

**THE CORPORATION OF THE
TOWNSHIP OF WAINFLEET
BYLAW NO. 012-2009**

Being a bylaw to regulate construction of berms in the Township
of Wainfleet.

WHEREAS Section 142 of the Municipal Act, 2001, as amended, provides that the Council of a local municipality may pass bylaws to:

- (a) prohibit or regulate the placing or dumping of fill;
- (b) prohibit or regulate the alteration of the grade of the land;
- (c) require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of land;
- (d) impose conditions to a permit, including requiring the preparations of plans acceptable to the municipality relating to grading, filling, or dumping, the removal of topsoil and the rehabilitation of the site;
- (e) require that fill dumped or placed contrary to a bylaw passed or a permit issued under this section be removed by the person who dumped or placed it or who caused or permitted it to be dumped or placed; and;
- (f) require that the grade of the land altered contrary to a bylaw passed or a permit issued under this section be restored to its original condition by the person who altered it or who caused or permitted it to be altered. 2001, c. 25, s. 142 (2).

NOW THEREFORE the Council of the Township of Wainfleet **HEREBY ENACTS AS FOLLOWS:**

Definitions

1. In this Bylaw:

- (a) "Berm" shall mean a raised barrier or longitudinal mound with sloping sides constructed of fill.
- (b) "Clerk" shall mean the Clerk of the Corporation;
- (c) "Berm Plans" means two sets of drawings – one that clearly shows the features of the existing site and one that shows the intended changes to the property.
- (d) "Township" means the Township of Wainfleet;
- (e) "Drainage" means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by an artificial method;
- (f) "Dumping" means the depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location on a property to another location on the same property;
- (g) "Erosion" means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;
- (h) "Existing Grade" means the elevation of the existing ground surface of the lands upon which dumping or placing of fill, or both, to construct the berm is proposed and of abutting ground surface up to three (3) metres wide surrounding such lands, except that where placing or dumping of fill has occurred in contravention of this bylaw, existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill;
- (i) "Fill" means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf either singly or in combination;

- (j) "Finished Grade" means the approved elevation of the ground surface of lands upon which fill has been placed in accordance with this bylaw;
- (k) "Inspector" means the person or persons appointed by Council for the purposes of enforcing the bylaw;
- (l) "Normal Agricultural Practices" means any activity performed on private lands by the owner or owner's agent that is considered by the Ministry of Agriculture and Food to be a routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property;
- (m) "Owner" includes the registered owner of the lands on which fill is proposed to be placed or dumped to construct a berm and any person, firm or corporation controlling such lands;
- (n) "Place of Disposal" means a municipally-owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Township;
- (o) "Placing" means the distribution of fill on lands to establish a finished grade different from the existing grade;
- (p) "Ponding" means the accumulation of surface water in an area not having drainage, where the lack of drainage is caused by the placing or dumping of fill;
- (q) "Proposed Grade" means the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped or the grade altered to construct the berm;
- (r) "Site alteration" means site grading, or the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere;
- (s) "Soil" means native material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel;
- (t) "Swale" means a shallow depression in the ground sloping to a place of disposal surface water for the purpose of providing a method of drainage;
- (u) "Topsoil" means those horizons in a soil profile containing native organic material and includes deposits of partially decomposed organic matter such as peat;
- (v) "Wetland" means land that is seasonally or permanently covered in shallow water or has a water table close to or at its surface, directly contributes to the hydrological function of a watershed through connection with a surface watercourse, has hydraulic soils, 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 as referred to in this section.

