

1980

c 39 Beach Protection Act

Ontario

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CHAPTER 39

Beach Protection Act**1. In this Act,**Interpre-
tation

- (a) "licence" means a licence issued under this Act;
- (b) "Minister" means the Minister of Natural Resources;
- (c) "regulations" means the regulations made under this Act;
- (d) "sand" includes earth, gravel and stone. R.S.O. 1970, c. 40, s. 1; 1972, c. 4, s. 12.

2.—(1) The Minister may issue licences for the taking of sand from the bed, bank, beach, shore or waters of any lake, river or stream or from any bar or flat in any lake, river or stream or adjoining any channel or entrance to any lake, river or stream in accordance with the regulations. R.S.O. 1970, c. 40, s. 2 (1); 1971, c. 50, s. 11 (1). Issue and
revocation
of licence

(2) Each licence is effective only in the geographical area defined therein, and shall contain such particular terms and conditions as to its operation as the Minister may direct. R.S.O. 1970, c. 40, s. 2 (2). Operation
of licence

3.—(1) The Minister may refuse to issue a licence to take sand from a bed, bank, beach, shore, waters, bar or flat mentioned in subsection 2 (1) that is the property of the Crown on any ground upon which he considers it to be contrary to the public interest to issue the licence. Refusal
to issue
licence

(2) Subject to section 11, where a bed, bank, beach, shore, waters, bar or flat mentioned in subsection 2 (1) is owned by a person other than the Crown, the owner or a person who has acquired from the owner the right to remove sand therefrom is entitled to be issued a licence by the Minister unless the Minister is of opinion that, Idem

- (a) the taking or removal of sand therefrom is contrary to the public interest on the ground that it will,
 - (i) unduly impair or interfere with the natural state or use of waters or the value or use of property,

(ii) likely cause undue erosion of or accretion to lands, or

(iii) likely create a threat to roads, rights-of-way, structures or, installations or to health or safety,

in the place from which the sand is to be taken or the area adjacent or near to such place; or

(b) the equipment that the applicant proposes to use for removal of the sand is not proper or suitable for such purpose.

Suspension,
etc., of
licence

(3) The Minister may, in accordance with section 4, refuse to renew or may suspend or revoke a licence,

(a) if the licensee has contravened or failed to comply with the terms and conditions of the licence; or

(b) on any grounds upon which he might refuse to issue the licence if application was being made for it in the first instance. 1971, c. 50, s. 11 (2), *part.*

Reference
to Mining
and Lands
Com-
missioner

4.—(1) Subject to subsection (7), before refusing to issue a licence under subsection 3 (2) or to renew any licence or before suspending or revoking any licence, the Minister shall refer the matter to the Mining and Lands Commissioner for a hearing and report.

Hearing

(2) Pursuant to a reference by the Minister under this section, the Mining and Lands Commissioner shall hold a hearing as to whether the licence to which the hearing relates should be issued or renewed or should be suspended or revoked, as the case may be, and the applicant or licensee and such other person as the Commissioner specifies shall be parties to the hearing.

Application of
R.S.O. 1980,
c. 484,
ss. 6-16, 21-23

(3) Sections 6 to 16 and 21 to 23 of the *Statutory Powers Procedure Act* apply with respect to a hearing under this section.

Assistance
for Com-
missioner

(4) The Mining and Lands Commissioner may obtain the assistance of engineers, surveyors or other scientific persons who may under his order view and examine the property in question, and in making his report he may give such weight to their opinion or report as he considers proper.

Report
of Com-
missioner

(5) At the conclusion of a hearing under this section, the Mining and Lands Commissioner shall make a report to the Minister setting out his findings of fact and any information or knowledge used by him in reaching his recommendations,

any conclusions of law he has arrived at relevant to his recommendations and his recommendations as to the issue, renewal, suspension or revocation of the licence to which the hearing relates, as the case may be, and shall send a copy of his report to the applicant or licensee to whom it relates.

