

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. Findings. Wetlands of this State are
7 indispensable and fragile resources. In their natural state,
8 wetlands reduce pollution and nutrients from a broad range of
9 sources, store and convey flood waters, reduce erosion,
10 provide waterfowl nesting and feeding areas, provide fish
11 habitats and habitats for rare and endangered plant and
12 animal species, provide bird watching and outdoor recreation
13 opportunities, and provide education and scientific study
14 opportunities. Wetlands play critical roles in water resource
15 protection and watershed management.

16 More than 7 million acres of these important resources
17 have been destroyed by filling, draining, dredging, and other
18 activities in this State. In addition, development located in
19 altered wetlands is often subject to problems such as
20 flooding, erosion, and poor soil condition. Filling or
21 draining wetlands in one area can cause increased flooding
22 and erosion in other areas.

23 It is, therefore, the policy of this State to ensure that
24 no further loss of wetland functions and acreage occur and to
25 ensure that activities in wetlands will not increase hazards.
26 Further, it is the policy of this State to reduce duplication
27 and ensure coordination in wetland programs and to encourage
28 the integration of wetland protection and restoration into
29 local comprehensive land management and watershed management
30 programs including floodplain and stormwater, pollution
31 control, source water, and other programs. Protection and

1 restoration of wetland resources shall be a joint
2 responsibility of the State, local units of government, the
3 federal government, and private citizens.

4 Section 10. Definitions. The following definitions shall
5 apply throughout this Act:

6 "Agency" means the Illinois Environmental Protection
7 Agency.

8 "County stormwater management planning committee" means
9 any stormwater management planning committee established
10 under Section 5-1062 of the Counties Code, as currently
11 enacted or later amended.

12 "County wetlands protection body" means a county or
13 county stormwater management planning committee that has been
14 authorized to issue within its jurisdiction all or a portion
15 of the wetland permits created by this Act.

16 "Department" means the Illinois Department of Natural
17 Resources.

18 "Person" means any individual, group of individuals,
19 association, firm, partnership, corporation, trust, estate,
20 organization, or legal entity of any kind, including
21 governmental corporations.

22 "Regulated activity" means any activity conducted within
23 a wetland or a regulated buffer area that may decrease
24 wetland functions, including discharge of fill material,
25 excavating, draining, impounding, and dredging.

26 "State regulated activity" means any regulated activity
27 that is not exempted from regulation under this Act by
28 Section 70 of this Act.

29 "Wetland" means those areas that are permanently or
30 seasonally inundated or saturated by surface or ground water
31 at a frequency and duration sufficient to support, and that
32 under normal circumstances do support, a prevalence of
33 vegetation typically adapted for life in saturated soil

1 conditions. Wetlands generally include swamps, marshes, bogs,
2 fens, and similar areas.

3 Section 15. Implementation.

4 (a) The Department shall implement a program for the
5 protection and restoration of wetlands in Illinois consistent
6 with the goals, procedures, and criteria set forth in this
7 Act. This program shall be carried out cooperatively with
8 other state agencies, federal agencies, local governments,
9 land trusts, landowners, and other interested groups and
10 organizations. In carrying out this program the Department
11 may:

12 (1) Adopt wetland maps as set forth in Section 20.

13 (2) Adopt rules necessary to administer the
14 requirements of this Act. The Department may implement
15 this Act through the use of emergency rules in accordance
16 with the provisions of Section 5-45 of the Illinois
17 Administrative Procedure Act. For purposes of the
18 Illinois Administrative Procedure Act, the adoption of
19 rules to implement this Act shall be deemed an emergency
20 and necessary for the public interest, safety, and
21 welfare.

22 (3) Provide technical assistance and training to
23 help local governments develop wetland protection and
24 restoration programs and to help local governments
25 integrate wetland protection and restoration into
26 comprehensive land planning and management efforts
27 including floodplain and stormwater management, pollution
28 control, source water planning, greenway, open space, and
29 other efforts.

30 (4) Encourage and provide guidance with regard to
31 the restoration of wetlands.

32 (5) Adopt joint permit processing procedures with
33 federal, other state, and local agencies with

1 jurisdiction over wetlands and take other measures to
2 improve coordination and reduce duplication between the
3 regulatory agency and other state agencies, federal
4 agencies, and local governments.