Exemptions

2. This bylaw is not applicable to the following activities:
- (a) the construction of berms as an incidental part of normal agricultural practices;
 - (b) the construction of berms pursuant to the provisions of the Aggregate Resources Act;
 - (c) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the Environmental Protection Act, R.S.O.1990 c.E.19, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
 - (d) the construction, extension, alteration, maintenance or operation of works under Section 28 of the Public Transportation and Highway Improvement Act, R.S.O. 1990 c.P.50, as amended;

- (e) emergency measures taken by the Corporation to mitigate erosion, soil failure or damage of trees;
- (f) the activities of the Township of Wainfleet, a Ministry of the Provincial government, the Regional Municipality of Niagara, the Niagara Peninsula Conservation Authority, related to the establishment or maintenance of utilities and services, roads, ditches or drains, bridges, flood and erosion control facilities, walkways, bicycle paths, fences, retaining walls, steps and lighting;
- (g) to actions by any local board as defined in the Municipal Act having jurisdiction within the Township of Wainfleet;
- (h) to any action by any Crown agency as defined in the Crown Agency Act;
- (i) to any action by Hydro One;
- (j) to any action by any person implementing a grading control plan or lot grading plan approved on behalf of the Township of Wainfleet pursuant to a registered site plan agreement, subdivision agreement, or development agreement pursuant to the provisions of the Planning Act duly executed by the Township of Wainfleet and affecting the lands;
- (k) any work authorized pursuant to the provisions of the Drainage Act;
- (l) any work pursuant to normal agricultural practices that does not affect the location or rate of runoff to neighbouring properties pursuant to the Farming and Food Production Protection Act;
- (m) any work conducted pursuant to, and in accordance with the provisions of, a regulation made under Section 28 of the Conservation Authorities Act respecting the placing or dumping of fill in any area of the Township of Wainfleet ;

Purpose of the Bylaw

3. No person shall construct a berm exceeding 1.0 meter in height within the Township of Wainfleet, unless they are exempt from the provisions of this bylaw, or a permit has been issued.

Issuance of Permits

4. An Inspector may issue a permit for construction of a berm on land within the geographic limits of the Township of Wainfleet, where it meets the requirements of Section 8. In all cases, the Township of Wainfleet will inspect and evaluate the need for a berm permit within ten (10) working days of receipt of the application form.
5. A permit does not absolve the applicant from the responsibility to obtain other required approvals.

To obtain a permit a Plan is required, one plan showing the site before and one plan showing the intended berm. The Plan should include or note the criteria listed in Schedule "A". A Plan accompanying a permit must be certified by a technically qualified person approved by the Inspector.

Time Limit for Permits

6. A permit issued pursuant to Section 4 shall be valid for a period of twelve (12) months from the date of issuance. A permit may be extended once, upon written application to the Inspector, prior to the date of expiry.

Condition for Permits

7. An Inspector may issue a permit, imposing such conditions as he or she feels are appropriate, when:
- (a) the Inspector is satisfied that the lands which are the subject of the application for a permit are not within an area where the construction of a berm is prohibited under this bylaw or other applicable law;
 - (b) the applicant has fulfilled all applicable requirements of Schedule "A" to this bylaw;
 - (c) the Inspector is satisfied that the proposed final elevations, the resulting drainage patterns, the type of fill to be used to construct the berm and the method of placing or dumping of fill are all in accordance with proper engineering and environmental practices;
 - (d) the Inspector is satisfied that the placing or dumping of fill to construct the berm will not result in:
 - (i) soil erosion,
 - (ii) blockage of a watercourse,
 - (iii) siltation in a watercourse,
 - (iv) pollution of a watercourse,
 - (v) flooding or ponding on abutting lands,
 - (vi) flooding or ponding caused by a watercourse overflowing its banks,
 - (vii) a detrimental effect on any trees of a caliper of seventy-five (75) millimetres or more, located on the lands,
 - (viii) a detrimental effect on sensitive ground or surface water features or on significant natural features or ecological functions,
 - (ix) any contravention of regulations, standards or guidelines established pursuant to the Environmental Protection Act, or
 - (x) the fouling of, or physical damage to, the adjacent roadway or other municipal infrastructure.
 - (e) the Inspector is satisfied that the issue of erosion has been satisfactorily addressed. An Erosion Control Plan may be required. It would include:
 - (i) the location and dimensions of the proposed berm,
 - (ii) the location and dimensions of all temporary soil and dirt stockpiles to be used in the construction of the berm,
 - (iii) the location and dimensions of all required construction site management control measures, and
 - (iv) a schedule of the anticipated starting and completion date including the installation of construction site management control measures needed to meet the requirements of this bylaw.
 - (f) The permit fee and any security required to be deposited with, or paid to, the municipality to ensure that conditions are satisfied has been deposited or paid and that any agreement required to implement conditions imposed by the Inspector has been signed;
 - (g) all other concerns of the Inspector have been satisfied.

