

REPUBLIC OF TRINIDAD AND TOBAGO

BEFORE THE ENVIRONMENTAL COMMISSION

EAA 003 OF 2006

BETWEEN

Vijay Sookdeosingh

Applicant

v.

**Atlantic LNG Company of
Trinidad and Tobago**

First Respondent

The Attorney General

Second Respondent

**The Environmental Management
Authority**

Third Respondent

Dated: January 14th 2009

**Coram: Her Honour Sandra Paul – Chairman
Her Honour Indira Ramrekersingh – Deputy Chairman
His Honour Roger Carrington – Member**

Appearances:

**Ms. Marina Narinesingh
Attorney-at-Law**

For the Applicant

**Mr. Vasheist Kokaram
Attorney-at-Law**

For the First Respondent

**Mr. Stuart Young
Mr. Sean Julien
Attorneys-at-Law**

For the Second Respondent

**Ms. Nalini Sharma
Ms. Shireen Khan
Attorneys-at-Law**

For the Third Respondent

RULING ON INTERLOCUTORY APPLICATION

SUMMARY OF JUDGMENT

The Applicant, Vijay Sookdeosingh, asked the Court to rule on an application for an extension of time to file a Direct Private Party Action. The Court in its deliberations identified three issues for its consideration –

- Whether the Applicant had locus standi to pursue the application;
- Whether the Commission has jurisdiction to entertain the application; and
- Whether the application was frivolous and vexatious.

The Commission, after careful consideration of the submissions of Counsel and on a totality of the evidence presented, concluded that –

- the Applicant has locus standi to bring the present application;
- the Applicant has complied with section 69 (1), thus the Commission has jurisdiction to hear the application; and
- the application was not frivolous and vexatious.

JUDGMENT

INTRODUCTION

(1) This is an application brought, pursuant to section 89 (4) of the Environmental Management Act Chap. 35:05 (the Act), by Vijay Sookdeosingh (hereinafter called “the Applicant”) seeking the Court’s leave for an extension of time to file a Direct Private Party Action.

BACKGROUND

(2) The Applicant filed a Notice of Direct Private Party Action against the First Respondent, Atlantic LNG Company of Trinidad and Tobago (Atlantic LNG), for breach of an environmental requirement, more particularly, a breach of a term at clause (ii) (j) of the Certificate of Environmental Clearance - CEC0114/2002 (CEC) dated June 6th 2003 that is, whereby Atlantic LNG was granted approval for the establishment of a Fourth Train (Train IV) for the liquefaction of natural gas (the Facility).

(3) Clause (ii) (j) of the CEC provides that:

“Atlantic LNG shall develop mechanisms to establish a buffer zone around the entire Facility if such is required to minimise impacts from the construction and operational phases of the activity, consistent with

applicable international standards and guidelines and assessments of risk to neighbouring communities from the Trinidad LNG Facility; this plan shall be developed and forwarded to the EMA prior to the commencement of operations of Train IV.”

(4) Section 69 of the Act makes provision for the institution of Direct Private Party Actions at the Environmental Commission. Section 69 (1) provides that:

“Any private party may institute a civil action in the Commission against any other person for a claimed violation of any of the specified environmental requirements identified in section 62, other than paragraphs (c), (d) and (l), save where –

- (a) the complainant has given written notice of such claimed violation to the Managing Director of the Authority at least sixty days prior to the commencement of the civil action;**
- (b) the complainant has served a copy of the complaint on the Managing Director within twenty-eight days of the date on which the complainant was first authorised to bring such an action.**
- (c) the Authority has not commenced an enforcement action under sections 63 to 67 inclusive or through other appropriate means available to it under section 68 regarding such claimed violation; and**
- (d) the Authority has not elected to assume responsibility for taking enforcement action under sections 63 to 68 inclusive within sixty days after the filing of a direct private party action by the complainant.”**

Section 69(2) provides that:

“For purposes of this section, any individual or group of individuals expressing a general interest in the environment or a specific concern with respect to the claimed violation shall be deemed to have standing to bring a direct private party action.”