5 (b) The Agency shall adopt water quality standards for
6 wetlands by December 31, 2003.

7 Section 20. Mapping. The Department shall adopt wetland
8 maps for Illinois. In this effort, the Department may utilize
9 on an interim or longer-term basis National Wetland Inventory
10 Maps for all or a portion of the State. The Department may
11 also use maps prepared by other groups or organizations or
12 undertake independent mapping with federal agencies, other
13 state agencies, local governments, or other groups or
14 organizations. The Department may separately adopt wetland
15 maps for various regions of the State. The Department may
16 issue permits according to this Act before its mapping
17 program is complete. In that case, the Department shall use
18 the best available information when evaluating permit
19 applications. The Department shall use the Corps of Engineers
20 1987 Manual for the Delineation of Jurisdictional Wetlands.

21 The Department shall, upon the written request of a
22 landowner whose land may be included in a regulated wetland,
23 delineate more precisely the wetland boundary line applying
24 delineation criteria. The Department may require information
25 from the landowner or other agencies or organizations to aid
26 in the delineation effort. The Department may require that
27 the landowner pay a reasonable fee for the requested
28 delineation. The validity of the delineation shall expire
29 after 2 years.

30 Section 25. Permits. Unless exempted under Section 70,
31 no person may conduct or cause to be conducted a regulated
32 activity within or affecting a wetland without a permit from

1 the Department. Any person proposing to conduct or cause to
2 be conducted a state regulated activity shall file an
3 application for a permit with the Department. The Department
4 shall determine the number of copies of the application that
5 the applicant shall submit, and shall forward one copy to the
6 Agency. The applicant shall provide within 10 days of filing
7 a permit application a written notice of the permit
8 application to the owners of each tract of property adjacent
9 to the property containing the wetland that is the subject of
10 the permit. The applicant shall also post a notice of the
11 proposed permit, within 10 days of the filing of the
12 application, in a local newspaper of general circulation.

13 A permit applicant shall include the following
14 information in the application, unless the Department
15 determines that a portion of this information is unnecessary:

16 (1) A map of the area that will be affected by the
17 activity, including wetland and water boundaries for the
18 areas affected and the existing uses and structures.

19 (2) A description of the proposed activity,
20 including its purpose, the location and dimensions of any
21 structures, grading or fills, drainage, roads, sewers and
22 water supply, parking lots, storm water facilities,
23 discharge of pollutants, and onsite waste disposal.

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

26 (4) A description of the entire parcel owned by the
27 applicant, including a topographical survey of the
28 property and a sketch map indicating the location of the
29 wetland on the parcel.

30 (5) A description of any natural hazards at the
31 site, including flood, erosion, and soil bearing capacity
32 hazards, and an indication of how the applicant will
33 avoid increasing hazards on other lands and avoid hazard
34 losses associated with the proposed activity.

1 (6) An explanation of other alternatives the
2 applicant has considered, why the proposed activity
3 cannot be located at other sites, and why other
4 alternatives cannot be used to fulfill the desired
5 purpose of the proposed activity.

6 (7) The names and addresses of adjacent landowners
7 as determined by the current tax assessment roles and a
8 description of adjacent uses and their distance from the
9 proposed activity.

10 (8) Proposed measures to reduce the impact of the
11 proposed activity on wetland functions and values and to
12 compensate for impacts.

13 The Department may require additional information where
14 that information is needed to determine the compliance of the
15 proposed activity with the criteria for issuance of a permit.
16 Where informational deficiencies are apparent in the
17 application, the Department shall advise the applicant of the
18 need for additional information within 30 days of the receipt
19 of the application.

20 Upon receipt of a permit application, the Department
21 shall notify, within 10 days, other state, federal, and local
22 government entities that may have jurisdiction over the
23 proposed activity, as well as any other persons or entities
24 that have requested to receive notification of wetland permit
25 applications from the Department. All people and entities so
26 notified shall have 30 days from the date of the Department's
27 notification to provide comments to the Department.

28 The Department shall also hold a public hearing
29 concerning the permit application if the proposed activity
30 may have significant impact upon wetland resources or if the
31 Agency determines that a public hearing is otherwise
32 appropriate.

