

1980

c 15 Agricultural Tile Drainage Installation Act

Ontario

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CHAPTER 15

Agricultural Tile Drainage Installation Act

1. In this Act,

Interpretation

- (a) "Board" means the Agricultural Licensing and Registration Review Board under the *Ministry of Agriculture and Food Act*; R.S.O. 1980, c. 270
- (b) "Director" means the Director appointed for the purpose of this Act;
- (c) "drainage work" means a drainage system constructed of tile, pipe or tubing of any material beneath the surface of agricultural land, including integral inlets and outlets, for the purpose of improving the productivity of the land drained;
- (d) "inspector" means an inspector appointed under this Act;
- (e) "licence" means a licence under this Act;
- (f) "Minister" means the Minister of Agriculture and Food;
- (g) "regulations" means the regulations made under this Act. 1972, c. 38, s. 1; 1978, c. 100, s. 2 (1).

2.—(1) No person shall carry on the business of installing a drainage work unless he is the holder of a licence for such purpose from the Director. Licences

(2) No person shall be the operator of a machine used in installing a drainage work unless he is the holder of a licence for such purpose from the Director. Idem

(3) No person shall use, or permit or cause to be used, in installing a drainage work a machine unless the owner of the machine has obtained a licence therefor from the Director and the licence is attached to and exposed on the machine. 1972, c. 38, s. 2. Idem

Non-
application
of Act

3. Where a person performs the installation of a drainage work on agricultural land owned or occupied by him, this Act does not apply. 1972, c. 38, s. 3.

Issue of
licence

4.—(1) The Director shall issue a licence to carry on the business of installing drainage works to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

- (a) the applicant or, where the applicant is a corporation, its officers or directors, is or are not competent to carry on the business;
- (b) the past conduct of the applicant or, where the applicant is a corporation, of its officers or directors, affords reasonable grounds for belief that the business will not be carried on in accordance with law;
- (c) the applicant does not possess or will not have available all facilities and equipment necessary to carry on the business in accordance with this Act and the regulations; or
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

Idem

(2) The Director shall issue a licence to be the operator of a machine used in installing drainage works to a person who makes application therefor in accordance with this Act and the regulations and pays the prescribed fee unless, after a hearing, he is of opinion that,

- (a) the applicant is not competent to operate the machinery or class thereof in respect of which the application is made;
- (b) the applicant has not attended the courses of instruction and passed the examinations prescribed in the regulations for the class of licence applied for;
- (c) the applicant has not completed the in-service training period prescribed in the regulations for the class of licence applied for; or
- (d) the applicant is not in a position to observe or carry out the provisions of this Act and the regulations.

Idem

(3) The Director shall issue a licence for a machine used in installing drainage works on application therefor by the owner

and payment of the prescribed fee unless, after a hearing, he is of opinion that the machine,

- (a) is not properly designed, constructed or equipped for the purposes for which it will be used;
- (b) is not in good working order; or
- (c) does not comply with performance standards prescribed in the regulations.

(4) Subject to section 5, the Director shall renew a licence ^{Renewal of licence} that is or has expired, on application by the licensee in accordance with this Act and the regulations and payment of the prescribed fee. 1972, c. 38, s. 4.

5.—(1) The Director may refuse to renew or may suspend ^{Refusal to renew licence, suspension or revocation} or revoke a licence to carry on the business of installing drainage works if, after a hearing, he is of opinion that,

- (a) the facilities and equipment used in the business do not comply with this Act and the regulations;
- (b) the licensee or, where the licensee is a corporation, any officer, director or servant thereof has contravened or has permitted any person under his control or direction in connection with the business to contravene, any provision of this Act or the regulations and such contravention warrants refusal to renew, suspension or revocation of the licence; or
- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

(2) The Director may refuse to renew or may suspend or ^{Idem} revoke a licence to be the operator of a machine used in installing drainage works if, after a hearing, he is of opinion that,

- (a) the licensee has contravened or has permitted any person under his control or direction in connection with the operation of the machine to contravene any provision of this Act or the regulations and such contravention warrants a refusal to renew, suspension or revocation; or
- (b) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

Idem

(3) The Director may refuse to renew or may suspend or revoke a licence for a machine used in installing drainage works if, after a hearing, he is of opinion that,

- (a) any ground for refusing to issue a licence exists;
- (b) the owner or any other person permitted to have the control or use of the machine has contravened any provisions of this Act or the regulations and such contravention warrants a refusal to renew, suspension or revocation; or
- (c) any other ground for refusal to renew, suspension or revocation specified in the regulations exists.

Continuation
of licence
pending
renewal

(4) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his licence, a licensee has applied for renewal of his licence and has paid the prescribed fee and observed and carried out the provisions of this Act and the regulations, his existing licence shall be deemed to continue until he has received the decision of the Director on his application for renewal. 1972, c. 38, s. 5.

Notice of
hearing

6.—(1) The notice of a hearing by the Director under section 4 or 5 shall afford to the applicant or licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the issue or retention of the licence.

Examination
of docu-
mentary
evidence

(2) An applicant or licensee who is a party to proceedings in which the Director holds a hearing shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 1972, c. 38, s. 6.