(5) The environmental requirements referred to in section 69 (1) are set out in section 62 of the Act. The section states *inter alia*:

“For the purposes of the Part and part VIII, “environmental requirement” means the requirement upon a person to –

(f) apply for and obtain a Certificate of Environmental Clearance;

(g) comply with the conditions and mitigation measures in any such certificate”

(6) On October 6th 2006 the Applicant filed a Direct Private Party Action at the Commission claiming that he has a specific concern with respect to the violation of the condition at clause 2(j) of the CEC.

(7) Counsel for the Applicant submitted to the Court that it was a precautionary measure that the present application has been made for an extension of time. It was filed in the event that the Direct Private Party Action was filed out of time.

(8) The Second and Third Respondents, the Attorney General and the Environmental Management Authority (the Authority), respectively, sought leave of the Court to be joined in this application submitting that section 69 of the Act will have to be interpreted and that they wished to be heard on the matter. Leave was granted to them to join in this application.

(9) Counsel for the First Respondent, Atlantic LNG, challenged the application for leave to institute the Direct Private Party Action out of time.

The Applicant’s Case

(10) Counsel for the Applicant submitted to the Court that the application for an extension of time was brought out of an abundance of caution. She said that on July 27th, 2006 the Applicant, served notice of direct private party action on the Authority. Seventy-one days later, on October 6th 2006, the Applicant filed Notice of Direct Private Party Action. Counsel submitted that the Applicant had good reason for extending the period of time for filing the Notice of Direct Private Party Action.

(11) The Applicant’s Attorney became aware that effective September 1st, 2006 there was to be a change in senior management at Atlantic LNG with the installation of a new Chief Executive Officer. In a bid to have the matter amicably resolved and without recourse to lengthy litigation, a letter dated August 30th 2006 was written to the new Chief Executive Officer providing a history of the conduct of Atlantic LNG in addressing the issue of the establishment of the buffer zone and compensation to affected residents.

(12) The Applicant received no response from Atlantic LNG at the date of filing, October 6th 2006. The Applicant contends that the Notice of Direct Private Party Action was filed without reasonable delay after the date when the Applicant was first authorised to bring such an action.

(13) Counsel contends that the Notice of Direct Private Party Action is being pursued to protect the health and lives of the Applicant and a section of the population living in the vicinity of the Facility. Further, the Applicant is demanding the protection of the safeguards procedures and processes as contained in the CEC for the protection of human health and the environment from risks posed by the operation of the Facility.

(14) It is also submitted that there are significant risks to the Applicant and to human life, health and the environment if the terms and conditions of the CEC are not properly adhered to by Atlantic LNG.

(15) Counsel submitted that there is no prejudice to Atlantic LNG if the reliefs sought in the substantive matter are granted to the Applicant. Alternatively, on a literal interpretation of section 69(1)(a) of the Act a complainant may file Notice of Direct Private Party Action at any time after sixty days upon service of the claimed violation on the managing Director of the Authority.

(16) Counsel pointed out that a number of preliminary objections have been raised in this application. Firstly, with respect to whether the Court has jurisdiction to hear the substantive matter on the ground that the Applicant has no *locus standi*. Secondly, that the statutory requirements pursuant to section 69 of the Act have not been met and thirdly, that the action is frivolous and vexatious and that there is no reasonable cause of action for the Court to deliberate upon.

(17) Counsel referred the Court to section 69(2) of the Act which states:

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

She submitted that section 69(2) should be interpreted to mean that if you are an individual or a group, and once you have a public interest in a violation or a private interest, that individual or group has *locus standi* to bring a Direct Private Party Action. In this particular matter, she submitted, the Applicant is an individual with a specific concern with respect to the claimed violation. The Applicant lives in close proximity to the Facility; he lives just outside of the buffer zone of seven hundred and ten metres and he has concerns with respect to his health, safety and his quality of life. Counsel submitted that the Applicant has standing as provided for under the Act to pursue the matter before the Court.

