



REPUBLIC OF  
TRINIDAD AND TOBAGO

THE  
ENVIRONMENTAL COMMISSION  
RULES OF PRACTICE  
AND PROCEDURE,  
2001



## THE ENVIRONMENTAL COMMISSION RULES OF PRACTICE AND PROCEDURE, 2001

### INTRODUCTION

These are the Rules of Practice and Procedure of the Environmental Commission which are contemplated by section 84(15) of the Environmental Management Act, 2000.

The Act sets out the formal requirements of an appeal and a direct private party action and what the Commission must do when it receives an appeal or action, see section 84(6), (7), (12), of the Act. In addition, the Act by section 81(3) confers on the Commission the status of a superior court of record with all powers inherent therein. The purpose of these Rules of Practice and Procedure is to indicate how the powers of the Commission may be invoked when applications, direct private party actions and appeals are filed. The intention of the Commission is to provide a fair, open, accessible and understandable process for parties and other interested persons. The Rules are meant to facilitate and enhance access to the Commission by the public, to encourage co-operation among parties and make proceedings less adversarial where appropriate. They are also to assure the efficiency and timeliness of proceedings and avoid unnecessary length and delay.

The Commission wishes to emphasize that its procedures will be flexible. Where any matter arises during the course of any proceedings that is not envisioned by these Rules, the Commission will do whatever is necessary to enable it to adjudicate fairly, effectively and completely. Additionally, the Commission will dispense with compliance of part or all of a particular rule if, in its opinion, the circumstances so require, and it will issue specific directions to govern such cases. In all cases the Act and other statutory provisions must be complied with and will override these Rules in case of conflict.

The Commission intends to use these Rules of Practice and Procedure to fulfill the spirit of the Act. Every effort will be made to process applications, direct private party actions and appeals in a timely fashion in accordance with principles of natural justice, including issuing decisions expeditiously. The Commission expects all parties to co-operate in the discharge of its mandate.

Finally, the Environmental Commission wishes to place on record that what it has accomplished, whatever its merit, could not have been accomplished without the valuable contributions we received by way of suggestions, comments and endorsements, from the Attorney General's Department, Ministry of the Environment, Office of the Ombudsman, the Environmental Management Authority and the Registrar of the Environmental Commission.

The Commission, however, accepts full responsibility for any errors or shortcomings in these Rules.

These Rules are made by the Environmental Commission on the 8th day of October, 2001.

MR. JUSTICE ZAINOOL HOSEIN  
*Chairman*

MS. SANDRA PAUL  
*Deputy Chairman*

DR. C. EUGENE LAURENT  
*Commissioner*

MS. ANNE-MARIE SIRJU  
*Commissioner*

DR. JUDITH GOBIN  
*Commissioner*

ENVIRONMENTAL COMMISSION RULES OF PRACTICE  
AND PROCEDURE, 2001

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LEGAL NOTICE NO. 135

REPUBLIC OF TRINIDAD AND TOBAGO

THE ENVIRONMENTAL MANAGEMENT AUTHORITY ACT, 2000

RULES

MADE BY THE COMMISSION WITH THE APPROVAL OF THE PRESIDENT  
UNDER SECTION 84(15) OF THE ENVIRONMENTAL MANAGEMENT  
AUTHORITY ACT

THE ENVIRONMENTAL COMMISSION RULES OF PRACTICE  
AND PROCEDURE, 2001

1. CITATION, APPLICATION AND DEFINITIONS

1.1 These Rules may be cited as the Environmental Commission Citation  
Rules, 2001.

1.2 A rule may be referred to by the number given to it.

Reference to a  
Rule

1.3 These Rules apply to all proceedings *mutatis mutandis* before the  
Commission.

Application of  
Rules

1.4 The Commission may exercise any of its powers under these  
Rules on its own initiative or at the request of any party.

1.5 In any proceedings before the Commission, directions may be  
given as to the procedure to be followed in respect of a matter not dealt  
with by the Act or these Rules. Such directions may be guided by the  
Rules of the Supreme Court 1975.

1.6 No proceeding is invalid by reason only of a defect or other  
irregularity in form.

1.7 In these Rules—

Definitions

“Act” means the Environmental Management Act, 2000;

“applicant” includes any person who files proceedings original,  
interlocutory or appellate as permitted by the Act;

“Authority” means the Environmental Management Authority  
established under section 6 of the Act;

“Commission” means the Environmental Commission  
established under section 81 of the Act, and includes a  
panel thereof or individual member of the Environmental  
Commission as permitted by the Act;

“conference” means a meeting conducted by a member of the Commission which is part of the proceedings, (but not part of the hearing) held for several purposes, including the identification of issues, the scheduling of the delivery of documents, the mediation or settlement of some or all of the issues in dispute;

“document” includes—

- (a) a notice of hearing, forms, correspondence, memoranda, files, books of account, agreements, reports, charts, graphs, and any other written or pictorial communication;
- (b) a sound recording, videotape, photograph, map, plan, survey or like thing;
- (c) information recorded or stored by means of any device, including computer files; and
- (d) facsimiles or copies of documents;

“fax” means electronic transmission of a facsimile of a document;

“file” means to lodge at the Registry, in the form and condition acceptable to the Registrar, together with payment of the prescribed fee (if any);

“hearing” means the hearing of the proceedings before the Commission for which notice has been given in which the Commission is empowered to make a final determination of the proceedings, or the hearing of an interlocutory application in advance of such hearing;

“interlocutory application” means a request for the ruling of the Commission or decision on a particular issue at any stage within a proceeding or intended proceeding, and includes an application for a stay or an interim stay of an order or decision of the Authority or of the Commission;

“mediation” includes all forms of facilitation, settlement conferences and other forms of negotiation;

“notice of proceedings” means a notice, the filing and sealing of which in the Registry commences a proceeding before the Commission;

“party” means—

- (a) the applicant in original, interlocutory or appellate proceedings;
- (b) the person whose decision is the subject of the notice of the appeal before the Commission; and

(c) for the purpose of these Rules, any person whom the Commission determines to be a party;

“representative” means an attorney-at-law or an agent duly authorized to represent a person in a proceeding.

## 2. TIME

2.1 A period of time fixed by these Rules or by a judgment, decision or order or by a document in any proceedings is to be reckoned in accordance with this Rule.

2.2 If a time of one day or longer is to be reckoned by reference to a given day or event, the given day or event is not to be counted.

2.3 If a period is five days or less and would (but for this subrule) include a day on which the Registry is closed, the day is not to be counted.

2.4 If the last day for doing a thing is a day on which the Registry is closed, the thing may be done on the next day on which the Registry is open.

2.5 The Commission may by order and on terms, extend or abridge any time fixed by these Rules or by any judgment, decision or order, of the Commission. Extension or  
Abridgement  
of Time

2.6 The Registrar with the consent of the parties may by order and on terms, extend or abridge any time fixed by these Rules.

