

Attorney(s) -at-law Mr. Mohabir Anil Nandlall, SC, MP, Attorney General and Minister of Legal Affairs of Guyana; and Mr. Nigel Ovid Hawke, Solicitor General
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**IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA
(CONSTITUTIONAL AND ADMINISTRATIVE DIVISION)**

2024-HC-DEM-CIV-FDA-104

In The Matter of an Application for Orders of Mandamus, Prohibition and Declarations and in the Matter of the Judicial Review Act Cap 3:06

BETWEEN

SHERLINA NAGEER

Applicant

-AND-

THE ENVIRONMENTAL PROTECTION AGENCY, a body corporate established under the Environmental Protection Act (Cap 20:05)

Respondent

URGENT NOTICE OF APPLICATION WITH NOTICE

The Applicant/Intended Added Respondent, The Attorney General of Guyana will make an application to the Court on the _____th day of _____, 2024, at _____ a.m. /p.m., or soon after that time as the motion can be heard,

at the High Court of the Supreme Court of Judicature before

PROPOSED METHOD OF HEARING: The Application is to be heard

- a. Orally; and
- b. In writing

1. THE APPLICATION IS FOR:

- a. an Order that this Notice of Application be deemed urgent, and that a date be set for the hearing and determination of this Notice of Application before the first scheduled hearing;
- b. an Order that the Minister of Natural Resources, through the Attorney General, has a statutory right be added to any action arising out of petroleum operations under the Petroleum Activities Act, the Environmental Protection Act or other relevant legislation which affects the interest of the State or the interest of a licensee;
- c. an Order that these proceedings arise out of petroleum operations under the **Petroleum Activities Act** and or the **Environmental Protection Act** or other relevant legislation which affects the interest of the State or the interest of a licensee, ExxonMobil Guyana Ltd.;
- d. an Order that the Applicant/Intended Added Respondent be added as a party to these proceedings (**Sherlina Nageer v EPA 2024-HC-DEM-CIV-FDA-104**) filed on 25th January 2024, and be granted leave to fully participate in these

proceedings, including to file: an Affidavit in Defence, written, and make oral submissions;

ALTERNATIVELY,

- e. an Order striking out the Applicant's Fixed Date Application Action No. **2024-HC-DEM-CIV-FDA-104** as it does not disclose any reasonable ground for bringing the claim;
- f. an Order that the cost of this Notice of Application be borne by the Respondent/Applicant; and
- g. such other Orders as this Honourable Court deems just and proper.

2. THE GROUNDS FOR THE APPLICATION ARE:

1. This Application is made pursuant to **Rules 1.01, 14.01, 14.02, 19.02, and 31.01** of the **Supreme Court of Guyana Civil Procedure Rules 2016** ("hereinafter **CPR 2016**"), **section 24** of the **High Court Act, Chapter 3:02, Laws of Guyana**, **Section 94** of the **Petroleum Activities Act 2023 (Act. No 17 of 2023)**, and **section 10** of the **State Liability and Proceedings Act, Cap 6:05, Laws of Guyana**.
2. This Honourable Court is vested with the jurisdiction, and discretion to grant the Orders prayed for in this Notice of Application;
3. The Minister of Natural Resources, represented by the Attorney General of Guyana, has a statutory right to be added as a party in proceedings which constitute an action arising out of petroleum operations under the **Petroleum**

Activities Act and the **Environmental Protection Act Cap 18:01, Laws of Guyana**, and which potentially impacts the interest of the State or the interest of a licensee.;

4. These proceedings seek, among other things, and under certain conditions, the following orders:

- i. where the Agency fails/refuses to provide a copy of the insurance policy or certificate of insurance required to evidence compliance with Condition 12.1 of the Permit [Environmental Permit (Modified and Varied) Reference Number 20171204-ESSLP issued to Exxon Mobil Guyana Ltd in respect of Liza Phase 2] on the grounds of the Permit Holder's failure to provide the same, **A Declaration that the Permit is cancelled in accordance with Condition 12.3 of the Permit**; and
- ii. where the Agency fails/refuses to provide evidence that the Permit Holder has complied with Condition 12.1 and 12.5 of the Permit on the ground of the Permit Holder's failure to provide the same, **An Order of Prohibition prohibiting the Agency from renewing the Permit or issuing a new environmental permit to the Permit Holder (its successors, assigns, and or affiliates) until the Agency files with the Court evidence of the insurance, legal agreements/guarantees and supporting documents mentioned in paragraph B and C above**;