Variation of
decision by
Director

7. Where the Director has refused to issue or renew or has suspended or revoked a licence pursuant to a hearing he may at any time of his own motion or on the application of the person who was the applicant or licensee vary or rescind his decision, but the Director shall not vary or rescind his decision adversely to the interests of any person without holding a rehearing to which such person is a party and may make such decision pursuant to such rehearing as he considers proper under this Act and the regulations. 1972, c. 38, s. 7.

8.—(1) Where the Director refuses to issue or renew or ^{Appeal to Board} suspends or revokes a licence, the applicant or licensee may, by written notice delivered to the Director and filed with the Board within fifteen days after receipt of the decision of the Director, appeal to the Board.

(2) The Board may ^{Extension of time for appeal} extend the time for the giving of notice by an applicant or licensee under subsection (1), either before or after expiration of such time, where it is satisfied that there are *prima facie* grounds for appeal and that there are reasonable grounds for applying for the extension.

(3) Where an applicant or licensee appeals to the Board ^{Disposal of appeal} under this section, the Board shall hear the appeal by way of a hearing *de novo* to determine whether the licence should be issued, renewed, suspended or revoked and may, after the hearing, confirm or alter the decision of the Director or direct the Director to do any act he is authorized to do under this Act and as the Board considers proper and, for such purpose, the Board may substitute its opinion for that of the Director.

(4) Notwithstanding that an applicant or licensee has ^{Effect of decision pending disposal of appeal} appealed under this section from a decision of the Director, unless the Director otherwise directs, the decision of the Director is effective until the appeal is disposed of. 1972, c. 38, s. 9.

9.—(1) The Director, the appellant and such other persons as ^{Parties} the Board may specify are parties to the proceedings before the Board under this Act.

(2) Members of the Board assigned to render a decision ^{Members making decision not to have taken part in investigation, etc.} after a hearing shall not have taken part prior to the hearing in any investigation or consideration of the subject-matter of the hearing and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but such members may seek legal advice from an adviser independent from the parties and in such case the nature of the advice should be made known to the parties in order that they may make submissions as to the law.

(3) The oral evidence taken before the Board at a hearing ^{Recording of evidence} shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(4) The findings of fact of the Board pursuant to a hearing ^{Findings of fact} shall be based exclusively on evidence admissible or matters

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c. 484

that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Only
members at
hearing to
participate
in decision

(5) No member of the Board shall participate in a decision of the Board pursuant to a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all persons so present participate in the decision. 1972, c. 38, s. 10.

Appeal
to court

10.—(1) Any party to the hearing before the Board may appeal from the decision of the Board to the Divisional Court in accordance with the rules of court.

Minister
entitled
to be
heard

(2) The Minister is entitled to be heard by counsel or otherwise upon the argument of an appeal under this section.

Record to
be filed
in court

(3) The chairman of the Board shall file with the Registrar of the Supreme Court the record of the proceedings before the Board which, together with a transcript of the evidence before the Board, if it is not part of the Board's record, shall constitute the record in the appeal.

Powers of
court on
appeal

(4) An appeal under this section may be made on any question that is not a question of fact alone and the court may confirm or alter the decision of the Board or direct the Director to do any act he is authorized to do under this Act or may refer the matter back to the Board for reconsideration by the Board as the court considers proper and the court may substitute its opinion for that of the Director or the Board.

Effect of
decision of
Board
pending
disposal of
appeal

(5) Notwithstanding that an applicant or licensee has appealed under this section from a decision of the Board, unless the Board otherwise directs, the decision of the Board is effective until the appeal is disposed of. 1972, c. 38, s. 11.

Appointment
of Director
and
inspectors

11.—(1) For the purposes of this Act, the Minister may appoint a Director and one or more inspectors.

Powers of
inspector

(2) For the purposes of carrying out his duties under this Act, an inspector may at any time between sunrise and sunset enter any premises or building other than a dwelling house, but nothing in this section affects the issuance and execution of a warrant under section 142 of the *Provincial Offences Act*.

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c. 400

Certificate of
appointment

(3) The production by an inspector of a certificate of his appointment purporting to be signed by the Minister is admissible in evidence as *prima facie* proof of his appointment

without further proof of the signature or authority of the Minister. 1972, c. 38, s. 12.

12. No person shall hinder or obstruct an inspector in the course of his duties or furnish him with false information or refuse to furnish him with information. 1972, c. 38, s. 13.

13. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction is liable for a first offence to a fine of not more than \$25 and for a subsequent offence to a fine of not more than \$100. 1972, c. 38, s. 14.

14. The Lieutenant Governor in Council may make regulations,

- (a) providing for the manner of issuing licences and prescribing their duration, the fees payable therefor and the terms and conditions on which they are issued;
- (b) prescribing grounds for refusal to renew, suspension or revocation of licences in addition to the grounds mentioned in section 5;
- (c) establishing classes of machine operators and prescribing the qualifications for each class and the duties that may be performed by each class;
- (d) providing for courses of instruction and examinations and requiring licence holders or applicants for a licence under this Act to attend such courses and pass such examinations;
- (e) prescribing the facilities and equipment to be provided by persons engaged in the business of installing drainage works;
- (f) prescribing standards and procedures for the installation of drainage works;
- (g) prescribing performance standards for machines used in installing drainage works;
- (h) prescribing forms and providing for their use;
- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act. 1972, c. 38, s. 15.

