



IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

CIVIL JURISDICTION

2024-HC-DEM-CIV-FDA-39

In the matter of an application for orders of
Mandamus, Prohibition and Declarations
and the Matter of the Judicial Review Act,
Cap. 3:06

BETWEEN:

AUDREYANNA THOMAS

Claimant

-and-

THE ENVIRONMENTAL PROTECTION
AGENCY a body corporate established under
the Environmental protection Act, Cap.
20:05, laws of Guyana, with its registered
office at Ganges Street, Sophia, Georgetown,
Guyana.

Defendants

BEFORE: The Honourable Justice Nicola Pierre

APPEARANCES: Mr. Tim Prudhoe, Ms. Melinda Janki, Ms. Anna Kay Brown, Mr. Saevion
David Longe for the Applicant

Ms. Shareefa Parks, Ms. Niomi Alsopp for the Respondent

Date(s) of Hearing: July 28, 2025

Date of Judgment: October 28, 2025

Environmental Impact Assessments - s. 11 Environmental Protection Agency Act Cap.
20:05- statutory interpretation

JUDGMENT

Background

1. The Environmental Protection Agency [EP Agency] on July 27, 2021, granted Global Environmental Services (Guyana) Inc Operation Permit Reference No 220210216-GOESW [GOES Permit] to operate a waste management facility for exploration and production oil and gas waste at Block X, Te Huiste Coverden, East Bank Demerara. This permit was granted without an Environmental Impact Assessment [EIA] of the project first being undertaken. This Permit was then transferred to Professional Wastes Solutions Inc. on July 14, 2023. The applicant claims that the grant by the EP Agency of the original permit without requiring and considering a project EIA was unlawful, and seeks the following orders-

- A. A DECLARATION THAT the operation of a waste management facility for exploration and production oil and gas wastes at Block 'X' 'TE' Huiste, Block I, "T" Hustle (sic) Coverden, (Te Huis Te Coverden) East Bank Demerara ("the Coverden Project"), as described in Operation Permit Reference No 220210216-GOESW granted to Global Oil Environmental Services (Guyana) Inc (GOES) (the "GOES Permit"), is a project that falls under the Environmental Protection Act ("EP Act") section 11(1) and Fourth Schedule, paragraph 5; and consequently, it requires an Environmental Impact Assessment ("EIA") before the Respondent, Environmental Protection Agency ("the Agency"), can grant an environmental permit.
- B. A DECLARATION THAT the GOES Permit is invalid, void and of no legal effect.
- C. AN ORDER OF CERTIORARI, quashing the decision of the Agency purporting to transfer the GOES Permit to Professional Waste Solutions Inc. (PWSI) in the form of an Environmental Permit (Transferred and Modified), no. 20210216- GOESW dated 14 July 2023 ("PWSI Permit").
- D. A DECLARATION THAT the Agency, acted illegally and/or irrationally and/or with procedural impropriety in consenting and approving the PWSI Permit because the

GOES Permit was invalidly issued without an EIA, contrary to the EP Act, section 11 (1) and Fourth Schedule and legally incapable of being transferred.

- E. A DECLARATION THAT the PWSI Permit is invalid, void and of no legal effect.
- F. AN ORDER OF CERTIORARI, quashing the decision of the Agency to issue the PWSI permit.
- G. An ORDER of PROHIBITION prohibiting the Agency from approving any environmental permit for the Coverden Project without requiring an EIA in compliance with EP Act section 11(1) and the Fourth Schedule, paragraph 5.
- H. AN ORDER of MANDAMUS directing the Agency to issue a prohibition notice under section 27 of the EP Act to PWSI, prohibiting PWSI from operating the Coverden Project and requiring PWSI to take steps to ameliorate the effect of the Coverden Project and restore the natural resources and environment to their condition before the Coverden Project took place.

