

Section 28 (only)

Conservation Authorities Act

R.S.O. 1990, CHAPTER C.27

http://www.e-laws.gov.on.ca/DBLaws/Statutes/English/90c27_e.htm

Amended by: 1993, c. 27, Sched.; 1994, c. 27, s. 127; 1996, c. 1, Sched. M, ss. 40-47; 1996, c. 32, s. 66; 1997, c. 5, s. 64; 1997, c. 26, Sched.; 1997, c. 29, s. 54; 1997, c. 43, Sched. G, s. 19; 1998, c. 3, s. 33; 1998, c. 15, Sched. E, s. 3; 1998, c. 18, Sched. I, ss. 1-14; 2000, c. 5, s. 8; 2001, c. 8, s. 203; 2001, c. 9, Sched. K, s. 1; 2002, c. 17, Sched. F, Table.

Regulations by authority re. area under its jurisdiction

28. (1) Subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction,

(a) restricting and regulating the use of water in or from rivers, streams, inland lakes, ponds, wetlands and natural or artificially constructed depressions in rivers or streams;

(b) prohibiting, regulating or requiring the 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 changing or interfering in any way with a wetland;

(c) prohibiting, regulating or requiring the 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;

(d) providing for the appointment of officers to enforce any regulation made under this section or section 29;

(e) providing for the appointment of persons to act as officers with all of the powers and duties of officers to enforce any regulation made under this section. 1998, c. 18, Sched. I, s. 12.

Delegation of powers

(2) A regulation made under subsection (1) may delegate any of the authority's powers or duties under the regulation to the authority's executive committee or to any other person or body, subject to any limitations and requirements that may be set out in the regulation. 1998, c. 18, Sched. I, s. 12.

Conditional permission

[\(3\)](#) A regulation made under clause (1) (b) or (c) may provide for permission to be granted subject to conditions and for the cancellation of the permission if conditions are not met. 1998, c. 18, Sched. I, s. 12.

References to maps

[\(4\)](#) A regulation made under subsection (1) may refer to any area affected by the regulation by reference to one or more maps that are filed at the head office of the authority and are available for public review during normal office business hours. 1998, c. 18, Sched. I, s. 12.

Minister's approval of development regulations

[\(5\)](#) The Minister shall not approve a regulation made under clause (1) (c) unless the regulation applies only to areas that are,

(a) adjacent or close to the shoreline of the Great Lakes-St. Lawrence River System or to inland lakes that may be affected by flooding, erosion or dynamic beach hazards;

(b) river or stream valleys;

(c) hazardous lands;

(d) wetlands; or

(e) other areas where, in the opinion of the Minister, development should be prohibited or regulated or should require the permission of the authority. 1998, c. 18, Sched. I, s. 12.

Regulations by L.G. in C. governing content of authority's regulations

[\(6\)](#) The Lieutenant Governor in Council may make regulations governing the content of regulations made by authorities under subsection (1), including flood event standards and other standards that may be used, and setting out what must be included or excluded from regulations made by authorities under subsection (1). 1998, c. 18, Sched. I, s. 12.

Invalid regulation

[\(7\)](#) A regulation made by an authority under subsection (1) that does not conform with the requirements of a regulation made by the Lieutenant Governor in Council under subsection (6) is not valid. 1998, c. 18, Sched. I, s. 12.

Transition

[\(8\)](#) Subject to subsection (9), if a regulation is made by the Lieutenant Governor in Council under subsection (6), subsection (7) does not apply to a regulation that was previously made by an authority under subsection (1) until two years after the regulation made by the Lieutenant Governor in Council comes into force. 1998, c. 18, Sched. I, s. 12.

Same

[\(9\)](#) If a regulation made by the Lieutenant Governor in Council under subsection (6) is amended by an amending regulation, subsection (7) does not apply, in respect of the amendment, to a regulation that was made by an authority under subsection (1) before the amending regulation, until such time as may be specified in the amending regulation. 1998, c. 18, Sched. I, s. 12.

Exceptions

[\(10\)](#) No regulation made under subsection (1),

(a) shall limit the use of water for domestic or livestock purposes;

(b) shall interfere with any rights or powers conferred upon a municipality in respect of the use of water for municipal purposes;

(c) shall interfere with any rights or powers of any board or commission that is performing its functions for or on behalf of the Government of Ontario; or

(d) shall interfere with any rights or powers under the *Electricity Act, 1998* or the *Public Utilities Act, 1998*. 1998, c. 15, Sched. E, s. 3 (8); 1998, c. 18, Sched. I, s. 12.

Activities under the *Aggregate Resources Act*

[\(11\)](#) A requirement for permission of an authority in a regulation made under clause (1) (b) or (c) does not apply to an activity approved under the *Aggregate Resources Act* after the *Red Tape Reduction Act, 1998* received Royal Assent. 1998, c. 18, Sched. I, s. 12.