(18) On the question of whether or not the Applicant complied with the statutory requirements as provided for in section 69(1) of the Act, Counsel submitted that the Act is clear in its meaning and that a literal interpretation of the section should be adopted. Counsel posited that there are basic requirements or preconditions that must be met

before the Court has the jurisdiction to entertain a Direct Private Party Action. She articulated these as follows:

- (i) the Authority must be given sixty days notice of the claimed violation before the Applicant can file his direct private party action;
- (ii) the Applicant can file his direct private party action at any time between the sixty-first and eighty-eighth day;
- (iii) the Applicant must serve his direct private party action between the sixty-first and eighty-eighth day;
- (iv) the Authority must not have assumed enforcement action prior to the filing of the action; and
- (v) the Authority must not have assumed enforcement action within sixty days after the filing of a direct private party action.

(19) The Court in considering the application for an extension of time to file the Notice of Direct Private Action has to consider a number of issues raised by the parties. Firstly, does the Applicant have locus standi to bring the application to the Commission? Secondly, does the Commission have jurisdiction to entertain the application before it, and thirdly, is the substantive matter frivolous and vexatious with little possibility of succeeding?

ISSUES

Issue 1.

Does the Applicant have locus standi to bring the application to the Commission?

(20) Counsel for the Applicant submitted that he has locus standi to pursue this application in the Court. She submitted that section 69(2) means that once you are an individual or a group, and once you have a public interest in a violation or a private interest, an individual has locus standi to bring a Direct Private Party Action. In this particular matter, she submitted, the Applicant is an individual with a specific concern with respect to the claimed violation. He lives in close proximity to the Facility. Further, he lives just outside of the buffer zone and has concerns with respect to his health, safety and his quality of life. Consequently, he has standing as provided for under the Act to pursue the matter before the Court.

(21) However, Counsel for Atlantic LNG submitted to the Court that the Applicant lacked the necessary locus standi to bring a Direct Private Party Action to the Court. He submitted that what is meant by “specific concern” with respect to an individual meant more than just a passing interest or a theoretical or academic interest. He said that an individual must show a direct impact on him.

(22) He said that the violation complained of by the Applicant, that contrary to the terms in the CEC, Atlantic LNG had failed to establish the buffer zone in conformity with applicable international standards and guidelines and assessments of risk to neighbouring

communities from the Facility, was sufficient to establish a nexus between that alleged violation and the health, safety and quality of life of the Applicant.

(23) Counsel for the Attorney General and the Authority did not challenge the locus standi of the Applicant. In fact Counsel for the Attorney General submitted that the Applicant had *locus standi* before the Court, there being no evidence to contradict his assertion that he lives next to the buffer zone and that he has certain concerns relating to his health and safety.

(24) We note Counsel's for the Applicant referral to the position as it obtains to citizen enforcement of environmental laws in the United States of America. In an article published in the Southern California Law Review¹, the learned author observed:

“Citizen enforcement has played an extremely valuable role in achieving compliance with environmental law ... Citizen enforcement has been especially instrumental in helping to bring government facilities into compliance. It also played a significant role in the private sector. Citizen groups are not dissuaded from enforcement by political pressure, nor are they subject to capture like regulatory staff. Citizen action thus provides an important deterrent to non-compliance when government agencies fail to act”

We agree with the observation of the learned author. It appears to the Court that Parliament contemplated a similar situation whereby private citizens can have an opportunity to participate in the policing of the environment by giving them an opportunity to bring a direct private party action when there is a claimed violation of an environmental requirement.

(25) It is clear from section 69 that Parliament intended for a private party to be part of the enforcement mechanism where there is a claimed violation of an environmental requirement and where the Authority has failed to act.

