

August 4, 2009

The Honourable Dalton McGuinty, MPP
Premier of Ontario
900 Bay Street
6th Floor, Mowat Block
Toronto, ON M7A 1C2



Dear Premier McGuinty:

On behalf Toronto and Region Conservation Authority (TRCA), I wish to bring to your attention the legislative constraints for TRCA to effectively and efficiently ensure compliance with our 'Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation' (Ontario Regulation 166/06) issued under Section 28(1) of the *Conservation Authorities Act* (CA Act). Conservation authorities in Ontario support the provincial interest of natural hazard management through the implementation of regulations approved by the Minister of Natural Resources under Section 28 (1) of the CA Act. TRCA has effectively administered a regulation under the CA Act for over 40 years to protect the public health and safety of the citizens within our jurisdiction and successfully upheld and defended these regulations before the Mining and Lands Commissioner and the Ontario Provincial Court.

Increasingly however, our ability to ensure compliance with Ontario Regulation 166/06 is challenged by the limitations of the current legislation and the lack of legislative compliance mechanisms. This is a serious concern to the member municipalities of the largest urbanizing conservation authority in the Province of Ontario, as outlined in the following resolution, and further detailed in the attached report (Attachment 1 – and further amended in the following resolution) approved by the Authority on May 22, 2009.

WHEREAS Toronto and Region Conservation Authority (TRCA) administers Ontario Regulation 166/06, "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation" under Section 28(1) of the Conservation Authorities Act;

AND WHEREAS TRCA staff is committed to working cooperatively with all of TRCA's municipal partners, landowners and stakeholders regarding all aspects of the implementation of Ontario Regulation 166/06, including permit compliance;

AND WHEREAS TRCA, through its Business Excellence objective, is committed to improve and streamline the administration of regulation compliance;

AND WHEREAS TRCA has experienced an increase in non-compliance issues resulting in increased pressures on staff resources, additional costs to TRCA and significant environmental impacts within the watersheds of TRCA;

THEREFORE LET IT BE RESOLVED THAT the "Interim Procedures" for dealing with non-compliance matters under Ontario Regulation 166/06 as outlined in the staff report be approved and implemented;

Member of Conservation Ontario



THAT staff be directed to pursue the additional "Future Considerations and Procedures" as outlined in this report, including any required consultation with provincial, municipal or Building, Industry and Land Development (BILD) officials, and TRCA legal counsel, and report back to the Executive Committee in early 2010;

THAT staff report on mechanisms whereby municipal governments can assist TRCA with enforcing permit compliance, ensuring best practices and recovering full costs for violations of TRCA applications;

THAT staff report on the feasibility of creation of a "violations list" of contractors and construction engineers to be shared with contractors, land owners and TRCA municipalities;

THAT staff be directed to develop a letter to the Premier signed by the Chair outlining the gaps in the Conservation Authorities Act and the need to amend the Act;

THAT Conservation Ontario be requested to endorse the letter;

AND FURTHER THAT municipalities in TRCA's jurisdiction, Conservation Ontario and the Ministry of Natural Resources be so advised.

Accordingly, Attachment 2 summarizes the current legislative framework, the impediments to effective compliance being faced by TRCA. The following are TRCA's recommendations to the Ministry of Natural Resources to address the legislative constraints.

Recommended Action:

Section 28 of the CA Act was last updated in 1998 as part of the *Red Tape Reduction Act* (Bill 25) to ensure that Regulations under the Act were consistent across the Province and complementary to provincial policies. In May 2004, the regulation to implement the 1998 changes to the CA Act, Ontario Regulation 97/04 "Content of Conservation Authority Regulations under Subsection 28 (1) of the Act: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" (i.e. Generic Regulation) was approved. This Regulation established the content requirements to be met in a Regulation made by a CA. In May 2006, the Minister of Natural Resources approved individual Development, Interference and Alteration Regulations for all CAs in the Province, consistent with Ontario Regulation 97/04, including TRCA's Ontario Regulation 166/06.

Through Conservation Ontario (CO) Council, there have been several requests made to the Minister of Natural Resources to amend specific provisions in Section 28 of the CA Act. Some of the requested changes would be considered 'housekeeping' amendments, while others relate more to program implementation. In 2007, CO sent another report consolidating all previously recommended amendments to the CA Act, including those related to Section 28, to the Minister of Natural Resources. To date, the requested amendments have not been made by the Ministry of Natural Resources (MNR).

Similarly, TRCA has previously raised concerns to the Minister of Natural Resources. In a report to the Business Excellence Advisory Board at meeting #4/05, held on September 23, 2005, TRCA staff, in consultation with TRCA's solicitor, provided comments on a list of proposed amendments to various sections of the CA Act, including Section 28.