The Parties' submissions

- 2. The applicant argues that section 11 of the Environmental Protection Act makes an EIA mandatory for any project falling within the categories listed in the Fourth Schedule of the Environmental Protection Act, and that the EP Agency may not grant an environmental authorisation or permit for any project falling within the categories listed in the Fourth Schedule without first obtaining a project EIA from the developer, and may not waive the requirement for an EIA.
- 3. The EP Agency argues two points. Firstly, that the Operation Permit Reference No 220210216-GOESW [GOES Permit] to operate a waste management facility for exploration and production oil and gas wastes does not fall within a Fourth Schedule category. Secondly, that Sec 11 of the EP Act does not mandate an EIA for all projects falling within the categories listed in the Fourth

Schedule but merely mandates that developers who seek to undertake those projects or any other project that may significantly affect the environment must apply for an environmental permit.

Issues

4. The issues to be determined are-

- a) Whether a 'waste management facility for exploration and production oil and gas wastes' falls within any of the project categories listed in the Fourth Schedule to the Environmental Protection Act, Cap. 20:05;
- b) Whether section 11 of the Environmental Protection Act, Cap. 20:05, imposes a mandatory obligation on the developer of a project falling within the categories enumerated in the Fourth Schedule to submit an Environmental Impact Assessment to the Environmental Protection Agency when applying for an Environmental Permit;
- c) Whether the Environmental Protection Agency by section 11(2) of the Environmental Protection Act, possesses the discretion to exempt a project falling within the categories listed in the Fourth Schedule from the requirement to obtain and submit an Environmental Impact Assessment when applying for an Environmental Permit.

The Law

5. The Environmental Protection Act Cap 20:05 section 11 with the marginal note 'Requirement of Environmental Impact Assessment' provides-

- 11 (1) A developer of any project listed in the Fourth Schedule, or any other project which may significantly affect the environment, shall apply to the Agency for an

environmental permit and shall submit with such application the fee prescribed and a summary of the project including information on—

- (i) the site, design and size of the project;
- (ii) possible effects on the environment;
- (iii) the duration of the project;
- (iv) a non-technical explanation of the project.

11 (2) Where it is not clear whether a project will significantly affect the environment, the developer shall submit to the Agency a summary of the project which shall contain the information as required by subsection (1) and the Agency shall within a reasonable period publish in at least one daily newspaper a decision with reasons as to whether the project—

- (a) will not significantly affect the environment, and therefore exempt from the requirement for an environmental impact assessment; or
- (b) may significantly affect the environment and will require an environmental impact assessment.

6. Fourth Schedule Projects are -

1. The construction of any hotel, guest house or inn above ten rooms.
2. Installation for hydro-electric energy production.
3. Construction of roads, harbours and airfields.
4. Dams and other installations designed to hold liquid or store it on a long-term basis.
5. Installation for the treatment of waste water, industrial or domestic waste.
6. The importing of any waste matter whether hazardous or not.
7. The release, use or keeping of any genetically modified organisms.
8. The harvesting and utilisation of forest resources.
9. The extraction and conversion of mineral resources.

Discussion

Whether a waste management facility for exploration and production oil and gas wastes falls within any of the project categories listed in the Fourth Schedule to the Environmental Protection Act, Cap. 20:05;

7. The EP Agency submits that a 'waste management facility for exploration and production oil and gas waste' is not a project falling under the Fourth Schedule category- 'Installation for the treatment of waste water, industrial or domestic waste.'
8. The EP Agency argues-

'Industrial waste is an all-encompassing term used to describe material considered to be no longer of use after a manufacturing process has been completed, and domestic waste is any waste generated within a household. However, the purpose of this facility is to manage upstream petroleum sector wastes, including drilling cuttings and muds, oily sludges, tank bottoms, chemical residues, and naturally occurring radioactive materials (NORMs), through processes such as thermal desorption, solidification and stabilization, and secure containment, technically distinguishable from a treatment facility reference under project No.5 of the Fourth Schedule of the Act. Critically, these facilities are not designed or operated for the treatment of wastewater, whether industrial or domestic, as contemplated in the Fourth Schedule of the Act. Produced water (waste water), domestic waste, and liquid effluents from petroleum operations are managed under separate regimes consistent with international obligations.'
9. This submission appears to be based on a misinterpretation of the words 'Installation for the treatment of waste water, industrial or domestic waste.' The submission appears to interpret the category as being limited to waste water and not including solid or other wastes. This is a misguided interpretation. This category covers waste water, *and* industrial waste, *and* domestic waste.
10. Petroleum sector waste is industrial waste. The oil and gas sector is an extractive industry. The Cambridge Dictionary defines an extractive industry as 'the people, companies, and activities