Finding

(26) The complaint of the Applicant is that Atlantic LNG was in violation of a condition imposed in the CEC, in that they failed to comply with the establishment of a buffer zone using international guidelines and standards. If that is in fact so, we find that such non-compliance may well have consequences related to safety, health and quality of life of persons living in close proximity of the buffer zone. The Applicant is one such person.

(27) We therefore hold that he has a specific concern with respect to the claimed violation and consequently he has locus standi to bring this action.

¹ Deterrence vs. Cooperation and the Evolving Theory of Environmental Enforcement, 71 S. Cal. L. Rev. 1181 at para.1231

Issue 2

Does the Commission have jurisdiction to entertain the application before it?

(28) The Court in considering this issue will of necessity have to interpret section 69 of the Act.

Submissions of the Parties

(29) Counsel for the Applicant urged the Court to interpret section 69 literally. She submitted that section 69(1) sets out certain basic requirements, pre-conditions or conditions precedent that must be met before the Court has the jurisdiction to entertain a direct private party action. She said that section 69 provides for certain timelines to be observed before a private party can pursue a direct private party action before the Court.

(30) She pointed out that there were five statutory requirements that needed to be fulfilled.

1. The Authority must be given sixty days notice by the Applicant of the claimed violation before the Applicant can file his direct private party action;
2. The Applicant can file his direct private party action at any time between the sixty-first and eighty-eight day;
3. The Applicant must serve his direct private party action between the sixty-first and eighty-eight day;
4. The Authority must not have assumed enforcement action prior to the filing of the action; and
5. The Authority must not have assumed enforcement action within sixty days after the filing of a direct private party action.

(31) Counsel submitted that the Applicant met all the statutory requirements. On the question of notification, she said that this was done by letter to the Authority dated July 27th 2006 and captioned – “**Notice of Direct Party Action Pursuant to section 69(1) (a) of the Environmental Management Act**”.

(32) She submitted that the Applicant was also in compliance with section 69(1) (b), because he served a copy of the complaint on the Managing Director within the twenty-eight days of the date when he was *first authorised* to bring the action. On October 6th, 2006, seventy-one days after notification, the Applicant filed the Notice of Direct Private Party Action. The Applicant had filed his complaint within the sixty-first and eighty-eighth day.

(33) In making this submission Counsel invited the Court to interpret *first authorised* as referring to the sixty-first day, being the day after the sixty day period of the notice. Hence a party is *first authorised* to bring a direct private party action on the sixty-first day and must serve a copy of the application not later than the eighty-eighth day.

(34) Counsel invited the Court, to consider in the alternative, if it did not agree that the Applicant had complied with section 69(1) (b), and that the Court had interpreted section 69(1) (b) as setting the time for filing the complaint on the sixty-first day, then it should grant the Applicant an extension of time for filing his complaint out of time pursuant to section 89(4) of the Act. She submitted that a twelve day delay was not an unreasonable one.

(35) In support of her submission that a twelve day delay was not an unreasonable one she drew the Court's attention to the history of the Applicant's efforts to obtain the information about the buffer zone stipulated in the CEC. Atlantic LNG made its decision to establish a buffer zone on January 13th 2006. Between that date and July 27th 2006 when the Authority was informed in writing of his intent to file a Direct Private Party Action, the Applicant through his attorneys-at-law attempted to have the matter amicably resolved without having recourse to the Courts. She submitted that during the period of discussions with Atlantic LNG there was a change of Chief Executive Officer and there was forbearance on the Applicant's part to pursue any legal options without first giving the new incumbent an opportunity to respond to his concerns.

(36) Counsel for Atlantic LNG submitted that the Applicant has conceded that he is out of time for filing the substantive matter by the fact that he has filed an application for an extension of time for bringing a Direct Private Party Action. Consequently, this is not an interpretation application of section 69. He said that until an order is made by the Court there is no Direct Private Party Action before the Court.