5. If any of these orders are granted, the interest of ExxonMobil Guyana Ltd., and the State of Guyana will be negatively impacted in a significant way;

6. Specifically, if the Orders are granted, they can:
 - i. affect ExxonMobil's ability to operate, and generate projected profits;
 - ii. trigger arbitration proceedings between Guyana and ExxonMobil Ltd. regarding any losses suffered due to the cancellation or non-renewal of its Environmental Permit to operate the Liza Phase 2 Project;
 - iii. negatively affect expected revenue which the Cooperative Republic of Guyana projects it will collect from the sale of oil produced from this project in 2024 and beyond;
 - iv. negatively impact massive infrastructural projects which Guyana has already budgeted for, and plans to implement using revenue from its share of oil sold from the Liza Phase 2 Project; and
 - v. negatively affect the economy of Guyana through possible job losses, and the disruption of the provision of goods and services associated with the operation of the Liza Phase 2 Project.

7. These proceedings therefore constitute an action arising out of petroleum operations pursuant to the **Petroleum Activities Act** and the **Environmental Protection Act Cap 18:01, Laws of Guyana** which potentially impacts the interest of ExxonMobil Guyana Ltd, and the State;

8. Consequently, the Minister of Natural Resources, represented by the Attorney General of Guyana by virtue of the **State Liability and Proceedings Act**, is entitled to be added as a party as of statutory right under **section 94 (1)** of the **Petroleum Activities Act**;
9. This Honourable Court is entitled to, upon an application, to add a party to proceedings under **Rules 19.01** and **19.02** of the **CPR 2016**.
10. An order by this Honourable Court granting permission to the Attorney General to be added as a party in these proceedings will not unduly delay these proceedings, and will not, in any way, prejudice the rights of the Respondent/Applicant;
11. This Application has been made by the Attorney General before the first hearing of these proceedings. As such, they will not delay the planned or impending timetable concerning these proceedings; and

ALTERNATIVELY,

12. The Respondent's/Applicant's Fixed Date Application reveals no reasonable ground for bringing the claim.
13. There is no practical purpose in granting paragraph 1 (A) of the Respondent's/Applicant's Fixed Date Application as this order is merely a restatement of the law;

14. The **Environmental Protection Act, Cap 20:05, Laws of Guyana**, stipulates the information or documentation which the Environmental Protection Agency is required to keep a register of open to the public;

15. The information or documentation on which Orders at paragraphs 1 (B), (C), (D), and (E), are based are not required to be kept in a register and or open to the public under the **Environmental Protection Act, Cap 20:05, Laws of Guyana**. Consequently, Orders at paragraphs 1 (B), (C), (D) and (E) cannot be granted; and

16. the Orders prayed for at paragraphs 1 (F) and (G) cannot be granted.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the application:

(a) Affidavit of Ocelisa Marks.

4. **A DRAFT OF THE ORDER** is attached.

Date: _____

Signature of Registry

Issued by:

Address of Registry where

issued:

**Supreme Court Registry,
South Road Georgetown
Demerara, Guyana**

TO: Melinda Janki
Tim Prudhoe
Anna-Kay Browne
106-107 Lamaha Street
Georgetown, Guyana
Tel: 592-620-5294
Email: tim@spearcaribbean.com and anna-kay@spearcaribbean.com

Attorney(s) Mr. Mohabir Anil Nandlall, SC,
-at-law MP, Attorney General and
Minister of Legal Affairs of
Guyana; and
Mr. Nigel Ovid Hawke,
Solicitor General
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Mandamus, Prohibition and Declarations
and in the Matter of the Judicial Review Act
Cap 3:06**

