23 of the request, the application shall be deemed complete.

24 The Agency may request additional information as needed
25 to make the completeness determination. The Agency shall,
26 within 30 days after receipt of classification request,
27 provide the person with a classification of wetlands located
28 on or contiguous to the affected property. If the Agency
29 fails to provide the person with a classification within 30
30 days, the classification requested by the person shall be
31 deemed granted.

32 The Agency shall classify a wetland as:

33 (1) A Class IA wetland if and only if (A) the
34 wetland is or encompasses a bog; (B) the wetland is or

1 encompasses a fen; (C) the wetland is or encompasses a
2 panne; (D) the wetland is or encompasses a cypress swamp;
3 or (E) a threatened or endangered species has been
4 identified in the wetland, provided that a wetland will
5 not be classified as Class IA based solely on the
6 presence of an endangered plant and the owner of the
7 wetland authorizes the taking of that plant pursuant to
8 the Illinois Endangered Species Protection Act.

9 (2) A Class IB wetland if and only if the wetland
10 (A) is or encompasses an ADID site; or (B) has a
11 Floristic Quality Index (FQI) that is equal to or greater
12 than 20 or a mean coefficient of conservatism (Mean C)
13 equal to or greater than 3.5, determined in accordance
14 with rules adopted by the Agency.

15 (3) A Class II wetland if and only if the wetland
16 is not a Class IA, Class IB, or Class III wetland.

17 (4) A Class III wetland if and only if (A) the
18 wetland is not a Class IA or Class IB wetland, and (B)
19 the total size of the wetland, including contiguous
20 areas, is (i) less than one-quarter acre or (ii) less
21 than one-half acre if the wetland is in a county that
22 does not have authority to establish stormwater
23 management programs under Section 5-1062 or Section
24 5-1062.1 of the Counties Code.

25 Any classification of a wetland by the Agency is a final
26 decision for purposes of appeal to the Board.

27 (d) Subject to the provisions of Section 35 regarding
28 general permits, no person may conduct or cause to be
29 conducted a regulated activity within or affecting a wetland
30 in such a manner that the biologic or hydrologic integrity of
31 the wetland is impaired within the scope of this Act, except
32 in accordance with the terms of an individual permit issued
33 by the Agency or authorization to proceed as applicable under
34 this Section.

1 (1) Class IA.

2 (A) A permit to conduct a regulated activity
3 affecting a Class IA wetland within the scope of
4 this Act shall be granted if documentation is
5 submitted that demonstrates that avoidance of
6 impacts to a Class IA wetland precludes the
7 reasonable economic use of the entire parcel and
8 that no practicable alternative to wetland
9 modification exists.

10 (B) No permit under this item (1) may be
11 issued by the Agency without a public notice and
12 opportunity for public hearing being afforded. In
13 the event that an affected party requests a public
14 hearing, a public hearing shall be held.

15 (C) Wetland losses under this item (1) shall
16 be mitigated at a ratio of no greater than 3.5:1 and
17 shall be mitigated in kind and within the same
18 watershed as the impacted area restoring, to the
19 maximum degree practicable as determined by the
20 Agency, both the type and functions of the wetland
21 that will be affected by the regulatory activity.
22 When the type and functions of the wetland that will
23 be affected by the activity cannot be adequately
24 restored to the maximum degree practicable by the
25 ratio allowed in this paragraph, the Agency may, on
26 a case-by-case basis, increase this ratio based on
27 site-specific criteria to be developed by rule. The
28 mitigation shall be consistent with rules adopted by
29 the Board and may consist of actual replacement or
30 participation in a mitigation banking program or
31 other compensation program approved by the Agency.

32 (2) Class IB.

33 (A) A permit to conduct a regulated activity
34 affecting a Class IB wetland within the scope of

1 this Act shall be granted if documentation is
2 submitted that demonstrates that no practicable
3 alternative to wetland modification exists.

4 (B) No permit under this item (2) may be
5 issued by the Agency without a public notice and
6 opportunity for public hearing being afforded. In
7 the event that an affected party requests a public
8 hearing, a public hearing shall be held.