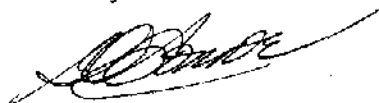
In that report, TRCA also noted opportunities for future amendments that would assist in the prosecution of violations and ensure site rehabilitation including:

- increase the time frame for prosecutions from six months to two years;
- significantly increase the fines to reflect monetary penalties in line with other compatible environmental legislation, (for example, offences under the Environmental Protection Act can carry penalties of \$5,000 *per day* and more);
- that in addition to any fine imposed by the court, neutralize any monetary benefit from the commission of the offence;
- imposing such other penalties and sanctions that may result, in part, with the redirection of monies to CAs as compensation to remedy, avoid or remediate damages done, or to advocate or implement proper environmental management practice in line with CA policies and objectives;
- require restoration and rehabilitation of land once the development has been removed (currently the section speaks of rehabilitation of wetlands but no other lands);
- a method of cost recovery similar to other legislation (*Ontario Water Resources Act, Municipal Act, Environmental Protection Act*) such as through the offender's tax bill.

These legislative amendments to the CA Act recommended to the Minister of Natural Resources in 2005 by TRCA remain relevant today. TRCA's member municipalities are frustrated with the legislative constraints impeding our ability to efficiently ensure regulatory compliance and the resulting impact to our watersheds. The legislative tools afforded to our member municipalities that assist with non-compliance matters need to be available to CAs.

We respectfully request the Minister of Natural Resources to amend Section 28 of the CA Act and provide conservation authorities with the legislative compliance mechanisms to support the implementation of this natural hazard management program. Your assistance with this matter is appreciated.

Sincerely



Gerri Lynn O'Connor
Chair

cc. The Honourable Donna Cansfield, Minister of Natural Resources
Don Pearson, General Manager, Conservation Ontario
Jeffrey Abrams, City Clerk, City of Vaughan
Martin de Rond, Clerk, Town of Ajax
Peter Fay, City Clerk, Clerk's Department, City of Brampton
Charlotte Gravlev, Regional Clerk and Director of Clerk's, Regional Municipality of Peel
Crystal Greer, Clerk, Clerk's Department, City of Mississauga
Barb Kane, Clerk and Deputy Treasurer, Township of Adjala-Tosorontio
Denis Kelly, Regional Clerk, Corporate Services, Regional Municipality of York
Michele Kennedy, Clerk, Town of Whitchurch-Stouffville
Lucille King, Director of Corporate Services/Town Clerk, Town of Aurora
Kimberley Kitteringham, Town Clerk, Town of Markham
Karen Landry, Town Clerk, Administration, Town of Caledon

Debbie Leroux, Clerk, Township of Uxbridge
Patricia Madill, Regional Clerk, Regional Municipality of Durham
Donna McLarty, Clerk, Town of Richmond Hill
Keith McNenly, Chief Administrative Officer/Clerk-Treasurer, Town of Mono
Chris Somerville, Clerk, Township of King
Ulli S. Watkiss, City Clerk, City Manager's Office, City of Toronto
Debi Wilcox, City Clerk, City of Pickering

/Encl.

Item 7.2

TO: Chair and Members of the Authority
Meeting #4/09, May 22, 2009

FROM: Carolyn Woodland, Director, Planning and Development

RE: PERMIT COMPLIANCE
Ontario Regulation 166/06 - "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation"

KEY ISSUE

Interim procedures and strategic approaches to address non-compliance issues related to Toronto and Region Conservation Authority's regulatory responsibilities under Section 28(1) of the Conservation Authorities Act and implementation of Ontario Regulation 166/06.

RECOMMENDATION

WHEREAS Toronto and Region Conservation Authority (TRCA) administers Ontario Regulation 166/06, "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation" under Section 28(1) of the Conservation Authorities Act;

AND WHEREAS TRCA staff is committed to working cooperatively with all of TRCA's municipal partners, landowners and stakeholders regarding all aspects of the implementation of Ontario Regulation 166/06, including permit compliance;

AND WHEREAS TRCA, through its Business Excellence objective, is committed to improve and streamline the administration of regulation compliance;

AND WHEREAS TRCA has experienced an increase in non-compliance issues resulting in increased pressures on staff resources, additional costs to TRCA and significant environmental impacts within the watersheds of TRCA;

THEREFORE LET IT BE RESOLVED THAT the "Interim Procedures" for dealing with non-compliance matters under Ontario Regulation 166/06 as outlined in the staff report be approved and implemented;

THAT staff be directed to pursue the additional "Future Considerations and Procedures" as outlined in this report, including any required consultation with provincial, municipal or Building, Industry and Land Development (BILD) officials, and TRCA legal counsel, and report back to the Executive Committee in early 2010;

AND FURTHER THAT municipalities in TRCA's jurisdiction, Conservation Ontario and the Ministry of Natural Resources be so advised.

