

Drainage Landowner FAQ Webpage

1. What is the Drainage Act?

Under the Common Law of Canada (through precedent), surface water generally has no right to flow. In other words, surface water has no right to pass from one land to the next. As this surface water has no right to flow, a receiving landowner may block/divert such flow of surface water from entering their lands by means of constructing a berm. This also means that an upstream landowner does not have the right to collect and discharge water onto another land (including tile outlets to municipal roadside ditches).

The Drainage Act provides means to an upstream landowner to collect and discharge such surface water legally, through a Mutual Agreement (Section 2 of the Drainage Act) or through a Petition Drain (Section 4 of the Drainage Act - also commonly referred to as a "Municipal Drain"). By establishing either a Mutual Agreement or Petition Drain, the upstream lands are legally acquiring the right to drain surface water from their lands to a sufficient outlet.

For further information regarding the details of a Mutual Agreement Drain or a Petition Drain, please contact your Drainage Superintendent or see the reference to the links below.

[Drainage Legislation Factsheet](#)

[So, What's a Municipal Drain? Factsheet](#)

2. What are my responsibilities as a landowner when part of a Petition Drain ("Municipal Drain")?

Typically, lands that are located within the watershed area of a Petition Drain are fiscally responsible for a portion of the cost to construct and to maintain. Each Petition Drain system requires an Engineer's Report to be adopted by Municipal By-law; this Engineer's report indicates which lands are fiscally responsible for construction/maintenance costs and the proportion each land is required to contribute. Costs of construction or maintenance hold a priority lien status on the tax role of a property.

As a landowner, you also have a responsibility to inspect the portion of the drain crossing your property and notify the Drainage Superintendents should there be any

concerns with the function of the system. Landowners are not legally permitted to conduct maintenance activities on their own (for the exception of removing debris such as fallen trees); maintenance must be administered by the Municipality. If maintenance is required on the Petition Drain, please contact your Drainage Superintendent for a formal maintenance request.

You should also inform the Drainage Superintendent of land use changes or severances affecting your property. When work is being proposed on the drain, you are also responsible to attend (or be represented at) all meetings in order to voice your opinion and/or concerns.

[Duties of the Landowner Factsheet](#)

[Municipal Drains and the Landowner Factsheet](#)

3. What are the responsibilities of the Municipality?

The Municipality is an administrative body that receives and responds to inquires relating to maintenance of an existing Petition Drain, improvements to a Petition Drain, or the creation of a Petition Drain.

Municipality is not generally a stakeholder of the drain, for the exception when municipal roadways are located within the watershed of a Petition Drain. Municipal roadways are assessed to the Municipality for cost of construction and maintenance in the same manner as all other lands within the watershed. Similarly, for County or Provincial Roads and/or any public utilities are assessed for any lands owned and located within the watershed.

The municipality's main role is to act as the unbiased administrator/facilitator of drainage construction and/or maintenance works. The municipality is responsible for maintaining the drain after construction which includes the procurement of a contractor. The Municipality is also responsible for appointing a Drainage Superintendent.

4. What is the role of the Drainage Superintendent?

The Drainage Superintendent (DSI) for a Municipality has the duty to inspect every drainage works for which the municipality is responsible and report periodically to council on the condition of those drainage works. In order to do so, the Drainage Superintendent has the authority to enter onto lands under S.95(3) of the Drainage Act. The DSI is responsible for initiating and supervising the maintenance and repair of the drainage works within the Municipality and assist in the construction or

improvement of the drainage works for which the municipality is responsible. The Drainage Superintendent also serves as the main point of contact for any landowner questions and concerns.

5. What is the difference between a Petition Drain and municipally owned ditches?

A Petition Drain is a legally established drainage system created under the Drainage Act, which allows lands to collect and discharge surface water from their lands to a sufficient outlet. The Petition Drain holds all lands within the watershed area (that contributes surface water to the system) to be fiscally responsible for the construction and maintenance of the system. A Petition Drain is governed by the Engineer's Report prepared and adopted under Municipal By-Law.

A Municipally owned ditch is a private ditch (typically along the roadside) that has a sole purpose of collecting surface water from the road surface so that it does not seep into the road base.

6. How can I tell if there is a Petition Drain on my property (and what is the name of the drain)?

If you are unsure whether your property is located within the watershed boundary of a Petition Drain system, please contact your Drainage Superintendent. Please be sure to provide the Lot/Concession or Roll Number of the property in question.

7. Can I clean my own portion of the drain crossing my property?

You are not legally permitted to complete maintenance on a Petition Drain system, even on your own property. Landowners may, remove debris from the drainage system such as fallen trees. Should a landowner improperly complete maintenance, they may be liable for any/all costs to repair the drain to its designed conditions under Section 82 of the Drainage Act.

