

February 19, 2020

BY E-MAIL ONLY (sara.peckford@ontario.ca)

Sara Peckford
Ministry of Agriculture, Food and Rural Affairs
Food Safety and Environmental Policy Branch
1 Stone Road West
Ontario Government Building, 2nd floor, Southwest
Guelph, ON
N1G 4Y2

Dear Ms. Peckford:

Re: Drainage Act Discussion Paper (ERO #019-1187)

Thank you for the opportunity to comment on the Ministry of Agriculture, Food and Rural Affairs' Environmental Registry (ERO) posting on the Drainage Act Discussion Paper.

The Toronto and Region Conservation Authority (TRCA) conducts itself in accordance with the objects, powers, roles and responsibilities set out for conservation authorities (CA) under the *Conservation Authorities Act* and the MNR Procedural Manual chapter on CA policies and procedures as:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

In these roles, TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. As stewards of the land, the agricultural community is a key partner in achieving the long-term health of our watersheds.

Drainage Act and Conservation Authorities Act Protocol

The purpose of the *Drainage Act* is to establish a process for creating mutual agreement drains and petition drains (also called municipal drains). The ERO Drainage Act Discussion Paper focuses on petition drains, not mutual agreement drains. Petition drains are created when landowners petition area municipalities for design and construction of drainage works, with the associated costs assessed to landowners benefitting from the drainage works. These municipal drains are generally constructed to improve agricultural drainage.

The process to install a new municipal drain, or to alter or expand an existing municipal drain, may trigger the need for a conservation authority permit under section 28 of the *Conservation Authorities*

Act (CA Act). Additionally, maintenance and repair of existing municipal drains is the legal responsibility of municipalities and may also require a CA Act s.28 permit.

In order to resolve legal liability issues for municipalities and conservation authorities arising from municipal drain provisions in the *Drainage Act* and the *Conservation Authorities Act*, the inter-agency *Drainage Act & Section 28 Regulations Team* (DART) was formed in 2008. The DART produced the “*Drainage Act and Conservation Authorities Act Protocol*” (the DART Protocol) and joint Drain Maintenance or Repair Notification Form (the Form), which may be used to apply for permissions from conservation authorities, the Ministry of Natural Resources and Forestry, and Fisheries and Oceans Canada for municipal drain maintenance and repair. The DART Protocol and Form do not address permissions for new drains and improvements to existing drains. Use of the Form simplifies the application process for proponents by using a single form for all permissions. The Form must be submitted to each of the agencies from which permissions are required.

Regarding CA Act s.28 permissions, the DART Protocol includes a set of Standard Compliance Requirements for regular repair and maintenance activities that, if followed, serve as the written permission to proceed with work under the CA Act. Implementation of the DART Protocol has improved regulatory certainty, reduced burden and streamlined CA Act s.28 permitting requirements for routine maintenance and repair of existing municipal drains. This is to the benefit of landowners that depend on municipal drains and the municipalities liable for the drainage works, while still meeting the requirements of CA regulations.

Government Proposal

We understand the government plans to propose changes to the *Drainage Act* that would reduce burden, streamline approvals and address stakeholder concerns while maintaining environmental standards. The *Drainage Act Discussion Paper* describes the proposed changes as intending to:

- provide the minister with legislative authority to develop and sign off on technical protocols such as the *Drainage Act and Conservation Authorities Act Protocol*
- create a new streamlined *Drainage Act* process for minor improvements
- enable a simplified process to update the engineer’s report to account for changes to the design made during construction

General Comments

TRCA staff have reviewed the proposal as described in the Discussion Paper and support the initiative to streamline review processes to facilitate drainage critical for agricultural productivity and the production of food.

TRCA Responses to Discussion Paper Questions

Consultation Question 1:

Beyond the DART Protocol, what additional protocols could be established to help streamline approvals?