(37) Further, Counsel for Atlantic LNG argued that the Applicant has failed to comply with the condition precedent that triggers his right to institute a third party action, namely compliance with the statutory regime of notification to the Authority within the context of sections 69 and 89 of the Act. The Direct Private Party Action was filed outside of the statutory time limit and ought not to have been instituted or proceeded with unless the Applicant applies for and obtains leave of the Court to institute its action pursuant to section 89(4).

(38) Counsel contended that the Applicant's delay in attempting to bring an action to the Commission was unreasonable having regard to the following facts:

- (i) Atlantic LNG since on or about January 2006 commenced relocation of several persons in the buffer zone;
- (ii) On December 21st 2003 Atlantic LNG had entered into contractual obligations with third parties to construct and maintain approximately 100 houses;
- (iii) Atlantic LNG invested approximately TT\$18 million in the construction of homes outside the zone for the relocation of those persons residing in the buffer zone;
- (iv) Atlantic LNG in March 2004 entered into negotiations with several residents residing in the buffer zone who indicated their

willingness to be relocated and/or compensated pursuant to the plan submitted to the Authority;

(v) Several persons residing in the buffer zone have entered into negotiations with Atlantic LNG to be relocated to houses built by Atlantic LNG outside of the buffer zone and/or distributed to such persons compensation in respect of their properties; and

(vi) Atlantic LNG negotiated with several landowners whose lands were within the buffer zone for the acquisition of these lands.

(39) Having argued that the Applicant's delay in bringing an action to the Commission was unreasonable, Counsel for Atlantic LNG went on to submit that section 69 of the Act created a new remedy for a private party or private citizen.

(40) He said in order for a private citizen to bring an action to the Commission there are several "statutory triggers" identified in section 69(1) of the Act. He pointed out that the Applicant failed to give written notice of any claimed violation of a specified environmental requirement as required by section 69(a).

(41) He argued that there was no evidence of service of a copy of the filed complaint on the Managing Director of the Authority before the commencement of the action. Consequently the Applicant is in breach of section 69(1) (b). He further argued that section 69(1) (b) required the Applicant to serve a copy of the complaint on the Authority within twenty-eight days on which he was *first authorised* to bring the action.

(42) *First authorised*, he submitted, presumes actual knowledge that there has been a violation of an environmental requirement. In the present case it was February 2006. He submitted that if the Court did not agree with that interpretation of *first authorised* then the alternative submission to that would be that the only person to authorise enforcement action would have to be the Authority under the Act.

(43) He contended that section 69(1) (d) has not been complied with, in that the Authority has sixty days after the filing of the action to elect to assume responsibility for taking enforcement action under sections 63 and 68 of the Act.

(44) Counsel for the Attorney General submitted that it is accepted that the main body charged with the protection of the environment and the enforcement of action is the Authority. Sections 69 and 89 of the Act provide for private citizens to bring enforcement action in certain cases. However, there are safeguards which will allow the Authority to assume enforcement action.

(45) Counsel for the Attorney General invited the Court to interpret section 69 (1) as applying to actions brought only with respect to claimed violations at paragraphs (c), (d) and (l). He submitted that the words **save where** in section 69(1) meant that the Commission has jurisdiction to solely hear complaints with respect to violations at section 62 (c), (d) and (l) once the complainant has observed the steps set out at sections 69(1)(a) to (d). He went on to submit that with respect to the other violations of

environmental requirements referred to at section 62, the Commission's jurisdiction is provided for by section 89 (2) of the Act which provides:

“The Commission shall not have jurisdiction over any private party action unless the complainant has given proper notice to the Authority of not less than sixty days before bringing such an action as required under section 69.”

(46) Consequently, Counsel submitted, there are two categories of potential Direct Private Party Actions. The first category encompasses violations provided for in section 62 apart from violations under section 69(c), (d) and (l), the Commission's jurisdiction thereto is provided for under section 89(2). The second category of violations under section 62 (c), (d) and (l); the Commission's jurisdiction is derived from section 69(1).

(47) In discussing the meaning of the words *first authorised* he argued that once the complainant has given written notice of the claimed violation the Authority has sixty days within which to act. If the Authority has failed to act then the complainant is now authorised to act.