2.7 Time may be extended under this rule before or after the time expires, whether an application for the extension is made before or after the time expires.

## 3. ADMINISTRATION

3.1 There shall be a Registry for the Commission in Port-of-Spain and in any other place as may hereafter be determined by the Chairman. Registry

3.2 The Registry shall be under the control and direction of the Registrar. In exercising that control and direction, the Registrar is to obey any direction by the Chairman.

3.3 The Seal of the Commission shall be an impressed seal with the wording “The Seal of the Environment Commission of Trinidad and Tobago”. The Registrar shall have custody of the Seal. Seal of the  
Commission

3.4 Orders of the Commission (or copies of them) when issued out of the Commission and warrants of the Commission shall be sealed with the Seal of the Commission.

Sittings of the  
Commission

3.5 The places, dates and times of the sittings of the Commission are to be published if, and in such manner, as the Chairman directs.

Vacation and  
Office hours

3.6 The Commission shall observe the same vacation periods as the Supreme Court of Judicature of Trinidad and Tobago.

3.7 This Rule does not affect any right to leave or extended leave, of any member of the Commission or officer of the Commission.

3.8 The offices of the Commission shall be open on every day of the year except—

- (a) Saturdays and Sundays;
- (b) Carnival Monday and Tuesday;
- (c) public holidays;
- (d) the next working day after Christmas day; and
- (e) Tuesday after Easter,

between 8 a.m. and 4 p.m. However, if the Chairman gives directions as to opening at other times and other days, the Registrar shall follow those directions.

#### 4. THE REGISTRAR

Documenta-  
tion kept or  
issued by the  
Registrar

4.1 The Registrar shall keep the books, files and other records of the Commission, and is to ensure that the appropriate entries are made in them. The Registrar shall retain custody of all documents filed in any proceedings.

4.2 The Registrar shall issue and sign the process of the Commission.

4.3 The Registrar shall keep an account of all fees, fines and money paid or payable into the Commission, give such receipts as are required under any law, and pay out any money to which a party is entitled.

4.4 The Registrar shall produce to an officer authorized by the Auditor General any book, file, or other record kept by the Registrar (whether or not it is a book of account) which the officer requires to be produced in the course of the officer's duties.

4.5 The Registrar may delegate any of the functions referred to in subrules 4.1—4.4 to any other officer in the Registry as the Registrar sees fit.

4.6 Except where otherwise expressly provided by the Act, these Rules, or any Practice Direction, the Registrar may exercise the powers of the Commission to make any order which the Commission may make, being an order consented to—

Registrar's  
orders by  
consent

- (a) by the parties to the application for the order; and
- (b) by any other person who will be required to comply with the order or to permit anything to be done under the order.

4.7 The Commission may by order direct the Registrar or any other officer of the Commission to do or to refrain from doing, in any proceedings, any act relating to the duties of the officer's office.

Direction to  
Registrar or  
to Other  
Officer

4.8 An application for an order under rule 4.7 is to be made by affidavit filed in the proceedings and served upon the officer concerned.

4.9 The Registrar may, of his own motion or on an application by a party, refer any proceedings before him to the Commission.

Referral of  
proceedings  
to  
Commission

4.10 The Commission, before the conclusion of any proceedings before the Registrar, may on application by a party, order that the proceedings be removed into the Commission.

Removal of  
proceedings  
to  
Commission

4.11 Upon the referral of any proceedings to the Commission under rule 4.9 or the removal under rule 4.10, the Commission may—

Disposal of  
referred or  
removed  
proceedings

- (a) hear and determine any matter in the proceedings in respect of which the proceedings were before the Registrar;
- (b) determine any question arising in the proceedings and remit the proceedings to the Registrar with such directions as the Commission thinks fit;
- (c) on the application of a party, dismiss or strike out a matter for want of prosecution, where it is deemed to have lapsed by reason that it has remained dormant without any step in its progress having been taken for a period of ninety (90) days. The matter will be reinstated if the party provides good and sufficient reason so to do and subject to the payment of costs including the costs of the Commission; or
- (d) accept or continue an undertaking given to the Commission.

4.12 If the Registrar gives a direction, makes an order or does any act in any proceedings, the Commission may, on application by any party, review the direction, order or act, and make such order by way of confirmation, variation, discharge or otherwise as the Commission directs.

Review of  
Registrar's  
Action

## 5. COMMENCEMENT OF PROCEEDINGS

5.1 Proceedings are commenced by filing at the Registry the original and four copies of one of the following Notices of Proceedings:

- (a) Notice of Application (*see* Schedule I, Form 1);
- (b) Notice of Appeal (*see* Schedule I, Form 2);
- (c) Notice of Application for Administrative Civil Assessment under section 66 of the Act (*see* Schedule I, Form 3); or
- (d) Notice of Direct Private Party Action under section 69 of the Act (*see* Schedule I, Form 4).

5.2 A Notice of Application 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 Authority.

5.3 (1) A Notice of Appeal shall 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 for the person objecting.

(2) A Notice of Appeal shall be filed within 28 days of the date of service of the order or decision against which the appeal is filed and must be accompanied by—



- (a) a copy of the order or decision of the Authority;
- (b) a list of the names and addresses of all owners of property within 120 metres 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.

5.4 A Notice of Application for Administrative Civil Assessment shall include—

- (a) the same particulars as required under rule 5.2 and the relevant particulars under section 66 of the Act; and
- (b) the Administrative Order.

5.5 A Notice of Direct Private Party Action shall include—

- (a) the same particulars as required under rule 5.2;
- (b) the notice of violation alleged;
- (c) proof of written notice of alleged violation to the Managing Director of the Authority in compliance with section 69(l)(a) of the Act; and
- (d) proof of compliance with section 69(1)(b) of the Act.

## 6. SERVICE

6.1 A sealed notice of proceedings must be personally served on each respondent together with the copies of all accompanying documents within 14 days of filing.

Mode of  
Service of  
Notice of  
Proceedings

6.2 Personal service on a party may be effected by delivering a copy to the party personally.

6.3 A copy may be delivered to a person by handing it to the person or by leaving it in the person's presence and informing the person of its nature.

6.4 Except where personal service is required, service on a party may be effected by delivering a copy at the residence or place of business of the party to a person apparently not less than sixteen years old and apparently residing at that residence or employed at that place of business.

6.5 For service of a document to be regular it is not necessary for the original to be produced to any person.

6.6 Documents other than a notice of proceedings may be served on a party by the server or his agent unless the Commission orders otherwise.

Service of  
other  
documents

Mode of  
Service of  
Other  
Documents

6.7 Where a document other than a notice of proceedings is to be served on any person, it may be served by any of the following methods:

- (a) personal service in accordance with rule 6.1—6.3;
- (b) registered mail;
- (c) delivery by courier service;
- (d) facsimile transmission; or
- (e) E-mail.