9 (C) Wetland losses under this item (2) shall
10 be mitigated at a ratio of no greater than 3:1 and
11 shall be mitigated in kind and within the same
12 watershed as the impacted area restoring, to the
13 maximum degree practicable as determined by the
14 Agency, both the type and functions of the wetland
15 that will be affected by the regulatory activity.
16 When the type and functions of the wetland that will
17 be affected by the activity cannot be adequately
18 restored to the maximum degree practicable by the
19 ratio allowed in this paragraph, the Agency may, on
20 a case-by-case basis, increase this ratio based on
21 site-specific criteria to be developed by rule. The
22 mitigation shall be consistent with rules adopted by
23 the Board and may consist of actual replacement or
24 participation in a mitigation banking program or
25 other compensation program approved by the Agency.

26 (3) Class II.

27 (A) A permit to conduct a regulated activity
28 affecting a Class II wetland within the scope of
29 this Act shall be granted if documentation is
30 submitted demonstrating that a minimization plan to
31 minimize or alleviate the impact on the wetland has
32 been developed and applied as reasonably
33 appropriate.

34 (B) No permit under this item (3) may be

1 issued by the Agency without a public notice and
2 opportunity for public hearing being afforded. In
3 the event that an affected party requests a public
4 hearing, the Agency may at its discretion hold a
5 public hearing on the proposed regulated activity.

6 (C) Wetland losses under this item (3) shall
7 be mitigated at a ratio of no greater than 1.5:1,
8 and shall be mitigated in kind and within the same
9 watershed as the impacted area restoring, to the
10 maximum degree practicable as determined by the
11 Agency, both the type and functions of the wetland
12 that will be affected by the regulatory activity.
13 When the type and functions of the wetland that will
14 be affected by the activity cannot be adequately
15 restored to the maximum degree practicable by the
16 ratio allowed in this paragraph, the Agency may, on
17 a case-by-case basis, increase this ratio based on
18 site-specific criteria to be developed by rule. The
19 mitigation shall be consistent with rules adopted by
20 the Board and may consist of actual replacement,
21 participation in a mitigation banking program or
22 other compensation programs approved by the Agency,
23 education or research programs, or other appropriate
24 programs.

25 (4) Class III.

26 (A) No regulated activity covered under this
27 Act that will impact an area that has been
28 classified as a Class III wetland may be undertaken
29 without prior notification to the Agency.

30 (B) The notification shall include (i) a
31 sketch that reasonably depicts the area that will be
32 affected by the regulated activity, including
33 wetland and water boundaries for the areas affected
34 and the existing land uses and structures; (ii) a

1 description of the proposed activity, including its
2 purpose; (iii) a description of any public benefit
3 to be derived from the proposed project; and (iv)
4 the names and addresses of adjacent landowners as
5 determined by the current tax assessment roles.

6 (C) Upon receipt of a notification of intent,
7 the Agency shall verify that the regulated activity
8 will affect a wetland that it previously classified
9 as Class III. If the Agency so verifies, the Agency
10 shall send the person, within 30 days of the receipt
11 of the notification, a response stating that the
12 regulated activity may proceed. If the Agency
13 cannot so verify, the Agency shall send the person,
14 within 30 days of the receipt of the notification, a
15 response stating that no classification has been
16 made by the Agency or that a classification of IA,
17 IB, or II was made and that the regulated activity
18 may not proceed until either a classification is
19 made pursuant to this Section, or a permit is
20 obtained, as applicable. Failure of the Agency to
21 respond to a notification shall be deemed as an
22 authorization to proceed.

23 (D) No permit shall be required for a
24 regulated activity covered under this Act that will
25 impact an area that has been classified as a Class
26 III wetland.

27 (e) Within 15 days of the receipt of a permit
28 application, the Agency shall determine if an application is
29 complete. To be deemed complete, an application must provide
30 all information, as requested in Agency application forms,
31 sufficient to evaluate the application. The information shall
32 include, at a minimum, the following:

33 (1) A sketch that reasonably depicts the area that
34 will be affected by the regulated activity, including

1 wetland and water boundaries for the areas affected and
2 the existing land uses and structures.

3 (2) A description of the proposed activity,
4 including its purpose.

5 (3) A description of any public benefit to be
6 derived from the proposed project.

7 (4) The names and addresses of adjacent landowners
8 as determined by the current tax assessment roles.

9 (5) A wetland delineation made in accordance with
10 the COE Wetlands Delineation Manual, Technical Report
11 Y-87-1.

