

PART IV - ANALYSIS OF LEGISLATION 2

C O M M U N A L R I G H T S

See under FORESTS: Forest Reserve Orders invariably preserve communal rights.

G O V E R N M E N T A L A G E N C I E S

A. Establishment of Commission or Authority, Its Composition and Functions

Ghana Fisheries Commission Act, 1980, Act 404

An Act to establish a Fisheries Commission in accordance with Article 191 of the Constitution and for other purposes connected therewith.

S. 1. Establishment of Ghana Fisheries Commission.

S. 2. Composition of the Commission.

1. The Commission shall consist of the following:

- (a) a Deputy Minister of the Ministry responsible for Agriculture who shall be Chairman;
- (b) the Chief Executive referred to in Section 11 of this Act;
- (c) a representative of the Fisheries Department;
- (d) a representative of the Irrigation Development Authority;
- (e) a representative of the Institute of Aquatic Biology;
- (f) a representative of the National Marine Fisheries Association;
- (g) a representative of the Canoe Fishermen's Association;
- (h) a representative of the Ghana Co-operative Fisheries Association;
- (i) a representative of the Volta Lake Research and Development Project;
- (j) a representative of the Agricultural Development Bank;
- (k) a representative of the National Investment Bank;
- (l) one person experienced in fresh water fishing; and
- (m) one person experienced in fish marketing.

S. 3. Qualifications of members of Commission.

S. 4. Tenure of Office.

S. 5. Emoluments of members of Commission.

S. 6. Objects of Commission.

The Commission shall be responsible for the regulation and management of the utilisation of all fishery resources of Ghana and the coordination of the policies in relation thereto.

S. 7. Functions of Commission.

1. Without prejudice to the general effect of S.6 of this Act, it shall be the responsibility of the Commission to:
- (a) advise the Government on matters affecting the fishing industry;
 - (b) ensure the implementation of Government's policies for the development, management and utilisation of fisheries resources of Ghana; and
 - (c) hear and determine complaints from aggrieved persons on matters relating to the fishing industry.

2. The Commission may also do all such acts as may appear to it expedient for the purposes of achieving the objects set out in S.6 of this Act and implementing the functions specified in subsection (1) of this section.

3. The Commission, in the carrying out of its objects and functions under S.6 of this Act, shall not engage in any commercial venture.

See also:

Land Planning and Soil Conservation Ordinance, 1953, No.32, sections 4, 5, 7-9; pages 76,77

Volta River Development Act, 1961, Act 46, sections 1-4, 9, 12-15, 17, 20, 27, 29; pages 35,87-89

Atomic Energy Commission Act, 1963, Act 204, sections 1-3, 7; pages 40,79

Ghana Water and Sewerage Corporation Act, 1965, Act 310, sections 1, 2; pages 41,82,83

Environmental Protection Council Decree, 1974, N.R.C.D.243, sections 1-3; pages 44,49,50

Irrigation Development Authority Decree, 1977, S.M.C.D.85, sections 1-3; pages 45,63,64

B. Corporate Status

Volta River Development Act, 1961, Act 46

S. 2. Status of the Authority.

The Authority shall be a body corporate with perpetual succession and a common seal which shall be officially and judicially noticed, and may sue and be sued in its corporate name, and for and in connection with the purposes of this Act may acquire and dispose of land and personal property and enter into contracts and other transactions.

See also:

Land Planning and Soil Conservation Ordinance, 1953, No.32, section 5, page 76

Ghana Forestry Commission Act, 1980, Act 405, section 1(2), page 60

C. Powers

Volta River Development Act, 1961, Act 46

S.17. Incidental powers.

The Authority may carry on any activity which is reasonably requisite or convenient for or in connection with the discharge of its functions under this Act.

S.20. Directions to the Authority.

The President may after consultation with the Authority, give to the Authority in any matter of exceptional public importance, directions of a general character not being inconsistent with the provisions of this Act nor with the contractual or other obligations of the Authority as to the exercise by the Authority of its functions under this Act, and the Authority shall give effect to any such directions.

Land Planning and Soil Conservation Ordinance, 1953, No.32

S. 4. Establishment of planning committees.

3. The validity of any proceedings or act of a planning committee shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment thereof.

D. Immunity from Liability

Volta River Development Act, 1961, Act 46

S.27. Filling of the lake and acquisition of land.

4. No legal proceedings shall lie against the Authority as a result of the inundation of any lands caused by the filling of the lake.

E. Powers in Relation to Private Property

Land Planning and Soil Conservation Ordinance, 1953, No.32

S. 7. Power of planning committee to enter upon land and construct and maintain works.

1. The Governor in council may by Order authorise members and employees of a planning committee, generally and such other persons as the order may specify, to enter upon any lands situate within the planning area for which the committee was established, and to construct and maintain thereon such works as the committee may deem necessary for:

- (a) the protection of the source, course and feeders of any stream or river;
- (b) the disposal and control of water, including storm water;
- (c) the mitigation or prevention of soil erosion;
- (d) the reclamation of land;
- (e) the utilisation of swamp land; or
- (f) the utilisation of land or water to promote or increase food production.

2. An Order made under the provisions of subsection (1) of this section may lay down conditions subject to which such power of entry may be exercised.

S. 8. Establishment of co-ordinating committees.

The Minister may by Order establish a co-ordinating committee to co-ordinate the work and policy of two or more planning committees.

