



Drainage Act and Conservation Authorities Act Protocol

Overview

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Introduction

- Protocol applies to *Conservation Authorities Act* and *Drainage Act* intersection only, for S.28 permits only.
- ~~Fisheries Act~~
- ~~Endangered Species Act~~
- Focus is on maintenance and repair
- New Protocol provides guidance on most appropriate practices and permit requirements, through standardized requirements for common maintenance & repair activities
- Provincial guidance that should be followed by CAs and Municipalities – not legislated.

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How does it work?

- Protocol outlines a number of standard drain maintenance and repair activities
- Set of Standard Compliance Requirements for each one
- These are the basic standards that would need to be upheld in carrying out the repair/maintenance activity in order to be in compliance with CA Act requirements.
- CA may allow the use of the appropriate SCR in place of a full permit
- Signing off on the use of an SCR constitutes written permission under the CA Act regulations.

Procedures – before applications

- Both parties have responsibilities to ensure work is completed when required
- In order to plan approvals and ensure they can be completed in the desired timeframe,
 - Municipalities should communicate annual workplan to the CA as early as possible in the year
 - Municipalities and CAs should meet at least annually to discuss the workplan to:
 - Identify potential concerns
 - Discuss CA availability/timing throughout the year and coordinate a schedule for applications
 - Identify projects which may require a full permit application.

Procedures

- Municipality submits a “Notification of Drain Maintenance or Repair” form to the CA
 - Form is available from MNR, OMAFRA, DSAO, and CO
 - Modified version of Fisheries Act application form for drains
 - Includes information for approvals under Endangered Species Act and Fisheries Act as well. Form must be submitted separately to MNR if approvals under ESA are required.
- CA acknowledges receipt of the form to the municipality
- CA screens the work in the notification form. May contact the drainage superintendent to request additional information if needed.
- CA sends signed copy of the SCR form to municipality
- This constitutes written permission under the appropriate CA Act S.28 regulation.

Procedures

- The CA should contact the municipality as soon as possible if it has concerns that the project may not be able to meet the Standard Compliance Requirements.
- The CA will endeavour to provide sign-off of an SCR within 15 working days of receipt of a complete notification form.
- The municipality then undertakes the work in accordance with the SCRs.
- Monitoring is done jointly by both parties, at their discretion.

Procedures – CA discretion

- CAs may request a full permit application (using regular process) if a project is deemed beyond the scope of an SCR
- SCR statements are available for activities within regulated wetland limits, but a full permit is recommended.
- Decision to use SCR or full permit process is at the discretion of the CA.



Legislated responsibility

- Does not change or remove a CA's ability in regulation to deny a permit. However:
- Municipality has a duty, under legislation, to repair and maintain drains
- CA has a duty under legislation to uphold regulation
- Therefore, CA and municipality both have a responsibility to work together to ensure repair/maintenance can be completed and that requirements of CA Act are met.

Procedures – emergency

- Exceptions from general mitigation requirements should occur only in emergency situations.
- Emergency situations – those that demand immediate attention from the municipality; e.g., structural failure of a crossing on a drain or flooding of property caused by blockage
- If the municipality must undertake emergency measures in these situations, the drainage superintendent should notify the CA as soon as is practical.



Definitions

- Protocol contains a glossary of definitions: some from Drainage Act, Conservation Authorities Act, technical guides, and Provincial Policy Statement (2005); others created for purpose of this Protocol.
- Terms that are defined in the Protocol are italicized.
- Key definitions include:
 - Municipal Drain
 - Repair, maintenance
 - Wetland
 - Regulated Wetland Limit
 - Staged cleanout
 - Two stage/low-flow channel

Communications before, during, after

- Good communication is fundamental for the Protocol to be effective:
- Regular communication between CAs and municipalities throughout the year for
 - Work planning
 - Understanding one another's interests
 - Being aware of changes and developments to planned projects or to policies
- Annual work planning meeting
- Maintain contact on individual applications to discuss timelines, expectations, etc.
- Good relationships and a common understanding of goals will head off issues before they become serious.

Resolving issues

- Drainage Issues Resolution Team (DIRT)
- Teams are made up of representatives from the drainage sector and from CAs (two of each)
- Representatives are volunteers appointed by OMAFRA and MNR for each case.
- If a dispute occurs over a permission, parties can refer the issue to a DIRT as an alternative to legal processes.
- Parties will contact MNR and OMAFRA to request assistance, and will submit concerns in writing to their representatives.
- MNR and OMAFRA will appoint representatives who are from the same geographic area, but have no involvement with the issue (e.g., neighbouring municipalities and conservation authorities).

Resolving issues

- DIRTs act as mediation teams and will provide an independent assessment of the best means of addressing the requirements of both the *Drainage Act* and *CA Act*.
- Teams will endeavour to render a decision within thirty days of collecting all information and conducting any field investigation that may be required.
- Teams will aim to come to a consensus on a recommendation; if no consensus can be reached, teams may offer multiple solutions.
- Proposed solutions are recommendations and are not binding on participants. They do not set legal precedent.
- If no acceptable resolutions can be found, standard statutory procedures remain available.

Summary

- Uses new notification form to simplify applying for multiple permissions
- Uses Standard Compliance Requirements to streamline permissions
- Provides a mechanism for resolving issues.
- Communication is key: annual meetings and regular communication