involved in removing oil, metals, coal, stone, etc. from the ground.’¹ The petroleum sector is so much an extractive industry that it features in the definition of extractive industry. Waste is defined as the ‘unwanted matter or material of any type, especially what is left after useful substances or parts have been removed.’² The unwanted matter or material from the petroleum extraction process which is to be treated in ‘a waste management facility for exploration and production oil and gas waste’ is industrial waste.

11. A ‘waste management facility for exploration and production oil and gas waste’ is a project within the Fourth Schedule category ‘Installation for the treatment of waste water, industrial or domestic waste.’

Whether section 11 of the Environmental Protection Act, Cap. 20:05, imposes a mandatory obligation on the developer of a project falling within the categories listed in the Fourth Schedule to submit an Environmental Impact Assessment (EIA) to the Environmental Protection Agency when applying for an Environmental Authorisation

12. The applicant submits that an EIA is mandatory for all projects falling within Fourth Schedule categories. The respondent submits that S. 11 of the Act does not mandate an EIA for any project listed in the Fourth Schedule of the Act, but merely mandates that that developers apply for Environmental Authorizations for any project which may significantly affect the environment.

¹ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/extractive-industry> accessed October 28, 2025

² Cambridge Dictionary

The Legislative Text

13. The legislative text is disjunctive. The phrase ‘A developer of any project listed in the Fourth Schedule, *or* any other project which may significantly affect the environment’ contains alternatives. Section 5 (1) of the Interpretation and General Clauses Act, Cap. 2.01, provides that ‘or’ shall be construed disjunctively.’
14. The word *or* separates two independent categories of projects, and ranks them in tiers based on environmental impacts -
- a) those listed in the Fourth Schedule which are automatically treated as environmentally significant – These are projects that *will* significantly affect the environment unless carefully managed; and
 - b) other unlisted projects whose significance must be determined by the EPAs screening - These are projects which *may* significantly affect the environment if not carefully managed.
15. The legislative text’s explicit identification of two type of projects – those ‘listed in the fourth schedule’ and ‘any other project’ signals that these are projects belonging to two different categories. Applying the principle of *expressio unius est exclusio alterius* (that the express mention of one thing implies the exclusion of another) analogously, in this case *the other*, instead of *another*, it follows that Parliament by mentioning each category individually and specifically, intended to treat these two categories separately and differently. By expressly distinguishing Fourth Schedule projects from ‘any other project’ the legislature signalled that projects enumerated in the Fourth Schedule form a closed and self-contained class with one set of obligations, and ‘any other project’ are a class subject to another set of obligations.

16. Each category is self-standing. In each category the developer is obliged to apply for an environmental permit. For projects in the first category the developer is obliged to submit an EIA. For projects in the second category the developer may, or may not, in the discretion of the EP Agency following a statutory procedure set out in section 11(2), be asked to submit an EIA.
17. Both classes must apply to the Agency for an environmental permit and shall submit with such application the fee prescribed and a summary of the project, the submission of a summary, payment of a fee and application for authorization. These obligations are not the distinguishing feature. What is? Why are some categories of projects listed in the Fourth Schedule and others not if all must apply for an EIA? The answer lies in the text.
18. This Court accepts the submission of counsel for the applicant that the presumption against redundancy or surplusage may be applied. If both categories were intended to be subject to the same discretionary test under section 11(2), then the legislative decision to separately identify Fourth Schedule projects would be meaningless — a direct violation of the presumption against surplusage. To give effect to all the words in section 11, the proper construction must be that Fourth Schedule projects automatically require an Environmental Impact Assessment (EIA); and Only non-Fourth Schedule projects fall within the EPA's discretion under section 11(2) to determine whether an EIA is required.
19. The text contains further guidance. The marginal note to section 11 is "Requirement of Environmental Impact Assessment." Marginal notes shall be construed as part of the written law according to section 57 of the Interpretation and General Clauses Act, Cap. 2:01. Section

11 provides that projects listed in the Fourth Schedule require an Environmental Impact Assessment.

