



ENVIRONMENTAL
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State Wetland Protection

Status, Trends, & Model Approaches

*A 50-state study by the
Environmental Law Institute*

*With support from the
U.S. Environmental Protection Agency*

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Appendix: State Profiles

Illinois

I. Overview

Less than nine percent of the historic 8.2 million acres of wetlands in Illinois remain intact today.¹ Furthermore, one-fourth of the remaining nine percent has been modified or created by dikes, impoundments, or excavation activities.² However, the destruction of wetlands in Illinois “no longer appears to be occurring at extremely rapid rates,” due, in part, to statewide regulatory measures.³

The Interagency Wetlands Policy Act of 1989 (IWPA) established a wetland regulatory program separate from the federal §404 permitting program under the Clean Water Act (CWA). The IWPA authorizes the Illinois Department of Natural Resources (IDNR) to regulate state-funded projects and activities that impact wetlands.⁴ However, state regulation of wetlands on private lands occurs primarily under CWA §401.

II. Regulatory Programs

Wetland definitions and delineation

Illinois defines waters of the state as “all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.”⁵ The IWPA defines wetlands as:

land that has a predominance of hydric soils (soils which are usually wet and where there is little or no free oxygen) and that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of hydrophytic vegetation (plants typically found in wet habitats) typically adapted for life in saturated soil conditions. Areas which are restored or created as the result of mitigation or planned construction projects and which function as a wetland are included within this definition even when all three wetland parameters are not present.⁶

State delineation criteria generally follow the U.S. Army Corps of Engineers (Corps) 1987 *Wetlands Delineation Manual*, or, for agricultural lands, the *National Food Securities Act Manual*. In practice, delineation of wetlands is similar between the two manuals.⁷

Organization of state agencies

Two state agencies, the Illinois Department of Natural Resources (IDNR) and the Illinois Environmental Protection Agency (IEPA), are involved in wetland protection at the state level.

¹ 20 ILL. COMP. STAT. § 830/1-2(a).

² Illinois Department of Natural Resources, *History*, at <http://dnr.state.il.us/wetlands/ch3b.htm> (last visited July 18, 2007).

³ *Id.*

⁴ 20 ILL. COMP. STAT. § 830/2-1.

⁵ Environmental Protection Act §3.550 (415 ILL. COMP. STAT. § 5/3.550).

⁶ 20 ILL. COMP. STAT. § 830/1-6(a).

⁷ Illinois Department of Natural Resources, *Delineation*, at <http://dnr.state.il.us/wetlands/ch1b.htm> (last visited July 18, 2007).

Illinois Department of Natural Resources. IDNR's primary authority is established under the IWPA. As previously mentioned, this Act provides the INDR with regulatory authority over state activities that affect wetlands.⁸ Additionally, the Rivers, Lakes, and Streams Act provides IDNR peripheral regulatory authority to regulate construction activities in floodplains; persons proposing such activities must first secure a permit from IDNR.⁹ The IDNR's wetland program has one full-time equivalent (FTE) and a minimal budget derived from general revenue funds.¹⁰

The Interagency Wetlands Committee (Committee) was created by the IWPA to advise the Director of the IDNR in the administration of the Act.¹¹ Committee members include representatives from IDNR, IEPA, Illinois Department of Transportation, Capital Development Board, Illinois Department of Agriculture, Illinois Department of Commerce and Economic Opportunity, and the Historic Preservation Agency; representatives from several federal agencies are also invited to attend Committee meetings.¹² Each state agency serving on the Committee is required to prepare an "Agency Action Plan, which shall be used as the agency's procedural plan for the implementation of [the] Act."¹³

Illinois Environmental Protection Agency. IEPA's Watershed Management Section (WMS) sets water quality standards in Illinois and administers the state's §401 certification program.¹⁴ Approximately 2.5 FTEs work primarily on §401 certification activities.¹⁵ Since 2003, funding for the §401 certification program has come from §401 certification fees.¹⁶

§401 certification

Section 401 water quality certification is Illinois' primary mechanism for regulating wetlands on private lands. IEPA issues approximately 150 certifications each year, conditionally approving almost all received applications.¹⁷ No decisions are waived and less than one percent of decisions result in denial.¹⁸ IEPA staff use both qualitative assessment and best professional judgment in making §401 certification decisions.