33 The Department shall issue, conditionally issue, or deny
34 a permit within 120 days of receipt of a permit application

1 unless the permit applicant has failed to supply needed
2 information or additional information gathering is needed to
3 determine the compliance of the permit with regulatory
4 criteria.

5 In granting a permit, the Department may impose
6 conditions that must be carried out to meet the goals of this
7 Act and the permit criteria. The Department may suspend or
8 revoke a permit if it finds that the applicant has not
9 complied with the conditions or limitations set forth in the
10 permit. The Department may require a bond in an amount and
11 with surety and conditions sufficient to secure compliance
12 with the conditions and limitations set forth in the permit.

13 Section 30. Permit fees. A permit applicant shall submit
14 a fee to the Department when submitting an application to the
15 Department for a regulated activity. The Department shall
16 deny any permit application that does not include the
17 appropriate fee.

18 The amount of the fee shall be \$1,000 for each acre pro
19 rata that will be affected by a regulated activity. However,
20 no fee shall be due from any entity listed in subsection (e)
21 of Section 12.2 of the Environmental Protection Act, as
22 currently enacted or later amended.

23 All fees collected by the Department under this Section
24 shall be deposited into the Wetlands Protection Fund.

25 Section 35. Criteria for issuance of permits

26 (a) The Department shall issue a permit if it finds that
27 the proposed activity is in the public interest.

28 (b) In determining whether a proposed activity is in the
29 public interest, the Department shall consider the goals of
30 this Act and any more specific criteria for permit issuance
31 adopted by the Department. The Department shall also consider
32 the need for the proposed activity and the impact on the

1 landowner of permit denial. To find that a proposed activity
2 is in the public interest, the Department must find that:

3 (1) There will be no net loss of wetland function.

4 At a minimum, this shall require findings that there will
5 be no net loss of:

6 (a) wetland habitat for breeding, nesting,
7 foraging, resting, or protection of any species,
8 including those species on the federal or State list
9 of threatened, endangered, or rare species;

10 (b) stormwater and floodwater retention
11 capacity;

12 (c) groundwater recharge capacity;

13 (d) ability to improve water quality through
14 sedimentation, filtration, biological treatment, or
15 other functions; and

16 (e) recreational opportunities such as hunting
17 or fishing.

18 (2) There will be no net loss of wetland acreage.

19 (3) The proposed activity will not cause flooding,
20 erosion, or other hazards that will threaten other
21 landowners or the public.

22 (4) An adequate upland buffer will be provided to
23 protect remaining wetland acres from sediment,
24 pollutants, and other threats. This buffer must be at
25 least 50 feet, except as otherwise provided in the
26 criteria adopted by the Department. The buffer width for
27 a development site may be varied to a minimum of 1/2 of
28 the required buffer width provided that the total
29 required buffer area is achieved.

30 (5) The Agency has certified that the proposed
31 activity will not cause or contribute to a violation of
32 any State water quality standards.

33 (6) The proposed activity will not otherwise
34 threaten health and safety, cause nuisances, impair

1 public rights to the enjoyment and use of public waters,
2 or threaten a rare or endangered plant or animal or a
3 unique ecosystem.

4 (7) The applicant has shown that there are no
5 practicable alternatives to the proposed activity that
6 would result in less environmental harm.

7 (8) Any adverse impacts will be minimized.

8 (c) In evaluating the impact of the proposed permit, the
9 Department shall consider the cumulative effect of existing
10 and reasonably anticipated future activities upon wetland
11 resources. The Department shall consider any irreversible and
12 irretrievable commitment of resources that will result from
13 the proposed activity, and the relationship between
14 short-term uses of the environment and the maintenance and
15 enhancement of long-term productivity. The Department shall
16 also consider any proposed impact reduction and compensation
17 measures only after determining that there are no practicable
18 alternatives to the proposed activity and that the measures
19 are consistent with this Act.

