



# SECTION 28 COMPLIANCE AND ENFORCEMENT PROCEDURAL MANUAL

FOR THE IMPLEMENTATION OF S. 28 OF THE CONSERVATION AUTHORITIES ACT AND O. REG. 155/06



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# Compliance and Enforcement Procedures

## 1.0 General

The Niagara Peninsula Conservation Authority (the Authority) is responsible for the administration of Ontario Regulation 155/06 pursuant to the Conservation Authorities Act. Regulations staff consider the text of the Conservation Authorities Act, and Regulations to determine if an occurrence is in non-compliance with or a contravention of Section 28 of the Act. In order to resolve contraventions, Regulations staff consider the planning and development policies of the Authority in conjunction with applicable Provincial Legislation.

These compliance procedures explain the Authority's approach to compliance and enforcement activities. This includes how regulations staff respond to complaints, identify known and potential violations, and make decisions on the appropriate level of actions to take for complaints, violations and non-compliance issues. The purpose of this manual is to provide guidance to staff. 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 Conservation Authority applicable legislation, please refer to the province's e-laws website.

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

Ontario Regulation 155/06: <https://www.ontario.ca/laws/regulation/060155>

### 1.1 Requirements of Officers

The implementation of this Procedural Manual requires that Officers of the NPCA:

- shall be appropriately appointed by the Board of Directors and meet all requirements of being designated as a Provincial Offences Officer.
- will always carry copies of the Legislation and Regulations that they are responsible for, and appropriate equipment such as proper identification (business cards), evidence notebook, and cell phone.
- must be aware of the Charter of Rights, the Occupational Health and Safety Act as well as the health and safety policies of the Authority (i.e., Working Alone Policy).
- must use their judgement when travelling alone and only proceed with an inspection, investigation, discussion with property owners, contractors, or others if there is no real or perceived threat to their safety or well-being. Officers should attend properties in uniform and in NPCA marked vehicles. If

appropriate, regulations staff should plan on attending sites with another regulations officer or NPCA staff member.

- shall have regard for all processes and procedures as outlined in the Provincial Offences Act, Conservation Authorities Act, NPCA Section 28 Enforcement Guidelines, 2011, this procedural manual, internal operating procedures and applicable NPCA policies.

## 2.0 Risk Based Approach to Compliance and Enforcement

The NPCA's approach to delivering the compliance and enforcement program is based on potential risk to people, property and environmental features, and failure to comply with the requirement to obtain permission prior to development or interference under the Conservation Authorities Act. Efforts will be focused where the potential for risk is highest, allowing the Authority to focus on resolving matters that are having the most significant impacts.

Compliance and enforcement staff will investigate complaints, issue Notices of Violation, complete Part III Summons and Information's, and other duties in accordance with the processes and procedures as outlined in this document and all applicable NPCA policies.

### Higher-Risk Focus / Lower-Risk Referral:

- Staff will focus on responding to higher-risk incidents (e.g., large fill within floodplains, realigning or removing a watercourse, major development/grading activities on shorelines and slopes).
- Incidents that are determined to be lower-risk or in areas not regulated by the NPCA will be referred to the appropriate level of government or agency. This will also include incidents or potential violations where municipalities have the authority under the Municipal Act, 2001 to address these types of incidents through bylaws, which would be the appropriate legislative mechanism for compliance (e.g., Site Alteration Bylaws).

Staff will follow standard operating procedures when considering the potential level of risk associated with an unauthorized development and determining the appropriate level of action. The compliance history of offenders may also be considered in conjunction with the risk analysis.

**Table 1 – Development Activity Risk and Response Matrix**

Hazard Area Risk	Development Activity Risk and Response		
	Low	Medium	High
		Meets Guidelines - Could Be Approved Under Policy	Low Impacts or Impacts Can Be Mitigated. High Likelihood of Compliance
Low	Low Priority Response	Low Priority Response	Moderate Priority Response
Medium	Low Priority Response	Moderate Priority Response	Moderate Priority Response
High	Low Priority Response	Moderate Priority Response	High Priority Response

**Table 2 – Response Priority Descriptions**

Low Priority Response	Regulations staff may not fully investigate these matters depending on volume. Focus will be on education and outreach, deterrence and possible restoration or approval if time and resources are available.
Moderate Priority Response	Regulations staff will endeavour to respond to and investigate these matters as time and resources allow with a focus towards voluntary compliance through approval for unauthorized works, remediation, or restoration. Court proceedings may be warranted depending on the level of landowner compliance and nature of the potential violation.
High Priority Response	Regulations staff will respond to and investigate all matters deemed a high priority within the timelines of the <i>Provincial Offences Act</i> . Focus will be on likely court proceedings, remediation/restoration in the public interest, deterrence, and risk reduction.
No Risk	Regulations staff will not respond to frivolous or vexatious complaints, incidents with insufficient information provided, or not clearly within the jurisdiction of the Conservation Authority.

