

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, 29a and 30 of the Rivers, Lakes and Streams Act [615 ILCS 5/23, 29a and 30].

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; recodified 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. _____, effective August 20, 2010.

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 as described to them as follows:

"Bridge or Culvert Reconstruction" 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, or reconstruction of any building or structure, any filling or excavation, the installation of any utility, or the storage of any materials. Construction includes, but is not limited to, modifications to an existing building which would increase the building's outside dimensions, channel modifications and enclosures, roads, bridges, culverts, levees, bank protection, walls, fences, and any other man-made activity which 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 discing and plowing.

"Department" The Illinois Department of Natural Resources.

"Floodway" The channel of a river, lake or stream and that portion of the adjacent land area that is needed to safely store and convey flood waters. Where floodways have been delineated regulatory purposes, the mapped lines show the floodway encroachment limits and will be used. For other areas, floodway limits will be estimated, using hydrologic and hydraulic calculations, to preserve adequate conveyance and storage so that stage increases for the 100-year frequency flood would not exceed 0.1 foot.

"Permittee" The person issued a permit pursuant to this Part.

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

"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 of 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 project alone and the combined effects of other existing construction and construction which could reasonably be anticipated to be proposed in the locality. Flood events up to and including the 100-year frequency flood shall be used in this analysis (see Section 3700.75 for exception).

(Source: Amended at 18 Ill. Reg. 8167, effective May 16, 1994)

Section 3700.30 Jurisdiction

- a) Construction in the floodway of any stream serving a tributary area of 640 acres or more in an urban area, or in the floodway of any stream serving a tributary area of 6,400 acres or more in a rural area, is subject to this Part and requires a permit from the 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 in any floodway land (overbank) area which would not obstruct flood flows such as grade stabilization structures and waterways;
 - 2) Installation of irrigation equipment in any floodway land (overbank) area;
 - 3) Work on private lakes which would not impact the dam or traverse the lake such as the construction of boat docks, bank stabilization and maintenance dredging;
 - 4) Removal of brush, woody vegetation, trash or other debris;
 - 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, levees and pumping stations;
 - 7) 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 (maintenance does not include increasing the height of an existing roadway);
 - 8) Widening of bridge decks;
 - 9) 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 existing culvert;

- 10) Removal of bridge and culvert structures provided no materials would be placed in a way which would obstruct normal or flood flows; and
- 11) Installation of fences in rural areas.

Section 3700.40 Permit Application

An applicant who desires a permit under this Part shall file with the Department an application consisting of a properly executed application form and all plans and information required to determine the effect of the construction on the carrying capacity of the stream. 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 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 at the following addresses:

One Natural Resources Way
Springfield IL 62702-1271

Michael A. Bilandic Building
160 N. LaSalle Street, Suite S-700
Chicago IL 60601

Region 2 Office
2050 West Stearns Road
Bartlett IL 60103

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 Illinois Department of Natural Resources, Office of Water Resources utilizes a joint application form with these two agencies.

(Source: Amended at 34 Ill. Reg. _____, effective August 20, 2010)

Section 3700.50 Notice to Interested Parties

When necessary or helpful to obtain information required for its evaluation, the Department will issue a notice of the application to potentially impacted parties allowing a period of 21 days for comment. This notice procedure will generally be limited to major projects such as levees and channel modifications.

Section 3700.60 Departmental Standards

- a) Except as provided in Section 3700.70, construction which would result in an obstruction to flood flows or a reduction in flood storage capacity in a delineated

floodway will not be permitted unless the application shows the criteria of subsection (b) below are met.

- b) Permits will be granted for construction which would not singularly or cumulatively result in flood damages or potential flood damages outside the project right-of-way due to increases in flood heights or velocities. Absent contrary evidence, this standard will be considered met if, for the worst-case analysis, the application shows that:
- 1) any water surface profile increase would be contained within the channel banks (or within existing vertical extensions of the channel banks such as within the design protection grade of existing levees or floodwalls) or flood easements; or
 - 2) in urban areas, the water surface profile increase would not exceed 0.1 foot; or
 - 3) in rural areas, the water surface profile increase would not exceed 0.5 feet; and
 - 4) any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or
 - 5) increased scour, erosion and sedimentation would be prevented by the use of riprap or other design measures.

Section 3700.70 Special Provisions for Bridges and Culverts

- a) General Standards for New Bridges and Culverts

Permits will be granted for new bridges and culverts which would not result in flood damages or potential flood damages outside the project right-of-way due to increases in flood heights or velocities. Absent contrary evidence, this standard will be considered met if, for the worst-case analysis, the application shows that:

- 1) any water surface profile increase would be contained within the channel banks (or within existing vertical extensions of the channel banks such as within the design protection grade of existing levees or floodwalls) or flood easements; or
- 2) in urban areas, the water surface profile increase would not exceed 0.5 feet at the structure, nor 0.1 foot at a point 1000 feet upstream of the structure as determined by the horizontal projection of the increase and the slope of the hydraulic grade line; or
- 3) in rural areas, the water surface profile increase would not exceed 1.0 foot at the structure, nor 0.5 feet at a point 1000 feet upstream of the structure as determined by the horizontal projection of the increase and the slope of the hydraulic grade line; and

- 4) any increase in average channel velocity would not be beyond the scour velocity of the predominant soil type of the channel; or
 - 5) increased scour, erosion and sedimentation would be prevented by the use of riprap or other design measures.
- b) General Standards for Bridge and Culvert Reconstruction

A bridge or culvert reconstruction project which would meet the following provisions will be permissible. A reconstruction project which would not meet these provisions must comply with the general standards for new bridges and culverts.

- 1) The reconstruction (including approach roads) shall be no more restrictive to normal and flood flows than the existing bridge or culvert crossing; and
- 2) Documentation must be provided that the existing crossing has not caused demonstrable flood damage. In the case of public projects, certification by a District Engineer of the Department of Transportation's Division of Highways, a County Engineer (if a Professional Engineer), or a Municipal Engineer (if a Professional Engineer) that the existing crossing has not caused demonstrable flood damage will be adequate documentation.

Section 3700.75 Special Provisions for Levees and Floodwalls

The flood discharge which would just overtop a levee or floodwall shall be used for the worst-case analysis.

(Source: Added at 18 Ill. Reg. 8167, effective May 16, 1994)

Section 3700.80 Statewide Permits

The Department may, by issuance of a statewide permit, grant approval for specific types of activities, for example, minor boat docks and utility crossings, which meet the standards defined in Sections 3700.60 or 3700.70. Subsequent to the issuance of a statewide permit, no application or further authorization will be required by the Department for activities meeting the terms and conditions of the statewide permit. Statewide permits will be issued only after notice and opportunity for public review and comment.

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 Violations and Enforcement

- a) When the Department becomes aware of an unauthorized activity or permit violation, it will conduct an investigation to determine the facts regarding the activity or violation and will advise the responsible party what actions are required to comply with State statutes and this Part. When the responsible party fails to perform the specified actions, enforcement will be sought as determined by the Department to be necessary and appropriate.
- b) Investigations may be initiated by the Department on its own or in response to complaints involving activities undertaken without a permit, or activities not in compliance with the terms and conditions of a permit. Complaints shall be in writing and shall contain the name, address and telephone number of the party believed to be responsible, the nature of the alleged violation, the location of the activity and the name of the body of water affected.

Section 3700.110 Final Administrative Decision

The approval or denial of applications for permit under this Part shall be considered final administrative decisions and are subject to judicial review in accordance with Article III of the Code of Civil Procedure (Administrative Review Law) [735 ILCS 5/Art. III].