

## **SECTION 2.2**

### **PERMITS/CODES ADMINISTERED BY LOCAL GOVERNMENTS**

#### **2.21 Introduction**

This Section addresses regulations and approvals that are most often required at the local level. In many instances, the County Surveyor and/or Drainage Board through a local Drainage Ordinance, must review and approve plans for any project that will affect surface water flows. Through the Indiana Drainage Code, the Drainage Boards and Surveyors also have review and approval authority for most activities within the statutory right-of-entry easement along the County Regulated Drains.

#### **2.22 Permits Required According to Local Ordinances**

Local permits or approvals are generally required for most land disturbing activities that will either alter existing land grades or result in increased runoff from a parcel. For **Drainage Improvement Projects** in unincorporated areas, the County Surveyor's Office should be contacted before beginning work to determine if any permits are required. For work within an incorporated city or town, contact the County Surveyor's Office and/or the Engineering or Public Works Department. Regulated Drain maintenance, reconstruction or construction projects undertaken by a County Drainage Board are usually, but not always, exempt from the local permit requirements.

Two laws passed by the 1996 State Legislature have added new duties and responsibilities for the Drainage Boards and County Surveyors. These two similar laws, Senate Enrolled Act (SEA) 336 and House Enrolled Act (HEA) 1277, provide an opportunity for people who feel they are being impacted by problems affecting mutual or private drains as well as an obstruction in any stream or watercourse. The stream or watercourse does not have to be a part of the Regulated Drain system for the County Drainage Board or Surveyor to become involved. The laws provide a process for disputes regarding obstructions to be settled by the County Drainage Board. These laws were incorporated into the Drainage code as a new Section, IC 36-9-27.4.

#### **2.23 Indiana Drainage Code (IC 36-9-27)**

##### **Description**

The Indiana Drainage Code outlines the duties and responsibilities of the County Drainage Boards. The Code also describes the Regulated Drain-related responsibilities of the County Surveyor.

The Indiana Drainage Code was enacted by the state legislature in 1965 and became effective in 1966. The Drainage Code replaced the former "Legal Drain" program which was usually under the auspices of a County Circuit Court or the County Commissioners. Through the Drainage Code, the County Drainage Boards and the County Surveyors are responsible for the maintenance and operating functions of all Regulated Drains, open and tiled, in the county. Each year, the County Surveyor must report on the condition of each Regulated Drain and, if necessary, recommend maintenance or reconstruction projects to the Drainage Board. The Drainage Boards and Surveyors must also respond to petitions by the public to create or dedicate new Regulated Drains, reconstruct existing Regulated Drains and perform regular maintenance activities.

### **Right-of-Entry Easement**

Section 33 of the Drainage Code describes the right-of-entry easement along all Regulated Drains. Any work within the right-of-entry easement area should be submitted to the Surveyor and/or Drainage Board for review and approval before work on the project begins. The easement is measured at right angles from:

- (1) The centerline of a tiled drain; or
- (2) The top edge of each bank of an open drain.

The easement extends 75 feet from the above noted points along both sides of a drain, but may be reduced to 25 feet for open drains and 15 feet for tile drains (See Subsection (e) of the Code). Section 33 also states that permanent structures may not be placed within the easement without the written consent of the Drainage Board. Trees, shrubs and woody vegetation may not be planted within the easement area without the written consent of the Drainage Board and may be removed by the Surveyor if necessary for the proper operation of the drain.

### **Early Coordination Process for Drainage Board Projects**

Section 53.5 of the Drainage Code was added by the 1995 Legislature through the passage of Senate Bill 368. This section details a process for pre-application meetings and correspondence between a County Surveyor or County Drainage Board, the IDNR, and IDEM (a representative from the local SWCD may also be involved). Through this process, an on-site field meeting can be held and the regulatory agencies will provide a list of conditions that would appear on a permit or certification for the proposed project. This Section also specifically defines construction from one side of a drain. It must be noted that Section 53.5 deals with Regulated Drain maintenance or reconstruction projects only. However, the process would be appropriate for all drainage improvement projects such as those undertaken by cities and towns, conservancy districts, drainage districts, levee districts, river basin commissions, or private entities. The early coordination process is discussed in detail in Section 2.34 of this handbook.