



1 "Agency" means the Illinois Environmental Protection  
2 Agency.

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

5 "Board" means the Illinois Pollution Control Board.

6 "Bog" means a peat-accumulating wetland that has no  
7 significant inflows or outflows and supports acidophilic  
8 mosses, particularly sphagnum, resulting in highly acidic  
9 conditions.

10 "Commencing such a regulated activity" means any steps  
11 taken in preparation of conducting a regulated activity that  
12 may impact the affected property, such as cutting, filling,  
13 pumping of water, and earth movement.

14 "Committee" means the Illinois Wetlands Advisory  
15 Committee.

16 "Contiguous" means a wetland that is delineated on the  
17 affected property and extends beyond the boundary of that  
18 property.

19 "Converted wetland" means a wetland that has been  
20 drained, dredged, filled, leveled, or otherwise manipulated  
21 (including the removal of woody vegetation or any activity  
22 that results in impairing or reducing the flow and  
23 circulation of water) for the purpose of or to have the  
24 effect of making possible the production of an agricultural  
25 commodity without further application of the manipulations  
26 described herein if: (i) such production would not have been  
27 possible but for such action, and (ii) before such action the  
28 land was a wetland, farmed wetland, or farmed-wetland pasture  
29 and was neither highly erodible land nor highly erodible  
30 cropland.

31 "Corps of Engineers" or "COE" means the United States  
32 Army Corps of Engineers.

33 "Cypress swamp" means forested, permanent or  
34 semi-permanent bodies of water, with species assemblages

1 characteristic of the Gulf and Southeastern Coastal Plains  
2 and including bald cypress, and that are restricted to  
3 extreme southern Illinois.

4 "Delegation agreement" means a written document executed  
5 between the COE and the Agency that authorizes the Agency to  
6 assume all of the COE's authority under the federal Clean  
7 Water Act regarding activities in wetlands. Such delegation  
8 agreement shall include federal funding sufficient to allow  
9 the Agency to carry out its responsibilities under such  
10 agreement.

11 "Director" means the Director of the Illinois  
12 Environmental Protection Agency.

13 "Fen" means a wetland fed by an alkaline water source  
14 such as a calcareous spring or seep.

15 "Floristic quality index" means an index calculated using  
16 the Floristic Quality Assessment Method of assessing  
17 floristic integrity or quality.

18 "Incidental fallback" means the redeposit of small  
19 volumes of dredged material that is incidental to excavation  
20 activity in waters of the State when such material falls back  
21 to substantially the same place as the initial removal.

22 "Incidentally created" means created as a result of any  
23 normal or routine activity coincidental with the conduct of  
24 legitimate business enterprises, except that a wetland or  
25 depression created as mitigation for any activity affecting  
26 wetlands is not "incidentally created".

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

34 "Panne" means wet interdunal flats located near Lake

1 Michigan.

2 "Person" means an individual, partnership,  
3 co-partnership, firm, company, limited liability company,  
4 corporation, association, joint stock company, trust, estate,  
5 political subdivision, state agency, or other legal entity,  
6 or their legal representative, agent, or assign.

7 "Prior converted cropland" means a converted wetland  
8 where the conversion occurred prior to December 23, 1985, an  
9 agricultural commodity has been produced at least once before  
10 December 23, 1985, and as of December 23, 1985, the converted  
11 wetland did not support woody vegetation and met the  
12 following hydrologic criteria: (i) inundation was less than  
13 15 consecutive days during the growing season or 10 percent  
14 of the growing season, whichever is less, in most years (50  
15 percent chance or more); and (ii) if a pothole, playa, or  
16 pocosin, ponding was less than 7 consecutive days during the  
17 growing season in most years (50 percent chance or more) and  
18 saturation was less than 14 consecutive days during the  
19 growing season most years (50 percent chance or more).

20 "Regulated activity" means the discharge of dredged or  
21 fill material into a wetland, the drainage of a wetland, or  
22 excavation of a wetland that results in more than incidental  
23 fallback.

24 "Threatened or endangered species" means those species  
25 that have been designated as threatened or endangered by the  
26 Illinois Endangered Species Protection Board pursuant to the  
27 Illinois Endangered Species Protection Act and those species  
28 that have been designated as threatened or endangered by the  
29 U.S. Fish and Wildlife Service pursuant to the Endangered  
30 Species Act (35 U.S.C. 1531-1544).

31 "Upland" means non-wetland, when used to describe a  
32 particular land use, or non-hydric, when used to describe a  
33 soil type.

34 "Wetlands" means those areas that are inundated or

1 saturated by surface or ground water at a frequency or  
2 duration sufficient to support, and that under normal  
3 circumstances do support, a prevalence of vegetation  
4 typically adapted for life in saturated soil conditions.