Response priority levels may change during the course of further investigation. Any matter which progresses to legal action or court proceedings will take priority over all other incidents, complaints and potential

violations 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.

## 2.1 Procedures for Receiving and Responding to Complaints

All reported incidents and potential violations should be directed to the regulations staff. Whenever possible, other NPCA staff should not be responding to complaints or concerns from the public or other clients where there is information to indicate that it may involve a potential violation. This process is in place to ensure that incidents are properly reported, validated and lawfully investigated in-line with NPCA compliance and enforcement procedures. The NPCA maintains a dedicated and informative Compliance and Enforcement webpage which includes an online complaint form (<https://npca.ca/services/enforcement-compliance>). The NPCA also has established a dedicated email address at TIPS@npca.ca and an enforcement extension at 255 to help ensure that complaints are appropriately directed to the regulations staff and include all required information. Regulations staff do not answer the enforcement extension, and voicemails are to be left by the complainant which will be screened based on the Procedural Manual and directed to the appropriate NPCA staff accordingly.

Regulations staff provide an initial response to complaints related to potential violations generally through whichever means the complaint was received (e.g., voicemail, email, or automatic acknowledgement from the online form). However, to protect the privacy and rights of the landowner, individual or company where legal or court proceedings are a possibility, in most instances regulations staff will not provide on-going follow up with or updates to a complainant unless additional information is required from the complainant. The NPCA cannot provide details or information on an open complaint, incident or potential violation file to the public or any internal or external staff who are not directly involved in the compliance matter once an investigation is underway. Exceptions may include Municipal By-Law, and other public agency enforcement staff with overlapping statutes and regulations.

In situations where the Authority is not the appropriate agency to respond to a concern, staff may direct the complaint to the appropriate agency, such as a 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 the procedures a regulations staff person will, whenever possible, make best efforts to collect the following information prior to undertaking any further investigation. This information may be collected through the online complaints form, dedicated email address or enforcement telephone extension.

- a) Complainant's full contact information if required. This is necessary as a complainant may be contacted to provide a witness statement and appear in court.
- b) Address and approximate location on the property where the work is occurring.
- c) Full details of the works occurring and dates (NOTE: the length of time between when the development or interference has occurred and when it has been reported to or discovered by the NPCA may influence the priority level assigned).
- d) Pictures of the occurrence (if possible).
- e) Description of the companies/person seen undertaking the work.
- f) 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 their property to make observations of the complaint).

If sufficient information cannot be initially obtained by regulations staff to support an Officer proceeding with a lawful investigation of the concern or complaint, no further action will be taken. This includes complaints received where the complainant indicates they want to remain anonymous as any person providing information to the NPCA for the purpose of reporting a potential violation may be required to provide a witness statement and be prepared to appear in court. This information will still be documented in the Compliance database for reference.

Once a complaint is received and initially deemed valid by regulations staff, a more fulsome review of the site will be completed. The works or activities need to be confirmed as a potential violation or non-compliance with a works permit issued by the Authority. To determine whether the works or activities are a potential violation or non-compliance, the following are preliminary steps which will be undertaken to the extent required:

1. Consult the NPCA regulations mapping to confirm if and how the property is regulated by the NPCA and if due diligence by the property owner would have made that clear (i.e., does the mapping show the property as regulated and would the owner have been made aware that the property is regulated, had they inquired with the NPCA?);
2. Consult the NPCA property, planning and permits datasets to determine if any approvals have been issued for the works, and discuss with internal staff as required;
3. Consult any other information sources available to determine any past history with the NPCA and the property; and,

4. If required, 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.

If it is confirmed that the property or area on the property is not regulated by the Authority, then all required information must be entered into NPCA's Compliance database. Based on the source and nature of the concern or complaint, the regulations 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 type of follow-up is particularly suggested 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 been issued for the described works and there are not any compliance concerns, then this information must be clearly documented in the Compliance database and the file closed. Based on the source and nature of the concern or complaint, 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 important 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 it appears that a permit has not been issued for the described works or activities, regulations staff will determine the risk associated with the activities based on the Development Activity Risk and Response Matrix (Table 1) and the 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, however, there may be non-compliance with the conditions, then regulations staff may contact the permittee and arrange for a site inspection under the permission of the permit.

For all scenarios, a concurrent complaint folder will be created on the Compliance NPCA network drive and all relevant correspondence, photos, emails, permits, or other information will be stored within that file moving forward.