ATTACHMENT 1

BACKGROUND

In the fall of 2008, the Executive Committee requested that staff report back on several compliance issues related to permits issued under Ontario Regulation 166/06, TRCA's "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation". In particular, staff was directed to investigate the adequacy of the current fees/penalties for:

- a) works commenced prior to the issuance of a TRCA permit, (i.e. 'after the fact permits');
- b) TRCA's ability to issue a ticket/stop work order for these offences;
- c) whether conservation authorities can obtain legislation similar to that available to municipalities that allows them to remove the work/offence, restore the site and recover this cost through a charge on the tax bill or a lien on the property; and
- d) the status of any proposed amendments to the *Conservation Authorities Act* (CA Act) related to the implementation of our regulatory responsibilities.

Legislative Framework

It is through Section 28(1) of the CA Act that conservation authorities (CAs), subject to the approval of the Minister of Natural Resources, are given the authority to implement a regulation within the area under their jurisdiction to:

- prohibit, regulate or require permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for the changing or interfering in any way with a wetland (Section 28(1)(b));
- prohibit, regulate or require permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development (Section 28 (1)(c));

Section 28 (1) also enables the appointment of officers, or persons to act as officers, to enforce the regulation. The following summarizes Sections 28 (16) to 28 (24) of the CA Act which relate to regulation enforcement and offences:

- every person who contravenes a regulation made under Section 28(1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000, or to a term of imprisonment of not more than three months;
- in addition, the court, upon making a conviction may order the removal, at the person's expense, of any development within a time ordered by the court; and order the rehabilitation of a watercourse or wetland;
- if a person does not comply with a court order, the CA may carry out the works of the court order; the person convicted is liable for costs of this work which is recoverable by the CA by action through the court, (i.e. CA must sue parties involved to recover costs);
- an enforcement officer may enter a property without a warrant if the entry is for the purpose of considering an application for a permit or for the purpose of enforcing the permission that was granted under the regulation; and
- in absence of a permit application or a permit, an enforcement officer must give the property owner reasonable notice to enter; if there are reasonable grounds to believe 'significant environmental damage' is likely to be caused, an officer may enter without notice.

Further to the above, it should be noted that the judicial process for charges laid under a CA's regulation is through the Ontario Provincial Court system and procedurally governed by the provisions of *Provincial Offences Act* (POA). Convictions, fines and requests for removal of development or rehabilitation of a watercourse or wetland are at the discretion of the court. Fines are paid to the court and not to the CA. Non-compliance with a court order requires further court proceedings to be pursued by the CA. There is a six month statute of limitation associated with non-compliance matters, as per the POA (i.e. it is not in the CA Act). In order to pursue an offence under the regulation, an enforcement officer must be able to demonstrate through evidence that the offence was committed or alleged to have been committed within six months from the last day of the work related to the activity (i.e. construction, filling, alteration).

Current TRCA Trends

Violations within TRCA's jurisdiction range in scale and scope from minor infractions to major site alterations resulting in significant environmental impacts. In some situations, particularly with the minor infractions, private residential landowners make an honest mistake about their site alteration activities and in not obtaining the appropriate TRCA approval. In other cases, activities are blatantly disrespectful of TRCA's regulation requirements and permitting approvals process. TRCA staff has identified an increase in the number of violations resulting from winter construction and financial pressures to complete projects. These occurrences are primarily associated with major developments such as subdivision sites and infrastructure projects. Historically, construction has been limited to three seasons. However with mild winter temperatures in recent years and a booming housing market, construction has continued throughout the winter months. Extreme weather scenarios during the winter months, such as a sudden thaw or an intense rain event, have created site conditions that can not be addressed through standard construction practices, such as those associated with sediment and erosion control measures. The lack of urgent response to implement emergency environmental protection measures during these events result in major on-site impacts, as well as adjacent and downstream impacts. In some circumstances, problems with public and site safety have been experienced.

In addition to our regulatory responsibilities under the CA Act, TRCA has a Level III Agreement with Fisheries and Oceans Canada (DFO) to review projects under Section 35(1) of the *Federal Fisheries Act*, which states that "no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat" (HADD). Where applicable, TRCA permits are also reviewed under the purview of this agreement and coordinated accordingly. DFO is responsible for enforcing the *Federal Fisheries Act*, however in light of our partnership review agreement, there are established protocols and procedures for TRCA Enforcement staff to notify and coordinate with DFO when there may be violation of their legislation.

