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Re: ERO no. 019-1187, Drainage Act Discussion Paper

As Drainage Superintendents of Norfolk County we would like to take this opportunity to comment on the Drainage Act Discussion Paper ERO 019-1187.

Drainage Superintendents are responsible under the Drainage Act (“The Act”) to maintain existing and oversee construction of new Municipal Drains throughout their municipalities. Superintendents are the municipal contact for agencies and landowners. Landowners have paid to have municipal infrastructure constructed and maintained over the last century to provide an outlet for surface and subsurface drainage systems.

For many years there have been excessive delays and associated costs relating to updating and improving drainage systems as well as the permitting and approvals processes. These delays and costs are directly imposed on owners assessed on the municipal drains which directly impacts their contribution to the local community and social economic markets.

We are excited to see this proposal as an opportunity to streamline minor improvements and address minor changes that occur during construction. From the time an engineer report is initiated under the Act to the time of construction and or future maintenance, ownerships and land drainage needs are constantly evolving. We would consider these two points together under a single amendment to the Act. With the growing stresses of urban encroachment on rural communities, crop values and changing land use practices there is an ever-growing need to change, update and improve drainage systems to address land use changes and environmental management practices. After a drain has been established there must be an efficient way to address design issues, update designs and manage the municipal and landowner responsibilities without recreating unnecessary burden on the owners or municipalities.

The time delay along with engineering and administration costs associated in correcting a drain report or procuring a new engineers report, have proven prohibitive to many owners. This results in owners not being able to optimise their land use practices and in some instances undertaking unauthorized alterations or compromising the drainage systems.

The minor improvements and alterations must consider the owners needs for minor relocations of drains and appurtenances such as moving a drain from bisecting a property, moving or adding crossings, catchbasins and minor enclosures to facilitate land use changes. Owners that benefit from drains are also burdened by the water that outlets through their property. In many instances owners would accept the cost of a minor improvement to their benefit but the requirement of a report including neighbours

appeals through the Drainage Act process may be a costly and time consuming delay which they are not willing to accept.

Land severances and developments may establish an immediate need to alter or upgrade an existing drain. These changes may be to the sole benefit of a single owner and should not impact adjacent or upstream owners. Many of these changes are facilitated through site plans or development agreements where engineers are already hired to complete the stormwater management designs and obtain approvals through municipal or provincial regulations and policies. If there is a need to update the current engineers report, this creates unnecessary duplication of work for the design, reporting, permits and approvals, all at the cost of the owners.

The Ontario Drainage Act has been viewed by some individuals as having a negative impact to the environment, when in fact, in more recent years, Norfolk County has been working to improve this perception through its Wetland Drain Enhancement Projects. We recognize that agricultural and artificial drainage has a direct relation to receiving watercourses, and in some cases directly to the Great Lakes. In recent years drainage design practices have evolved to include environmental features and habitat enhancements through existing or proposed drainage systems, which improve water quality, water quantity and habitat features. To date the engineering and administration costs to update the engineers drain report to incorporate these environmental enhancements, including the time delays caused by the Act has proven to restrict the available funding sources, resulting in projects becoming not feasible or impractical. Currently there is no cost benefit, mechanism to recover the costs, or incentives being offered to include environmental enhancements to a municipal drain. We recommend that where areas can be improved or new environmental features could be incorporated, a strategy be developed to streamline the process for adding such works and as a result, such enhancements would be better protected under the Drainage Act. It would be a great addition to the strategy if OMAFRA were able to partner with other environmental agencies to bring funding to the table in support of these environmental enhancements.

Changes during Construction

Often what is found in the field or what is in an as-constructed plan varies from what is in the approved drain by-law. Whether the changes have occurred recently or during the original construction of the drain. At some point during construction these changes were permitted or deemed necessary by an engineer, but are not specifically addressed in the reports, designs or assessment schedules which tend to cause liability issues or confusion for the municipalities and owners when maintenance is required. We agree there must be an ability to easily incorporate these changes without creating an unnecessary additional burden on the owners. Between this proposed amendment to the Act and the previous section there should also be consideration to address a retroactive incorporation of changes made during construction.

We urge caution in defining the scope of this proposal. We must ensure the engineers remain liable for their original designs and are accountable to the owners for all additional engineering, permits and approvals that may have otherwise been applicable or subject to appeal through the initial report

process or through a quality of construction appeal. It may be advantageous to identify changes on the drain within the Completion Certificate prepared by the Engineer or possibly an amending by-law to adopt the as-constructed plans.

Also, if the design changes are relative to specific owner requests during construction, utilities or environmental approval and permit conditions a component of this proposal must consider the ability to assess individuals or agencies for the additional engineering and administration in addition to the original drain estimates, and assessments.

Technical Protocol Regulation

There are many existing mechanisms for permitting, reporting and monitoring activities under varying legislation. The ability to define and regulate protocols for notifications, permitting and approvals relating to drainage works will improve current practices and provide clarity in the planning, design and scheduling needs of drainage superintendents, drainage engineers and approval agencies. Permit submittals, reviews and approvals all take time and resources this may alleviate delays to projects and project costs. As such we foresee the proposal will improve our ability to complete work efficiently under the Drainage Act.