The state's §401 certification review process is initiated upon notification from the U.S. Army Corps of Engineers regarding the Corps permits required for a project. IEPA must then evaluate the next action for the project. If the project falls under a Nationwide Permit (NWP) or regional

⁸ 20 ILL. COMP. STAT. § 830/2-1.

⁹ Illinois Department of Natural Resources, *Rivers, Lakes, and Streams Act*, at <http://dnr.state.il.us/wetlands/Ch4f.htm> (last visited July 18, 2007).

¹⁰ Personal communication with Patrick Malone, Ill. Dep't of Natural Res. (Sept. 29, 2006).

¹¹ Other duties of the Committee include: establishing guidelines for developing individual Agency Action Plans, developing and adopting "technical procedures for the consistent identification, delineation, and evaluation of existing wetlands and quantification of their functional values and the evaluation of wetland restoration or creation projects," developing a research program for wetland function, restoration and creation, and developing educational materials to promote the protection of wetlands. Illinois Department of Natural Resources, *The Interagency Wetlands Committee*, at http://dnr.state.il.us/Wetlands/IWC_intro.htm (last visited July 18, 2007).

¹² 20 ILL. COMP. STAT. § 830/2-1.

¹³ *Id.*

¹⁴ Illinois Department of Natural Resources, *Introduction*, at <http://dnr.state.il.us/wetlands/ch4a.htm> (last visited July 18, 2007).

¹⁵ Personal communication with Bruce Yurdin, Ill. Env'tl. Prot. Agency (Sept. 25, 2006).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

permit that has been certified, the agency takes no further action on the project because certification has already been granted. If the project is not subject to a NWP or regional permit that has been certified, an individual review is conducted. The individual certification process begins with an antidegradation review in accordance with state water quality regulations. A public notice consisting of an antidegradation fact sheet on the project is posted on the IEPA's website. Following the public notice period, the agency reviews any comments received, including requests for hearing. The agency may decide to hold a hearing, prepare a response to the letters, request additional information from the applicant or prepare a certification. If the project meets antidegradation criteria and narrative and numeric water quality standards, the agency will request a fee (unless the applicant is exempt from paying the fee).¹⁹ Once the fee is received, a §401 water quality certification is issued and sent to both the Corps and the applicant.²⁰

Nationwide permits

On January 12, 2002, the Corps issued the final notice of NWPs under §10 of the 1899 Rivers and Harbors Act and §404 of the Clean Water Act.²¹ For the 2002 NWPs, §401 certifications were issued for eight NWPs without conditions²² and for eight NWPs with regional conditions.²³ Section 401 certification was denied for 18 NWPs.²⁴ Illinois's action on the 2007 NWPs could not be reviewed within the reporting period.

Mitigation

To accomplish "no net loss," the IWPA established a review process for all projects being pursued by a state agency or being accomplished with state funds that have the potential to adversely impact a wetland.²⁵ Projects must first be reviewed by IDNR to determine whether a wetland impact will occur; if it is determined there will not be an impact, the project will be approved and funds may be released. If an impact is expected to occur, the agency requesting approval must create a plan detailing how it will compensate for the impact before the project

¹⁹ For example, state agencies and school districts are not required to pay a fee for a certification.

²⁰ Yurdin, *supra* note 15.

²¹ Letter from Bruce Yurdin, Manager of the Watershed Mgmt. Section of the Bureau of Water Ill. Env'tl. Prot. Agency, to the Rock Island Dist. Corps of Eng'rs (March 14, 2002), *available at* <http://www.mvm.usace.army.mil/regulatory/Permit/NWP.IL.WQC.2002.pdf>.

²² *Id.* The following NWPs have been certified without conditions: NWP#4 - Maintenance; NWP#4 - Fish and Wildlife Harvesting; NWP#5 - Scientific Measuring Devices; NWP#6 - Survey Activities; NWP#7 - Outfall Structures; NPS#20 - Oil Spill Cleanup; NWP#22 - Removal of Vessels; NWP#36 - Boat Ramps.