Recognizing the need to update erosion and sediment control practices and provide construction, site monitoring and maintenance guidance, the Greater Golden Horseshoe Area Conservation Authorities developed the "Erosion and Sediment Control Guideline for Urban Construction" in December 2006. The standards of this document are applied to TRCA permits. TRCA staff has also held training sessions on this document for our municipal partners and the construction industry. However, there is still a need for the construction industry to become more experienced in identifying and implementing erosion and sediment control measures appropriate for site conditions, monitoring and maintaining these measures and responding in an urgent and appropriate manner in emergency situations.

Violation Categories and Procedures

The nature and scope of offences under the regulation experienced at TRCA are described in the following three categories:

(i) Minor Infractions

This category includes minor works and activities that were started or recently completed within a regulated area without the approval of TRCA. Some examples include decks, pools, low retaining walls, patios and extensions of backyards through filling/landscaping. These projects generally comply or can be modified to comply with TRCA policies through landowner cooperation and a permit is issued. These infractions are referred to as 'after the fact' permits. An additional administrative fee is applied to these permits, in accordance with Resolution #B37/04 approved at Executive Committee meeting #2/04, held on March 5, 2004. This administrative fee is an additional 50% of the base permit fee for minor/residential properties and 100% of the base permit fee for larger scale projects (e.g. stormwater management pond for a subdivision). Since 2004, TRCA has issued 32 'after the fact' permits.

(ii) Violations on Issued Permits

In this category, through the normal course of procedures of inspecting issued permits for compliance, TRCA Enforcement Officers will discover on site works that deviate, sometimes significantly, from the approved plans. In these situations, the Enforcement Officer enters into the negotiation process with the landowner in order to get an urgent response and resolve impacts quickly. These negotiations, particularly for significant offences, often involve other TRCA staff, (planning, ecology, engineering, etc) and municipal staff and require on-site meetings. Negotiations in this category result in an acceptable resolution, either through removal or restoration, and compliance with the regulation. This is a less costly solution than the judicial process for the current volume of violations, assuming that the violation is solvable by acceptable site adjustments. In the past five years, 42 violations have been issued in this category.

(iii) Judicial Process

In circumstances where there are substantial issues and the offence can not be successfully resolved through the negotiation process with the landowner, the violation process evolves into a judicial process. As previously noted, charges are laid before the court. TRCA retains legal counsel to prosecute significant cases and assist the investigating case Enforcement Officer. TRCA planning and technical staff are often called upon for their expertise and testimony in these proceedings, in addition to Enforcement staff. During the period of 2004 to 2008, Enforcement staff laid 51 charges under the CA Act and made 94 appearances before the court.

Permit and Enforcement Statistics

Statistics on permit and violation activities for the past five years are summarized in Attachment 1. In 2008, 923 permits were issued by TRCA. To manage workload volume and priorities, Enforcement staff inspect only the regular permits and permissions for routine infrastructure works and not the minor permits (248 in 2008). Site inspections and compliance monitoring are also prioritized based on the complexity of applications, level of site development constraints and associated risks and/or developments that were subject to significant negotiations during the application process. There were a total of 67 violation notices issued in 2008 (for TRCA permitted and non-TRCA permitted activities); of those 23 were to private landowners, 23 to corporate entities, 10 to construction companies, 6 to agents and 5 to other entities. A single violation site may result in the issuance of more than one violation notice, depending on the number of individuals involved in the offence. The violation notice procedures generated 10 'after the fact' permits and 9 violations were issued on active permit sites. Enforcement staff resolved 13 violations through negotiations for removal and/or restoration. A total of 9 charges were laid through the judicial process and there were 8 court appearances for all Section 28 active prosecution matters, current and outstanding for 2008. As noted previously, the trend in violations has been in the large scale developments and infrastructure projects, both private and public. While the number of violation sites is relatively low, (43 in 2008), in comparison to the volume of permits processed, the staff resources required to negotiate and resolve violations is very time consuming and costly.

Opportunities and Constraints

Section 8 of the *Building Code Act* requires compliance with all applicable laws prior to the issuance of a building or demolition permit. The Ontario Building Code defines regulations made by a conservation authority under the CA Act as applicable law. Prior to the issuance of a building or demolition permit within an area regulated by TRCA, municipal building officials must receive a copy of the TRCA permit.

