

TRINIDAD AND TOBAGO.

No. 46.—1920.

I ASSENT,

[L.S.]

J. R. CHANCELLOR,
Governor.

16th November, 1920.

AN ORDINANCE to provide for the control of pollution of land or water by oil mining operations and for the issue of licences for the abstraction of water from watercourses for industrial purposes.

[By Proclamation.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows :—

PART I.

Interpretation and constitution of Oil and Water Board.

Short title.

1. This Ordinance may be cited as the Oil Pollution and Water Conservation Ordinance, 1920.

Interpretation.

2. In this Ordinance, unless the context otherwise requires :—

The expression "land" includes messuages, tenements and hereditaments, houses and buildings of any tenure, and also a watercourse, water hole, and a spring, and also water in a pond or reservoir, natural or artificial.

The expression "owner" as applied to land includes all persons having any estate or interest in the land.

The expression "inspector" means an inspector appointed for the purposes of this Ordinance.

The expression "industry" includes the oil mining industry, and irrigation and inundation for agricultural purposes, and all industries.

The expression "watercourse" includes any river, stream, creek, or other permanent and defined course for water, whether continuously containing water or not.

The expression "riparian owner" with reference to a watercourse includes the owner of land in a lagoon or swamp which is wholly or partially fed by that watercourse.

The expression "abstraction" as applied to water includes impounding and diversion.

3.—(1.) There shall be established a Board to be called the "Oil and Water Board" (in this Ordinance referred to as "the Board") whose duty it shall be to hear and adjudicate on in accordance with the provisions of this Ordinance:—

*Constitution
of Oil and
Water Board.*

- (a.) All complaints as to the pollution of land by oil mining operations,
- (b.) All applications for licences to commence or carry on oil mining operations causing or likely to cause pollution to land, and
- (c.) All applications for licences to abstract water from any watercourse for the purpose of any industry.

(2.) The Board shall consist of a judge of the Supreme Court to be appointed by the Governor and to be chairman, the Director of Public Works, the Director of Lands and Mines, the Director of Agriculture, and four other persons (in this Ordinance referred to as "unofficial members") to be appointed by the Governor of whom two shall have a special knowledge of the oil mining industry and two shall have a special knowledge of agriculture.

(3.) The chairman and the unofficial members shall hold office during the Governor's pleasure. No person in Government employ shall be an unofficial member.

(4.) The Governor may appoint any qualified person to act in the place of any member of the Board during his temporary absence from the Colony, illness, inability (whether from interest or otherwise), or unwillingness to act.

(5.) Every member of the Board shall before acting as a member of the Board take the following oath, namely:—

I.....do hereby swear that I will perform the duties of a member of the Oil and Water Board without favour or partiality, and to the best of my skill and ability.

(6.) The oath of the Chairman shall be administered by the Governor. The oaths of other members shall be administered by the Chairman.

Style and seal
of Board.

4. The Board may sue and be sued, and may for all purposes be described as the "Oil and Water Board," and shall have an official seal which shall be officially and judicially noticed, and the seal shall be authenticated by the signature of the chairman.

Procedure of
Board.

5.—(1.) The Board may act by any four of its number (provided that the chairman shall always be present), and may so act notwithstanding a vacancy in its number.

(2.) Questions before the Board shall be decided by a majority of votes of those present and voting, and in the case of equality of votes the chairman shall have a second or casting vote.

(3.) Provided that every point of law before the Board shall be decided by the chairman alone.

(4.) No member shall take any part in the deliberations or decisions of the Board on any question relating to oil mining operations or land or a watercourse in which he is beneficially interested or in which any company of which he is a member or creditor is beneficially interested.

(5.) The Board shall have full power to adjourn its proceedings from time to time, to make or permit amendments, to correct errors in its proceedings, to direct how service is to be made, to permit substituted service, and generally, subject to the provisions of this Ordinance, to regulate its own procedure.

6.—(1.) Whenever the Board has power to order or require any act to be done, the Board may, if it thinks fit, at the same time or subsequently fix a period within which or a day on or before which that act is to be done. Power to fix and enlarge time.

(2.) The Board may enlarge any time allowed or fixed by this Ordinance or by any licence or order of the Board (including an order enlarging time) for doing any act on such terms (if any) as the Board thinks just, and may so enlarge any time although the time allowed or fixed has already expired.

7.—(1.) Every decision of the Board shall be final and binding on all persons served with notice of or attending or represented at the proceedings, except that an appeal from any such decision may be made to a full court of the Supreme Court. Appeals. Provided that no judge who was a member of the Board whose decision was appealed from shall be a member of the full court hearing the appeal.