²³ *Id.* The following NWPs are issued §401 certifications subject to regional conditions: NWP#12 - Utility Line Activities; NWP#13 - Bank Stabilization; NWP#14 - Linear Transportation Projects; NWP#27 - Stream and Wetland Restoration Activities; NWP#29 - Single-family Housing; NWP#38 - Cleanup of Hazardous and Toxic Waste; NWP#41 - Reshaping Existing Drainage Ditches; NWP #44 - Mining Activities.

²⁴ *Id.* The following NWPs are denied §401 certification: NWP#15 - U.S. Coast Guard Approved Bridges; NWP#16 - Return Water from Upland Contained Disposal Areas; NWP#17 - Hydropower Projects; NWP#18 - Minor Discharges; NWP#19 - Minor Dredging; NWP#21 - Surface Coal Mining Activities; NWP#23 - Approved Categorical Exclusions; NWP#25 - Structural Discharges; NWP#30 - Moist Soil Management for Wildlife; NWP#31 - Maintenance of Existing Flood Control Facilities; NWP#32 - Completed Enforcement Actions; NWP#33 - Temporary Construction, Access and Dewatering; NWP#34 - Cranberry Production Activities; NWP#37 - Emergency Watershed Protection and Rehabilitation; NWP#39 - Residential, Commercial and Institutional Developments; NWP#40 - Agricultural Activities; NWP#42 - Recreational Facilities; NWP#43 - Stormwater Management Facilities.

²⁵ Illinois Department of Natural Resources, *Interagency Wetland Policy Act of 1989*, at <http://dnr.state.il.us/wetlands/ch4e.htm> (last visited July 18, 2007).

may move forward.²⁶ The administrative rules of the IWPA establish guidelines for wetland compensation plans and include a set of mitigation ratios.²⁷ Each state agency is authorized to establish a Wetland Compensation Account, which is a “system of accounting for wetland loss and compensation” that “reconcile[s] debits and credits established as the result of Wetland Compensation Plans.”²⁸

Compliance and enforcement

Illinois has neither an enforcement or compliance program with respect to wetlands. The state defers to the Corps to on §404 enforcement and compliance issues.²⁹

Tracking systems

The IEPA has created two separate databases to track §401 permits and mitigation requirements.³⁰

III. Water Quality Standards

Illinois has not adopted wetland-specific water quality standards (WQS). However, wetlands are subject to general use WQS, which “must be met in waters of the State for which there is no specific designation.”³¹ National Pollutant Discharge Elimination System source permit decisions are tied to antidegradation standards and effluent WQS.³²

State WQS do not specify designated uses for wetlands; however, General Use Waters designated uses state that all waters that are not specified in another designated use category must meet the standards laid out in §302(B) of the state WQS.³³ There are, however, anti-degradation standards specific to wetlands that set the state’s goal for no net loss of existing wetland acres or functional values as a result of state-supported activities.³⁴

IV. Monitoring and Assessment

Based on information provided in each project’s delineation and monitoring report, IDNR staff use “best professional biological judgment” to assess the success of mitigation and compensation efforts, as well as wetland impacts.³⁵ With funding from a U.S. Environmental Protection

²⁶ 20 ILL. COMP. STAT. § 830/3-1.

²⁷ Illinois Department of Natural Resources, *supra* note 25. *See also* ILL. ADMIN CODE tit. 17, §§ 1090.10 to 1090.100.

²⁸ 20 ILL. COMP. STAT. § 830/3-3.

²⁹ Yurdin, *supra* note 15.

³⁰ *Id.*

³¹ ILL. ADMIN CODE tit. 35, § 303.201.

³² Yurdin, *supra* note 15.

³³ ILL. ADMIN CODE tit. 35, § 302(B).

³⁴ 20 ILL. COMP. STAT. § 830/1-4.

³⁵ Malone, *supra* note 10.

