

**Update on Conservation Authority Exceptions for the Drainage
Community Further to the Release of Ontario Regulation 41/21:
Prohibited Activities, Exemptions and Permits under the
*Conservation Authorities Act***



March 28, 2024

On April 1, 2024 a new Minister's regulation ([Ontario Regulation 41/24: Prohibited Activities, Exemptions and Permits](#)) under the *Conservation Authorities Act* will be enacted. This regulation will replace the existing individual Conservation Authority (CA) "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" regulations made under Section 28 of the *Conservation Authorities Act*.

The administration of O. Reg. 41/24 is a Mandatory Program and Service of the Conservation Authorities as per Section 21.1.1 of the [Conservation Authorities Act](#) and as stipulated in [O. Reg. 686/21: Mandatory Programs and Services](#). Under section 6 of O. Reg. 686/21 CAs shall provide programs and services to review proposals made under the *Drainage Act*. Under section 8 of O. Reg. 686/21, Conservation Authorities shall provide programs and services to ensure that the Authority carries out its duties, functions and responsibilities to administer and enforce the provisions of Parts VI [Regulation of Areas Over Which Authorities Have Jurisdiction] and VII [Enforcement and Offences] of the Act and any regulations made under those Parts.

Key Changes

While much of the CA regulatory process remains the same, key changes of interest for our drainage partners include:

- The definition of a "watercourse" has been amended from "***an identifiable depression in the ground in which a flow of water regularly or continuously occurs***" to "***a defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs***".
- The regulated area around wetlands ("other areas") will be consistent at 30 m, including around provincially significant wetlands.
- Exceptions for certain low-risk activities, with specific reference to activities for municipal drains (see below for further information).

Excerpt from [O. Reg. 41/24: Prohibited Activities, Exemptions and Permits](#)

5. Paragraph 2 of subsection 28 (1) of the Act does not apply to,
(e) the maintenance or repair of municipal drains as described in, and **conducted in accordance with the mitigation requirements** [emphasis added] set out in the Drainage Act and the Conservation Authorities Act Protocol, approved by the Minister and available on a

government of Ontario website, as it may be amended from time to time;

Note: Applicants are encouraged to confirm exceptions with the CA prior to carrying out the work.

Implementation of the Drainage Act and Conservation Authorities Act Protocol as of April 1, 2024

The [Drainage Act and Conservation Authorities Act Protocol](#) (DART Protocol) establishes a means for municipalities and Conservation Authorities to fulfill their responsibilities under the *Drainage Act* and *Conservation Authorities Act* respectively without compromising the intent of either statute. The DART protocol addresses the maintenance and repair of municipal drains under the *Drainage Act* and does not address issues around new drains and improvements to existing drains. In addition, the DART protocol establishes a communication platform for CAs and municipalities to discuss workplans and projects and provides a dispute mechanism should the need arise. This ongoing communication and workplanning is essential to maintaining well-functioning municipal drains as well as healthy watersheds. Having both organizations aware of the work is necessary so that they are equipped to address any public concerns about the maintenance and repair activities as well as allowing CAs to maintain their stream gauge infrastructure for low water and flood forecasting and warning purposes. Further to this, continued notice of excepted drain maintenance and repair activities is required.

Given the exception under O. Reg. 41/24, it is required that the following procedures be followed for drain maintenance and repair activities in accordance with the DART Protocol, O. Reg. 41/24 and the Conservation Authorities Act.

Procedures for General Works not Located in a Regulated Wetland Limit (See Table 1; Standard Compliance Requirements A-L):

1. The municipality completes Page One of the Drain Maintenance or Repair Notification form for each drain maintenance or repair project and submits it to the CA.
2. The municipality completes the work in accordance with the description of typical works and mitigation requirements and applicable legislation/regulations.

3. There is no fee associated with the submission of this Drain Maintenance or Repair Notification Form.

Should the municipality be unable to meet the mitigation requirements listed in the SCRs or the project be beyond the scope of an SCR statement, a permit application and review process would be required. In the event of non-adherence by the municipality to the description of typical works or mitigation requirements in the aforementioned SCRs the CAs may issue a notice of violation and if necessary, enter into legal proceedings.

Procedures for Works Within a Regulated Wetland Limit (See Table 1; Standard Compliance Requirements M-O):

1. The municipality completes the Drain Maintenance or Repair Notification form for each drain maintenance or repair project and submits the form to the CA.
2. The CA acknowledges receipt of the form to the municipality.
3. The CA screens the work proposed in the notification form and may request additional information if the notification form is incomplete.
4. In accordance with the DART protocol, it is recommended that a permit be required for these activities. The CA may issue a permit with conditions that incorporate mitigation requirements outlined in the SCRs for works within regulated wetland limits.
5. If the CA requires the municipality to obtain a permit, the municipality will undertake the normal permit application procedures.
6. Timely, clear and open communication between all parties is encouraged.
7. The municipality is encouraged to pre-consult with the CA as early as possible to identify, discuss, mitigate and resolve any potential issues or concerns from either party.
8. The CA will make a permit decision and notify the municipality of this decision in writing in accordance with requirements under the *Conservation Authorities Act* and O. Reg. 41/24.
9. The CA may place conditions on a permit, but due to the municipality's duty to maintain drainage works under the Drainage Act, a CA and a municipality shall work cooperatively to maintain the drain with written permission, with or without conditions. If the CA does not feel it can approve the permit or the municipality disagrees with the conditions placed on the permit, and no

agreement can be reached between the parties, the issue can be referred to the Drainage Issues Resolution Team.

10. The municipality undertakes the work in accordance with the permit.

Transition

For those applications submitted prior to the enactment of O. Reg. 41/24 (i.e. pre-April 1, 2024), the permitting process that applied at the time the application was made will apply. New permit applications submitted on or after April 1, 2024 will follow the processes outlined in the updated Section 28 of the *Conservation Authorities Act*, O. Reg. 41/24 and in this document.

Other Agency Approvals

Issuance of a permit or exception does not relieve the applicant from the responsibility of acquiring approval from other agencies or relieve the applicant from compliance with any conditions imposed on the work.