(2.) The full court shall have all the powers of a full court on an appeal from a judge of the Supreme Court, and may vary the decision of the Board to any extent or may remit the proceedings to be dealt with by the Board in accordance with the directions of the full court.

(3.) The power of making rules conferred on the Chief Justice by section forty-six of the Judicature Ordinance shall apply to appeals under this Ordinance and is hereby extended so as to authorize the making of rules as to the information and documents to be supplied on appeals under this Ordinance by the Board or by the appellant, and as to the time within which and the manner in which such appeals may be made. Ord. 31.

In default of or subject to any such rules, the rules for the time being in force regulating appeals in an action from a final order of a judge of the Supreme Court to the full court (including rules as to time) shall apply to appeals under this Ordinance.

Representa-
tion of persons
under
disability.

8. The Board may from time to time give directions, either generally or with regard to any particular case, as to the manner in which unborn persons, infants, and other persons under disability are to be represented in any matter before the Board.

Power to
summon
witnesses.

9. For the purpose of performing its duties under this Ordinance, the Board shall have all the powers of the Supreme Court of summoning, enforcing the attendance of, and examining witnesses on oath and of ordering and enforcing the production of documents.

Evidence.

10.—(1.) Every document purporting to be an order or other instrument issued by the Board and to be sealed with the seal of the Board authenticated in manner provided by this Ordinance shall be received in evidence and shall be deemed to be such order or instrument without further proof, unless the contrary is shown.

Ord. No. 32.

(2.) The Evidence Ordinance shall apply to the Board as though the Board were included in the first column of the schedule to that Ordinance, and the chairman of the Board were mentioned in the second column of that schedule.

PART II.

Licences for oil mining operations causing pollution to land.

Meaning of
pollution.

11. For the purposes of this Ordinance, land shall be deemed to be polluted as a result of oil mining operations if it is polluted by the escape of oil or salt water or any solid or liquid matter, whether of a nature similar to oil or water or not, from any mineral oil well or from any boring or excavation for the purpose of finding or winning mineral oil or from any natural or artificial pond, reservoir, sump, tank, watercourse, channel, or pipe used in connection with oil mining operations, or if it is polluted by the bursting, flooding, or overflow (not being due to the negligence of the owner of the land polluted) of any pond, reservoir, sump, channel, or watercourse, which has been polluted as a result of oil mining operations.

12.—(1.) Whenever complaint is made to the Board by any person that land in which he has an estate or interest has been, whether before or after the commencement of this Ordinance, or is likely to be injuriously affected by pollution resulting from oil mining operations, the Board shall, as soon as practicable, investigate the complaint, and if it considers the complaint justified,

Duty of Board to assess damages for pollution.

- (a.) Assess and order the payment of compensation for the damage (if any) done by the pollution, and
- (b.) Decide whether it is expedient in the public interest that the commencement or continuance of the oil mining operations causing or likely to cause pollution should be permitted and, if so, on what conditions.

13.—(1.) Whenever the Board considers that the commencement or continuance of oil mining operations is likely to cause pollution to any land, the Board may in its discretion, as it thinks most expedient in the public interest, either prohibit such oil mining operations or grant a licence (in this Ordinance called an "oil licence") for their commencement or continuance subject to the provisions of this Ordinance.

Licences for oil mining operations causing pollution.

(2.) But the Board shall not prohibit oil mining operations in circumstances in which, if this Ordinance had not been passed, it would not be competent for the Supreme Court to grant an injunction prohibiting such operations.

(3.) In deciding whether to grant an oil licence and on the conditions to be inserted in the oil licence, the Board shall have regard to the relative importance to the public interest of the damage likely to be done by pollution as compared with the amount of oil likely to be obtained.

14. An oil licence may be granted on the application of any person carrying on or intending to commence oil mining operations, either after a complaint as to pollution or apprehended pollution has been made or without any such complaint having been made.

Who may apply for oil licence.

15. Every application for an oil licence shall be accompanied by a plan showing the area in which it is proposed to carry on the oil mining operations and the boundaries

Form of application.

and owners of all lands likely to be injuriously affected by pollution from such operations, and, so far as practicable, giving particulars of the probable sites of all borings, oil sumps, reservoirs, and other works, intended to be used or erected for the purposes of such operations, and generally of the mode in which the operations will be conducted, and such other particulars as the Board may from time to time, either generally or in regard to the particular case, direct.

Public inquiry.

16. Before granting an oil licence the Board shall hold a public enquiry into the expediency of granting the oil licence, and shall satisfy itself that all persons likely to be affected by the grant of the oil licence have been served with due notice of the application and have had an opportunity of being heard by the Board, and may direct notice of an application to be served on any person, and may permit any person to be heard although he has not been served.

Contents of oil licence.