## 2.2 Inspections and Investigations

Inspections involve monitoring for regulatory compliance and may include the collection of evidence to support regulatory requirements. Investigations involve instances where the predominant purpose of the inquiry is the determination of penal liability (*R. v Jarvis, 2002*), involves the collection of evidence, and are carried out to support a resolution or enforcement outcome including potential prosecution. The attained threshold of an investigation will be determined on a case-by-case basis in accordance with the relevant

policies; but in their simplest sense are to be undertaken when there are reasonable grounds to believe non-compliance has occurred.

## 2.3 Access to Property

Access to property is an important consideration when seeking to enter a property. The methods used to access a property, will influence the demeanour and cooperation of the landowner. In addition, when property access is lawfully obtained, it prevents the legal defence of a charter violation which will cause evidence collected to not be allowed in a court proceeding and alleviates the risk of a trespass lawsuit against the Authority or individual staff. To ensure the best opportunity for negotiating with a landowner and maintaining the integrity of evidence, the rights of the property owner must be respected.

There are three types of authorities available to staff to enter private property. These are statute authority, consent, and judicial authorization.

### 2.3.1 Statute Authority

Conservation Authority staff have certain powers to access private property without the consent of the owner/occupiers available to them as outlined in Section 28 (subsections 20 through 23) of the Conservation Authorities Act. This authority shall only be exercised for entry onto open land and does not confer the power to enter buildings or structures. There are two circumstances in which staff may exercise this authority, specifically:

- A permit application has been submitted and the staff is entering for the purpose of considering the application; and
- Staff have reason to believe that a contravention of Ontario Regulation 155/06 is taking place on the property and this contravention is causing or is likely to cause significant environmental damage; and further that, the entry is taking place for the purpose of enforcing the Regulation and the entry is necessary to prevent or reduce the significant environmental damage.

For staff to exercise this authority to enter private property under one of the above circumstances, additional statutory obligations must be met including:

- The entry is made at a “reasonable time”
  - The customary time for a search to be carried out on property where there is an expectation of privacy in accordance with a search warrant is between the hours of 6AM and 9PM as established by the Provincial Offences Act. Almost all property inspections will be carried out

by staff during the regular business hours of the Authority, 8:30 AM – 4:30 PM; constituting a reasonable time.

- “Reasonable notice” has been given to the owner and occupier of the property, provided that the occupier is not the owner
  - Under the Occupiers Liability Act, an occupier is a person who is in physical possession of premises, OR a person who has responsibility for and control over the condition of premises or the activities there carried on, or control over persons allowed to enter the premises.
  - The transmission of notice given to owners and occupiers and its agreeance to reason must be contemplated on a case-by-case basis considering the totality of the circumstances. Generally, the Authority provides a notice of entry of two days.
  - This notice is not required in the case where staff have reasonable grounds to believe that the time required in giving the notice would likely lead to significant environmental damage.

In many instances, clients and landowners are cooperative with regulations staff when contact is made either for investigative purposes or to advise of notice of entry. At the discretion of staff, notice of entry can be given for periods that suit both client and staff availability.

### ***2.3.2 General Protocols to Follow Prior to Entering a Property***

The investigating Officer will adhere to the following protocols and be guided by the NPCA health and safety Working Alone Policy and compliance and enforcement standard operating procedures:

- Every effort to contact the landowner/occupier and obtain permission before attending a site visit at the property (i.e., exhaust all reasonable avenues), will be made.
- The owner and/or the occupier will be sought upon entering private property.
- Prior to undertaking any further inspection of the site, the Officer will clearly explain why they are attending the property, what the potential outcomes may be, explain expectations for who should attend the property (i.e., the landowner and their representatives) and gain the landowner’s consent to continue with the investigation if entry is not for the purpose of determining compliance with an issued permit.
- If at any time during the inspection, the Officer feels threatened, there is discomfort with the circumstances, there is interference with their investigation or the potential for perceived bias, the Officer should leave the site immediately at their discretion and contact their immediate supervisor as soon as safely possible.

- If the Officer is asked to leave the site, the landowner/occupier should be thanked for their time and the Officer will leave immediately. The Officer should not return to the site without a Search Warrant or further review of the issued permit, in this case. Detailed notes about the request to leave should be made by the Officer as soon as possible after leaving the property.
- If there is significant environmental harm, or risk to life or property happening or about to occur, the Officer will issue a caution to the landowner, return to the office, and initiate the appropriate next level of enforcement actions with approval from their immediate supervisor or other appropriate management staff.
- If the property is gated or has clearly visible “No Trespassing” signs, the Officer will not enter the property without the permission of the landowner/occupier or under the authority of search warrant.