12 The Agency application forms shall be finalized and made
13 available prior to the date on which any application is
14 required. The Agency shall provide notice to the applicant as
15 to whether a submitted application is complete. Unless the
16 Agency notifies the applicant that the application is
17 incomplete within 20 days of receipt of the application, the
18 application shall be deemed complete. The Agency may request
19 additional information as needed to make the completeness
20 determination. The Agency may, to the extent practicable,
21 provide the applicant with a reasonable opportunity to
22 correct deficiencies prior to a final determination of
23 completeness. Within 90 days after the receipt of a complete
24 application for permit, the Agency shall issue, deny, or
25 issue with conditions a permit. If a public hearing is held
26 on the application, however, this period shall be extended by
27 45 days.

28 (f) The Agency shall not issue any permit pursuant to
29 this Section unless the Agency has certified that the
30 proposed activity will not cause or contribute to a violation
31 of any State water quality standard. The Agency will be
32 deemed to have certified that the proposed activity will not
33 cause or contribute to a violation of any State water quality
34 standard if it has not declined in writing to so certify

1 within 80 days of the filing of the application, unless the
2 Agency has requested that the applicant supply more
3 information relevant to assessing the water quality impacts
4 of the proposed activity.

5 (g) Any person may submit concurrent requests for
6 determination and delineation, classification, and a permit
7 application or provision of notification. The Agency shall
8 act on such combined requests concurrently in accordance with
9 expedited permitting procedures proposed by the Agency and
10 adopted by the Board.

11 (h) Any person may submit an application for an
12 after-the-fact permit to be issued under this Act, and the
13 Agency is authorized to issue such an after-the-fact permit
14 if it determines that the activities covered by the
15 after-the-fact permit application were undertaken and
16 conducted in response to emergency circumstances where there
17 may be an imminent threat to persons, public infrastructure,
18 personal property, or uninterrupted utility service that made
19 it impracticable for the applicant to obtain prior
20 authorization under this Act to undertake and conduct such
21 activities. The applicant shall be required to demonstrate
22 that it provided notice to the Agency of the emergency
23 circumstances as soon as reasonably possible following the
24 discovery of such circumstances.

25 (i) The Board shall adopt rules to carry out the
26 provisions of this Section in accordance with Section 40 of
27 this Act.

28 Section 35. General permits.

29 (a) Notwithstanding Section 25, any person who intends
30 to conduct a regulated activity within the State may do so in
31 accordance with a general permit issued by the Agency under
32 this Section.

33 (b) Permits for all categories of activities, subject to

1 the same permit limitations and conditions that are the
2 subject of a nationwide permit issued by the COE, in effect
3 on the date of the enactment of this Act are adopted as
4 general permits covering regulated activities subject to this
5 Act.

6 (c) The Agency may adopt general permits covering other
7 activities that would be subject to the same permit
8 limitations and conditions if it determines that the
9 activities in that category will cause only minimal adverse
10 environmental effects when performed separately, will have
11 only minimal cumulative adverse effect on the environment,
12 will not cause or contribute to a violation of State water
13 quality standards when performed separately, and will have
14 only a minimal cumulative adverse effect on water quality.
15 The Agency may prescribe the best management practices for
16 any general permit issued under this Section. The Agency
17 shall consider any optional mitigation proposed by an
18 applicant in determining whether the net adverse
19 environmental effects of a proposed regulated activity are
20 minimal. Specifically, the Agency must adopt a general
21 permit for:

22 (1) the construction or maintenance of access roads
23 for utility lines, substations, or related equipment or
24 facilities; and

25 (2) activities for the purpose of preserving and
26 enhancing aviation safety or preventing an airport
27 hazard.

28 (d) No general permit adopted under this Section shall
29 be for a period of more than 5 years after the date of its
30 adoption and the general permit may be revoked or modified by
31 the Agency if, after opportunity for public hearing, the
32 Agency determines that the activities authorized by the
33 general permit have an adverse impact on the environment,
34 cause or contribute to a violation of State water quality

1 standards, or are more appropriately authorized by individual
2 permits.

3 (e) Compliance with the terms of the general permits
4 shall be deemed compliance with the provisions of this Act if
5 the applicant (i) files a notice of intent to be covered
6 under the provisions of the general permit in accordance with
7 rules adopted pursuant to this Act and (ii) files any reports
8 required by the general permit.

9 (f) The Agency shall respond to a notice of intent to
10 proceed under general permits issued under this Section
11 within 30 days after the Agency receives the notice. In the
12 event that the Agency fails to respond to a notice of intent
13 to proceed within 30 days as required by this subsection (f),
14 the person submitting the notice shall be deemed fully
15 authorized to conduct the activities described in the notice
16 under the terms and conditions of the applicable general
17 permit.