Agency (U.S. EPA) - Region V grant,³⁶ IEPA is developing a “Statewide Wetland Monitoring and Assessment Program” for wetlands as a mechanism for reporting wetland quality in future 305(b) reports. The program is expected to be established by the summer of 2007.³⁷

An outgrowth of interagency discussions during the development of the aforementioned program was the identification of the need to update Illinois’ National Wetland Inventory (NWI). In collaboration with and support from numerous state agencies, including IDNR and IEPA, Ducks Unlimited is seeking funding to commence the NWI update process in late summer 2007 using both 2005 and 2007 updated aerial imagery datasets.³⁸

As part of their water quality program, IEPA employs the Index of Biological Integrity and the Macroinvertebrate Biological Index to track chemical and biological criteria to assess aquatic life-use support of streams to aid in the compilation of the list of impaired waters to fulfill the requirements set forth in Section 303(d) of the Clean Water Act.³⁹ The IEPA also uses the stream assessment data to ensure that WQS are met and to aid in permitting decisions.⁴⁰ Additionally, IEPA has recently begun a collaborative effort with five other states in U.S. EPA - Region V to develop a uniform assessment methodology for the Mississippi River; quarterly meetings are coordinated by the Mississippi River Basin Association.⁴¹

IDNR participates in the Critical Trends Assessment Program (CTAP), a monitoring effort for forests, wetlands, grasslands, and streams throughout the State of Illinois. The program assesses changes in ecological conditions against a baseline in order to compare regional and site-specific patterns throughout Illinois. Between 1997 and 2001, surveys were conducted at 139 wetland sites and 149 stream sites. These were randomly selected from across the state on both public and private lands, so that once extrapolated, statewide wetland conditions could be reported. In its second five-year cycle (2002-2006), each site that was visited from 1997-2001 was resampled.⁴²

A second outgrowth of interagency discussions during the development of the Statewide Wetland Monitoring and Assessment Program was the identification of the need to develop a Wetland – Index of Biotic Integrity (IBI) to better assess the quality of Illinois wetlands. CTAP has developed a preliminary proposal to develop an IBI over a two-year period, and it is planned that a formal proposal for U.S. EPA - Region V Wetlands Program Development Grant funding will be submitted by June 2007.⁴³

³⁶ Note, “[the IEPA] is under a grant condition to develop a protocol- there is no obligation at this point, without additional resources, to fully engage and implement wetland monitoring and assessment throughout the state.” Personal communication with Gregg Good, Ill. Env’tl. Prot. Agency (November 15, 2006).

³⁷ *Id.*

³⁸ *Id.*

³⁹ Yurdin, *supra* note 15.

⁴⁰ Good, *supra* note 36.

⁴¹ *Id.*

⁴² Critical Trends Assessment Program, *About CTAP*, at <http://ctap.inhs.uiuc.edu/index.asp> (last visited July 18, 2007).

⁴³ Good, *supra* note 36.

V. Restoration and Partnerships

IDNR operates several state wetland restoration initiatives. Since 1975, IDNR has used money collected from the sale of duck stamps to restore, manage, and enhance wetlands to increase waterfowl habitat to support waterfowl hunting.⁴⁴ The IDNR spends approximately \$300,000 annually on projects throughout the state, many of which are located in the Illinois, Mississippi, and Kaskaskia River basins. In 2005, 146 acres of wetlands were restored in northeastern Illinois. In 2006, a total of 679 acres of wetlands were restored; 92 acres of wetlands were restored in southern Illinois and 587.25 were created or enhanced in southwestern and eastern Illinois. Support for these restoration projects came from private landowners, IDNR's private lands initiative, the federal Conservation Reserve Enhancement Program, the Habitat Fund (from sale of habitat stamps), the Furbearer Fund from habitat stamps, duck stamp fund, Agricultural leases on state sites, Ducks Unlimited, and the North American Wetlands Conservation Act. The State Duck Stamp Committee approved funding for creating or restoring approximately 517 acres in 2007 or later.⁴⁵ The agency's ultimate goal is to establish 46,313 new acres of wetlands in Illinois.⁴⁶

