

Supplementary report on the forensic audit and review of the Environmental Protection Agency

1. Introduction

- 1.1 On 17 July 2015, I issued my report on the forensic audit and review of the Environmental Protection Agency (EPA). Following a review of the report, the Minister with the Ministry of Finance requested that I carry out some additional work in relation to the issuing of environmental permits and the procedures the EPA has in place for the conduct of inspections. The Minister had also requested me to investigate an allegation that the EPA discriminated against a company by denying it an Environmental Authorisation.
- 1.2 This supplementary report presents the results of the additional work requested by the Minister. Some of the findings contained in the main report have been repeated to highlight the fact that the Agency was not provided with adequate resources to properly discharge its mandate. As a result, no new recommendations have been made in this supplementary report.

2. Background information

- 2.1 Prior to 2013, the Environmental Management Division was responsible for: (a) processing environmental authorisations; (b) management of complaints; and (c) monitoring and enforcement. A proposal was made for the reorganization of this Division through the creation of two separate divisions, namely Environmental Management Permitting; and Environmental Management Compliance, and for the recruitment of additional staff. However, this proposal was not considered. According to EPA's annual report, the Environmental Management Division continued to grapple with increasingly excessive workload exacerbated by frequent staff turnover.
- 2.2 In 2013, the new structure was approved. The Environmental Management Permitting Division is now responsible for issuing permits relating to: (a) mining and forestry; (b) agriculture, fisheries and tourism; (c) industry, infrastructure and energy; (d) hazardous waste/materials and air quality; and (e) water quality. It is also responsible for ensuring that environmental impact assessments are carried out where they are considered necessary. The Division has a staffing of 23 officers, and the key activities are:

- Screening and processing of applications for environmental authorization for new and existing projects, including renewals and modifications;
- Addressing valid complaints of operations that require environmental authorization;
- Investigating and addressing environmental emergencies collaboratively reported to the Agency;
- Monitoring air quality and hazardous waste management for existing operations and for the export of hazardous wastes;
- Developing guidelines, standards and/or regulations that support screening for environmental significance;
- Continuing pollution management programme to regularize existing developments that may have significant environmental effects; and
- Establishing partnerships with the Private and Public Sectors to foster collaboration in environmental management.

2.3 The Environmental Management Compliance Division is responsible for: (a) research and development; (b) compliance monitoring; (c) enforcement; and (d) litter prevention, including the ban on Styrofoam. It works along with industry associations, businesses, community organisations, ministries and other governmental organisations in developing standards and promoting good practices. Key activities include:

- Promoting compliance by providing practical, constructive and authoritative advice on compliance with the law;
- Monitoring compliance with the law and detection of non-compliance;
- Enforcing the requirements of the law and applying sanctions in event of violations; and
- Encouraging higher performance through the work of its four units.

3. Findings and recommendations

3.1 Severe budgetary constraints

3.1.1 For the years 2012 to 2014, the Agency received on average only 61 per cent of funds requested from the Government for operating expenses, as shown at Table I:

Table I
Summary of budgetary requests for the years 2012-2014

Year	Operating Expenses \$'000	Amount Approved \$'000	% of request
2012	321,321	166,424	52
2013	343,435	196,719	57
2014	268,280	206,250	77
TOTAL	933,036	569,393	61

3.1.2 In a brief to the subject Minister dated 8 June 2015, the Agency reported that with only monthly subventions to cover salaries for staff and some essential services, it had to significantly limit its field and operational activities. In addition, the Agency did not have a dedicated regional presence, especially in Regions 7, 8, 9 and 10 where its services were much needed. **Management has indicated that arrangements are now in progress for a more decentralized operation with presence in Regions 1, 2,6, 7,8,9, 10 and that these are expected to come on stream in 2017.**

3.1.3 The Agency further stated that “basic operations such as site visits required for the processing of applications for environmental permits have been delayed. As a result, there is a backlog in processing of applications which has implications, particularly if developers proceed with their plans without the EPA’s approval. There is a similar situation with conducting audits and renewals”. **Management commented that with increased budgetary allocations for 2016, the situation has somewhat been ameliorated.**