For any maintenance procedures multi-level approvals/permits must be obtained from various review agencies prior to competing work. If these approvals are not obtained prior to completing work, fines can be issued to the party at fault.

8. Can I reduce my assessment by cleaning my portion of the drain?

No. Even if a landowner decides to conduct maintenance on their own property, they will still be assessed in full when the Municipality administers any maintenance. An assessment is based on a portion of the total cost of maintenance on the drain. A

landowner performing maintenance themselves does not eliminate their portion of the assessment and could be held liable if the drain is damaged by their work.

9. Can I remove a beaver dam on my neighbor's portion of the drain?

No. A landowner does not have the legal right to enter onto neighboring lands to remove a beaver dam. Removing a beaver dam on your neighbor's property could constitute as trespassing if you do not have their permission to do so. Furthermore, careless removal of a beaver dam can cause significant flooding of surrounding lands. You could be held responsible for damages caused the flooding of lands due to the beaver dam removal.

[Beaver in the Municipal Drain Factsheet](#)

10. How do I request Drain Maintenance?

If you are interested in having a Petition Drain maintained, please contact your Drainage Superintendent. You will be prompted to fill out a Municipal Drain Questionnaire. The DSI will help you in determining the type of maintenance necessary by following up with a site visit. The Drainage Superintendent will then guide you in filling out the official "Notice of Request for Drain Maintenance and / or Repair" from OMAFRA which will be sent to the Municipality. It should be noted that inquiries for drain maintenance should be sent at least one year in advance of the desired date of maintenance due to permits and environmental limitations.

11. What is the Drain Maintenance process?

- a) The Drain Maintenance process begins with a drain inquiry sent to the Drainage Superintendent. The DSI will follow up with a site visit to determine the type of maintenance required on the Petition Drain.
- b) The stakeholder fills out a formal "Notice of Request for Drain Maintenance and / or Repair" and sends it to the Municipality.
- c) The DSI then reviews the current Engineer's Report to determine if it still applies or if it requires updates.
- d) Property owners impacted by the maintenance will receive a notice through the mail and/or an invitation to an onsite meeting where they will be able to voice their questions or concerns.
- e) The DSI then begins the environmental permit application process. Once all permits are received, the municipality procures a contractor to complete the work as per the environmental agencies' requirements.
- f) After the completion of maintenance, the Treasurer applies for grants and levies assessments on the impacted properties.

[Drainage Superintendent Procedures for Drain Maintenance](#)

12. What is the timeline for completing Drain Maintenance?

The typical timeline for Drain Maintenance is 1 year (from application to completion) therefore, it is suggested that you file a request for drain maintenance at least 1 year in advance of when you would like the works completed. The timeline for completion is dependant on many different factors such as site inspection, procurement of contractors and Environmental permitting as well as an in-depth review of the current Engineer's Report. Outdated Assessment Schedules within these Engineer's reports might need to be updated before maintenance can be completed which could cause further delays.

13. What environmental aspects are involved?

There are three different agencies involved in the drainage process; the Department of Fisheries and Ocean (DFO), the local Conservation Authority (CA) and the Ministry of the Environment, Conservation and Parks (MECP). Each agency has their own requirements which need to be met in order to receive permits. The DFO ensures that any work undertaken does not cause death of fish or alteration/destruction of fish habitat. The CA sets erosion and sediment control measures to ensure soil stabilization and reduce flood damages. The MECP ensure that all Species at Risk (SAR) impacted by the works are protected, such as endangered plants and animals.

14. How much will maintenance cost me?

The cost of maintenance varies widely on a case by case basis. The total cost of the project is not known until the Tender process is complete and contractors have submitted their pricing. Once the contractor begins the project, the type of work being performed can be subject to change based on field decisions which could alter the initial price. Some environmental requirements can also add additional costs to a drainage project such as turtle fencing or sediment traps. The total cost of the drainage project is then distributed between all stakeholders within the watershed of the drain according to the most recent Assessment Schedule. Each stakeholder's assessment is a set percentage of the total cost of drain maintenance. Costs are assessed on a variety of different factors such as the size of the property located within the watershed boundary, the land use and the property's proximity to the drain. Only landowners upstream or adjacent to the maintenance are assessed costs.

[Understanding Drainage Assessment](#)

15. Can I appeal my assessment costs for maintenance?

It is important to note that you can NOT appeal your assessment for drain maintenance because the Engineer's Report for the drain is already adopted under by-law.