S. 9. Powers of co-ordinating committee to enter upon land.

Any member of a co-ordinating committee may, subject to compliance with such conditions as the Minister may impose, enter on any land situate within a planning area for the purposes of exercising or carrying out the functions conferred on the committee by the provisions of an Order made under S.8 of this Ordinance.

See also:

Volta River Development Act, 1961, Act 46, section 27, page 89
Ghana Water and Sewerage Corporation Act, 1965, Act 310, section 2(3), page 83
Environmental Protection Council Decree, 1974, N.R.C.D.239, section 2A(b), page 49
Ghana Forestry Commission Act, 1980, Act 405, section 1, pages 60, 61

F. Compensation of Injured Parties

Volta River Development Act, 1961, Act 46

S.12. Powers in relation to transmission system.

For the purposes of constructing and operating the transmission system referred to in paragraph (b) of S.10 of this Act, or of preventing damage or obstruction thereto, the Authority shall have all the powers of the Chief Engineer set out in S.3 of the Electricity Supply (Control) Ordinance (Cap 66), to be exercised by itself, its workmen and agents, and be subject to the limitations and the duties there provided; and every person who has any estate or interest in any lands injuriously affected by exercise of the powers conferred by this section shall be entitled to compensation to be settled, awarded and paid in accordance (as nearly as may be) with the provisions relating to compensation which are contained in the State Property and Contracts Act, 1960 (CA.6).

See also:

Ghana Water and Sewerage Corporation Act, 1965, Act 310, section 2(3), page 83

G. Inspectorates

Minerals Ordinance, 1936 (1951 revised), Cap.155

S. 9. Chief Inspector of Mines.

The President* may appoint an Officer to be called the Chief Inspector of Mines, who shall have the general supervision of the exercise of mining rights in the Protectorate (Northern Region).

S.10. Inspectors of Mines.

The President may from time to time appoint Inspectors, who shall perform such duties as the President* or the Chief Inspector Mines, with the approval of the President* shall assign to them.

S.11. Power of Officers.

The Chief Inspector of Mines, or any officer duly authorised by him in that behalf, and every Inspector, at all reasonable times by day or night, but so as not unreasonably to impede or obstruct work in progress, may:

- (i) enter, inspect, and examine any land on which prospecting or mining operations are being conducted, or which is the subject of a prospecting right, exclusive prospecting licence, mining lease, or special mining lease;
- (ii) examine into and make enquiry respecting the condition and ventilation of any mine or workings thereof and any building connected with prospecting or mining activity and all matters relating to the safety and health of persons employed therein;
- ... (vi) exercise all powers necessary for carrying this Ordinance into effect.

See also under INSPECTION

I N S P E C T I O N

A. Power to Appoint Inspectors

Minerals Ordinance, 1936 (1951 revised), Cap.155

S. 9. Chief Inspector of Mines.

The President* may appoint an officer to be called the Chief Inspector of Mines who shall have the general supervision of the exercise of Mining Rights in the Protectorate.

S.10. Inspectors of Mines.

The President* may from time to time appoint Inspectors, who shall perform such duties as the President*, or the Chief Inspector of Mines, with the approval of the Governor, shall assign to them.

See also:

Mining Regulations, 1970, L.I.665, section 223; page 66

Oil in Navigable Waters Act, 1964, Act 235, section 14; pages 80,81

B. Power to Enter, etc. and Inspect

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151

S.10. Powers of Examination.

1. Any police officer not below the rank of sergeant, any senior officer of

* Amended by the Constitution (Consequential Provisions) Act, 1960, C.A.8.

the Mines Department, any senior officer of the Geological Survey Department and any other officer or class of officer authorised in writing by the Minister in that behalf, may, for the purpose of enforcing the provisions of this Ordinance, without warrant or other legal process:

- (a) enter and search any place where he has reasonable grounds for suspecting that an offence under this Ordinance has been or is about to be committed;
- (b) search any person whom he has reasonable grounds for suspecting to have committed, or to be about to commit, an offence under this Ordinance;
- (c) arrest any person whom he has reasonable grounds for suspecting to have committed, or to be about to commit, an offence under this Ordinance;
- (d) seize any radio-active mineral or prospecting or mining apparatus connected with which he has reasonable grounds to suspect to be, or to be about to be, derived from, or employed in, the commission of an offence under this Ordinance.

2. Where any person is arrested, or any radio-active mineral or prospecting or mining apparatus is seized, under the provisions of sub-section (1) of this section, such person, mineral and apparatus shall, as soon as practicable, be brought before the nearest Magistrate.

See also:

Mining Rights Regulation Ordinance, 1905 (1951 revised), Cap.153, section 5; pages 64,65
Oil Mining Regulation, 1957, L.N.221, section 17; page 66
Mining Regulations, 1970, L.I.665, section 223; page 66
Mosquitoes Ordinance, 1911 (1951 revised), Cap.75, section 3; pages 61,62
Minerals Ordinance, 1936 (1951 revised), Cap.155, section 11; page 69
Oil in Navigable Waters Act, 1964, Act 235, section 14; pages 80,81

C. Offence to Obstruct Inspector

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151

S.10. Powers of examination.

3. Every person who obstructs, or attempts to obstruct, whether actively or passively, any officer in the execution, or purported execution, of his duties under this section, shall be liable upon summary conviction, to imprisonment for six months or to a fine of one hundred pounds or to both such imprisonment and fine.

D. Legal Immunity of Inspectors

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.12. No action lies against officers for action done in the execution of their duties.

No action or other legal proceeding whatsoever, civil or criminal, shall be instituted in any Court against the Chief Inspector of Mines or any person acting under his authority, or any Inspector for or on account of or in respect of anything done in good faith and in the execution or intended execution of his duty under this Ordinance.

