

ILLINOIS REGISTER

DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PROPOSED AMENDMENTS

TITLE 17: CONSERVATION  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES  
SUBCHAPTER h: WATER RESOURCES

PART 3700

CONSTRUCTION IN FLOODWAYS OF RIVERS, LAKES AND STREAMS

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**AUTHORITY:** Implementing and authorized by Sections 23, 26a, 29a, 30 and 35 of the Rivers, Lakes and Streams Act [615 ILCS 5/23, 26a, 29a, 30 and 35].

**SOURCE:** Adopted at 17 Ill. Reg. 4484, effective March 23, 1993; emergency amendment at 18 Ill. Reg. 790, effective January 14, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 8167, effective May 16, 1994; re-codified from 92 Ill. Adm. Code 700, Department of Transportation, to the Department of Natural Resources, at 22 Ill. Reg. 7362; amended at 27 Ill. Reg. 7774, effective April 21, 2003; amended at 29 Ill. Reg. 8316, effective May 26, 2005; amended at 34 Ill. Reg. 12875, effective August 20, 2010; amended at 38 Ill. Reg. 934, effective December 27, 2013; amended at 39 Ill. Reg. 1158, effective December 31, 2014; amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

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**Section 3700.10 Purpose**

- a) The purpose of this Part is to protect the rights, safety and welfare of private and public landowners by the regulation of floodway development. Construction activities which restrict a stream's capacity to carry flood flows may result in channel instability and increased flood damages to neighboring properties.
- b) This Part applies to all rivers, lakes and streams under the Department's jurisdiction except those in the counties of Cook, Will, DuPage, Kane, Lake and McHenry for which floodway limits have been defined pursuant to 17 Ill. Adm. Code 3708.
- c) Compliance with this Part does not excuse an applicant from complying with the following Department of Natural Resources, Office of Water Resources construction related rules:
  - 1) Rules for Construction and Maintenance of Dams, 17 Ill. Adm. Code 3702. This Part is applicable statewide.
  - 2) Regulation of Public Waters, 17 Ill. Adm. Code 3704. This Part applies to the entire State geographically but is limited to only those lakes, rivers, streams and waterways that are considered public waters.
- d) Additionally, permits issued under this Part do not relieve the permittee of the responsibility of securing all other required authorizations.

**Section 3700.20 Definitions**

As used in this Part, the words and terms listed shall have the meanings ascribed to them as follows:

"Applicant" – The person(s) or entity(ies) applying for a permit pursuant to this Part. The applicant shall be the person(s) or entity(ies) that has or will have the responsibility and authority for complying with the terms and conditions of the permit by reason of property ownership, easement, or other agreement. If the property on which the activity will be located is not presently owned by the applicant, an explanation of any easement or rights-of-way, which have been or

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will be obtained, or how such land will be acquired shall be submitted with the application. If a project is being proposed by a lessee, the lessee and the lessor shall be co-applicants. Co-applicants share identical responsibility and authority for complying with the terms and conditions of the permit.

"Bridge or Culvert Crossing Modification" – Modification of a bridge or culvert crossing that changes the crossing's hydraulic capacity but does not involve the replacement of the existing bridge or culvert structure. Bridge and culvert crossing modifications can include such activities as constructing an overflow structure, adding an additional span to an existing bridge, adding an additional barrel to an existing culvert, widening an existing bridge, lengthening an existing culvert, widening the approach roadways and raising or lowering the approach roadways.

"Bridge or Culvert Crossing Reconstruction" – Reconstruction of a bridge or culvert crossing that involves the total replacement of an existing bridge or culvert, including substructure and superstructure, on the existing road alignment or on an alignment within 100 feet upstream or downstream of the existing alignment in an urban area, or within 500 feet upstream or downstream of the existing alignment in a rural area.

"Construction" – The placement, erection, building, modification or reconstruction of any building or structure, any fill or excavation-of any utility, any channel, enclosures, roads, bridges, culverts, levees, bank protection, walls, fences, and any other man-made activity that would modify the physical features of a floodway with respect to the storage or conveyance of flood waters. Construction does not include normal maintenance and repair activities or farming operations such as cultivating and plowing.

"Department" – The Illinois Department of Natural Resources.

"Flood Damage" – Loss to the use or economic value of property, which the applicant does not own, resulting from increases in flood heights or velocities due to the applicant's construction.

"Floodplain" – The land area adjacent to a river, lake, stream or watercourse with ground surface elevations at or below the 1% annual chance of exceedance (100-year frequency) flood elevation.

