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**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
CIVIL JURISDICTION
(CONSTITUTIONAL AND ADMINISTRATIVE DIVISION)
PROCEEDING FOR JUDICIAL REVIEW
2021-HC-DEM-CIV-FDA-**

**IN THE MATTER OF AN APPLICATION BY
SINIKKA HENRY (FIRST APPLICANT),
SHERLINA NAGEER (SECOND APPLICANT)
AND ANDRISKA THORINGTON (THIRD
APPLICANT) FOR ORDERS OF
CERTIORARI, MANDAMUS AND
PROHIBITION**

BETWEEN:

- 1. SINIKKA HENRY,**
- 2. SHERLINA NAGEER**
- 3. ANDRISKA THORINGTON**

APPLICANTS

AND

**THE ENVIRONMENTAL PROTECTION AGENCY
RESPONDENT**

FIXED DATE APPLICATION

**TO THE RESPONDENT
THE ENVIRONMENTAL PROTECTION AGENCY
GANGES ST
SOPHIA
GEORGETOWN
GUYANA**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant, Sinikka Henry. The claim made by the Applicant is set out in the following pages.

THIS APPLICATION will come on for a hearing on _____ day of _____ 2022, at _____, before the Honourable _____ at The Law Courts, Georgetown, Demerara.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Attorney-at-Law acting for you must forthwith prepare an Affidavit in Defence in Form 10C prescribed by the Civil Procedure Rules 2016, serve it on the Applicant's Attorney-at-Law or, where the Applicant does not have an Attorney-at-Law, serve it on the Applicant, and file it, with proof of service, at a Registry, **AT LEAST FOUR DAYS** before the date fixed for the hearing of the Application, and you or your Attorney-at-Law must appear at the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, AN ORDER OR JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT ANY FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

THIS NOTICE OF APPLICATION has no validity unless it is served on you at least seven days before the date fixed for the hearing of this application.

Date: _____

Signature of Registry

Issued by:

Address of Registry where issued: The Law Courts, Georgetown, Demerara

TO: THE ENVIRONMENTAL PROTECTION AGENCY

**GANGES ST
SOPHIA
GEORGETOWN
GUYANA.**

APPLICATION

1. The APPLICANT makes application for:
 - (a) AN ORDER OF CERTIORARI directed to the Environmental Protection Agency (the 'Respondent') quashing the decision of the Respondent purportedly made under the Environmental Protection Act Cap: 20:05 ("the Act") and/or the Environmental Protection Regulations 2000 ("the Regulations") to replace the environmental permit dated 25th September 2020 and numbered 20160705-EEDPF (the 'Liza 1 Permit') as granted to Esso Exploration and Production Guyana Ltd. ("Esso") with a purportedly modified permit (the 'purportedly modified permit') dated 15th May 2021, on the grounds that the decision to grant the purportedly modified permit is so flawed at, and/or contrary to, or in breach of the law as to amount to, *inter alia*:-
 - (i) a nullity; is void and of no legal effect; was made without or in want of or in excess of jurisdiction; is ultra vires; is unreasonable or irrational; is arbitrary, capricious or erroneous at law; is illegal; disproportionate; in defiance of logic; without any legal foundation or basis or authorisation or authority; and/or contrary to or in breach of the provisions of the Act and/or the Regulations;
 - (ii) a breach of or omission to perform a duty;
 - (iii) a failure to satisfy or observe conditions or procedures required by law;
 - (iv) an abuse of power;

- (v) an improper purpose or irrelevant consideration;
 - (vi) a conflict with the policy of the Act and/or the Regulations;
and
 - (vii) an exercise of a power in a manner that is so unreasonable that no reasonable or respectable person or public authority, acting judicially or quasi judicially and properly instructed as to the relevant law could or would have so exercised the power to modify the said Liza 1 Permit.
- (b) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to issue an order to Esso to immediately cease all flaring.
 - (c) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to issue an order to Esso to immediately reduce or cease production in order to stop flaring safely.
 - (d) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to issue an order to Esso to immediately refrain from venting gas.
 - (e) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish the annual aggregate greenhouse gas emissions from all facilities and offshore support activities which are required to be quantified under Article 3.1 of the Liza 1 Permit.
 - (f) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a report setting out what methods Esso has adopted to control and reduce fugitive emissions in compliance with Article 3.2 of the Liza 1 Permit.
 - (g) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to commission an independent and expert investigation into whether and to what extent Esso has complied with Article 3.3 of the Liza 1 Permit and has (i) operated its mechanical equipment in particular its gas compression equipment in accordance with the manufacturer's standards and (ii) has

regularly maintained and operated its mechanical equipment in particular its gas compression equipment to minimise atmospheric emissions.

- (h) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to commission an independent and expert investigation into the petroleum operations being carried out by Esso purportedly under the Liza 1 Permit in order to assess the safety of the said petroleum operations, to identify Esso's systems failure and failures of procedure, to identify, examine and assess failures of Esso's equipment including Esso's gas compression equipment, to identify and assess the danger that Esso's petroleum operations and failures pose to the people and environment of Guyana and the Caribbean, and to make recommendations to protect the people and environment of Guyana and the Caribbean from harm arising or which may arise from Esso's petroleum operations or failures in the Liza Phase 1 Development .
- (i) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a statement setting out from 1st June 2017 to 15th May 2021 (1) the total amount of oil that has been extracted from the Liza Phase 1 Development Project; (2) the total amount of gas that Esso has flared; (3) the total amount of gas that Esso has vented; (4) the total amount of gas that Esso has re-injected; and (5) the gas to oil ratio.
- (j) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a statement setting out (i) the total amount of greenhouse gas emissions from the gas that Esso has flared from 1st June 2017 to 15th May 2021; (2) the total amount of greenhouse gas emissions from the gas that Esso has vented from 1st June 2017 to the 15th May 2021; and (3) the methodologies used to calculate all such greenhouse emissions.