3.2 Inadequate staffing

3.2.1 The Agency has also been operating with severe staff constraints. The then Ministry of Natural Resources had approved of a staff structure of only 97, whereas the Agency estimated that 262 officers were needed to properly discharge its mandate, as shown at Table II:

Table II
Comparison of authorised staffing with desired level of staffing

Division	Staffing as at 31 May 2015	Desired staffing	Deficiency in staffing
Executive Directors's office	2	5	3
Biodiversity Management	8	25	17
Environmental Management Compliance	27	90	63
Environmental Management Permitting	23	41	18
Administrative Services	29	37	8
Education, Information & Training	8	19	11
Technical Services	-	45	45
TOTAL	97	262	165

3.2.2 As can be noted, the actual staffing of the Environmental Management and Permitting Division (EMPD) and the Environmental Management and Compliance Division (EMCD) was 23 and 27 respectively, compared with Management's assessment of the desired level of staffing of 41 and 90 respectively. These two divisions are the backbone of the Agency, and combined, they were operating with a staff strength of approximately 38% of the desired level. This, coupled with high staff turnover due to the low levels of salaries offered, would have had an exacerbating effect on the operations of not only these two divisions but also for the organization as a whole.

3.3 Low levels of emoluments

3.3.1 The emoluments offered were not attractive enough to recruit and retain adequate numbers of qualified and trained personnel, as salary scales were similar to those of the traditional Public Service. For example, the position of legal officer attracted a salary of \$262,107 per month; and the Finance Officer, a professionally qualified accountant, earned \$226,362 per month. In addition, although the Agency is semi-autonomous with its own legislation and a Board, there was an over-involvement in decision-making by the then Ministry of Natural Resources and the Environment as well as the Public Service Ministry, especially in the area of recruitment. In effect, the Agency was treated as a Department of the subject Ministry.

3.3.2 In addition, although most of the officers were required to be in the field, they did not benefit from duty-free concessions to assist them to acquire their own vehicles. The Agency had a limited number of vehicles that could be used to undertake field trips. Given the age of these vehicles, operating and maintenance costs were also very high.

3.3.3 In terms of retirement benefits, the EPA does not have a pension plan. As a result, staff members were recruited on a contractual basis but at the same public service salary scales; and obtained a gratuity every six months. However, the latter could hardly be a substitute for a dedicated pension plan, whether contributory or non-contributory. Such a plan is likely to provide for a more settled organization in terms of staff recruitment and retention.

3.4 Physical working conditions

3.4.1 The Agency is housed in a building in Sophia with limited office space. The physical environment is unsuited for its operations, and there are no laboratory facilities for the testing of samples. The Agency had requested in its capital expenditure programme for 2015 an amount of \$200 million for the construction of a new 'green' building. However, as at 31 May 2015, the Government's Estimates of Revenue and Expenditure had not been presented to the National Assembly. **Management commented that in the 2016 budget, an amount of \$40 million has been allocated to commence construction work on a new building.**

3.5 Proposed restructuring of the EPA

3.5.1 In early 2015, under the direction from the then Ministry of Natural Resources and the Environment, the Agency tendered for "Consultancy Services for the Re-orientation of the Environmental Protection Agency" to address the organizational changes needed to strengthen and improve efficiency. Funding of US\$240,000 was provided from the Guyana Geology and Mines Commission (GGMC) based on a Cabinet decision dated 9 September 2014. This amount was placed in the Agency's US\$ account at a commercial bank. However, after two attempts, no bids were received for the project, and no expenditure was incurred as of 31 May 2015.

