

APPENDIX J –

**COMPLIANCE &
ENFORCEMENT
ADMINISTRATIVE
GUIDELINES**

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Compliance & Enforcement Administrative Guidelines

Quinte Conservation

January 2024



This document was created with the best intentions of remaining consistent with the various Compliance and Enforcement Policies and Procedures Manuals/Guidelines from other Conservation Authorities and Conservation Ontario. To that end the following were sourced for this document:

- Lake Simcoe Region Conservation Authority Compliance and Enforcement Procedural Manual (2022)
- Niagara Peninsula Conservation Authority Section 28 Compliance and Enforcement Procedural Manual (2022)
- Conservation Ontario Regulatory Compliance Committee Conservation Authority Regulatory Compliance Guidelines: Sample Policies and Procedures (2011)

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INTRODUCTION

Quinte Conservation (QC) is responsible for the administration and enforcement of *Ontario Regulation 319/09* pursuant to the *Conservation Authorities Act*. Regulations staff use the *Conservation Authorities Act (Section 28)*, and Regulation to determine if an activity is in non-compliance with or a contravention of Section 28. In order to resolve contraventions, Regulations staff consider the Watershed Regulations Policy Manual, approved by the Board of Directors, in conjunction with applicable Provincial Legislation.

This document explains QC's approach to compliance & enforcement activities. This includes how staff respond to complaints, identify potential violations, and how staff decide the appropriate level of action to take for complaints, violations and non-compliance issues. There may be occasions where staff use their professional discretion while exercising their authority to administer legislation that varies from the contents in this document. To understand the scope of authority an officer has under our applicable legislation please refer to the province's e-laws website.

Conservation Authorities Act: <https://www.ontario.ca/laws/statute/90c27>

Ontario Regulation 319/09: <https://www.ontario.ca/laws/regulation/090319>

RISK BASED APPROACH TO COMPLIANCE AND ENFORCEMENT

QC's approach to delivering the Compliance & Enforcement program is based on potential risk to people, property, environmental features, and failure to comply with the requirements to obtain permission prior to development, alteration or interference pursuant to the *Conservation Authorities Act*. This means that efforts are focused where the potential for risk is highest, allowing QC to be more efficient and resolve issues that could be having major impacts.

As such, the Regulations staff will be responding to complaints, issuing notices of violation and Part III Summons and Informations in accordance with this document. All QC staff employed as Regulation Officers are also certified as Provincial Offences Officers which provides the legal authority to start a violation file and follow procedure accordingly.

Staff will be focusing on responding to higher-risk incidents (e.g., large fill or development within the floodplain, interference with wetlands, alterations to a watercourse, and major development/grading on the shoreline or slopes). While all complaints are documented, incidents that are determined to be lower-risk may not receive follow-up action, and any incident related to development that is not regulated will be referred to the appropriate level of government with jurisdiction. Incidents or activities that occur outside of the watershed jurisdiction will be directed to the appropriate conservation authority as required.

Staff will use an internal Informed Judgment Matrix when considering the level of risk associated with a development, alteration or interference and determining the appropriate level of action*.

Table 1 – Informed Judgement Matrix

Hazard Area Risk		Activity Risk and Response		
		Low	Moderate	High
		Meets guidelines, could be approved	Low impacts or impacts can be mitigated, likelihood of compliance	Mitigation difficult, does not meet guidelines, high hazard area, or major activity risk
	Low	Low Priority Response	Low Priority Response	Moderate Priority Response
	Moderate	Low Priority Response	Moderate Priority Response	Moderate Priority Response
	High	Low Priority Response	Moderate Priority Response	High Priority Response

Table 2 – Response Level

Category	Level of Associated Response
No Risk	Officers will not respond to frivolous or vexatious complaints, incidents with insufficient information provided, or not clearly within the jurisdiction of the Conservation Authority.
Low Priority Response	Development confirmed through desktop review and/or Municipal staff if possible. Officers may not fully investigate depending on volume of work. Focus will be on education and outreach, deterrence and possible restoration or approval if time and resources are available.
Moderate Priority Response	Development confirmed through drive-by or by photographs from Municipal staff during periods of high workload. Officers will endeavour to respond to and investigate these matters as time and resources allow. Focus will be on voluntary compliance through approval for unauthorized works or activities, remediation or restoration. Court proceedings may be warranted depending on the level of landowner compliance and nature of the potential violation.
High Priority Response	Development confirmed through formal site inspection within the timeline of the <i>Provincial Offences Act</i> . Focus will be on remediation/rehabilitation in the public interest, deterrence and risk reduction. Court proceedings may be warranted depending on the level of landowner compliance and nature of the potential violation.