The IDNR also administers the Private Land Wildlife Habitat Program, which strives to "protect, enhance, and develop wildlife habitat, including wetlands, on private land for the purpose of improving wildlife populations, soil and water conservation, and quality of life for Illinois residents."⁴⁷ The program offers assistance to qualifying landowners with "plans, field equipment, plant materials, and labor to develop, implement, and maintain wildlife habitat management practices that require specialized training, equipment, or resources which would otherwise be unavailable to landowners."⁴⁸ The IDNR also participates in the U.S. Department of Agriculture's Conservation Reserve Enhancement Program⁴⁹ and Wetland Reserve Program.⁵⁰ Technical recommendations on techniques for restoring wetland wildlife habitat are made available to private landowners through the IDNR's District Wildlife Biologists and District Heritage Biologists.⁵¹ The IDNR also produces the *Illinois Wetland Restoration and Creation Guide*, which outlines the steps necessary to develop and implement a wetland restoration or creation project.⁵²

Illinois' Farmland Assessment Act (FAA) of 1977 provides property tax relief to landowners and farmers for non-intensive uses of land. The FAA requires the Department of Revenue to consider wetlands "open lands" and assess them as such at "fair cash value" instead of as croplands. To be eligible for tax relief, the wetlands must be a minimum of 10 acres in size;

⁴⁴ Personal communication with Ray Marshall, Ill. Dep't of Natural Res. (Sept. 27, 2006).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Illinois Department of Natural Resources, *Voluntary Incentive Programs*, at <http://dnr.state.il.us/wetlands/ch5b.htm> (last visited July, 2007).

⁴⁸ *Id.*

⁴⁹ See Illinois Conservation Reserve Enhancement Program, at <http://www.ilcrep.org/> (last visited July 18, 2007).

⁵⁰ See United States Department of Agriculture, Natural Resources Conservation Service, *Wetlands Reserve Program*, at http://www.il.nrcs.usda.gov/programs/wrp_ewp/wrp_index.html (last visited July 18, 2007).

⁵¹ Marshall, *supra* note 44.

⁵² Illinois Department of Natural Resources, *supra* note 11.

lands enrolled in federal or other conservation programs are also eligible for tax relief under the FAA.⁵³

VI. Education and Outreach

The IDNR formerly provided an extensive education and outreach program that was abandoned approximately three years ago when funding was cut. There is currently one state program, Environment and Nature Training Institute for Conservation Education, which teaches educators about wetland functions and values as a minor component in the program.⁵⁴

VII. Coordination with State and Federal Agencies

The IWPA requires inclusion of “[p]rocedures to coordinate the responsibilities contained within [the] Act with other State programs” within the Agency Actions Plans for IDNR, IEPA, Illinois Department of Transportation, Capital Development Board, Illinois Department of Agriculture, Illinois Department of Commerce and Economic Opportunity, and the Historic Preservation Agency.⁵⁵ Representatives from several federal agencies, including the Natural Resources Conservation Service, the Corps, U.S. Fish and Wildlife Service, and the U.S. EPA, are also invited to attend meetings of the Committee in order to exchange technical information and further coordinate.⁵⁶ Additionally, the IEPA and the IDNR meet with the Corps to discuss regulatory issues on a project-by-project basis.⁵⁷

VIII. Acronyms and Abbreviations

Committee – Interagency Wetlands Committee
Corps – U.S. Army Corps of Engineers
CWA – Clean Water Act
FAA – Farmland Assessment Act
FTE – Full-time Equivalent
IDNR – Illinois Department of Natural Resources
IEPA – Illinois Environmental Protection Agency
IBI – Index of Biotic Integrity
INHS – Illinois Natural History Survey
IWPA – Interagency Wetlands Policy Act of 1989
NWI – Illinois’ National Wetland Inventory
NWP – Nationwide Permits
USDA – United State Department of Agriculture
U.S. EPA – U.S. Environmental Protection Agency

⁵³ Illinois Department of Natural Resources, *supra* note 47.

⁵⁴ Malone, *supra* note 10.

⁵⁵ 20 ILL. COMP. STAT. § 830/2-1.

⁵⁶ Illinois Department of Natural Resources, *supra* note 11.

⁵⁷ Malone, *supra* note 10.

WMA – Watershed Management Section
WQS – Water Quality Standards