20. It is impracticable if not impossible to legislate for every eventuality. The Act recognises that the Fourth Schedule may not contain an exhaustive list of all categories of activities capable of significantly affecting the environment. Section 11 extends the regime to cover other projects—that is, projects not listed in the Fourth Schedule—which may also require an Environmental Impact Assessment.

21. To address this residual category, projects which may or may not require an EIA, section 11(2) confers upon the EP Agency the authority to determine which of these non–Fourth Schedule projects may or may not require an EIA. Section 11(2) qualifies the phrase ‘any other project which may significantly affect the environment.’ This is evident from the opening words, ‘Where it is not clear whether a project will significantly affect the environment,’ which make it plain that subsection (2) applies only to unlisted projects whose potential environmental impact is uncertain. This prevents projects not listed in the Fourth Schedule from claiming automatic exclusion from an EIA requirement.

22. The approach to interpreting the text must not only be literal, but also be purposive and contextual. Anderson JCCJ in *OO v. BK*³ emphasised that statutory interpretation must follow a purposive and contextual approach, one that advances rather than restricts the purposes of the Act -

[125] ... In ensuring that the legislative intent is properly and effectively applied, the court relies on certain established rules of statutory interpretation. These rules are not in doubt. A Dictionary of Law, (106) provides for the following methodology in the interpretation of a statute:

³ [2023] CCJ 10 (AJ) BB

(1) An Act must be construed as a whole, so that internal inconsistencies are avoided. (2) Words that are reasonably capable of only one meaning must be given that meaning whatever the result. This is called the literal rule. (3) Ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result. This is the golden rule. (4) When an Act aims at curing a defect in the law any ambiguity is to be resolved in such a way as to favour that aim (the mischief rule)....

23. The purpose of the EP Act is to ‘provide for the management, conservation, protection and improvement of the environment, the prevention or control of pollution, the assessment of the impact of economic development on the environment, the sustainable use of natural resources and for matters incidental thereto or connected therewith.’ An interpretation that gives the EP Agency a discretion to exempt Fourth Schedule projects from EIAs would undermine the Act’s protective scheme. Conversely, interpreting Fourth Schedule projects as automatically subject to EIA furthers the Act’s object — ensuring robust environmental review for inherently high-impact undertakings. The purposive approach in *OO v BK* supports mandatory EIA for listed projects.

24. Respected legal academics also hold this view. In *Principles of Caribbean Environmental Law*⁴ the learned author says – ‘In the case of Guyana a developer of any project listed in the Fourth Schedule is required to apply to the Agency for an environmental permit and to submit the project to an EIA.’

25. Looking at the legislative text - the two categories, the existence of the Fourth Schedule, the marginal note stating the purpose of section 11 -and applying a literal interpretation, and looking at the aims of the Act and the Act as a whole and applying a contextual and purposive

⁴ Winston Anderson, *Principles of Caribbean Environmental Law* (Environmental Law Institute 2013) 218

interpretation, yields the inescapable conclusion that EIAs are mandatory for Fourth Schedule projects.

Whether the Environmental Protection Agency by section 11(2) of the Environmental Protection Act, possesses the discretion to exempt a project falling within the categories listed in the Fourth Schedule from the requirement to obtain and submit an Environmental Impact Assessment when applying for an Environmental Permit.

26. The EIA is a mandatory requirement for Fourth Schedule Projects. The EP Agency may not exempt Fourth Schedule projects from obtaining EIA's.