5 Section 15. Exemptions.

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

10 (1) Normal farming, silviculture, and ranching  
11 activities, such as plowing, seeding, cultivating, minor  
12 drainage, harvesting for the production of food, fiber,  
13 and forest products, or upland soil and water  
14 conservation practices.

15 (2) Maintenance, including emergency reconstruction  
16 of recently damaged parts, of currently serviceable  
17 structures, such as dikes, dams, levees, groins, riprap,  
18 breakwaters, causeways, and bridge abutments or  
19 approaches, and transportation structures.

20 (3) Construction or maintenance of farm or stock  
21 ponds or irrigation ditches or the maintenance of  
22 drainage ditches.

23 (4) Construction of temporary sedimentation basins  
24 on a construction site that does not include any  
25 regulated activities within a wetland.

26 (5) Construction or maintenance of farm roads,  
27 forest roads, or temporary roads for moving mining  
28 equipment, where such roads are constructed and  
29 maintained, in accordance with best management practices,  
30 to assure that flow and circulation patterns and chemical  
31 and biological characteristics of the wetland are not  
32 impaired, that the reach of the wetland is not reduced,  
33 and that any adverse effect on the aquatic environment

1 will be otherwise minimized.

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

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

9 (8) Repair and maintenance of existing buildings,  
10 facilities, lawns, and ornamental plantings.

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

14 (10) Application of media, including deicing media,  
15 on the surface of existing roads for purposes of public  
16 safety.

17 (11) Non-surface-disturbing surveys and  
18 investigations for construction, planning, maintenance,  
19 or location of environmental resources.

20 (12) Wetland management practices on lands that are  
21 used primarily for the management of waterfowl or other  
22 migratory water birds or furbearers if such practices  
23 took place on these lands prior to the effective date of  
24 this Act. This includes vegetation management that may  
25 include the use of fire, chemical, or mechanical  
26 (hydro-axe, bulldozer, roto disk, or similar equipment)  
27 removal of invading woody or herbaceous vegetation to  
28 maintain a preferred successional stage. Use of chemicals  
29 must be by a certified applicator and chemicals must be  
30 registered for appropriate use. Clearing or removal of  
31 woody vegetation shall be limited to 4-inch dbh or  
32 smaller material for the purpose of establishing or  
33 maintaining the successional stage of a wetland as a  
34 herbaceous wetland vegetated by native moist soil plants

1 or selected wildlife food plants.

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

7 (c) The following are not wetlands for purposes of this  
8 Act:

9 (1) Waste treatment systems, including treatment  
10 ponds or lagoons, designed to comply with water quality  
11 standards of the State or to remediate a site in  
12 accordance with an approved Agency program, and former  
13 waste treatment systems that have ceased operations less  
14 than 33 years before the date the permit application is  
15 received by the Agency or that are undergoing remediation  
16 in accordance with an approved Agency program.

17 (2) A drainage or irrigation ditch.

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

20 (4) An artificial lake or pond created by  
21 excavating or diking upland to collect and retain water  
22 for the primary purpose of stock watering, irrigation,  
23 wildlife, fire control, or ornamentation or landscaping  
24 or as a settling pond.

25 (5) Except for wetlands created pursuant to mining  
26 activities described in item (7), an incidentally created  
27 water-filled depression, unless (i) ownership of the  
28 property containing the depression has been transferred  
29 away from the party who incidentally created the  
30 water-filled depression, (ii) the ownership transfer  
31 occurred more than 12 months prior to the commencement of  
32 an otherwise regulated activity, (iii) the use of the  
33 property has changed from the use that existed when the  
34 property was transferred from the party who incidentally

1 created the water-filled depression, (iv) the resulting  
2 body of water meets the definition in this Act of a  
3 wetland, (v) the ownership of the property has not  
4 transferred from the party who created the incidentally  
5 created water-filled depression, and (vi) the depression  
6 was not created more than 33 years before the date the  
7 permit application is received by the Agency.

8 (6) Stormwater or spill management systems,  
9 including retention and detention basins, ditches and  
10 channels, and former stormwater or spill management  
11 systems that have ceased operations less than 33 years  
12 before the date the permit application is received by the  
13 Agency or that are undergoing remediation in accordance  
14 with an approved Agency program.

15 (7) Waters that undergo mining activities conducted  
16 pursuant to a federal, State, regional, or local permit  
17 that requires the reclamation of the affected wetlands if  
18 the reclamation will be completed within a reasonable  
19 period of time after completion of activities at the site  
20 and, upon completion of such reclamation, the wetlands  
21 will support functions generally equivalent to the  
22 functions supported by the wetlands at the time of  
23 commencement of such activities.

24 (8) Prior converted cropland.

25 Section 20. Applicability. The requirements of this Act  
26 shall apply to all isolated wetlands as that term is defined  
27 in this Act. In the event that an isolated wetland ceases to  
28 meet that definition because it becomes subject to regulation  
29 under the federal Clean Water Act, the wetland shall no  
30 longer be subject to the provisions of this Act.