(6) After considering the report of the Mining and Lands Commissioner under this section, the Minister may thereupon ^{Decision of Minister} refuse to issue or to renew or may suspend or revoke the licence to which the report relates and shall give notice of his decision to the applicant or licensee specifying the reasons therefor.

(7) Notwithstanding subsection (1), the Minister, by notice to a licensee and without referring the matter to the Mining and Lands Commissioner for a hearing, may provisionally refuse renewal of, or suspend the licensee's licence where the continuation of operations under the licence is, in the Minister's opinion, an immediate threat to the public interest and the Minister so states in such notice, giving his reasons therefor, and the Minister shall forthwith thereafter refer the matter to the Mining and Lands Commissioner and the provisions of subsections (1) to (6) shall apply. 1971, c. 50, s. 11 (2), *part*; 1973, c. 105, s. 4. ^{Provisional suspension, etc.}

5.—(1) No person, unless he is the holder of a licence, shall take or carry away in any boat, vessel, craft, cart, truck or other conveyance, or otherwise transport by land or water or remove by drag-line or other mechanical device, any sand from a bed, bank, beach, shore, waters, bar or flat mentioned in subsection 2 (1) whether or not such bed, bank, beach, shore, waters, bar or flat is owned by such person. ^{Prohibition against taking sand}

(2) Subsection (1) does not apply to the removal of sand, ^{Where licence not required}

(a) by a municipality for municipal use; or

(b) by a *bona fide* resident of Ontario for his personal use and not for resale or for use for commercial purposes, if the removal is with the written consent of an official designated by the council of the local municipality in which the sand is situate. R.S.O. 1970, c. 40, s. 3.

6. Subject to subsection 5 (2), no person shall go upon any bed, bank, beach, shore, waters, bar or flat mentioned in subsection 2 (1) for the purpose of removing or assisting to remove any sand therefrom except under the authority of a licence. R.S.O. 1970, c. 40, s. 4. ^{Being present to remove sand}

7. No person shall have on board his vessel or on a vessel in his possession or control any sand taken contrary to this Act. R.S.O. 1970, c. 40, s. 5. ^{Having sand unlawfully taken on vessel}

Issue of
search
warrant

8.—(1) Where a person makes oath before a justice of the peace that he has reason to believe and does believe that sand, in contravention of section 5, 6 or 7, is on board any vessel, or at any place, the justice of the peace shall issue a search warrant directed to a sheriff, police officer, constable or bailiff, who shall forthwith proceed to search the vessel or place and, if any sand is found thereon or thereat, he shall seize it and the vessel, if any, in which it is contained, and shall keep them secure until final action as hereinafter provided is had thereon.

Prosecution

(2) The owner, master or person in possession of the vessel, or person in possession of sand, shall, without further information laid, be summoned forthwith by the justice who issued the warrant to appear before a provincial offences court, and if such owner, master or person in possession fails to appear, or if it is shown to the satisfaction of the court that a contravention has taken place, the court may convict the owner, master or person in possession. R.S.O. 1970, c. 40, s. 6.

Removal of
sand from
bed of
certain
streams
prohibited

9.—(1) No person shall remove any sand from the bed of any river, stream or creek running between two municipalities without the consent of the councils of such municipalities, and in no case shall any sand be removed from the bed of any river, stream or creek so as to injure or endanger the safety of any bridge, drainage pipe, watermain or other structure erected or laid by a municipal corporation.

Offence

(2) Every person who contravenes any provision of subsection (1) is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$25. R.S.O. 1970, c. 40, s. 7.

Removal of
sand from
street or
road
prohibited

10.—(1) No person shall remove any sand from any street or road or from the extension of any street or road into any river or lake without the consent of the council of the municipality in which it is situate.

Offence

(2) Every person who contravenes any provision of subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10 for every load removed. R.S.O. 1970, c. 40, s. 8.

