

## 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 Commission makes its decision 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.



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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 an appeal by:

- dismissing it;
- allowing it and modifying the decision or action of the Environmental Management Authority; or
- allowing it and referring the decision or action back to the EMA for reconsideration.

## Can the Commission award Costs?

Yes.

## 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.

## 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, or other respondent or appellant in the action, as the case may be.

## 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.

### TO CONTACT THE ENVIRONMENTAL COMMISSION:



E. F. 'Telly' Paul Building  
Corner of St Vincent and New Streets  
Port of Spain  
Trinidad, West Indies  
Tel: (868) 625 7353; 627 9186/3432  
Fax: (868) 627 0871  
Email: [environcommission@tsstt.net.tt](mailto:environcommission@tsstt.net.tt)  
[www.ttenvironmentalcommission.org](http://www.ttenvironmentalcommission.org)



## *A Guide to*

# APPEALS AGAINST DECISIONS OF THE ENVIRONMENTAL MANAGEMENT AUTHORITY

UNDER THE ENVIRONMENTAL MANAGEMENT ACT, 2000



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# SCOPE OF THIS GUIDE

This guide is intended to assist members of the public in understanding the procedure for appealing certain decisions of the Environmental Management Authority (EMA) made under the Environmental Management Act, 2000. These include:

- An appeal against a decision of the Environmental Management Authority to designate an Environmentally Sensitive Area or Environmentally Sensitive Species.
- An appeal where the EMA has failed to comply with the requirement for public participation;
- An appeal against a decision by the EMA to refuse to grant a certificate of environmental clearance or to grant such certificate with conditions;
- An appeal against a decision of the EMA to reject a claim under the Certificate of Environmental Clearance Rules, 2001 that information supplied in an application is a trade secret or confidential business information and should be excluded from the National Register of Certificates of Environmental Clearance;
- An appeal against a decision of the EMA under the Noise Pollution Control Rules, 2001 to:
  - refuse to grant a variation;
  - refuse to transfer a variation;
  - refuse to renew a variation;
  - revoke a variation;
  - impose any conditions of a variation; or
  - reject a claim that information supplied in an application is a trade secret or confidential business information and should be excluded from the Noise Variation Register;
- An appeal against a decision of the EMA to disclose information or materials claimed as a trade secret or confidential business information; and
- An appeal against an Administrative Order.



DR. EUGENE LAURENT

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 commencing with or participating in any action before the Commission.

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

## 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 members 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 on the occasion of an action 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 appeal a decision of the Environmental Management Authority?

- Any interested person can appeal a decision of the EMA on the ground that the EMA failed to comply with the requirement for public participation. An interested person is any person who submitted a written comment on the proposed action during the public comment period.

- A person can appeal against a decision of the EMA:
  - to disclose information or materials claimed as a trade secret or confidential business information; and
  - to refuse to grant a Certificate of Environmental Clearance or to grant such Certificate with conditions;
- Any applicant or grantee under the Noise Pollution Control Rules, 2001; and
- A person against whom an Administrative Order has been made.



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## How is An Appeal Instituted?

An appeal shall be instituted by filing with the Registry of the Commission a notice of appeal serving a copy thereof on the Secretary of the EMA or other respondent.

## When must an Appeal be filed?

An appeal must be filed within twenty-eight (28) days of the date of service of the order or decision being appealed. The Commission however has the power to extend time for filing where the Commission is satisfied that there was a reasonable cause for not appealing within the time limit and that the appeal was filed thereafter without unreasonable delay.

## How is an Appeal commenced?

The appeal is commenced by filing with the Registry the original and four copies of the Notice of Appeal specified in Schedule I Form 2 of the Environmental Commission Rules of Practice and Procedure, 2001. The Notice of Appeal must include:

- (a) a statement of the order or decision appealed against;
- (b) the provision of the Act under which the notice of appeal is submitted;
- (c) the name and title of the person whose decision is the subject of the notice of appeal and the details of the decision objected to;
- (d) the grounds of appeal including the reasons why the appellant objects to the decision;
- (e) a description of the relief requested by the person objecting;
- (f) the signature of the person objecting, or the person's agent; and
- (g) an address for service of the person objecting.

The Notice of Appeal must be filed with the Registry of the Commission and be accompanied by:

- (a) a copy of the order or decision of the EMA;
- (b) a list of names and addresses of all owners of property within 120 meters of the boundary of the property which is the subject of the order or decision; and
- (c) a list of the names and addresses of any other persons who should be notified of the proceedings because they may have an interest in the outcome.



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