TRCA is supportive of new protocols consistent with the DART Protocol approach to appropriately streamline review processes for agricultural drainage works while meeting the requirements of s.28 CA regulations. Therefore, any new streamlining measures should maintain requirements for appropriate technical analyses for all drainage works that are not like-for-like replacement projects to ensure natural features and hazards are protected and adverse upstream or downstream impacts do not occur. For example, a Qualified Professional should prepare a hydraulic analysis for culvert

extensions that form part of the approved drain infrastructure. Hydraulic analyses should be required for other proposals to change channel geometry and similar projects that may affect the flood plain.

Consultation Question 2:

What projects should be included in the definition of minor improvements? What else would you like a minor process to achieve?

The parameters and associated thresholds within the new processes for minor works should define which drainage work types, size and scale constitute minor improvements. The discussion paper mentions developing protocols to streamline approvals for “low risk activities.” As with the term “minor improvement,” the term “low risk activities” should be defined and CAs could assist given our efforts through the DART – see the definition of minor projects as articulated in the current DART Protocol. We note that the 2017 Fisheries and Oceans Canada publication, “Guidance for Maintaining and Repairing Municipal Drains in Ontario” may provide additional guidance.

Consultation Question 3:

Do you have any specific concerns with any of the items discussed in the paper?

Regarding section 3. Simplifying Administrative Processes, TRCA is supportive of a simplified process to update the engineer’s report to account for any changes made during construction. This could be a practical measure and an improvement in the process. TRCA suggests that any design changes from the permitted/approved design should be in conformance with any conditions of the initially permitted design.

Consultation Question 4:

Do you have any additional suggestions to reduce burden or contribute to additional opportunities for your business?

In order to assist applicants, technical guidance should clearly articulate what is required in technical reports to support a project. For instance, for an environmental appraisal (section 6 of the *Drainage Act*), the method to weigh and evaluate criteria in the appraisal through a sustainability lens (examining the economic, environmental and social aspects of proposed drainage works) should be outlined. This additional guidance would enhance certainty for all stakeholders and contribute to efficient and effective review processes.

In TRCA’s experience, there are situations where watercourses that form part of municipal drains are re-naturalized and become surrounded by urban development through ongoing planning processes. Currently, municipal drains in urban settings that are not abandoned through *Drainage Act* processes (sections 19 and 84) involve assessing individual urban dwellings’ drain maintenance costs (taxes to maintain drains), even though these drains are no longer necessary for agricultural purposes. Amendments to the *Drainage Act*, or development of new protocols, might consider outlining terms for what happens to a municipal drain when urban development occurs, and the drain is no longer necessary for agricultural purposes.

Drain abandonment that occurs upon urban development may present opportunities for ecological restoration of watercourses and avoiding future drain maintenance activities that no longer benefit surrounding land uses.

TRCA Recommendations

In order to achieve a streamlined process to support agricultural operations and continue to ensure the protection of people and property from natural hazards and the conservation of natural resources, TRCA recommends that:

- 1) The introduction of new streamlining measures or any proposed changes to the *Drainage Act* maintain the requirement for a permit where applicable, in accordance with section 28 of the *Conservation Authorities Act* and the DART Protocol;
- 2) The parameters and thresholds defining minor improvements and low risk activities, where they affect CA regulated activities, are developed in consultation with CAs.
- 3) Technical guidance for study requirements be made available to applicants to enhance certainty for project proponents.
- 4) Should the proposed amendments to the Act or new streamlining measures address drain abandonment, the protection and restoration of any remaining natural features be considered in consultation with conservation authorities as applicable.

Thank you once again for the opportunity to provide comments on the Drainage Act Discussion Paper. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.667.6290 or at john.mackenzie@trca.ca.

Sincerely,



John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer

BY E-MAIL

cc:

TRCA: Laurie Nelson, Director, Policy Planning
Sameer Dhalla, Director, Development and Engineering Services
Moranne McDonnell, Director, Restoration and Infrastructure