31 On and after July 1, 2007, the requirements of this Act  
32 shall apply to wetlands, if and only if by that date the COE  
33 has entered into a delegation agreement with the Agency;



1 provided, however, that the provisions of this Act shall  
2 continue in full force and effect as applied to isolated  
3 wetlands. The delegation agreement shall provide, at a  
4 minimum, that all delineation, classification, notification,  
5 and permitting requirements shall be at least as stringent as  
6 those contained in this Act.

7 Section 25. Wetland delineation; classification;  
8 notification; permits.

9 (a) The requirements of this Section apply beginning on  
10 the effective date of the rules required under Section 40 or  
11 one year from the effective date of this Act, whichever  
12 occurs earlier. The procedures and regulatory criteria for  
13 the delineation, classification, notification, and permitting  
14 for wetlands shall be conducted in accordance with the  
15 provisions of this Section.

16 (b) Any person who intends to conduct a regulated  
17 activity within the State may request a determination from  
18 the Agency as to the existence, location, and surface area of  
19 any wetlands on or contiguous to the affected property.  
20 Nothing in this Section shall require the person to seek such  
21 a determination, however, failure to seek and obtain a  
22 determination shall not be a defense against a violation of  
23 this Act.

24 The person seeking a determination shall provide the  
25 Agency with sufficient information to render such a  
26 determination. The information shall include a wetland  
27 delineation made in accordance with the COE Wetlands  
28 Delineation Manual, Technical Report Y-87-1. Delineation of  
29 the portion of a contiguous wetland not on the affected  
30 property shall be made to the extent reasonably possible, and  
31 methods other than physical on-site evaluations shall be  
32 considered by the Agency.

33 The Agency shall provide notice to the applicant as to

1 whether a submitted application is complete. Unless the  
2 Agency notifies the applicant that the application is  
3 incomplete within 15 days of receipt of the application, the  
4 application shall be deemed complete. The Agency may request  
5 additional information as needed to make the completeness  
6 determination. The Agency shall, within 30 days after receipt  
7 of a complete determination request, provide the person with  
8 a determination as to the existence, location, and surface  
9 area of wetlands located on or contiguous to the affected  
10 property.

11 If the Agency determines that there are no wetlands on  
12 the affected property, any otherwise regulated activity  
13 conducted on the property shall not be subject to the  
14 provisions of this Act.

15 If the Agency determines that there is one or more  
16 wetlands on or contiguous to the affected property, the  
17 person may apply to the Agency for classification of such  
18 wetlands.

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

21 (c) If a person intends to conduct a regulated activity,  
22 the person may, prior to commencing the regulated activity,  
23 request that the wetland be classified as a Class IA, Class  
24 IB, Class II, or Class III wetland in accordance with the  
25 provisions of this Section. Nothing in this Section shall  
26 require the person to seek such a classification, however any  
27 wetlands not so classified shall be considered Class IA  
28 wetlands for purposes of this Act.

29 The person seeking a classification shall provide the  
30 Agency with sufficient information to render such a  
31 classification. The information shall include a wetland  
32 delineation made in accordance with the COE Wetlands  
33 Delineation Manual, Technical Report Y-87-1.

34 Unless the Agency notifies the applicant that the request

1 for classification is incomplete within 15 days after receipt  
2 of the request, the application shall be deemed complete.

3 The Agency may request additional information as needed  
4 to make the completeness determination. The Agency shall,  
5 within 30 days after receipt of classification request,  
6 provide the person with a classification of wetlands located  
7 on or contiguous to the affected property. If the Agency  
8 fails to provide the person with a classification within 30  
9 days, the classification requested by the person shall be  
10 deemed granted.

11 The Agency shall classify a wetland as:

12 (1) A Class IA wetland if and only if (A) the  
13 wetland is or encompasses a bog; (B) the wetland is or  
14 encompasses a fen; (C) the wetland is or encompasses a  
15 panne; (D) the wetland is or encompasses a cypress swamp;  
16 or (E) a threatened or endangered species has been  
17 identified in the wetland, provided that a wetland will  
18 not be classified as Class IA based solely on the  
19 presence of an endangered plant and the owner of the  
20 wetland authorizes the taking of that plant pursuant to  
21 the Illinois Endangered Species Protection Act.

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

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

30 (4) A Class III wetland if and only if (A) the  
31 wetland is not a Class IA or Class IB wetland, and (B)  
32 the total size of the wetland, including contiguous  
33 areas, is (i) less than one-quarter acre or (ii) less  
34 than one-half acre if the wetland is in a county that

1 does not have authority to establish stormwater  
2 management programs under Section 5-1062 or Section  
3 5-1062.1 of the Counties Code.

