

Is the timeline for instituting a Direct Private Party Action rigid?

The Commission has the power to extend time for filing where the Commission is satisfied that there was reasonable cause for not filing within the time limit and that the complaint was filed thereafter without unreasonable delay.

Do I need a lawyer?

No. However you may retain a lawyer if you wish.

How does the Commission make its decision?

The Commission's objective is to conduct a fair, efficient and impartial hearing at which all relevant evidence and principles will be considered. The Environmental Commission makes its decisions on the basis of the oral, written and other evidence that is admissible in the proceedings, as well as on the basis of all relevant provisions of the law. Evidence may include that of technical and expert witnesses.

Mediation

The Commission has identified mediation as the preferred method of alternative dispute resolution. The practice and procedure with respect to mediation is set out in Rule 10 of the Environmental Commission Rules of Practice and Procedure, 2001.

The Commission on its initiative or at the request of the parties may at any time before or during the proceedings schedule a mediation session. The purpose of a mediation session is to attempt to resolve as many issues, whether substantive or procedural, as possible. The mediator will either be a member of the Commission, Commission staff or a person appointed by the Commission.

What can be the outcome of the proceedings?

After hearing all the evidence in the matter, the Commission may dispose of a Direct Private Party Action by:

- dismissing it;
- allowing it and issuing an order as would have been appropriate had the EMA taken action pursuant to section 64 to 67 inclusive; or
- allowing it and referring the decision or action back to the EMA for reconsideration.

Can I appeal the Commission's decisions?

Yes. If a party to the proceedings is dissatisfied with the decision of the Commission as being wrong in law, such party has the right to appeal to the Court of Appeal. However, the decisions of the Commission on questions of fact are final.

Can the Commission award Costs?

Yes.

When can an appeal of the Commission's decision be filed?

The appeal must be filed within twenty-one (21) days after delivery of the decision of the Commission. It is commenced by filing with the Registry a notice in writing identifying the specific points of law alleged to be in error and requesting the Commission to state and sign a case for the opinion of the Court of Appeal. A copy of this notice must be served on the Secretary of the EMA.

Get More Information

For further information on this topic you should refer to:

- The Environmental Management Act, 2000;
- The Noise Pollution Control Rules, 2001;
- The Noise Pollution (Fees) Regulations, 2001;
- The Certificate of Environmental Clearance Rules, 2001;
- The Certificate of Environmental Clearance (Designated Activities) Order, 2001;
- The Certificate of Environmental Clearance (Fees and Charges) Regulations, 2001; and
- The Environmental Commission Rules of Practice and Procedure, 2001.

Parties may also consult an attorney-at-law before proceeding with any litigation before the Commission.

THIS BROCHURE IS NOT A SUBSTITUTE FOR INDIVIDUAL PROFESSIONAL ADVICE. THE ENVIRONMENTAL COMMISSION HAS PREPARED THIS DOCUMENT MERELY AS A GUIDE, AND EACH PERSON'S SITUATION OR CASE MAY DIFFER. IT IS RECOMMENDED THAT YOU SEEK LEGAL ADVICE FOR YOUR PARTICULAR CASE.

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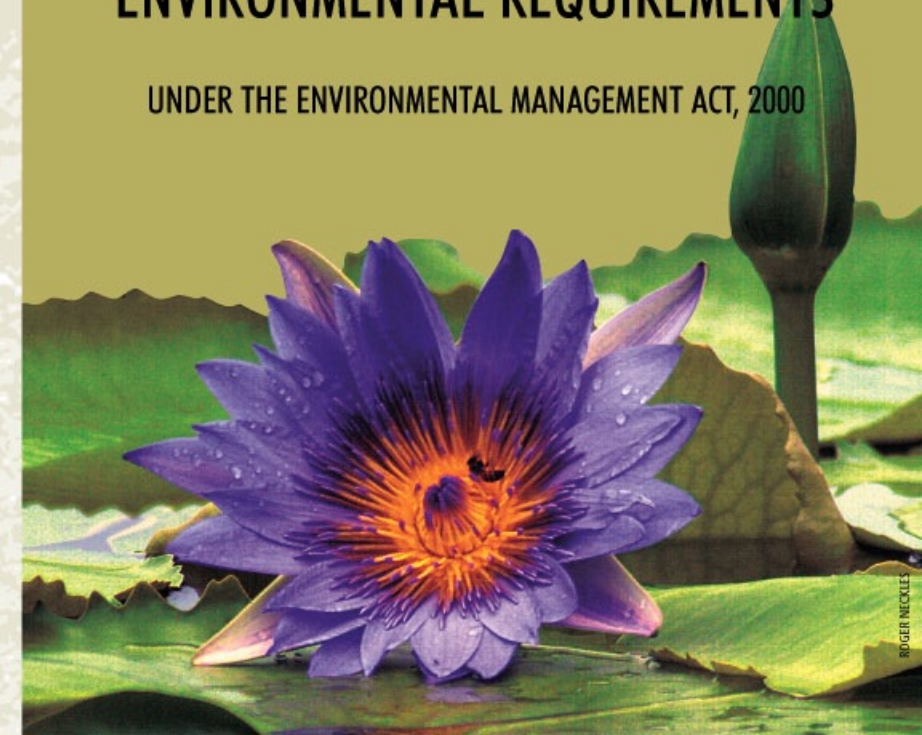
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A Guide to