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"Floodway" – The channel of a river, lake, or stream or watercourse and that portion of the floodplain that must be preserved to store and convey the 1% annual chance of exceedance (100-year frequency) flood event without cumulatively increasing water surface profiles by more than a 0.1 foot. Floodway delineation in Illinois is based on three criteria established by the 1975 *Governor's Task Force on Flood Control*. First, a steady flow equal conveyance loss encroachment analysis is performed to ensure that the upstream stage increase would not exceed 0.1 foot. Second, flood storage is reviewed to ensure that at least 90% of the existing floodplain storage volume is preserved to protect against increased downstream discharges and stages. Finally, velocity increases are limited to 10% to avoid increased erosion and sedimentation potential.

Where floodways have been delineated for regulatory purposes, the mapped lines show the floodway limits and will be used. For other areas, the entire floodplain shall be considered to be in the floodway unless an analysis is approved by the Department demonstrating that a project site is outside of the floodway. The Department will review floodway delineation analyses provided by the applicants to verify that the resulting loss of flood conveyance and storage will result in no more than a 0.1-foot increase in stage. The Department will either approve or disapprove floodway delineation analyses and inform applicants of the reason for disapproval.

"Levee or Floodwall Modification" – Modification of a levee or floodwall that changes any portion of the structure's profile, alignment or cross section. Reconstructing a levee or floodwall that has been non-serviceable and abandoned for longer than ten (10) years is considered new construction and not modification. Restoring a recently damaged levee or floodwall to its pre-July 1, 1985 or permitted alignment, profile and cross section; constructing cutoff walls and relief wells to remedy seepage problems and protecting the structure with riprap or other erosion protection measures is considered maintenance and repair, not modification.

"Office of Water Resources" – The Office of Water Resources of the Illinois Department of Natural Resources.

"Permittee" – The person(s) or entity(ies) issued a permit pursuant to this Part which has the responsibility for complying with the terms and conditions of the

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permit. Co-permittees share identical responsibility and authority for complying with the terms and conditions of the permit.

"Rural Areas" – All areas of the State not classified as urban areas.

"Undeveloped Floodplain Conditions" – The floodplain without any existing or proposed construction affecting the storage or conveyance of flood flows.

"Urban Areas" – Areas of the State where residential, commercial or industrial development currently exists or, based on land use plans or controls, is expected to occur within 10 years after the application date. In determining urban areas, the Department will consider the expertise of local officials, regional and local planning commissions, city and county planners, or private development planners, as well as all available mapping. Areas with only isolated or widely scattered buildings will not be classified as urban areas.

"Worst-case Analysis" – The calculation of the maximum increases in flood heights, velocities and damages a project would cause due to conveyance and storage losses considering both the construction alone and the combined effects of other existing construction and reasonably anticipated equally obstructive construction on other similarly situated properties in the locality. If the proposed construction, considering the combined effects of all existing and other equally obstructive floodplain construction on other properties, would reduce the volume of floodplain storage by more than 10%, or floodway storage by any significant amount, the worst-case analysis should include the calculation of the impact of the storage loss on downstream discharges and water surface profiles. For all construction projects, flood events up to and including the 1% annual chance of exceedance (100-year frequency) event shall be used in this analysis.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.30 Jurisdiction**

- a) Any construction in the floodway of any river, lake, or stream serving a tributary area of one square mile (640 acres) or more in an urban area, or in the floodway of any river, lake, or stream in a rural area serving a tributary area of ten square miles (6,400 acres) or more, is subject to this Part and requires a permit from the

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Department.

- b) The following activities are exempt from this Part:
- 1) Installation of field tile systems, tile outlet structures, and any water or sediment control construction activity within any floodway area, such as grade stabilization structures and waterways.
  - 2) Installation of irrigation equipment within any floodway area.
  - 3) Work on private lakes which would not impact the dam or traverse the lake such as the construction of boat docks, and maintenance dredging.
  - 4) Removal of brush, woody vegetation, trash or other debris provided the material would be removed from the floodway.
  - 5) Routine maintenance and repair of existing structures.
  - 6) Maintenance and repair, to preserve design capacity and function, of artificially improved stream channels, drainage ditches and pumping stations.
  - 7) Maintenance and repair, to preserve design capacity and function, of levees and floodwalls that existed on July 1, 1985 or have been authorized by a permit issued under this Part. Maintenance and repair includes such work as restoring a recently damaged levee or floodwall to its pre-July 1, 1985 or permitted alignment, profile and cross section; constructing cutoff walls and relief wells to remedy seepage problems and protecting the structure with riprap or other erosion protection measures. Maintenance and repair does not include raising a levee or floodwall above its pre-July 1, 1985 or permitted profile, realigning any portion of a levee or floodwall, modifying the pre-July 1, 1985 or permitted cross sectional dimensions of a levee or floodwall.
  - 8) Maintenance and repair of existing bridge and culvert structures, including dredging to restore the waterway opening to the original design cross section, and superstructure replacement which would not reduce the waterway opening below the 1% annual chance of exceedance (100-year