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

6 (d) Subject to the provisions of Section 35 regarding  
7 general permits, no person may conduct or cause to be  
8 conducted a regulated activity within or affecting a wetland  
9 in such a manner that the biologic or hydrologic integrity of  
10 the wetland is impaired within the scope of this Act, except  
11 in accordance with the terms of an individual permit issued  
12 by the Agency or authorization to proceed as applicable under  
13 this Section.

14 (1) Class IA.

15 (A) A permit to conduct a regulated activity  
16 affecting a Class IA wetland within the scope of  
17 this Act shall be granted if documentation is  
18 submitted that demonstrates that avoidance of  
19 impacts to a Class IA wetland precludes the  
20 reasonable economic use of the entire parcel and  
21 that no practicable alternative to wetland  
22 modification exists.

23 (B) No permit under this item (1) may be  
24 issued by the Agency without a public notice and  
25 opportunity for public hearing being afforded. In  
26 the event that an affected party requests a public  
27 hearing, a public hearing shall be held.

28 (C) Wetland losses under this item (1) shall  
29 be mitigated at a ratio of no greater than 3.5:1 and  
30 shall be mitigated in kind and within the same  
31 watershed as the impacted area restoring, to the  
32 maximum degree practicable as determined by the  
33 Agency, both the type and functions of the wetland  
34 that will be affected by the regulatory activity.

1           When the type and functions of the wetland that will  
2           be affected by the activity cannot be adequately  
3           restored to the maximum degree practicable by the  
4           ratio allowed in this paragraph, the Agency may, on  
5           a case-by-case basis, increase this ratio based on  
6           site-specific criteria to be developed by rule. The  
7           mitigation shall be consistent with rules adopted by  
8           the Board and may consist of actual replacement or  
9           participation in a mitigation banking program or  
10          other compensation program approved by the Agency.

11          (2) Class IB.

12                 (A) A permit to conduct a regulated activity  
13                 affecting a Class IB wetland within the scope of  
14                 this Act shall be granted if documentation is  
15                 submitted that demonstrates that no practicable  
16                 alternative to wetland modification exists.

17                 (B) No permit under this item (2) may be  
18                 issued by the Agency without a public notice and  
19                 opportunity for public hearing being afforded. In  
20                 the event that an affected party requests a public  
21                 hearing, a public hearing shall be held.

22                 (C) Wetland losses under this item (2) shall  
23                 be mitigated at a ratio of no greater than 3:1 and  
24                 shall be mitigated in kind and within the same  
25                 watershed as the impacted area restoring, to the  
26                 maximum degree practicable as determined by the  
27                 Agency, both the type and functions of the wetland  
28                 that will be affected by the regulatory activity.  
29                 When the type and functions of the wetland that will  
30                 be affected by the activity cannot be adequately  
31                 restored to the maximum degree practicable by the  
32                 ratio allowed in this paragraph, the Agency may, on  
33                 a case-by-case basis, increase this ratio based on  
34                 site-specific criteria to be developed by rule. The

1 mitigation shall be consistent with rules adopted by  
2 the Board and may consist of actual replacement or  
3 participation in a mitigation banking program or  
4 other compensation program approved by the Agency.

5 (3) Class II.

6 (A) A permit to conduct a regulated activity  
7 affecting a Class II wetland within the scope of  
8 this Act shall be granted if documentation is  
9 submitted demonstrating that a minimization plan to  
10 minimize or alleviate the impact on the wetland has  
11 been developed and applied as reasonably  
12 appropriate.

13 (B) No permit under this item (3) may be  
14 issued by the Agency without a public notice and  
15 opportunity for public hearing being afforded. In  
16 the event that an affected party requests a public  
17 hearing, the Agency may at its discretion hold a  
18 public hearing on the proposed regulated activity.

19 (C) Wetland losses under this item (3) shall  
20 be mitigated at a ratio of no greater than 1.5:1,  
21 and shall be mitigated in kind and within the same  
22 watershed as the impacted area restoring, to the  
23 maximum degree practicable as determined by the  
24 Agency, both the type and functions of the wetland  
25 that will be affected by the regulatory activity.  
26 When the type and functions of the wetland that will  
27 be affected by the activity cannot be adequately  
28 restored to the maximum degree practicable by the  
29 ratio allowed in this paragraph, the Agency may, on  
30 a case-by-case basis, increase this ratio based on  
31 site-specific criteria to be developed by rule. The  
32 mitigation shall be consistent with rules adopted by  
33 the Board and may consist of actual replacement,  
34 participation in a mitigation banking program or

1 other compensation programs approved by the Agency,  
2 education or research programs, or other appropriate  
3 programs.

4 (4) Class III.

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

9 (B) The notification shall include (i) a  
10 sketch that reasonably depicts the area that will be  
11 affected by the regulated activity, including  
12 wetland and water boundaries for the areas affected  
13 and the existing land uses and structures; (ii) a  
14 description of the proposed activity, including its  
15 purpose; (iii) a description of any public benefit  
16 to be derived from the proposed project; and (iv)  
17 the names and addresses of adjacent landowners as  
18 determined by the current tax assessment roles.