## 2.4 Starting a Violation File

Once the Officer has confirmed that the works occurring are likely a violation, a formal violation file should be opened. At minimum, information about the landowner is required. In addition, information about the contractor, if available, should be filed. Once the file is opened, any further site reconnaissance becomes an investigation.

Once a Violation file has been opened, the Officer will prepare and deliver a formal Notice of Violation.

## 2.5 Compliance/Unauthorized Works Approval Process

In many scenarios regulations staff may be able to obtain voluntary compliance and provide written permission for unauthorized works if the works meet the NPCA’s policies for the administration of Ontario Regulation 155/06 (e.g., development that was completed in the absence of a permit) or issue permission and the specific conditions for site remediation through a works permit. A permit for unauthorized works or for remediation works should be pursued only when there is a strong indication that the landowner(s) and/or contractors are willing to work with the Officer to resolve the issues of non-compliance.

The Officer will adhere to the following protocols when a violation can be resolved through a works permit to obtain voluntary compliance:

- A NPCA permit to restore the site/property is required when development/alteration has been done without a permit, in contravention of the legislation and does not meet NPCA policy. The Officer will present the landowner with an opportunity to undo the unauthorized work without 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 permit fee with an applied Compliance Surcharge as outlined in the Board-approved Fee Policy.

- A permit for unauthorized works may be considered when development/alteration is done without a permit but has high potential to be allowable under the legislation and will meet NPCA policy (i.e., would have likely received an NPCA permit had the landowner/agent applied for one). Where it is determined that the development could meet NPCA policy, a permit may be issued for the development following the normal NPCA permit process including a permit application and associated drawings and studies as well as the appropriate permit fee with an applied Compliance Surcharge as outlined in the Board approved Fee Policy.

A permit to authorize works already undertaken may be an appropriate method for achieving compliance where the development would meet NPCA's policies. This process is initiated and documented by the Officer, and under the advice of the Officer, is processed by a Watershed Planner in coordination with other technical staff as required.

## 2.6 Preparing for Part III Information's, Unwilling or Non-Compliant Landowner

If the landowner is unwilling or unable to work with the Authority for voluntary compliance, the violation becomes an enforcement matter and the following procedures should be initiated.

Once the formal enforcement process commences, a Notice of Violation should be sent if one has not already been issued. A Notice of Violation is a formal letter issued 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 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.

There are two methods of initiating legal action under the Conservation Authorities Act and they are distinguished by the original charging document (determined by the Provincial Offences Act). The method used to initiate the charging or offence notice has significant consequences at trial, on appeal and with respect to sentencing.

Court action initiated through the laying of an Information or a Part III Summons to court is considered serious and leads to penalties and Orders. Anyone may initiate proceedings by way of an Information or Part III

proceeding, providing they believe “on reasonable and probable grounds” that an offence has been committed. The NPCA requires that the initiation of a Part III is undertaken by a designated Provincial Offences Officer employed by the Authority after review and consideration by their immediate supervisor or Director and possibly legal counsel.

### **2.6.1 Investigation**

Investigations begin when the Officer has established reasonable grounds to believe an offence has occurred. As soon as it is confirmed that development has occurred in a regulated area without permission, the process has moved past a site visit and into an investigation. Where the landowner is willing to work with the Officer and the infraction either can be remediated or has the potential to meet policy, the Officer works towards compliance. However, where the landowner is uncooperative or unwilling to work with the Officer, a formal caution will be issued, and the enforcement process begins.

It is acceptable to revisit the site with the owner’s consent and knowledge that the visit is for investigative purposes. This allows the owner time to consider options and whether they would like to consult with agents or representatives before entertaining such a visit. It is imperative that the Officer launches the following legal protocols to ensure that any evidence collected is admissible.

### **2.6.2 Facts in Issue**

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. The onus is on the prosecutor (the Conservation Authority) to prove beyond a reasonable doubt that the defendant is guilty of the alleged offence. The example charge below provides the details of a potential violation or non-compliance scenario followed by the evidence which would need to be collected to support laying a charge.

#### **Example Charge:**

“On or about the 9th day of October 2020 John Smith unlawfully undertook development to wit placement of fill within 0-120m of a Provincially Significant Wetland without written permission from the Niagara Peninsula Conservation Authority.”