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frequency) water surface elevation. Maintenance does not include increasing the elevation of an existing roadway. (Note: although exempt from this Part, superstructure replacement involving replacing the girders of bridges over public bodies of water will require authorization under 17 Ill. Adm. Code 3704 Regulation of Public Waters).

- 9) Widening of bridge decks which would not reduce the bridge waterway opening below the 1% annual chance of exceedance (100-year frequency) water surface elevation or lengthen bridge piers.
- 10) Culvert extensions of up to 100% of the original length, but not exceeding 40 feet in length, provided the extension involves no change in alignment or reduction in size from the original culvert.
- 11) Removal of structures provided the materials would be removed from the floodway.
- 12) Installation of fences in rural areas that provide greater than 80% open space to allow for the free flow of water.
- 13) Temporary placement of properly sized and anchored materials in the floodway adjacent to existing structures (buildings and/or above ground utility units) for flood fighting purposes to protect those structures from flood losses that:
  - A) does not extend more than 10 feet beyond the outside dimensions of the existing structure; and
  - B) does not remain in place in excess of 30 calendar days after floodwaters have receded; and
  - C) does not include the placement of any materials in the channel of any river, lake or stream; and
  - D) does not singularly or cumulatively exceed five hundred (500) feet in length; and
  - E) does not use materials known to cause water pollution as defined

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by the Environmental Protection Act (415 ILCS 5); and

- F) does not place materials in a way which would cause erosion or the accumulation of debris on properties opposite or adjacent to the temporarily placed materials; and
  - G) does not place materials in a way which would cause adverse drainage impacts and flood damages to interior drainage systems.
- 14) Temporary placement of properly sized and anchored materials on existing levees in compliance with Federal and State regulations for the purpose of flood fighting that:
- A) is preceded by a written notification to the Illinois Department of Natural Resources; and
  - B) does not remain in place in excess of 30 calendar days after floodwaters have receded; and
  - C) does not reduce the cross-sectional area of the channel of any river, lake or stream; and
  - D) does not use materials known to cause water pollution as defined by the Environmental Protection Act (415 ILCS 5); and
  - E) does not place materials in a way which would cause erosion or the accumulation of debris on properties opposite or adjacent to the temporarily placed materials; and
  - F) does not place materials in a way which would cause adverse drainage impacts and flood damages to interior drainage systems.
- 15) Construction of deadmen, pier cells, and other similar mooring facilities, which have been permitted by the U. S. Army Corps of Engineers and are solely for the purpose of barge fleeting but not including construction of such devices for barge docking or loading/unloading facilities or dredging.
- 16) Aerial utility crossings that:



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- A) are constructed above the estimated 100- year flood elevation or are attached to an existing bridge above the low chord of the bridge (with the bridge owner's permission); and
  - B) do not cross a river, lake or stream more than twice in a five mile reach or run parallel to a river or stream; and
  - C) do not include any supporting towers, poles, or foundations located in a river, lake or stream; and
  - D) meet all Illinois Commerce Commission, National Electrical Safety Code, and federal requirements for clearances; and
  - (E) has a minimum distance between supporting structures of 500 feet.
- 17) Construction of underground utility lines and pipelines not crossing a lake or stream and not involving fill or positive change in grade.
- 18) Construction of underground pipeline or utility crossings beneath the bed of the river, lake or stream where the crossing is encased in concrete or entrenched in bedrock, a minimum of five (5) feet beneath the existing bed of the river, lake, or stream and where the river, lake or streambed and adjacent floodway area are returned to their original condition and stabilized.
- 19) Construction of properly anchored minor, non-commercial, unroofed, projection, recreational boat docking facilities and modifications of, or additions to, such minor docking facilities that:
- A) does not include more than one dock; and
  - B) does not involve any lateral sections of the dock such as L-shaped, U-shaped or T-shaped docks; and
  - C) does not project more than 50 feet into a waterway, nor project greater than 1/4 of the width of the waterway; and