E. Duty of Inspectors to Prevent Commission of Offence

Forest Protection Decree, 1974, N.R.C.D.243

S. 4. Duties of Forest Officers.

1. Every Forest Officer* shall take all necessary steps to prevent the commission of an offence under this Decree.

* Arguably a Forest Officer is not an Inspector.

F. Power to Arrest

Forest Protection Decree, 1974, N.R.C.D.243

S. 5. Arrest and seizure.

1. Any Forest Officer* may arrest without warrant any person whom he reasonably suspects to have committed or to have been concerned in any offence under this Decree, if such person fails to give his name and address or gives a name and address which is believed to be false, or if there is reason to believe that he may abscond.
2. A person arrested under this section shall within 48 hours be brought before a Magistrate, if not sooner released.

See also:

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151, section 10, 1(b);
page 73

G. Power to Seize Property

Forest Protection Decree, 1974, N.R.C.D.243

S. 5. Arrest and seizure.

3. Where there is reason to believe an offence has been committed under this Decree, any Forest Officer* may seize all forest produce to which the offence relates together with all instruments, vehicles and other articles suspected to have been used in committing the offence.

See also:

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151, section 10(2); page 73

H. Power to Inspect and/or Copy Records

Oil in Navigable Waters Act, 1964, Act 235

S.14. Powers of Inspection.

- ... (b) to require the production of any records which by virtue of sections 7 and 8 of this Act are required to be kept in respect of that vessel;
- (c) to copy an entry in any such records, and require the person by whom the records are kept to certify the copy as a true copy of the entry.

See also:

Mining Rights Regulation Ordinance, 1905 (1951 revised), Cap.153, section 5(2); page 64

* Arguably a Forest Officer is not an Inspector.

L I C E N S I N G

Note: The technique of licensing is employed in a number of enactments referred to in this volume. In no case, however, is the primary purpose of the licensing of a person, activity or premises, for the protection of water resources. In some instances, particularly in relation to mining activities, such matters as protection of water rights or prevention of pollution are incorporated in the terms of the licence. The material set out here is therefore selected so as to bias the emphasis of licensing laws towards water related provisions.

A. Licensing of Motor Fishing Vessels

Fisheries Decree, 1979, A.F.R.C.D.30

Note: This Decree is largely concerned with licensing of motor fishing vessels and appears to concern sea fishing rather than fishing in inland waters.

See also:

Traffic and Floating Timber on the Ankobra, 1954 revised, Cap.226, section 10;page 86

B. Mining Licences

Minerals Act, 1962, Act 126

An Act ... to enable the President to issue prospecting, mining, dredging and water licences ...

S. 2. President to grant mining licences, etc.

1. The President, subject to this Act or any other enactment, may after holding such enquiry as may be prescribed:

(a) grant, upon payments of the appropriate rents and royalties and compliance with such conditions as may be prescribed, licences for:

(i) prospecting minerals;

(ii) dredging rivers, streams or watercourses;

(iii) winning or obtaining minerals from any land; and

(iv) obtaining, diverting, impounding or conveying water from any river, stream or watercourse for mining or other industrial purposes.

See also:

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151; pages 72,73

Minerals Regulations, 1962, L.I.231; pages 75,76

Minerals Regulations, 1963, L.I.253, page 75

Minerals (Oil and Gas) Regulations, 1963, L.I.258; page 75

C. Licensee Not to Pollute

Minerals (Oil and Gas) Regulations, 1963, L.I.258

S.15. Pollution of Water.

A licensee under a winning licence shall so conduct his operations as to ensure, as far as is practicable, that no water (whether underground or on the surface) is polluted, that the harmful effects of the pollution are abated or, if not practicable, that compensation of an amount assessed by the Minister (being an amount equal to the cost of furnishing an alternative supply of water) is paid to the persons suffering loss as a result of the pollution.

See also:

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151; pages 72,73

D. Licences in Relation to Other Regulatory Control

Minerals Regulations, 1963, L.I.253

S. 9. Avoidance of doubt.

For the avoidance of doubt it is hereby declared that nothing in the principal regulations or in these regulations shall relieve any person of the necessity of complying with the requirements of any other enactment relating to:

... (b) the obtaining or use of water for any purpose.

See also:

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151, section 11; page 73

E. Licensee Not to Alter Water Supply

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.53. Alterations in water supply prohibited.

1. It shall not be lawful for any lessee of a mining lease to make or permit any other person to make, without the sanction of the Minister, any such alteration in the water supply of any lands as may prejudicially affect the water supply enjoyed by any other persons or lands.

F. Operating Without Licence

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151

S. 9. Offences.

Every person who:

- (a) prospects for or mines, or attempts to prospect for or mine, any radio-active mineral within the Gold Coast without a licence; or
- (b) being the holder of a licence, prospects for or mines, or attempts to prospect for or mine, any radio-active mineral within the Gold Coast otherwise than in accordance with any term or condition of his licence; or
- (c) being a licence holder of a licence, fails to comply with the requirements of S.5 of this Ordinance; or
- (d) exports, or attempts to export, from the Gold Coast any radio-active mineral without a permit; or
- (e) being the holder of a permit, exports, or attempts to export, from the Gold Coast any radio-active mineral otherwise than in accordance with any term or condition of his permit; or
- (f) obtains, or attempts to obtain, licence or permit by means of a false statement or representation,

shall upon summary conviction, be liable to imprisonment for twelve months or to a fine of five hundred pounds or to both such imprisonment and fine.

