

FINAL DRAFT
2010 DRAINAGE PRACTITIONERS MEETING
MINUTES OF MEETING
Thursday October 21, 2010
Holiday Inn Hotel and Conference Centre
Guelph, Ontario

1.0 Attendance and Call to Order

The meeting was called to order at 7:40 p.m. An attendance sheet was circulated at the meeting and there were 26 people in attendance of which 11 were practitioners.

2.0 Minutes of the Last Meeting

Motion by John Kuntze and seconded by Tom Pridham that the minutes of the Thursday October 29, 2009 meeting as distributed be accepted. Carried. The minutes now can be found on the website www.landdrainageengineers.com.

3.0 Old Business

No old business.

4.0 Chairman's Report – Tim Oliver

Chairman, Tim Oliver reported on the activities of the O.S.P.E. Land Drainage Committee for the past year.

- Amendments to the Drainage Act: Open for Business, Bill 68 received 3rd reading today
The Amendments to the Drainage Act did not include the LDC recommendations to changes to Section 58(4) of the Drainage Act.
- DAWG – latest meeting was held September 15th, 2010
Mike DeVos is our representative
DFO is preparing an 'F' Drain position statement
'F' Drains are intermittent with low flow or no flow – with a Letter of Advice from the CA work may be done any time
Drain Classifications 'A' – 'F' - maintenance within last 10 years has been removed – classification will not change even if maintenance work has not been performed within the last 10 years.
- MTO – Directive B12 now complete

Software program to be finalized in early 2011 and it will be on the MTO website.

5.0 OMAFRA Report - Sid VanderVeen, P. Eng. Drainage Coordinator
Environmental Management Branch

KEY OMAFRA CONTACTS

In the Ministry of Agriculture, Food and Rural Affairs, drainage is administered by the Environmental Management Branch. The following are a few of the key people in the Ministry responsible for the administration of the program:

- In January 2010, Carol Mitchell was appointed Minister of Agriculture, Food and Rural Affairs.
- Last month, John Burke became Deputy Minister of Agriculture, Food and Rural Affairs.
- Jim Richardson remains as Director of the Environmental Management Branch.
- Len Senyshyn remains as Manager of Approvals, Certification and Licensing and is responsible for the Ministry's drainage programs.
- Your specific drainage contacts at OMAFRA continue to be:
Valerie Anderson is responsible for data entry for the Tile Loan Program and the *Drainage Act* grants. She is also responsible for the processing of license renewals and for the management of our files and electronic information. Valerie can be reached by phone at 519-826-3324 or by email at valerie.j.anderson@ontario.ca

- Andy Kester is the Drainage Analyst/Inspector and is responsible for the review and processing of tile loans and of grants under the *Drainage Act*. He is also responsible for inspections and contractor training under the *Agricultural Tile Drainage Installation Act*. Andy can be reached 519-826-3551 or by email at andy.kester@ontario.ca
- Sid Vander Veen is the Drainage Coordinator and is responsible for policy, issues management, training for the *Drainage Act* and *Tile Drainage Act*. Sid can be reached by phone at 519-826-3552 or by email at sid.vanderveen@ontario.ca
- Richard Boychuk has joined us this year through the Ontario Internship Program. Richard spent last year working in Strategic Policy with our Ministry.
- Jacqui Laporte is an Environmental Specialist within our Branch of OMAFRA. She is assisting Brett Ruck with a Grass Pickerel study in Fort Erie.
- Andrew Jamieson is leading some work under the Drainage Act in areas without municipal organization.
- Rob Waters is the Drainage Referee and Bill Turville is the Acting Drainage Referee.

MINISTRY ACTIVITIES:

The following upcoming Courses have been planned:

- The 2011 Drainage Superintendents Course will be held from February 28 to March 4, 2011 at the Provincial Government Building at 1 Stone Road West in Guelph.
- The dates and locations for the Rural Municipal Drainage Courses and the Calculating Drainage Assessment Courses have not been set yet. However, our preliminary plans are to hold these courses in the area of London, Essex, Renfrew and Fort Frances.

