**Section 3708.90 Delegation to Municipalities and Counties**

a) *No unit of local government, including home rule units, may issue a building permit or other apparent authorization for any prohibited new construction within the regulatory floodway* (Section 18g of the Act).

b) The Department will delegate to municipalities within incorporated areas and to counties within unincorporated areas the Department's authority to issue permits in accordance with this Part for non-governmental activities, upon determination by the Office that the following conditions have been met:

1) The municipality or county is participating in the regular phase of the National Flood Insurance Program;

2) The municipality or county has enacted an ordinance that adopts requirements at least as restrictive as this Part; and

3) The municipality or county has enacted an ordinance which requires that all proposed regulatory floodway projects are reviewed under the supervision of a registered professional engineer under the employ or contract of the municipality or county and, in the case of appropriate uses, so stated in writing by that registered professional engineer to meet the specific requirements of Section 3708.70.

c) A completed permit application form must be submitted to the Department for regulatory floodway construction activities proposed in a delegated municipality or county. The Department will review the application to determine if the proposed activity qualifies for review by the delegated municipality or county pursuant to subsection (j). When the Department determines a regulatory floodway construction activity does qualify, it will notify the delegated community in writing that it has the authority to review and, if appropriate, authorize the activity for compliance with this Part. This process is subject to a permit application review fee as described in Section 3708.115.

d) The only permits a municipality or county may issue for new construction in a regulatory floodway are for appropriate uses as defined by Section 3708.70.

e) If the proposed appropriate use will require a regulatory floodway delineation change or will change the flood stage elevation, the municipality or county shall require that the applicant obtain a conditional approval of the regulatory floodway map change from the Department and FEMA before a permit is issued for the appropriate use.

f) No buildings or structures or other construction that is not an appropriate use shall be placed in a designated regulatory floodway until the designated regulatory floodway map has been revised to remove the building site from the regulatory floodway. A conditional approval of a regulatory floodway map change is not a change in the regulatory floodway map. After completing a project which will result in a regulatory floodway map revision, the applicant must submit "as built" plans to the Office and FEMA to revise the regulatory floodway map. The municipality or county will then be notified by the Department or FEMA when the regulatory floodway map has been changed, at which time a building permit may be issued.

g) No municipality or county shall issue a variance not in compliance with this Part.

h) Municipalities and counties may adopt and enforce ordinances with greater restrictions than those of this Part.

i) If a municipality or county issues a regulatory floodway development permit not in accordance with this Part or fails to meet the criteria listed in subsections (b)(1) through (3), the Department will rescind the municipality's or county's authority to administer the Department's regulatory floodway permit program for appropriate uses.

j) The following shall not be delegated to municipalities and counties as part of this Section and shall be subject to Department review or Department permits:

1) Department permits shall be issued to organizations that are exempt from the municipality's or county's ordinance.

2) The Department will permit Department projects, dams (as defined by 17 Ill. Adm. Code 3702) and all other state, federal or local unit of government projects, including projects of the municipalities and counties.

3) The Department will permit construction and other activities in public bodies of water pursuant to 17 Ill. Adm. Code 3704.

4) The Department will review an engineer's determination that an existing bridge or culvert is not a source of flood damage pursuant to Section 3708.70.

5) The Department will review an engineer's determination that a proposed bridge affected by backwater from a downstream receiving stream may be built with a smaller opening pursuant to Section 3708.70.

6) The Department will retain its authority to accept alternative transition sections and hydraulically equivalent storage as indicated in Section 3708.70.

(Source: Amended at 38 Ill. Reg. 983, effective December 27, 2013)