



EROSION AND SEDIMENT CONTROL BYLAW NO. 4381 ENFORCEMENT GUIDELINES

ENACTED: SEPTEMBER 30, 2007
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PURPOSE:

The purpose of the Guidelines is to ensure industry-wide compliance with the Erosion and Sediment Control Bylaw No. 4381. (the Bylaw) and in turn support the Bylaws goals of protecting the environment and drainage infrastructure. This Guideline is also designed to ensure fair, efficient and effective application of the Enforcement tools specified in the Bylaw.

GUIDELINES:

- 1) Enforcement actions undertaken to compel persons to adhere to the Bylaw will be applied equally to all persons affected by the Bylaw.
- 2) Except in cases of imminent or occurring damage to the environment or infrastructure, all persons violating the Bylaw will receive a violation warning and be provided an opportunity to address the Bylaw violation before enforcement action occurs.
- 3) The due-diligence and prior compliance history of the offender will be taken into consideration when assessing enforcement required.
- 4) Enforcement actions will be stepwise. They are scaled to the severity of the offence and will be increased or decreased depending on the offenders actions to remedy the situation.
- 5) Except in extreme, unpredictable circumstances enforcement will be undertaken in response to all violations in accordance with the attached enforcement matrix.

BACKGROUND:

In September 2006 the Township adopted the Erosion and Sediment Control Bylaw, 2006, No. 4381 (the Bylaw) to protect the receiving environment and Township infrastructure from sediment related impacts. The Bylaw includes various enforcement tools that can be utilized to promote compliance in cases where persons are not voluntarily adhering to the Bylaw. When and how these tools are utilized is not fully addressed in the Bylaw.

The Guidelines propose a standard methodology for utilizing the enforcement tools available in a fair, efficient and effective manner to achieve compliance with the Bylaw when education of the development community has not led to voluntary compliance.

ATTACHMENTS:

- A – Description of Enforcement Tools
- B – Enforcement Matrix

ATTACHMENT A – DESCRIPTION OF ENFORCMENT TOOLS

Warning Letters: (not specified in Bylaw)

- For issues not posing an immediate threat to Township drainage structures or downstream water quality.
- Advises Developer / Owner of deficiencies of ESC works, design or maintenance that must be addressed.
- Sets timeframe in which deficiencies must be addressed.
- Informs Developer / Owner that if issues are not addressed, further enforcement actions will occur.

Notice to Comply: (specified in Bylaw)

- A notice to comply letter requires the receiver (developer / owner) to remediate a significant non-compliance issue within 24 hours (or longer if explicitly stated by TOL) of receipt.
- All other site construction work must cease, except for that required to achieve compliance.
- Must be served in person, or via registered mail (considered served 3 days after being mailed).
- Can also be used in any cases where the validity of the permit or other bylaw provisions such as maintaining security, retaining Qualified Monitor etc. are not met.

Tickets: (noted in Bylaw, and specified in Township MTI Bylaw 4481, Schedule 24)

- Act as a specific deterrence against repeat offenders.
- Assist Township in covering costs of extra monitoring required for repeat offenders.
- Amount and Offence specified in Township MTI Bylaw as:
 - Discharge Sediment \$1000
 - Excess Turbidity levels \$1000
 - Construction without ESC Permit \$500
 - Failure to Maintain ESC Facilities \$500
 - Construction before Letter of Appointment \$500
 - Failure to Maintain Logbook \$250
- Where tickets are challenged, they result in a Provincial Court hearing.
- Tickets regarding turbidity levels must be followed up by sample verification in an independent laboratory.

Security Draw: (specified in Bylaw)

- Allows Township cost recuperation for undertaking work deemed necessary to protect drainage infrastructure from the action (or lack of) of the developer/ owner.
- Does not prevent other, concurrent legal remedy.
- Can only be used where Permittee fails to comply with Notice to Comply.

Stop Work Order: (specified in Bylaw)

- Utilized to stop work that is causing significant, current impact on downstream water quality. (i.e. excavating foundations during significant rain storms).
- All Construction activities are halted based on visual inspection and/ or field turbidity measurement.
- Construction may not continue until water quality and/ or condition of ESC controls are repaired or reworked to the satisfaction of the Township.

Summary Conviction: (specified in Bylaw)

- Information sworn in provincial court, penalties for approved charges range from \$2000-\$10,000 per offence, per day.
- Each day for which an offence continues is usually treated as a separate offence.
- Courts will examine facts of the case to determine if a Bylaw infraction has occurred. Where it has, penalties are normally imposed to achieve the following goals:
 - Remove all profitability from the criminal action.
 - Impose a penalty (usually financial) significant to the size of the infraction and the size of the company.
 - Send a message to other, similar businesses considering similar criminal activity.

