

# ILLINOIS

## *Enforceable Provisions Applicable to Nonpoint Source Water Pollution*

### DISCHARGE PROHIBITIONS

#### Water Pollution Control Law

Illinois' water pollution control law includes some provisions that may be used to take enforcement action against nonpoint source discharges that pollute the waters of the state or that violate state regulations or standards.

- The general discharge prohibition in Illinois states that "No person shall cause or threaten or allow the discharge of any contaminants that would cause or tend to cause water pollution, or that would violate regulations or standards adopted" by the Illinois Pollution Control Board (hereafter "IPCB").<sup>1</sup>

- Another general provision restricts a person from depositing "any contaminants upon the land in such place and manner so as to create a water pollution hazard."<sup>2</sup>

While these statutory provisions are not specifically limited to point sources, another provision which restricts a person from causing, threatening or allowing the "discharge of any contaminant into the waters of the State without a permit" applies only to point source discharges, and specifically only to those sources for which a federal permit is required.<sup>3</sup>

There are several avenues of enforcement. Following an investigation, the Agency may issue a notice and complaint and hold a hearing, or the Board may enforce an order by injunction, mandamus, or other appropriate remedy and/or civil penalties.<sup>4</sup> Civil penalties of a maximum of \$50,000 for the violation and \$10,000 for each continuing day may be assessed,<sup>5</sup> and it is a class A misdemeanor to violate the Act or regulations.<sup>6</sup> In addition, the Attorney General has broad authority to seek an injunction "to prevent air, land or water pollution within this State," notwithstanding any proceeding before any administrative agency.<sup>7</sup>

#### Other Discharge Limitations

- The organization of a *conservancy district* is authorized under the Illinois River Conservancy Districts Act (as distinguished from the Soil and Water Conservation Districts Act under Agriculture Requirements *infra*) "whenever the unified control of a lake or...river system...shall be deemed conducive to the prevention of stream pollution development, conservation and protection of water supply...development of irrigation, conservation of soil...and the promotion of the public health..."<sup>8</sup> State law endows the conservancy board with the right "to prevent pollution of ..." and "cause any and all parties, person,...to cease any and all pollution of" any stream or any other body of water in the district, although it cannot supersede the authority of the IPCB.<sup>9</sup> Although not specified in this section of the state statute, the Illinois Municipal Code authorizes sanctions of up to \$750 or imprisonment of up to six months.<sup>10</sup>

- The Illinois Metropolitan Water Reclamation District Act authorizes the establishment of local districts, such as a "sanitary district" which has the authority to prevent the pollution of a public water supply.<sup>11</sup> If the district Superintendent determines that "sewage or industrial wastes or other wastes" are causing "pollution," then it may bring an action in circuit court for mandamus or injunction, or issue a cease and desist order with accompanying fines.<sup>12</sup> "Other wastes" include "oil, tar and chemicals." "Pollution" means "such alteration of ...properties of any waters of the State, or such discharge of any contaminant into any waters as will or is likely to create a nuisance or render such waters harmful..." A violation of an order is considered a nuisance.<sup>13</sup> The state Water Authorities Act<sup>14</sup> also authorizes creation of a "water authority" which has the broad power to make regulations that "protect public health, welfare, and safety and to prevent pollution of its water supply" and may by ordinance "prevent pollution of waters which feed its reservoir for a distance of five miles upstream from the headwaters of its reservoir and may abate any cause of pollution...as a nuisance."<sup>15</sup>

- The state authorizes municipalities to adopt local land resource management plans to protect the land, air, water, natural resources and environment of the state to "ensure good quality and quantity of water resources," among other things and to adopt implementing ordinances.<sup>16</sup> Municipalities further have the power to pass laws that specifically protect from pollution any "reservoir or artificial lake constructed or maintained by the municipality for water supply purposes."<sup>17</sup> These local ordinances are enforced through local law enforcement and criminal prosecutions.<sup>18</sup> Civil and criminal penalties are authorized.<sup>19</sup>

Other state discharge prohibitions are narrowly defined by an express limitation on the specific substances that can be discharged.

- One Illinois statute prohibits the discharge of oil in quantities greater than standards set by the IPCB. However, this same provision also prohibits the discharge of "*other pollutants* directly or indirectly into the waters...",<sup>20</sup> and "other pollutants" are defined as "any floating materials which may cause unsightly appearance on the surface of such waters or are detrimental to aquatic life or the water quality of such waters."<sup>21</sup> Read broadly, this provision could be interpreted as a general discharge prohibition.

