

As environmental regulation increased relating to sanitary sewerage systems, many county drainage systems evolved into elaborate treatment/pumping facilities. Moreover, federal water quality regulations required many facilities to implement a “first-flush” treatment of stormwater. Today, detention and treatment facilities have taken the shape of rain gardens and other “low impact design” features, such as permeable pavement.

Types of drains include: open stormwater “ditches,” storm sewers, sanitary or combined sanitary and storm sewer systems, wastewater treatment facilities, wetland complexes, detention/retention ponds, pump stations, river restorations, levees, dikes and dams.

3. The Petition Process

How do drainage improvement projects proceed? First, a petition is filed with the Drain Commissioner. Petitions can be filed by property owners, municipalities, the county, the road commission, or MDOT. Specific petition requirements depend on whether it is for a new drain, maintenance or improvement of an existing drain, or for an intercounty drain.

After a petition is filed, the Drain Commissioner appoints a Board of Determination, made up of three property owners who own property in the county, but not in any municipalities in the drainage district. The Board holds a public hearing and determines whether the drain or maintenance and improvement of the drain is necessary for the public health, safety, or welfare. The Board also determines whether the municipalities in the drainage district are liable for an assessment at-large.

If the Board of Determination determines necessity, a property owner has 10 days to challenge the determination in circuit court. Townships (and other municipalities in the drainage district) have 20 days after notification of the determination of necessity to appeal the decision in probate court. If the necessity is not challenged, there is no other remedy under the Drain Code to “stop” a drain project if the proper procedures have been followed.

Next, the Drain Commissioner determines the scope of the project, at which point the project is engineered and plans and specifications are prepared. Once the scope is determined, the Drain Commissioner issues a Final Order of Determination, and determines the route and course of the drain and the drainage district boundaries.

After signing the Final Order of Determination, the Drain Commissioner gives notice for the receiving of bids to construct, repair, or improve the drain. The Drain Commissioner also gives notice to all property owners and municipalities in the drainage district, and publishes notice of the project in a newspaper of general circulation.

Once bids are received and costs are calculated, the Drain Commissioner holds a Day of Review, a public meeting to hear objections to the project, including the apportionment of benefits and assessment of project costs. The Drain Commissioner can make revisions based on these objections. A Day of Review must be held not less than five or more than 30 days after the bids for the project are received. Property owners and municipalities have only 10 days after the Day of Review to appeal the apportionment or assessment to the probate court. This apportionment percentage will be used for future maintenance projects until a new Day of Review is held for the drain.

To pay for the projects, drain assessments are placed on the winter tax roll and collected by the local municipality.

4. The Scope of a Drain Project

The Drain Commissioner determines the scope of a project. He or she is not limited by the petitioner's specific requests for work or any statements by the Board of Determination. The Board of Determination only decides the necessity, and not what specific work should be performed.

Engineers are retained to study and determine the scope of the problem, and make recommendations to the Drain Commissioner as to project design alternatives. The engineer then proceeds with the preliminary and final designs and completes project bid documents.

The scope of a project includes considerations such as costs, permit issues, property acquisition, and stakeholder input. Township, road commission, and MDOT involvement at this level plays a substantial role in assisting the Drain Commissioner in determining the final project scope.

5. Important Timelines for Drain Projects

- Petition. There is no expiration date on a petition.
- Board of Determination. After the Board of Determination determines necessity of a project, a property owner has 10 days to challenge the determination in circuit court. Townships (and other municipalities in the drainage district) have 20 days after notification of the determination of necessity for public health to appeal the decision giving rise to at-large assessments in probate court.
 - If the decision of necessity is not challenged, there is no other remedy under the Drain Code to "stop" a drain project if the proper procedures have been followed.