- (h) The owner shall provide written evidence to the Inspector that the work has been completed.

Agreements with the Corporation

- 8. Wherever an Inspector requires, as a condition of a permit, that there be a written agreement concerning the work contemplated by the permit, such agreement shall be executed by the owner, the owner's authorized agents, where applicable, and the Township; such agreement shall be executed on behalf of the Township by the Inspector and may require that a security deposit be lodged with the Township equal to the cost estimate for the work authorized by the permit as approved by the Inspector to guarantee that the work is completed in accordance with the permit and any related plans and documents and that the owner may be required to pay the Township's costs of reviewing and approving the plans and work referred to in the permit.
All permits will require the applicant to:
 - (a) notify the Inspector twenty-one (21) working days prior to commencing any site activity,
 - (b) provide the Inspector with the name, phone number and fax number of an emergency contact person,
 - (c) notify the Inspector of completion of any control measures within two (2) days after their installation,
 - (d) obtain permission in writing from the Inspector prior to modifying the control plan,
 - (e) maintain all road drainage systems, stormwater drainage systems, control measures and other facilities identified in the control plan,
 - (f) repair any siltation or erosion damage to adjoining surfaces and drainageways and watercourses which have resulted from the site alteration activities,
 - (g) inspect the construction control measures after each rain of 1 centimetre or more and at least once a week and undertake needed repairs, and,
 - (h) ensure that during site activity a copy of the control plan is on site.

Compliance with Plans and Conditions

- 9. Where a permit has been issued under this bylaw, no person shall construct a berm except in accordance with the plans, documents and any other information on the basis of which the permit was issued and in compliance with any conditions imposed by the Inspector.

Minimum Standards

- 10. Every person who constructs a berm shall:
 - (a) ensure that the finished grade surface of the berm is protected by sod, turf, seeding of grass, greenery, or such other material as the Inspector may approve, either singly or in combination,
 - (b) ensure that no piped connection to Township of Wainfleet culverts or ditches is covered and backfilled until the work has been inspected and approved by an Inspector,
 - (c) ensure such protection for trees as may be required by an Inspector,
 - (d) ensure that all fill used to construct the berm is clean and free of rubbish, glass, garbage, termites, organic materials, liquid and toxic chemicals, asphalt, concrete, and other contaminants,

- (e) ensure that fill used to construct the berm is placed or dumped in such a manner that no ponding is caused on the subject lands or abutting lands and that adequate provision is made for proper surface stormwater drainage.

Remedies for Contravention

- 11. Where a person has moved, placed or dumped fill for the construction of a berm in contravention of any permit given pursuant to this bylaw, without a permit where a permit is required under this bylaw, or contrary to any other provision of this bylaw, an Inspector may make an order directing the person to do any or all of the following:
 - (a) comply with the conditions of the permit and this bylaw;
 - (b) cease the placing or dumping of fill to construct the berm ;
 - (c) remove the fill that has been placed or dumped to construct the berm within forty-eight (48) hours after service of the order, or such other length of time as may be specified in the order.

 - (d) reparation or rehabilitation may be required in a specified time period and take the form of:
 - (i) leveling and regrading of affected lands;
 - (ii) planting of trees
 - (iii) the stabilization by either sodding, hydroseeding, mulching or such other methods as may be directed.

