

1970

c 31 The Niagara Escarpment Protection Act, 1970

Ontario

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Bibliographic Citation

The Niagara Escarpment Protection Act, 1970, SO 1970, c 31

Repository Citation

Ontario (1970) "c 31 The Niagara Escarpment Protection Act, 1970," *Ontario: Annual Statutes*: Vol. 1970, Article 33.

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CHAPTER 31

An Act to provide for the Preservation of the Niagara Escarpment and its Vicinity

*Assented to June 26th, 1970
Session Prorogued November 13th, 1970*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpre-
tation

(a) "Commissioner" means the Mining Commissioner appointed under *The Mining Act*;

R.S.O. 1960.
c. 241

(b) "mine" means a mine as defined in *The Mining Act*;

(c) "Minister" means the Minister of Mines and Northern Affairs;

(d) "protected zone" means the lands to which this Act applies.

2. This Act applies to such lands in the geographic townships of Niagara, Stamford, Grantham, Thorold, Pelham, Louth, Clinton, North Grimsby, Saltfleet, Barton, Ancaster, Beverly, West Flamborough, East Flamborough, Nelson, Nassagaweya, Esquesing, Erin, Chinguacousy, Caledon, Albion, Mono, Adjala, Mulmur, Osprey, Nottawasaga, Collingwood, Artemesia, Euphrasia, St. Vincent, Holland, Sydenham, Derby, Keppel, Sarawak, Amabel, Albermarle, Eastnor, Lindsay and St. Edmunds as are designated by the regulations under this Act.

Application
of Act

3.—(1) No person shall open or operate a mine in the protected zone unless he is the holder of a permit issued by the Minister.

Permit

(2) Where a person was operating a mine in the protected zone on the 6th day of May, 1970 subsection 1 does not apply until ninety days after this section comes into force.

Idem

Site plan

4. An application for a permit shall be accompanied by a site plan that includes,

- (a) the true shape, topography, contours, dimensions, acreage and location of the property owned or under lease and held for present or future pit or quarry operations;
- (b) the use or the proposed use of all land and the location and use or the proposed use of all buildings and structures lying within a distance of 500 feet of pit or quarry property boundaries;
- (c) the location, height, dimensions and use of all buildings or structures existing or proposed to be erected on the property;
- (d) existing and anticipated final grades of excavation, contours where necessary and excavation set backs;
- (e) drainage provisions;
- (f) all entrances and exits;
- (g) as far as possible, ultimate pit development, progressive and ultimate road plan, any water diversion or storage, location of stockpiles for stripping and products, progressive and ultimate rehabilitation and, where possible, intended use of the land after the extractive operations have ceased; and
- (h) such other information as the Minister may require or as is prescribed by the regulations.

Refusal to issue permit

5.—(1) The Minister may refuse to issue a permit where, in his opinion, the operation of the mine would be against the interest of the public in preserving the character of the formation that includes the Niagara escarpment and the availability of its natural attributes for enjoyment by the public.

Conditions of permit

(2) The Minister may attach such terms and conditions to the issuance of a permit as, in his opinion, are necessary for the interest of the public referred to in subsection 1.

Revocation of permit

6. The Minister may revoke a permit issued under this Act if the permittee has contravened this Act or has failed to comply with the terms and conditions of the permit.

Hearing

7.—(1) Subject to section 8, before refusing to issue a permit under section 5 or before revoking a permit, the Minister shall refer the matter to the Commissioner for a hearing and report.

(2) Pursuant to a reference by the Minister under this section, the Commissioner shall hold a hearing as to whether the permit to which the hearing relates should be issued or should be revoked, as the case may be, and the applicant or permittee and such other persons as the Commissioner specifies shall be parties to the hearing. ^{Idem}

(3) A hearing by the Commissioner shall be conducted in accordance with the rules, practices and procedures applicable to proceedings before the Commissioner under Part VIII of *The Mining Act*. ^{Procedure}
R.S.O. 1960,
c. 241

(4) The 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. ^{Expert assistance}

(5) The Commissioner shall, at the conclusion of a hearing under this section, make a report to the Minister which shall set 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 or revocation of the permit to which the hearing relates, as the case may be, and shall send a copy of his report to the applicant or permittee to whom it relates. ^{Report of Commissioner}

(6) After considering the report of the Commissioner under this section, the Minister may refuse to issue or may revoke the permit to which the report relates and shall within thirty days after he receives the report of the Commissioner give notice of his decision to the applicant or permittee specifying the reasons therefor, and, subject to subsection 7, the decision of the Minister is final. ^{Decision of Minister}

(7) Any person whose permit or right to a permit is affected by a decision of the Minister may appeal the decision on any point of law to a judge of the Court of Appeal. ^{Appeal}

8. Where the Minister refers the matter of a revocation of a permit to the Commissioner for a hearing and report and, in the opinion of the Minister, the continuation of the mining operation constitutes an immediate threat to the interest of the public referred to in section 5, the Minister may, upon notice to the permittee, provisionally suspend the permit pending the final disposition of the matter. ^{Interim suspension}

Quarrying
near
escarpment

9.—(1) Notwithstanding that a permit has been issued under this Act, no person shall quarry in the Amabel or Lockport Formation in the protected zone at any point nearer to the natural edge of the Niagara escarpment than 300 feet measured horizontally.

Idem

(2) For the purposes of this section, the Amabel and Lockport Formations are as defined in Geological Survey of Canada Memoir 289, 1957, entitled "Silurian Stratigraphy and Palaeontology of the Niagara Escarpment".

Order of
compliance

10.—(1) Where it appears to the Minister that any person does not comply with any provision of this Act, notwithstanding the imposition of any penalty in respect of such non-compliance, the Minister may apply to a judge of the High Court for an order directing such person to comply with such provision, and upon the application the judge may make such order as he thinks fit.

Appeal

(2) An appeal lies to the Court of Appeal from an order made under subsection 1.

Penalty

11.—(1) Every person who contravenes section 3 or 9 or fails to comply with the terms and conditions of a permit is guilty of an offence against this Act and is liable to a fine of not more than \$5,000 for every day upon which the offence occurs or continues.

Idem

R.S.O. 1960,
c. 241

(2) Section 626 of *The Mining Act* applies to offences against this Act.

Regulations

12. The Lieutenant Governor in Council may make regulations,

- (a) designating lands for the purposes of section 2;
- (b) governing applications for permits and providing for their issue;
- (c) prescribing additional information to be included on site plans under section 4;
- (d) prescribing forms for the purposes of this Act and providing for their use.

Commence-
ment

13. This Act comes into force on the day it receives Royal Assent.

Short title

14. This Act may be cited as *The Niagara Escarpment Protection Act, 1970*.