**BETWEEN
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Applicant

-AND-

**THE ENVIRONMENTAL PROTECTION AGENCY, a
body corporate established under the Environmental
Protection Act (Cap 20:05)**

Respondent

**URGENT NOTICE OF APPLICATION WITH
NOTICE**

Attorney(s) -at-law	Mr. Mohabir Anil Nandlall, SC, MP, Attorney General and Minister of Legal Affairs of Guyana; and Mr. Nigel Ovid Hawke, Solicitor General
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THE ENVIRONMENTAL PROTECTION AGENCY, a body corporate established under the Environmental Protection Act (Cap 20:05)

Respondent

AFFIDAVIT IN SUPPORT OF NOTICE OF APPLICATION TO INTERVENE

I, **Ocelisa Marks, Assistant State Solicitor of 95 Carmichael Street, Cummingsburg, Georgetown**, being duly sworn make oath and say as follows:

1. I am authorised to depose this Affidavit on behalf of the Applicant/Intended Added Respondent.
2. The facts and matters hereinafter deposed are within my personal knowledge save and except where otherwise stated.
3. I am advised by my attorneys-at-law and do verily believe that this Application is made pursuant to **Rules 1.01, 14.01, 14.02, 19.02, and 31.01** of the **Supreme Court of Guyana Civil Procedure Rules 2016** (“hereinafter **CPR 2016**), **section 24** of the **High Court Act, Chapter 3:02, Laws of Guyana**, **section 94** of the **Petroleum Activities Act 2023 (Act. No 17 of 2023)**, and **section 10** of the **State Liability and Proceedings Act, Cap 6:05, Laws of Guyana**.
4. I am further advised by my attorneys-at-law and do verily believe that this Honourable Court is vested with powers to grant the order sought herein.
5. On the 25th January 2024, the Respondent/Applicant filed a Fixed Date Application in the High Court (**Sherlina Nageer v EPA Action No. 2024-HC-DEM-CIV-FDA-104**) seeking various orders: These Orders include the following:

- a. where the Agency fails/refuses to provide a copy of the insurance policy or certificate of insurance required to evidence compliance with Condition 12.1 of the Permit [Environmental Permit (Modified and Varid) Reference Number 20171204-ESSLP issued to ExxonMobil Guyana Ltd in respect of Liza Phase 2] on the grounds of the Permit Holder's failure to provide the same, **A Declaration that the Permit is cancelled in accordance with Condition 12.3 of the Permit.**

 - b. where the Agency fails/refuses to provide evidence that the Permit Holder has complied with Condition 12.1 and 12.5 of the Permit on the ground of the Permit Holder's failure to provide the same, **An Order of Prohibition prohibiting the Agency from renewing the Permit or issuing a new environmental permit to the Permit Holder (its successors, assigns, and or affiliates) until the Agency files with the Court evidence of the insurance, legal agreements/guarantees and supporting documents mentioned in paragraph B and C above.**
6. If these Orders are granted, they can negatively impact the State, and ExxonMobil Guyana Ltd.
 7. Lisa Phase 2 produced approximately 220,000 barrels of oil a day in 2023 and is projected to produce the same amount in 2024.
 8. The Government of Guyana has a production-sharing agreement with ExxonMobil Guyana Ltd., under which the Government of Guyana earns 50% of

profit-oil. Some of this revenue has already been used to fund monumental development projects around Guyana since oil production commenced in 2019.