Consent of Owner

- 12. No person shall construct a berm on any land unless it is done at the request of, or with the consent of, the owner of the land affected.

Enforcement

- 13. The administration and enforcement of this bylaw shall be performed by an Inspector, by persons authorized by an Inspector, or by such bylaw Enforcement Officers of the Township of Wainfleet as may be appointed by bylaw of the Council of the Township of Wainfleet. The Inspector may, at any reasonable time, enter and inspect said property to determine compliance with the permit.
 - (a) Upon the failure by the Permit holder to complete all or part of the works in the time stipulated in the Plan, the Township of Wainfleet may draw the appropriate amount from the securities posted and use the funds to arrange for the completion of the said works, or any part thereof;
 - (b) Upon the failure by the Permit holder to repair or maintain a specific part of the works as requested by the Township of Wainfleet, and in the time requested, the Township of Wainfleet may at any time authorize the use of all or part of the securities to pay the cost of any part of the works it may in its or their absolute discretion deem necessary; or
 - (c) In the case of emergency repairs or clean-up, the Township of Wainfleet may undertake the necessary works at the expense of the Permit holder and reimburse itself out of securities posted by the applicant.

14. Where it has been discovered that an applicant for a Berm Permit pursuant to this bylaw has provided misleading or false information on the application, the Permit issued under this bylaw shall become null and void and the Township of Wainfleet may order or direct that any persons or corporation conducting berm construction activity which was based on this misleading or false information, forthwith shall cease and desist all operations and make appropriate reparation as outlined in section 11.
15. Where a person who has been ordered to remove fill used to construct a berm in accordance with Section 11 fails to do so within forty-eight (48) hours, the Township may have the work that was agreed upon completed at the expense of such person and the Township may recover the expenses incurred in so doing by action, the same may be recovered in like manner as municipal taxes or drawn from the Letter of Credit or the security deposit. Before the Township of Wainfleet enters on the land to do said work, the owner shall be notified as pursuant to Section 144 of the Municipal Act.

Offence and Penalty

16. Where a person contravenes the provisions of this bylaw such person is guilty of an offence and, upon conviction, is liable to a maximum fine as established pursuant to the Municipal Act.

Appeal to Ontario Municipal Board

17. Where:
 - (a) the Inspector refuses or neglects to issue a permit under Section 4 of this bylaw within forty-five (45) days after the application is received by the Inspector and after the supporting plans and documents referred to in Schedule "A" are received by the Inspector; or
 - (b) an owner of the lands on which a berm is to be constructed objects to a condition in the permit;

the owner may appeal to the Ontario Municipal Board in accordance with the applicable provisions of the Municipal Act, 2001, as amended.

Assistance for Inspector

19. An Inspector shall have the right to retain the services of the Township of Wainfleet's consulting engineer for the purposes of determining whether the requirements of Schedule "A" or Schedule "B" have been complied with, and to assist with the administration of this bylaw.

Permit Fees

20. The Permit fee shall consist of a flat rate plus an hourly fee to review applications and accompanying drawings. Depending on the complexity of the project, the permit issuing inspector may request a security deposit equal to the value of the project or a lesser amount as a condition of issuing a permit.

All fees shall be as per the Township fee schedule Bylaw or in the absence of such Bylaw, shall be as approved by Council on an annual basis.

General

21. This bylaw shall come into force and take effect upon its final passing.

BYLAW READ A FIRST TIME THIS 14TH DAY OF APRIL, 2009.

BYLAW READ A SECOND TIME THIS 14TH DAY OF APRIL, 2009.

BYLAW READ A THIRD TIME AND FINALLY PASSED THIS 14TH DAY OF APRIL, 2009.


B. Henderson, MAYOR


T. Lamb, CLERK

SCHEDULE "A" TO BYLAW NO. 012-2009

A person applying for a permit pursuant to Section 5 shall provide to the Inspector the following **as required**:

Yes

No

(a) a complete application in the form prescribed by the Inspector;

(b) a description of the fill proposed to be used to construct the berm including a description of the source of the fill; and

(c) if the Inspector so requests, a set of accurate plans meeting some, or all, of the requirements set out below.

To indicate proposed changes, 'before' and 'after' Berm Plans are required. Plans for the construction of the berm shall be prepared in accordance with the standard drawings and to the satisfaction of the Township of Wainfleet and include and/or note the following on the site and surrounding area:

- a title block – including lot and plan number and scale used
- the proposed berm indicating all dimensions including height of berm
- a location map with north arrow,
- property lines and dimensions,
- the current and proposed use of the site,
- dimensions and use of any existing or proposed buildings or structures on or adjacent to the site,
- existing & proposed elevations with contours at 0.5 metre intervals or less,
- spot elevations along property lines at 10 metres beyond the property
- the predominant soils,
- any environmental contamination on the site,
- all wetlands,
- woodlots,
- vegetative cover, drains,
- channels,
- ditches,
- swales,
- watercourses or water bodies,
- fish habitat,
- regulatory floodline and Conservation Authority fill regulation lines,
- utilities,
- roads,
- the proposed stormwater management system, and
- the existing and final elevations of the berm

show temporary erosion control measures to be in place during the construction period, e.g. silt fence, sedimentation traps, etc., and permanent erosion control works to be left in place after construction, e.g. siltation ponds, etc.

**TOWNSHIP OF WAINFLEET
BERM CONSTRUCTION APPLICATION FORM**

Owner's Name: _____
 Address: _____
 Phone No: Residence: _____ Fax: _____
 Business: _____

Applicant/Agent's Name (if different from owner): _____
 Address: _____
 Phone No: Residence: _____ Fax: _____
 Business: _____

Description of Property

Municipal Address: _____
 Brief Legal Description: Lot _____ Plan _____
 Other _____
 (attach survey if available)

Please describe Nature of Proposed Works

 (please attach before and after Berm Plans to illustrate)

Please Answer Following Questions

Is there a registered flood and/or fill line on or adjacent to the property? Yes/No
 Is there a significant natural area or fish habitat on or adjacent to this property? Yes/No
 Has the property ever been used for industrial/ commercial/institutional purposes? Yes/No
 Will elevations be altered at any property boundary? Yes/No

<u>FOR OFFICE USE ONLY</u>	<u>STAFF COMMENTS</u>
Application Date Received:	_____
Application Date Inspected:	_____
Agreement Required: Yes/No (attach agreement if applicable)	_____
Permit Issued: Yes/No	_____
More Information Required: Yes/No (attach requesting information if applicable)	_____
Security Required: Yes/No	_____
Conditions Added: Yes/No/Attach Permit	_____

PROVINCIAL OFFENCES ACT

Part I

IT IS ORDERED pursuant to the provisions of the *Provincial Offences Act* and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-Law No. 012-2009, of the Township of Wainfleet, Niagara Region, attached hereto is the set fine for that offence. This Order is to take effect December 24, 2013.

Dated at Hamilton this 24th day of December 2013.



Sharon Nicklas
Regional Senior Justice
Central South Region

**PART 1 PROVINCIAL OFFENCES ACT
TOWNSHIP OF WAINFLEET
SET FINE SCHEDULE**

Offences and set fines under By-Law 012-2009, regulate the construction of berms.

<u>Item</u>	<u>Column 1</u> Short Form Wording	<u>Column 2</u> Provision Creating or Defining Offence	<u>Column 3</u> Set Fine in \$
1.	Cause a berm to be constructed greater than 1 meter in height with no permit	Section 3	300.00
2.	Construct a berm not in accordance with plans, documents and any other information of which the permit was issued	Section 9	300.00
3.	Construct a berm on any land without the request of or with the consent of the owner of the land affected	Section 12	300.00

Note: The penalty provision from the offences indicated above is in accordance to Section 61 of the Provincial Offences Act, R.S.O. 1990, c. P.33

*JW
Dec 23/13*