20 Section 40. General permits.

21 (a) In carrying out its functions relating to regulated
22 activities, the Department may, after notice and opportunity
23 for public hearing, issue a general permit on a State,
24 county, or regional basis for any category of regulated
25 activity if the Department determines that the activities in
26 that category are similar in nature, will cause only minimal
27 adverse environmental effects when performed separately, and
28 will have only minimal cumulative adverse effect on the
29 environment. Best management practices may be prescribed for
30 activities regulated by a general permit. Any general permit
31 issued under this subsection shall:

32 (1) be based on the guidelines set forth in this
33 Act; and

1 (2) set forth the requirements and standards that
2 will apply to the activity authorized by the general
3 permit.

4 (b) No general permit issued under this subsection shall
5 be valid for a period of more than 5 years after the date of
6 its issuance.

7 (c) A general permit may be revoked or modified by the
8 Department if, after opportunity for public hearing, the
9 Department determines that the activities authorized by the
10 general permit have an adverse impact on the environment or
11 the activities are more appropriately authorized by
12 individual permits.

13 Section 50. County wetland protection body regulation of
14 wetlands.

15 (a) Counties and county stormwater management planning
16 committees with wetland regulations may apply to the
17 Department for permission to issue all or a portion of the
18 wetland permits in lieu of the Department. The Department
19 shall authorize a county or county stormwater management
20 planning committee to issue all or a portion of wetland
21 permits for wetlands within the county or county stormwater
22 management planning committee's jurisdiction if the
23 Department finds: (i) that the overall wetland function
24 protection provided by the county or county stormwater
25 management planning committee regulations equals or exceeds
26 the protection provided by the Department; and (ii) that the
27 county or county stormwater management planning committee has
28 adequate administration and enforcement mechanisms. To make
29 this finding, the Department must find that the county or
30 county stormwater management planning committee's program
31 incorporates reasonable notice, comment, and hearing
32 procedures. In making its decision regarding an application
33 made by a county or county stormwater management planning

1 committee, the Department shall give appropriate deference to
2 counties and county stormwater management planning committees
3 with substantial experience in managing programs that protect
4 wetland functions.

5 (b) County wetland protection bodies issuing permits
6 under this Section shall provide copies of those permits to
7 the Department. The Department shall be the permitting agency
8 for applications for State regulated activities that affect
9 wetlands located in more than one county or activities where
10 the county wetland protection body is itself the permit
11 applicant.

12 (c) County wetland protection bodies may charge a
13 reasonable fee to permit applicants to raise funds for use in
14 administering and enforcing the county wetland protection
15 body's wetland regulations.

16 (d) The Department may withdraw approval of a county
17 wetland protection body's application for issuance of permits
18 in lieu of the Department for any county wetland protection
19 body program that fails to administer and enforce regulations
20 equaling or exceeding the overall protection of wetland
21 functions of the program of the Department.

22 Section 60. Creation, restoration, and compensation;
23 mitigation banks. The Department shall encourage private
24 landowners, local governments, other State agencies, land
25 trusts, and others to restore wetlands in order to achieve
26 the long-term goal of a net gain in wetland resources. The
27 Department shall provide technical assistance to agencies,
28 organizations, and individuals in planning and carrying out
29 restoration projects. The Department shall identify possible
30 restoration sites in cooperation with other organizations.
31 The Department shall adopt guidelines and educational
32 materials for restoration projects and may carry out
33 restoration research and demonstration projects.

1 When a permit applicant proposes wetland restoration,
2 creation, or enhancement to compensate for damage to a
3 wetland, the Department shall consider the risk of failure of
4 the impact reduction and compensation measures and may
5 require that permit applicant to implement compensation
6 measures prior to undertaking the proposed activity.

7 The Department may not accept as an impact reduction or
8 compensation measure any measure that creates or restores, on
9 a pro rata basis, less than 1.5 acres of wetland for every 1
10 acre of wetland disturbed by a regulated activity. In
11 deciding whether the compensation ratio proposed by the
12 project applicant is sufficient to provide no net loss of
13 wetland functions and acreage, the Department shall consider:

- 14 (1) the sensitivity of the wetland type;
- 15 (2) the success of other efforts to restore this
16 wetland type;
- 17 (3) the length of time it will take before a
18 compensation wetland will become fully functioning;
- 19 (4) the degree of difficulty that will be
20 encountered in creating or restoring wetland hydrology in
21 this setting;
- 22 (5) the adequacy of the overall project design;
- 23 (6) the threats, if any, posed to the compensation
24 wetland by pollution or other activities;
- 25 (7) the adequacy of proposed protection and
26 management measures for the proposed compensation
27 wetland;
- 28 (8) the extent to which monitoring and mid-course
29 correction capabilities are proposed;
- 30 (9) the extent to which bonds or other assurances
31 are provided to insure long-term success; and
- 32 (10) any other factors the Department determines to
33 be relevant.

