



## **TOWARD RIPARIAN HEALTH - WHICH ENFORCEMENT MODEL?**

When beach alterations harm the healthy functioning of a lake shoreline, or when livestock harm the bank and the water quality of a creek, what method should be used to remedy the problems? How does the public or government deal fairly and effectively with landowner behavior that is harmful to valuable riparian areas? This is a problem that has long haunted all levels of government as well as any public group that has attempted lakeshore and watershed protection and restoration. In the Vincent Lake Working Model process, enforcement was a very contentious issue – until we resolved to deal with it in a special way that might also work elsewhere. We considered two kinds of enforcement and their pros and cons, “active” enforcement and “passive” enforcement.

### **Definitions**

**“Active enforcement”** involves the use of laws, regulations, and policies to cause people to change their behavior. In protecting riparian areas, this might involve financial penalties, jail, or other punishment, official warnings, and/or orders to restore a damaged riparian area.

**“Passive enforcement”** involves educating people so that they understand how riparian areas function, how important riparian areas are, and the reasons behind the laws, regulations, and policies, so they will improve their behavior because of this knowledge. When people come to understand the importance of healthy riparian areas they have an informed choice - to do nothing, or to cease behavior that causes further damage, to restore riparian areas to a healthy condition, and to protect those areas from future damage.

### **Application**

**The active enforcement** of environmental issues often is difficult, embarrassing, time-consuming, and costly, for the perpetrator and for the enforcing agencies. Public reaction to active enforcement can be unpleasant, especially if the person is not told, does not understand, or refuses to accept the reasons for the watershed protection laws and an enforcement action. Fines, and enforcement orders to restore the damaged site to its original condition, may add further to the unpleasantness. Active enforcement also can be unpleasant for the enforcing individuals and agencies. Many hours can be gobbled up dealing with an apparently simple infraction. Often several agencies are involved. Damage in front of cottages may involve a municipality (because of damage to an environmental reserve), provincial agencies such as Public Lands, Water Management, and Fisheries and Wildlife (because of damage to the Crown-owned bed and shore of the water body and impacts to water quality and fish habitat), and the federal Department of Fisheries and Oceans (because of harm to fish spawning and nursery areas in the lake shallows and in areas that will be flooded in high water at Spring runoff). The scale of the riparian damage problem can be daunting because some lakes have hundreds of infractions involving trespass and damage to Crown lands

and the areas covered by the Water Act and federal Fisheries Act. Some cottage-front sites have been annually rototilled or cultivated for thirty or more years. Some agricultural sites have had serious cultivation or grazing damage of riparian areas for just as long. Historically, when there were fewer of us and when we didn't have the knowledge that we do today, the traditional behavior of most landowners towards creek banks and lakeshores was actually harmful to the lake and the watershed, but it didn't matter as much then. And, traditionally, the responsible agencies had other priorities and did not do an outstanding job of preventing damage to these sensitive and important watershed areas. In part this occurred because of a lack of knowledge by both the public and the government staff about the fundamental importance of riparian areas. And so, with poor or no enforcement, combined with damaging behavior of adjacent landowners, we created the sterilized and damaged shorelines, the degraded water quality, and the poorly functioning or non-functioning riparian habitat that we see today on significant parts of most of our important recreational lakes and watersheds. Although active enforcement of watershed infractions has not been highly successful to date, the well-timed use of thoughtful active enforcement methods is critical to ensuring that important riparian areas and water quality are not further jeopardized.

**"A program without enforcement is an invitation to break the law without consequences."**

(Public Employees for Environmental Responsibility)

**Passive enforcement** was selected by the Vincent Lake Working Group as the method that would have the most long-term benefits. It was felt that by educating the public about the many values of healthy riparian areas, most residents would change their behavior in order to impact the watershed more gently, allow it to restore its damaged values, and ensure those healthy riparian processes continue. During the one to two years that an education and awareness program at Vincent Lake is attempting to improve landowner knowledge about riparian health, stimulate well-meaning peer pressure about shoreline care, and provide some good neighborly examples of how to evaluate and manage healthy shorelines, it is expected that substantial improvements will occur to many damaged riparian areas on the lake. While that process is underway at Vincent Lake it was informally agreed that active enforcement would not be pursued except in cases of new shoreline damage. It was felt that this approach would contribute to better working relationships between the Vincent Lake Working Group and the cottaging and farming public, by delaying the threat of active enforcement actions against long-standing problem sites while still using active enforcement against new infractions that happened to occur during the passive enforcement process. Unfortunately, even with full deployment of an education and awareness program about why and how to properly care for a lake and its watershed, the active enforcement model may be the only method that will improve the behavior of some people toward riparian areas. There is no question that public lakeshore and watershed groups and government staff prefer the passive enforcement model and would rather work with individuals and help them repair damage to riparian areas than take legal action.

**"We'd rather work with the individual and help them repair the aquatic environment than take legal action."**

(John Stundt, chief, Regulatory Branch, Army Corps of Engineers.)