(48) He submitted that the Applicant by his attorney's letter of July 27th 2006 gave notice to the Authority. This was so despite the fact that it was captioned Notice of Direct Private Party Action. He said that it would have been better if it had been captioned **Notice of Violation** to fit the language of section 69(1) (a); however, he submitted, the language used went more to form than to substance.

(49) Counsel for the Authority submitted that in interpreting section 69(1) when regard is had to the words **save where**, in the ordinary meaning of those words they mean **except** and if read that way in section 69, the section does not make sense. She submitted that **save where** should be read in relation to sections 69(1) (c) and (d), so that the effect of those sub-sections would be that if the Authority has not commenced an action, the private party may not proceed to bring a complaint and conversely where the Authority decides to take enforcement action the private party may also proceed to take action. If the Authority decides there is no merit in the allegation by the private party's claim of violation of an environmental requirement then it would be wrong for the private party to go off on a frolic of his own and decide that there is merit. At the end of the day she submitted the private party and the Authority must always work together.

(50) Counsel for the Authority submitted an interpretation of *first authorised* that is in agreement with the alternative interpretation submitted by Counsel for Atlantic LNG, that is, the Authority is the only person tasked with authorising enforcement.

(51) She contended that in interpreting section 69 the philosophy of the Act which is contained in the Preamble must be borne in mind. The Preamble states *inter alia* -

“And whereas, management and conservation of the environment and the impact of environmental conditions on human health constitute a shared

responsibility and benefit for everyone in the society requiring co-operation and co-ordination of public and private sector activities:

And whereas, in furtherance of its commitment, the Government is undertaking the establishment and operation of an Environmental management Authority to co-ordinate, facilitate and oversee execution of the national strategy and programmes, to promote public awareness of environmental concerns, and to establish an effective regulatory regime which will protect, enhance and conserve the environment:"

(52) She submitted that a private party cannot go far on its own in any enforcement action. It is necessary for the Authority to play a supporting role in any enforcement procedure. Under section 69 the private party merely acts as a notifier. It is the Authority which is the specialist in the field of environmental management and conservation and has the best understanding of what is required. It is the Authority which ultimately decides on the course of action to be taken. Where the Authority does not elect to proceed to enforcement the private party cannot do so.

(53) Consequently, she submitted, *first authorised* means that the Authority within sixty days after it received the written notice of the claimed violation can authorise the private party to proceed to lay a private complaint against the alleged violator.

The Law

(54) The sole object in statutory interpretation is to arrive at the legislative intention. Parliament entrusts the Courts with the task of spelling out its intent.²

(55) The Act makes provision for private parties to bring a complaint to the Environmental Commission for a violation of an environmental requirement. Section 69(1) and section 89 provides for the manner in which the jurisdiction of the Commission is to be invoked. Section 69(1) states -

“Any private party may institute a civil action in the Commission against any other person for a claimed violation of any of the specified environmental requirements identified in section 62, other than paragraphs (c), (d) and (l), save where –

- (a) the complainant has given written notice of such claimed violation to the Managing Director of the Authority at least sixty days prior to the commencement of the civil action;**
- (b) the complainant has served a copy of the complaint on the Managing Director within twenty-eight days of the date on which the**

² Francis Bennion Statutory Interpretation, 5th ed., p.15

- complainant was first authorised to bring such an action.
- (c) the Authority has not commenced an enforcement action under sections 63 to 67 inclusive or through other appropriate means available to it under section 68 regarding such claimed violation; and
 - (d) the Authority has not elected to assume responsibility for taking enforcement action under sections 63 to 68 inclusive within sixty days after the filing of a direct private party action by the complainant.”

Section 89 provides inter alia:

“89 (1) This section shall apply to every direct private party action brought pursuant to section 69.

(2)The Commission shall not have jurisdiction over any private party action unless the complainant has given proper notice to the Authority of not less than sixty days before bringing such an action as required under section 69.