3.5.2 The EPA received an additional amount of \$600 million from the GGMC, consequent upon Cabinet decision of 15 January 2015. Of this amount, \$500 million was to be transferred to the National Drainage and Irrigation Authority (NDIA) to execute works in Regions 1, 3, 4, 5, 6, and 10 as part of the "Pick-It-Up" campaign. However, no transfers were made to the NDIA, as a Memorandum of Understanding for the execution of the works had not been finalised. As at 31 May 2015, the balance on this account was \$515.718 million.

3.5.3 It should be emphasised that it is not within the authority of GGMC to transfer funds to other government agencies to incur expenditure, especially if such expenditure is unrelated to its activities. This practice not only undermines the role of Parliament in

approving public expenditure, as provided for under Article 217 of the Constitution but also Section 16 of the Fiscal Management and Accountability (FMA) Act 2003. If the GGMC has funds that are surplus to its requirements, it would be entirely appropriate for transfers to be made to the Consolidated Fund to allow for the Legislature to reallocate funds to other areas of Government operations that are in need of them.

- 3.5.4 In addition, since the transfers are not captured in the National Estimates, the related expenditure will not be reflected in the public accounts of the country, and hence there will be an under-reporting of public expenditure.
- 3.5.5 The Cabinet has also acted improperly in approving these two transfers, as its actions and/or decisions violated both the Constitution and the FMA Act.
- 3.5.6 **Management commented that the EPA board considered these two matters and accepted the recommendation contained in the main report that the two amounts be transferred to the Consolidated Fund. At the time of reporting, the Agency was awaiting concurrence from the subject Minister before proceeding further.**
- 3.5.7 In the above-mentioned brief to the Minister, the Agency had proposed the establishment of a Technical Services Division to rationalize the existing workload of the EMPD and EMCD as well as dedicated units for the implementation of the Regulations on air quality, and oil and gas, among others. A second proposal involved the decentralisation of the operations of the Agency to the other Regions of the country since the current location of the Agency does not provide for quick responses to complaints and environmental emergencies, and ready assistance to the public at large. Developers in other Regions, especially the hinterland, were required to travel to Georgetown to conduct their business with the Agency. With a decentralized system, the need to travel to Georgetown would be obviated.

3.6 **Achievements during the period 2012 - 2014**

- 3.6.1 Despite the severe constraints under which the Agency was forced to operate, it nevertheless reported the following achievements in its 2012 annual report to the National Assembly. However, it shied away from referring to these constraints in its report:
 - (a) The EPA received a total of 381 applications for environmental authorisations: 165 for noise; 88 for new projects; 44 for existing projects; 73 for renewals; one for transfer; and 10 for variation. The applications (other than noise permits) were mainly in

relation to mining and forestry, especially for the development of new projects; and lumber and lumber processing;

- (b) A total of 316 or 83% of the applications were processed by the end of the year to the point where a permit was granted: 65 environmental permits; 75 operational permits; 5 construction permits; 6 letters of authorisations; and 165 noise permits;
- (c) Two applications required Environmental Impact Assessments (EIAs) – the Marriott Hotel and EKT Mining, both of which were issued with Environmental Authorizations in May and July 2012 respectively. Seven applications required the preparation of Environmental Management Plans (EMPs). Most of the applications not processed to finality relate to the non-submission of outstanding information; and
- (d) A total of 245 inspections were carried out as part of the authorization process in addition to 91 environmental audits and 161 follow-up inspections. 326 environmental complaints were also received, of which 120 were investigated while 33 complaints were referred to the relevant Neighbourhood Democratic Councils (NDCs) and the Central Housing and Planning Authority (CH&PA).

3.6.2 In summary, for the period 2012-2014, a total of 1,051 Environmental Authorisations were received, of which 662 were processed and the related authorisations issued, as shown at Table III.