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- D) does not include any type of permanent roof structure excluding canopy structures; and
  - E) does not exceed 6 feet in width; and
  - F) does not come within 10 feet of the projection of the property line; and
  - G) does not involve any other related construction activity such as shore protection or fill; and
  - H) does not use materials known to cause water pollution as defined by the Environmental Protection Act (415 ILCS 5).
- 20) Construction of underground wells and septic systems.
  - 21) Construction of single post structures like light poles and sign posts.
  - 22) Construction of sidewalks, driveways, patios and similar surfaces which are built at grade.
  - 23) Construction of one properly anchored, unwallled, open structure such as playground equipment (excluding urban fences), pavilions, and carports.
  - 24) Placement of one properly anchored auxiliary building or structure not exceeding seventy (70) square feet in size, and/or ten (10) feet in any dimension such as animal shelters and tool sheds where the building is the only such auxiliary building on the property.
  - 25) Elevating of an existing building provided no changes are made to the outside dimensions of the building and provided the proposed elevation would not involve the placement of fill to accomplish the raising.
  - 26) Backfilling of an existing basement level to the adjacent grades (not involving a positive change in grade).
  - 27) Construction of outfall structures and drainage ditch outlets that do not extend riverward or lakeward of the existing adjacent natural bank slope

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or adjacent bank protection and include means to prevent scour and sedimentation.

- 28) Minor maintenance dredging activities of an existing channel, active harbor, marina, and docking and water intake facility that restore a natural or previously authorized condition and does not singularly or cumulatively, exceed one thousand (1000) feet in length nor involve spoiling any material in the floodway (unless such material is placed in a previously authorized spoil site) or wetland.
- 29) Construction of temporary structures including cofferdams and construction scaffolding in the floodway that:
  - A) does not remain in place in excess of 180 calendar days; and
  - B) does not occupy more than 1/10 of the width of the channel and/or floodway at any time minimizing floodway encroachment to the greatest practical extent; and
  - C) does not use materials known to cause water pollution as defined by the Environmental Protection Act (415 ILCS 5); and
  - D) does not place materials in a way which would cause erosion or the accumulation of debris on properties opposite or adjacent to the temporarily placed structure.
- 30) Soil boring and sampling activities.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.40 Permit Application**

- a) An applicant requesting a permit under this Part shall file with the Department an application consisting of a properly executed application form, all plans and information required to determine the effect of the construction on the carrying capacity of the stream, and the permit application fee (see Section 3700.45). All portions of the application form, including the name and address of the applicant, a description of the proposed activity, the location of the proposed activity, and

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the names and addresses of all adjoining property owners, shall be completed and all required attachments must be submitted before a determination of permissibility will be made. Application forms may be obtained from the Illinois Department of Natural Resources, Office of Water Resources, and are available on the Department's website ([www.dnr.illinois.gov](http://www.dnr.illinois.gov)). For projects involving floodway construction activities at more than one location, separate permit applications shall be submitted for each location.

- b) Many activities permitted under this Part require review of the U.S. Army Corps of Engineers and the Illinois Environmental Protection Agency. To simplify application procedures, the Office of Water Resources utilizes a joint application form with these two agencies.
- c) The Department will respond to initial application submittals within 45 calendar days of receipt of an application. The response will include such information as a determination of whether a permit is required, procedures for paying the application review fee, and an initial assessment of any additional plans, specifications, or analysis required to determine permissibility.
- d) Technical guidance on preparing applications is available on the Department's website ([www.dnr.illinois.gov](http://www.dnr.illinois.gov)) or upon request.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.45 Permit Application Review Fee**

- a) If a permit is required for the construction proposed, permit applicants must pay a non-refundable permit application review fee. The fee will be determined by the Department, and the applicant shall be notified of that determination after the Department's initial review of the application. When appropriate and when it is in the best interest of the State, the Department may enter into agreements to allow other State and Federal agencies to offset the cost of fees by providing in-kind services in lieu of cash payments. The permit application review fee shall be the sum of the base review fee for this Part (subsection (a)(1)) and the base review fee(s) from any other applicable Parts (subsection (a)(2)). The permit application review fee shall be capped at \$5000. Further processing of the application will not be initiated until the permit application review fee is received.