TRCA Enforcement staff can issue violation notices when there is an offence under the regulation. However, unlike municipal building officials, they do not have the ability to issue a stop work order. The ability to stop work and correct site alterations is particularly important in sites that pose a public health and safety risk, both on site or where downstream impacts are significant. Under the provisions of Ontario Regulation 166/06, TRCA's Regulation that came into effect in May 2006, TRCA now has the ability to cancel a permit subject to holding a hearing with the applicant. While in some circumstances this might be an appropriate course of action, particularly in the case of a construction permit associated with municipal building permit, in others it may not. Revoking a permit does not necessarily facilitate negotiations or achieve removal or restoration of an offence. In many cases additional harm to the environment will be realized if the proponent is prevented from undertaking identified works and associated stabilization.

Through Ontario Regulation 166/06, TRCA now clearly has the opportunity to impose conditions on permits. To date, through the processing of permit applications, TRCA staff ensure that all drawings approved with permits include detailed notes about site development requirements, such as construction timing and methodologies, and sediment and erosion control measures, in accordance with TRCA requirements (i.e. what may be considered as conditions'). Imposing conditions to address the potential for non-compliance matters could be considered. For example, for permits involving site grading, a condition could be imposed to require the applicant to submit certification of final grading by a professional engineer to ensure the works have been done in accordance with the permission. A standard set of conditions could be developed, with additional conditions as required.

Municipal Comparison

The Executive Committee requested staff to investigate the legislative tools available to municipalities in dealing with potential violations of municipal approvals. Under the *Planning Act* process, municipalities can hold letters of credit/securities through agreement with the landowners for compliance with approved grading plans, landscaping plans, etc., for applications such as subdivisions and site plans. Through this mechanism, if there is a non-compliance issue, these securities would be used to rectify the situation.

Most municipalities within TRCA's jurisdiction implement a Fill By-law under the provisions of the *Municipal Act* for those lands within the municipality that fall outside areas regulated by a conservation authority under Section 28 of the CA Act. As per Section 142(8) of the *Municipal Act*, a municipal fill by-law cannot overlap with an area regulated by a conservation authority. A municipality can appoint an employee, officer or agent of the municipality to undertake compliance inspections for permits issued under their fill by-law. Municipalities often retain certain securities through the issuance of a permit under their fill by-law. Through the provisions of the *Municipal Act*, a municipality also has the ability to recover fines for offences or removal/restoration of sites under their fill by-law through taxation or liens on the affected property.

As previously noted, a municipality has the ability to issue a stop work order under the *Building Code Act* for matters on non-compliance.

TRCA Enforcement staff make every attempt to solicit support and assistance from TRCA's municipal partners to coordinate efforts when dealing with non-compliance matters and strategically use all available legislative tools to resolve these matters. This is not a formalized process but is done on an individual case basis. The CA Act currently does not contain any provisions related to taking securities in association with permits. Consideration could be given to including this as part of the standard conditions. TRCA staff would recommend further legal assistance is required if consideration of this mechanism, or any other legislative tools similar to the provisions in the *Municipal Act* are to be explored to deal with non-compliance matters.

Conservation Authorities Act Amendments

Section 28 of the CA Act was last updated in 1998 as part of the *Red Tape Reduction Act* (Bill 25) to ensure that Regulations under the Act were consistent across the province and complementary to provincial policies. In May 2004, the regulation to implement the 1998 changes to the CA Act, Ontario Regulation 97/04 "Content of Conservation Authority Regulations under Subsection 28 (1) of the Act: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" (i.e. Generic Regulation) was approved. This Regulation established the content requirements to be met in a Regulation made by a CA. In May 2006, the Minister of Natural Resources approved individual Development, Interference and Alteration Regulations for all CAs in the province, consistent with Ontario Regulation 97/04, including TRCA's Ontario Regulation 166/06.

Prior to 1998, an offence under Section 28(1) of the CA Act was subject to a fine, upon conviction of not more than \$1,000 or to a term of imprisonment of not more than three months. In 1998, the fine was increased to \$10,000.

Through Conservation Ontario (CO) Council, there have been several requests made to the Minister of Natural Resources to amend specific provisions of Section 28 of the CA Act. Some of the requested changes would be considered 'housekeeping' amendments, while others relate more to program implementation. In 2001, CO Council requested an amendment to allow CAs to prosecute violations for up to 2 years from the date of the violation, thereby ensuring consistency with the provisions of the *Public Lands Act* and other environmental legislation.