18 Section 40. Illinois Wetlands Advisory Committee;
19 duties; rules.

20 (a) There is hereby established the Illinois Wetlands
21 Advisory Committee consisting of 13 members appointed by the
22 Governor. The Committee shall include 5 members selected from
23 among the following organizations:

- 24 (1) The Illinois State Chamber of Commerce.
- 25 (2) The Illinois Association of Realtors.
- 26 (3) The Consulting Engineers Council of Illinois.
- 27 (4) The Illinois Association of Aggregate
28 Producers.
- 29 (5) The Illinois Association of Home Builders.
- 30 (6) The National Solid Waste Management
31 Association.
- 32 (7) The Illinois Farm Bureau.

33 The Committee shall include 3 members selected from the

1 membership of environmental and conservation groups in the
2 State.

3 The Committee shall include 2 persons representing
4 counties exercising authority under Section 5-1062 or Section
5 5-1062.1 of the Counties Code to establish stormwater
6 management programs.

7 The Committee shall include 3 other members as determined
8 by the Governor.

9 Members of the Committee may organize themselves as they
10 deem necessary and shall serve without compensation.

11 (b) The Committee shall review, evaluate, and make
12 recommendations (i) regarding State laws, rules, and
13 procedures that relate to this Act and (ii) relating to the
14 State's efforts to implement this Act.

15 (c) Within 6 months after the effective date of this
16 Act, the Agency, after consideration of the recommendations
17 of the Committee, shall propose to the Board any rules
18 required by this Act prescribing procedures and standards for
19 its administration. Within 6 months of the proposal of such
20 rules to the Board, the Board shall adopt, pursuant to
21 Sections 27 and 28 of the Environmental Protection Act and
22 any rules adopted thereunder, rules that are consistent with
23 this Act. Nothing in this Act shall preclude, at any time,
24 the recommendation, proposal, or adoption of any other rules
25 deemed necessary for the orderly implementation of this Act.

26 (d) The Committee shall develop a plan for Statewide
27 wetlands protection and shall submit the plan to the State.
28 The State shall seek to obtain a delegation of COE authority
29 under Section 404 of the federal Clean Water Act for all
30 wetlands in Illinois on or before July 1, 2007, in accordance
31 with Section 20 of this Act.

32 Section 45. Appeal of final agency decision; judicial
33 review.

1 (a) If the Agency rejects a proposed determination and
2 delineation, refuses to approve a classification, or approves
3 a classification other than that supplied by the applicant,
4 or refuses to grant or grants with conditions a permit under
5 Sections 25 or 35 of this Act, the applicant may, within 35
6 days after receipt of the decision, petition for a hearing
7 before the Board to contest the decision of the Agency.
8 However, the 35-day period for petitioning for a hearing may
9 be extended by the applicant for a period of time not to
10 exceed 90 days by written notice provided to the Board from
11 the applicant and the Agency within the initial period. The
12 applicant and the Agency must jointly file a request for
13 extension within 35 days after the date of service of the
14 Agency's final decision. The joint request may seek an appeal
15 period not exceeding 125 days from the date of service of the
16 Agency's final decision to file a petition for review under
17 this Section. The Board shall publish notice in a newspaper
18 of general circulation in that county where the regulated
19 activity at issue is located for a period of 21 days. The
20 Agency shall appear as respondent in the hearing. At the
21 hearing the rules prescribed in Section 32 and subsection (a)
22 of Section 33 of the Environmental Protection Act shall apply
23 and the burden of proof shall be on the petitioner.

24 (b) The applicant or the Agency, when adversely affected
25 by a final order or determination of the Board, may obtain
26 judicial review by filing a petition for review within 35
27 days from the date that a copy of the order or other final
28 action sought to be reviewed was served upon the party
29 affected by the order or other final Board action complained
30 of, under the provisions of the Administrative Review Law and
31 the rules adopted pursuant thereto, except that review shall
32 be afforded directly in the appellate court for the district
33 in which the cause of action arose and not in the circuit
34 court.

1 Section 50. Investigation; enforcement.

2 (a) In accordance with constitutional limitations, the
3 Agency shall have authority to enter at all reasonable times
4 upon any private or public property for the purpose of
5 inspecting and investigating to ascertain possible violations
6 of this Act or of rules adopted hereunder or permits or terms
7 or conditions thereof.

8 (b) The Agency shall conduct investigations and pursue
9 enforcement of alleged violations of this Act, any rule
10 adopted pursuant to this Act, a permit granted by the Agency,
11 or a term or condition of a permit as prescribed in Section
12 30 and subsections (a), (b), and (c) of Section 31 of the
13 Environmental Protection Act and any rules adopted pursuant
14 to this Act.