In the above example, the following facts in issue would need to be proven:

1. **Date of the offence** – the offence occurred on the 9th of October 2020
2. **Name of the guilty party** –John Smith is the guilty party

3. **Development** – development occurred (if a removal order is being sought, the Officer would also need to prove how many loads of fill were placed)
4. **Type of development** – the nature and extent of the unauthorized development
5. **Location of offence** – the offence occurred within 0-120m of the Provincially Significant Wetland
6. **Existence of the Provincially Significant Wetland** – a Provincially Significant Wetland exists within 0-120m of the development
7. **No written permission** – permission was not previously provided to the accused

### ***2.6.3 Investigation and Risk Assessment***

The severity of the violation will dictate the level of investigation needed. In cases where the violation is egregious and has negatively impacted the control of flooding, erosion, pollution, dynamic beaches or the conservation of land or has 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 Development Activity Risk and Response Matrix (Table 1).

When a violation is deemed minor in nature and will likely not require the Conservation Authority to seek a Section 28(17) order, the Regulations Officers should record the Information in the basic facts in issue example. Who, what, where, when and how need to be discovered and documented.

A full investigation requires the Officer to determine all of the facts associated with the violation. This process is similar to the facts in issue but expands the minimum facts for a conviction.

The Officer will endeavour to gather the following evidence.

1. Property owner information
2. Contractor information
3. Third party involvement information
4. Land ownership documents
5. Documentary evidence associated with the violation
6. Emails
7. Contracts
8. Invoices
9. Correspondence
10. Measurements
11. Photos/video

12. Witness statements
13. Statements from the accused
14. Historical documents
15. Maps
16. Air photos
17. GPS Points and/or Surveys
18. Drawings

#### **2.6.4 Statements**

Where the violation is significant and court prosecution is likely, formal statements may be taken from the accused and all witnesses, including other Conservation Authority staff or other agency staff if appropriate. The time that the statement was started and finished must be noted and the statement signed. The last question asked during all statements will be, “Do you have anything you would like to add?” The person must be given the opportunity to read over the statement and sign and date it.

A statement is typically presented in a question-and-answer format. It tells the story of the incident from the view of the accused and/or the witness. The Officer or the accused/witness may write the statement. It is important to take statements from witnesses, if possible, or at least obtain their contact information for further follow-up. The witnesses should write down their version of the events, including answering “who, what, where, when and how.” The investigator may ask questions to fill in any blanks or clarify missing information, recording further questions and answers. Each witness statement must be reviewed and signed by the witness.

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.

#### **2.6.5 Caution**

If there are reasonable grounds to believe that a person has committed an offence and a formal statement can be obtained from the accused, a formal legal “caution” must be given to the accused. This is done by directly reading from a “caution card” or evidence notebook. The purpose of the caution card is to advise the “accused” of their rights under the Charter of Rights. A formal statement taken without the accused first being

cautioned may not be admissible in court, should the investigation result in formal charges. The caution can also be found in the rear section most formal evidence notebooks. After reading the caution, the offender must be asked if they understand the caution and their exact response must be recorded in the notebook.

### **2.6.6 Collection of Evidence**

When the process moves from inspection to investigation, the Officer must actively search for evidence to support the facts in issue. The Officer must follow legal requirements before searching for and collecting evidence. This should not be confused with the inspection authorities as these authorities do not permit the collection of evidence. While searching for evidence, the Officer will determine if a search warrant(s) is needed, whether the information is given voluntarily without threats or inducements, and whether the person being investigated is aware of the legal jeopardy associated with the investigation. The aforementioned considerations need to be made continuously throughout the investigation.

### **2.6.7 Notebooks**

Notes should be taken either at the time or as soon as possible for every compliance site visit or occurrence. Notes must include the date, time, names, weather, location, vehicle involved (colour), description of people, and any other relevant details. A detailed written record of the incident will ensure that Officers are able to recall details and outline the relevant information with regards to the incident. Detailed notes are also necessary as they will often become admissible as evidence in court. This situation may present in cases where a statement has been given to an Officer and the individual who made the statement subsequently changes their facts.

Where reference is made to notes, the Officer(s) must be prepared for defence counsel to request to see them. Officers are required under law to disclose their notes as part of a Crown Brief. For this reason, terminology in notes will be proper and business-like. Use of derogatory terms or slang expressions should never occur in notes.

#### **2.6.7.1 Contents of Notebook**

1. Write name, business address, and badge number (if applicable) on the front cover.
2. Write the starting date on the front cover.
3. Write the final date on the front cover when the book is completed.
4. All pages of the notebook must be numbered prior to the first entry.
5. Write any and all issues that pertain to the Inspection/Compliance enforcement work.
6. Notes assist memory during an investigation/inspection/court case.
7. Make notes at the time of the occurrence or as soon after the occurrence as is feasible.