TRCA has previously raised concerns similar to those expressed by the current Executive Committee to the Minister of Natural Resources and Conservation Ontario. In a report to the Business Excellence Advisory Board at Meeting #4/05, held on September 23, 2005, TRCA staff, in consultation with TRCA's solicitor, provided comments on a list of proposed amendment to various sections of the CA Act, including Section 28. In that report, TRCA also noted opportunities for future amendments that would assist in the prosecution of violations and ensure site rehabilitation including:

- increase the time frame for prosecutions from 6 month to 2 years;
- significantly increase the fines to reflect monetary penalties in line with other compatible environmental legislation, (for example, offences under the Environmental Protection Act can carry penalties of \$5,000 *per day* and more);
- that in addition to any fine imposed by the court, neutralize any monetary benefit from the commission of the offence;
- imposing such other penalties and sanctions that may result, in part, with the redirection of monies to CAs as compensation to remedy, avoid or remediate damages done, or to advocate or implement proper environmental management practice in line with CA policies and objectives;
- require restoration and rehabilitation of land once the development has been removed (currently the section speaks of rehabilitation of wetlands but no other lands);
- a method of cost recovery similar to other legislation (*Ontario Water Resources Act, Municipal Act, Environmental Protection Act*) such as through the offender's tax bill.

In 2007, CO sent another report consolidating all previously recommended amendments to the CA Act, including those related to Section 28, to the Minister of Natural Resources. To date, the requested amendments have not been made by MNR. However, CO staff continues to take every opportunity through various initiatives to recommend to MNR amendments to Section 28 of the CA Act, including those that have arisen in the past few years through the implementation of the new Regulations, that would result in improved program efficiencies and delivery.

Recommended Approach

In light of the above discussion, including works initiated without TRCA approval, lack of urgent response to implement emergency protection measures and to recover staff resources for negotiation and resolution of violations, TRCA staff recommends to the Executive Committee that the procedures for dealing with non-compliance issues related to the implementation of TRCA's Regulation be addressed as follows:

Interim Procedures

Current enforcement procedures for dealing with non-compliance matters under Ontario Regulation 166/06 be updated, effective immediately, to include the following:

- **'After the Fact' Permit Fee** - increase the current administrative fee from 50% of the base permit fee for minor/residential properties and 100% of the base permit fee for larger scale projects to **100%** of the base permit fee for all permit categories. For example, a minor residential 'after the fact' permit would be \$690 (\$345 base fee) and a stormwater management pond 'after the fact' would be \$7,730 (\$3,865 base fee).
- **'After the Fact' Permit Approval Period** - Permits issued under Ontario Regulation 166/06 are valid for a maximum period of 24 months. In instances where works have already been completed without a TRCA permit, the approval period to the TRCA permit shall be reduced to a time frame deemed appropriate by the Director, Planning and Development, based upon coordination with municipal requirements and TRCA enforcement requirements.
- **Additional Fees for Site Meetings, Technical Team Meetings** - the current TRCA fee schedule includes a fee structure for additional site visits (\$600 for up to half a day; \$1,200 for up to a day including travel time) and for pre-consultation technical team site visits (\$2,500). This fee structure shall be applied and charged to applicants that enter into negotiations with TRCA in order to recover the level of staff service, including multiple meetings and site visits required to resolve non-compliance issues. TRCA staff will work with our solicitor for the appropriate leverage to collect these fees.
- **On-Site Non-Compliance Reports** - Enforcement staff currently issue violation notices to applicants upon securing all required information to initiate non-compliance matters under the CA Act. In addition to this normal procedure, primarily for the larger project sites, enforcement staff shall issue on-site, non-compliance reports at the time of site investigation. This will serve not only as an initial notice to the owner/agent/construction company, etc. that there is an offence occurrence under the Regulation, but also document and record on-going offences and associated meetings.
- **Post Violation Correction and Restoration** - As part of the compliance process for those violations that do not go through the judicial process, remediation and restoration of the site and/or monetary compensation for damages will be negotiated between the owner and TRCA.

- **Training and Monitoring** - TRCA staff will continue to work with our municipal partners and the construction industry to provide training and guidance on erosion and sediment control practices, site monitoring and maintenance. In addition, TRCA will begin to track and monitor the performance of these activities and share this information with our municipal partners and the development industry.
- **Letter of Credit** - In special circumstances, TRCA will implement a Letter of Credit as a condition of permit approval, as a security to ensure permit compliance. In these situations, TRCA staff will notify the proponent of the intention to impose a Letter of Credit condition in advance of the permit being considered by the Executive Committee, in order for the proponent to confirm acceptance of the condition or afford the proponent the opportunity to object to the condition at a Hearing.