[Drainage Act Appeals](#)

[Court of Revision Info Sheet](#)

Once maintenance is completed on a drain through a formal maintenance request, applicable properties within the watershed will receive a bill based on the information contained in the Drain's Associated Engineer's Report. The report outlines the division of the costs between property owners. This assessment report is utilized to determine the total costs for each property owner and placed into a schedule for payment, which is then approved through a Council by-law. Those that receive a bill will have 30 days to pay their bill, if the bill is not paid, the Municipality will charge it to the property taxes of the associated property after 120 days with the interest that has been accumulated since the invoice due date (interest rate is 1.25%). Maintenance assessments can be paid via cash, cheque, debit or through online banking using the property roll number but the payor must notify the municipality to direct the payment to the drain invoice. If the property owner requires time to pay the invoice, the municipality can transfer the maintenance amount to the property tax account and the payor will need to subscribe to the Pre Authorized Payment (PAP) program in order for an equal amount to be withdrawn monthly for the remainder of the calendar year.

The Municipality has the right to accumulate the cost of drainage maintenance for up to five years or \$5,000.00. This means you may be billed for work occurring before you owned a property. The Municipality recommends, that prior to purchasing a property, that you investigate how municipal drains may affect it.

16. Are there any grant opportunities available to me?

Agricultural properties that hold a farm class tax rate are eligible to receive a grant from OMAFRA for a value of 1/3 of their initial assessment for construction, improvement or maintenance completed under sections 4, 78 and 74.

See link http://www.omafra.gov.on.ca/english/landuse/facts/adip_admin.htm

Also see Section 85 to 87 of the Drainage Act

17. How do I request a Drain Improvement?

If you are interested in improving a Petition Drain, please contact your Drainage Superintendent. The DSI will help you to determine if your improvement is valid and may follow up with a site visit. The Drainage Superintendent will then guide you in

filling out the official "Notice of Request for Drain Improvement" from OMAFRA which will be sent to the Municipality.

18. What is considered a Drain Improvement?

- Changing the course of the drainage works;
- Making a new outlet for the whole or any part of the drainage works;
- Constructing a tile drain under the bed of the whole or any part of the drainage works;
- Constructing, reconstructing or extending bridges or culverts;
- Constructing, reconstructing or extending embankments, walls, dykes, dams, reservoirs, pumping stations or other protective works in connection with the drainage works;
- Otherwise improving, extending to an outlet or altering the drainage works;
- Covering all or part of the drainage works; and/or
- Consolidating two or more drainage works.

19. What is the difference between a Drain Improvement and Drain Maintenance?

According to the Drainage Act, Drain Improvement is defined as: "any modification of or addition to a drainage works intended to increase the effectiveness of the system." An improvement goes beyond the original scope of work noted in the Engineer's Report. Improvements can be completed under S.78 of the Drainage Act and include works such as culvert additions and drain re-alignments. (See Question 19.)

Drain Maintenance is defined as: "the preservation of a drainage works." Maintenance consists of restoring the drain to its original condition and can be completed under S.74 of the Drainage Act. Maintenance includes works such as brushing, cleanouts and beaver dam removal which must be completed in accordance with the Engineer's Report and drain design.

20. What is the difference between Section 65, Section 76 and Section 78 of the Drainage Act?

Section 65 – Minor updates to the assessment schedule for individual properties and change in land use, splitting an assessment schedule for subsequent divisions of land.

Section 76 – Is an update and re-calculation of the entire assessment schedule to reflect all major changes inside the watershed boundary.

Section 78 – Improvements upon the existing physical feature of a municipal drain (i.e. deepening, widening, realignment, etc.)

21. I want to add/remove/relocate/replace a culvert on the drain. What steps do I need to take?

Culverts or crossings on a Petition Drain are all accounted for in the Engineer's Report, therefore, any modifications need to be undertaken with a Drain Improvement request (see questions 18 and 19). If the culvert in question is already part of the Engineer's report and you wish to replace it like for like, this may be done under Drain Maintenance using the current Engineer's Report. For any questions or concerns regarding culverts or crossings, contact your Drainage Superintendent.

22. How do I request/petition for a new drain? And what is the process?

A petition for the construction of a new drain can be filed with the Clerk of the Municipality. For a petition to be considered valid, it requires signatures from either:

- a) The majority in number of the landowners within the area requiring drainage.
(*Note: Where a property has more than one owner, all owners must sign the petition and their signatures will be counted as one single landowner)
- b) Landowners of properties representing more than 60% of the total area requiring drainage.
- c) The road authority.

