

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, 30 and 35 of the Rivers, Lakes and Streams Act [615 ILCS 5/23, 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; 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. 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.

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:

"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 that 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 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 discing and plowing.

"Department" – The Illinois Department of Natural Resources.

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

"Floodway" The channel of a river, lake or stream and that portion of the floodplain that is needed to store and convey the 1% annual chance of exceedence flood discharge with no more than a 0.1 foot increase in stage due to the loss of flood conveyance and storage. Where floodways have been delineated for regulatory purposes, the mapped lines show the floodway encroachment 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.

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

"Permittee" – The entity 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 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 project alone and the combined effects of other existing construction and reasonably anticipated equally obstructive construction on other similarly situated properties in the locality. Flood events up to and including the flood which has a 1% annual chance of exceedence shall be used in this analysis (see Section 3700.75 for exception).

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

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

- 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 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. 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.

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

Section 3700.45 Permit Application Fee

- a) If a permit is required for the activity proposed and is not already permitted by a Statewide Permit authorization (see Section 3700.80), 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 immediately after 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 agencies to offset the cost of fees by providing in-kind services in lieu of cash payments. As outlined in this subsection (a), the review fee shall be calculated based on the determination of the base review fee, the application of an escalation adjustment factor, and the addition of review fees from any other applicable Parts (see subsection (a)(3)). Further processing of the application will not be initiated until the review fee is received.
 - 1) The base review fee will be as follows:
 - A) \$200 for previously permitted construction activities requiring new permit authorization in accordance with Section 3700.88 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 3700.85); 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 and 3700.75; or

- D) \$2500 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 and 3700.75. The base review fee shall be increased an additional \$1500 for applications requiring public notice in accordance with Section 3700.50.

2) Annual Escalation Adjustment

- A) The base review fee amounts in subsection (a)(1) shall be adjusted on July 1 each year to account for inflation. The U.S. Bureau of Labor Statistics' Consumer Price Index Table for all urban consumers (CPI-U), U.S. city average, all items, base period 1982-1984 = 100 (Series ID: CUUR0000SA0) (available on the U.S. Bureau of Labor Statistics' website) shall be used to calculate the adjustment factor. The adjustment factor shall be directly proportional to the change in the CPI index since June 2013 and shall be calculated according to the following formula:

$$\text{Adjustment factor} = \frac{\text{CPI (May of current year)}}{\text{CPI (June 2013)}}$$

- B) The base fee amounts in subsection (a)(1) shall be multiplied by this factor and rounded to the nearest \$10 to compute the review fee for the coming fiscal year (July 1 through June 30). The review fee shall be capped at \$5000. The dollar amounts that result from these calculations will be posted on the Department's website at: www.dnr.illinois.gov.

3) 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 review fee for each Part shall be added to calculate the total review fee. The total review fee shall be capped at \$5000.

b) Submission of Fees

- 1) Except when possible through electronic fee submittal, the applicant shall submit the required fee amounts in the form of a check or money order made payable to the Illinois Department of Natural Resources.

- 2) If the 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 review fee will need to be submitted to restart the application process.
 - 3) Insufficient payment or failure of a fee payment to clear the bank it is drawn against will result in the automatic withdrawal of the application.
 - 4) All fees shall be deposited into the State Boating Act Fund (see 615 ILCS 5/35).
- c) Refund of Permit Application Fees
Except for refunding of overpayments, permit application fees shall not be refunded. Application fees are tendered for consideration of the application only and do not imply any promise of permit issuance by the Department.

(Source: Amended at 39 Ill. Reg. 1158, effective December 31, 2014)

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 that 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) are met.
- b) Permits will be granted for construction that 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 (see Section 3700.20):
 - 1) the application shows that:
 - A) 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

B) in urban areas, the water surface profile increase would not exceed 0.1 foot; or

C) in rural areas, the water surface profile increase would not exceed 0.5 feet; and

2) the application shows 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.

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

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 that 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 (see Section 3700.20):

1) the application shows that:

A) 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

B) 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

C) 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

2) the application shows 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.
- b) General Standards for Bridge and Culvert Reconstruction
A bridge or culvert reconstruction project that would meet the following provisions will be permissible. A reconstruction project that would not meet these provisions must either comply with the general standards for new bridges and culverts or be designed to reduce the induced flood damages to the fullest practicable extent.
 - 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.

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

Section 3700.75 Special Provisions for Levees and Floodwalls

The flood discharge that would just overtop a levee or floodwall shall be used for the worst-case analysis (see Section 3700.20).

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

Section 3700.80 Statewide Permits

The Department may, by issuance of a statewide permit, grant approval for specific types of activities that meet the standards defined in Section 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.

(Source: Amended at 38 Ill. Reg. 934, effective December 27, 2013)

Section 3700.85 General Permits

The Department may, for the purpose of providing more expeditious processing of permit applications, issue general permits pertaining to specific types of activities, such as boat launching facilities, 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 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.

(Source: Added at 38 Ill. Reg. 934, effective December 27, 2013)

Section 3700.88 Permits Not Transferable

Permits issued pursuant to this Part are not transferable. If the property rights for the grounds on which the project will be located are transferred before the authorized construction is completed, the new entity must apply for a permit under its name. The application for permit may incorporate by reference all information from the previous permit that is determined by the Department to be pertinent to the new application.

(Source: Added at 38 Ill. Reg. 934, effective December 27, 2013)

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].