Right to hearing

[\(12\)](#) Permission required under a regulation made under clause (1) (b) or (c) shall not be refused or granted subject to conditions unless the person requesting the permission has been given the opportunity to require a hearing before the authority or, if the authority so directs, before the authority's executive committee. 1998, c. 18, Sched. I, s. 12.

Powers of authority

[\(13\)](#) After holding a hearing under subsection (12), the authority or executive committee, as the case may be, shall,

(a) refuse the permission; or

(b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12.

Reasons for decision

[\(14\)](#) If the authority or its executive committee, after holding a hearing, refuses permission or grants permission subject to conditions, the authority or executive committee, as the case may be, shall give the person who requested permission written reasons for the decision. 1998, c. 18, Sched. I, s. 12.

Appeal

[\(15\)](#) A person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may,

(a) refuse the permission; or

(b) grant the permission, with or without conditions. 1998, c. 18, Sched. I, s. 12.

Offence: contravening regulation

[\(16\)](#) Every person who contravenes a regulation made under subsection (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. 1998, c. 18, Sched. I, s. 12.

Orders

[\(17\)](#) In addition to any other remedy or penalty provided by law, the court, upon making a conviction under subsection (16), may order the person convicted to,

(a) remove, at that person's expense, any development within such reasonable time as the court orders; and

(b) rehabilitate any watercourse or wetland in the manner and within the time the court orders. 1998, c. 18, Sched. I, s. 12.

Non-compliance with order

[\(18\)](#) If a person does not comply with an order made under subsection (17), the authority having jurisdiction may, in the case of a development, have it removed and, in the case of a watercourse or wetland, have it rehabilitated. 1998, c. 18, Sched. I, s. 12.

Liability for certain costs

[\(19\)](#) The person convicted is liable for the cost of a removal or rehabilitation under subsection (18) and the amount is recoverable by the authority by action in a court of competent jurisdiction. 1998, c. 18, Sched. I, s. 12.

Powers of entry

[\(20\)](#) An authority or an officer appointed under a regulation made under clause (1) (d) or (e) may enter private property, other than a dwelling or building, without the consent of the owner or occupier and without a warrant, if,

(a) the entry is for the purpose of considering a request related to the property for permission that is required by a regulation made under clause (1) (b) or (c); or

(b) the entry is for the purpose of enforcing a regulation made under clause (1) (a), (b) or (c) and the authority or officer has reasonable grounds to believe that a contravention of the regulation is causing or is likely to cause significant environmental damage and that the entry is required to prevent or reduce the damage. 1998, c. 18, Sched. I, s. 12.

Time of entry

[\(21\)](#) Subject to subsection (22), the power to enter property under subsection (20) may be exercised at any reasonable time. 1998, c. 18, Sched. I, s. 12.

Notice of entry

[\(22\)](#) The power to enter property under subsection (20) shall not be exercised unless,

(a) the authority or officer has given reasonable notice of the entry to the owner of the property and, if the occupier of the property is not the owner, to the occupier of the property; or

(b) the authority or officer has reasonable grounds to believe that significant environmental damage is likely to be caused during the time that would be required to give notice under clause (a). 1998, c. 18, Sched. I, s. 12.

No use of force

[\(23\)](#) Subsection (20) does not authorize the use of force. 1998, c. 18, Sched. I, s. 12.

Offence: obstruction

[\(24\)](#) Any person who prevents or obstructs an authority or officer from entering property under subsection (20) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. 1998, c. 18, Sched. I, s. 12.

Definitions

[\(25\)](#) In this section,

"development" means,

(a) the construction, reconstruction, erection or placing of a building or structure of any kind,

(b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure,

(c) site grading, or

(d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere; ("aménagement")

"hazardous land" means land that could be unsafe for development because of naturally occurring processes associated with flooding, erosion, dynamic beaches or unstable soil or bedrock; ("terrain dangereux")

"pollution" means any deleterious physical substance or other contaminant that has the potential to be generated by development in an area to which a regulation made under clause (1) (c) applies; ("pollution")

"watercourse" means an identifiable depression in the ground in which a flow of water regularly or continuously occurs; ("cours d'eau")

"wetland" means land that,

(a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,

(b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,

(c) has hydric soils, the formation of which has been caused by the presence of abundant water, and

(d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d). ("terre marécageuse") 1998, c. 18, Sched. I, s. 12.

Transition

[\(26\)](#) A regulation that was in force immediately before the day the *Red Tape Reduction Act, 1998* received Royal Assent and that was lawfully made under clause (1) (e) or (f) of this section as it read immediately before that day shall be deemed to have been lawfully made under clause (1) (c). 1998, c. 18, Sched. I, s. 12.