* Current workloads, staff availability, and budget may impact this matrix.

The compliance history of offenders will also be considered in conjunction with risk analysis.

Response priority levels may change during the course of further inspections. Any matter which progresses to legal action or court proceedings will take priority over all other incidents, complaints and potential violations. This is due to procedural timelines under the *Provincial Offences Act*, laying an Information and service of Summons, solicitor and court requirements for timely correspondence and documentation, court appearances, negotiations and corporate liability.

Procedures for Receiving and Responding to Complaints

Quinte Conservation has developed an online complaint reporting system to help streamline our enforcement and compliance processes. It is available at the following link:

<https://www.quinteconservation.ca/en/permits-and-planning/report-a-violation.aspx>

Staff may follow up with a complainant if further information is required. **QC does not provide information on an open complaint or violation file to the public or any internal or external staff not directly involved in the file.** Exceptions include Municipal By-Law, and other public agencies with concurrent jurisdiction. In situations where QC is not the appropriate authority to respond to a complaint, staff will help direct the complaint to the appropriate authority, such as another provincial ministry or agency, a federal government department or a local municipality.

The response of enforcement staff to any incident will be proportionate to the risk presented by the incident, compliance history, and the response of the potential violator. Compliance and enforcement tools can include education and outreach, warnings, Notices of Violation and prosecution.

As part of QC's procedures for staff to respond to a complaint made by the public an online complaint form is completed and submitted, which must include the following information:

- Complainants full contact information. Please note that a complainant may be contacted to provide a witness statement;
- Address and approximate location of the property where development is occurring;
- Full details of the development occurring, and dates noted. (please note that staff typically do not respond to complaints unless the activity occurred recently, or is actively ongoing);
- If possible, pictures of the activity should be included;
- Description of the companies/people seen undertaking the work;

- Accessibility of the site (is it visible from the road, or from the complainant's property? If visible from the complainant's property can officers enter your property to make observations of the complaint).

If sufficient information cannot be initially obtained in order for an Officer to support proceeding with a lawful investigation of the concern or complaint, no further action is required. **Concerns, complaints, or inquiries where the complainant wishes to remain anonymous will likely be considered deficient with no additional follow-up by staff.** This information will be clearly documented in the internal QC database for future reference.

Once a complaint is received and validated by staff, a desktop review of the site will be completed. The works or activities need to be confirmed as a likely violation or non-compliance with a QC issued permit. To determine whether the works or activities are a violation or non-compliance, the following are preliminary steps which will be undertaken to the extent required:

Consult the regulations mapping to confirm how the property is regulated and if due diligence would have made that clear (i.e., does regulation mapping show the property as regulated and would the owner have been made aware that the property is regulated, had they inquired?);

1. Consult the internal database to determine if any approvals have been issued for the works or activity, and discuss with internal staff as required;
2. Consult any other information sources available to determine any past history with the property; and,
3. Contact municipal staff or other appropriate agency staff to see if there is a shared concern and if so, how they would like to be involved.

All required information will be entered into the internal QC database. Based on the source and nature of the concern or complaint, if it is confirmed that the property or area on the property is not regulated by the Authority, staff may choose to follow-up with the complainant, indicating that there are no compliance concerns, and that the Authority considers the file closed. This is suggested particularly for files where the initial source of the information is from municipal, or other agency staff.

If it is confirmed that the property is regulated and a permit has not been issued for the described works or activities, staff will determine the risk associated with the activities based on

the Informed Judgement Matrix (Table 1) and location described in the complaint. The next steps will be determined based on the response category.

If it is confirmed that the property is regulated and a permit has been issued for the described works or activity but there are concerns that there may be non-compliance with the conditions, then the officer may contact the permittee and arrange for a site inspection under the permission of the permit. An outline of the entire complaint process is shown in the flow chart at the end of this document.

Inspections and Investigations

Inspections involve monitoring for regulatory compliance and can include the collection of measurements, material (i.e. soil sample, plant material) and photographs. Inspections are conducted to ensure compliance with the regulation and/or permit.

Investigations are, in their simplest sense, are undertaken when there are reasonable grounds to believe non-compliance (a violation) has occurred. As soon as it is confirmed that development has occurred in a regulated area without permission, the process has moved past an inspection and into an investigation. The purpose of conducting an investigation is to search for and gather evidence that will substantiate the facts in issue and support potential court proceedings. Should charges follow the investigation the onus is on the prosecutor (the Conservation Authority) to prove beyond a reasonable doubt that the defendant is guilty of the alleged offence.