17.—(1.) Every oil licence shall describe the area within which oil mining operations may be carried on, and may, if the Board thinks fit, permit only specified operations.

(2.) An oil licence may impose any conditions, whether of a nature similar to the conditions by this Ordinance expressly authorised or required to be imposed or not, which the Board considers just and expedient.

Power to vary and revoke oil licence.

18.—(1.) The Board may revise the conditions of an oil licence from time to time as may be necessary for the protection of the owner of any land from pollution, or as may for any reason be deemed expedient by the Board.

(2.) The Board may, if circumstances alter, grant an oil licence notwithstanding a previous refusal.

(3.) An oil licence may be revoked by the Board in the event of any breach in the conditions of the licence or if, in the opinion of the Board, owing to altered circumstances revocation becomes necessary in the public interest.

Works for preventing pollution.

19.—(1.) Every oil licence shall require that such precautions be taken and such works be executed and maintained to the satisfaction of the Board for the purpose of preventing or diminishing pollution as the Board may from time to time prescribe.

(2.) In deciding what works are to be executed the Board shall have regard to the expense of the works as compared with the damage likely to be done by pollution if the works are not executed.

20. The Board shall not permit oil mining operations which, in its opinion, will by pollution seriously diminish the utility or enjoyment of any land, unless the person responsible for the oil mining operations, before a date to be named by the Board, makes an offer in accordance with the provisions of Part IV of this Ordinance to purchase the whole or such part of any land likely to be damaged or injuriously affected by such operations as the Board shall direct.

Offers to purchase polluted land.

21. Whenever the Board considers that any oil mining operations are causing or are likely to cause pollution to any water supply which is necessary for the proper enjoyment of any house or land, the Board shall not permit the commencement or continuance of those operations unless either:—

Pollution of water supply.

- (a.) Means are adopted to the satisfaction of the Board for the prevention of all material pollution of the water supply, or
- (b.) Arrangements are made to the satisfaction of the Board for the provision by and at the expense of the person responsible for the oil mining operations of an unpolluted water supply sufficient for the reasonable requirements of the house or land but not better than the original supply before pollution, or
- (c.) If neither of the foregoing alternatives is reasonably practicable, but the Board considers it expedient in the public interest that the oil mining operations should be permitted, unless the person responsible for the oil mining operations, before a date to be named by the Board, makes an offer in accordance with the provisions of Part IV of this Ordinance to purchase the house (if any), and also the whole or such part of any land likely to be damaged or injuriously affected by pollution of the water supply as the Board shall direct.

Clearing
obstructions
in water-
courses.

22.—(1.) Where, in the opinion of the Board, it is necessary, in order to prevent or diminish the pollution of land resulting from the overflow of a watercourse liable to pollution by oil mining operations carried on under an oil licence, that the channel of any watercourse should be kept clear, the Board may, if it thinks it expedient, after giving the owner of the watercourse and every person likely to be affected by the order or by anything to be done thereunder an opportunity of being heard, order the licensee so far as practicable to keep the channel clear of obstructions likely to cause the overflow of the watercourse.

(2.) For the purpose of complying with any such order the licensee, his workmen, servants, and agents may, from time to time, as may be necessary, enter by a route to be agreed upon between the persons concerned or, in default of agreement, to be settled by the Board, and with or without any necessary vehicles and animals of any description, and examine and clear the watercourse.

(3.) Provided that before entering, the licensee shall, except where immediate entry is necessary in an emergency for the purposes of clearing an obstruction likely to cause an overflow, give at least seven days notice in writing to the occupiers of the riparian lands on both sides of the watercourse of his intention to enter.

(4.) If any difficulty arises as to giving notice to the occupier, or if there is no occupier of the riparian lands, the Board may give directions as to how and to whom notice of intention to enter is to be given.

(5.) A licensee shall pay full compensation to be assessed by the Board for any damage which the owner of any land or watercourse may sustain by reason of anything done in pursuance of the powers conferred by this section.

Prescriptive
and granted
rights to
pollute.

23.—(1.) Pollution of land resulting from oil mining operations carried on or purporting to be or being apparently carried on under an oil licence shall not confer a prescriptive right to pollute any land.

(2.) Save as aforesaid, nothing in this Ordinance shall prejudice any right to pollute land acquired or to be acquired by prescription, agreement, or grant.

24.—(1.) The owner of any land injuriously affected by pollution resulting from oil mining operations, whether carried on under an oil licence or not, shall be entitled to full compensation (to be assessed from time to time by the Board) for all damage suffered by him owing to such pollution.

Regulation of
right to
compensation.

(2.) But the Board shall not award compensation in circumstances in which compensation would not be recoverable in a court of justice if this Ordinance had not been passed.