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- 1) The base permit application review fee will be as follows:
  - A) \$200 for previously permitted construction activities requiring new permit authorization in accordance with Section 3700.85 and not involving any changes from the previously permitted activity; or
  - B) \$500 for construction activities that comply with the terms and conditions of a general permit (in accordance with Section 3700.80); or
  - C) \$1000 for construction activities that the Department determines will not require review of a hydrologic and/or hydraulic analysis to demonstrate compliance with the standards listed in Sections 3700.60, 3700.70, 3700.71, 3700.72, 3700.75 and 3700.76; or
  - D) \$3500 for construction activities such as levees, certain bridge/culvert crossings, and major floodway filling that the Department determines will require review of a hydrologic and/or hydraulic analysis to demonstrate compliance with the standards listed in Sections 3700.60, 3700.70, 3700.71, 3700.72, 3700.75 and 3700.76. The base review fee shall be increased an additional \$1500 for applications requiring public notice in accordance with Section 3700.50.

- 2) Permit Application Review Fee for Multiple-Regulation Projects

If the construction activity being applied for also requires authorization under 17 Ill. Adm. Code 3702 and/or 3704, the base permit application review fee for each Part shall be added to calculate the permit application review fee, not to exceed \$5000.

- b) Submission of Permit Application Review Fees

- 1) The applicant shall submit the required permit application review fee amounts in the form of a check or money order made payable to the Illinois Department of Natural Resources or via electronic fee submittal

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through the Department's website and electronic payment vendor (vendor service charges apply).

- 2) If the permit application review fee is not received within 90 days after the Department's notification of the amount of that fee, the application shall be deemed withdrawn. A new application and permit application review fee will need to be submitted to restart the application process.
- 3) Insufficient payment or failure of a permit application fee payment to clear the bank it is drawn against will result in the automatic withdrawal of the application.
- 4) All permit application review fees shall be deposited into the State Boating Act Fund (see 615 ILCS 5/35).

c) Refund of Permit Application Review Fees

Except for refunding of overpayments, permit application review fees shall not be refunded. Permit application review fees are tendered for consideration of the application only and do not imply any promise of permit issuance by the Department.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.60 Permit Standards**

- a) The permit standards apply to all construction in floodways of jurisdictional rivers, lakes, streams and watercourses except as to construction projects specified in Section 3700.70, 3700.71, 3700.72, 3700.75 and 3700.76.
- b) Construction in a floodway will not be permitted unless the criteria of subsection (c), (d), or (e) and (f) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) For circumstances where there are buildings or other structures that would be

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subject to flood damage, permits will be granted for construction if, for the worst-case analysis considering flood events up to and including the 1% annual chance of exceedance (100-year frequency) event, the application demonstrates that any water surface profile increase would be contained within the channel banks or flood easements. If the construction would otherwise comply with the criteria of subsection (e), flood easements would need to be obtained only on the buildings and other structures subject to flood damage and not on other property.

- e) For circumstances where there are no buildings or other structures that would be subject to flood damage, permits will be granted for construction if, for the worst-case analysis considering flood events up to and including the 1% chance exceedance (100-year frequency) event:
  - 1) the application demonstrates that:
    - A) any water surface profile increase would be contained within the channel banks or flood easements; or
    - B) in urban areas, the water surface profile increase would not exceed 0.1 foot over undeveloped floodplain conditions water surface profiles; or
    - C) in rural areas, the water surface profile increase would not exceed 0.5 feet over undeveloped floodplain conditions water surface profiles; and
  - 2) the application demonstrates that:
    - A) any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or
    - B) increased scour, erosion and sedimentation would be prevented by the use of riprap or other design measures.
- f) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the *State Agency Historic Resources Preservation Act* (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's

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Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.70 Permit Standards for New Bridge and Culvert Crossings**

- a) The permit standards of this section apply to all construction of new bridge and culvert crossings in floodways of jurisdictional rivers, lakes, streams and watercourses.
- b) Construction of new bridge and culvert crossings in a floodway will not be permitted unless the criteria of subsections (c), (d), (e) and (f) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) For circumstances where there are buildings or other structures that would be subject to flood damage, permits will be granted for construction of new bridge and culvert crossings if, for the worst-case analysis considering flood events up to and including the 1% annual chance of exceedance (100-year frequency) event, the application demonstrates that any water surface profile increase would be contained within the channel banks or flood easements. If the construction would otherwise comply with the criteria of subsection (e), flood easements would need to be obtained only on the buildings and other structures subject to flood damage and not on other property.
- e) For circumstances where there are no buildings or other structures that would be subject to flood damage, permits will be granted for construction of new bridges and culverts crossings if, for the worst-case analysis considering flood events up to and including the 1% chance exceedance (100-year frequency) event:
  - 1) the application-demonstrates that:



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- A) any water surface profile increase would be contained within the channel banks or flood easements; or
  - B) in urban areas, the water surface profile increase over undeveloped floodplain conditions water surface profiles would not exceed 0.5 feet at the structure, nor 0.1 foot at a point 1000 feet upstream of the structure; or
  - C) in rural areas, the water surface profile increase over undeveloped floodplain conditions water surface profiles would not exceed 1.0 foot at the structure, nor 0.5 feet at a point 1000 feet upstream of the structure; and
- 2) the application demonstrates that:
- A) any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or
  - B) increased scour, erosion and sedimentation would be prevented by the use of riprap or other design measures.
- f) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the *State Agency Historic Resources Preservation Act* (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.71 Permit Standards for Bridge and Culvert Crossing Reconstruction**

- a) The permit standards of this section apply to all bridge and culvert crossing reconstruction in floodways of jurisdictional rivers, lakes, streams and

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watercourses.

- b) Bridge and culvert crossing reconstruction in a floodway will not be permitted unless the criteria of subsections (c), (d), (e), (f) and (g) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) Permits will be granted for bridge or culvert crossing reconstruction if the application demonstrates that:
  - 1) For any flood event up to and including the 1% annual chance of exceedance (100-year frequency) event, the reconstructed crossing (including approach roads) would be no more restrictive to flood flows than the existing bridge or culvert crossing; and
  - 2) The existing crossing has not caused flood damage. Documentation will be required confirming that:
    - A) no buildings or structures have been damaged by a water surface profile increase induced by the existing crossing; and
    - B) there is no record of complaint of flood damage associated with the existing crossing.
- e) For circumstances where the existing bridge or culvert crossing has caused flood damage, permits will be granted if the application demonstrates that the reconstructed crossing would reduce the flood damage to the fullest practicable extent.
- f) If the reconstructed bridge or culvert crossing would, for any flood event up to and including the 1% annual chance of exceedance (100-year frequency) event, be more restrictive to flood flows than the existing bridge or culvert crossing, permits will be granted if the application demonstrates that the reconstructed crossing would comply the permit standards for new bridge and culvert crossings (Section 3700.70).

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- g) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the State Agency Historic Resources Preservation Act (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.72 Permit Standards for Bridge and Culvert Crossing Modification**

- a) The permit standards of this section apply to all bridge and culvert crossing modification in floodways of jurisdictional rivers, lakes, streams and watercourses except construction projects exempted in accordance with subsection (b) of Section 3700.30.
- b) Bridge and culvert crossing modification in a floodway will not be permitted unless the criteria of subsections (c), (d), (e) and (f) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) Permits will be granted for bridge and culvert crossing modification if, for the worst-case analysis considering flood events up to and including the 1% annual chance of exceedance (100-year frequency) event, the application demonstrates that, the modified crossing would be no more restrictive to flood flows than the existing bridge or culvert crossing.
- e) If the modified bridge or culvert crossing would, for any flood event up to and including the 1% annual chance of exceedance (100-year frequency) event, be more restrictive to flood flows than the existing bridge or culvert crossing, permits will be granted if the application demonstrates that the modified crossing would comply with the permit standards for new bridge and culvert crossings (Section 3700.70).

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- f) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the State Agency Historic Resources Preservation Act (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

**Section 3700.75 Permit Standards for New Levees and Floodwalls**

- a) The permit standards of this section apply to all construction of levees and floodwalls in floodways of jurisdictional rivers, lakes, streams and watercourses.
- b) Construction of levees and floodwalls in a floodway will not be permitted unless the criteria of subsections (c), (d), (e) and (f) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) For circumstances where there are buildings or other structures that would be subject to flood damage, permits will be granted for construction of levees and floodwalls if, for the worst-case analysis considering flood event up to and including the 1% annual chance of exceedance (100-year frequency) event, the application demonstrates that any water surface profile increase would be contained within the channel banks or flood easements. If the construction would otherwise comply with the criteria of subsection (e), flood easements would need to be obtained only on the buildings and other structures subject to flood damage and not on other property.
- e) For circumstances where there are no buildings or other structures that would be subject to flood damage, permits will be granted for construction of levees and floodwalls if, for the worst-case analysis considering flood events up to and including the 1% annual chance of exceedance (100-year frequency) event:

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- 1) the application demonstrates that:
  - A) any water surface profile increase would be contained within the channel banks or flood easements; or
  - B) in urban areas, the water surface profile increase would not exceed 0.1 foot over undeveloped floodplain conditions water surface profiles; or
  - C) in rural areas, the water surface profile increase would not exceed 0.5 feet over undeveloped floodplain conditions water surface profiles; and
- 2) the application demonstrates that:
  - A) any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or
  - B) increased scour, erosion and sedimentation would be prevented by the use of riprap or other design measures.
- f) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the *State Agency Historic Resources Preservation Act* (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

**Section 3700.76 Permit Standards for Levee and Floodwall Modification**

- a) The permit standards of this section apply to modification of the alignment, profile and cross section of levees and floodwalls in floodways of jurisdictional rivers, lakes, streams and watercourses.