Future Considerations and Procedures

Staff recommends that the following additional actions, which may require further provincial, municipal or TRCA legal consultation, be pursued in an effort to address the issues associated with regulatory non-compliance:

1. **Municipal Consultation and Partnership** - Municipalities rely on TRCA's technical experience when dealing with natural hazards and environmentally sensitive sites. Staff will continue to dialogue with TRCA's municipal partners and seek opportunities to coordinate better environmental compliance through all available tools. This may include increasing letters of credit and securities through municipal tools, such as site plan agreements, to ensure appropriate level of site remediation and restoration is available for emergency and non-responsive situations. Changes to construction practices, site management and adaptive environmental monitoring should also be explored through this process. It is recommended that opportunities to implement third party environmental monitoring of construction sites, (i.e. professionals that do not report to owner/applicant/contractor), through municipal legislative tools and TRCA permitting conditions, be explored as a means of ensuring compliance with complex development applications, particularly in sensitive areas.
2. **Consultation with BILD (Building Industry and Land Development Group)** - TRCA staff has already started discussions with BILD about the quality of construction compliance and the need to recover additional TRCA staff costs resulting from negotiations to resolve offences of TRCA's permit approvals. The next scheduled update for TRCA fees is 2010. As part of that update, staff intend to consider fees designed to recover non-compliance matters, which might include inspection fees for major development permits, fees for additional site visits and technical staff time for negotiations, adding a premium for emergency works, a 'violation consultancy service fee' to resolve municipal/public violations, etc..
3. **Legislation** - TRCA will continue to work with Conservation Ontario and the Ministry of Natural Resources to advocate for legislative amendments to the CA Act or the ability for CAs to use other existing legislative tools that would promote regulatory compliance and cost recovery to the CA. In particular, the additional CA Act amendments recommended by TRCA to CO and MNR in 2005, as outlined in this report, will be promoted.

4. **Permit Conditions** - TRCA staff will develop a standard set of conditions that address both permit compliance (e.g. certification of final grading, floodproofing measures, etc.) and the potential for non-compliance issues (e.g. certification of on-site erosion and sediment control measures).

Report prepared by: Laurie Nelson, extension 5281

Emails: lnelson@trca.on.ca

For Information contact: Laurie Nelson, extension 5281;

Carolyn Woodland, extension 5214

Emails: lnelson@trca.on.ca; cwoodland@trca.on.ca

Date: May 14, 2009

Attachments: 1

Attachment 1**TRCA Permit and Enforcement Statistics
2004 to 2008**

The following is a summary of activities under Section 28 of the CA Act from 2004 to 2008. Please note that Ontario Regulation 158 was in effect in 2004/05 and replaced by Ontario Regulation 166/06 in May 2006.

PERMITS ISSUED:

	2004	2005	2006	2007	2008
Standard/Regular Permits:	405	465	515	550	639
Permission for Minor Works:			165	260*	248*
Permission for Routine Infrastructure:					36
Total:	405	465	680	810	923

* *Permission for Minor Works Implemented in 2006; No inspection by Enforcement staff for compliance.*

** *Permission for Routine Infrastructure Implemented in 2008*

VIOLATIONS:

	2004	2005	2006	2007	2008
Total number of Violation Notices Issued: (Includes TRCA permitted and Non-TRCA permitted activities)	80	109	55	125	67
To private landowners	40	44	27	63	23
To corporate entities	19	17	13	30	23
To construction companies	7	24	8	18	10
To agents	12	20	5	8	6
Number of other entities (e.g. consultants, engineers, etc.)	2	4	2	6	5
Total number of violation sites:	46	58	37	86	43
Total number of permits generated from Violation Notice procedure:	5	8	3	6	10
Total number of Violations issued on Active Permits sites:	7	15	3	8	9
Total number of violation sites resolved through negotiations for removal and /or restoration by Enforcement staff	20	8	21	16	13

Total number of charges laid by Enforcement	11	5	7	19	9
Total number of court appearances for all Section 28 active prosecution matters, current and outstanding	30	22	18	16	8

ATTACHMENT 2

Current Legislative Framework:

It is through Section 28(1) of the CA Act that conservation authorities (CAs), subject to the approval of the Minister of Natural Resources, are given the authority to implement a "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulation within the area under their jurisdiction.

Section 28 also enables the appointment of officers, or persons to act as officers, to enforce the regulation. The following summarizes Sections 28 (16) to 28 (24) of the CA Act which relate to regulation enforcement and offences:

- every person who contravenes a regulation made under Section 28(1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000, or to a term of imprisonment of not more than three months;
- in addition, the court, upon making a conviction may order the removal, at the person's expense, of any development within a time ordered by the court; and order the rehabilitation of a watercourse or wetland;
- if a person does not comply with a court order, the CA may carry out the works of the court order; the person convicted is liable for costs of this work which is recoverable by the CA by action through the court, (i.e. CA must sue parties involved to recover costs);
- an enforcement officer may enter a property without a warrant if the entry is for the purpose of considering an application for a permit or for the purpose of enforcing the permission that was granted under the regulation; and
- in absence of a permit application or a permit, an enforcement officer must give the property owner reasonable notice to enter; if there are reasonable grounds to believe 'significant environmental damage' is likely to be caused, an officer may enter without notice.