19 (C) Upon receipt of a notification of intent,  
20 the Agency shall verify that the regulated activity  
21 will affect a wetland that it previously classified  
22 as Class III. If the Agency so verifies, the Agency  
23 shall send the person, within 30 days of the receipt  
24 of the notification, a response stating that the  
25 regulated activity may proceed. If the Agency  
26 cannot so verify, the Agency shall send the person,  
27 within 30 days of the receipt of the notification, a  
28 response stating that no classification has been  
29 made by the Agency or that a classification of IA,  
30 IB, or II was made and that the regulated activity  
31 may not proceed until either a classification is  
32 made pursuant to this Section, or a permit is  
33 obtained, as applicable. Failure of the Agency to  
34 respond to a notification shall be deemed as an

1 authorization to proceed.

2 (D) No permit shall be required for a  
3 regulated activity covered under this Act that will  
4 impact an area that has been classified as a Class  
5 III wetland.

6 (e) Within 15 days of the receipt of a permit  
7 application, the Agency shall determine if an application is  
8 complete. To be deemed complete, an application must provide  
9 all information, as requested in Agency application forms,  
10 sufficient to evaluate the application. The information shall  
11 include, at a minimum, the following:

12 (1) A sketch that reasonably depicts the area that  
13 will be affected by the regulated activity, including  
14 wetland and water boundaries for the areas affected and  
15 the existing land uses and structures.

16 (2) A description of the proposed activity,  
17 including its purpose.

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

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

22 (5) A wetland delineation made in accordance with  
23 the COE Wetlands Delineation Manual, Technical Report  
24 Y-87-1.

25 The Agency application forms shall be finalized and made  
26 available prior to the date on which any application is  
27 required. The Agency shall provide notice to the applicant as  
28 to whether a submitted application is complete. Unless the  
29 Agency notifies the applicant that the application is  
30 incomplete within 20 days of receipt of the application, the  
31 application shall be deemed complete. The Agency may request  
32 additional information as needed to make the completeness  
33 determination. The Agency may, to the extent practicable,  
34 provide the applicant with a reasonable opportunity to



1 correct deficiencies prior to a final determination of  
2 completeness. Within 90 days after the receipt of a complete  
3 application for permit, the Agency shall issue, deny, or  
4 issue with conditions a permit. If a public hearing is held  
5 on the application, however, this period shall be extended by  
6 45 days.

7 (f) The Agency shall not issue any permit pursuant to  
8 this Section unless the Agency has certified that the  
9 proposed activity will not cause or contribute to a violation  
10 of any State water quality standard. The Agency will be  
11 deemed to have certified that the proposed activity will not  
12 cause or contribute to a violation of any State water quality  
13 standard if it has not declined in writing to so certify  
14 within 80 days of the filing of the application, unless the  
15 Agency has requested that the applicant supply more  
16 information relevant to assessing the water quality impacts  
17 of the proposed activity.

18 (g) Any person may submit concurrent requests for  
19 determination and delineation, classification, and a permit  
20 application or provision of notification. The Agency shall  
21 act on such combined requests concurrently in accordance with  
22 expedited permitting procedures proposed by the Agency and  
23 adopted by the Board.

24 (h) Any person may submit an application for an  
25 after-the-fact permit to be issued under this Act, and the  
26 Agency is authorized to issue such an after-the-fact permit  
27 if it determines that the activities covered by the  
28 after-the-fact permit application were undertaken and  
29 conducted in response to emergency circumstances where there  
30 may be an imminent threat to persons, public infrastructure,  
31 personal property, or uninterrupted utility service that made  
32 it impracticable for the applicant to obtain prior  
33 authorization under this Act to undertake and conduct such  
34 activities. The applicant shall be required to demonstrate

1 that it provided notice to the Agency of the emergency  
2 circumstances as soon as reasonably possible following the  
3 discovery of such circumstances.

4 (i) The Board shall adopt rules to carry out the  
5 provisions of this Section in accordance with Section 40 of  
6 this Act.

7 Section 30. Surety. The Board may provide by rule for  
8 any requirements regarding bonds or letters of credit in  
9 favor of the State, including conditions sufficient to secure  
10 compliance with conditions and limitations of a permit.

11 Section 35. General permits.

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

16 (b) Permits for all categories of activities, subject to  
17 the same permit limitations and conditions that are the  
18 subject of a nationwide permit issued by the COE, in effect  
19 on the date of the enactment of this Act are adopted as  
20 general permits covering regulated activities subject to this  
21 Act.