Removal
of sand
from Erie,
Ontario,
Huron

11.—(1) Notwithstanding any other provision of this or any other Act or in any regulation or order made under this or any other Act, the Lieutenant Governor in Council may make regulations prohibiting or restricting, subject to the terms and conditions contained therein, the taking, removing and carrying away by cart, truck, vessel or any other vehicle or water craft of any sand

from any bed, beach, shore or waters of or adjacent to any part of the shores of Lake Erie, Lake Ontario or Lake Huron, or from any land covered by the waters of any of such lakes adjacent to such shore, or from any sandbar or flat therein or adjoining any channel or entrance thereto as described in the regulations.

(2) Such prohibition or restriction extends to the owner, ^{Extent of prohibition or restriction} tenant or occupant of any such bed, beach, shore, sandbar or flat and to any person claiming under the authority of any municipal corporation or of any order of the Ontario Municipal Board and to every other individual and corporation.

(3) Every person who contravenes the prohibition or restriction ^{Offence} contained in any such regulation is guilty of an offence and on conviction is liable to a fine of not less than \$10 and not more than \$100. R.S.O. 1970, c. 40, s. 9.

12. Every person who contravenes any of the provisions of this Act or the regulations is guilty of an offence and on conviction, if no other penalty is provided, is liable to a fine of not less than \$10 and not more than \$1,000, but no prosecution shall be commenced except with the consent in writing of the Attorney General. ^{General penalty; consent to prosecute} R.S.O. 1970, c. 40, s. 10; 1972, c. 1, s. 9 (7).

13. Except as otherwise provided in this Act, the *Provincial Offences Act* ^{Application of R.S.O. 1980, c. 400} applies to all proceedings taken under this Act. R.S.O. 1970, c. 40, s. 11.

14. In addition to the method of service prescribed by the *Provincial Offences Act*, any summons or other proceeding may, where it is directed to a person on board a vessel, be served by leaving it, or a copy thereof, with the person who is or appears to be in charge or command of the vessel. ^{Service of proceedings} R.S.O. 1970, c. 40, s. 12.

15. Where it is proved in any prosecution under this Act that the accused has done or committed any act or thing for which a licence or the consent of any person or persons is required under this Act, the burden of proving that the required licence was issued or consent was given shall rest upon the accused. ^{Burden of proof} 1971, c. 50, s. 11 (3).

16.—(1) A person to whom a licence to take sand from ^{Royalties} property of the Crown in right of Ontario is issued may be required to pay to the Crown, in addition to his licence fee, a fixed sum for every cubic metre of sand removed under the authority of the licence. 1971, c. 50, s. 11 (4); 1978, c. 87, s. 22 (1).

- Amount of royalty (2) The amount to be charged per cubic metre shall be fixed by the Minister according to the location, type, availability and accessibility of the sand. R.S.O. 1970, c. 40, s. 14 (2); 1978, c. 87, s. 22 (2).
- Security (3) The Minister may require a person to whom such a licence is issued and by whom such sums are payable to the Crown to give security by bond satisfactory to the Minister for the payment of such sums. R.S.O. 1970, c. 40, s. 14 (3).
- Sale of vessel, etc., for payment of penalty
R.S.O. 1980, c. 400
- 17.**—(1) In addition to the remedies provided by the *Provincial Offences Act* for the recovery of penalties, any penalty imposed for a contravention of this Act, if not paid in accordance with the conviction, may be levied by the sale of any vessel, conveyance, drag-line or other mechanical device involved in the commission of the offence under the warrant of the court that imposed the penalty.
- Payment of balance to owner (2) Upon return being made of the sale, after satisfying the fine and the costs of the sale, the surplus, if any, shall be paid to the owner of the vessel. R.S.O. 1970, c. 40, s. 15.
- Regulations **18.** The Lieutenant Governor in Council may make regulations,
- (a) providing for the issue and renewal of licences and prescribing the terms and conditions thereof and the fees payable therefor;
 - (b) prescribing the form and contents of security bonds;
 - (c) prescribing forms and providing for their use. R.S.O. 1970, c. 40, s. 16; 1971, c. 50, s. 11 (5).