

Information Note #6:**Compliance Monitoring and Enforcement**

This Information Note is a guide only. It is not a substitute for the federal Fisheries Act, the provincial Riparian Areas Regulation, or local government bylaws..

By meeting the requirements of the Riparian Areas Regulation, local governments, developers and landowner will be helping to protect the fish riparian habitat. Failure to meet standards, notifications requirements, or general conditions could result in penalties under the *Water Act* and other legislation such as the federal *Fisheries Act*.

To ensure that changes occur in a way that protects riparian areas, spot inspections and ongoing project monitoring and auditing will be conducted to ensure compliance with the requirements of the Regulation.

Compliance monitoring

Compliance monitoring establishes the degree to which assessments are consistent with the assessment methods and whether the development is consistent with the results of the assessment. The focus of compliance monitoring is to encourage voluntary compliance by developers. Enforcement actions may be taken when non-compliance occurs. Compliance monitoring has been separated into routine compliance monitoring and complaint-based monitoring. A compliance strategy includes monitoring, education and enforcement.

Routine compliance monitoring

Routine monitoring focuses on project integrity and compliance with approved design. A subset of the Assessment Reports being prepared by Qualified Environmental Professionals (QEPs) will be reviewed for accuracy, completeness and quality prior to, during and after construction. Construction activities will be monitored during and after development, as well as the developer's compliance with the QEP Assessment Report.

Routine compliance monitoring will be undertaken through a stratified sample based on an assessment of risk.

Inherent in the Riparian Areas Regulation assessment methodology is the fact that a QEP provides an opinion that:

- if the development is implemented as proposed; or
- if the streamside protection and enhancement areas identified in the report are protected from the development, and if the developer implements the measures identified in the report to

protect the integrity of those areas from the effects of the development,

then there will be no harmful alteration, disruption or destruction of natural features, functions and conditions that support fish life processes in the riparian assessment area.

Complaint-based monitoring

Environmental awareness associated with the development adjacent to watercourses is increasing. Complaints regarding activities within the Riparian Assessment Area will undoubtedly arise and it is anticipated that local government in larger municipalities will receive the majority of complaints from the public and environmental groups. However, the Provincial Government will also receive complaints. To maximize the effectiveness and efficiency of this process, a high degree of cooperation among the three levels of government will be implemented.

Effectiveness monitoring

Riparian vegetation is only one factor that contributes to stream health. The Riparian Areas Regulation sets out streamside protection and enhancement areas (SPEAs) based on site-specific features to provide riparian functions. Other factors that will affect stream health are: stormwater management, large woody debris removal for flood hazards, construction and maintenance of instream works, impacts of forestry operations or agriculture operations, and water quality problems ranging from hazardous spills to temperature from impervious areas. A rigorous monitoring program will be able to single out the influence of riparian setbacks to stream health in the presence of these other factors.

The Regulation is designed to use an adaptive management approach. Adaptive management uses information gained from past management experiences to evaluate both success and failure, and to explore new management options. This management process will provide for professional, scientific reviews to evaluate the effectiveness of existing Regulation standards. The review may lead to change in various components of the Regulation.

Effectiveness monitoring needs to be carried out at both the development site and watershed level, and should include a research-based component. In addition, all levels of government should participate in the process.

Local government enforcement tools

The Regulation is not enforceable in itself. It establishes a due diligence requirement for existing regulatory tools, notably the *Fisheries Act* and the *Water Act*. It relies on other Acts and powers such as those in local government, provincial and federal jurisdictions. These include the federal *Fisheries Act*; the provincial *Water Act*, section 9, which regulates changes in or about a stream; and some local government bylaws (e.g., tree protection, soil preservation and watercourse protection) that have various powers and applicability depending on their wording.

Protocols will be put in place for coordinating enforcement actions around the Regulation to determine who is best able to undertake cases and what legislation will be used. The preferred course in addressing non-compliance will be to first seek voluntary compliance by the proponent.

The first order of enforcement, however, may be by a local government using the tools at its disposal based on the means by which it is implementing the Regulation. Some of these methods have been mentioned in the previous sections, and include tickets and fines, stop work orders, court actions, withholding approval, security deposits or bonds, and restrictive covenants. They are summarized in Table 1.

Table 1. Enforcement tools available to local governments

Tool	Source and when to use	Comments
Ticket/fine	Can be applied under a regulatory bylaw established under the <i>Community Charter</i> or Part 22 of the <i>Local Government Act</i> (e.g., tree protection, soil deposit and removal, runoff management, environmental protection).	Provides “a teachable moment”; can be used as a preventative tool instead of, or in addition to, a disciplinary measure. Enforced typically by bylaw enforcement staff who may need training on what constitutes riparian infractions. No avenue for requiring remediation – i.e., no “fix-it” authority unless tickets are used as a means of negotiating a remedy.
Stop work order	Building permits; may be applicable to permits issued under regulatory bylaws (see above).	Allows inspectors or local government staff to stop development activity on a site until infraction rectified. Applicable only while development is under way.
Withhold approval	For rezoning, under the <i>Local Government Act</i> ; for subdivision, approving authority under <i>Land Title Act</i> .	Can withhold approval of preliminary plan or design stage until riparian issues are addressed satisfactorily. For subdivision, the approving officer must be able to justify based on bylaw requirements or “public interest.”
Court order or injunction	Development permits	Stops work until infraction is rectified.
Security deposits/ bonds	Can be required with most forms of permits	Should be of sufficient amount to act as incentive to complete the activity required or to cover a local government’s costs if it must take corrective action.

Restrictive covenants	Rezoning approval, subdivision approval, development permits	Monitored by the government agency holding the covenant. New landowners need to determine if any covenants exist on land that they purchase.
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Education

Informing and educating people about riparian area protection and the requirements of the Riparian Areas Regulation are important parts of the compliance continuum.

Public awareness and understanding prevents inadvertent non-compliance; ensures long-term recognition of the importance of SPEAs during particular types of development and after development is completed; and promotes compliance. By being well informed about both the requirements of the Regulation and the local government’s regulatory approach, the public can be involved in reporting inappropriate or non-compliant activities.

Local governments are directed by the Regulation to cooperate with DFO and the Provincial Government in developing strategies and tools (such as brochures) for education purposes.

Enforcement roles

How complaints and infractions regarding riparian areas will be responded to will depend on the regulatory tool used by local government to implement the Riparian Areas Regulation. In all cases, the *Fisheries Act* and the *Water Act* may ultimately be used.

Enforcement will be coordinated between the three levels of government. The enforcement steps taken, and who takes the lead in a particular enforcement action, will depend on the nature and severity of the infraction.