INSTITUTING CIVIL ACTIONS (DIRECT PRIVATE PARTY ACTIONS) AGAINST OTHER PERSONS FOR VIOLATIONS OF ENVIRONMENTAL REQUIREMENTS

UNDER THE ENVIRONMENTAL MANAGEMENT ACT, 2000



SCOPE OF THIS GUIDE

This guide is intended to assist members of the public in understanding the procedure for instituting a civil action in the Environmental Commission against any other person for a claimed violation of an environmental requirement specified in the Environmental Management Act, 2000.



ROGER NECKLES

Section 62 of the Environmental Management Act, 2000 specifies certain environmental requirements, breach of which can attract the law enforcement powers of the Environmental Management Authority (EMA). Section 69 however allows any private party to institute a civil action in the Commission against any other person for a claimed violation of any specific environmental requirement where the EMA has taken no action. Such civil actions are referred to as "Direct Private Party Actions".

The specific rules governing practice and procedure with respect to actions before the Environmental Commission are contained in the Environmental Commission Rules of Practice and Procedure, 2001, copies of which are available at the Government Printer. You and/or your attorney should therefore consult the Rules of Practice and Procedure before initiating or participating in any action before the Commission.

Guidelines regarding other applications or appeals over which the Environmental Commission has jurisdiction are also available.



ROGER NECKLES

What is the Environmental Commission?

The Environmental Commission, an impartial and independent body, is a superior court of record established by the Environmental Management Act, 2000.

The Commission comprises a full-time Chairman and Deputy Chairman, as well as three part-time members. The Chairman and Deputy-Chairman are required to be attorneys-at-law of not less than ten (10) years standing while the part-time Commissioners are appointed on the basis of their knowledge of, or experience in environmental issues, engineering, the natural sciences or the social sciences. Members of the Environmental Commission are appointed by His Excellency the President of the Republic of Trinidad and Tobago.

How are the members of the Environmental Commission Addressed?

The members are referred to as "His Honour" or "Her Honour" as appropriate. In court a member is addressed as "Your Honour."

What are the Powers of the Environmental Commission?

The Commission has specific powers under the Environmental Management Act, 2000, as well as all the powers inherent in a superior court of record. The Commission therefore has the same powers as the High Court of Justice which includes the power to:

- punish contempts of court;
- enforce its own orders;
- require the attendance and examination of witnesses;
- permit the entry on and inspection of property; and
- require the production and inspection of documents.

Who can institute a Direct Private Party Action?

Any individual or group of individuals expressing a general interest or a specific concern with respect to a claimed violation.

When must a Direct Private Party Action be filed?

- Before the Action can be commenced the complainant must give written notice of the claimed violation to the Managing Director of the EMA at least sixty (60) days before commencing the Action.
- Once the EMA has not within the sixty (60) days taken any action the complainant has twenty-eight (28) days within which to commence the Action.

How is a Direct Private Party Action commenced?

The Action is commenced by filing with the Registry the original and four copies of the Notice of Direct Private Party Action specified in Schedule I Form 4 of the Environmental Commission Rules of Practice and Procedure, 2001. The Notice must:

- (a) include a title of the complaint;
- (b) include a full description of the alleged violation;
- (c) specify any remedy that is being sought by the complainant;
- (d) state the names and addresses of all persons intended to be served with the complaint;
- (e) state whether the proceedings are filed out of time and if so, shall be endorsed with a reason for late filing;
- (f) include the notice of violation alleged; and
- (g) include proof of written notice of violation to the Managing Director of the EMA, at least sixty (60) days prior to the commencing of the Action.



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The Managing Director of the EMA must be served with a copy of the complaint within twenty-eight (28) days of the date on which the complainant was first authorised to bring the action. Service of the complaint must be effected on the EMA and the Attorney General.

When does a Direct Private Party Action proceed?

The Direct Private Party Action will only be allowed to proceed if the EMA has not elected to assume responsibility for taking enforcement action within sixty (60) days after the filing of the Action.

What happens if the EMA decides to take enforcement action after the Direct Private Party Action has been filed?

If the EMA elects to assume responsibility for taking enforcement action within sixty (60) days after the filing of the Direct Private Party Action, the EMA may:

- (1) pursue the Action before the Commission;
- (2) issue an Administrative Order or enter a Consent Agreement and Final Order addressing the violation;
- (3) pursue other appropriate means of addressing the violation available to it under the Act.

Where the EMA assumes responsibility for enforcement under (2) and (3) above, the EMA may seek dismissal of the complaint before the Commission. The Commission shall upon dismissal award costs to the complainant. The EMA shall bear responsibility for payment of the complainant's cost.