(3) A direct private party action shall be instituted by filing a complaint with the Registrar of the Commission and serving a copy thereof on the respondent and the secretary of the Authority, within twenty-eight days of the date on which the complainant is first authorised to bring such an action.

(4) Notwithstanding subsection (3), a complaint may be instituted out of time if the Commission is satisfied that there was a reasonable cause for not bringing the complaint within the time limit and that the complaint was filed thereafter, without unreasonable delay.

(7) At any time within sixty days after the filing of a direct private party action, the authority may assume responsibility for taking enforcement action against the respondent by -”

Finding

(56) The Court noted with interest Counsel’s for the Applicant reference to the article **Deterrence vs. Cooperation and the Evolving Theory of Environmental Enforcement** where the author made the following observation about what obtains in the United States of America where ordinary citizens have been given the power to ensure that there is compliance with environmental laws. The learned author of that article opined that –

“Citizen enforcement has played an extremely valuable role in achieving compliance with environmental law ... Citizen enforcement has been especially instrumental in helping to bring government facilities into compliance. It also played a significant role in the private sector. Citizen groups are not dissuaded from enforcement by political pressure, nor are they subject to capture like regulatory staff. Citizen action thus provides an important deterrent to non-compliance when government agencies fail to act”

(57) The Court also noted the submission of Counsel for Atlantic LNG and agreed with his submission when he contended that to police the environment can be a very extensive and difficult task. There may be people in areas that are being directly affected and the only way that the Authority can be made aware of this is by being informed by the people who are being affected. We reject his submission when he states that the private party simply acts only as a notifier to the Authority when there is a breach of an environmental requirement.

(58) Having regard to the foregoing reference and submission, the Court is of the opinion that it was Parliament’s intention to give to an individual the power to ensure compliance with environmental requirements when it enacted section 69 of the Act. As a consequence the Court is of the opinion that since Parliament intended to give the citizens the power to ensure compliance with environmental requirements, the use of the words **save where** in section 69(1) is to be interpreted as introducing pre-conditions to be observed before an individual can bring a direct private party action to the Commission.

(59) The Court finds that the Applicant has complied, in all material particulars, with the requirement of section 69 in instituting a civil action at the Commission. We so find for the following reasons -

(i) section 69 (1) (a) which required the complainant to give written notice of the claimed violation to the Managing Director was complied with. The Court accepts the letter dated July 27th 2006 as giving the necessary notice of the claimed violation. We so find despite the caption **“Notice of Direct Private Party Action Pursuant to Section 69(1) (a) of Environmental Management Act, 2000”**. We agree with Counsel for the Attorney General when he submitted that the language used in the letter went more to form than to substance. This letter reads as follows –

“July 27, 2006

**Dr. Dave McIntosh
Managing Director and Chief Executive Officer
Environmental Management Authority
No.8 Elizabeth Street
St. Clair
Port of Spain**

Dear Sir,

Re: Notice of Direct Private Party Action Pursuant to Section 69(1) (a) of Environmental Management Act, 2000

Pursuant to section 69 (1)(a) of the Environmental management Act 2000 (“EM Act”) you are hereby given notice of intention to institute direct private party action against Atlantic LNG Company of Trinidad and Tobago (“Atlantic LNG”).

By Certificate of Environmental Clearance registered number CEC 0114/2002 (“Atlantic LNG CEC”) and dated the 6th June 2003 , the Atlantic LNG was granted approval for the establishment of a Fourth Train (Train IV) for the liquefaction of natural gas to produce approximately 5 million tonnes of liquefied natural gas annually by the Environmental Management Authority (“EMA”).

Reference is made to clause (ii) (j) of the Atlantic LNG CEC. It provides:

“Atlantic LNG shall develop mechanisms to establish a buffer zone around the entire facility if such is require to minimize the impacts from the construction and operational phases of the activity, consistent with applicable international standards and guidelines and assessments of risks to neighbouring communities from the Trinidad LNG facility; this plan shall be developed and forwarded to the EMA prior to the commencement of operations of Train 4.”