25. From and after the commencement of this Ordinance no injunction or order restraining pollution by oil mining operations or restraining oil mining operations on account of pollution shall be granted by any court of justice, and, where any such injunction or order has been granted before the commencement of this Ordinance, the Board shall have power to grant an oil licence in accordance with the provisions of this Ordinance for the oil mining operations to which the injunction or order relates, and the injunction or order shall not be enforced with respect to the operations authorised by the oil licence.

Injunctions
restraining oil
mining
operations.

PART III.

Licences to abstract water for industrial purposes.

26.—(1.) Whenever the Board considers that the abstraction of water from a watercourse is necessary for the purpose of any industry and that no other reasonably practicable means of obtaining water for the purpose are available, the Board may, if it thinks it expedient in the public interest, grant a licence (in this Ordinance called a "water licence") in accordance with the provisions of this Ordinance for the abstraction from the watercourse of sufficient water for the purposes of that industry, and for the construction and

Licences for
abstraction of
water.

maintenance of the necessary works (in this Ordinance called "waterworks") for the purpose of impounding or diverting, abstracting, and using the water.

(2.) In deciding whether to grant a water licence and on the conditions to be inserted in the water licence the Board shall have regard to the relative importance to the public interest of the damage likely to be done to other persons by the abstraction of water as compared with the importance and necessities of the industry for which the water is required.

Who may
apply for
water licence.

27. A water licence may be granted on the application of any person carrying on or intending to carry on any industry.

Form of
application.

28. Every application for a water licence shall give particulars of the amount of water it is proposed to abstract, the purpose for which the water will be used and the estimated volume of water flowing in the watercourse, and shall be accompanied by plans and sections of the proposed waterworks and by a map showing the site of the proposed waterworks, the course of the watercourse from which the water will be abstracted below the proposed point of abstraction down to the mouth and above the point of abstraction so far as the level of the water in the watercourse is likely to be raised by the impounding of the water, and the boundaries and owners of all lands, whether below or above the point of abstraction, likely to be injuriously affected by the abstraction or by anything to be done under the water licence, and shall give such other particulars as the Board may from time to time, either generally or in regard to a particular case, direct.

Consent of
owner of site
of waterworks.

29. The grant of a water licence shall not confer any right on the licensee to enter on the site of the proposed waterworks unless the licensee is the owner of the site or has obtained the previous permission of the owner.

Public
inquiry.

30. Before granting a water licence the Board shall hold a public enquiry into the expediency of granting the water licence, and shall satisfy itself that all persons whose land is likely to be injuriously affected by the grant of the water licence have been served with due notice of the application

and that all such persons have had an opportunity of being heard by the Board, and may direct notice of an application to be served on any person, and may permit any person to be heard although he has not been served.

31. Every water licence shall specifically describe the waterworks to be constructed or maintained and the amount of deviation allowed from the plans or sections, and shall state the amount of water to be abstracted (which may vary according to the time of year) and the manner in which the water may be abstracted, and may impose such conditions, whether of a nature similar to those by this Ordinance required or authorised to be imposed or not, as the Board shall in each case think proper.

Contents of
water licence.

32. Where before the commencement of this Ordinance waterworks have been constructed for the abstraction of water from a water course, an application for a licence to continue such abstraction shall comply with the requirements of this Ordinance so far as applicable, and, in addition, shall be accompanied by plans and sections of the existing waterworks, and the Board may, if it thinks fit, either before granting the licence or by the licence or subsequently, require the removal or alteration to any extent of the existing waterworks.

Existing
waterworks.

33.—(1.) The Board may revise the conditions of a water licence from time to time as may be necessary to secure the most economical and equitable distribution of the available water among the riparian owners, or as may for any reason be deemed expedient by the Board.

Power to vary
and revoke
water licence.

(2.) The Board may, if circumstances alter, grant a water licence notwithstanding a previous refusal.

(3.) A water licence may be revoked by the Board in the event of any breach of the conditions of the water licence or if, in the opinion of the Board, owing to altered circumstances revocation becomes necessary in the public interest.

34.—(1.) Whenever it appears to the Board that the abstraction of water from a watercourse will cause material damage to any lower riparian owner, the Board shall not

Compensatory
water for
lower riparian
owners.

grant a water licence for or permit the continuance of such abstraction unless either—

- (a.) Arrangements are made to the satisfaction of the Board for the provision free of cost to the lower riparian owner of a compensatory water supply sufficient for the reasonable requirements from time to time for the domestic and farm purposes of himself, his tenants, and servants, and for the purposes of any industry for which, in the opinion of the Board, a free supply can, in the circumstances, fairly be demanded. Provided that a lower riparian owner shall not be entitled to receive any better supply than his original supply.
- (b.) If the foregoing alternative is not reasonably practicable but the Board considers it expedient in the public interest that the water licence should be granted, unless an offer is made in accordance with the provisions of Part IV of this Ordinance to purchase the whole or such part of the land injuriously affected by the abstraction as the Board shall direct.