E-LEARNING

Last year I reported on an e-learning tool that we were developing for our website. This will be an interactive website that focuses primarily on common law drainage problems. The site will guide the individual to specific points they need to understand as well as provide them with specific suggestions to resolve their issues. We expect the tool to reduce the number of “common law” questions we receive and hope that the tool will also be useful for municipal staff.

This project is moving along. A significant amount of time has been spent developing the information for the e-learning tool. A student was hired to develop the website and project completion is expected by the end of the calendar year.

DRAINAGE BMP (Best Management Practices):

The Drainage BMP is also nearing completion. Last year I reported that a draft of the BMP had been developed and was being circulated for comment. As a result of the work done by the Drainage BMP committee, the Drainage BMP document grew in content to the point where it became unwieldy. A decision was made to take a different approach to this document:

- We are proceeding with the publication of the overall Drainage BMP, but it is unlikely to be printed. This project will be completed by March 31, 2011.
- We are proceeding with a shorter Cropland Drainage BMP. This BMP booklet should be 40-50 pages in length and will be published and printed by March 31, 2011.
- Next fiscal year we plan to proceed with a shorter Constructed Drain BMP (or Communal Drain BMP) that will cover municipal drains and other shared drainage systems.

Greg Nancekivell (Dietrich Engineering Limited) is involved in this project. Once we resume the Constructed Drains BMP, we may need to consult some more people.

RURAL DRAINAGE WEBSITE: www.omafra.gov.on.ca/english/landuse/gis/map_dis.htm

The Rural Drainage Mapping website combines a number of different data layers including cities & towns, geographic township, lots, municipal boundaries, roads, railways, conservation authority boundaries, constructed drains, tile drainage, woodlands, rivers, lakes, Ontario soils, power lines and more.

Bob Steiss from our GIS Unit has been working with a number of partners to improve the content of the website which we expect to implement early in 2011. First the title will be changing from “Rural Drainage Mapping” to “Agricultural Information Atlas” website and the following data layers will be added: contour data, watershed information, assessment parcels, geology, soils (CLI), hydrologic soil groups, water wells, petroleum wells, utilities, OBM mapping index and more.

With the addition of the assessment parcels, we will also be able to add a layer showing those parcels of land that are assessed at the Farm Property Class Tax Rate, which is one of the key criteria for eligibility for the *Drainage Act* grants.

BILL 68 – PROPOSED CHANGES TO THE DRAINAGE ACT

At the Practitioners Meeting last year, I reported on the government’s Open for Business initiative and indicated that we were consulting with the Land Drainage Committee and the Drainage Superintendents Association of Ontario about possible changes to the *Drainage Act*. A proposal went forward and was incorporated into Bill 68. I received notice earlier today that third reading of the Bill was debated and was passed.

As a result of Bill 68 and subject to Royal Assent, the following changes have been made to the *Drainage Act*:

- Repeal of Section 3 (requisition drains). This section is rarely used anymore and usually results in issues when it is used. All references to Section 3 and requisitions drains in later sections of the *Drainage Act* are also removed. Subsection 3(18) continues the authority of Award Drains and is not being repealed.
- Changing all references to “written notice” to “notice”, of “mailed” to “sent” and removing all requirements to send “by prepaid mail”. In this electronic age, these changes will give municipalities’ additional flexibility in communicating with property owners.
- Changing the time period for engineers to submit reports from 6 months to one year.
- Clarifying:
 - Section 52(1) - clearly identify the three grounds of appeal to the Court of Revision.
 - Section 78(1) – activities authorized by this section were pulled into a separate subsection
 - Section 61(6) – clarifies the assessment of lands exempt from taxation
 - Section 58(1) – clarifies that the provisional by-law is finally being passed. The current wording suggests that a new provisional by-law should be passed.
- Sections 66 deals with land use changes and connections from outside a drain watershed. There were problems in this section that John Kuntze identified in a paper at the 2002 Drainage Engineers Conference. We have combined Section 66 with Section 65 (severances) to address these issues. In addition, the ability to deal with assessment changes resulting from land being removed from a watershed has also been added.
- Section 83 (pollution) is being repealed because, other than as a threat, it wasn’t being used. Any enforcement was being done under other legislation such as the *Environmental Protection Act* or the *Ontario Water Resources Act*.
- Sections 93 and 94 (drainage superintendent appointment and duties) are being revised and improved for clarity. The only significant change in content is the repeal of the subsection that allows the appointment of a commissioner when no superintendent is appointed.
- The authority in Section 125 for the Lieutenant Governor in Council to make regulations prescribing forms will be changed to the Minister.