Table III
Environmental applications received and processed

#	Description	2012	2013	2014	TOTAL
1	Applications for Environmental Authorisations	381	392	278	1,051
2	Environmental Authorisations issued	316	244	102	662
3	Environmental Impact Assessment projects processed	2	7	1	10
4	Environmental Management Plans processed	7	27	-	34
5	Compliance inspections carried out	91	111	70	272
6	Pollution complaints received	326	266	159	751
7	Complaints investigated	120	123	235	478
8	Follow-up inspections	161	177	82	420
9	Application for Noise Permits received and issued	165	163	327	655

3.7 Review of developers' files

- 3.7.1 At the time of the review, the Agency had approximately 2,200 developers' files on hand. The room in which these files were stored was very congested and access was not restricted. In addition, the computerized database of developers was kept and updated in an open office. Explanations obtained indicated that the Agency was constrained by the limited space in which to operate and that the proposal to have new building is likely to resolve the problem. **Management commented that an additional clerk has since been recruited and there is now restricted access to developers' files.**
- 3.7.2 A sample of 21 files was selected for review for compliance with the Agency's policies as well as to ascertain whether there were any undue delays in the processing of applications for Environment Permits and Authorisations. The individual files contained all correspondence with the developers from the application stage to final approval and were filed in date sequence. In addition, each file contained a file summary. My review did not indicate any shortcomings or undue delays in the processing of applications. Annex I summaries the results of my review.
- 3.7.3 Particular mention should be made of Celina's Resort. The following is the sequence of pertinent events:
- (i) **October 1996**: CH&PA received application for permission to construct an ocean-front resort;
 - (ii) **February 1998**: A seawall feasibility and zoning plan recommended that the area between Pegasus and west of Bel Air Gardens be used for recreational purposes and should under no circumstances be given to a private developer for commercial use;
 - (iii) **October 2000**: Cabinet approved of the building up area of land east of and alongside the Kitty groyne and north of Georgetown Seawall, comprising 1.6 acres being leased to Mr. Bernard Yhan for the establishment of a Seaview Resort. The EPA has noted that the proposed resort may be overlapping the zoning regulations for Protected (Mangrove Vegetation) and the Ocean Resort/Entertainment zones;
 - (iv) **2001**: Provisional lease approved by the Lands and Surveys Commission;
 - (v) **November 2001**: Formal application submitted to the EPA for Environmental Authorisation. EPA informed developer that an Environmental Impact Assessment (EIA) needed to be carried out;
 - (vi) **January 2002**: EPA carried out site visit and discovered a number of discrepancies in the information provided to the Agency;
 - (vii) **April 2002**: Developer informed the Agency that the project has been scaled down. As a result, the EPA determined that EIA was no longer necessary. However, an Environmental Management Plan (EMP) was needed;
 - (viii) **November 2002**: Developer submitted the EMP;

- (ix) **January 2003**: The Agency issued an Environmental Permit;
- (x) **March 2006**: Agency received correspondence from Sea Defence Board indicating that a no objection to extend resort to accommodate a hotel could not be issued for a number of reasons;
- (xi) **April 2006**: CH&PA informed developer that permission to add four two storied benabs has also been rejected;
- (xii) **April 2012**: Compliance monitoring visit by the Agency found significant non-compliance with the Environmental Permit that was granted to the developer. Developer was given until 30 June 2012 to implement corrective measures;
- (xiii) **July 2013**: Compliance inspection recommended that the developer inform the Agency of any intention to close the project or to apply for authorization if he wished to continue with the project; and
- (xiv) **June 2015**: Agency issued a cease order to the developer and since there has been no further development. The Ministry of Public Infrastructure was also monitoring the situation.

3.8 Complaint of discrimination by a developer

3.8.1 In relation to the complaint by the developer, the following is the sequence of event a gleaned from the developer's file:

- (i) **2 October 2014**: Application for Environmental Authorisation to operate a quarry received;
- (ii) **14 October 2014**: Agency conducted site visit and determined that an Environmental Management Plan was needed;
- (iii) **16 January 2015**: Agency sent correspondence informing developer of results of visit. Developer was also informed that his project would be subject to the 30-day notification period required by the Environmental Protection Act to allow the public to comment on the Agency's decision;
- (iv) **19 January 2015**: Agency received correspondence from the GGMC via the Permanent Secretary indicating that the area applied for by the developer was occupied by another quarry;
- (v) **22 January 2015**: Agency informed developer of its inability to process its application in view of (iv);
- (vi) **25 September 2015**: Agency received a Court document from the developer issued to the High Court of Guyana to the GGMC;
- (vii) **8 October 2015**: Developer met with the Agency's Executive Director. He accused the Agency of holding up the process and indicated that the EPA had no jurisdiction concerning land use. The Agency informed the developer that from its review of the Court document, the Court did not rule in his favour but rather requested the GGMC to show cause why a Writ of Mandamus should not be

issued directing the GGMC to grant the developer a mining licence. Since the matter was still engaging the attention of the Court, the Agency could not proceed with the processing of the developer's application; and

- (viii) **20 October 2015**: Developer again visited the Agency and insisted that the EPA was holding up his application. He was shown the opinion of Agency's Legal Officer on the matter which indicated that the issue should be resolved by the GGMC and the Lands and Surveys Commission before the EPA could take any further action.

S. A. Goolsarran FCCA, MBA, DBA

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ANNEX I

Status of application of a sample of developers

#	Name of developer	Application type	Date applied	Date approved	Remarks
1	Abdul Rahim	Lumber yard	Jan-08	Oct-12	Developer did not submit annual report for 2013.
2	Amaila Falls	Hydroelectric project	Dec-00	Jul-02	Application for renewal submitted in Feb. 2012. Final permit issued in Aug. 2013.
3	Barama Co. Ltd.	Logging operations	Jan-12	Not finalised	Barama requested permit for 1 year instead of 5 years. Issuance was delayed because of the developer's disagreement with the permit conditions.
4	B. Ramlochan	Lumber yard	May-07	Nov-07	Draft renewed permit submitted to developer.
5	H. Tewari	Wood processing	Mar-02	Jul-02	Several exchange of correspondence seen. There were objections from the public and non-compliance issued.
6	H. Prashad	Lumber yard	Jan-04	Jan-04	Draft renewal permit submitted to developer.
7	H. Mustapha	Lumber yard	Oct-06	Apr-07	Permit renewed in Sept. 2012
8	UNICOM	Sand mine	Jan-12	Aug-12	Agency wrote to developer regarding outstanding annual reports
9	R. Shinath	Lumber yard	Feb-07	Dec-10	Agency wrote to developer regarding outstanding annual reports
10	R. Davis	Portable sawmill	Oct-09	Jun-13	None
11	Rudolph Lakha	Lumber yard	May-09	Jun-12	None
12	W. Khan	Lumber yard	Jan-08	Jun-08	Renewed in Aug. 2012
13	Sams Service Centre	Gas station	Nov-08	Pending	Several correspondences seen indicating that there were problems. Outstanding information was required relating to land ownership.
14	Bank's DIH	Power Generation Plant.	Jul-07	Oct-07	Variance to the operation permit.

		Installation of a 500 gal. gasoline tank.	Feb-11	Feb-12	None.
15	C. Gajadar	Gas station	Jan-06	Jun-06	Permit renewed to May-18.
16	C. James	James Gas station	Sep-08	Dec-12	Permit valid to Dec-16.
17	C&P Investments	Gas station, Mini mart, Internet Café and Wash bay	Mar-06	Aug-06	Permit renewed to Jun-16.
18	D. Persaud	Gas station	Jun-12	Aug-12	None
19	Leslie Lowe	Wharf	Feb-12	Apr-12	None
20	Celina's Resort	Ocean-front resort	Nov-01	Jan-03	Developer informed that EIA needed. Several correspondences with developer seen. Heavy involvement of Cabinet, CH&PA. Ministry of Housing and Sea Defence Board seen. In June 2015, Agency issued cease order to developer because he was operating without an Environmental Authorisation. EPA not aware of any further development. Matter has also gained the attention of Ministry of Infrastructure.
21	D. Dhanraj	Marudi Resort	Apr-00	Apr-00	Permit renewed to Nov.17