- Another discharge prohibition applies to "litter." It prohibits a person from dumping, depositing, dropping, throwing, discarding, leaving, causing of litter or permitting any of the above on public or private property or into "a river, lake, pond, or other stream or body of water in this state" (except in an emergency situation or for designated litter disposal areas).<sup>22</sup> "Litter" includes but is not limited to "garbage, trash, refuse, debris, rubbish, grass clippings or other lawn or garden waste...any nauseous or offensive matter of any kind...or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned or otherwise disposed of improperly."<sup>23</sup>

- It is a public nuisance "to throw or deposit offal, other offensive matter or the carcass of a dead animal in a water course, lake, pond, spring, well or common sewer..." and "to corrupt or render unwholesome or impure the water of a spring, river, stream, pond, or lake to the injury or prejudice of others."<sup>24</sup> It is enforced locally with a

maximum fine of \$100 for a first offense and a class B misdemeanor for subsequent offenses.<sup>25</sup>

Illinois law provides that no farm is a nuisance because of changed circumstances in the surrounding area where it has been in operation more than one year and was not a nuisance when it began operation, unless the nuisance results from "negligent or improper operation of the farm."<sup>26</sup> However, even this exception from nuisance liability does not prevent recovery of damages resulting from water pollution.<sup>27</sup>

## **Fish/Fisheries Laws**

Illinois laws relating to fish and fisheries do not appear to contain enforceable provisions applicable to nonpoint source discharges.

## **OPERATIONAL REQUIREMENTS**

### **Forestry Requirements**

- Illinois laws relating to forestry do not appear to contain enforceable operating requirements with respect to nonpoint source discharges.

### **Agriculture Requirements**

- Illinois statutes authorize the organization of soil and water conservation districts that have the power to formulate land-use regulations, including soil erosion measures, requirements for cultivation and other soil and erosion management methods, and provisions prohibiting the clearcutting of trees within thirty feet of any navigable waters, except for trees in a forestry management plan or other licensed activities.<sup>28</sup> Three-fourths of the landowners must approve the regulations in order for them to be enforceable as a local ordinance within the district, and the regulations are binding upon all of the landowners in the district.<sup>29</sup> The state municipal code grants these districts authority to pass ordinances that impose \$750 maximum civil penalties and/or up to six years imprisonment.<sup>30</sup>

- With respect to regulating pesticides, the IPCB may adopt "standards and conditions regarding the sale, offer, or use of any pesticide, detergent or any other article determined...to cause a water pollution hazard," provided that regulations related to pesticides are adopted in accordance with the Illinois Pesticide Act.<sup>31</sup> The state statute also states that "it is unlawful to store, display, use or distribute pesticides in such manner as to endanger man and his environment."<sup>32</sup> Under this provision, the Director may issue an order to stop use or regulate removal of a pesticide or related substance, or the Director may seek an injunction in circuit court.<sup>33</sup>

### **Development and Other Earth-Disturbing Activities**

No operating requirements are set forth, apart from any that may be contained in urban stormwater programs under the Clean Water Act or that may be authorized by general land use regulation such as zoning.

## Endnotes

- <sup>1</sup> 415 Ill. Cons. Stat. 5/12(a).
- <sup>2</sup> 415 Ill. Cons. Stat. 5/12 (c).
- <sup>3</sup> 415 Ill. Cons. Stat. 5/12 (f).
- <sup>4</sup> 415 Ill. Cons. Stat. 5/30-32, 415 Ill. Cons. Stat. 5/42.
- <sup>5</sup> 415 Ill. Cons. Stat. 5/42.
- <sup>6</sup> 415 Ill. Cons. Stat. 5/44.
- <sup>7</sup> 15 Ill. Cons. Stat. 215/2.
- <sup>8</sup> 70 Ill. Cons. Stat. 2105.
- <sup>9</sup> 70 Ill. Cons. Stat. 2105/26.
- <sup>10</sup> 65 Ill. Cons. Stat. 5/1.
- <sup>11</sup> 70 Ill. Cons. Stat. 2605/7aa.
- <sup>12</sup> 70 Ill. Cons. Stat. 2605/7bb.
- <sup>13</sup> 70 Ill. Cons. Stat. 2605/7bb.
- <sup>14</sup> 70 Ill. Cons. Stat. 3715/24.
- <sup>15</sup> 70 Ill. Cons. Stat. 3715/26.
- <sup>16</sup> 50 Ill. Cons. Stat. 805.
- <sup>17</sup> 65 Ill. Cons. Stat. 5/11-126-4.
- <sup>18</sup> 65 Ill. Cons. Stat. 5/1/2-7, 5/1-2-1.1.
- <sup>19</sup> 65 Ill. Cons. Stat. 5/1-2-1.
- <sup>20</sup> 415 Ill. Cons. Stat. 25/3.
- <sup>21</sup> 415 Ill. Cons. Stat. 25/2.
- <sup>22</sup> 415 Ill. Cons. Stat. 105/4.
- <sup>23</sup> 415 Ill. Cons. Stat. 105/3(a).
- <sup>24</sup> 720 Ill. Cons. Stat. 5/47-5.
- <sup>25</sup> 70 Ill. Cons. Stat. 5/47-25.
- <sup>26</sup> 740 Ill. Cons. Stat. 70/3.
- <sup>27</sup> 740 Ill. Cons. Stat. 70/4.
- <sup>28</sup> 70 Ill. Cons. Stat. 405/23.
- <sup>29</sup> 70 Ill. Cons. Stat. 405/23.
- <sup>30</sup> 65 Ill. Cons. Stat. 5/1-2-1.
- <sup>31</sup> 415 Ill. Cons. Stat. 5/13(a)(6).
- <sup>32</sup> 415 Ill. Cons. Stat. 60/14.
- <sup>33</sup> 415 Ill. Cons. Stat. 60/15-17.