34 The Department may use the compensation ratios

1 established under the Illinois Interagency Wetland Policy Act
2 of 1989 and its implementing regulations and guidelines to
3 establish minimum compensation ratios under this Act. Ratios
4 shall be higher for compensation activities performed outside
5 the immediate sub-watershed where the regulated activity will
6 occur. Compensatory activities shall normally occur in the
7 same county as that of the wetland to be affected by the
8 permitted activity.

9 The Department may also authorize permit applicants, in
10 appropriate circumstances, to compensate for loss of wetland
11 functions by utilizing wetland mitigation banks. The
12 Department may authorize a permit applicant to use a bank if
13 there is no practicable onsite alternatives and using the
14 bank will provide a net benefit in wetland functions and
15 acreage. The Department may permit some combination of onsite
16 impact reduction, compensation measures, and offsite
17 mitigation banks.

18 Section 70. Exemptions.

19 (a) Except as provided in subsection (b) of this
20 Section, the following activities are not prohibited by or
21 otherwise subject to regulation under this Act:

22 (1) normal farming, silviculture, or ranching
23 activities such as plowing, seeding, cultivating, minor
24 drainage, harvesting for the production of food, fiber,
25 and forest products, and upland soil and water
26 conservation practices;

27 (2) maintenance, including emergency reconstruction
28 of recently damaged parts, of currently serviceable
29 structures such as dikes, dams, levees, groins, riprap,
30 breakwaters, causeways, bridge abutments or approaches,
31 and transportation structures;

32 (3) construction or maintenance of farm or stock
33 ponds or irrigation ditches, or the maintenance, but not

1 construction of drainage ditches;

2 (4) construction of temporary sedimentation basins
3 on a construction site that does not include any
4 regulated activities within or affecting a wetland; and

5 (5) construction or maintenance of farm roads,
6 forest roads, or temporary roads for moving mining
7 equipment, where the roads are constructed and maintained
8 in accordance with best management practices to assure
9 that flow and circulation patterns and chemical and
10 biological characteristics of wetlands are not impaired,
11 that the reach of wetlands is not reduced, and that any
12 adverse effect on the aquatic environment will be
13 otherwise minimized.

14 (b) Any regulated activity having as its purpose
15 bringing a wetland into a use to which it was not previously
16 subjected, where the flow or circulation of waters may be
17 impaired, or where the reach of the wetlands shall be
18 reduced, shall be required to have a permit.

19 (c) Any regulated activity for which a permit has been
20 obtained pursuant to Section 404 of the Clean Water Act or
21 pursuant to the Interagency Wetland Policy Act of 1989 is not
22 prohibited by or otherwise subject to regulation under this
23 Act.

24 Section 80. Administrative appeals.

25 (a) Any permit applicant who has been denied a permit in
26 whole or in part, and any person who participated in the
27 permit proceeding and who is aggrieved by a decision of the
28 Department to grant a permit in whole or in part, may appeal
29 the decision to the Director of the Department within 30 days
30 of the permit grant or denial.

31 (b) Any county or county stormwater management planning
32 committee that has had an application filed under Section
33 50(a) of this Act denied in whole or in part or that has been

1 subject to a withdrawal of approval under Section 50(d) of
2 this Act may appeal the denial or withdrawal to the Director
3 of the Department within 30 days of the denial or withdrawal.

4 Section 85. Judicial appeals. A person, county, or
5 county stormwater management planning committee aggrieved by
6 a decision made pursuant to this Act, including a decision of
7 the Director or the Department, may, after exhausting the
8 available administrative appeals, seek judicial review of the
9 decision pursuant to the Administrative Review Act.