15 (c) The Agency shall have the duty to administer the
16 permit and certification systems as may be established by
17 this Act or by rules adopted pursuant to this Act.

18 (d) In hearings before the Board to enforce provisions
19 of this Act, the burden shall be on the Agency to show either
20 that the respondent has violated or threatens to violate any
21 provision of this Act or any rule adopted pursuant to this
22 Act or a permit or term or condition of a permit. If such
23 proof has been made, the burden shall be on the respondent to
24 show that compliance with the Board's rules would impose an
25 arbitrary or unreasonable hardship.

26 (e) Hearings in enforcement proceedings shall be held in
27 accordance with Section 32 of the Environmental Protection
28 Act and any rules adopted thereunder.

29 (f) Board determinations and orders shall be made in
30 accordance with Section 33 of the Environmental Protection
31 Act and any rules adopted thereunder.

32 (g) The civil penalties provided for in this Section may
33 be recovered in a civil action, which may be instituted in a
34 court of competent jurisdiction or by determination or order

1 of the Board. The State's Attorney of the county in which the
2 alleged violation occurred, or the Attorney General, may, at
3 the request of the Agency or on his or her own motion,
4 institute a civil action in a court of competent jurisdiction
5 to recover civil penalties and an injunction to restrain
6 violations of the Act.

7 (h) Any person who violates any provision of this Act or
8 any rule adopted pursuant to this Act, or any permit or term
9 or condition thereof, or that violates any determination or
10 order of the Board pursuant to this Act, shall be liable for
11 a civil penalty of not to exceed \$10,000 per day of
12 violation; such penalties may, upon order of the Board or a
13 court of competent jurisdiction, be made payable to the
14 Environmental Protection Trust Fund, to be used in accordance
15 with the provisions of the Environmental Protection Trust
16 Fund Act.

17 (i) In determining the appropriate civil penalty to be
18 imposed under this Section, the Board is authorized to
19 consider any matters of record in mitigation or aggravation
20 of penalty, including but not limited to the following
21 factors:

22 (1) The duration and gravity of the violation.

23 (2) The presence or absence of due diligence on the
24 part of the person in attempting to comply with
25 requirements of this Act and rules adopted hereunder or
26 to secure relief therefrom as provided by this Act.

27 (3) Any economic benefits accrued by the person
28 because of delay in compliance with requirements.

29 (4) The amount of monetary penalty which will serve
30 to deter further violations by the person and to
31 otherwise aid in enhancing voluntary compliance with this
32 Act by the person and other persons similarly subject to
33 the Act.

34 (5) The number, proximity in time, and gravity of

1 previously adjudicated violations of this Act by the
2 person.

3 (j) A violation of any provision of this Act or any rule
4 adopted pursuant to this Act, or any permit or term or
5 condition thereof, or any violation of any determination or
6 order of the Board pursuant to this Act, shall not be deemed
7 a criminal offense.

8 (k) All final orders imposing civil penalties pursuant
9 to this Section shall prescribe the time for payment of such
10 penalties. If any such penalty is not paid within the time
11 prescribed, interest on the penalty at the rate set forth in
12 subsection (a) of Section 1003 of the Illinois Income Tax Act
13 shall be paid for the period from the date payment is due
14 until the date payment is received. However, if the time for
15 payment is stayed during the pendency of an appeal, interest
16 shall not accrue during such stay.

17 Section 55. Fees.

18 (a) Any person seeking a permit, coverage under a
19 general permit, or filing a notification of activities to be
20 conducted on a Class III wetland from the Agency shall pay a
21 fee to the Agency at the time of filing an application or
22 notification. The following fee amounts shall apply:

23 (1) The fee for a Class IA or Class IB wetland is
24 \$400 if the site is less than 1 acre; \$500 if the site is
25 equal to or greater than 1 acre but less than 10 acres;
26 \$750 if the site is equal to or greater than 10 acres but
27 less than 50 acres; and \$1,000 if the site is equal to or
28 greater than 50 acres. In the event that the Agency is
29 required to review a mitigation plan for any such site,
30 an additional fee will be required at the time the
31 applicant is notified that such a review is required. The
32 additional mitigation review fee shall be: \$750 if the
33 affected wetland is less than 0.5 acres; \$1000 if the

1 affected wetland is equal to or greater than 0.5 acres
2 but less than 2 acres; \$1250 if the site is equal to or
3 greater than 2 acres but less than 5 acres; and \$1,500 if
4 the site is equal to or greater than 5 acres.