Address for  
Service

6.8 If a party has given an address at which documents for him shall be served, the documents must be delivered or posted to him at that address.

6.9 If the party has given a facsimile transmission number in his address for service the documents shall be sent to him by facsimile transmission to that number.

6.10 If a party to be served has not given an address at which documents for him shall be served, documents shall be served at—

- (a) the business address of any attorney who purports to act for him in the proceedings;
- (b) in the case of an individual, his usual or last known place of residence; or
- (c) in the case of a proprietor of a business, either—
  - (i) his usual or last known place of residence; or
  - (ii) his place or last known place of business.

6.11 A party may change the address for service by filing and serving a notice of the change showing the new address for service.

Days when  
Service  
cannot be  
effected

6.12 Service cannot be effected on a Sunday or any public holiday, unless authorized by the Chairman.

Doubtful  
Service

6.13 In the case of a doubtful service, the Commission may not allow any fresh steps in proceedings to be taken against a party, and may adjourn or strike out the proceedings, or order fresh process to issue, as it considers just.

6.14 In subrule 6(13) “doubtful service” refers to a case where service of any document on a party has not been personal, and the Commission is satisfied on the evidence before it that the document either did not come to the knowledge of the party within reasonable time, or on that evidence, that the service is in doubt.

6.15 If for any reason it is impractical to effect service of a document on a person in any of the modes prescribed in this rule for that service, the Commission may, on application supported by an affidavit showing grounds, direct that, instead of service, such steps be taken as specified in the order for the purpose of bringing the document to the notice of the person.

6.16 If the Commission makes an order under this rule, it may order that service be taken to be effected on the happening of any specified event, or on the expiry of any specified time.

6.17 If it is impractical for any reason to effect service of a document, but steps have been taken for the purpose of bringing, or having a tendency to bring the document to the notice of the party, the Commission may, if it thinks fit, direct that the service be deemed to have been effected on a date specified in the order (e.g. fourteen days after posting the document is deemed to be served).

6.18 The Commission may dispense with service of a document if it is appropriate to do so.

6.19 If an attorney endorses on any process a note that he accepts service of the process on behalf of any person, process is taken to have been duly served on the person on the date on which a copy of the process was delivered to the attorney or left at the attorney's office.

6.20 Delivery of a copy of a document in proceedings to a party's attorney, or leaving a copy at the attorney's office, or sending a copy by post addressed to the attorney at the attorney's office, is taken to be good service of the document on the party as on the day when the copy is delivered or left, or would have been delivered in the ordinary course of post, as the case may require.

6.21 Delivery by any particular electronic means to the attorney's office of a reproduction of the document or copy, is sufficient service on that party as on the day after that delivery, if the attorney has indicated in writing that delivery by those means is acceptable as service.

6.22 Subrules 6.20–6.21 apply in a case where a party has on the record of any proceedings an attorney acting for him. These rules do not apply to or in respect of the service of any originating process or document if that service must be personal.

6.23 For the purposes of the proof of service, evidence of a statement by a person of the person's identity, or that the person holds some office, as evidence of that identity or that the person holds the office, as the case may be, shall be admissible.

Service on  
Companies

6.24 Service on a company which is a party may be effected by delivery to a director, officer, receiver, receiver-manager or liquidator or to the general manager of the company, or its registered office.

6.25 Subrule 6.24 applies where no other law applies to service on the company.

Service on  
unregistered  
firm

6.26 If a person is carrying on a business within Trinidad and Tobago under a business name not registered under the Registration of Business Names Act, Chap. 82:05, any process or document relating to any proceeding may be served on such person—

- (a) by leaving it at a place within Trinidad and Tobago where the business is carried on with someone apparently engaged (whether employee or otherwise) in the business and apparently not less than sixteen years old; or
- (b) by sending it by registered mail addressed to the business name, or to the person at a place within Trinidad and Tobago where the business is carried on.

6.27 This rule applies whether or not the person is named in the proceedings in his name or in a business name.

6.28 Service according to this rule has effect as personal service.

6.29 Subrules 6.26–6.28 do not limit the operation of the Registration of Business Names Act, or of any other Act or regulation relating to service.

Response to  
Service of  
Proceedings

6.30 Upon being served with a notice of proceedings other than a notice of direct private party action, the Authority shall, within 10 days file with the Commission a list of the names and addresses of any other persons who the Authority considers should be notified of the proceedings, because they may have an interest in the outcome.

6.31 A party other than the Authority served with a notice of proceedings must file within 28 days of service a statement of case in opposition to the application and copies of all documents relevant thereto.

6.32 The Authority upon being served with a Notice of Application or a Notice of Appeal must file within 28 days a Reply or Statement of Defence and copies of all documents relevant thereto.

## 7. PRELIMINARY HEARING AND CONFERENCE

7.1 A Preliminary hearing may be held to deal with any of the following—

- (a) identifying parties and other interested persons and the scope of their participation in the hearing;
- (b) determining the length, schedule and the location of the hearing;
- (c) determining whether the hearing will be conducted orally, electronically or in writing;
- (d) hearing preliminary interlocutory applications, including interlocutory applications to dismiss for non-compliance;
- (e) addressing procedural issues;
- (f) identifying, defining and simplifying issues;
- (g) arranging for the exchange among parties of all documents relevant to the proceeding;
- (h) identifying witnesses;
- (i) establishing facts or evidence that may be agreed on;
- (j) parties agreeing on a joint expert;
- (k) scheduling an alternative dispute resolution process (most probably mediation) prior to the date set for the hearing; and
- (l) any other matters that may assist in the just and expeditious disposition of the proceedings.

7.2 Any representative attending a preliminary hearing or conference must have the authority to make procedural or other agreements and give undertakings respecting the matters to be addressed.

## 8. ADJOURNMENTS

8.1 If, after the notice of the date of hearing of any proceedings has been given, the parties want an adjournment, they should communicate with the Registrar at least five days before the date of hearing or its continuance, stating the grounds for an adjournment. However, such a request for adjournment, though by consent, may not necessarily be granted. If an adjournment is sought at a late stage, the Commission may order payment of costs, including the costs of the Commission. In granting or refusing an adjournment the Commission may impose such conditions as it considers appropriate.

## 9. INTERLOCUTORY APPLICATIONS

9.1 This Rule applies to an interlocutory or other application in relation to any proceedings, other than an application by which proceedings are started.

9.2 An interlocutory application in respect of any proceedings shall be made by filing in the proceedings the following documents—

- (a) an application in Form 5 of the Schedule I;
- (b) all affidavits and other documents in support of the application; and
- (c) a draft of the order sought.

9.3 Once the documents are filed as required by this rule, the Registrar shall, as soon as practicable, submit all documents filed in the proceedings (including those required by this rule) to the Chairman or Deputy Chairman of the Commission for consideration of the application and the hearing thereof.

9.4 The Commission may not hear an interlocutory application unless the requisite documents have first been filed in the proceedings and have been served on each party.

