

**The Environmental
Commission of
Trinidad and Tobago**

Direct Private Party Action





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INTRODUCTION

The Environmental Management Act Chapter, 35:05 of the Laws of the Republic of Trinidad and Tobago (the EM Act) was passed in the year 2000, establishing the Environmental Commission of Trinidad and Tobago as a superior court of record.

In addition to the EM Act, management of the environment is further buttressed by subsidiary legislation in the form of Rules and Regulations. The EM Act and the Rules and Regulations set the environmental standards of behaviour which are to be followed and also set out the consequences for the breach of these standards.

The EM Act and its related Rules and Regulations are public information and can be accessed at the website of the Environmental Commission at ec.gov.tt. Matters may be commenced at the Environmental Commission by filing at the registry either:

- A Notice of Application, or
- A Notice of Appeals, or
- A Notice of Direct Private Party Action.

WHAT IS A DIRECT PRIVATE PARTY ACTION

When individuals are faced with environmental issues, they can complain to the Environmental Management Authority (EMA), which falls under the “Executive arm” of Government.

The EMA is responsible for coordinating, facilitating and overseeing the execution of the national environmental strategy and programmes.

The EMA is also responsible for establishing an effective regulatory regime to protect, enhance and conserve the environment.

The EMA has the responsibility to bring alleged violators of environmental requirements before the Environmental Commission.

The Environmental Commission is a court and so it falls under the “Judicial arm” of Government. As a court, its primary responsibility is to resolve disputes.

Any individual or group of individuals expressing a general interest in the environment or having a specific concern with respect to a claimed violation shall be deemed to have standing to bring a direct private party action.

FILING A DIRECT PRIVATE PARTY ACTION

Any private party may institute a civil action at the Environmental Commission against any other person for a claimed violation of any of the specified environmental requirements identified under Section 62 of the EM Act, Chapter 35:05.

This cause of action requires a party to:

- give a minimum of 60 days written notice to the EMA;
- serve a copy of the complaint on the EMA;
- confirm that the EMA has not commenced enforcement action;
- confirm that the EMA has not elected to assume responsibility for taking enforcement action.

The EMA or the Attorney General can intervene in a direct private party action at any time as a matter of right.





THE ENVIRONMENTAL COMMISSION'S JURISDICTION

Section 69, of the EM Act provides that any private party may institute a civil action in the Environmental Commission against any other person for a claimed violation of any of the specified environmental requirements identified in Section 62 [except paragraphs (c), (d) and (l)]. These environmental requirements are the requirements upon a person to:

- comply with the procedures for the registration of sources from which pollutants may be released into the environment;
- comply with the procedures and standards with respect to permits or licences required for any person to install or operate any process or source from which pollutants will be or may continue to be released into the environment;
- comply with the performance standards, procedures, licensing or permitting requirements established for the handling of hazardous substances;
- apply for and obtain a Certificate of Environmental Clearance;
- comply with the conditions and mitigation measures in any such certificate;
- comply with the procedures and standards with respect to the periodic or continual monitoring of pollution or releases of pollutants or conditions required under a permit or licence;
- provide timely and accurate notification with respect to an accidental or unauthorised release of a pollutant, or other incident with respect to a hazardous substance;

THE ENVIRONMENTAL COMMISSION'S JURISDICTION

- control the release of pollutants in such a manner as to comply with any permit or licence granted under section 50(1), 53(1), 57(1) or 60(1); and
- submit timely payment of required fees or charges payable to the EMA.

THE ENVIRONMENTAL COMMISSION

The filing of Direct Private Party Actions at the Environmental Commission

When filing a Direct Private Party Action, kindly note:

The Environmental Commission shall not have jurisdiction over any private party action unless the complainant has given proper notice to the EMA of not less than 60 days before bringing such action to the court as required under Section 69.

A direct private party action shall be instituted by filing a Notice of Direct Private Party Action at the Registry of the Environmental Commission and serving a copy thereof on the respondent and the Secretary of the EMA, within 28 days of the date on which the complainant is first authorised to bring such an action.

Such an action may be instituted out of time if the Environmental Commission is satisfied that there was a reasonable cause for not bringing the complaint within the time limit and that the complaint was filed thereafter, without unreasonable delay.

The complaint shall specify those provisions of the EM Act allegedly violated by the respondent, and subject thereto, the complaint shall be in such form as may be prescribed.



THE ENVIRONMENTAL COMMISSION

The filing of Direct Private Party Actions at the Environmental Commission (Continued)

At any time within 60 days after the filing of a direct private party action, the EMA may assume responsibility for taking enforcement action against the respondent.

Disposal of a complaint

The Environmental Commission may dispose of a complaint by—

- a) dismissing it;
- b) allowing it and issuing such an order as would have been appropriate had the EMA taken action pursuant to sections 64 to 67 of the EM Act inclusive; or
- c) allowing it and referring the decision back to the EMA for reconsideration.

The decision of the Environmental Commission is final on a question of fact; however, an appeal under Section 87 of the EM Act shall lie on any question of law to the Court of Appeal.