Many Drainage Act projects are being submitted to multiple provincial agencies all requiring the same or similar information. The submittal processes or the form of submittal is inconsistent at best. This results in duplication of process, permits and associated fees as well as the confusion as to what and when information is required. With the lack of understanding across the province this is resulting in many resubmittals and re-engineering to revise plans and designs. The associated delays and costs are a great burden to the affected owners as well as the approval agencies. A well-defined process including timelines for submittals and responses and appropriate forms containing the necessary information when secure under regulation should provide a clear understanding of the requirements for all parties involved from the initial proposal submittal to the final action in the field.

Many years of work has gone into establishing the Drainage Act and Conservation Authorities Act (DART) protocol. This has been scrutinized by Drainage Superintendents, Conservation Ontario, and various other staff from environmental agencies. The DART protocol is all encompassing and should be considered the highest standard for all municipal drain environmental approvals for all permitting and approval submittals moving forward.

These regulations or protocols must also consider landscape and local needs. Superintendents have worked in various degrees with local Conservation authorities to establish local protocols and practices that work for their specific areas and landscapes. The current application and use of the DART protocol for Department of Fisheries and Oceans (DFO) permit and approvals should be considered. Depending on the location and scale of the proposed work the DFO have established varying levels of authorizations including "Do Not Send" lists, letter of authorization and full permits. The DFO approvals are depending on the location, scope of the work and scale of the watercourses.

Additional Suggestions

Define and enforce the use of “*Environmental Appraisal*” Section 6 of the Act. This section requires notification to various agencies at the onset of a project and provides an opportunity to request an “*Environmental Appraisal*”. This section is rarely requested by these agencies for two primary reasons. Firstly, the Cost is attributed to the proponent requesting such. Second, the term “*Appraisal*” is undefined. Under current practice agencies are requesting studies and reports throughout the *Drainage Act* process or upon submittal of the final report. This stage in the *Drainage Act* process is way too late to address design changes without incurring substantial redesign and engineering costs and additional review submittals. These agencies have created an ability to request any environmental appraisal they deem necessary at the cost of a project as long as they are not referred to as “*appraisals*”. These studies initiated in the midst of a project or after the final report has been adopted are excessively costly, creates significant time delays, and adds considerable engineering or redesign, all of which are often at the cost of the owners affected by the drainage system. This issue may be addressed simply by properly defining the term “*Environmental Appraisal*” to include any study report or evaluation deemed necessary of the area requiring drainage for environmental purposes.

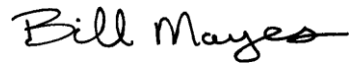
The *Drainage Act* is very specific in the duties and responsibilities of the Engineer. However beyond the Consideration of the engineers report and appeals there is minimal discussion of the engineer’s responsibilities. All duties of the engineer that would be required after the consideration should be clearly defined in the Act so that it can be encompassed in the Engineers Report or should be completed by the municipality at the municipalities’ expense. Items such as procuring construction, inspection, grant application, calculation of final assessments, construction warranty inspections, additional monitoring for permits and approvals, landowner disputes with construction, etc. Consideration to these items and how costs are to be distributed to reduce or address the costs after the report has been filed. The costs of appeals, additional meetings with owners, permits and approvals, contract administration are continually growing. The *Drainage Act* is quite unclear as to who is responsible for these additional cost unless awarded through the Tribunal or Court decisions. This may be an ideal opportunity to address this issue.

The ability to establish a simple process to update entire assessment schedules or merge multiple drainage systems into one current drain report. Many municipal drainage systems have old assessment schedules with multiple apportionments, missed severances as well as separate reports and assessments applicable only part or a branch of the entire system. When looked at as whole, these systems, their reports and assessments may for lack of a better term be considered outdated or unfair to the assessed owners. These issues hinder or complicate maintenance activities for Drainage Superintendents, requiring the need to refer to multiple reports and assessment schedules and maintenance clauses to maintain a single system. It would be ideal if an engineer could provide a new plan, brief report, and assessment schedules consolidating existing reports for the same and connected systems under the streamlined minor improvement proposal. This could be completed under the maintenance provisions of the Act and assessed as maintenance to the watershed. Providing this opportunity for municipalities and superintendents to better manage their reports and assessment schedules will reduce the need for new engineer reports under Section 76 and 78 of the Act reducing engineering and administration cost to owners and the workload being assigned to engineers.

Lastly, we would like consideration to the ability to incorporate minor improvements and alterations that have been made historically that may not be addressed in the reports but exist in the field such as incorporating drain crossings which have been designed and constructed appropriately but may have been installed privately or under approvals outside the *Drainage Act* or under previous drainage legislation.

In closing, we are interested in partaking in the next steps of defining and are open to discuss our comments at a time that is convenient for you.

Yours truly,



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