(2.) The water licence shall specify the means whereby the water is to be supplied to the lower riparian owner and the amount of water to be supplied, which may vary according to the time of year.

Supply to
lower riparian
owner for
industrial
purposes.

35.—(1.) Where a water licence is granted, and a lower riparian owner requires water for the purposes of any industry and is either not entitled to a free compensatory supply for that purpose, or the free compensatory supply to which he is entitled is not sufficient for his requirements, the Board may, if it thinks it expedient for the purpose of securing economy in water or financial economy, instead of granting a water licence for the lower riparian owner himself to abstract water from the watercourse, order the licensee, either by the licence or subsequently, to supply the lower riparian owner with water for the purposes of any industry on such conditions as the Board shall from time to time think just, and may for that purpose order the licensee to enlarge his water works.

(2.) Every order under this section shall specify the means whereby the water is to be supplied to the lower riparian owner and the amount of water to be supplied, which may vary according to the time of year.

(3.) Every such order shall provide for the payment by the lower riparian owner of the whole or such part of the cost of any enlargement of the licensee's waterworks as the Board thinks just after taking into consideration any benefit which the licensee will derive from the enlargement.

(4.) Every such order shall specify the price to be paid by the lower riparian owner for the water supplied to him.

(5.) The necessary pipes and connections for the purposes of such supply shall be provided, laid, made, and maintained by the licensee at the expense of the lower riparian owner, but shall become the property of the lower riparian owner.

(6.) The Board shall not make an order under this section unless the lower riparian owner gives to the licensee security in such form and in such amount as the Board thinks just for the payment of all expenses to be incurred by the licensee and payable by the lower riparian owner and for the payment of the price of the water to be supplied.

(7.) Breach by either party of any of the conditions in such an order shall be deemed to be a breach of contract by that party with the other party and shall be actionable accordingly.

(8.) Breach of any such condition by the lower riparian owner shall be a ground on which the Board may, if it thinks it just, authorise the licensee to discontinue the supply.

(9.) Breach of any such condition by the licensee shall be a ground on which the Board may, if it thinks it just, revoke the water licence.

(10.) The provisions of any such order may be varied from time to time.

36.—(1.) A licensee shall not permit any water abstracted under a water licence to be used by any other person, not being a lower riparian owner, or for any purpose not specified in the water licence except for the domestic and farm

Supply to persons other than riparian owners.

purposes (not including irrigation) of himself, his tenants, and servants.

(2.) But the Board may, if it thinks fit, permit a licensee to supply any person with water subject to such conditions as the Board thinks fit to impose.

Provided that no permit to supply a person not being a lower riparian owner shall be given or allowed to continue unless all lower riparian owners receive sufficient water for their requirements, industrial or otherwise, for the time being.

Several licences for same watercourse.

37.—(1.) The grant of a water licence shall not prevent the grant of a subsequent water licence to abstract water at the same or another point in the same watercourse, whether above or below the point of abstraction under the previous licence.

(2.) Where more water licences than one are granted to abstract water from the same watercourse, whether the licences are granted at the same time or at different times, the Board may from time to time give directions as to the working of each water licence so as to insure the equitable and economical distribution of the available water between the licensees according to their respective requirements.

Prevention of waste.

38. If any person, whether a licensee or not, wilfully wastes water abstracted under the authority of a water licence or water supplied to him or any other person by a licensee, he shall on summary conviction before a magistrate be liable for each offence to a fine not exceeding ten pounds.

Entry by licensee on other persons' lands.

39.—(1.) For the purpose of enabling a licensee to supply a riparian owner with water, whether as a compensatory supply or for industrial purposes, or to give effect to any direction of the Board as to the working of any water licence or to comply with any lawfully made order of the Board, the Board may, after giving all persons interested an opportunity of being heard, make an order giving authority for the licensee under any water licence, his workmen, servants, and agents to enter and pass into, over, and through the land of any person with or without any

necessary vehicles and animals of any description and lay, sink, maintain and repair pipes or other things, and for that purpose to dig and break up the soil thereof.

(2.) The Board may give such authority either without imposing any conditions or subject to such conditions as the Board shall, in each case, think proper, and, in particular the Board may, if it thinks it just, order the licensee to pay a wayleave, either by a single payment or by periodical payments (the amount to be settled by the Board), for the privilege of laying and maintaining such pipes or things on the land of any owner.