9. It is projected that there will be 202 lifts of crude oil in 2024 from ExxonMobil's operational projects. The Government estimates that its earnings from its share of profit oil in 2024 will be US\$2,078.9 million, while royalty payments for the year are projected at US\$319.9 million. **Annexed hereto and marked "OM 1" is an excerpt from the 2024 Budget Speech, para 5.20, page 97.**
10. Since these projections are based on the operations of three of ExxonMobil's projects, if one of these projects is shut down due to the cancellation or non-renewal of an Environmental Permit, both ExxonMobil Guyana Ltd., these estimates will likely see a downward adjustment.
11. The Government of Guyana plans to use the expected revenue from the sale of its share of oil to fund expenditure in 2024 and beyond, including several multi-million, and multi-billion-dollar infrastructural development projects.
12. The Government of Guyana's planned expenditure for 2024 is \$1.1 trillion, and part of this sum is expected to flow from anticipated revenue from the sale of oil produced from Liza Phase 2. In 2024, approximately US\$1.2 billion (G\$211,419,600,000 (two hundred and eleven billion, four hundred and nineteen million, six hundred thousand dollars), or almost a quarter of the 2024 budget) of this amount will come from expected revenue from Guyana's share of profit oil and royalties. Through 2027, approximately US\$5 billion of expenditure is expected to come from revenue from Exxon's oil projects. **Annexed hereto and**

marked “OM 2” Annex VII of the 2024 Budget Speech, titled “Actual and Projected Natural Resources Fund inflows and Withdrawals”

13. Additionally, the Government of Guyana and ExxonMobil Guyana Ltd. are engaged in the design, construction and building of a Gas to Shore Project intended to convert natural gas to provide *inter alia*, low-cost electricity to the Guyanese public. The supply for the onshore operations will come from ExxonMobil’s offshore operations, including Liza Phase 2. This Project, whose investment value is in the vicinity of US\$1,700,000,000 (one billion seven hundred million United States Dollars) will be placed in severe jeopardy if the orders prayed for are granted.
14. The Government of Guyana plans to see the first product later this year or next year. A minimum of 50 million standard cubic feet of gas per day is expected to be transported through the pipeline in 2024, and the pipeline will have a maximum capacity of 130 million cubic feet. Approximately 70 million cubic feet per day are expected from the Liza 1 and 2 and Payara projects. As such, a cancellation or non-renewal of the Environmental Permit for Liza 2 will make it difficult for the required amount of gas to be sent from offshore to onshore. This, in turn, could hamper the success of the gas to shore project itself, as well as the intended benefits, such as increased power generation.
15. Generally, if the orders prayed for are granted, they can:
 - a. affect ExxonMobil’s ability to operate, and generate projected profits;
 - b. trigger a dispute, including possible arbitration proceedings between Guyana and ExxonMobil regarding any losses suffered by ExxonMobil due to the

- cancellation or non-renewal of its Environmental Permit to operate the Liza Phase 2 Project;
- c. negatively affect expected revenue which the Cooperative Republic of Guyana projects it will collect from the sale of oil produced from this project in 2024 and beyond;
 - d. negatively impact massive infrastructural projects which Guyana has already budgeted for, and plans to implement using revenue from its share of oil sold from the Liza Phase 2 Project; and
 - e. negatively affect the economy of the Guyana through possible job losses, and the disruption of the provision of goods and services associated with the operation of the Liza Phase 2 Project.
16. The Respondent's/Applicant's Fixed Date Application therefore threatens to negatively impact the interest of the State, ExxonMobil Guyana Ltd, and as a consequence, all other parties with licences under the Petroleum Activities Act related to the Liza Phase 2 Project.
17. **Section 94 (1)** of the **Petroleum Activities Act 2023 (Act. No 17 of 2023)** provides that *"In any action arising out of petroleum operations pursuant to this Act or related legislation that impacts the State or the interest of a licensee, the Minister and the licensee shall be named as a party of right."*
18. In the Fixed Date Application, the Respondent/Applicant raises questions as to the powers and or obligations of the **Environmental Protection Agency** under the **Environmental Protection Act** in granting Environmental Permits to ExxonMobil Guyana Ltd.