9.5 However, a party may move the Commission without previously filing or serving notice of the interlocutory application—

- (a) if the preparation of the application, its filing or service (as the case may be) would cause undue delay or other mischief to the applicant;
- (b) if each party interested, other than the applicant consents to the order; or
- (c) if the Commission dispenses with the requirements of rule 9(4).

9.6 Every interlocutory application shall—

- (a) state the precise relief sought;
- (b) state the grounds to be argued, including a reference to any statutory provision or rule to be relied on;
- (c) list and exhibit the documentary evidence to be used at the hearing of the application;
- (d) name each party to be affected by the order which is sought; and
- (e) bear a note of any previous order made by the Commission in connection with the subject matter of the application.

9.7 If an interlocutory application is required to be served, it must, <sup>Time for Service</sup> unless the Commission otherwise orders, be served not less than three clear days before the date fixed for the hearing of the application.

9.8 Nothing in these rules shall prohibit the Commission from ordering that time be abridged or extended for the service of an interlocutory application.

9.9 A hearing date shall be obtained from the Registrar before the application is served and it shall be endorsed on the copies for service. <sup>Hearing Date for Interlocutory Applications</sup>

9.10 Unless the Commission permits oral evidence, the evidence in <sup>Affidavits</sup> the hearing of an interlocutory application shall be by affidavit. A party who intends at the hearing to rely on any affidavit must file the affidavit in the proceeding and serve a copy on every other interested party (except a party on whom service of an interlocutory application is dispensed with in accordance with these rules) not less than two days before the hearing or within such period as the Commission may order.

9.11 Every affidavit shall be endorsed with a note showing on whose behalf it is filed and the dates of swearing and filing, and an affidavit which is not so endorsed, must not be filed or used without the leave of the Commission.

9.12 The Commission, on the hearing or adjourned hearing of any <sup>Hearing of Interlocutory Application</sup> interlocutory application, may make or refuse the order sought and may make such other order or give directions as may be just.

9.13 An interlocutory application in relation to any proceedings shall include, so far as is practicable, all or as many applications as the applicant may wish to make in relation to the proceedings and having regard to the nature of the proceedings, can conveniently be dealt with at the same time.

9.14 On the hearing or the adjourned hearing of the interlocutory application, any respondent is at liberty to make an application for an order in relation to the proceedings.

9.15 The Commission may either grant or refuse the order applied for by the respondent, and give such directions as may be just, or may adjourn the hearing of the application and direct that notice be given of the application.

9.16 If the Commission grants or refuses any order upon the hearing or adjourned hearing of an interlocutory application, it may do so on terms.

## 10. MEDIATION

Purpose of Mediation	10.1 In accordance with section 84(3) of the Act, the Commission encourages parties to consider mediation and other alternative dispute resolution procedures. Mediation, which is part of the proceeding before the Commission but not a part of the hearing, may be held for the purpose of attempting to reach a settlement of the issues, or at least their simplification. It is conducted in confidence, by a member of the Commission, Commission staff or a person appointed by the Commission. If no settlement is reached on the issues, the hearing will take place with no reference to the information disclosed during the mediation, except with the consent of the parties. The Commissioner who conducted the mediation may sit or continue to sit as a Commissioner exercising jurisdiction to hear and determine the matter.
Time for Mediation	10.2 Parties may apply to the Commission for referral to mediation of a matter arising in proceedings at any time after the commencement of those proceedings.
Adjournment of Proceedings	10.3 If the parties consent to referral to mediation, the proceedings will stand adjourned to enable the mediation to be conducted, unless the Commission considers that, in all the circumstances, they should not be adjourned.
Statement of Issues	10.4 At least seven days before a mediation session is to commence, the parties shall exchange statements of the issues that are in dispute between them and supply copies to the Commission.
Appointments and Directions	10.5 The Member of the Commission or other person to whom a matter is referred for mediation— <ul style="list-style-type: none"> <li>(a) shall, within seven days of being notified of the referral, in writing, appoint a time and place for mediation;</li> <li>(b) may appoint a preliminary meeting of the parties; and</li> <li>(c) may give directions relating to preparations for and the conduct of the mediation.</li> </ul>
Attendance and Representation	10.6 A mediation session shall be attended by each party or, by a representative having authority to settle the matter.  10.7 Other persons may attend a mediation session with the leave of the mediator.
Conclusion and Outcome of Mediation	10.8 The mediator shall within seven days of the conclusion of the mediation, advise the Commission of that fact but not the details thereof.



10.9 The parties may advise the Commission of the terms agreed between them, of any agreement or arrangement arrived at or arising out of a mediation session.

10.10 A mediator may terminate a mediation.

Termination

10.11 A party may terminate a mediation at any time by giving notice of the termination to the Commission, the mediator and every other party.

10.12 If a mediation is terminated, the proceedings are sent to the Chairman for further directions, if necessary.

10.13 All documents submitted and all statements made at the mediation are confidential and without prejudice.

Confidentiality

10.14 Any confidential documents used at the mediation shall—

- (a) not be accessible to the public;
- (b) be returned to the party who submitted the documents after the mediation;
- (c) not be considered to be filed in the proceedings; and
- (d) not part of the record.

## 11. HEARING PROCEDURE

11.1 Every party to a complaint, an application, or appeal, must file a written submission (five copies) with the Commission and serve a copy on every other party at least seven days before the date of hearing.

Written Submission

11.2 A written submission shall contain—

- (a) a summary of the facts and evidence to be relied on by the party;
- (b) a list of witnesses to be called on by the party and a summary of the evidence of each witness including photographs and other visual presentations other than models; and
- (c) the name, address, telephone and fax numbers of an attorney-at-law or other agent acting on behalf of the other party.

11.3 Unless the Commission directs otherwise, at the beginning of every hearing each party shall give a brief opening statement that describes the issues that the party will address at the hearing. The statement should include an outline of the evidence the party intends to introduce, a list of witnesses, the topics to be covered and the amount of time required.

Opening Statements

11.4 Unless otherwise required by the Commission, the opening statements will be made in the following order—

- (a) the applicant/complainant/appellant;
- (b) the Authority;
- (c) the Attorney General; and
- (d) other parties.

Order of  
Presentation

11.5 Unless the Commission directs otherwise, the evidence at a hearing shall be presented by the parties in the following order—

- (a) the applicant/complainant/appellant;
- (b) other parties whose interest or position is, in the opinion of the Commission, similar to that of the applicant/complainant/appellant;
- (c) the Authority's representative at the hearing;
- (d) other parties whose interest or position is, in the opinion of the Commission, similar to that of the Authority;
- (e) the Attorney General;
- (f) the witnesses of the Commission, if any; and
- (g) the applicant/complainant/appellant in reply.