(3.) A licensee before entering on any land under an authority given by the Board shall give at least seven days notice in writing to the occupier of the land of his intention to enter, specifying the locality in which work will be done and the nature of the work. If any difficulty arises as to giving notice to the occupier or if there is no occupier of the land, the Board may give directions as to how and to whom notice of intention to enter is to be given.

(4.) The licensee shall pay full compensation (to be assessed by the Board) for any damage which the owner of the land may sustain by reason of anything done in pursuance of the powers conferred by this section.

(5.) Provided that a lower riparian owner shall not be entitled to compensation for unavoidable damage done to his land for the purpose of supplying him on payment with water for industrial purposes unless the Board shall in any case otherwise order.

(6.) If any person wilfully obstructs any licensee, or any workman, servant, or agent of a licensee, in the lawful exercise of any power conferred by an order of the Board made under this section, he shall on summary conviction before a magistrate be liable for each offence to a fine not exceeding twenty-five pounds.

(7.) Nothing in this Ordinance shall prevent the acquisition by agreement of right to enter upon any land for the purposes of executing works thereon.

Abandonment
of industry by
licensee.

40.—(1.) Whenever a licensee abandons the industry for which he is licensed to abstract water, the Board may in its discretion—

- (a.) Order the licensee to take such steps as may be specified in the order to insure that all water in excess of the quantity reasonably required by the licensee for the domestic or farm requirements (not including irrigation) of himself, his tenants, and servants shall pass down the watercourse, or
- (b.) Order the licensee to permit any lower riparian owner to acquire and use the waterworks of the licensee at a valuation to be made by the Board, and order that all the interest of the licensee in the waterworks shall on payment of the amount of the valuation vest in such lower riparian owner.

(2.) A lower riparian owner who acquires waterworks under this section shall obtain a water licence before he uses the waterworks.

Prescriptive
and granted
rights to
water.

41.—(1.) Abstraction of water from a watercourse under or purporting to be or being apparently under the authority of a water licence shall not confer a prescriptive right to abstract any water.

(2.) Save as aforesaid, nothing in this Ordinance shall prejudice any right to abstract water from a watercourse acquired or to be acquired by prescription, agreement, or grant.

Compensation
for damage by
abstraction of
water.

42.—(1.) The owner of any land injuriously affected by the abstraction of water from a watercourse under or purporting to be under or apparently under a water licence, or by the construction or maintenance of any waterworks, or by the doing of anything required or authorised to be done by a water licence or order of the Board, or by the breach of any condition in a water licence, or by the breach of any order of the Board, or by anything resulting from any of the foregoing matters shall be entitled to full compensation (to be assessed from time to time by the Board) for all damage suffered by him through such abstraction or the construction

or maintenance of such works or the doing of such thing or such breach as aforesaid or through anything resulting from any such matter as aforesaid.

(2.) In assessing compensation for damage suffered by a lower riparian owner through abstraction of water, the Board shall have regard to any arrangements made for the supply to him of a compensatory water supply.

(3.) The Board shall not award compensation in circumstances in which compensation would not be recoverable in a court of justice if this Ordinance had not been passed.

43. From and after the commencement of this Ordinance no injunction or order shall be granted by any court of justice restraining the doing of anything authorised or required to be done by a water licence or order of the Board, and, notwithstanding any injunction or order of a court of justice, whether granted before or after the commencement of this Ordinance, the Board shall have power to grant a water licence and to make any order in accordance with the provisions of this Ordinance, and no injunction or order shall be enforced with respect to anything required or authorised to be done by a water licence or order of the Board.

Injunctions
with respect to
water licences.

PART IV.

Inspection of Reservoirs and Dams, and matters common to both Oil and Water Licences.

44.—(1.) From and after the commencement of this Ordinance it shall not be lawful to commence the construction of any dam or reservoir capable of impounding more than a quarter of a million gallons of water or oil unless the site, plans, and section, and the method of construction of the dam or reservoir have been previously submitted to and approved of by the Board or by an inspector acting in accordance with such instructions as may from time to time be given him by the Board.

Inspection of
reservoirs and
dams.

(2.) A reservoir or dam capable of impounding more than a quarter of a million gallons of water or oil completed after the commencement of this Ordinance,

whether the construction was begun before or after the commencement of this Ordinance, shall not, without the consent of the Board, be used until it has been inspected by an inspector or fourteen days have elapsed after notice in writing of the completion has been given to the Board, whichever first occurs.

(3.) The foregoing provisions of this section shall not prevent the immediate construction or user of a dam or reservoir for storing an unexpected flow of oil or water from an oil well or boring.

Provided that written notice of such construction or user is given to the Board within seven days from the commencement thereof.