5 (2) The fee for a Class II wetland shall be
6 calculated at 50% of the fee charged to a Class IA or
7 Class IB wetland.

8 (3) The fee for filing a notice of intent to be
9 covered under a general permit shall be \$200.

10 (4) The fee for filing a notification of activities
11 to be conducted on a Class III wetland shall be \$150.

12 (b) The Agency shall establish procedures for the
13 collection of fees required under this Act.

14 (c) There is hereby created in the State Treasury a
15 special fund to be known as the Wetlands Management Fund.
16 There shall be deposited into the Fund all monies received
17 from the fees collected under subsection (a) of this Section.
18 Pursuant to appropriation, monies from the Fund shall be
19 allocated in amounts deemed necessary to implement this Act
20 and, if sufficient funds are available, for the
21 administration of other permit programs administered by the
22 Agency.

23 (d) For the purposes of this Section, "site" means the
24 area of land that will be disturbed or altered as a result of
25 the project or development that may affect a wetland.

26 Section 60. Home rule; delegation of authority.

27 (a) A home rule unit may not regulate wetlands except as
28 provided in subsection (b) and (c) of this Section. This
29 Section is a limitation under subsection (i) of Section 6 of
30 Article VII of the Illinois Constitution on the concurrent
31 exercise by home rule units of powers in functions exercised
32 by the State.

33 (b) In cases where a county government has implemented a

1 wetlands regulation program prior to March 1, 2003, that
2 county will be permitted to regulate wetlands until July 1,
3 2007. Beginning on July 1, 2007, the limitation in subsection
4 (a) of this Section shall take effect.

5 (c) The provisions of any ordinance or resolution
6 adopted before, on, or after the effective date of this Act
7 of the 93d General Assembly by any unit of local government
8 that impose restrictions or limitations on the
9 identification, classification, notification, permitting, or
10 regulatory criteria for wetlands are invalid, except as
11 authorized by subsection (d) of this Section, and all those
12 existing ordinances and resolutions are declared null and
13 void. This subsection shall not be deemed to be a limitation
14 on any legitimate statutory authority of any unit of local
15 government to regulate flood control or stormwater
16 management, so long as those rules are not more stringent
17 than the rules adopted under Section 40 of this Act.

18 (d) The Agency may enter into written delegation
19 agreements with any county government under which it may
20 delegate all or portions of its inspecting, investigating,
21 and enforcement functions under this Act. In cases where a
22 county government has implemented a wetlands regulation
23 program prior to March 1, 2003, the Agency shall, upon the
24 receipt of a request for delegation by such county
25 government, delegate all or portions of its functions under
26 this Act, as requested. Such delegation agreements shall, at
27 a minimum, require that:

28 (1) All of the administrative procedures and
29 operations performed by the delegated county government
30 shall be performed in accordance with the provisions of
31 this Act and with rules adopted pursuant to Section 40 of
32 this Act.

33 (2) The general permits issued under Section 35 of
34 this Act shall be administered by the delegated county

1 government for those activities covered under the general
2 permits.

3 (3) At the time of filing a permit application or
4 notification with a delegated county government, the
5 person shall file a certification with the Agency
6 attesting to such filing.

7 (4) Within 30 days after the delegated county
8 government takes final action on a permit or
9 notification, a copy of the permit or notice action shall
10 be filed with the Agency.

11 (5) Any final action taken by a delegated county
12 government may be appealed in accordance with the
13 provisions of Section 45 of this Act.

14 (e) Notwithstanding any other provision of law to the
15 contrary, no unit of local government shall be liable for any
16 injury resulting from the exercise of its authority pursuant
17 to such a delegation agreement, unless the injury is
18 proximately caused by the willful and wanton negligence of an
19 agent or employee of the unit of local government, and any
20 policy of insurance coverage issued to a unit of local
21 government may provide for the denial of liability and the
22 nonpayment of claims based upon injuries for which the unit
23 of local government is not liable pursuant to this
24 subsection.

25 Section 90. The State Finance Act is amended by adding
26 Section 5.620 as follows:

27 (30 ILCS 105/5.620 new)

28 Sec. 5.620. The Wetlands Management Fund.

29 Section 97. Severability. The provisions of this Act are
30 severable under Section 1.31 of the Statute on Statutes.