Further to the above, it should be noted that the judicial process for charges laid under a CA's regulation is through the Ontario Provincial Court system and procedurally governed by the provisions of *Provincial Offences Act* (POA). Convictions, fines and requests for removal of development or rehabilitation of a watercourse or wetland are at the discretion of the court. Fines are paid to the court and not to the CA. Non-compliance with a court order requires further court proceedings to be pursued by the CA. There is a six month statute of limitation associated with non-compliance matters, as per the POA (i.e. it is not in the CA Act). In order to pursue an offence under the regulation, an enforcement officer must be able to demonstrate through evidence that the offence was committed or alleged to have been committed within six months from the last day of the work related to the activity (i.e. construction, filling, alteration).

Legislative Constraints:

Ability to Stop Work:

Section 8 of the *Building Code Act* requires compliance with all applicable laws prior to the issuance of a building or demolition permit. The Ontario Building Code defines regulations made by a conservation authority under the CA Act as applicable law. Prior to the issuance of

a building or demolition permit within an area regulated by the TRCA, municipal building officials must receive a copy of the TRCA permit. TRCA Enforcement staff can issue violation notices when there is an offence under the regulation. However, unlike municipal building officials, they do not have the ability to issue a 'stop work order'. The ability to stop work and correct site alterations in a timely manner is particularly important in sites that pose a public health and safety risk, both on site or where downstream impacts are significant.

Prosecution Period:

In order to pursue an offence under the regulation, an enforcement officer must be able to demonstrate through evidence that the offence was committed or alleged to have been committed within six months from the last day of the work related to the activity (i.e. construction, filling, alteration). In 2001, Conservation Ontario Council requested the Ministry of Natural Resources for an amendment to the CA Act to allow CAs to prosecute violations for up to 2 years from the date of the violation, thereby ensuring consistency with the provisions of the *Public Lands Act* and other environmental legislation.

Monetary Penalties:

Prior to 1998, an offence under Section 28(1) of the CA Act was subject to a fine, upon conviction of not more than \$1,000 or to a term of imprisonment of not more than three months. In 1998, Section 28 of the CA Act was updated as part of the *Red Tape Reduction Act* and the fine was increased to \$10,000. This fine is significantly less than monetary penalties of other environmental legislation, (for example, offences under the Environmental Protection Act can carry penalties of \$5,000 *per day* and more).

Restoration for All Lands:

If a court order is issued for the removal of a development, the current legislation is limited to the rehabilitation of a watercourse or wetland, but no other lands. This gap in the current legislation allows the potential for a site to be vulnerable to further natural processes, such as erosion, causing additional environmental damage and impacts both on and off site. Restoration and rehabilitation should apply to all lands.

Cost Recovery and Legislative Tools:

Under the *Planning Act* process, municipalities can hold letters of credit/securities through agreement with the landowners for compliance with approved grading plans, landscaping plans, etc., for applications such as subdivisions and site plans. Through this mechanism, if there is a non-compliance issue, these securities would be used to rectify the situation.

Most municipalities within TRCA's jurisdiction implement a Fill By-law under the provisions of the *Municipal Act* for those lands within the municipality that fall outside areas regulated by a conservation authority under Section 28 of the CA Act. As per Section 142(8) of the *Municipal Act*, a municipal fill by-law can not overlap with an area regulated by a conservation authority. A municipality can appoint an employee, officer or agent of the municipality to undertake compliance inspections for permits issued under their fill by-law. Municipalities often retain certain securities through the issuance of a permit under their fill by-law. Through the provisions of the *Municipal Act*, a municipality also has the ability to recover fines for offences or removal/restoration of sites under their fill by-law through taxation or liens on the affected property. When seen from the municipal perspective, the very important and sensitive areas protected by conservation authority regulations have a lower level of protection than the areas covered by municipal regulations.

TRCA Enforcement staff make every attempt to solicit support and assistance from our municipal partners to coordinate efforts when dealing with non-compliance matters and strategically use all available legislative tools to resolve these matters. This is not a formalized process but is done on an individual case basis. The CA Act currently does not contain any provisions related to taking securities in association with permits nor cost recovery mechanisms such as those afforded to our municipal partners as noted above.

Convictions, fines and requests for removal of development or rehabilitation of a watercourse or wetland are at the discretion of the court. Fines are paid to the court and not to the CA. Non-compliance with a court order requires further court proceedings to be pursued by and at cost to the CA. In keeping with the provincial interest of natural hazard management, it would be far better to impose penalties and sanctions that may result, in part, with the redirection of monies to CAs as compensation to remedy, avoid or remediate damages done, or to advocate or implement proper environmental management practice in line with CA policies and objectives.