Combining  
Proceedings  
or Hearing  
Proceedings  
together

11.6 If two or more proceedings before the Commission involve the same or similar facts, law, or policy, the Commission may, with the consent of the parties, combine the proceedings or any part of them or hear the proceedings at the same time.

Expert  
Witnesses

11.7 A witness having technical or special knowledge, who is retained by any of the parties before the Commission to give evidence, shall provide a written *curriculum vitae* of his qualifications and experience.

11.8 In hearings, the Commission will not normally qualify a witness as an expert, but any witness with a degree of specialized knowledge should reference that knowledge on the *curriculum vitae*. Any party may challenge the qualifications of any witness having technical or specialized knowledge, before or during the course of his testimony.

11.9 *Curricula vitarum* shall be filed with the Commission at least seven days prior to the hearing.

11.10 The Commission, in its discretion, will determine the weight to be given each witness' testimony and the witness' qualifications and experience will be a factor in determining the weight to be given such testimony.

11.11 Witness summonses (see Schedule I, Form 6) must be served <sup>Witness</sup> no later than ten working days before the date of hearing, except where <sup>Summonses</sup> the witness would attend willingly, and the issue of a summons is a matter of form, the Commission will not normally issue a witness summons less than five working days before the date of hearing.

## 12. EVIDENCE

12.1 The Commission shall admit any relevant oral or documentary <sup>Admissibility</sup> evidence that is not privileged. Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the proceeding more probable or less probable than it would be without the evidence. The Commission may, however, exclude evidence if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or considerations of undue delay, waste of time, or needless presentation or repetition.

12.2 The fact that evidence is deemed admissible does not mean that it will be determinative of the issue.

12.3 Where there is full compliance with the Evidence Act and with <sup>Confidential</sup> any legislation dealing with privilege, the Commission may <sup>and Sensitive</sup> limit <sup>Information</sup> introduction of evidence or issue such protective or other order that in its judgment is required to prevent undue disclosure of classified, confidential or sensitive matters including but not limited to matters of national security, business, or of a personal or proprietary nature.

12.4 Where the Commission determines that information in documents containing classified, confidential or sensitive matters should be made available to another party, the Commission may direct the party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

12.5 If the Commission determines that the procedure described at Rule 11.14 is inadequate and that classified or otherwise sensitive matters must form part of the record in order to avoid prejudice to a party, the Commission may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to such matters.

Written Testimony	12.6 The Commission may accept and enter into the record direct testimony of a witness made by a sworn written statement rather than by oral presentation at the hearing. A witness whose testimony is presented by a sworn written statement shall be available for cross-examination, as may be required.
Cross- examination	12.7 Cross-examination shall be limited to the scope of the direct evidence and subject to the discretion of the Commission, and shall always be limited to witnesses whose testimony is adverse to the party desiring to cross-examine. Cross-examination will be permitted to the extent necessary for full and true disclosure of the facts. The Commission may, in the exercise of its discretion, permit inquiry into additional matters as if on direct evidence.
Evidence in Camera	12.8 Evidence of a confidential or sensitive nature or evidence so deemed can with the leave of the Commission, be heard <i>in camera</i> .
Technical and Scientific Evidence	12.9 A technical witness is a person who gives scientific and technical observations, tests, measurements and estimates. He may be able to collect this information because of special training and expertise, but is not an expert who interprets scientific and technical evidence and provides opinions.  12.10 An expert witness is someone who has specialized education, training or experience that qualifies him to reliably interpret scientific or technical information or to express opinions about matters for which untrained or inexperienced persons cannot provide reliable opinions.
The Role of the Technical Witness	12.11 The Commission expects the witness giving technical evidence to remain within his area of competence. The witness should not attempt to interpret the meaning or significance of tests, observations and measurements unless qualified to do so. The witness should disclose in advance to other parties all measurements, tests, observations, and data relating to the issues about which he will give evidence, and disclose in examination-in-chief all information relevant to the issues before the Commission, regardless of which party the information appears to favour.
The Role of the Expert Witness	12.12 The opinion evidence from a properly qualified expert witness should be based on accurate facts, reliable estimates, and accepted or tested techniques or methods of investigation, measurement and analysis.
Evidence of Technical and Expert Witnesses	12.13 Technical witnesses as well as the expert witnesses are expected to be guided by the practice hereinafter appearing in Schedule II of these Rules.

12.14 (1) Failure to comply with rules 11.20–11.23 and the Compliance Guidelines for Technical and Expert Witnesses set out in Schedule II referred to in rule 11.24 may result in, among other things—

- (a) a decision by the Commission to decline to accept the opinions or evidence of an otherwise qualified witness;
- (b) the evidence being admitted and heard, but accorded little weight;
- (c) the Commission intervening to ensure that the rules are respected; and
- (d) the conduct of the witness being noted and may be subject to adverse comment in the decision of the Commission.

(2) Where it appears to the Commission that there has been a breach of professional standards of conduct, an attempt to mislead, incompetence or negligence, extensive violation of these Rules, or serious interference with its process, the Commission may report this to the professional association or licensing body responsible for compliance with its standards of conduct.

### 13. STAY

13.1 A party may apply for a stay of the decision that is the subject of the notice of appeal, or the decision of the Commission and the Commission may grant such a stay at its discretion. An application for a stay shall be in writing, signed by the applicant or his agent, filed with the Commission and served on all parties to the original proceedings.

13.2 Upon an application for a stay, the Commission may—

- (a) make an order staying the order, decision or original proceedings;
- (b) dismiss the application for a stay; or
- (c) issue directions on procedure, inviting submissions from interested persons on whether or not a stay should be granted. Directions on procedure issued shall provide that—
  - (i) the applicant for a stay shall serve a copy of the directions on procedure on all parties to the original proceedings;
  - (ii) an interested person filing a submission with the Commission shall serve a copy of the submission on the applicant for a stay and all parties to the original proceedings;

- (iii) the applicant for a stay be given an opportunity to reply to any submissions; and
- (iv) the applicant for a stay shall file a copy of any reply with the Commission and serve it on all parties to the original proceedings.

13.3 If the application for the stay relates to the issuing of an enforcement order or an environmental protection order and is made by the person who has been issued the order, the Commission may—

- (a) require the Authority to take whatsoever action the Commission considers necessary to carry out the terms and conditions of the order, and determine the costs of doing so; and
- (b) require the recipient of the order to provide security to cover such costs, if the Commission is of the opinion that immediate and significant adverse effects may result, if the terms and conditions of the order are not carried out.

#### 14. JOINDER OF PARTIES AND INTERVENTIONS

14.1 Where any matter or issue connected with the subject matter of the proceedings should be determined not only as between the original parties but also as between either or both of them and a person not already a party, such person may make an application to intervene in the proceedings or may be joined as a party on the application of any party.

14.2 Such an application to intervene or to join or be joined shall be in writing and shall contain in addition to particulars in rule 9.2, particulars of the person's interest in the subject matter of the proceedings.