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- b) Levee and floodwall modification in a floodway will not be permitted unless the criteria of subsections (c), (d), (e) and (f) are met.
- c) The application demonstrates compliance with the terms and conditions of an active Office of Water Resources General Permit.
- d) Permits will be granted for levee and floodwall modification if, for the worst-case analysis considering flood events up to and including the 1% annual chance of exceedance (100-year frequency) event, the modified levee or floodwall would be no more restrictive to flood flows than the pre-July 1, 1985 or previously permitted levee.
- e) If the modified levee or floodwall would, for any flood event up to and including the 1% annual chance of exceedance (100-year frequency) event, be more restrictive to flood flows than the pre-July 1, 1985 or previously permitted levee, permits will be granted if the application demonstrates that the modified levee would comply with the permit standards for new levees and floodwalls (Section 3700.75).
- f) To ensure compliance with the *Illinois Endangered Species Protection Act* [520 ILCS 10/11], the *Illinois Natural Areas Preservation Act* [525 ILCS 30/17], and the State Agency Historic Resources Preservation Act (20 ILCS 3420), each project application will be reviewed for potential impacts by the Department's Division of Ecosystems and Environment. Permits will be granted for construction if the application sufficiently complies with these noted statutes as determined by the Department's Division of Ecosystems and Environment. Consultation with the Department's Division of Ecosystems and Environment may be required to sufficiently demonstrate application compliance.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.80 General Permits**

The Department may, for the purpose of providing more expeditious and less costly processing of permit applications, issue general permits pertaining to specific types of activities meeting conditions necessary to assure compliance with the purpose and intent of this Part. General permits may be applicable on a statewide basis or may be restricted to specified rivers, lakes and

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streams, or reaches of rivers and streams. Subsequent to the issuance of a general permit, individual applications must still be submitted but authorizations will be granted for activities meeting all of the terms and conditions of the general permit without notice or interagency coordination. General permits will be issued only after notice and opportunity for public review and comment. General permits shall remain in effect until such time as they are modified, suspended or revoked by the Department. The active general permits are provided in Section 3700.Appendix A.

(Source: Amended at 40 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 3700.90 Denial of Applications**

Applications not meeting the requirements of this Part will be denied. If an application for permit is denied, the Department will submit a letter, based on the administrative record, to the applicant explaining the reason(s) for denial. The application may be resubmitted for consideration if it can be modified to meet the Department's objections as specified in the letter of denial.

**Section 3700.100 Final Administrative Decisions, Violations, and Enforcement**

- a) Notice of Non-Compliance: When the Department determines that a permittee or any person or entity engages in conduct or activities required to be permitted under the ACT is in violation of any requirement of the Act or any permit condition, the local government entity with floodplain management authority will be advised, if appropriate of the violation for enforcement actions under the local National Flood Insurance Program (NFIP) ordinance (if appropriate), and a notice of non-compliance letter shall be issued to the violator.
- b) Notice of Violation: If a violator fails to remedy the violation in the manner and timeframe requested in the notice of non-compliance letter, a notice of violation shall be issued to the violator. The notice of violation shall contain:
  - 1) A statement regarding the nature of the violation, including a citation to the specific Section of the Department 's rules or Section of the Act alleged to have been violated;

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- 2) The remedial action (and review fee, when appropriate) needed to correct the unauthorized activity or permit violations;
  - 3) The time frame within which the unauthorized activity or permit violations must be corrected; and
  - 4) The amount of the civil penalty if the violation is not timely abated and an order is issued.
- c) The Department shall mail a copy of the notice of violation to the person or permittee charged with the violation.
- d) Within 30 days after issuance of the notice of violation, the permittee, entity or person charged with the violation shall:
- 1) Undertake the remedial action needed to correct the violation and so state in writing; or
  - 2) Provide the Department in writing their intent to comply with the notice of violation, including the proposed date(s) of the remediation work; or
  - 3) Provide the Department in writing any information in mitigation of the violation. The written information may include a proposed alternative to the Department's suggested action needed to correct the violation. Upon receipt of a proposed alternative and appropriate application review fee, the Department shall review and consider the proposal and inform the violator of its viability within 30 days.
- e) Enforcement Hearings: If the permittee, person or entity contest the issuance of the notice of violation, he, she or it must submit a written request for hearing within 30 (thirty) days from receipt of the notice of violation. Upon receipt of the written request for hearing, the Department shall afford the permittee, person, or entity an administrative hearing. The hearing shall be conducted by a hearing officer designated by the Director and shall be conducted in accordance with the following procedures:



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- 1) A notice of hearing: The designated hearing officer shall serve all parties with notice of hearing personally or by certified or registered mail, or as otherwise provided for by law. The notice shall include the following:
  - A. A statement of the time, place and nature of the hearing;
  - B. A statement of the legal authority and jurisdiction under which the hearing is to be held;
  - C. A reference to the particular sections of the substantive and procedural statutes and rules involved;
  - D. Consequences of a failure to respond; and
  - E. The names and mailing addresses of the administrative law judge and parties of record.
  
- 2) Pre-Hearing: A pre-hearing conference shall be scheduled within 30 days after the request for hearing for the purpose of:
  - A. Defining the factual and legal issues to be litigated at the administrative hearing;
  - B. Determining the timing and scope of discovery available to the parties;
  - C. Setting a date for the parties to exchange all documents they intend to introduce into evidence during the hearing, a list of all witnesses the parties intend to have testify and a summary of the testimony of each witness;
  - D. Scheduling a date for the administrative hearing; and
  - E. Arriving at an equitable settlement of the hearing request, if possible.

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- 3) Administrative Hearing: The Hearing Officer shall have the powers necessary and appropriate to conduct a fair hearing and to render a decision on the petition including the following:
  - A. To administer oaths and affirmations;
  - B. Taking action to avoid delay, maintain order and develop a clear and complete record;
  - C. Receive relevant evidence;
  - D. To consider and rule upon procedural requests;
  - E. To examine witnesses and direct witnesses to testify;
  - F. To require the production of documents or subpoena the appearance of witnesses, either on the Hearing Officer's own motion or for good cause shown on motion of any party of record.
- 4) All participants in the hearing shall have the right to be represented by counsel.
- 5) The hearing officer shall rule on any preliminary matters appropriate for disposition prior to representation of evidence including, but not limited, motions, preliminary exhibits and proof of publications.
- 6) Record of Proceeding: The Department shall provide at its expense a certified court reporter to record the proceedings at the administrative hearing. Any person testifying shall be required to do so under oath.
- 7) At the hearing the Department shall have the burden of proving the facts of the violation alleged in the notice of violation at issue. The standard of proof shall be by a preponderance of the evidence.
- 8) Default: If a party, after proper service of notice, fails to appear at the pre-hearing conference or at a hearing, and if no continuance is granted, the Department may then proceed to make its decision in the absence of that party.

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- g) **Decisions and Orders:** Upon the conclusion of any hearing held under this Section, the Hearing Officer who conducted the hearing or one who has read the record shall prepare a proposal for decision. The proposal shall contain recommended findings of fact, conclusions of law and a recommendation as to the disposition of the case. The proposal shall be submitted to each party of record.
- h) The Director of the Department upon receipt of the record shall issue a final administrative decision or order. The decision or order shall include a finding of fact and conclusion of law. All agency decisions or orders shall specify whether they are final and subject to the Administrative Review Law. A copy of the decision or order shall be delivered or mailed to each party and to his or her attorney of record.
- i) **Civil Penalties:** Any person, permittee, or entity who after reasonable notice and a hearing has been found by the Department or a court of competent jurisdiction to have violated any provision of the ACT; any rule or regulation adopted by the Department; any permit, term or condition of the Act; or any order of the Department under the Act; shall be liable for a civil penalty of up to 2 times the applicable permit fee, but not to exceed \$5,000 per violation.

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**3700.APPENDIX A General Permits**

General Permit 1: Construction of Parallel Shoreline Protection Projects in Lake Michigan (Not Applicable to Part 3700)

General Permit 2: Bridge and Culvert Crossings of Streams in Rural Areas

General Permit 3: Bridge and Culvert Replacement Structures

General Permit 4: Construction of Marine Structures

General Permit 5: Minor Floodway Construction

General Permit 6: Minor Shoreline, Streambank and Channel Protection Activities

General Permit 7: Reconstruction and Elevating of Existing Buildings and/or Construction of Second Story Additions

General Permit 8: Temporary Construction Activities

General Permit 9: Special Uses of Public Waters (Not Applicable to Part 3700)