G. Power to Revoke Licence

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.59. Power to revoke licence.

The Minister may revoke any water right granted under section 55, 56 or 58 if the holder shall commit any breach of the provisions of this Ordinance or of the terms and conditions of his licence.

H. Provisional Permission to Use Water

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.56. (1) Provisional permission to use water.

Pending the grant of a water right for which application has been made the Minister may grant to the applicant on such terms as he thinks fit provisional permission to exercise and enjoy the powers and rights for which such application has been made: provided always that no such provisional permission shall be granted until after the expiration of one month from the date on which notice of the application has been published and posted in accordance with the provisions of section 55.

I. Application for Water Licence

Minerals (Northern Territories) Regulations, 1954 revised, Cap.155

See sections 30 to 33.

First Schedule

Form L - Application for a Water Right.

S.11. Particulars of the length and width of:

- (a) the proposed watercourse;
- (b) that portion of the proposed watercourse outside land held under a mining lease by the applicant or his employers or in respect of which permission to mine has been given to the applicant or his employers;
- (c) that portion of the proposed watercourse within the boundaries of land held by any person other than the applicant under a mining lease or in respect of which any such person has applied for a mining lease and been granted permission to mine.

S.12. Particulars of mining areas through which it is proposed to divert the water.

S.13. Particulars of the position of any dam or reservoir proposed to be constructed and the area that will be covered by the impounded water.

S.14. Particulars of any pumping station, and, if on ground other than that held under lease by the applicant or his employers, the area to be occupied by such pumping station.

S.15. Whether or not the water diverted will be returned to the river, stream or watercourse from which it was derived.

S.16. Particulars of the maximum and minimum flow of water required in cubic feet per second, and if for hydraulicing, the estimated pressure in lbs. per square inch at point of delivery and the horse power that will be developed respectively.

S.17. A plan on a suitable scale showing the proposed watercourse, the position of any dam, reservoir or pumping station and the boundaries of any mining areas traversed. (attached)

S.18. Particulars of the area or areas in respect of which the water right is required.

S.19. Particulars of the methods proposed to be used for conveyance of the water.

Form M - Water Right.

S. 3. The licence and authority hereinbefore granted is subject to the following conditions:

- ... 6. the licensee will in any respects observe and comply with the provisions of any existing Ordinance or law ... where the same shall apply or relate in any respect to the exercise of the licence and authority hereby granted or to anything herein contained.

J. Grant of Water Licence

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.56. (1) Provisional permission to use water.

Pending the grant of a water right for which application has been made the Minister may grant to the applicant on such terms as he thinks fit provisional permission to exercise and enjoy the powers and rights for which such application has been made: provided always that no such provisional permission shall be granted until after the expiration of one month from the date on which notice of the application has been published and posted in accordance with the provisions of section 55.

K. Forfeiture of Licence

Minerals Ordinance, 1936 (1951 revised), Cap.155

S. 75. Penalties.

The holder of a licence to purchase minerals who whall contravene any of the provisions of either of the two last preceding sections or the conditions of his licence shall be liable to the forfeiture of his licence in addition to the penalties prescribed by section 84.

L. Contravention of Licence

Rivers Ordinance, 1903 (1951 revised), Cap.226

S. 9. Cancellation of dredging licence.

Where in any prosecution under this Ordinance it is proved that the terms on the face of, or the regulations endorsed on, a dredging licence have been contravened it shall be lawful for the Divisional Court or Magistrate's Court, subject to the approval of the Minister, to cancel such licence in addition to imposing any penalty prescribed by the Ordinance.

O F F E N C E S A N D P E N A L T I E S

A. Summary Offence: Penalty, a fine and/or imprisonment

Forest Protection Decree, 1974, N.R.C.D.243

S. 1. Forest Offences.

1. Any person who in a Forest Reserve without the written authority of the competent forest authority:

... (f) in any way obstructs the channel of any river, stream canal or creek;

(g) hunts, shoots, fishes, poisons water or sets traps or snares;

shall be guilty of an offence and liable on summary conviction to a fine not exceeding ₦1,000.00 or to imprisonment not exceeding five years or to both.

See also:

Minerals Ordinance, 1936 (1951 revised), Cap.155, section 84; page 71

Oil in Navigable Waters Act, 1964, Act 235; pages 80-82

Water Charges Regulations, 1980, L.I.1255, section 5; page 84

B. Increased Penalty for Subsequent Offence

Forest Protection Decree, 1974, N.R.C.D.243

S. 1. Forest Offences.

Provided that for a second or subsequent offence under this section an offender shall be liable on summary conviction to a fine not exceeding ₦5,000.00 or to imprisonment not exceeding ten years or to both.

See also:

S.3(2) of above; page 59

Mosquitoes Ordinance, 1911 (1951 revised), Cap.75; page 62

C. Civil Compensation

Forest Protection Decree, 1974, N.R.C.D.243

S. 1. Forest Offences.

2. A person convicted of an offence under subsection 1(a) or 1(h) of this section shall, in addition to any other punishment imposed under this section be liable to pay to the Commissioner responsible for lands twice the commercial value of each tree or of the timber or forest produce which is the subject matter of the offence.

3. A person convicted of an offence under this section shall in addition to any other punishment imposed under this section, be liable to pay to the person whose rights have been infringed such compensation as the Court may direct.