FORMS – REGULATION 274

Anticipating the passage of Bill 68, we have started work to update forms under the *Drainage Act* and the *Tile Drainage Act*. To that end, we have started a “Forms Update” project being led by Richard Boychuk. The project will involve:

- A review of existing forms specified in the current Regulations and of those produced by Municipal World. To assist us in the review, we’ve enlisted the help of a few people across the Province:
 - Louise Coté from the Municipality of West Nipissing
 - Annie Levaq from North Glengarry Township
 - Lynn Tyhurst from the Municipality of Chatham-Kent
 - Wray Wilson from Howick Township
 - Manson Barton from North Glengarry Township
 - David Neely from St. Clair Township
 - Jeff Dickson from R. J. Burnside & Associates
- Forms that require content control will be prescribed in Minister’s regulations.
- Forms that do not require content control will be produced in an electronic format (e.g. Microsoft Word or Adobe Acrobat fillable forms) and made available to municipalities.

REGULATION 275:

Regulation 275 is the “Rules of Practice and Procedure to be Followed in all Proceedings Before the Drainage Referee”. This regulation has not been updated in decades and so, under the Open for Business initiative, a review was initiated. Sharon McCartan and I began this project last year by meeting with the Drainage Referees and gathering their comments. Referee Waters also circulated the proposed revisions to some lawyers who work extensively under the *Drainage Act*. We didn’t receive many comments, so the project was dormant for a period of time. However, under Richard’s leadership, this project has been renewed and we have since received comments from two lawyers.

AGRICULTURAL DRAINAGE INFRASTRUCTURE PROGRAM (ADIP)

The results of the ADIP review are being implemented strategically. This year we implemented the recommendation to delay the payment of the maintenance grants to the beginning of the new fiscal year. In order to implement this, we had to consult with several stakeholder groups and obtain various approvals within our Ministry.

A couple of the key changes that were recommended by the Land Drainage Committee and the Drainage Superintendents Association are the elimination of the “enclosure” policy and improvements in the expenses component of drainage superintendents cost. We will not put forward these changes until we are relatively confident of their success.

I want to remind you of an email that I sent to drainage engineers last April. Some engineers have resisted implementing some of the requirements of the ADIP policies and this email reminded you that the report must address these items. These include the design standard for the drain, the area land values on which the allowances are based and many more. I concluded with these two statements:

- Any engineer’s report that does not contain the required information items above will not be accepted for grant payment unless the engineer provides OMAFRA with a written description of how the items were addressed. Verbal reports will no longer be accepted.
- Any engineer’s reports dated April 6, 2010 or later that contain deviations from the policies that were not approved by OMAFRA in advance of the project will not be funded. In reports dated prior to April 6, 2010, we will continue to work with the engineer and municipality on grant eligibility.

In addition, prior to the implementation of the report, the engineer is required to discuss and have OMAFRA approval for any deviation from the policies where grant is still expected. Examples of this would be the need to deviate from the crossing policy or the hauling spoil policy.

ADIP GRANTS:

As mentioned earlier, the payment of drain maintenance grants will now take place at the beginning of the next fiscal year. So there are three separate deadlines for the three grant types:

- Drainage superintendent grant applications must be received by January 31, 2011.
- Drain construction or improvement grant applications must be received by Feb.15, 2011.
- Drain maintenance, repair and operations grant applications must be received by April 29, 2011. If you submit them early, they will not be reviewed, processed or even acknowledged before the beginning of the new fiscal year (April 1, 2011).

UPDATES

HOLLAND MARSH

It's unusual for me to report on a specific project, but this project is unusual. After 13 years of engineering, planning, legal challenges, environmental approvals and appeals, the Holland Marsh dyke and canal reconstruction project has begun work earlier this year. The Tribunal heard several appeals in late 2009 and issued their decision on March 12, 2010. There was a request for a review of the decision which the Tribunal denied. The authorizing by-law was passed on March 23, 2010 and work on the seven year project began in the third week of June. This \$27 million project was spearheaded by Art Janse when he was drainage superintendent for Bradford-West Gwillimbury and King Township and continued by the current drainage superintendent, Frank Jonkman. The engineer for this project is Kenn Smart of K. Smart Associates.

