

	WATER RESOURCES DIVISION POLICY AND PROCEDURE		DEPARTMENT OF ENVIRONMENTAL QUALITY
Original Effective Date: September 15, 2005	Subject: Part 31 - Fences in Floodplains		Category:
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Note: This policy and procedure was previously division guidance memo No. 031-05-02.

ISSUE:

The Water Resources Division (WRD) floodplain engineers in the district offices have asked for guidance when reviewing permit applications for the placement of a fence in a regulated floodplain.

AUTHORITY:

Part 31, Water Resources Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

Part 301, Inland Lakes and Streams, of the NREPA

DISCUSSION:

- 1) Section 3104(1) of Part 31 states that, "The department shall have control over the alterations of natural or present watercourse of all rivers and streams in the state to assure that the channels and the portions of the floodplains that are floodways are not inhabited and are kept free and clear of interference or obstruction that will cause any undo restriction of the capacity of the floodway."
- 2) Section 3108(1) of Part 31 states that, "a person shall not occupy or permit the occupation of land for residential, commercial, or industrial purposes or fill or grade or permit the filling or grading for a purpose other than agriculture of land in a floodplain, stream bed, or channel of a stream, as ascertained and determined for the record by the department, or undertake or engage in an activity on or with respect to land that is determined by the department to interfere harmfully with the discharge or stage characteristics of a stream, unless the occupation, filling, grading or other activity is permitted under this part."
- 3) Section 30102 of Part 301 states, "... a person without a permit from the department shall not do any of the following: (e) structurally interfere with the natural flow of an inland lake or stream."

WATER RESOURCES DIVISION
POLICY AND PROCEDURE

Number: WRD-033

Subject: Part 31 - Fences in Floodplains

Page 2 of 3

- 4) Rule 4 of Part 301 states, "In each application for a permit all existing and potential environmental effects shall be determined and the department shall not issue a permit unless the department determines... (a) that the adverse impacts to the public trust, riparian rights, and the environment will be minimal."

GUIDANCE/ACTION:

- 1) A chain link fence or any other open fencing that is placed in the floodplain but outside the floodway will not require a permit under Part 31 provided there is no grading required to place the fence. Driving in fence posts and attaching open fencing does not constitute an occupation of the floodplain. Because the fence is open to flow and is outside the floodway, it also does not interfere harmfully with the discharge or stage characteristics of a stream.
- 2) A solid fence that is placed in the floodplain but outside the floodway has the potential to hold out flood storage waters and will therefore require a permit under Part 31 because of its potential to harmfully interfere with the discharge or stage characteristics of a stream. If it is determined that the fence is solid enough to prevent the infiltration of flood waters, then it is assumed that there is a loss of flood storage volume. Compensation for the loss of the flood storage volume shall be required.
- 3) Any fence that is placed in the floodway will require a permit under Part 31 because of its potential to interfere harmfully with the discharge or stage characteristics of a stream. Fences across streams are generally discouraged under Part 301 because of the potential to block navigation and other public trust and riparian rights issues. The following guidance is given for fences built in the floodway:
 - a. If the fence is placed parallel with the direction of flow, it should have minimal impact to flood flow and therefore may be permissible provided the proposed fence meets the requirements of all other applicable statutes administered by the WRD.
 - b. If the fence is placed in such a manner that it has the potential to block flood flows then it should be evaluated under Part 31 for its potential to cause a harmful interference. It must be determined if any potential increase in flood levels would impact adjacent property, buildings, crops, septic systems, etc.
 - c. Fences that cause an increase in upstream flood stages should be denied if there is a harmful interference as defined by Part 31.
 - d. Fences that have been determined to cause a harmful interference may be modified to reduce the potential increase in upstream stages. The following options are available:
 1. Remove the bottom portion of the fence located within the floodway up to the 100-year floodplain elevation.

WATER RESOURCES DIVISION
POLICY AND PROCEDURE

Number: WRD-033

Subject: Part 31 - Fences in Floodplains

Page 3 of 3

2. Construct a hinge or pivot mechanism for the bottom portions of the fence located within the floodway up to the 100-year floodplain elevation.
3. Construct a hinge or pivot mechanism that will break away and allow the fence to swing to the landward side of the floodplain during flood events. The portion of the fence that will be released must remain attached to the rest of the structure to prevent it from obstructing flows at downstream locations.

If the modification is acceptable, a permit may be issued for the fence provided it meets the requirements of all other applicable statutes administered by the WRD.

4) Permit Application Review Fee

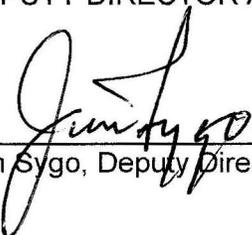
- a. A \$100 fee for fence construction in the floodplain but outside the floodway when a permit is required.
- b. A \$500 fee for fence construction in the floodway.
- c. A \$1500 review fee shall be required if a hydraulic analysis is required.

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