22 (c) The Agency may adopt general permits covering other  
23 activities that would be subject to the same permit  
24 limitations and conditions if it determines that the  
25 activities in that category will cause only minimal adverse  
26 environmental effects when performed separately, will have  
27 only minimal cumulative adverse effect on the environment,  
28 will not cause or contribute to a violation of State water  
29 quality standards when performed separately, and will have  
30 only a minimal cumulative adverse effect on water quality.  
31 The Agency may prescribe the best management practices for  
32 any general permit issued under this Section. The Agency

1 shall consider any optional mitigation proposed by an  
2 applicant in determining whether the net adverse  
3 environmental effects of a proposed regulated activity are  
4 minimal. Specifically, the Agency must adopt a general  
5 permit for:

6 (1) the construction or maintenance of access roads  
7 for utility lines, substations, or related equipment or  
8 facilities; and

9 (2) activities for the purpose of preserving and  
10 enhancing aviation safety or preventing an airport  
11 hazard.

12 (d) No general permit adopted under this Section shall  
13 be for a period of more than 5 years after the date of its  
14 adoption and the general permit may be revoked or modified by  
15 the Agency if, after opportunity for public hearing, the  
16 Agency determines that the activities authorized by the  
17 general permit have an adverse impact on the environment,  
18 cause or contribute to a violation of State water quality  
19 standards, or are more appropriately authorized by individual  
20 permits.

21 (e) Compliance with the terms of the general permits  
22 shall be deemed compliance with the provisions of this Act if  
23 the applicant (i) files a notice of intent to be covered  
24 under the provisions of the general permit in accordance with  
25 rules adopted pursuant to this Act and (ii) files any reports  
26 required by the general permit.

27 (f) The Agency shall respond to a notice of intent to  
28 proceed under general permits issued under this Section  
29 within 30 days after the Agency receives the notice. In the  
30 event that the Agency fails to respond to a notice of intent  
31 to proceed within 30 days as required by this subsection (f),  
32 the person submitting the notice shall be deemed fully  
33 authorized to conduct the activities described in the notice  
34 under the terms and conditions of the applicable general

1 permit.

2 Section 40. Illinois Wetlands Advisory Committee;  
3 duties; rules.

4 (a) There is hereby established the Illinois Wetlands  
5 Advisory Committee consisting of 13 members appointed by the  
6 Governor. The Committee shall include 5 members selected  
7 from among the following 10 organizations:

- 8 (1) The Illinois State Chamber of Commerce.
- 9 (2) The Illinois Association of Realtors.
- 10 (3) The Chemical Industry Council of Illinois.
- 11 (4) The Consulting Engineers Council of Illinois.
- 12 (5) The Illinois Association of Aggregate  
13 Producers.
- 14 (6) The Illinois Association of Home Builders.
- 15 (7) The Illinois Energy Association.
- 16 (8) The Illinois Manufacturers Association.
- 17 (9) The National Solid Waste Management  
18 Association.
- 19 (10) The Illinois Farm Bureau.

20 The Committee shall include 3 members selected from the  
21 membership of environmental and conservation groups in the  
22 State.

23 The Committee shall include 2 persons representing  
24 counties exercising authority under Section 5-1062 or Section  
25 5-1062.1 of the Counties Code to establish stormwater  
26 management programs.

27 The Committee shall include 3 other members as determined  
28 by the Governor.

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

31 (b) The Committee shall review, evaluate, and make  
32 recommendations (i) regarding State laws, rules, and  
33 procedures that relate to this Act and (ii) relating to the

1 State's efforts to implement this Act.

2 (c) Within 6 months after the effective date of this  
3 Act, the Agency, after consideration of the recommendations  
4 of the Committee, shall propose to the Board any rules  
5 required by this Act prescribing procedures and standards for  
6 its administration. Within 6 months of the proposal of such  
7 rules to the Board, the Board shall adopt, pursuant to  
8 Sections 27 and 28 of the Environmental Protection Act and  
9 any rules adopted thereunder, rules that are consistent with  
10 this Act. Nothing in this Act shall preclude, at any time,  
11 the recommendation, proposal, or adoption of any other rules  
12 deemed necessary for the orderly implementation of this Act.

13 (d) The Committee shall develop a plan for Statewide  
14 wetlands protection and shall submit the plan to the State.  
15 The State shall seek to obtain a delegation of COE authority  
16 under Section 404 of the federal Clean Water Act for all  
17 wetlands in Illinois on or before July 1, 2007, in accordance  
18 with Section 20 of this Act.

