



Municipal Drains and the Landowner

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Introduction

Do you feel that the procedures of the Drainage Act are beyond your control? Then read on! This Factsheet outlines the landowner's input to the proposed drainage works.

Your interest, comments and questions can help council and the engineer determine the value and need for a drainage project. This Factsheet summarizes the decisions of the landowner for each step of the procedures outlined in the Drainage Act. Remember, landowners are the "initiators" of new or improved drainage works. The municipality (council) is the "facilitator".

Background

In Common Law, an owner is liable for damages when surface water is artificially collected and discharged on lower lands. Common Law does not permit outlet for non-riparian owners (those owners not abutting a natural watercourse). For more information see OMAF Factsheet *Common Law Aspects of Water*, Agdex 557. The Drainage Act accepts the liability but allows non-riparian owners to recompense the riparian owner through assessments for "outlet liability" and "injuring liability". The payment of an injuring liability assessment relieves a non-riparian property from future charges under common law for damages caused by water artificially collected. A discussion of assessments may be found in OMAF Factsheet *Understanding Drainage Assessment*, Agdex 557. The Drainage Act provides interested non-riparian landowners with a method of obtaining a "legal outlet".

Three methods of outlet are set out in the Drainage Act and are commonly known as:

- (a) Mutual Agreement (b) Requisition (c) Petition.

Factsheets entitled *Mutual Agreement Drains*, Agdex 555 and *Drainage Legislation*, Agdex 752 explain outlet procedures.

The Drainage Report

A new municipal drain is initiated by petition. A municipal drain on which landowners wish improvements is frequently initiated by council. A new drain or an improvement to a drain requires the preparation of a drainage report by a registered engineer. Interested landowners are financially responsible for a portion of costs incurred when the proposal is accepted by council and an engineer is appointed.

The drainage engineer has the obligation to prepare an unbiased drainage report based on information presented in written form, orally, and from visual inspection; in accordance with currently accepted design criteria. Council and/or the drainage superintendent should have a copy of *Performance Guidelines for Services of the Engineer Acting Under the Drainage Act*, published by the Association of Professional Engineers of Ontario.

An "on-site" meeting will be held by the engineer to gather information, view the site and hear landowner concerns. A survey crew will collect the necessary field information for the drainage system.

Taking all the available information into consideration, a drainage report is then prepared by the engineer and presented to council for review, prior to the "meeting to consider".

When the drainage report is received by a landowner, there will be a meeting notice attached, requesting the ratepayers to meet and discuss the proposed work. Providing the proposed work is accepted, council will proceed to set a date for the Court of Revision where ratepayers may appeal assessments. The Factsheet entitled "Drainage Act Appeals", Agdex 557, provides more information.

If you do not understand the report, assistance can be obtained from the drainage superintendent, the municipal clerk, or other knowledgeable persons.

It is the landowner's responsibility to review and understand the report and to attend or be represented at all the meetings for which notification is received. Non-attendance implies acceptance of the report as received. Similarly, if a "time frame" for an appeal is missed, the opportunity to appeal is forfeited unless a special situation exists. Appeals may add costs and time delays to the project. Thus it is very important that the landowner review the report and carefully consider the value of appeals relative to the overall cost of the drainage works.

The tabular information identifies "activities" taking place and "decisions" which can be made by the landowners and others. Reference to the applicable sections of the Drainage Act is given in numerals. This table is not "all encompassing" as circumstances may present alternatives not covered. This information follows the procedures as if a new drain was being undertaken. When a new drainage report is prepared for an existing municipal drain, the petitioning procedure may not be necessary. In this case, enter the tabular information at "the On-Site Meeting" under the sub-title "(b) Petition is Valid". Where the action is not noted, reference should be made to knowledgeable persons for advice.

Also note that as you move down through the procedures, decisions move from the owners involved, to other groups such as the Court of Revision and the Drainage Tribunal.

Maintenance of Drains According to Current By-Law

The municipality is responsible for the maintenance of any drainage works constructed under the Drainage Act RSO 1980 or its predecessors to the extent of the work and structures specified in the current by-law. All upstream landowners, from the commencement of the maintenance work, are assessed for the cost of the maintenance work "pro-rata" as per the maintenance assessment schedule. 74

Landowners can reduce maintenance costs by undertaking management practices which reduce or eliminate degradation of the drain. Some practices to consider are:

1. Limiting cattle access by fencing and providing adequate cattle crossings.
2. Providing erosion control structures for surface water entry to open drains and for subsurface drain outfalls.
3. Maintaining a grass buffer strip along the top of the bank on open drains to aid bank stability and to provide a sediment filter.
4. Inspecting the drainage works for bank failure, obstructions, recent damage, structural failures, and surface water chutes or subsurface outfall durability.
5. Alerting the municipality (drainage superintendent) of concerns found from the inspection.
6. Discussing changes such as severances and land use with the municipality to ensure that the current drainage report reflects changes that influence expected flows. 65, 66
7. Encouraging frequent inspection and minor maintenance by the municipality to reduce long-term maintenance costs.

Abandonment of the Drain

If a notice proposing abandonment of all or a portion of a drain in which property has been assessed is received, the landowner should review present and future drainage needs relative to the current and future use of the property. 84 Be aware that "abandonment" returns the watershed to Common Law Status, subject to riparian rights and obligations. Also, landowners not abutting the watercourse lose access to an outlet. Appeals against "abandoning" are possible. See OMAF Factsheets *Common Law Aspects of Water*, and *Drainage Act Appeals*, Agdex 557.