14.3 In order to make a determination of an application to intervene, the Commission shall consider whether—

- (a) the applicant's participation will materially assist the Commission in deciding the matter by providing testimony, cross-examining witnesses, or offering arguments or other evidence directly relevant to the matter and whether the applicant has a sufficient interest in the subject matter of the proceeding and his intervention will not unnecessarily delay the progress of the matter;
- (b) the applicant's position is or is not supportive of the proceedings, complaint or appeal;

- (c) the applicant will not repeat or duplicate evidence presented by other parties; and
- (d) if the application is late, there are satisfactory reasons therefor.

14.4 An appellant who claims or requests (such claim or request to be in writing) that the Commission vary, revoke, or provide other relief from the Authority's decision or order because of alleged acts or omissions of a person who is not a party to the appeal shall—

Action of  
Person Not a  
Party Upon  
Whom a  
Notice of  
Proceedings  
is Served

- (a) within 10 days of the filing of such claim or request, serve that person and the Authority with a Notice of Allegation, including the facts upon which the appellant relies in support of the allegation together with copies of all documents relevant thereto; and
- (b) within 7 days thereafter, provide the Commission with the person's address, telephone and fax numbers, and file a copy of the notice and proof of service.

14.5 A person served with a Notice of Allegation shall within 10 days of receipt thereof, file with the Commission a list of the names and addresses of any other persons who he considers should be notified of the proceedings, because they may have an interest in the outcome.

14.6 After service of the Notice of Allegation, the recipient and/or the Authority shall, within 21 days thereafter—

- (a) file an acknowledgement of service (*see* Schedule I Form 7) indicating whether he/it wishes to be heard on the matter or not, and give an address for service, and if he/it wishes to accept further service by fax or e-mail, a telephone number for facsimile transmission or an e-mail address as may be the case; and
- (b) in the event that the recipient and/or the Authority wishes to be heard on the matter he/it shall file and serve upon all parties his/its reply in the matter together with all documents relevant thereto.

## 15. DISCONTINUANCE OR WITHDRAWAL

15.1 A party may, with the leave of the Commission or the consent of the other parties, discontinue or withdraw the whole or any part of the proceedings brought by him.

Discontinu-  
ance

- Withdrawal      15.2 A respondent may with the consent of the applicant, and all other parties, have the proceedings withdrawn.
- Mode of Discontinuance or Withdrawal      15.3 A discontinuance or withdrawal shall be made by filing a notice stating the extent of the discontinuance or withdrawal.
- 15.4 If the discontinuance or withdrawal is by consent, the consent shall be endorsed by each consenting party on the notice before filing.
- Service      15.5 Where leave of the Commission is sought to discontinue or withdraw, an application in that behalf shall be made and notice of such application shall be served on all parties.

## 16. BURDEN OF PROOF

16.1 In a case in which the Commission hears evidence, any party offering such evidence shall have the burden of introducing appropriate evidence to support its position. Where there is conflicting evidence, the Commission shall decide which evidence to accept and generally act on the preponderance of the evidence.

## 17. COSTS

17.1 Any party to a proceeding before the Commission may make an application for an award of costs on an interim or final basis. A party, in the preparation and presentation of his submissions, may make an application for all costs that are reasonable and are directly and primarily related to the matters in the Application or Notice of Appeal or Direct Private Party Action.

17.2 An application for an award of interim costs may be made by a party at any time prior to the close of hearing.

17.3 An application for interim costs shall contain sufficient information to demonstrate to the Commission that interim costs are necessary in order to assist the party in effectively preparing its submissions at a hearing.

17.4 An award of interim costs is subject to a redetermination in an award of final costs.

17.5 No party shall be entitled to recover any costs of or incidental to any proceedings from any other party to the proceedings, except under an order of the Commission. If the Commission in the exercise of



its discretion sees fit to make any order as to the costs of and incidental to any proceedings, the Commission shall order that costs follow the event, except when it appears to the Commission that in the circumstances of the proceedings some other order should be made as to the whole or any part of the costs.

## 18. SITE VISIT AND INSPECTION

18.1 The Commission may make one or more site visits or inspections to better understand the evidence given at the hearing, and may in each case issue directions for the procedures to be followed during the site visit or inspection.

## 19. DECISIONS, JUDGMENTS AND ORDERS OF THE COMMISSION

19.1 In this Rule “order” includes a decision or judgment.

19.2 The Commission may, at any stage of any proceedings, on the application of any party, make such order as the nature of the case requires. General Relief

19.3 The Commission may do so even if the applicant did not make a claim for relief extending to that order.

19.4 (1) A minute of the final order disposing of the proceedings shall be signed, sealed and filed by the Registrar. Minute of Decision

(2) The Registrar shall prepare, sign and seal a minute of any other order when directed by the Commission to do so.

19.5 A final order disposing of any proceedings takes effect when it is given or made, unless otherwise ordered by the Commission. Time of Effect

19.6 An order, which requires a person to do an act other than the payment of money, shall specify the time within which the person is required to do the act. Time for Compliance with Orders Not Relating to Money

19.7 The time shall be 7 days after the date of service of a copy of the order on the person required to do the act, unless the Commission otherwise orders.

19.8 The Commission may, by a later order, require the person to do the act within another specified time.

Setting Aside,  
or Varying an  
Order

19.9 The Commission may, on terms, set aside or vary an order in any of the following cases:

- (a) if the order has been made in the absence of a party, whether or not the absent party is in default of appearance or otherwise in default, and whether or not the absent party had notice of the application for the order;
- (b) if the application for setting aside or variation is filed before the signing, sealing and filing of the minute under subrule 19.4;
- (c) if the order was obtained by fraud;
- (d) if the order is interlocutory;
- (e) if the order through mistake or error does not reflect the intention of the Commission; or
- (f) if the party in whose favour the order was made consents.

## 20. APPEALS FROM DECISIONS OF THE COMMISSION

20.1 A party wishing to appeal a decision of the Commission shall comply with the provisions of section 87 of the Act.

## 21. TRANSITIONAL PROVISIONS

21.1 Any proceedings pending before the Environmental Commission prior to the commencement of these Rules shall be deemed to have been commenced and shall be continued in accordance with these Rules.

This Application was taken out (name of firm of attorneys) for the applicant, whose address for service is

## DIRECTIONS FOR DEFENDING

The Respondent may file a Statement of Defence in person or by an Attorney-at-law either (1) by handing in the appropriate form duly completed at the Environmental Commission, Port-of-Spain; or (2) sending it to that office by post within 28 days of the date of service upon him of the application herein.

This Application was served by me at .....

on the ..... Respondent .....

on the ..... day of ..... 20 ..

Endorsed the ..... day of ....., 20 ..

How identified .....

.....