See also:

Oil in Navigable Waters Act, 1964, Act 235, section 16(2); pages 81,82

D. Prohibitions imposed on Repeated Offenders

Forest Protection Decree, 1974, N.R.C.D.243

S. 3. Persistent offenders to be banned.

1. Any person who has been convicted three times of an offence under this decree shall be deemed to be prohibited from owning, operating or participating in any timber business or timber concession, and all permits and property marks held by him under any enactment relating to forests, trees or timber shall be deemed to be forfeited.

2. Any person who contravenes a prohibition imposed on him by subsection 1 of this section shall be guilty of an offence and liable on conviction to imprisonment not exceeding ten years without the option of a fine.

E. Penalty for Condoning, etc.

Forest Protection Decree, 1974, N.R.C.D.243

S. 4. Duties of Forest Officers.

1. Every Forest Officer shall take all necessary steps to prevent the commission of an offence under this Decree.

2. Where the Commissioner responsible for lands is satisfied that any Forest Officer has aided, condoned or connived at the commission of any offence under this Decree, he may order that such Forest Officer be summarily dismissed.

F. Power to Arrest

Forest Protection Decree, 1974, N.R.C.D.243

S. 5. Arrest and seizure.

1. Any Forest Officer may arrest without warrant any person whom he reasonably suspects to have committed or to have been concerned in any offence under this Decree, if such person fails to give his name and address or gives a name and address which is believed to be false, or if there is reason to believe that he may abscond.

2. A person arrested under this section shall within 48 hours be brought before a Magistrate, if not sooner released.

G. Seizure and Forfeiture of Offenders' Property

Forest Protection Decree, 1974, N.R.C.D.243

S. 5. Arrest and Seizure.

3. Where there is reason to believe an offence has been committed under this

Decree, any Forest Officer may seize all forest produce to which the offence relates together with all instruments, vehicles and other articles suspected to have been used in committing the offence.

S. 6. Forfeiture and disposal of articles.

1. A court which convicts any person of an offence under this Decree shall order that all forest produce, instruments, vehicles and other articles in respect of which or by means of which the offence was committed (including anything seized under S.5) shall be forfeited to the Republic.
2. Any vehicle or other article which is seized under S.5 and whose owner cannot be ascertained shall, after the expiration of 14 days from the date of seizure, be deemed to be forfeited to the Republic.
3. A vehicle or other article which is seized under S.5 and whose owner has been ascertained shall, if no prosecution is brought under this Decree, be restored to its owner.
4. Anything which is forfeited to the Republic under this section may be sold or otherwise disposed of by the Commissioner responsible for lands, and the proceeds applied for forest rehabilitation, provided that where a vehicle is forfeited and the Commissioner is satisfied that the owner was in no way implicated in the offence, the Commissioner may restore the vehicle to such owner.

See also:

Minerals Ordinance, 1936 (1951 revised), Cap.155, sections 3, 75; pages 68,71
Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.155, section 9(2); page 73
Oil in Navigable Waters Act, 1964, Act 235, section 16(1); page 81

H. Failure to Provide Information

Environmental Protection Council Decree, 1974, N.R.C.D.239

S.2B. [Inserted by 1976/S.M.C.D.58]

1. Any person:
 - (a) who fails without any reasonable excuse (the proof of which shall be on them) to provide any information requested from him or refuses or neglects to attend in obedience to a summons issued, under paragraph (a) of S.2A, or
 - (b) who knowingly provides false information or any information which he has no reason to believe to be true in response to a request for information, or
 - (c) who obstructs the Chairman or any member of staff of the Council authorised by him, in the inspection of any premises under paragraph (b) of S.2A,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.00 or to a term of imprisonment not exceeding 6 months or to both.

See also:

Minerals Act, 1962, Act 126, section 9; page 74

I. Offence by Corporate Body

Environmental Protection Council Decree, 1974, N.R.C.D.239

S.2B. [Inserted by 1976/S.M.C.D.58]

Where any offence under this section is committed by a body of persons then:

- (a) where the body is a body corporate other than a partnership every director and officer of that body shall also be deemed to be guilty

- of that offence, and
- (b) where the body is a partnership every partner shall be deemed to be guilty of that offence.

See also:

Minerals Act, 1962, Act 126, section 10; page 74
Fisheries Decree, 1979, A.F.R.C.D.30, section 21; page 52

J. Defence of due Diligence, etc.

Environmental Protection Council Decree, 1974, N.R.C.D.239

S.2B. [Inserted by 1976/S.M.C.D.58]

Provided that no such person shall be deemed to be guilty of the offence, if he proves that such offence was committed without his knowledge and that he exercised due diligence to prevent the commission of the offence having regard to all the circumstances.

See also:

Minerals Act, 1962, Act 126, section 10; page 74
Fisheries Decree, 1979, A.F.R.C.D.30, section 21; page 52

K. Offence of Failing to Provide Accurate Records

Oil in Navigable Waters Act, 1964, Act 235

S.10. Offences under sections 7, 8 and 9.

1. If any person fails to comply with any requirements imposed by or under S.7, S.8 or S.9 he shall be liable on summary conviction to a fine not exceeding five hundred pounds, and if any person makes an entry in any records kept under S.7 or S.8 which is to his knowledge false or misleading in any material particular, he shall be liable on summary conviction to a fine not exceeding five hundred pounds, or to imprisonment for a term not exceeding six months, or to both.

S.14. Powers of Inspection.

5. If any person fails to comply with any requirement duly made in pursuance of paragraph (b) (production of records) or paragraph (c) (keeping of records) of the last preceding subsection, he shall be liable on summary conviction to a fine not exceeding ten pounds.