19. The Respondent/Applicant also claims that the **Environmental Protection Agency** has an obligation to make public certain documents related to petroleum operations.
20. The Respondent/Applicant also prays for Orders that the Environmental Permit authorising Liza Phase 2 to engage in petroleum extraction to be cancelled or not renewed if the Environmental Protection Agency does not make public the document(s) required. The Respondent/Applicant also prays for Orders that future Environmental Permits authorising petroleum extraction contain specific terms.
21. Considering the foregoing, I am of the view that these proceedings constitute an action arising out of petroleum operations pursuant to the **Petroleum Activities Act** and the **Environmental Protection Act**.
22. These proceedings also clearly have the potential to negatively impact the interest of ExxonMobil Guyana Ltd., and the State of Guyana.
23. **Section 94 (1)** of the **Petroleum Activities Act 2023** therefore required that the Minister of Natural Resources (the subject minister under that Act), represented by the Attorney General of Guyana under **section 10** of the **State Liabilities and Proceedings Act**, be named a respondent in the originating documents (the Fixed Date Application) in these proceedings.
24. Additionally, the Minister of Natural Resources, represented by Attorney General of Guyana, is now entitled, as of statutory right, to be named as a party to these proceedings.

25. This Honourable Court is entitled to, upon an application, to add a party to proceedings under **Rules 19.01** and **19.02** of the **CPR 2016**
26. An order by this Honourable Court granting permission to the Attorney General to be added as a party in these proceedings will not unduly delay these proceedings, and will not, in any way, prejudice the rights of the Respondent/Applicant.
27. This Application has been made by the Attorney General before the first hearing of these proceedings. As such, they will not delay the planned or impending timetable concerning these proceedings.
28. Further, the Fixed Date Application in these proceedings reveal no reasonable ground for bringing the claim.
29. There is no practical purpose in granting paragraph 1(A) of the Respondent's/Applicant's Fixed Date Application as the order is merely a restatement of law.
30. **Section 36 (1)** of the **Environmental Protection Act** expressly sets out the documents or information which the Environmental Protection Agency is required to make available to the public.
31. **Section 36 (2)** of the **Environmental Protection Act** states that the Minister may make regulations prescribing other information to be included in the register and prescribing fees. The list of documents under **Section 36 (1)** of the **Environmental Protection Act** may only be augmented by the Minister of

Natural Resources under **section 36 (2)** of the **Environmental Protection Act** or by an amendment by Parliament.

32. **Section 36 (1)** of the **Environmental Protection Act** does not include the information of documentation requested by the Respondent/Applicant, and there are no additional regulations which state that the information or documentation demanded by the Respondent/Applicant should fall part of the register and be made available to the public.
33. Given that this information or documentation is the basis for Orders prayed for under **paragraphs 1 (B), (C), (D), and (E)**, of the Respondent's/Applicant's Fixed Date Application, these Orders cannot be granted for the reasons sated above.
34. If this Honourable Court grants the Orders at **paragraphs 1 (B), (C), (D), and (E)** of the Respondent's/Applicant's Fixed Date Application, it would be unilaterally manufacturing new obligations for the Environmental Protection Agency, creating new documents to be added to the register and made available to the public.
35. This would constitute judicial overreach, and a breach of the doctrine of separation of powers.
36. Granting the Orders prayed for under **paragraphs 1 (B), (C), (D), and (E)** of the Respondent's/Applicant's Fixed Date Application would also constitute a usurpation of the power and discretion of the Minister of Natural Resources under **section 36 (2)** of the **Environmental Protection Act**.
37. Further, the Orders prayed for at paragraphs 1 (F) and (G) of the Fixed Date Application would a fetter on the discretion of the **Environmental Protection Act** in the exercise of its powers and duties under the Act.

38. This Honourable Court is therefore asked to grant the orders prayed for in this Notice of Application.

39. This Affidavit was drawn by **Anil Mohabir Anil Nandlall SC MP, Attorney General and Minister of Legal Affairs**, the Applicant/Intended Added Respondent, **Shoshanna V. Lall, Assistant Solicitor General, and Chevy Devonish, Senior Legal Advisor**, whose address for service is the Attorney General's Chambers, 95 Carmichael Street, North Cummingsburg, Georgetown, Demerara.