ATTACHMENT B - ENFORCEMENT MATRIX,

This enforcement matrix will be utilized to fairly and transparently address non-compliance issues. Full implementation is expected **After September 1, 2007**. Except in cases where damage to the environment or drainage has already occurred, Permittees will receive at least one and up to three warning letters before being subject to punitive enforcement actions such as Tickets, Notices to Comply or Stop Work Orders. This enforcement matrix is stepwise, with a Permittee moving up and down the enforcement scale in accordance with their response to previous enforcement action. This enforcement matrix would only allow for Legal proceedings when the Township has no other means to correct physical damage to the environment or drainage caused by a Permittee. This enforcement matrix is a guideline only.

Legend:

Probability of damage to Environment or Drainage : Low Medium High
 Value of fine specified in MTI Bylaw (\$xxx)

Not recommended for this offence:	
Not available under MTI Bylaw:	NOT AVAILABLE
Action in response to drainage or environmental damage	

ACTION / OFFENCE	Warning Letter Level 1	Warning Letter Level 2	Warning Letter Level 3	MTI Tickets (max available = 1 / day)	Notice To Comply	Security Draw	Stop Work Order	Summary Conviction / Legal Proceedings
Exceedance of 25 NTU	1 st offence	2 nd offence	3 rd offence	4 th -N th offence (\$1000)	Where continues after Ticket	NOT AVAILABLE	Can be issued immediately upon inspection at any time where, in the opinion of the inspector it is not possible to continue working without causing significant environmental or drainage system impact due to weather or other mitigating circumstances. Stop work order would be removed as soon as work can safely continue.	
Exceedance of 100 NTU	1 st offence	2 nd offence	3 rd offence	4 th - N th offence (\$1000)	Where continues after Ticket			
Failure to maintain inspection logbook	1 st offence	2 nd offence	3 rd offence	4 th -N th offence (\$250)	Where continues after Ticket	NOT AVAILABLE		
Failure to sample or test where required	1 st offence	2 nd offence	3 rd offence	NOT AVAILABLE	Where continues after warning (1 day minimum)		Where continues after Notice to Comply – 3 days minimum stop work order	
Failure to report NTU Exceedance		1 st offence	2 nd offence	NOT AVAILABLE	Where continues after warning (1 day minimum)		Where continues after Notice to Comply – 3 days minimum stop work order	
Failure to maintain security			1 st offence	NOT AVAILABLE	Where continues after warning		If does not heed notice to comply	
Working after Permit Expires			1 st offence	NOT AVAILABLE	Where continues after warning		Where continues after Notice to Comply	
Sediment release	Trace	Visible accumulation downstream	Reduction in flow capacity	Minor habitat detriment likely occurred (\$1000)	Ongoing accumulations in habitat	Continuing deposition after Notice to Comply	NOT AVAILABLE	
Failure to install works		1 st offence	2 nd offence	NOT AVAILABLE	IF developer has disregarded previous warnings and works deemed necessary by ToL to prevent future sediment release	IF ToL installs works where developer has not in anticipation of precipitation		IF permittee fails to address “Notice To Comply” issues. Stays in place until issues are addressed, either by Permittee or through ToL use of security. ToL may concurrently consider pursuing legal action.
Failure to maintain ESC Facilities		1 st offence	2 nd offence	4 th or further offences which do not cause other noted, adverse effects (\$500)	If maintenance is deemed necessary by ToL to prevent future sediment release	IF ToL undertakes maintenance where developer has not in anticipation of precipitation		
Failure to retain Qualified ESC Monitor			1 st offence	NOT AVAILABLE	Where continues after warning	NOT AVAILABLE	If does not heed notice to comply	
Working without a Permit			1 st offence	Where continues after warning (\$500)	Where continues after ticket(s)	NOT AVAILABLE	Where continues after Notice to Comply	
Sediment release causing environmental or infrastructure damage; or otherwise requiring TOL remedial work				1 st offence	Where continues after Notice to Comply (\$1000)	Remediation required after notice to comply	IF permittee fails to address “Notice To Comply” issues. Stays in place until issues are addressed, either by Permittee or through ToL use of security. ToL may concurrently consider pursuing legal action.	Failure to adhere to Stop Work Order. At the discretion of the General Manager only.