ENDANGERED SPECIES ACT (ESA)

a) The ESA contained a window that allowed municipalities to enter into agreements with the Minister of Natural Resources concerning municipal drain maintenance. That window closed on June 30, 2010 and 76 municipalities have entered into agreements. This is positive news.

However, now that the window is closed, no new municipalities can enter into these agreements and any new endangered species identified subsequent to the agreement cannot be added to the agreement. We have identified this impediment to doing business to MNR.

b) You should be aware that there is a "Species at Risk – Farm Incentive Program" (SARFIP) that is operated through the Ontario Soil and Crop Improvement Association (OSCIA). Through this cost share program, farmers may be eligible for 50% of eligible costs of the following drainage related activities:

- buffer establishment
- fencing
- improved stream crossings
- wetland restoration
- soil erosion control planning
- soil erosion structures

Check out the website: www.ontariosoilcrop.org/en/species_risk.htm

FISHERIES ACT – DRAINS ACTION WORKING GROUP:

The Drains Action Working Group (DAWG) has been meeting periodically, but not regularly. The Guidance document is still not complete, but we have assurances from DFO that the project is not forgotten. However, they have been severely restricted with staff and budget constraints.

One issue we are working on is the very limited timing window when a drain has both fish habitat and endangered species habitat.

DRAINAGE ACT and Section 28 REGULATIONS TEAM (DART)

Most of you are familiar with the DART working group that has been established to sort out the issues between the *Conservation Authorities Act* and the *Drainage Act*. The group has decided to develop two protocol documents: one for drain maintenance and repair and the other for work under a new engineer's report. The maintenance and repair protocol document has been drafted and has gone to each group member for one last review. After this, it will require agency approval which could take in excess of three months. It will also be posted on the EBR registry.

Next month, we will begin work on the protocol document for drain construction and improvement projects. The committee is jointly chaired by Rheanna Leckie of MNR and Sid Vander Veen of OMAFRA. Drainage representatives on the committee include Brett Ruck (Fort Erie – DSAO), Wray Wilson (Howick Twp. – DSAO) and John Kuntze (K. Smart Associates Ltd. – Land Drainage Committee). Support is being provided by Richard Boychuk.

NEW ISSUES

ONTARIO HERITAGE ACT

Earlier this month, I was educated about the *Ontario Heritage Act* and I need to pass some of this education on to you. Augusta Township is located at the upstream end of the South Nation River watershed between Brockville and Prescott. About 13 years ago, an upstream section of the South Nation River was incorporated as a municipal drain; in fact Phil McNeely was the author of the report and Eric Tousignant presented on this project at the 1997 Drainage Engineers conference.

The municipality planned to maintain the drain because water is being held back to the point that the tile drainage systems of upstream farmers are being affected. They began by consulting with the local conservation authority. I am not completely clear of the chain of events, but somehow the Ministry of Tourism and Culture (MTC) was informed of the proposed project and MTC informed the municipality that an archaeological assessment of the project would be required. I participated in a subsequent conference call and found out the following:

- Any activities that disturb the subsoil requires an archaeological assessment
- Because municipal drain activity disturbs the soil, the activity requires an archaeological assessment; this includes drain maintenance work.
- Normal farm operations do not require an archaeological assessment
- Beaver dam removal would not require an archaeological assessment

See the MTC website for information regarding the Ontario Heritage Act.

WETLANDS

The Environmental Commissioner's Office (ECO) recommends that the Ministry of Agriculture, Food, and Rural Affairs amend the Drainage Act and its policies to ensure that provincially significant wetlands are protected from being drained.

Not everyone may agree with everything written, but the Environmental Commissioner may accurately represent the perceptions of the general public. This places responsibilities on us:

- In making your recommendations and writing your reports, you need to make sure you are sensitive to the importance of wetlands;

- I will be working with the Environmental Commissioners Office to help them more fully understand the *Drainage Act*; to that end, I have invited members of the Commissioner's Office to the conference tomorrow and also intend to invite them to our courses.