Note: For wilfully and recklessly giving false information see
Minerals Ordinance, 1936 (1951 revised), Cap.155, sections 19, 21, 60;
pages 69-71

L. Breach of Licensing Laws

Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151

S. 9. Offences.

1. Every person who:

- (a) prospects for or mines, or attempts to prospect for or mine, any radio-active mineral within the Gold Coast without a licence; or
- (b) being the holder of a licence, prospects for or mines, or attempts to prospect for or mine, any radio-active mineral within the Gold Coast otherwise than in accordance with any term or condition of his licence; or
- (c) being a licence holder of a licence, fails to comply with the requirements of S.5 of this Ordinance; or
- (d) exports, or attempts to export, from the Gold Coast any radio-active

mineral without a permit; or

- (e) being the holder of a permit, exports, or attempts to export from the Gold Coast any radio-active mineral otherwise than in accordance with any term or condition of his permit; or
- (f) obtains, or attempts to obtain, a licence or permit by means of any false statement or representation,

shall upon summary conviction, be liable to imprisonment for twelve months or to a fine of five hundred pounds or to both such imprisonment and fine.

Minerals Ordinance, 1936 (1951 revised), Cap.155

S. 3. Control of minerals and water.

2. Except as in this Ordinance provided, no person shall prospect ...

3. Any person contravening the provisions of the last preceding subsection shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds, or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment and the Court before which such person is convicted may order the forfeiture of all minerals obtained by such person, or, if such minerals cannot be forfeited, of such a sum as the Court shall assess as the value of such minerals.

See also:

Rivers Ordinance, 1903 (1951 revised), Cap.226, sections 5, 8, 9, 11; page 85
Fisheries Decree, 1979, A.F.R.C.D.30, section 20; page 52

M. Pollution of Watercourses

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.52. Pollution of water prohibited.

No person shall in the course of mining or prospecting operations ... pollute or permit to become polluted the water of any river, stream or water-course. Any person contravening the provisions of this section shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds, or in the case of a continuing offence to a fine not exceeding five hundred pounds for each day during which the offence continues.

See also:

Oil in Navigable Waters Act, 1964, Act 235; pages 80-82
Mining Regulations, 1970, L.I.665, section 44; page 66

N. Alteration of Watercourses

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.53. Alterations in water supply prohibited.

1. It shall not be lawful for any lessee of a mining lease to make or permit any other person to make, without the sanction of the Minister, any such alteration in the water supply of any lands as may prejudicially affect the water supply enjoyed by any other person or lands.

2. Whenever any such alteration shall have been made, the lessee benefitted thereby, shall in the absence of proof to the contrary be presumed to have made it.

3. Any person contravening the provisions of subsection (1) shall be guilty of an offence, and on summary conviction be liable to the penalties provided by S.52.

See also:

Rivers Ordinance, 1903 (1951 revised), Cap.226, section 10; page 85
Water Charges Regulations, 1980, L.I.1255, section 5; page 84

O. Penalty for Breach of Regulations

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.85. Power of Governor to make regulations.

2. The Governor may attach to the breach of any regulation made under subsection (1)* a penalty not exceeding fifty pounds or six months imprisonment or both and, in the case of a second or subsequent breach of the same regulation, a penalty not exceeding one hundred pounds or twelve months imprisonment or both.

See also:

Rivers Ordinance, 1903 (1951 revised), Cap.226, section 13; pages 85,86
Rivers Regulations, 1954 (revised), Cap.226, section 14; pages 86,87
River Traffic Regulations, 1954 (revised), Cap.226, section 19; page 86
Traffic and Floating Timber on the Ankobra, 1954 (revised), Cap.226, section 14; pages 86,87
Ofin River Regulations, 1954 (revised), Cap.226, section 5; page 87
Pra River Regulations, 1954 (revised), Cap.226, section 9; page 87
Mining Health Areas Ordinance, 1926 (1951 revised), Cap.150, section 4(1); pages 67,68
Forests Ordinance, 1927 (1951 revised), Cap.157; page 53

* which could include the pollution of springs, streams, rivers or lakes.

P R O P R I E T O R Y I N T E R E S T S

A. Ownership of Minerals

Minerals Act, 1962, Act 126

An Act to provide for the vesting of the ownership and control of minerals throughout Ghana in the President ... to enable the President to issue prospecting, mining, dredging and water licences

B. Water Rights

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.55. [Repealed by 1962 Act 126]

Provided that any Statutory Instrument made under those provisions and in force immediately before the commencement of this Act shall, until such instrument is altered, revoked or otherwise modified under this Act, continue in force as if such instrument had been made under this Act.

1. If it shall appear necessary for the proper working of the area of any mining lease the Minister may, on such terms as he may think proper and subject to such conditions as may be prescribed, grant to the lessee in such area, a licence (which shall be known as a water right) to obtain and convey from any river, stream or watercourse outside the area of his lease such volume of water as may be required for the purposes of mining within his area, and for such purpose to occupy such land as may be required for a dam, reservoir or pumping station, and for the conveyance of such water to the mining area by means of pipes, ducts, flumes, furrows or otherwise.

3. Provided always that:

(b) no such water right shall be granted if it is shown to the satis-

faction of the Minister that the exercise thereof will prejudicially affect any existing right in or over the water supply to which it relates, unless the applicant shall pay to the person whose rights will be prejudicially affected such compensation as may be agreed upon between the parties or as may be determined by arbitration under the provisions of the Arbitration Ordinance.

S.56. (1) Provisional permission to use water.