10 Section 90. Penalties; enforcement.

11 (a) A person who directly or through any employee or
12 agent knowingly violates this Act or any rule established
13 under this Act is guilty of a Class A misdemeanor.
14 Conservation police officers, other employees designated by
15 the Director of the Department, sheriffs, and other police
16 officers shall enforce this Act and the rules promulgated
17 under this Act and are empowered to arrest any person
18 detected in violation of this Act. Each violation of this Act
19 shall be a separate offense, and in the case of continuing
20 violation, each day's continuance shall be deemed to be a
21 separate and distinct offense.

22 (b) A person who violates this Act or the rules
23 promulgated under this Act or causes a violation by his or
24 her employee or agent, shall be liable for a civil penalty
25 not to exceed \$50,000 for the original violation and an
26 additional civil penalty not to exceed \$10,000 for each day
27 during which any loss of wetland functions caused by the
28 violation continues. The penalty shall be recovered in an
29 action brought by the Attorney General or the State's
30 Attorney in the circuit court. In determining the appropriate
31 civil penalty to be imposed, the circuit court may consider
32 any matters of record concerning mitigating or aggravating

1 factors for determining the penalty, including but not
2 limited to the following:

- 3 (1) the duration and gravity of the violation;
- 4 (2) the presence or absence of due diligence on the
5 part of the violator in attempting to comply with the
6 requirements of this Act and the rules promulgated under
7 this Act or to secure relief as provided by this Act;
- 8 (3) any economic benefits received by the violator
9 from the violation of this Act;
- 10 (4) the amount of monetary penalty that will serve
11 to deter further violations by the violator and to
12 otherwise aid in enhancing voluntary compliance with this
13 Act by the violator and other persons similarly subject
14 to this Act; and
- 15 (5) the number, proximity in time, and gravity of
16 previously adjudicated violations of this Act by the
17 violator.

18 (c) The Department may terminate a permit if the holder
19 violates any condition of the permit, obtains a permit by
20 misrepresentation, or fails to disclose relevant facts.

21 (d) The Attorney General, or the State's Attorney of the
22 county where the affected wetland is located, may, upon his
23 or her own motion or upon request of the Department,
24 institute a civil action in circuit court for an injunction
25 or other appropriate legal action to restrain a violation of
26 this Act or of any rule adopted under this Act. In the
27 proceeding the court shall determine whether a violation has
28 been committed or is likely to occur, and shall enter any
29 order it considers necessary to remove the effects of the
30 violation and to prevent the violation from occurring,
31 continuing, or being renewed in the future. An order may
32 include a requirement that the violator restore the affected
33 wetland area, including a provision that, if the violator
34 does not comply by restoring the wetland within a reasonable

1 time, the Department may restore the wetland to its condition
2 prior to the violation and the violator shall be liable to
3 the Department for the cost of restoration.

4 (e) Any penalty assessed pursuant to this Act, including
5 costs of wetland restoration and any restoration
6 requirements, shall be recorded by the clerk of the court as
7 a lien against the land and shall not be removed until the
8 penalty is paid or the restoration is completed.

9 (f) All costs, fees, and expenses in connection with an
10 enforcement or restoration action shall be assessed as
11 damages against the violator.

12 (g) All penalties collected by the Department under this
13 Section shall be deposited into the Wetlands Protection Fund.

14 (h) Enforcement actions under this Section may be
15 concurrent or separate.

16 Section 100. Wetland Protection Fund. All fees collected
17 by the Department pursuant to this Act shall be deposited
18 into the Wetlands Protection Fund, which is hereby created as
19 a special fund in the State Treasury. In addition to any
20 moneys appropriated from the General Revenue Fund, the
21 Illinois General Assembly shall appropriate moneys in the
22 Wetlands Protection Fund to the Department and the Agency in
23 amounts deemed necessary to implement this Act.

24 Section 110. Preemption. Nothing in this Act shall be
25 construed as a limitation or preemption of any statutory or
26 regulatory authority arising under the Environmental
27 Protection Act or Section 5-1062 of the Counties Code.

28 Section 300. The State Finance Act is amended by adding
29 Section 5.570 as follows:

30 (30 ILCS 105/5.570 new)

31 Sec. 5.570. The Wetlands Protection Fund.

1 Section 999. Effective date. This Act takes effect upon
2 becoming law.