



505 Fifth Ave Suite 850  
Des Moines IA 50309  
515.244.1194  
iaenvironment.org

September 24, 2024

Jon Garton  
Floodplain and Dam Safety Section  
Iowa Department of Natural Resources  
6200 Park Ave  
Des Moines, IA 50321

**RE: Iowa DNR Regulatory Analysis – Chapter 71**

Dear Mr. Garton:

The Iowa Environmental Council (IEC) offers the following comments on the proposed revisions to 567 Iowa Administrative Code Chapter 71. These comments represent the views of the Iowa Environmental Council, an alliance of more than 100 organizations, at-large board members from business, farming, the sciences and education, and over 500 individual members. IEC's members hike, fish, paddle, swim, and recreate in and around wetlands, lakes, rivers, and streams throughout the state.

We are concerned that DNR's regulatory analysis and the associated rule changes lack clarity and allow unreasonable development in floodplains and floodways.

**Regulatory Analysis**

The Regulatory Analysis briefly discusses the rescission of chapters 75 and 76. IEC recommends specifying which parts of chapter 75 were incorporated into chapter 71 to provide clarity to readers.

**Preamble**

The preamble to the rule is unnecessary. The first section of 71.2 contains some of the same information. IEC recommends deleting the preamble to reduce duplication, consistent with the charge to DNR under Executive Order 10.

**71.1, Delegated State Floodplain Permitting by Local Communities.**

In considering the structure of the rule, IEC recommends moving section 71.1 after proposed section 71.2. Section 71.1 functions as an exception to 71.2, identifying instances in which a

state permit is not required. Generally in drafting, a rule should be placed before the exception to the rule so that it is clear what the exception applies to.

In addition, the rule does not specify the criteria DNR will use to review whether local ordinances are “compatible” with the DNR rules. Does this mean that the local ordinance is at least as strict as the DNR rules? The rule also does not specify the process for local governments to submit ordinances for DNR approval. IEC recommends revising the rule to clarify the criteria and process of approval.

### **71.2, State Floodplain Permits.**

IEC recommends revising rule language that uses passive voice, which does not identify the subject of an action, to reduce ambiguity and length. For example, IEC recommends that “Approval by the department for... shall be required” be rephrased to “The Department shall approve any....”

### **71.3(4), Excavations.**

This subsection exempts projects from permitting if “the channel cross section is increased by 10% or less.” The basis for the 10% change is a current survey or original engineering plans. However, there is no prohibition on repeatedly expanding the cross section by ten percent. This loophole could allow far greater expansion than the rule intends, leaving the potential expansion of the channel open-ended. The effect of this loophole is exempting projects that will exacerbate flooding downstream. IEC recommends revising the language to specify that the cross section cannot increase more than 10% beyond original engineering plans, and in the absence of engineering plans the exemption does not apply.

## **Chapter 75**

IEC notes that chapter 75, proposed to be rescinded in this rulemaking, included a requirement for local ordinances approved by DNR to operate in lieu of state permits, all local variances were subject to DNR review. In deleting that requirement, it appears that DNR has removed the requirement for DNR input on local variances. This could harm Iowans downstream from local variances where the new development exacerbates flooding in other locations. IEC recommends DNR retain the review process for variances to ensure that any variance accounts for the impacts in other communities.

## **Conclusion**

We appreciate DNR’s efforts to evaluate the need for rules and to make the rules more accessible consistent with Executive Order 10, but that effort cannot undermine the protection of the state’s natural resources. We encourage DNR to adopt IEC’s recommended changes.

Sincerely,

/s/ Michael R. Schmidt

Michael R. Schmidt  
Staff Attorney  
Iowa Environmental Council