Pending the grant of a water right for which application has been made the Minister may grant to the applicant on such terms as he thinks fit provisional permission to exercise and enjoy the powers and rights for which such application has been made

S.58. Powers of Minister as regards overflow.

The Minister may require a person to whom a water right has been granted under S.55 to permit any other mining lessee to take from the water supply obtained under the water right any water which is not required by the holder of the water right, subject to such terms and conditions as to the Minister may appear just, and may grant to such other lessee a water right to construct and maintain any pump, line of pipes, duct, flume or watercourse as may be necessary to convey such water to the area of his mining lease.

REGULATION MAKING POWERS

Notes:

1. In many instances the regulation making power was formerly vested in the Governor, or the Governor in Council. This power now rests, in some cases with the President, in others (e.g. Mining Health Areas Orders, 1954 revised, Cap.150) with a Minister. In some of the newer legislation, regulation making power is vested in a Board (e.g. Ghana Water and Sewerage Corporation Act, 1965, Act 310) or Authority (e.g. Volta River Development Act, 1961, Act 46) or Commission (e.g. Ghana Forestry Commission Act, 1980, Act 405). In some of the latter cases regulations so proposed must be approved by another person (e.g. by the Minister - see Ghana Water and Sewerage Corporation Act, 1965, Act 310).
2. In some instances (e.g. Ghana Forestry Commission Act, 1980, Act 405) the regulation making power specifies the penalties which may be prescribed for breach of regulations made.
3. In all cases only those regulation making powers which are directly, or indirectly concerned with conservation or utilisation of water, have been noted.

Ghana Forestry Commission Act, 1980, Act 405

S.26. Regulations.

1. The Commission may by legislative instrument, make such regulations as it may think fit for the purposes of giving full effect to the provisions of this Act.
2. Without prejudice to the generality of subsection (1) of this section, regulations made thereunder may:
 - (a) prescribe the form of all licences, permits, agreements and other instruments dealing with the conservation of recreational forest, wildlife and recreational resources.
3. Regulations made under this section may prescribe in relation to any contravention of the regulations:
 - (a) penalties not exceeding a fine of ₵50,000.00 or five years imprisonment or both;
 - (b) additional penalties not exceeding ₵200.00 per day in respect of continuing offences;

- (c) forfeiture to the State and disposal of any articles with which or in connection with which the offences are committed.

See also:

Rivers Ordinance, 1903 (1951 revised), Cap.226, section 13; pages 85,86
Mining Rights Regulation Ordinance, 1905 (1951 revised), Cap.153, section 11; page 65
Mosquitoes Ordinance, 1911 (1951 revised), Cap.75, section 10; page 62
Mining Health Areas Orders, 1926 (1951 revised), Cap.150, section 4; pages 67,68
Forests Ordinance, 1927 (1951 revised), Cap.157, section 35; page 53
Minerals Ordinance, 1936 (1951 revised), Cap.155; pages 68-71
Radio-Active Minerals Ordinance, 1946 (1951 revised), Cap.151, section 11; page 73
Land Planning and Soil Conservation Ordinance, 1953, No.32, section 11; page 77
Volta River Development Act, 1961, Act 46; pages 87-90
Minerals Act, 1962, Act 126, section 11; page 74
Atomic Energy Commission Act, 1963, Act 204, section 10; page 80
Ghana Water and Sewerage Corporation Act, 1965, Act 310, section 14; pages 83,84
Environmental Protection Council Decree, 1974, N.R.C.D.239, section 17; page 50
Irrigation Development Authority Decree, 1977, S.M.C.D.85, section 20; page 64
Ghana Fisheries Commission Act, 1980, Act 404; pages 52,53

R E S T I T U T I O N

Note: For abatement of nuisances see the note on the Ghana Towns Ordinance, 1892 under Ghana Water and Sewerage Corporation Act on page 84.

A. Action required by Wrongdoer

Minerals Ordinance, 1936 (1951 revised), Cap.155

S.54. Prevention of continuance or recurrence of offence.

Any person who offends against any of the provisions of either of the last two preceding sections may by Order in writing be required to take action as may be directed to prevent a continuance or recurrence of the offence and within such time as may be directed by the order. Such order may be made by the Minister or by such officer as may be prescribed.

Any person who fails to comply with any such order shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding ten pounds for each day during which such failure shall continue.

See also:

Minerals Act, 1962, Act 126; pages 73-75

B. Recovery of Expenses by Inspector

Mosquitoes Ordinance, 1936 (1951 revised), Cap.75

S. 5. Recovery of cost.

It shall be lawful for the Sanitary Authority to recover from the owner or occupier of any premises the expense of any measures carried out on his premises under the provisions of this Ordinance, but if it is satisfied that such owner or occupier is not in a position to pay such expenses, to pay all or any part of such expenses itself.

S. 6. Method of recovery.

All expenses incurred by the Sanitary Authority in carrying out, with respect to premises, the provisions of this Ordinance shall be recoverable in a summary manner before a Magistrate.

See also:

Oil in Navigable Waters Act, 1964, Act 235, section 16(2); pages 81,82

C. Payment of Expenses of Victim

Forest Protection Decree, 1974, N.R.C.D.243

S. 1. Forest Offences.

5. A person convicted of an offence under this section shall in addition to any other punishment imposed under this section, be liable to pay to the person whose rights have been infringed such compensation as the Court may direct.

D. Payment for Works undertaken at Citizens' Request

Land Planning and Soil Conservation Ordinance, 1953, No.32

S.10. Payment by owner or occupier for works done at his request.