Provided also that the Board may order the removal, alteration, or strengthening of such dam or reservoir.

(4.) The Board may from time to time cause any reservoir or dam capable of holding more than a quarter of a million gallons of water or oil, whether constructed before or after the commencement of this Ordinance, to be inspected by an inspector.

(5.) If, as a result of any inspection, the Board considers any dam or reservoir to be unsafe, the Board may either prohibit the use of the dam or reservoir or permit its use for a specified number of gallons only or permit it to be filled not higher than a mark to be placed by the inspector on the inner face of the dam or reservoir until the dam or reservoir is strengthened to the satisfaction of the Board.

(6.) Any person who, without the leave of the Board, defaces, alters the position of, obliterates, or removes any such mark shall on summary conviction before a magistrate be liable to a fine not exceeding one hundred pounds.

(7.) An order prohibiting or limiting the use of a dam or reservoir may be made by an inspector on behalf of the Board if, in his opinion, the immediate making of such an order is necessary for safety.

(8.) Where an order prohibiting or limiting the use of a reservoir has not been complied with, or where an inspector considers a dam or reservoir to be in such a dangerous

state as not to admit of delay in removing the danger, the inspector may by himself and his assistants take such steps as he may deem expedient for the purpose of lowering the water or oil to a safe level.

(9.) All expenses incurred by an inspector in lowering the water or oil to a safe level (the amount to be certified by the Board) shall be payable by the owner of the dam or reservoir in respect of which they were incurred.

(10.) The approval of the Board under this section of the site, plans, section, or method of construction of a dam or reservoir shall not operate as a licence to carry on oil mining operations or to abstract water from a watercourse.

45. Whenever an offer to purchase land or a house is by this Ordinance required or authorised to be made, the following provisions shall have effect, namely—

Offers to purchase.

(1.) All mines, minerals, and mineral oil, if belonging to the vendor, and the right to work the same on such conditions and together with such powers and privileges for the purpose as the Board in each case considers proper shall, except by agreement between the parties, be reserved to the vendor.

(2.) The price shall be fixed by the Board who shall first fix the price on the basis of a sale by an unwilling vendor to a willing purchaser, and shall then add to that price any depreciation in value of any land belonging to the same owner adjoining or in the near neighbourhood which will be caused by the severance of such land from the land or house to be sold or by the pollution of or abstraction of water from such last mentioned land.

(3.) Where by reason of the severance of the land or house included in an offer from other land belonging to the same owner adjoining or in the near neighbourhood, such other land will, in the opinion of the Board, cease to be of practical utility to the owner, the Board shall, if it thinks it just, order that, as an alternative to compensation for

severance, an offer be made to purchase such other land at a price to be fixed by the Board, and in such case the owner may accept either the compensation for severance or, in lieu thereof, the offer to purchase such other land.

(4.) The offer shall name a date to be fixed by the Board before which the offer must be accepted or refused, and, if not accepted before that date, the offer shall be deemed to be refused.

(5.) The offer shall contain such conditions of sale as the Board shall in each case think just.

(6.) The conveyance or other instrument completing the sale shall, if the Board so require, be submitted to and approved of by the Board.

(7.) The vendor's costs, charges, and expenses of and incidental to the sale shall be paid by the purchaser. In the event of dispute the amount shall be settled by the Board.

Transfer of
licences.

46. Every licence granted under this Ordinance shall name the person to whom it is granted, and shall not be transferable without the consent of the Board who may impose conditions on the transfer.

Provided that the Board shall not unreasonably refuse to permit a transfer to a responsible person.

Proof of
negligence.

47. In order to recover compensation, whether before the Board or a court of justice, for damage resulting from anything done or omitted under the authority of this Ordinance or an oil licence or a water licence or an order of the Board it shall not be necessary to prove negligence on the part of the person responsible for the damage where proof of such negligence would not have been necessary if this Ordinance had not been passed.

Award of
damages by
courts of
justice.
Ord. 28 of
1916.

48. A court of justice (including a judge or magistrate acting as arbitrator under the Mining (Assessment of compensation) Ordinance, 1916) shall not after the commencement of this Ordinance award compensation for any damage for which compensation can under the provisions of this Ordinance be awarded by the Board unless both the damage occurred and the proceedings to recover the compensation were commenced before the commencement of this Ordinance.

49. The Board shall before granting an oil licence or a water licence require the licensee to give security in such amount and in such form as may be decided by the Board for the payment of any compensation which may be awarded against him by the Board. Security for compensation.

50. The Board may, if it thinks fit, decide on the amount of any compensation for damage after personal inspection by a quorum of the Board without hearing any evidence or may, if it thinks fit, employ and pay an independent person to assess such amount and accept his sworn opinion without hearing any further evidence. The fee and expenses of such person shall be treated as part of the costs of the matter before the Board. Evidence as to damage.