Where the landowner is willing and the described works can be removed or has the potential to meet policy with modifications, staff works towards compliance. However, where the landowner is unwilling or uncooperative, or where the described works would not have met current policies, the enforcement process begins. Corrective measures may include prosecution.

Starting a Violation File

A violation file can only be initiated by a Provincial Offences Officer employed by the Authority. All QC staff employed as Regulation Officers are also certified as Provincial Offences Officers. Once the Officer has confirmed that the works or activity occurring are likely a violation, a formal caution will be issued and a violation file will be opened. A caution is given by directly reading from a “caution card” and the purpose of the caution is to advise the “accused” of their

rights under the Charter of Rights. Once a violation file is opened, any further site reconnaissance is part of the investigation.

The Officer will prepare and deliver a formal Notice of Violation once the file has been opened and assigned a number through the QC internal database. A Notice of Violation is a formal letter, informing the landowner and/or contractor that it is believed an offence under the *Conservation Authorities Act* has occurred or is occurring on the subject property. The Notice of Violation should detail the type of violation, recommend mitigation steps, and provide details about risks associated with being found guilty of an offence of the *Conservation Authorities Act*.

The severity of the violation will dictate the level of investigation needed. In cases where the violation is egregious and may have negatively impacted the control of flooding, erosion, pollution, dynamic beaches or the conservation of land or may have caused significant interference with a wetland or watercourse, the Officer must conduct a full investigation. The Officer will also consider the appropriate compliance/enforcement outcomes based on the willingness of the person(s) being dealt with and the level of risk the violation poses as per the Informed Judgement Matrix and Response Level (Table 1 and 2).

Compliance Agreement Process

In some scenarios staff may be able to obtain voluntary compliance for unauthorized works (e.g., development that was completed in the absence of a permit) through a Compliance Agreement. This Agreement would retroactively provide written permission and specific conditions for site remediation. The Compliance Agreement approval process should be pursued only when there is an indication that the landowners are willing to work with the Officer to resolve the violation. This process is initiated and documented by the Officer and undertaken by the Officer in coordination with other technical staff as required. Reference should be made to the informed judgment matrix. Two common scenarios where a Compliance Agreement may be appropriate are:

1. A Compliance Agreement can be used when development/alteration is done without a permit but has the potential to meet policy and may have received a permit had the landowner/agent applied for one. Where it is determined that the development could meet policy, a permit will be issued for the development with the submission of the appropriate drawings, application form and violation fee as outlined in the Fee Policy.

2. A Compliance Agreement can also be used to restore the site/property when development/alteration has been done without a permit and the development does not meet policy. An approval in this situation would require the landowner to undo the unauthorized work in order to avoid risking further enforcement action. A permit application and associated drawings and studies showing how the restoration of the site will occur is required as well as the appropriate violation permit fee as outlined in the Fee Policy.

Throughout this process, it is important to educate the landowner about the applicable legislation and any related environmental issues and continue to work co-operatively to try to resolve the violation through removal/amendment of the completed works or site restoration. In instances where the violation is considered low risk, evidence should be taken in a comprehensive, but relatively informal manner and statements recorded to allow for the commencement of proceedings at a later date should compliance not be forthcoming.

Enforcement, Unwilling or Non-Compliant Landowner

Should the landowner be unwilling to work with QC for voluntary compliance, the violation becomes an enforcement issue. The Informed Judgement Matrix will help determine the level of action staff will take based on the risk associated with the development.

The *Provincial Offences Act* is the guiding legislation which establishes the procedures for prosecution (charges, laying of charges) of provincial offences in Ontario. The Act is structured so as to distinguish relatively minor infractions from the more serious offences.

Court action initiated through the laying of an “information” or a Part III Summons to court is considered serious and can lead to large penalties and Orders. Only when the Officer establishes reasonable and probable grounds to believe a person has committed an offence, do they have the legal authority to swear an information detailing the alleged offences. Charges must be laid within 2 years of the date that the Officer becomes aware of the violation.

Upon the completion of a trial and/or sentence hearing, Quinte Conservation may want to issue a press release detailing the findings of the Justice and subsequent sentence. The press release is done to ensure members of the public are able to take comfort in knowing that the Regulation is being enforced to protect public health and safety. It is also important to let the general public know that there are consequences for failing to seek permission.

QC FLOW CHART – COMPLAINT AND COMPLIANCE PROCESS