W A T E R R I G H T S

A. Preferential Rights

Ghana Water and Sewerage Corporation Act, 1965, Act 310

S.15. Relations with local authorities, etc.

2. The Corporation shall have preference over other authorities in the use of water resources for public, domestic and industrial purposes and if there is any doubt as to the meaning of the expression "public, domestic and industrial purposes" in section 2 of this Act, such doubt shall be resolved by the Minister whose decision shall be final.

See also:

Minerals Act, 1962, Act 126, section 2; page 74

B. Licences as Proprietary Interests

Minerals Regulations, 1962, L.I.231

S.11. Dredging licences and licences to win minerals.

1. No licence to dredge rivers, streams or watercourses, or to win or obtain minerals, shall be granted for a term exceeding sixty years, or:

- (a) in the case of the first-mentioned licence, in respect of a distance exceeding twenty miles;
- (b) in the case of the last-mentioned licence, in respect of an area exceeding twenty square miles.

And the aggregate distance or area in respect of which licences referred to in paragraph (a) or (b) are granted to any one person shall not exceed respectively sixty miles or sixty square miles.

2. No such licence shall be granted unless or until:

- (a) the land or watercourse (including rivers and streams) to which the proposed licence will relate has been surveyed in accordance with section 6 of the Survey Act, 1962 (Act 127); and
- (b) the requirements of any enactment relating to fees for surveys have been complied with.

First Schedule

Form 4 - Application for a Water Licence. .

- S.13. Particulars of water rights desired (length and width of artificial water-courses, detail of pumping stations, etc.)
- S.14. Whether water would be polluted and, if so, particulars of proposed purification plant.
- S.15. Whether purification would make used water suitable for human or animal consumption or for watering of crops.
- S.16. Whether water is to be returned and, if so, in what state.
- S.17. Particulars of disposal of water if purification impossible.
- S.18. Particulars of diversions.
- S.19. Particulars of dams or reservoirs and approximate area to be covered by impounded water.
- S.20. Particulars of amount of water required per second in cubic feet (maximum and minimum flow); and if for hydrosluicing, the estimated pressure in lbs. per square inch at point of delivery, and horse power that will be developed.
- S.21. A plan, related to a topographical map, showing proposed installations and description, related to a topographical map of area or areas required.
- S.22. Particulars of methods to be used for conveyance of water

See also:

Volta River Development Act, 1961, Act 46; pages 87-90

Minerals Ordinance, 1936 (1951 revised), Cap.155

- S.18. Prospecting right privileges.
 - 1. Subject to the provisions of section 8, the holder of a prospecting right may:
 - (b) whilst engaged in bona fide prospecting erect on any unoccupied land his camp and such buildings or machinery as may be necessary for the purpose of prospecting and for such purpose or for domestic purposes take timber and water from any land, lake, river, stream or water-course situate upon any unoccupied land;
 - (c) make excavations, sink shafts or wells, drive adits or levels, or dig trenches:
- provided that he shall not:
 - (i) divert water from any stream, river or watercourse, without the consent of the Chief Inspector of Mines or the District Commissioner in charge of the district.
- S.85. Power of Governor to make regulations.
 - 1. The Governor may make regulations for all or any of the following purposes:
 - (a) the manner in which applications for prospecting rights, water rights, exclusive prospecting licences, mining leases and special mining leases shall be made, and the form to be used.

Minerals (Northern Territories) Regulations, 1954 revised, Cap.155

First Schedule

Form L - Application for a Water Right.

- S.11. Particulars of the length and width of:
- (a) the proposed watercourse;
 - (b) that portion of the proposed watercourse outside land held under a mining lease by the applicant or his employers or in respect of which permission to mine has been given to the applicant or his employers;
 - (c) that portion of the proposed watercourse within the boundaries of land held by any person other than the applicant under a mining lease or in respect of which any such person has applied for a mining lease and been granted permission to mine.
- S.12. Particulars of mining areas through which it is proposed to divert the water.
- S.13. Particulars of the position of any dam or reservoir proposed to be constructed and the area that will be covered by the impounded water.
- S.14. Particulars of any pumping station and, if on ground other than that held under lease by the applicant or his employers, the area to be occupied by such pumping station.
- S.15. Whether or not the water diverted will be returned to the river, stream or watercourse from which it was derived.
- S.16. Particulars of the maximum and minimum flow of water required in cubic feet per second and, if for hydraulicing, the estimated pressure in lbs. per square inch at point of delivery and the horse power that will be developed respectively.
- S.17. A plan on a suitable scale showing the proposed watercourse, the position of any dam, reservoir or pumping station and the boundaries of any mining areas traversed (attached).
- S.18. Particulars of the area or areas in respect of which the water right is required.
- S.19. Particulars of the methods proposed to be used for conveyance of the water.

Rivers Ordinance, 1903 (1951 revised), Cap.226

- S. 5. Dredging in river to be licensed.

Schedule 2, Form A, Form B

It shall not be lawful to dredge in any river without a licence from the Minister, which shall be in one of the forms in Schedule 2. Any person dredging in a river without a licence or contrary to the terms on the face of his licence, shall be guilty of an offence, and shall be liable to a penalty not exceeding fifty pounds for every day during which the offence continues.

- S.10. Licence to divert water.

It shall not be lawful to pump, divert or by any means cause water to flow from any river for purposes of irrigation, or for mines, factories or other commercial or industrial purposes whatsoever, or to generate power without a licence from the Minister, which shall be in the Form D in Schedule 2, and shall be subject to such terms and conditions as the Minister may think fit.