Sworn before me at the City of Georgetown,
County of Demerara, on the April, 2024

.....
Ocelisa Marks

.....
Commissioner For Taking Affidavit

Attorney(s) **Mr. Mohabir Anil Nandlall, SC,**
-at-law **MP, Attorney General and**
 Minister of Legal Affairs of
 Guyana; and

Chambers Address Mr. Nigel Ovid Hawke,
Solicitor General
Attorney General's Chambers
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3

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Protection Act (Cap 20:05)**

Respondent

**AFFIDAVIT IN DEFENCE OF NOTICE OF
APPLICATION TO INTERVENE**

**Attorney(s) Mr. Mohabir Anil Nandlall, SC,
-at-law MP, Attorney General and
Minister of Legal Affairs of
Guyana; and
Mr. Nigel Ovid Hawke,
Solicitor General**

Chambers Attorney General's Chambers

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AGENCY, a body corporate established under
the Environmental Protection Act (Cap 20:05)**

Respondent

DRAFT ORDER

BEFORE: THE HONOURABLE MADAM CHIEF JUSTICE ROXANE GEORGE

DATED: _____

ENTERED: _____

APPEARANCES: Melinda Janki, Tim Prudhoe and Anna-Kay Browne for the
Respondents/Applicants

Mr. Mohabir Anil Nandlall SC, MP, Attorney General, Shoshana Lall, Assistant Solicitor General, and Mr. Chevy Devonish, Senior Legal Advisor, for the Applicant/Intended Added-Respondent

THIS APPLICATION was heard on _____ , wherein the Applicant/Intended Added Respondent sought the following orders:

1. an Order that this Notice of Application be deemed urgent, and that a date be set for the hearing and determination of this Notice of Application before the first scheduled hearing;
2. an Order that the Minister of Natural Resources, through the Attorney General, has a statutory right be added to any action arising out of petroleum operations under the Petroleum Activities Act, the Environmental Protection Act or other relevant legislation which affects the interest of the State or the interest of a licensee;
3. an Order that these proceedings arise out of petroleum operations under the **Petroleum Activities Act** and or the **Environmental Protection Act** or other relevant legislation which affects the interest of the State or the interest of a licensee, ExxonMobil Guyana Ltd.;
4. an Order that the Applicant/Intended Added Respondent be added as a party to these proceedings (**Sherlina Nageer v EPA 2024-HC-DEM-CIV-FDA-104**) filed on 25th January 2024, and be granted leave to fully participate in these

proceedings, including to file: an Affidavit in Defence, written, and make oral submissions;

ALTERNATIVELY,

5. an Order striking out the Applicant's Fixed Date Application Action No. **2024-HC-DEM-CIV-FDA-104** as it does not disclose any reasonable ground for bringing the claim;
6. an Order that the cost of this Notice of Application be borne by the Respondent/Applicant; and
7. such other Orders as this Honourable Court deems just and proper.

ON READING the Notice of Application, and the Affidavit of Ocelisa Marks:

THIS COURT ORDERS that:

1. the Minister of Natural Resources, through the Attorney General, has a statutory right be added to any action arising out of petroleum operations under the Petroleum Activities Act, the Environmental Protection Act or other relevant legislation which affects the interest of the State or the interest of a licensee;
2. these proceedings arise out of petroleum operations under the **Petroleum Activities Act** and or the **Environmental Protection Act** or other relevant legislation which affects the interest of the State or the interest of a licensee, ExxonMobil Guyana Ltd.;
3. the Applicant/Intended Added Respondent is added as a party to these proceedings (**Sherlina Nageer v EPA 2024-HC-DEM-CIV-FDA-104**) filed on

25th January 2024, and be granted leave to fully participate in these proceedings, including to file: an Affidavit in Defence, written, and make oral submissions;

ALTERNATIVELY,

4. the Applicant's Fixed Date Application Action No. **2024-HC-DEM-CIV-FDA-104** is struck out as it does not disclose any reasonable ground for bringing the claim;
5. an Order that the cost of this Notice of Application be borne by the Respondent/Applicant; and

Date: _____

Signature of Registry

Issued by:

Address of Registry where issued: