

IC 36-9-27-33**Right of entry over private land; extension of spoil banks beyond right-of-way**

Sec. 33. (a) The county surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter has the right of entry over and upon land lying within seventy-five (75) feet of any regulated drain. The seventy-five (75) foot limit shall be measured at right angles to:

(1) the center line of any tiled drain; and

(2) the top edge of each bank of an open drain;
as determined by the surveyor.

(b) Spoil bank spreading resulting from the construction, reconstruction, or maintenance of an open drain may extend beyond the seventy-five (75) foot right-of-way if:

(1) the county surveyor finds that the extension is necessary; and

(2) the extension has been provided for in the engineer's report on the construction, reconstruction, or maintenance.

(c) All persons exercising the right given by this section shall, to the extent possible, use due care to avoid damage to crops, fences, buildings, and other structures outside of the right-of-way, and to crops and approved structures inside the right-of-way. The county surveyor shall give oral or written notice of the entry on the land to the property owner of record, and in the case of a municipality, to the executive of that municipality. The notice must state the purpose for the entry.

(d) The owners of land over which the right-of-way runs may use the land in any manner consistent with this chapter and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when so ordered by the board or by the county surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the surveyor, the board, or their representatives. Trees, shrubs, and woody vegetation may not be planted in the right-of-way without the written consent of the board, and trees and shrubs may be removed by the surveyor if necessary to the proper operation or maintenance of the drain.

(e) This subsection applies to new regulated drains established after September 1, 1984, and to urban drains. The board may reduce the seventy-five (75) foot requirement of subsections (a) and (b) to any distance of not less than twenty-five (25) feet from the top of each bank of an open ditch and fifteen (15) feet from the center line of any tiled drain as measured at right angles.

(f) The surveyor, the board, or an authorized representative of the surveyor or the board acting under this chapter does not commit criminal trespass under IC 35-43-2-2.

As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.206-1984, SEC.3; P.L.76-1989, SEC.6