(Signed)

(Address)

Note:

- (i) This Notice of Application must include a title of the application.
- (ii) A full description of the nature of the application, for example, Statement of Case.
- (iii) State the names and addresses of all the persons intended to be served with a notice of the application/Statement of Case.
- (iv) State whether the application was filed out of time and if so, must be endorsed with a reason for late filing.
- (v) The notice must be accompanied by the decision, order of designation, consent agreement, or Administrative Order of the Environmental Management Authority.

FORM 2

NOTICE OF APPEAL

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE ENVIRONMENTAL COMMISSION

No.        of 20

Between

*Applicant*

and

*Respondent*

1. TAKE NOTICE that the Appellant, being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the order of the Environmental Management Authority made on the                      day of                      20 , do hereby appeal the Environmental Commission upon the grounds set out in paragraph 3 and will at the hearing of the Appeal seek the relief set out in paragraph 4.

And the Applicant/Appellant further states that the names and addresses including his own, of the persons directly affected by the Appeal are those set out in paragraph 5.

2.    (i) Particulars of decision or order appealed against.  
      (ii) Provision of the Act under which Notice of Appeal is submitted.  
      (iii) The name and title of the person whose decision is the subject of the notice of appeal.  
      (iv) Full details of the objections, arguments and submissions in respect of the decision or order appealed against.  
      (v) A description of the relief sought.
3.    Grounds of appeal, including the reasons why the Appellant objects to the decision or order.
4.    Set out relief sought.
5.    The Notice of Appeal must be filed within 21 days of the date of service of the order or decision appealed against and accompanied by—
  - (i) a copy of the decision or order of the Authority;
  - (ii) a list of the names and addresses of all owners of property within 120 metres of the boundary of the property which is the subject of the decision or order;
  - (iii) 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.

## NAMES

## ADDRESSES

Appellant

Respondent

Other parties

Dated this      day of      20      .

*Attorneys-at-law for the  
Applicant/Appellant*

Tel. No.

Fax: No.

E-mail:

To: THE REGISTRAR OF THE ENVIRONMENTAL COMMISSION

And To:

Attorneys-at-law for the Respondent

## DIRECTIONS FOR DEFENDING

The Respondent and other parties may file a full reply to paragraph 2(iv) above, to be filed and served within 28 days of service of the Notice of Appeal.



## DIRECTIONS FOR DEFENDING

The Respondent may file a Statement of Defence in person or by an attorney-at-law either (1) by handing in the appropriate form duly completed at the Environmental Commission, Port-of-Spain; or (2) sending it to that office by post within 28 days of the date of service upon him of the application herein.

This Application was served by me at .....  
 on the ..... Respondent .....  
 on the ..... day of ..... 20 .  
 Endorsed the ..... day of ....., 20 .

How identified .....  
 .....

(Signed)

(Address)

Note:

- (i) This Notice of Application for Administrative Civil Assessment must include a full description of the nature of the application.
- (ii) State the names and addresses of all the persons intended to be served with a notice of the application.
- (iii) The notice must be accompanied by the Administrative Order if any.



## NOTICE OF DIRECT PRIVATE PARTY ACTION

IN THE ENVIRONMENTAL COMMISSION

This Complaint was taken out (name of firm of attorneys) for the Complainant, whose address for service is

## DIRECTIONS FOR DEFENDING

The Respondent may file a Statement of Defence in person or by an attorney-at-law either (1) by handing in the appropriate form duly completed at the Environmental Commission, Port-of-Spain; or (2) sending it to that office by post within 28 days of the date of service upon him of the complaint herein.

This Complaint was served by me at .....  
 on the ..... Respondent .....  
 on the ..... day of ..... 20 .  
 Endorsed the ..... day of ..... 20 .  
 How identified .....  
 .....

(Signed)

(Address)

Note:

- (i) This Notice of Direct Private Party Action must include a title of the complaint.
- (ii) A full description of the nature of the alleged violation.
- (iii) State the names and addresses of all the persons intended to be served with a notice of the complaint.
- (iv) Proof of written notice of the alleged violation to the Managing Director of the Environmental Management Authority in compliance with section 69(i)(a) of the Environmental Management Act, 2000.
- (v) Proof of compliance with section 69(i)(b) of the Environmental Management Act, 2000.
- (vi) Service of the complaint must be effected on the Environmental Management Authority and the Attorney General.

FORM 5

NOTICE OF INTERLOCUTORY APPLICATION

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE ENVIRONMENTAL COMMISSION

No.        of 20 .

Between

*Applicant*

and

*Respondent*

LET ALL PARTIES concerned or their attorneys-at-law attend before the Environmental Commission, Port-of -Spain on the                      day of                      , 20 , at the hour of 9.30 o'clock in the forenoon or so soon thereafter as attorney-at-law on behalf of the (applicant) can be heard on the hearing of an application for the following orders namely:

- (i) (List orders sought)
- (ii) (List relief sought).

Dated the        day of                      , 20 .

This Application was taken out by Messrs.    Attorneys-at-law  
for (applicant), of (address of firm).

*Attorneys-at-law for the Applicant*

Tel. No.

Fax No.

E-mail:

Note: If you do not attend either in person or by your Attorney at the time and place above-mentioned, such order shall be made and proceedings taken as to the Commission may seem just and expedient.

To: The Registrar of the Environmental Commission

And To:

Note:

- (i) There must be annexed to the application all affidavits and other documents in support of the application.
- (ii) A draft of the order sought.

## FORM 6

## WITNESS SUMMONS

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE ENVIRONMENTAL COMMISSION

No.     of 20 .

Between

*Applicant/Complainant/Appellant*

and

*Respondent*

To: (Witness' name)

of (Witness' address)

You are hereby summoned to attend at the Environmental Commission of Trinidad and Tobago at 1st Floor, E.F. "Telly" Paul Building, Corner St. Vincent and New Streets, Port-of-Spain at                      a.m./p.m. on the                      day of                      , 20 , the day fixed for the hearing of this Application/Complainant/Appeal and from day to day till the end of the proceedings to give evidence (and to bring with you and produce the following documents)—

(SEAL)

Dated

This Summons was issued on the application of the (Applicant/Appellant/Complainant) (Respondent) whose attorney is  
of

Tel. No.

Fax No.

E-mail:



## FORM 7

## WITNESS SUMMONS

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE ENVIRONMENTAL COMMISSION

No.      of 20 .

Between

*Applicant/Complainant/Appellant*

and

*Respondent*

- |   |                   |
|---|-------------------|
| 1. Have you received the (Notice of Application/Notice of Appeal/Notice of Application for Administrative Civil Assessment/Notice of Direct Private Party Action/Notice of Interlocutory Application/Notice of Allegation) with the above number? | YES/NO            |
| 2. If so, when?   | ...../...../..... |
| 3. Did you also receive Applicant's/Complainant's/Appellant's Statement of Case?  | YES/NO            |
| 4. If so, when?   | ...../...../..... |
| 5. Are your names properly stated on the Form?  | YES/NO            |
| 6. Do you intend to defend the action or be heard on the matter?  | YES/NO            |
| 7. What is your address for service?  | .....<br>.....    |

You should also give your Telephone number, Fax number and E-mail address if any.