8. The Officer will often be asked questions by the defence counsel relating to when the notes were made and should therefore be prepared to answer that they were made as soon as possible following the occurrence. No reference can be made to notes which were made beyond this period.
9. Make entries in chronological order.
10. Do not leave large blank spaces left in the book between entries.
11. Any errors or mistakes will have a single line drawn through them. Do not erase.
12. Use a black pen.
13. The first item for every separate entry must be the date.
14. Notes should answer the WHO, WHAT, WHEN, WHERE, WHY and HOW.
15. Request that all other Authority staff in attendance make their notes on the matter recorded in a bound notebook.

#### **2.6.7.2 Storage of Notes**

The Provincial Offences Officer and other Authority staff are responsible for retaining notebooks in a safe place indefinitely.

Some Authority staff use a hard covered bound notebook that is 8 ½ x 11", larger than a typical evidence notebook. Any notebook used by any staff must be bound to ensure that no information has been removed and the pages must be numbered by the manufacturer. Any information that is not written in the notebook (i.e., on a loose piece of paper) must be kept in its original form and married to the notebook either by fastening them into the notebook (i.e., stapled) or referencing them in the notes as a separate piece of paper. These separate notes must be kept and disclosed in the same manner as evidence notebook notes.

#### **2.6.8 Photographs**

According to Section 30.1.(4) of the Conservation Authorities Act, Officers are given the authority to make any photographic or other records that may be relevant to the inspection. Using a camera, take a series of pictures of the violation. Whenever feasible Officers will endeavour to undertake photo documentation in the following manner:

1. Overview Shot – covers the entire surroundings.
2. Mid-range shot – narrows toward particularly important aspects or objects and shows them in reference to their surroundings.
3. Close-up shot – displays details of an object or important area.

Officer notes will reflect the systematic manner in which any supporting photographic evidence is collected. Drawing a site diagram in notes and placing markers to show vantage point is highly recommended.

Photographs should be taken of the work area, the undisturbed areas all around and on either side and/or up and down stream. A reference element for scale such as a person, vehicle or measuring device and as well as a panoramic view of the landscape including the occurrence should be part of the photographic evidence.

Hard or paper copies of all the photographs should be included in the compliance file. Photographs should be marked with the date of the photo, the name of the photographer & signature, location/direction of the photo and a brief description of the photograph. If using a digital camera (including cell phones), all photos taken must be kept in a secure location where the Officer is assured the photos cannot be damaged, tampered with, erased or the properties of the digital image altered or changed. It is best practice to retain a paper copy and a digital copy in the respective files.

### ***2.6.9 Measurements***

Using a measuring tape where possible, collect the height, width, length of all disturbed areas, size of structures or alteration of any kind which may form part of the potential violation. GPS coordinates of the disturbed area or location of the incident on property mapping can also be useful in determining the extent and significance of any offence as it relates to property boundaries, location to or within hazard lands, etc.

### ***2.6.10 Consent to Search***

Regulations staff must ensure that investigated parties' rights are always respected. It is recommended that if an Officer believes the violation is of a serious nature, before commencing a search for evidence on private property, the Officer must conduct a consent to search.

Consent exists if the following is present:

1. There was a consent, either express or implied;
2. The consenting party has the authority to give the consent;
3. Consent was voluntary and not the product of Officer oppression, coercion, or other external conduct negating freedom to choose not to consent;
4. The consenting party knew of the nature of the Officer conduct to which he or she was being asked to consent;
5. The consenting party knew they had the ability to refuse the search; and,
6. The consenting party was aware of the potential consequences of giving the consent

### ***2.6.11 Search Warrant***

The Conservation Authorities Act outlines that a search warrant can be obtained under Part VIII of the Provincial Offences Act and can authorize (if named) other people to assist Officers as required. The Provincial Offences Act provides Provincial Offences Officers the ability to obtain search warrants when an Officer either suspects an offence has occurred or has reasonable grounds to believe an offence has occurred. Once evidence is obtained under the authority of a search warrant, the evidence cannot be challenged as unlawfully obtained. When possible and when the situation dictates, the Officer will obtain a search warrant. The reasons for and desired outcomes of executing a search warrant must be discussed with the Officer's immediate supervisor prior to obtaining or executing a search warrant. Additional discussion with legal counsel may be advisable at this time.

### ***2.6.12 Return to Justice***

Once a search warrant has been executed and evidence collected, the Officer must do a return to a justice as soon as practical (see Provincial Offences Act). If proceedings are not commenced within 3 months or a detention order has not been issued, the seized evidence (drawings, etc.) must be returned.

### ***2.6.13 Creation of a File Synopsis***

Once the evidence has been examined and catalogued, the Officer should draft a File Synopsis or "mini-crown brief" that details the facts in issue. The brief will expand on the occurrence report and provide a detailed synopsis of events. This brief must be reviewed with the Officer's immediate supervisor prior to proceeding to laying a charge. Additional discussion with legal counsel may be advisable at this time.