19 Section 45. Appeal of final agency decision; judicial  
20 review.

21 (a) If the Agency rejects a proposed determination and  
22 delineation, refuses to approve a classification, or approves  
23 a classification other than that supplied by the applicant,  
24 or refuses to grant or grants with conditions a permit under  
25 Sections 25 or 35 of this Act, the applicant may, within 35  
26 days after receipt of the decision, petition for a hearing  
27 before the Board to contest the decision of the Agency.  
28 However, the 35-day period for petitioning for a hearing may  
29 be extended by the applicant for a period of time not to  
30 exceed 90 days by written notice provided to the Board from  
31 the applicant and the Agency within the initial period. The  
32 applicant and the Agency must jointly file a request for  
33 extension within 35 days after the date of service of the

1 Agency's final decision. The joint request may seek an appeal  
2 period not exceeding 125 days from the date of service of the  
3 Agency's final decision to file a petition for review under  
4 this Section. The Board shall publish notice in a newspaper  
5 of general circulation in that county where the regulated  
6 activity at issue is located for a period of 21 days. The  
7 Agency shall appear as respondent in the hearing. At the  
8 hearing the rules prescribed in Section 32 and subsection (a)  
9 of Section 33 of the Environmental Protection Act shall apply  
10 and the burden of proof shall be on the petitioner.

11 (b) The applicant or the Agency, when adversely affected  
12 by a final order or determination of the Board, may obtain  
13 judicial review by filing a petition for review within 35  
14 days from the date that a copy of the order or other final  
15 action sought to be reviewed was served upon the party  
16 affected by the order or other final Board action complained  
17 of, under the provisions of the Administrative Review Law and  
18 the rules adopted pursuant thereto, except that review shall  
19 be afforded directly in the appellate court for the district  
20 in which the cause of action arose and not in the circuit  
21 court.

22 Section 50. Investigation; enforcement.

23 (a) In accordance with constitutional limitations, the  
24 Agency shall have authority to enter at all reasonable times  
25 upon any private or public property for the purpose of  
26 inspecting and investigating to ascertain possible violations  
27 of this Act or of rules adopted hereunder or permits or terms  
28 or conditions thereof.

29 (b) The Agency shall conduct investigations and pursue  
30 enforcement of alleged violations of this Act, any rule  
31 adopted pursuant to this Act, a permit granted by the Agency,  
32 or a term or condition of a permit as prescribed in Section  
33 30 and subsections (a), (b), and (c) of Section 31 of the

1 Environmental Protection Act and any rules adopted pursuant  
2 to this Act.

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

6 (d) In hearings before the Board to enforce provisions  
7 of this Act, the burden shall be on the Agency to show either  
8 that the respondent has violated or threatens to violate any  
9 provision of this Act or any rule adopted pursuant to this  
10 Act or a permit or term or condition of a permit. If such  
11 proof has been made, the burden shall be on the respondent to  
12 show that compliance with the Board's rules would impose an  
13 arbitrary or unreasonable hardship.

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

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

20 (g) The civil penalties provided for in this Section may  
21 be recovered in a civil action, which may be instituted in a  
22 court of competent jurisdiction or by determination or order  
23 of the Board. The State's Attorney of the county in which the  
24 alleged violation occurred, or the Attorney General, may, at  
25 the request of the Agency or on his or her own motion,  
26 institute a civil action in a court of competent jurisdiction  
27 to recover civil penalties and an injunction to restrain  
28 violations of the Act.

29 (h) Any person who violates any provision of this Act or  
30 any rule adopted pursuant to this Act, or any permit or term  
31 or condition thereof, or that violates any determination or  
32 order of the Board pursuant to this Act, shall be liable for  
33 a civil penalty of not to exceed \$10,000 per day of  
34 violation; such penalties may, upon order of the Board or a

1 court of competent jurisdiction, be made payable to the  
2 Environmental Protection Trust Fund, to be used in accordance  
3 with the provisions of the Environmental Protection Trust  
4 Fund Act.

5 (i) In determining the appropriate civil penalty to be  
6 imposed under this Section, the Board is authorized to  
7 consider any matters of record in mitigation or aggravation  
8 of penalty, including but not limited to the following  
9 factors:

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

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

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

17 (4) The amount of monetary penalty which will serve  
18 to deter further violations by the person and to  
19 otherwise aid in enhancing voluntary compliance with this  
20 Act by the person and other persons similarly subject to  
21 the Act.

22 (5) The number, proximity in time, and gravity of  
23 previously adjudicated violations of this Act by the  
24 person.

25 (j) A violation of any provision of this Act or any rule  
26 adopted pursuant to this Act, or any permit or term or  
27 condition thereof, or any violation of any determination or  
28 order of the Board pursuant to this Act, shall not be deemed  
29 a criminal offense.

30 (k) All final orders imposing civil penalties pursuant  
31 to this Section shall prescribe the time for payment of such  
32 penalties. If any such penalty is not paid within the time  
33 prescribed, interest on the penalty at the rate set forth in  
34 subsection (a) of Section 1003 of the Illinois Income Tax Act



1 shall be paid for the period from the date payment is due  
2 until the date payment is received. However, if the time for  
3 payment is stayed during the pendency of an appeal, interest  
4 shall not accrue during such stay.

