

Drainage Act Discussion Paper

Summary of Proposal

Ontario's agri-food sector is an important component of the provincial economy, contributing \$39.5 billion in Gross Domestic Product (GDP) and employing nearly 822,500 people in 2017. Primary agriculture accounted for roughly 11 per cent of the sector's GDP (\$4.4 billion), generating \$13.1 billion in farm cash receipts and employing 68,500 people in 2017 while producing a diverse range of over 200 different commodities.

Drainage is critical for supporting agricultural productivity and the production of food. It also enables sector growth by delivering environmental and economic benefits such as improved crop productivity, nutrient loss reduction, reduced soil erosion, habitat protection and flood control. Though mostly unnoticed, it is an essential part of the rural Ontario landscape with more than 45,000 kilometers of municipal drains servicing approximately 1.75 million hectares of cropland.

It also positively impacts the economy as over \$100M is privately invested in drainage annually which has created 800-900 jobs and supports over 100 independent businesses.

To permit the construction and maintenance of municipal drains and private agricultural drainage systems, the agricultural sector has relied on drainage legislation for over 150 years. OMAFRA administers three pieces of agricultural drainage legislation: the *Drainage Act*, the *Tile Drainage Act* and the *Agricultural Tile Drainage Installation Act*.

The *Drainage Act* is unique in many ways. It establishes a process for resolving property right disputes involving water flow and drainage. It is premised on a user pay system where costs are fairly assessed to the property owners within the watershed. A drainage engineers report provides the design and allocation of project costs for a municipal drain that involves multiple private properties. Through collaboration between private landowners, it has helped address broader societal benefits such as flood control within Ontario's rural communities.

The *Drainage Act* is one of the Province's oldest pieces of legislation. Passed in 1859, there have not been any significant changes to the legislation since 1975. This has led to stakeholders requesting changes to the Act. For example, some stakeholders have indicated there are too many steps and agencies involved for drainage construction, maintenance and improvements to be approved in a timely and less costly way. Others have suggested that additional protocols (such as the *Drainage Act and Conservation Authorities Act Protocol*) could help with streamlining approvals for low risk activities.

To address some of these stakeholder concerns and reduce burden (e.g. project delays and projects costs) while maintaining environmental standards, OMAFRA is considering changes to the *Drainage Act*. This is part of the Ontario Government's broader approach to cutting red tape and reducing regulatory burden for all businesses, to lower business operating costs and improve Ontario's competitiveness.

OMAFRA is proposing changes to the Drainage Act that would, if passed:

- Create a new streamlined *Drainage Act* process for minor improvements to drainage systems;
- Enable a simplified process to update the engineer's report to account for changes to the design made during construction; and
- Provide the minister with legislative authority to adopt technical protocols such as the DART Protocol by reference in regulation.

1. Supporting Technical Protocols

Authority to adopt protocols by reference in regulation

Currently, projects under the *Drainage Act* typically require approvals from multiple agencies (e.g. conservation authorities, Department of Fisheries and Oceans, Ministry of Natural Resources and Forestry) to address protection of endangered species, water management and flood risks and other environmental considerations. When not coordinated, these additional approvals can add cost and project delays.

Protocols (such as the *Drainage Act and Conservation Authorities Act Protocol*) when adopted, have been demonstrated to reduce project delays and project costs while maintaining environmental protections. OMAFRA is proposing to amend the *Drainage Act* to enable broader adoption of this collaborative approach by providing legislative authority for the minister to develop and sign off on technical protocols.

Similar to the DART Protocol that originated from a multi-agency Drainage Act and Regulations Team (DART), OMAFRA would work in collaboration with other ministries, regulatory agencies, conservation authorities, municipalities, farming organizations, indigenous organizations and others on the development of any new protocols.

The DART Protocol was established in 2008 to streamline approvals for municipal drain repair and maintenance projects that meet *Conservation Authorities Act* permitting requirements in order to support compliance with *Drainage Act* requirements. For example, specific drainage maintenance and repair that follows environmental mitigation measures recommended in the

DART Protocol are provided with a streamlined approval under section 28 of the *Conservation Authorities Act* where conservation authorities have adopted the Protocol.

Numerous stakeholders contributed to the development of the DART protocol including the Ministry of Natural Resources and Forestry, Conservation Ontario, conservation authorities, the Drainage Superintendents Association of Ontario, the Society of Professional Engineers Land Drainage Committee, Ontario Federation of Agriculture, Ontario Farm Environmental Coalition and the Rural Ontario Municipal Association.

2. Streamlining Approvals

Creating a new process for minor improvements

The *Drainage Act* establishes a process for resolving issues involving water flow and drainage. However, it doesn't enable a streamlined process for simple drain improvement projects that have minimal impact on the environment and other properties. This leads to a very lengthy and involved process that involves all assessed landowners, creating additional cost and burden, and can result in delaying or avoiding improvement activities.

OMAFRA is considering a new *Drainage Act* process for minor improvements so projects could be completed in a less costly and more efficient way. Examples of minor improvements could include: creating or widening a crossing, relocating a drain on an individual property or the addition of a feature with environmental benefits (e.g. buffer, water retention area). It would also allow for easier adoption of some green infrastructure technologies that have multiple benefits.

It is estimated that a streamlined minor improvement process could reduce the approval process by half; from 9 months to possibly 4-5 months. Less process and fewer meetings could result in an estimated 10 per cent savings a year for minor improvement project costs. The reduced process and costs would be especially important in facilitating environmental improvements to drains.

Moving the requirements into a new regulation would define minor improvement projects and describe a process to implement them in a streamlined way.

3. Simplifying Administrative Processes

Accounting for changes to drain design during construction

An engineer's report is prepared at the beginning of a drainage project to assess water drainage needs, affected landowners, system design and costs. It is common for drainage systems built under the *Drainage Act* to deviate from the design plans in the engineer's report because of unforeseen site conditions in the field. These changes are currently not identified in the engineer's report since there is no authority or defined process in the Act to follow to amend the report with new information. This can lead to a lack of clarity for municipal drainage superintendents who plan and implement maintenance and repair activity in accordance with the engineer's report.

OMAFRA is considering amendments to the *Drainage Act* to enable a simplified process to update the engineer's report to account for any changes made during construction. This would recognize and align with existing engineering practices.

It would also ensure the municipality has the authority to maintain the drain "as built" which would ensure that landowners are fairly assessed for the costs of maintaining and repairing the drain. By providing clarity to municipalities on the content of the engineer's report (accounting for changes made to the design during construction), cost savings could also be expected for municipalities while increasing certainty for landowners.

Summary

Changes to the *Drainage Act* are proposed that would, if passed, enable a streamlined process for drainage projects to meet the requirements of property owners, municipalities and a cross section of government agencies. Additional housekeeping amendments may be considered.

The ministry is seeking your feedback on potential amendments to the *Drainage Act* and related programs. Your feedback will be considered during the development of possible legislative amendments.

We are also committed to consulting further on more specific changes to be included in a regulatory proposal for minor drain improvements.

Questions for Consultation

- i. Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?*
- ii. What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?*
- iii. Do you have any specific concerns with any of the items discussed in the paper?*
- iv. Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?*

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