### ***2.6.14 Charges***

Only when the Officer establishes reasonable grounds to believe a person has committed an offence, will they have the legal authority to swear an Information detailing the alleged offences. In cases where the offence supports the laying of charges, the Officer will appear before the courts to swear an Information.

### ***2.6.15 Limitation Period***

The Conservation Authorities Act has a two-year limitation period. Once an Officer has established reasonable grounds to believe an offence has occurred, there are two years to conduct an investigation before charges must be sworn. If the Officer does not swear an Information within two years of establishing reasonable grounds, the Justice of the Peace will not accept the Summons and the Authority will be unable to obtain Section 28(17) orders. It should be noted that post November 1, 2010, the date of the alleged violation has no impact on the limitation period.

### **2.6.16 Part III Information (laying a charge)**

An Information is the charging document in a criminal prosecution which initiates a court action, proceeding or charge for a Provincial Offence. This is usually reserved for more serious offences. “Any person who believes on reasonable and probable grounds”, that an offence has been committed may lay an Information before a Justice of the Peace. Typically, an Officer will swear the Information at the municipal courthouse in the presence of a Justice of the Peace (intake court). An Information will not be undertaken without consultation with the Officer’s immediate supervisor and likely in consultation with legal counsel.

The Officer must be prepared to explain the particulars of the offence to the Justice at intake court and indicate the reasons for being confident that the Information is the truth.

The Information contains:

- The Officer’s name, organization, occupation, and signature;
- The defendant’s name or description and address;
- The charge;
- The date and location of the offence;
- The Legislation and Ontario Regulation # and Offence section;
- The signature of the Justice of the Peace/Judge;
- Court date and location (there are set times for First Appearances).

“Information” forms can be obtained at the court office or as online forms if available. If online forms are used, two copies of the Information will be prepared on yellow paper. One will stay with the court signed by the Justice of the Peace and the other will go into the case file. An Information can be sworn by anyone. The Summons, which is the notification form used to inform the offender that a charge has been laid against them in Provincial Court, must be served by a Provincial Offences Officer.

### **2.6.17 Summons**

Once an Information has been sworn, a Summons will be issued. It is the responsibility of the Officer to serve the Summons as soon as practical as per the requirements of the Provincial Offences Act. It is recommended that the Officer contact the charged party to arrange an appropriate time and location to personally serve the Summons. If the charged individual does not arrange a time or place to meet and receive service, the Officer may have to work outside of regular hours in order to effectively provide the service.

If required, the Provincial Offences Officer may contact the appropriate Police service station to request that a Police Officer attend and assist with issuance of the Summons or, if police presence is not necessary, that another NPCA staff person (preferably another Officer) attend with the Officer.

### **2.6.18 Affidavit of Service**

It is imperative that the Officer documents how service was carried out and attend the court to swear an affidavit of service as soon as practical, but no later than one week after serving the Summons. A signed copy of the affidavit of service is to be put in the case file.

### **2.6.19 Field Summons**

There are times when it would be impractical to swear an Information and serve a Summons. This may be because the alleged offender is transient and be difficult to find. In these cases, while an Officer is on site it may be appropriate to issue a field Summons. Before an Officer issues a field Summons or files it at the court, the Officer will obtain direction from their immediate supervisor.

### **2.6.20 Legal Documents**

Before charges are laid, the Officer should prepare a disclosure brief and evidence brief. The disclosure package will be provided both to the prosecutor and the charged parties. The disclosure must be provided no later than one week before the first appearance. The evidence brief is prepared for the prosecutor and assists the prosecutor in determining if the facts in issue have been established.

### **2.6.21 Sentencing Brief**

Upon the completion of the disclosure and evidence brief, the Officer may be required to prepare a sentencing brief that includes restoration requirements and suggested penalties. The brief will detail options for either guilty pleas or post trial options. The Officer is not to formally charge any person or provide any restoration requirements or penalties until such time as the appropriate management staff have reviewed the offence and discussed potential options. This step usually involves coordination and discussion with the solicitor.

## **3.0 Court**

Unless directed otherwise, the Officer should attend court, particularly when evidence is being presented. Usually, a summary of the court proceedings and decisions are provided by the solicitor. There may be a time when the Officer will attend court as an agent for the Authority. Officers must maintain a professional image while attending court.