51.—(1.) A person awarded compensation under the provisions of this Ordinance shall, unless the Board for good cause otherwise orders, be awarded and paid all costs, charges, and expenses reasonably incurred by him in connection with his claim for compensation. Costs.

(2.) But a person awarded compensation who has previously refused to accept tender of compensation of the same or a greater amount shall not, unless the Board for good cause otherwise orders, be awarded any costs, charges, or expenses in connection with his claim for compensation incurred after such tender.

(3.) Where an application is made for an oil licence or a water licence, any person served with a notice of the application or permitted to be heard by the Board shall, unless the Board for good cause otherwise orders, be awarded and paid all costs, charges, and expenses reasonably incurred by him in safeguarding his interests in connection with the licence.

(4.) Save as aforesaid, the costs of any matter before the Board shall be in the discretion of the Board.

(5.) The Board shall have power to tax any costs, charges, or expenses awarded by it.

52. Where, in the opinion of the Board, more persons than one are responsible for any act giving rise to a claim for compensation under this Ordinance, the Board may order the compensation to be paid by all or any of the persons responsible, and, if more than one, in such proportions as the Board thinks just. Apportionment of compensation among persons liable.

Disposal of compensation where land does not belong to single owner.

53. Where land in respect of which compensation is awarded under this Ordinance does not belong to one beneficial owner, the Board shall order the compensation to be divided among the persons interested in such proportions or to be paid to trustees or to be otherwise disposed of in such manner as the Board thinks just.

Employment of inspectors.

54.—(1.) The Board may employ and pay one or more inspectors who shall have power to inspect anything required or authorised to be done by or done or purporting or appearing to be done under a licence granted under this Ordinance.

(2.) An inspector and his assistants shall have the right to enter, inspect, and examine at all times all land, watercourses, wells, borings, sumps, reservoirs, dams, works, factories, and things used or proposed or about to be used or appearing to be used in connection with anything which he is by this Ordinance or by an order of the Board authorised to inspect.

(3.) The Board shall settle the amount of the fees of inspectors which shall, unless the Board otherwise orders, be paid by the persons responsible for the oil mining operations inspected or by the owner of the waterworks, dam, or reservoir inspected.

(4.) The Board may, if it thinks fit, instead of charging fees for the services of inspectors order the payment by any licensee of an annual or quarterly sum to cover the cost of inspection of everything connected with the licence held by that licensee.

(5.) If any person shall obstruct an inspector in the execution of his duties under this Ordinance, he shall on summary conviction before a magistrate be liable for each offence to a fine not exceeding one hundred pounds.

Enforcement of orders of the Board.

55.—(1.) If any person shall carry on oil mining operations which have been prohibited by the Board or shall fail to observe or perform any of the requirements, provisions, or conditions in an oil licence or a water licence or in any lawfully made order of the Board within the period or by the day (if any) fixed by the Board, he shall on summary conviction before a magistrate be liable for each offence to a fine not exceeding five hundred pounds, and, in the case

of a continuing offence, to an additional fine not exceeding one hundred pounds for every day during which the offence continues.

(2.) Every award by the Board of compensation or costs, and every order by the Board for the payment of money may be entered in the Supreme Court in the same manner as judgments of the Supreme Court are entered, and thereupon may be enforced in the same manner in all respects as a judgment of the Supreme Court for payment of money may be enforced.

56. Any person who contravenes any provision in this Ordinance shall, if no other punishment is imposed by this Ordinance, be liable on summary conviction before a magistrate for each offence to a fine not exceeding five hundred pounds, and, in the case of a continuing offence, to an additional fine not exceeding one hundred pounds for every day during which the offence continues.

Fine for
contravention
of Ordinance.

57. The Board with the sanction of the Governor in Executive Council may from time to time by order published in the *Royal Gazette* (which shall be judicially noticed) make rules for carrying into effect the objects of this Ordinance, and in particular for regulating the procedure of the Board and the procedure for bringing matters before the Board, and prescribing a scale of fees to be charged in respect of matters brought or about to be brought before the Board and by whom and in what manner such fees are to be collected and accounted for, and to what account they shall be paid, and also for prescribing forms to be used.

Power to
make rules
and
prescribe fees.

58. This Ordinance shall come into operation on a day to be fixed by the Governor by proclamation published in the *Royal Gazette* which shall be judicially noticed.

Commence-
ment.

Passed in Council this Twenty-second day of October, in the year of Our Lord one thousand nine hundred and twenty.

E. F. AANENSEN,
Acting Clerk of the Council.