CROWN LAND PATENTS

Be aware that some property owners may not allow municipal staff entry onto their property in order to complete municipal drain work.

A property owner organization has sent correspondence to some municipalities indicating that they would not be permitted on their property without the express permission of the property owner. This correspondence is based on their interpretation of the Crown Land Patents rights in which an "...owner is protected from any interruption, intrusion, legislation or regulation, be it municipal, provincial or federal, from all associated actions as to entry or surveillance [by any means] of/onto private land of/or into private property as supported by the authority of the land/property owner's Crown Land Patent Grant."

This is based on the following court decision:

"Attorney-General v. DeKeyser's Royal Hotel Ltd. "This is a fundamental principle, going back at least to Magna Carta," In Attorney-General v. DeKeyser's Royal Hotel Ltd., [1920] A.C.508 at 509 (H.L.) [DeKeyser's Royal Hotel], Lord Parmoor said: "Since Magna Carta the estate of a subject in lands or buildings has been protected against the prerogative of the Crown.""

It may require a legal challenge to determine if this argument has any merit.

DRAINAGE STATISTICS

2009/2010 drainage statistics will be included in the proceedings of the 42nd Drainage Engineers Conference.

The following are some key observations:

- The number of projects (160) has increased slightly but is still far down from the number of projects completed 10 or more years ago.
- The number of engineers who have completed a report is up and there are some new younger engineers getting involved in the activity.
- The engineering as a percent of the total is around 25% again, as it has been for the past 6 years.
- The average cost of a project has increased by about \$16,000 from last year
- About 45% of the municipal drains were piped which is also reflected in the higher per hectare cost of projects
- There was a \$1.9 million increase in drain maintenance activity and about a \$0.5 million increase in drainage superintendent costs.

6.0 Report from Agriculture Food and Rural Affairs Appeal Tribunal

- Kirk Walstedt, chair and Jack Young, vice-chair presented the report
- 2009/2010 stats – 16 hearings
- 7 appeals were withdrawn
- 15 hearings in 2010
- Need better communication between the engineer and landowners
- Size of print on some of the engineer's drawings should be increased
- Provide full size drawings at the hearing
- Okay to provide a copy of the engineer's overview to the Tribunal and the appellants prior to the hearing
- Slide presentation as part of the overview is okay

- Don't explain the method of assessment in the overview
- Engineers should not talk to the Tribunal at the hearing – issue of bias
- Organize summary for the last day of the hearing, make sure you tell the Tribunal what you want the Tribunal to do

7.0 LDC Membership Procedures

The chairman of the LDC presented the following resolutions in LDC membership procedures. These procedures will not require a change to the current OSPE Land Drainage Committee Terms of Reference but will serve as a Directive from the LDC.

A motion by John Kuntze and seconded by David Johnson that the following resolutions will serve as a Directive for the LDC membership procedures. The motion was carried.

Resolution 1

That the term of membership on the Land Drainage Committee shall be 3 years and that each year the membership of 2 members shall expire

Resolution 2

That members whose term on the Committee expires can be nominated again and that there is no limit on the number of years that a member can serve on the Committee

Resolution 3

That the Land Drainage Committee shall arrange for nominations and election of 2 qualified Committee members each year at the annual meeting of Drainage Engineers (Practitioners) with the elected members to be approved by OSPE

Resolution 4

The Land Drainage Committee members shall select a Chairperson, Vice Chair and Secretary each year after the election of two new members with the Chairperson selected to be approved by OSPE.

Section 5 of the current Terms of Reference for the OSPE Land Drainage Committee (revised January 2005) outlines membership criteria and procedure for the Committee which is summarized as follows:

- Committee is to be 6 members each of whom shall be a P. Eng. and actively involved in drainage engineering (if drainage engineering practice ceases while on the Committee then membership is terminated at the next regular meeting)
- Committee chair to be appointed by OSPE chair
- A vacancy shall be filled by the OSPE chair

8.0 Election of New Members

Jeff Dickson, John Kuntze and Tom Pridham were nominated as new members.
Jeff Dickson declined, John Kuntze and Tom Pridham were acclaimed.

9.0 Adjournment

The meeting was adjourned at 9:45 p.m.

Tim Oliver, Chairman

Bill Dietrich, Secretary