

Full Authority
21 March 2024
Agenda Item: 10

Ontario Regulation 41/24

Background

On 16 February 2024, a new Minister's regulation, Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits, under the Conservation Authorities Act was approved by the Province.

This regulation will replace the Crowe Valley Conservation Authority's, Ontario Regulation 159/06: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses and come into effect on the 1 April 2024. The enactment of O. Reg. 41/24 will also coincide with the proclamation of associated sections within the Conservation Authorities Act. Ont. Reg. 41/24 will be used by all conservation authorities across the Province.

Since the CVCA Board will not be meeting again until the 18 April 2024, it is imperative to know and understand some of the basics the new regulation will mean for the Board, CVCA staff and the public throughout the CVCA watershed. In particular, there is a compliance issue and the reappointment of CVCA Regulations Officers to formalize in order to have as smooth a transition as possible.

Although the new regulation represents a single regulation for all CAs, fortunately, many aspects of the CA regulatory process remains the same. Administratively, O. Reg. 41/24 is a Mandatory Program and Service of the Conservation Authorities as per Section 21.1.1 of the Conservation Authorities Act and as stipulated in O. Reg. 686/21: Mandatory Programs and Services. Under Section 8 of O. Reg. 686/21, Conservation Authorities shall provide programs and services to ensure that the Authority carries out its duties, functions and responsibilities to administer and enforce the provisions of Parts VI and VII of the Act and any regulations made under those Parts.

Conservation authorities will continue to require applications for a permit to undertake otherwise prohibited development, interference and alteration activities in regulated areas as defined under the Conservation Authorities Act and in O. Reg. 41/24. For those applications submitted prior to the enactment of O. Reg. 41/24, the current permitting process will be followed. New permit applications submitted on or after April 1, 2024 will follow the processes outlined in the updated Section 28 of the Conservation Authorities Act and O. Reg. 41/24.

The Crowe Valley Conservation Authority staff will keep all member municipalities informed as we work to comply with O. Reg 41/24 and the Conservation Authorities Act changes as the two documents must be read and understood together. The CVCA will make every attempt to minimize disruptions to the development application approval process and continue to work with our municipal partners as staff transition from one regulation to the other.

Notable changes include the following:

- i. The definition of a “watercourse” has been amended from “an identifiable depression in the ground in which a flow of water regularly or continuously occurs” to “a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs”.
- ii. The regulated area around wetlands (“other areas”) will be consistent at 30 metres, including around provincially significant wetlands rather than 120 metres used for provincially significant wetlands and wetlands greater than 2ha. As such the potential for wetland loss is elevated and will be a concern. The CVCA is blessed with wetlands to assist with the control of flooding and any wetland loss would be detrimental for the entire watershed. Limiting the reduction in the quantity and quality of wetlands in the watershed will also assist in mitigating the impacts of climate change on people and property throughout the watershed.
- iii. There are exceptions for certain low-risk activities included in O. Reg 41/24 (which actually is very similar to the CVCA proposed policy changes - see Attachment One - Exceptions for Certain Low Risk Activities for further details).
- iv. These changes will require the CVCA to review post mapping on and update their regulatory mapping (as appropriate) to reflect the new regulated limits.

In addition:

- Municipal partners will be advised that CA regulatory mapping when available will be shared for screening purposes and may require updates.
- In the absence of mapping, the text of O. Reg. 41/24 will prevail as it did with the previous regulation.
- Any questions about the regulatory extent of the Crowe Valley Conservation Authority can and should be directed to staff responsible for development review in each municipality.
- In Section 5 of O. Reg. 41/24 there is a list of activities or works where a CA permit is no longer required, where works are carried out in accordance with the regulation. The CVCA will encourage the public to confirm exceptions with the CA prior to carrying out their planned work.
- The CVCA will work to provide implementation support materials to municipalities as soon as possible.

Plan Review Services:

- There are no changes to the CVCA's planning responsibilities at this time. Conservation Authorities will continue to provide mandatory or Category 1 programs or services related to reviewing and commenting on applications and other matters (e.g., planning document updates) under the Planning Act, and for proposals under Acts referred to in Section 6 (2) of Ontario Regulation 686/21: Mandatory Programs and Services.
- Therefore, municipalities ***must continue to circulate*** planning applications and other matters, including technical reports to CAs so that we may review and comment on natural hazards and wetland matters per Ontario Regulation 686/21. Comments provided will reflect a watershed based approach to the provision of mandatory programs and services.

Fee Schedules:

- The Minister has issued a direction to freeze Conservation Authority fees for planning and regulations for 2024 and the new regulation does not alter this directive.

The substance of our development regulation stays largely the same and our planning role is unchanged. However, there are some changes to what and how we regulate development. Perhaps the most important fact remains, the CVCA will continue to provide the mandatory services and programs to a high standard and will in doing also be available to support our member municipalities.

To assist with this short transition to the implementation of O. Reg. 41/24, Conservation Ontario has provided an interim policy guideline for all conservation authorities to utilize and/or adopt until the policy can be adopted by the CVCA.

Fortunately, the CVCA staff have been reviewing the current CVCA Policy prior to the release of O. Reg 41/24 and have made a number of changes which coincide with it. Staff have also been able to include the necessary changes stipulated in the regulation.

Staff Appointments

As a result of the pending enactment of the new Section 28 Ontario Regulation 41/24 on 1 April 2024 and Conservation Authorities will need to re-appoint all existing Provincial Offence Officers under the new regulations. Current staff that undertook the Provincial Officer Training were appointed by the Crowe Valley Conservation Authority's Board of Directors under our prior Section 28 and 29 Regulations. There are currently three staff members working for the CVCA that have active status under the Provincial Offences Act designation.

Therefore, Regulations Officer Andrew McIntyre, Beth Lowe and Kelsey Davidson will need to be designated under Section 30.1 of the Act to be considered to be in conformity with the pending new regulation.

Policy Manual Changes

The approval of the changes to the Policy Manual was originally to be scheduled for the 18 April 2024 CVCA Board meeting. However, the new regulation will be in effect as of 1 April 2024. Therefore, staff would prefer the Board approve the Policy Manual changes in March to be compliant with the CA Act and pending O.Reg. 41/24 and not disrupt or add confusion beyond the 1 April 2024. This would be the cleanest option to continue to deliver the CVCA's Category 1 Regulations and Planning program and services.

If there are concerns or issues between the March meeting and April's meeting, then Board members would be able to bring them forward for discussion and revise/update the Policy manual at that time.

Staff Recommendation

- 1) That the Crowe Valley Conservation Authority Board acknowledge the CVCA will not attain compliance with the 1 April 2024 implementation of Ontario Regulation 41/24 due to the short transition timeline and lack of resources to place mapping on the website. Staff will proceed make every effort to meet the requirements of Ont. Regulation 41/24 as soon as possible.***
- 2) That the CVCA Board adopt the proposed staff changes to the CVCA Regulations and Planning Policy Manual which includes changes to ensure compliance with Ontario Regulation 41/24 and that any further revisions or changes be brought forward at the next regularly scheduled CVCA Board meeting.***
- 3) That the Board reappoint CVCA Regulations Officers Andrew McIntyre, Beth Lowe and Kelsey Davidson as regulations officers to fulfill their roles and responsibilities as per the revised Conservation Act in conjunction with Ontario Regulation 41/24, effective 1 April 2024.***

Board Decision

TP