Council considers the petition and circulates it the environmental agencies. An Engineer is appointed, and an on-site meeting is conducted to determine if the petition is valid and any other needs/concerns. Council may instruct the Engineer to prepare a Preliminary Report (optional) or a Final Report which will include:

- Plans, profiles and specifications
- Total cost estimate
- Assessment schedule
- Allowances

Once the Final Report is complete, the Engineer presents the report at a Meeting to Consider the Final Report. Landowners then have the opportunity to add or withdraw their names from the petition. If the petition is still valid, a by-law is provisionally adopted by Council and landowners are given the opportunity to appeal their assessments to the Court of Revisions. After all appeals have been heard or the time for appeals has expired (min. 40 days), Council may pass the by-law and procure a

contractor. Once construction of the new Petition Drain is done and the petitioning landowners are satisfied with the quality of the work, the project is complete. The costs for the project are then assessed to all landowners within the drainage area (watershed boundary) as per the assessment schedule in the Engineer's Report.

[Understanding Drainage Assessments Factsheet](#)

[OMAFRA Petitions & Agreements- Drainage Act Forms](#)

23. When does an Engineer's Report need to be updated for a drain?

An Engineer's Report needs to be updated, if there have been severances, land use changes or development on the properties within the watershed boundary. In these cases, the assessment schedule becomes inaccurate and does not allow for a fair distribution of maintenance costs amongst all landowners. Likewise, if there have been improvements to the drain such as extensions, realignments, widenings or additional crossings, the Engineer's Report needs to be updated to reflect the proposed changes. Updates to the Engineer's report ensure that all stakeholders are being assessed a fair share of the drainage costs and provides the ability for the Municipality to readily administer maintenance on a drain following a request.

24. Can I have a copy of the current Engineer's Report?

Yes. If you are a stakeholder to the Petition Drain you may request a copy from the Municipality or your Drainage Superintendent. However, the copy of the Assessment Schedule will only include your portion of the assessments due to the *Freedom of Information and Protection of Privacy Act*.

25. What are the tile loan program opportunities and who is eligible?

The Tile Loan Program provides loans to agricultural property owners to help them finance tile drainage projects. The Tile Loan Program is a 10-year term loan at a fixed interest rate the life of the loan. Currently, the interest rate is at 6% on the total balance owing in a given year. Any landowner in a municipality in Ontario planning to install a tile drainage system on their agricultural land is eligible for the Tile Loan Program. Applicants can receive up to 75% of the cost of the work, to a maximum of \$50,000 per farmer per year. Loan application forms are available at the Municipal office and must be submitted to Council before the tile drainage project begins.

[Tile Loan Program Factsheet](#)

26. Can I outlet my drainage tiles/private ditch into a Petition Drain?

Prior to any work contact your Drainage Superintendent as it is circumstantial and varies on a case to case basis. By paying towards a Petition Drain, a landowner acquires the right to outlet his tile drainage system / private ditch into the drain as long as it doesn't change the overall watershed. However, this still does not give a landowner the right to cross anyone's property with a tile or ditch to gain access to the Petition Drain. Access for tile drainage should be discussed with the Drainage Engineer prior to the construction of the Petition Drain. It is possible to petition for a Branch to the Petition Drain after its completion, but it can be costly. Your Drainage Superintendent can help you find a solution for outlet into a Petition Drain. (See "Top 10 Common Law Problems" Factsheet)

27. Can I outlet my drainage tiles/private ditch into the road-side ditch?

No. The road-side ditches are a form of private ditch and are not designed to take water from surrounding lands. Excess water added into a road-side ditch can damage municipal infrastructure. Permission must be obtained from the road department to outlet tile drains into them. (See "Top 10 Common Law Problems" Factsheet)

28. My neighbor is draining onto my property. What do I do?

Local drainage issues fall under Common Law, which covers a wide array of issues, rights, and obligations. It is best to avoid misinterpretation and generalizations, and to contact your Drainage Superintendent with specifics on your situation so they can provide recommendations. (See "Common Law Aspects of Water" Factsheet and "Top 10 Common Law Problems" Factsheet)

29. What is a Mutual Agreement Drain? How is it different from a Petition Drain or an Award Drain?

When two or more owners of land desire to construct or improve a drainage works on any of their lands and are willing to pay the cost thereof, they may enter into a written agreement for the construction, improvement, financing, and maintenance of such drainage work. The written agreement should include a description of the affected lands, the location of the proposed drain as well as the proportion of the work each person is expected to pay. Once all parties involved are satisfied with the agreement, it should be registered against the land to protect current and future landowners. A Mutual Agreement Drain can provide all the same drainage rights as a Petition Drain but at a fraction of the cost.

[Mutual Agreement Drains Factsheets](#)