ACCESS TO THE ENVIRONMENTAL COMMISSION

Summary

Direct Private Party Actions

The Direct Private Party Action provides the ideal opportunity for persons, institutions and organisations such as environmental interest groups and community interest groups to take an active role in regulating the use of the environment by bringing their concerns before the Court.

The EM Act defines a “person” as an individual, firm, business, company, enterprise, body, corporate (company), trust, unincorporated association (NGOs), partnership or government entity.

All information on past judgments, filing and any other queries can be found on the Environmental Commission’s website at ec.gov.tt or at the Registry of the Environmental Commission.



DIRECT PRIVATE PARTY ACTION

Procedure

- 1) An individual observes an environmental issue that falls within the jurisdiction of the EMA.
- 2) Written notice of the issue is given to the Managing Director of the EMA.
- 3) If no action is taken within 60 days a claim can be filed at the Environmental Commission with 6 copies of the Notice of Direct Private Party Action under section 69 of the EM Act (see Schedule I, Form 4) found in the Environmental Commission Rules of Practice and Procedure 2001 online <http://www.ec.gov.tt/images/stories/2019-pdf/legislation/The%20Environmental%20Commission%20Rules%20of%20Practice%20and%20Procedure,%202001.pdf>

DIRECT PRIVATE PARTY ACTION

Procedure (Continued)

A Notice of Direct Private Party Action shall

- a) include a title of the Application;
- b) include a full description of the nature of the Application;
- c) specify any remedy that is being sought by the Applicant;
- d) state the name and address of all persons intended to be served with the Notice of Application;
- e) state whether the proceedings are filed out of time and if so, shall be endorsed with a reason for a late filing; and
- f) be accompanied by the decision, order of designation, Consent Agreement or Administrative Order of the EMA.
- g) the Notice of Violation alleged;
- h) proof of written notice of alleged violation to the Managing Director of the EMA in compliance with section 69(l)(a) of the EM Act; and
- i) proof of compliance with section 69(1)(b) of the EM Act.

LIST OF ENVIRONMENTAL RULES AND REGULATIONS SUPPORTING THE ENVIRONMENTAL MANAGEMENT ACT

RULES	YEAR CREATED	GAZETTED	AMENDED
Certificate of Environmental Clearance Rules, 2001	2001	LN 104 / 2001	
Certificate of Environmental Clearance (Fees and Charges) Regulations, 2001	2001	LN 91 / 2001	LN 217 / 2001
Certificate of Environmental Clearance (Designated Activities) Order	2001	LN 103 / 2001	LN 164 / 2007, LN 186 / 2008
Noise Pollution Control Rules, 2001	2001	LN 60 / 2001	LN 18/2022
Noise Pollution Control (Fees) Regulations, 2000	2001	LN 51 / 2001	
Environmentally Sensitive Species (ESS) Rules, 2001:	2001	LN 63 / 2001	
• ESS (Manatee) Notice, 2005	2005	LN 123 / 2005	
• ESS (Pawi) Notice, 2005	2005	LN 124 / 2005	
• ESS (White-Tailed Sabrewing) Notice, 2005	2005	LN 125 / 2005	
• ESS (Ocelot) Notice, 2013	2013	LN 31 / 2013	
• ESS (Golden Tree Fog) Notice, 2013	2013	LN 32 / 2013	
• ESS (Leatherback Turtle) Notice, 2014	2014	LN 88 / 2014	
• ESS (Loggerhead Turtle) Notice, 2014	2014	LN 89 / 2014	
• ESS (Green Turtle) Notice, 2014	2014	LN 90 / 2014	
• ESS (Hawksbill Turtle) Notice, 2014	2014	LN 91 / 2014	
• ESS (Olive Ridley Turtle) Notice, 2014	2014	LN 92 / 2014	
• ESS (Scarlet Ibis) Notice, 2018	2018	LN 143 / 2018	
• ESS (Trinidad Howler Monkey) Notice, 2022	2022	LN 179 / 2022	
• ESS (Trinidad White-Fronted Capuchin) Notice, 2022	2022	LN 180 / 2022	
Environmentally Sensitive Areas (ESA) Rules, 2001:	2001	LN 37 / 2001	
• ESA (Matura National Park) Notice, 2004	2004	LN 323 / 2004	
• ESA (Nariva Swamp Managed Resource Protected Area) Notice, 2006	2006	LN 334 / 2006	
• ESA (Aripo Savannas Strict Nature Reserve) Notice, 2007	2007	LN 152 / 2007	
Air Pollution Rules, 2014	2014	LN 12 / 2015	
Air Pollution (Fees) Regulations, 2014	2014	LN 13 / 2015	
Water Pollution Rules, 2019	2019	LN 312 / 2019	
Water Pollution (Fees) Regulations, 2019	2019	LN 311 / 2019	

Notes



ON BEHALF OF THE CHAIRMAN, MEMBERS AND STAFF OF THE
ENVIRONMENTAL COMMISSION OF TRINIDAD AND TOBAGO

THANK YOU!

This booklet is intended to be used to highlight some key points but is not a substitute for the Act and subsidiary legislation, the Environmental Commission Rules of Practice and Procedure or any other applicable law.

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