5 Section 55. Fees.

6 (a) Any person seeking a permit, coverage under a  
7 general permit, or filing a notification of activities to be  
8 conducted on a Class III wetland from the Agency shall pay a  
9 fee to the Agency at the time of filing an application or  
10 notification. The following fee amounts shall apply:

11 (1) The fee for a Class IA or Class IB wetland is  
12 \$400 if the site is less than 1 acre; \$500 if the site is  
13 equal to or greater than 1 acre but less than 10 acres;  
14 \$750 if the site is equal to or greater than 10 acres but  
15 less than 50 acres; and \$1,000 if the site is equal to or  
16 greater than 50 acres. In the event that the Agency is  
17 required to review a mitigation plan for any such site,  
18 an additional fee will be required at the time the  
19 applicant is notified that such a review is required. The  
20 additional mitigation review fee shall be: \$750 if the  
21 affected wetland is less than 0.5 acres; \$1000 if the  
22 affected wetland is equal to or greater than 0.5 acres  
23 but less than 2 acres; \$1250 if the site is equal to or  
24 greater than 2 acres but less than 5 acres; and \$1,500 if  
25 the site is equal to or greater than 5 acres.

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

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

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

33 (b) The Agency shall establish procedures for the

1 collection of fees required under this Act.

2 (c) There is hereby created in the State Treasury a  
3 special fund to be known as the Wetlands Management Fund.  
4 There shall be deposited into the Fund all monies received  
5 from the fees collected under subsection (a) of this Section.  
6 Pursuant to appropriation, monies from the Fund shall be  
7 allocated in amounts deemed necessary to implement this Act  
8 and, if sufficient funds are available, for the  
9 administration of other permit programs administered by the  
10 Agency.

11 (d) Counties that are delegated functions under this Act  
12 pursuant to Section 60 (d) may establish fees it deems  
13 necessary in lieu of using the fee structure in subsection  
14 (a).

15 Section 60. Home rule; delegation of authority.

16 (a) A home rule unit may not regulate wetlands except as  
17 provided in subsection (b) and (c) of this Section. This  
18 Section is a limitation under subsection (i) of Section 6 of  
19 Article VII of the Illinois Constitution on the concurrent  
20 exercise by home rule units of powers in functions exercised  
21 by the State.

22 (b) In cases where a county government has implemented a  
23 wetlands regulation program prior to March 1, 2003, that  
24 county will be permitted to regulate wetlands until July 1,  
25 2005. Beginning on July 1, 2005, the limitation in subsection  
26 (a) of this Section shall take effect.

27 (c) The provisions of any ordinance or resolution  
28 adopted before, on, or after the effective date of this Act  
29 of the 93d General Assembly by any unit of local government  
30 that impose restrictions or limitations on the  
31 identification, classification, notification, permitting, or  
32 regulatory criteria for wetlands are invalid, except as  
33 authorized by subsection (d) of this Section, and all those

1 existing ordinances and resolutions are declared null and  
2 void. This subsection shall not be deemed to be a limitation  
3 on any legitimate statutory authority of any unit of local  
4 government to regulate flood control or stormwater  
5 management, so long as those rules are not more stringent  
6 than the rules adopted under Section 40 of this Act.

7 (d) The Agency may enter into written delegation  
8 agreements with any county government under which it may  
9 delegate all or portions of its inspecting, investigating,  
10 and enforcement functions under this Act. In cases where a  
11 county government has implemented a wetlands regulation  
12 program prior to March 1, 2003, the Agency shall, upon the  
13 receipt of a request for delegation by such county  
14 government, delegate all or portions of its functions under  
15 this Act, as requested. Such delegation agreements shall, at  
16 a minimum, require that:

17 (1) All of the administrative procedures and  
18 operations performed by the delegated county government  
19 shall be performed in accordance with the provisions of  
20 this Act and with rules adopted pursuant to Section 40 of  
21 this Act.

22 (2) The general permits issued under Section 35 of  
23 this Act shall be administered by the delegated county  
24 government for those activities covered under the general  
25 permits.

26 (3) At the time of filing a permit application or  
27 notification with a delegated county government, the  
28 person shall file a certification with the Agency  
29 attesting to such filing.

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

34 (5) Any final action taken by a delegated county

1 government may be appealed in accordance with the  
2 provisions of Section 45 of this Act.

3 (e) Notwithstanding any other provision of law to the  
4 contrary, no unit of local government shall be liable for any  
5 injury resulting from the exercise of its authority pursuant  
6 to such a delegation agreement, unless the injury is  
7 proximately caused by the willful and wanton negligence of an  
8 agent or employee of the unit of local government, and any  
9 policy of insurance coverage issued to a unit of local  
10 government may provide for the denial of liability and the  
11 nonpayment of claims based upon injuries for which the unit  
12 of local government is not liable pursuant to this  
13 subsection.

14 Section 90. The State Finance Act is amended by adding  
15 Section 5.595 as follows:

16 (30 ILCS 105/5.595 new)

17 Sec. 5.595. The Wetlands Management Fund.

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

20 Section 99. Effective date. This Act takes effect upon  
21 becoming law."