- (k) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a statement setting out (1) the total amount of gas that Esso has flared from 15th May 2021 to the date of the order; (2) the total amount of greenhouse gas emissions from such flaring; (3) the total amount of gas that Esso has vented from 15th May 2021 to the date of the order; (4) the total amount of greenhouse gas emissions from such venting; and (5) the methodologies used to calculate all such greenhouse emissions.
- (l) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a report covering the period from 1st June 2017 to the date of the order setting out for each month the quantity of each pollutant emitted by the petroleum operations carried out by Esso in the Liza Phase 1 Development Project including carbon dioxide, nitrogen oxides, sulphur oxides, carbon monoxide, particulate matter, hydrogen sulphide, volatile organic compounds, methane, ethane, benzene, ethyl benzene, toluene, xylenes, glycols, polycyclic aromatic hydrocarbons.
- (m) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a report setting out the volumes of hydrocarbons flared each month from 1st June 2017 to the date of the order.
- (n) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to enforce section 13(1)(d) of the Act and require Esso to restore and rehabilitate the environment by removing the greenhouse gases emitted by Esso's flaring.
- (o) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to apply the 'polluter pays principle' as set out in section 4(4)(a) of the Act and in application thereof to issue an order to Esso directing Esso to ensure that the environment is restored to an acceptable state by removing the greenhouse gases

emitted by Esso's flaring and requiring Esso to bear the cost of such measures.

- (p) A DECLARATION THAT the charge of US\$30 per tonne of carbon dioxide equivalents as set out in Article 3.7 of the purportedly modified permit is a breach of the 'Polluter Pays Principle' as set out in section 4(4)(a) of the Act.
- (q) AN ORDER OF MANDAMUS directed to the Environmental Protection Agency directing the Environmental Protection Agency to issue a statement setting out the dates and amounts of all payments purportedly made by Esso under Article 3.7 of the purportedly modified permit up and including the date of the order.
- (r) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a report setting out the inspection, maintenance and surveillance systems that are in place to identify and prevent unplanned emissions on board the Floating Production Storage Offloading vessel that is covered by the Liza 1 Permit.
- (s) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to publish a statement setting out the systems and procedures the Environmental Protection Agency has established or has relied on since 1st June 2021 to ensure proper monitoring and enforcement of Esso's obligations under the Liza 1 Permit;
- (t) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to issue an order to Esso requiring Esso to shut down without delay, in a safe manner and without exposing the people and environment of Guyana to danger, all petroleum operations in the Liza Phase 1 Development Project until the Respondent submits to this court an independent expert statement confirming that it is safe to allow Esso to restart the petroleum operations authorised by the Liza 1 Permit.
- (u) AN ORDER OF MANDAMUS directed to the Respondent directing the Respondent to maintain an effective presence on board the

Floating Production Storage Offloading vessel to monitor all activities in the Liza Phase 1 Development Project.

- (v) Costs.
- (w) Such further or other orders, directions and/ or relief as the Court may deem just.

2. The grounds of the application are:

- (1) The First, Second and Third Applicants are citizen of Guyana.
- (2) The Respondent is a public authority with the exclusive statutory responsibility for granting environmental permits under the Environmental Protection Act Cap 20:05 ("the Act").
- (3) The Respondent granted an environmental permit no. 20160705-EEDPF dated 1st June 2017 to Esso Exploration and Production Guyana Ltd. for the Liza Phase 1 Development Project on the basis *inter alia* of an Environmental Impact Assessment dated 1st June 2017, an Environmental and Socioeconomic Management Plan dated 1st June 2017 and a Revised Oil Spill Response Plan and Wildlife Response Plan dated 1st June 2017.
- (4) The Environmental Impact Assessment dated 1st June 2017 stated *inter alia* that Esso would re-inject gas and that produced gas not used as fuel gas on the FPSO would be re-injected under normal operations.
- (5) On 25th September 2020, following court proceedings and in anticipation of a consent order entered on 7th October 2020, the Respondent, issued to Esso an amended environmental permit no. 20160705-EEDPF in which the term of the said environmental permit was reduced from more than twenty-three years to five years, ending on 31st May 2022.
- (6) On 12th May 2021, the Respondent purported issued to Esso a modified environmental permit no. 20160705-EEDPF in which the Respondent purported *inter alia* to allow Esso Exploration and

Production Guyana Ltd. to flare gas and to apply the 'polluter pays principle'.

- (7) On 24th August 2021 the Respondent admitted that Esso had flared a total of 15.089 Billion Standard Cubic Feet of gas as at July 26, 2021.
- (8) The Respondent purported to modify the Liza Phase 1 Permit under regulation 14 of the Regulations.
- (9) Regulation 14 authorises the Environmental Protection Agency to modify an environmental permit provided that a modification shall not give rise to an additional adverse effect.
- (10) The Respondent's purported modification gives rise to an additional adverse effect.
- (11) In view of this factual and legal background the Applicant avers that
 - (a) The Respondent's act in issuing the 'purported modified' permit constitutes a violation of the Act and Regulations;
 - (b) The Respondent has violated the polluter pays principle in the Act.
- (12) Section 13(1) (d) of the Act implies into every environmental permit an obligation to restore and rehabilitate the environment;
- (13) The following documentary evidence will be used at the hearing of the application
 - (i) Affidavit of Sinikka Henry.

Issued this day of January 2022

Melinda Janki
Ronald Burch-Smith
Attorneys-at-Law

The Registry is located at the Law Courts, Georgetown, Demerara. The office is open to the public between 8:30 am and 3.30pm Mondays to Thursdays and 2.30pm on Fridays, except holidays.

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