Conclusion and Disposition

27. As this Court outlined in *Dr. Mark Lyte and Julian Cambridge v Guyana Teachers Union and others*⁵ the grounds for judicial review are procedural impropriety, irrationality, illegality,⁶ and unconstitutionality.⁷ Judicial review is a challenge to 'the acts or omissions of a public authority for legality' as opposed to a re-hearing of a matter on its merits.⁸ 'Judicial review is concerned, not with the decision, but with the decision making process.'⁹ Traditionally the court exercising its judicial review jurisdiction will not inquire into the merits of the tribunals decision and substitute its own, but rather will examine the legality of the decision making process and procedures, and if the process is illegal will set aside the decision. The ambit of judicial review

⁵ 2025/59-HC-FDA-DEM-CIV (unreported) Pierre J

⁶ *CCSU v Minister for Civil Services* [1985] AC 374 per Lord Diplock

⁷ Albert Fiadjoe Commonwealth Caribbean Public Law, 3rd ed. 2008, 29

⁸ Albert Fiadjoe Commonwealth Caribbean Public Law, 3rd ed. 2008, 22

⁹ *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1135, per Lord Brightman

has expanded under the ultra vires (ultra vires- acting beyond one's powers or authority¹⁰) doctrine to set aside decisions where the mistake is so fundamental as to go to jurisdiction.¹¹ Courts using the ultra vires doctrine have set aside decisions where a tribunal makes an error of law on the face of the record¹² and even where 'a material finding of fact is irrational in the absence of evidence capable of warranting such a finding.'¹³

28. The EP Agency when granting Operation Permit Reference No 220210216-GOESW to Global Oil Environmental Services (Guyana) Inc. without an EIA of the project being submitted failed to follow the requirements of section 11 of the EP Act.

29. The EP Agency when waiving the requirement of an EIA for the waste management facility for exploration and production oil and gas wastes failed to follow the requirements of section 11 of the EP Act.

30. The waiver is a procedural impropriety, and the grant without first considering an EIA is illegal and outside the powers of the EP Agency under the Act.

31. This Court –

- a) Declares that the operation of a waste management facility for exploration and production oil and gas wastes is a project that falls under the Environmental Protection Act section 11(1) and Fourth Schedule.

¹⁰ Commonwealth Caribbean Public Law, 28

¹¹ Commonwealth Caribbean Public Law, 49

¹² *R v Northumberland Compensation Award* Tribunal [1952] 1KB 338,

¹³ Commonwealth Caribbean Public Law, p. 50 per Margot Warner J in *Re Lalla*

- b) Declares that section 11 of the Environmental Protection Act imposes a mandatory requirement to conduct an Environmental Impact Assessment for Fourth Schedule projects.
- c) Declares that that Global Oil Environmental Services (Guyana) Inc. ought to have obtained and submitted an Environmental Impact Assessment to the Environmental Protection Agency in the course of applying for the environmental permit to operate a waste management facility for exploration and production oil and gas wastes.
- d) Declares that the Environmental Protection Agency acted with procedural impropriety and illegally and outside of its powers in granting the Operation Permit Reference No 220210216-GOESW to Global Oil Environmental Services (Guyana) Inc. without first receiving and considering an EIA of the project.
- e) Declares that the Environmental Protection Agency acted with procedural impropriety and illegally in granting Global Oil Environmental Services (Guyana) Inc. an exemption from the section 11 requirement to obtain an EIA of the project. The discretion conferred on the Environmental Protection Agency by section 11(2) is confined to projects not listed in the Fourth Schedule.
- f) Declares the Operation Permit Reference No 220210216-GOESW invalid.
- g) Makes an order of Certiorari quashing the decision the Agency to transfer the Operation Permit Reference No 220210216-GOESW to Professional Waste Solutions Inc. (PWSI) in the form of an Environmental Permit (Transferred and Modified), no. 20210216- GOESW dated 14 July 2023.

- h) Declares the transfer of Environmental Permit (Transferred and Modified), no. 20210216-GOESW dated 14 July 2023 to Professional Waste Solutions Inc. is invalid.
- i) Orders the respondent to pay costs to the Applicant and that Costs are to be assessed- CPR 2016 56.04(4)

32. This Court recognises the efforts of counsel for both parties and thanks them for their substantial submissions.

A handwritten signature in black ink, appearing to read 'N. Pierre', with a stylized, flowing script.

Nicola Pierre
Puisne Judge