

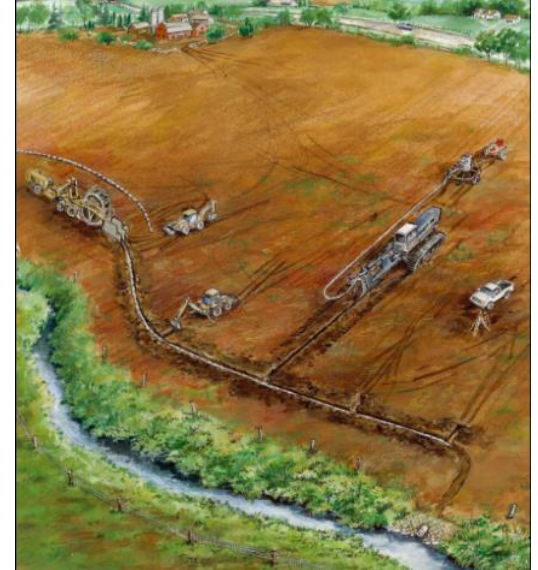
Drainage Act **Regulatory Proposal**

Stakeholder Webinars

January 2021

Agenda

- Welcome and Introductions
- Background
- Regulatory Proposal Overview
 - Discussion & Feedback
- Next Steps and Closing Remarks



Drainage Act Amendments

- Three Acts regulate drainage in rural communities: *Drainage Act*, *Agricultural Tile Drainage Installation Act*, *Tile Drainage Act*. The *Drainage Act* is a long-established piece of legislation that has not been significantly updated since 1975.
- The *Drainage Act* is unique in that it provides a process for sharing costs of construction and maintenance activities for a municipal drain, fairly assessed to private property owners within the watershed.
- Amendments to the *Drainage Act* to reduce regulatory burden were included in Bill 197, COVID-19 Economic Recovery Act which was introduced on July 8, 2020 and passed on July 21, 2020.
- The amendments enabled a new regulation to implement the following changes:
 1. A simplified process for minor improvements to municipal drains;
 2. A simplified process for approving updates to Engineer's Reports for changes to the design made during construction; and,
 3. Adoption of technical protocols by reference in regulation.
- A new Minister's Regulation is proposed to reduce administrative burden for municipalities, streamline approvals and address stakeholder concerns while maintaining environmental standards.
- A discussion paper on a new regulatory proposal is currently posted on the Environmental Registry and Regulatory Registry. It closes February 7, 2021.



Proposed Minor Improvement Process

1. Proposed Minor Improvement Process for Municipal Drains

Purpose

- Stakeholders have identified a need for a simpler process to expedite requests for minor improvements to existing municipal drains. Suggestions included;
 - setting out criteria for minor improvements;
 - enabling environmental improvements or green infrastructure;
 - allowing municipalities to manage the process; and
 - caution regarding removing any environmental protections.

Proposed Options for New Process

- OMAFRA staff are considering a range of minor improvement processes that have varying degrees of municipal and engineer involvement:
 - Streamlined process
 - Further streamlining with pre-approved engineered designs for applicable projects

Outcome

- The streamlined minor improvement process would permit minor improvement projects to become completed in a timelier and more efficient way, which will save time and reduce costs.
- Regardless of the approach, regulatory approvals [e.g. Department of Fisheries and Oceans and local Conservation Authority (CA) permits] are required for all improvement projects regardless of major or minor.
- Note: The existing improvement process will remain in place for the majority of projects, but these projects will be referred to as “major improvements.”

Minor Improvements for Municipal Drains: Eligibility Criteria

An eligible minor improvement project (on a municipal drain) would have to meet the following proposed criteria.

- The property owner initiates the improvement which is only on the one property
- The property owner is paying the full construction cost for the minor improvement
- There is no need for construction access on neighbouring properties or the property owner has already obtained consent from applicable neighbouring properties
- The minor improvement will not impact how the costs of future repair and maintenance are allocated to other property owners in the watershed
- The minor improvement does not change the drain capacity

Why criteria versus a pre-determined list of minor improvements?

- A pre-determined list would be limiting for the farmer since it is impossible to identify all probable minor improvement projects. Criteria provides more flexibility for farmers to tailor their improvement to allow it to go through the minor improvement process.

Example: A property owner may want to widen a drainage crossing which could be considered a minor improvement if it meets the above criteria.



Potential Processes

Base Proposal: Streamlined Process	Potential Add-On: Pre-approved designs
<p data-bbox="92 347 736 382">Municipal/Engineer Involvement: Some</p> <ul data-bbox="92 444 938 715" style="list-style-type: none"><li data-bbox="92 444 813 525">• Municipality would sign off that the minor improvement project meets the criteria.<li data-bbox="92 539 890 621">• Engineer would be appointed to design project and Council meeting would occur.<li data-bbox="92 635 938 715">• Upon approval, the minor improvement would be constructed.	<p data-bbox="977 347 1653 382">Municipal/Engineer Involvement: Limited</p> <ul data-bbox="977 444 1798 843" style="list-style-type: none"><li data-bbox="977 444 1798 568">• Municipality accepts a pre-approved drawing for straight forward projects (e.g. existing Ontario Provincial Standards/Drawings for culverts)<li data-bbox="977 582 1798 664">• Municipality or engineer would likely inspect the improvement project.<li data-bbox="977 678 1750 759">• New design would take some time to develop through a collaborative process.<li data-bbox="977 773 1702 843">• The design would need to ensure the drain function and capacity is maintained.

Minor Improvement Discussion Questions

Proposed Minor Improvement Process

- Do you agree with the proposed minor improvement criteria?
 - Are we missing any other possible criteria?
- Does the proposed process and the flow chart cover all the necessary steps?
- What are the benefits and challenges with this process?

Pre-Approved Minor Improvement Designs

- What types of pre-approved designs do you foresee for being possible?
- What are the benefits and challenges with this approach? For example, would there be any cost and time savings?
- If established, who should be part of the collaborative team to develop a new protocol that could include several pre-approved engineered designs?

Additional Streamlining of Minor Improvement Process

- Are there other changes that could be made that would reduce red tape for improving municipal drains?
- How can the risks be managed?

Proposed Process to Update an Engineer's Report

2. Engineer's Report Update: Proposed Approach

Purpose

- Create a process to update the Engineer's Report for changes made during construction. Including;
 - Who decides if the construction changes are required;
 - What types of changes can be included in the engineer's report update;
 - How are additional costs related to the changes determined and if future maintenance is affected whether landowners need to be consulted; and
 - Who pays for updating the report.

Proposed New Process

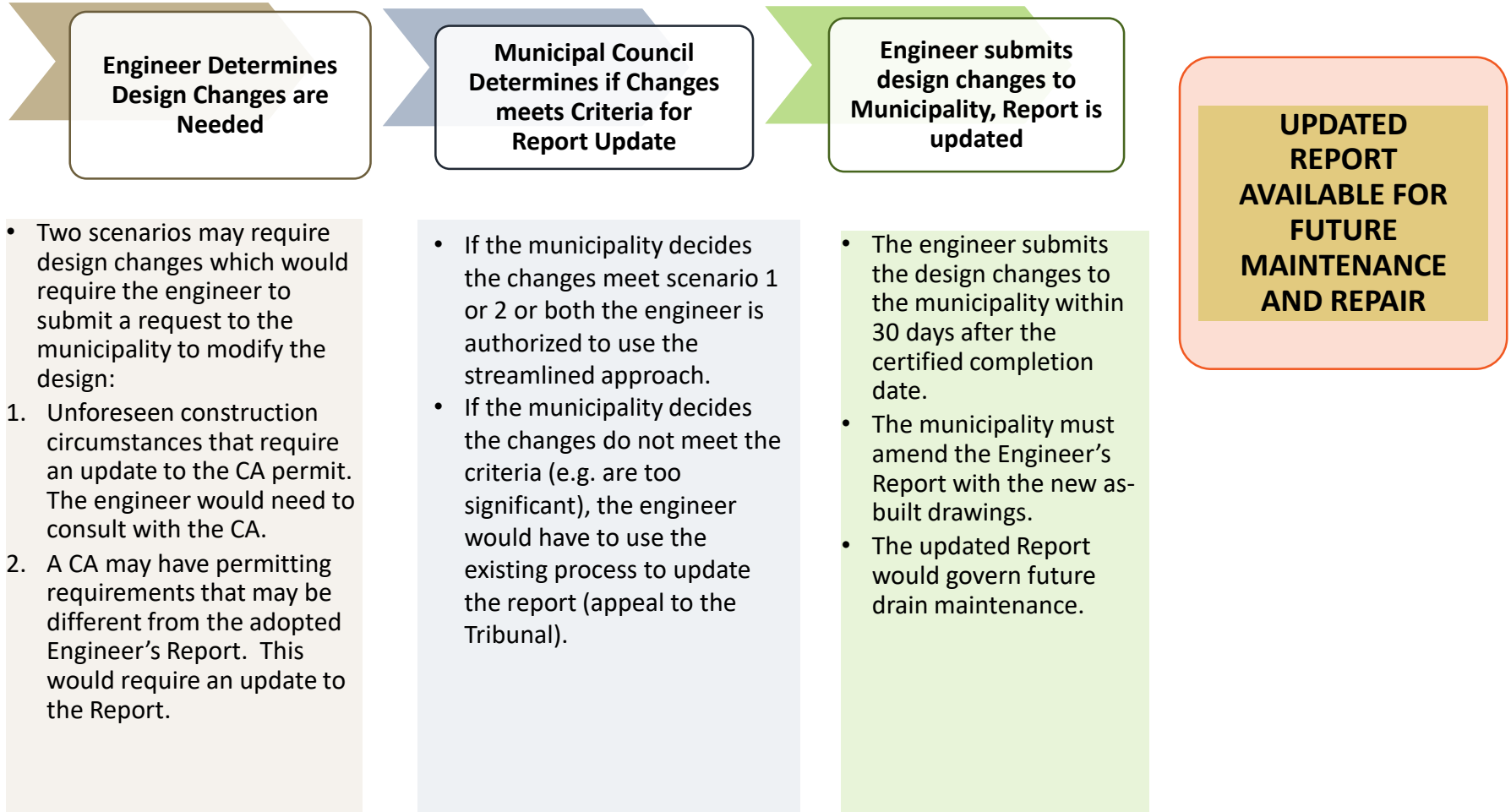
- The streamlined process for updating an Engineer's Report is only available as a result of eligible construction activities. For example, if the field site conditions (e.g. soil conditions) or a conservation authority permit required a change to the drain design.
- Includes how any additional engineering costs would be charged back to those impacted by the drain.

Outcome:

- More effective maintenance and repair activities carried out on municipal drains due to access to the correct design information
- Ongoing cost savings for municipalities and property owners

Updating the Engineer's Report For a Municipal Drain: Process

See Flow Chart for reference. The process would have no impact on existing requirements for environmental approvals and/or permits from other agencies.

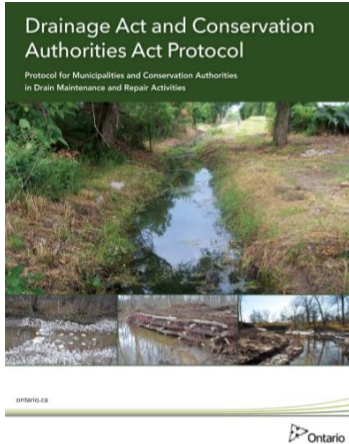


Discussion Questions

- Are the proposed criteria for updating an Engineer's Report appropriate?
 - Are we missing anything?
- Does the proposed process and the flow chart cover all the necessary steps?
- Do you have any other input?

Proposed DART Protocol Incorporation

3. Proposal for Incorporating Technical Protocols



- Municipal drainage engineers and other stakeholders identified a role for technical protocols to create a consistent multi-agency approach to drain construction and maintenance and environmental protection. Specific recommendations included:
 - Need for municipal representation when developing new protocols;
 - Ensure environmental protections while considering the rights of landowners; and
 - Suggestions for new protocols and expansion of the DART Protocol

Proposed Incorporation of Protocols

- The proposed regulation would incorporate the DART Protocol by reference. This would require some administrative updates to the DART Protocol.
- Additional new protocols could be considered to follow (could include new protocols related to pre-approved design for minor improvements, other utilities and an expansion of the DART Protocol).
- A multi-ministry working group would collaborate on the development of protocols, potentially through the existing DART framework or through an expanded framework including municipal stakeholders, Indigenous partners, the Federal Department of Fisheries and Oceans and other agencies.

Outcome:

- Future approval processes for municipal drains will benefit from consistent expectations across approving agencies, leading to faster approvals of drain construction projects

Discussion Questions

- What should be considered with the development of new technical protocols?
- What type of involvement would you like to have in the development of new protocols?
- What new protocols would you prioritize?

Prescribed Persons Proposal

Prescribed Persons

Rationale

- The recent changes to the *Drainage Act* allow for the new regulation to prescribe persons that must be notified in various sections of the Act. Moving the list of persons to be notified to a regulation would make it easier to update the lists in future.
 - Sections 5 (1) (b), 6 (1), 10 (2), 10 (8), 41 (1) of the *Drainage Act* specify notification requirements (see next slide)
 - In prescribing persons in the proposed regulation, OMAFRA would make any administrative updates. For example, the Ministry of Natural Resources would be replaced by the Ministry of Natural Resources and Forestry for each relevant section.
- No other changes to persons requiring notification are being considered at this time.

Notifications in the *Drainage Act*

Clause of Act	Current persons
Drainage works constructed on petition Section 5 (1) (b)	- each petitioner, the clerk of each local municipality that may be affected, and the conservation authority that has jurisdiction over any lands in the area or, if no such conservation authority exists, the Minister of Natural Resources
Notice that environmental appraisal is required Section 6 (1)	- a local municipality, conservation authority or the Minister of Natural Resources
Consideration of [engineers] report Section 10 (2)	- every owner of land within the area requiring drainage as determined by the engineer or described in the petition, as the case may be; - any public utility or road authority that may be affected by the drainage works; - any local municipality and conservation authority entitled to notice under section 5 or, if no authority is entitled to notice, to the Minister of Natural Resources; and - the Minister
Referral to Tribunal Section 10 (8)	- a conservation authority or regional office of the Ministry of Natural Resources, the Minister of Natural Resources
Notice of drainage works Section 41 (1)	- the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report; - the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate; - the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report; - any railway company, public utility or road authority affected by the report, other than by way of assessment; - the Minister of Natural Resources where land under his or her jurisdiction may be affected by the report; and - the Director
Notice to conservation authority Section 78 (2)	- the secretary-treasurer of each conservation authority that has jurisdiction over any of the lands that would be affected

Next Steps

- Access the full proposal at www.ero.Ontario.ca
- Provide your comments by February 7, 2021.
- Feedback gathered will be used in finalizing the proposed regulation. We are targeting spring 2021 for implementation.

Contact Information

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Thank you