



Preliminary Reports On Municipal Drains Prepared Under The Drainage Act, R.S.O., 1980

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PRELIMINARY REPORTS are often desirable but there have been difficulties, sometimes, in the matter of obtaining grants from the Ministry of Agriculture and Food toward the cost of their preparation. The purpose of this paper is to suggest how preliminary reports might be handled in order to ensure that their costs will be eligible for grant.

One of the complaints about Drainage Engineers is that, once hired, it frequently happens that an Engineer will proceed with the preparation of a complete report at some considerable expense, for the construction of a drainage project which is much more elaborate and expensive than either the Municipal Council or the owners had contemplated. Council then has great difficulty deciding what to do - if it does not proceed with the project, the owners are left with a seemingly large engineering bill for a report that is never implemented. If the project does proceed, the owners may feel they are "stuck" with a much more expensive project than they consider to be necessary. Either way, the cost to the owners is seen to be excessive and the Engineer's reputation suffers - often to the point where he is never hired again in that municipality. More than that, the critics of The Drainage Act System are provided with one more example of what they term "bad engineering" or "unprincipled Engineers".

With a view to preventing this situation wherever possible, the Joint Committee has been encouraging practitioners to prepare preliminary report wherever it seems reasonable to do so, in order to ensure that the owners, Council and the Engineer are all "on the same wave length" before the Engineer devotes a lot of time and expense to a project that has no hope of going ahead; moreover, this is a worthwhile step toward achieving better communications, which is another area in which the En-

gineer should be attempting to improve his operation.

The nice thing about preliminary reports is that their cost is eligible for a Provincial Grant under Section 85 of The Drainage Act so that even if the project does not proceed, the financial burden on the owners is not oppressive. Unfortunately, OMAF has found that, frequently a report that has been labelled "Preliminary Report" may be "preliminary" as far as the Engineer who prepared it is concerned but if it does not conform with the definition of a Preliminary Report set out in Section 10(1) of the Act, OMAF is not in a position to pay the grant under Section 85. We are told that this problem occurs most frequently when the Engineer includes an Assessment Schedule in a report that he considers to be preliminary. Unfortunately, since an Assessment Schedule is not included in the definition of a preliminary report set out in Section 10(1), OMAF has no choice but to refuse the payment of a grant on the cost of preparing a report that contains an Assessment Schedule, regardless of whether it is entitled a "Preliminary Report" or not.

A division of the cost in general terms where the Engineer simply sets out the approximate shares to be paid by certain groups (e.g. benefiting owners, tributary owners, owners upstream or downstream of a certain point, etc.) is not an Assessment Schedule and, apparently, may therefore be included in a preliminary report without affecting its eligibility for grant.

Often, at the request of Council or the property owners a preliminary report will set out two or more alternative solutions to the problem at hand, along with estimated costs of implementing these alternatives. Although Section 10(1) of the Act makes no specific reference to "alternatives" or "options" it seems that these are so basic to the purpose of preparing preliminary reports that dealing with alternatives in a preliminary report does

not affect its eligibility for a grant under Section 85.

In spite of what may appear to be unnecessary complications, the Joint Committee is still of the opinion that the use of preliminary reports should be encouraged to ensure that the Engineer is developing the project in a direction and at a cost that is acceptable to both Council and the owners. They may be prepared on projects authorized by either Section 4 or Section 78 of The Drainage Act.

In order to avoid problems in the matter of grants, however, the Joint Committee suggests that the Engineer follows this procedure:

1. Following his appointment, discuss with Council and the owners the suitability of preparing a preliminary report.
2. Determine just what information Council and the owners want the Engineer to provide at this preliminary stage, explaining to them that the more data provided, the more time it takes to collect it and, hence, the greater the cost.
3. Review with Council and the owners what part of the data requested can be included in the preliminary report in order to conform with Section 10(1) and be eligible for grant and what part must be separated out and paid for entirely by the owners and/or municipality without grant (such as a Schedule of Assessment). They should be encouraged to determine, at this time, how these extra costs are to be shared. It should be noted that there is no mechanism in The Drainage Act by which the municipality can enforce the collection of an owner's share of these "extra costs" and Council should therefore make sure that it has some kind of binding commitment from the owners, before proceeding.

4. Prepare a preliminary report that conforms with Section 10(1) of The Drainage Act and attach as a completely separate document any additional information that may have been requested by Council and the owners.
5. Submit separate invoices, one for the preliminary report and one for the preparation of the additional information.

We understand that if this procedure is used, the responsibility for payment of these invoices and their eligibility for grant will be as follows, under the current system:

1. If the project proceeds past the preliminary report stage:
 - (a) The costs of the preliminary report will be eligible for a grant under Section 85.
 - (b) The Engineer may shift the cost of any of the so-called additional information that he uses in his final report into his invoice for the final report where it will receive grant, with the remainder of the invoice for additional information being paid entirely by the owners (and/or Municipality) without grant.
2. If the project does not proceed past the preliminary report stage:
 - (a) The cost of the preliminary report:
 - (i) Will be eligible for grant under Section 85 and the balance will be paid by the owners in accordance with Section 10(4) of the Act, where the project is stopped because petitioners have withdrawn their names at the meeting to consider the preliminary report and the petition is no longer valid, or where the preliminary report has been prepared under Sections 78 and 10 for the repair and/or improvement of an existing drain. (The Drainage Act is not clear on how a municipality can collect the Engineer's fee for a preliminary report - or for a Final Report for that matter - under Section 78, if no bylaw is passed to authorize work and assess its cost. Current practice seems to be that the municipality charges the cost of such a report to the drain in the same manner as maintenance costs and this is probably the best method to follow until the problem has been resolved by the Courts.)

(ii) Will not be eligible for grant under Section 85 and should probably be paid by the Municipality where the preliminary report has been authorized under Sections 4 and 10 and, even though the petition is still valid at the end of the meeting to consider the preliminary report, the Council decided not to proceed further with the project.

(b) The entire cost of the additional information will have to be paid by the owners and/or the Municipality, without grant, on whatever basis they may have decided at the time instructions were issued.

The "Guidelines for Services of the Engineer Acting Under The Drainage Act" published by A.P.E.O. contains a detailed outline of preliminary reports but caution should be exercised in including a profile as mentioned in the Guidelines since this is not within the definition in Section 10(1) of The Act. From the perspective of grants it is probably safer to provide the profile, when necessary, as part of the additional information rather than as part of the preliminary report.

With the costs of drainage projects continuing to increase while the farm economy continues to stagnate, the need for preliminary reports is bound to be greater than ever before. The Joint Committee hopes that this paper will not only encourage the preparation of preliminary reports but will also assist in keeping their cost to the owners as low as possible having in mind that the philosophy of preliminary reports is to provide adequate information at minimum expense. ●

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