Signed. ....  
(Respondent in person) (Respondent's Attorney)

NOTE: You may indicate by filing within 21 days of service of this Form upon you whether you wish to be heard on the matters contained in the notice of proceedings or notice of allegation accompanying this Form.

## SCHEDULE II

## GUIDELINES FOR TECHNICAL AND EXPERT WITNESSES

1. The Commission expects the technical and/or expert witness to provide it with assistance by way of qualified, relevant opinions and accurate information in relation to matters within his expertise. Objectivity and impartiality are necessary to assist the Commission in its decision.

2. Evidence that is influenced by the special interests of a party may be received and considered, but the Commission may give this evidence little or no weight.

3. The Witness should express an opinion to the Commission only when the opinion is based on adequate knowledge and sound conviction. The witness should be reluctant to accept an assignment to provide evidence for use by the Commission if the terms of reference of the assignment do not allow the witness to carry out the investigations and obtain the information necessary to provide such an opinion. A witness who accepts an assignment under these circumstances, should advise the Commission of the limitations that the terms of reference place on his ability to provide the information necessary to assist the Commission in making a sound decision or to give informed opinions.

4. Technical and expert evidence should be and should be seen to be, the independent product of the witness uninfluenced as to form and content by the exigencies of litigation, the particular dispute before the Commission, and the interests of the witness' client.

5. The witness must never assume the role of advocate for a party. Argument and advocacy should be left to counsel and agents presenting the party's case. This does not preclude the vigorous advancement of strongly held scientific or other professional opinions or prevent a duly qualified witness who is also a party, from advancing technical and opinion evidence.

6. The witness has a duty to change his opinion where circumstances, such as the receipt of new information, require it. If at any time before the Commission issues its final decision, the witness changes his view on a material matter for any reason, particularly after having read the reports or listened to the evidence of witnesses for other parties, the change in information and/or opinion should be communicated to the Commission without delay. Where reports or documents prepared by the witness contain errors or information which has changed, this must be promptly identified.

7. The witness must not change his opinion or change or withhold information to suit the position taken by the party that has retained or employed him.

8. In preparing reports to be used by the witness' employer or client in determining the issues to be raised and the employer or client's position on those issues and for use as evidence, and in testifying before the Commission, the witness has the following duties of disclosure:

- (a) It is the responsibility of the witness to make fair and full disclosure.
- (b) The witness should make it clear when a particular question or issue falls outside his or her expertise.
- (c) To be useful, the opinion and evidence must provide enough clear information on assumptions, procedures used, and conclusions drawn to allow comprehension of the report as it stands, and permit fair and efficient cross-examination.

- (d) When the witness is providing an opinion or giving evidence on an issue or problem area for which there are differences of professional or scientific opinion, he has an obligation to make such differences clearly known to the Commission and all parties. The witness should make reasonable efforts to be fully informed of those differences.
- (e) The witness should state all the material facts and assumptions upon which his opinion is based. He or she should not omit to consider and acknowledge material facts which could detract from the opinion. Where the facts are in dispute, the Commission expects that the witness will give his view of the facts and the proof relied upon before giving the opinion.
- (f) Where the opinion and evidence are based on information contained in other documents, detailed references should be provided in any report prepared by the expert, and copies of those documents made available on request before and during the hearing. Copies of the documents should be brought for reference on cross-examination.
- (g) Parties and their respective representatives questioning their own witnesses are required by the Rules of Practice and Procedure of the Commission to ask questions designed to elicit the information required by these guidelines. However, the witness is expected to disclose to the Commission and to all other parties all significant information and opinions, and errors, shortcomings and limiting factors even if no one has asked for them.
- (h) The weight to be given to the evidence of technical and expert witnesses will be affected by the demeanor of the witness. The witness should give direct answers to questions and should not be evasive while giving testimony, even though the answers may appear to be detrimental to the case of the witness' client or employer. Any effort to avoid answering direct questions could adversely affect the weight assigned to the witness' evidence on the issue or the evidence as a whole.

9. When giving an opinion, the witness should state and explain the degree of certainty of the opinion or the level of probability that it is correct. The degree of uncertainty and the reasons for uncertainty should be candidly acknowledged. Uncertainties and assumptions inherent in measurements should be clearly identified. The level of confidence or the sensitivity to error must be given.

10. It is better for a witness to base conclusions on facts and data obtained from those who possess them, rather than construct a series of possibly incorrect assumptions, hypotheses and/or models.

11. Where there is a lack of consensus with respect to the use of a particular model or formula, the rationale for the chosen approach should be identified.

12. If the witness' opinion is not properly researched because insufficient data is available, this shortcoming must be stated. Any limiting qualification to the opinion should be identified. The Commission expects to be told when a lack of factual information or experience will increase the probability of inaccurate conclusions or predictions. The witness should avoid speculation where data is insufficient.

13. Where an estimate falls within a range of reasonable possibilities, based on the same data, the variance within that range should be thoroughly disclosed. Where a prediction can lead to a range of potential impacts, that range should be fully described.

#### *Plain Language*

14. In preparing reports and giving testimony, the witness should take into account that the hearing process is a public process in which reports and testimony must be understood by participants and observers who may not have any significant technical knowledge. Therefore the language and writing style should be simple and direct and scientific or technical terms and concepts should be explained, where possible, in clear, simple language.



15. Where specialized language is necessary to convey information accurately, the witness should use it rather than risk misleading or over-simplifying. However, where possible, the witness should avoid the use of scientific terms and jargon and unfamiliar acronyms, or at least fully explain those terms, so that technical information and opinion can be easily understood.

*Efficiency*

16. Reports, witness statements and information should be produced in a timely fashion to all parties.

17. All reasonable requests for answers to interrogatories (that is, written questions) must be answered promptly and thoroughly by the witness.

18. Notwithstanding the requirements for full disclosure, the witness should make every effort to give succinct answers to questions put to him in written questions and in examination-in-chief, cross-examination and re-examination, and questioning by the Commission. Answers should be concise, responsive and focused on the most essential issues.

19. During his testimony a witness should not be called upon to review fundamental techniques in a painstaking step-by-step fashion, and to read correspondence and other reports line-by-line and page-by-page, unless it is clear that the purpose of such elaboration warrants this expenditure of time.

Made by the Environmental Commission this 8th day of October, 2001.

MR. JUSTICE ZAINOOL HOSEIN  
*Chairman*

MS. SANDRA PAUL  
*Deputy Chairman*

DR. C. EUGENE LAURENT  
*Commissioner*

MS. ANNE-MARIE SIRJU  
*Commissioner*

DR. JUDITH GOBIN  
*Commissioner*

Approved by His Excellency the President this 11th day of October, 2002.

ARTHUR N. R. ROBINSON  
*President*