The Authority's solicitor will be notified of all cases requiring court action by the Officer's immediate supervisor, after which the solicitor will work closely with the required Authority staff and the Officer. The Authority's solicitor will handle the court case with respect to presenting the case, evidence, witnesses,

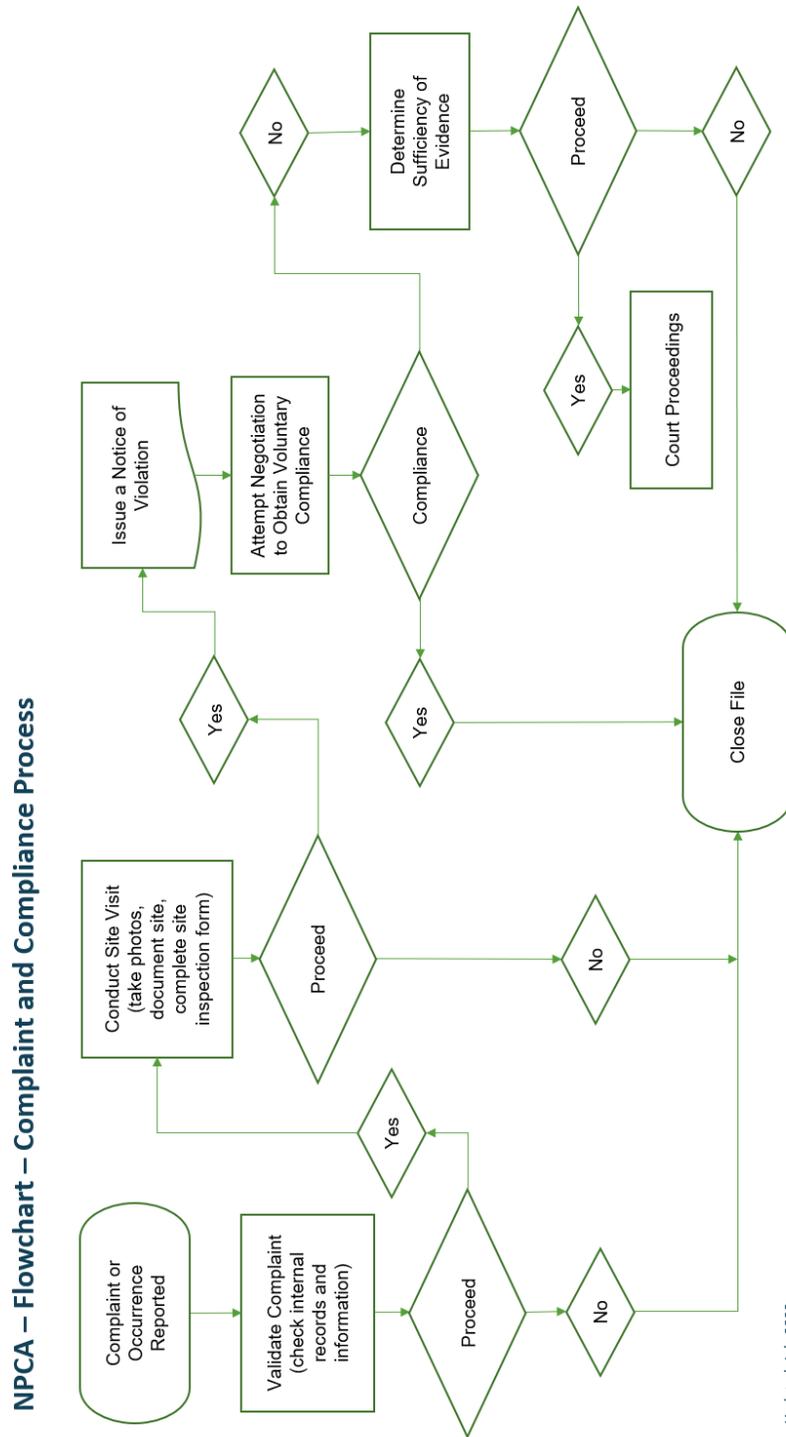
examination, etc. The solicitor is not necessarily an expert in the natural hazards field and, therefore, all relevant information must be provided to explain important pieces of evidence and to provide input on how the evidence should be introduced in any court proceedings.

The Officer should realize that defendants may want to discuss aspects of the case ‘without prejudice’, or even change a plea to guilty. If the opportunity for these discussions/alternatives arises, the Officer will defer any formal decisions to their immediate supervisor likely in consultation with the solicitor.

### **3.1 Testimony**

When giving testimony, the importance of appearance goes beyond dress. The Officer or expert witnesses for the Authority should wait for the entire question to be asked before answering, think about the answer, and then answer the question. If necessary and available, Officer’s will ask the Justice if their notes can be used and referenced. Officers should focus on the notes that were made at the time of the incident and whether any changes to the notes were made since that time. If the answer to the question(s) being asked are unknown, inform the court.

# Appendix 1: Flowchart – Complaint and Compliance Process



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