Atlantic LNG has established a buffer zone pursuant to clause (ii) (j) of the Atlantic LNG CEC of 710 metres from its fence line having deemed it necessary. The buffer zone has been defined as:

“An area of land comprising approximately 6 hectares extending beyond the fence line of the Trinidad LNG facility which is designed to form a clear demarcation between residential and industrial land use. Once established there will be no residential activity in this zone and its establishment shall be primarily for the improvement of comfort and quality of living for those persons residing in close proximity to the Trinidad LNG facilities.”

Atlantic LNG pursuant to clause (ii)(j) of the Atlantic LNG CEC deemed a buffer zone was necessary but contrary to the said clause (ii)(j) of the Atlantic LNG CEC, Atlantic LNG has refused to indicate what international standards and guidelines were used in the establishment of the buffer zone and therefore it is reasonable to presume that the said buffer zone was not established in compliance with international standards and guidelines and assessment of risks to neighbouring communities contrary to clause (ii)(j) of the ALNG CEC.

This action is being commenced on behalf of Vijay The Applicant of Roberts Street Point Ligoure.

Sincerely,

**Rajendra Ramlogan
Attorney at Law”**

(ii) We find that the pre-condition for instituting an action as set out in section 69 (1) (a) has been complied with. We note in the caption to the above reproduced correspondence that section 69(1) (a) was referenced, and further in the body of the correspondence, the claimed violation was identified in the penultimate paragraph.

(iii) We find that section 69(1) (b) was complied with. In arriving at this finding the Court accepted the submission of Counsel for the Applicant and the Attorney General when they submitted that *first authorised* meant the complainant could institute an action between the sixty-first and eighty-eighth day when notification of the claimed violation was given to the Managing Director of the Authority. In making this determination we reject the submission of Counsel for the Authority and Atlantic LNG when they submitted that it is the Authority which is empowered to authorise the complainant to bring a complaint to the Commission. We do not believe that that was the intent of Parliament. We are of the opinion that it was Parliament’s intention to empower citizens to ensure that there was compliance with environmental requirements where the Authority has failed to do so.

(iv) We find that section 69 (i) (b) has been complied with when the Applicant filed the Notice of Direct Private Action on October 6th 2006, a date between the sixty-first and eighty-eighth day as is required by the Act, and served a copy of it on the Authority.

(vi) Finally, we find that the pre-condition set out under section 69(1)(c) has been complied with in that the Applicant filed his Direct Private Party Action only after the Authority had failed to take action against Atlantic LNG as provided for in the Act.

Issue 3

Is the substantive matter before the Commission frivolous and vexatious with little possibility of succeeding?

(60) Counsel for Atlantic LNG submitted that the substantive matter before the Court is frivolous and vexatious. He submitted that in determining that question there are two

sub-issues, the first being whether or not on the face of the application there is disclosed a breach of an environmental requirement and the second being whether the Applicant has locus standi.

The Law

(61) Section 62 of the Act states inter alia that –

“For the purposes of this Part and Part VIII, “environmental requirement” means the requirement upon a person to –

(f) apply for and obtain a Certificate of Environmental Clearance;

(g) comply with the conditions and mitigation measures in any such certificate;”

Conclusion

(69) We find, after listening to the submissions of counsel and on a totality of the evidence that –

- (i) the Applicant has locus standi to bring the application;
- (ii) the Applicant has complied with section 69(1) (b) in that the Applicant served a copy of the complaint on the Managing Director within the twenty-eight days of the date on which the complainant was first authorised to bring a Direct Private Party Action; and
- (iii) the application is not frivolous and vexatious;

(70) In the circumstances there is no need to grant the Applicant an extension of time to institute the substantive action.

(70) There will be no order as to costs.

Sandra Paul
Chairman

Indira Ramrekeringh
Deputy Chairman

Roger Carrington
Member

