

STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

SEIAA-2018/CR-150/SEIAA
Environment Department
Room No. 217, 2nd Floor,
Mantralaya,
Mumbai- 400032.
Date: 30.01.2019

To
The Chairman, SEAC-1
The Chairman, SEAC-2
The Chairman, SEAC-3

Sub : Consideration of proposals involving violation of EIA notification,
2006 amended till date.

Dear Sir,

In pursuance of the notification dt. 14.03.2017 and O.M. dt. 15.03.2018 & 16.03.2018 issued by Ministry of Environment and Forest (MoEFCC) on procedure to be adopted for dealing with the EC violation cases, the development of a protocol for Assessment for Environmental Damage and Estimation of Remediation Costs for Building Construction Projects was under consideration.


Accordingly committee was constituted for evaluation process to evolve uniform guidelines to deal with the cases of violations under the chairmanship of chairman, SEIAA as below-

1. Shri. Ajay Deshpande, (Ex. Expert Member, NGT)
2. Shri Mukund Athavale, Member, SEIAA
3. Dr.B.N.Patil (Director, Env.), M.S., SEAC-II
4. Shri. Abhay Pimparkar (Sci-I), M.S., SEAC-I
5. Shri Joy Thakur, SCi-II, M.S., SEAC-III
6. Shri Raghunath Mahabal, Advocate

Above committee has submitted its report to Environment Department. Further, after due consultation with stakeholders and NABET accredited consultants in a round table workshop held at Pune on 21st December, 2018, it is decided to follow the provisions of MoEF&CC notification dated 14.03.2017 and refer the report submitted by committee for Assessment of Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance. Copy of the same is enclosed herewith for kind perusal.

In this regard, I have been directed to inform you to start appraising the proposals under violation as per the provisions of MoEFCC notification dtd.14.03.2017 and O.M. dtd. 15.03.2018 & 16.03.2018 and refer the report of committee on Assessment for Environmental Damage and Estimation of Remediation Costs.

Thanking you.



(D.S.Bhalerao)

Scientist -2, Environment
Govt. of Maharashtra

D.A.: as above

- Copy to 1. Chairman, SEIAA.
2. P.S., Environment and M.S., SEIAA.
3. Member Secretary, SEAC-1/2/3

An Approach for Assessment for Environmental Damage And Estimation of Remediation Costs For Building Construction Projects initiated without obtaining mandatory Environmental clearance (Violation Cases)

1. Ministry of Environment and Forest (MoEFCC) has issued a notification on procedure to be adopted for dealing with the EC violation cases on 14.3.2017¹ and also, give 6-month amnesty window for such proponents who have violated the EC regulations. These violations are primarily related to initiating the project work or carrying out the project activities without obtaining the mandatory EC. Special EAC was also notified to deal with violations cases at the central level. Subsequently, on 8.3.2018², MoEFCC issued another notification which delegated the powers to deal with such 'violation cases' to the concerned SEIAA and further provided an additional amnesty window of one month for such project proponents to apply for grant of EC.
2. The notification dated 14.3.2017 stipulated the procedure for consideration of such cases where construction of projects was carried out without obtaining EC, treating such cases as violation cases. The important provisions for considerations of such proposal in the said notification are as under;
(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level. (3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the

¹ MoEF notification SO 804 (E) Dated 14.3.2017

² MoEFCC notification SO 1030 (E) dated 8.3.2018

Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance. (4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under subsection (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law. (5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project an assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment. (6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal

Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

Subsequently, vide notification dated 8.3.2018, such powers have also been delegated to concerned SEIAA.

3. Maharashtra Scenario: In Maharashtra, there are about 104 cases which have been submitted for grant of EC under this 'violation' notification. As per the information given by DoE, there are 91 cases related to building construction projects and 14 cases related to industry. However, this number is likely to increase substantially, as during evaluation of new EC cases, the SEAC generally finds non-compliance in the appraisal process.
4. Department of Environment (DoE) and SEIAA Maharashtra wanted to streamline the process of evaluation of the 'environmental damage assessment' for such violation cases to bring reasonable consistency and uniformity in approach and assessment while dealing with such cases. The assessment of environmental damage is no doubt a very specialised study and the parameters, approach, weightages, techniques are likely to vary significantly from project to project and also, from area to area. Still however, it would be necessary and prudent to develop some broad structure and framework for such environmental damage assessment which can be used by concerned SEAC for consistent and uniform methodology. The SEACs can obviously incorporate any new specific aspect of evaluation, based on project type, damages anticipated and sensitivity of project area by making special reference to such compelling factors to incorporate additional evaluation aspects. This report is outcome of such requirement of DoE and SEIAA Maharashtra.
5. The present approach paper deals only with Building construction project. However, the broad principles can be adopted with suitable modifications for the industrial projects. The subject of environmental damage

assessment and also, restitution and restoration of environment is a very complex and multidisciplinary subject and the present approach paper is based on desktop studies to prepare some basic framework for assessment of the proposal received in order to ensure a broader consistency in appraisal for various SEAC. The framework is generic in nature and obviously, open for further updating with gain of knowledge and experience while dealing with subject, based on field level data and information.

6. Assessment of environmental damages and preparation of remediation plan are highly specialised subject and very much case specific. The methods and techniques to assess the damage would vary from project to project and also, has significant correlation with project site. Considering this, the scope of this approach paper has been limited to preparation of broad guidelines and framework to assess the damage, rather than detailing actual procedure and methodology. Considering the types of projects, the environmental damage assessment methodology can be conveniently grouped in three types of activities/process namely; a. building and construction activities b. infrastructure and mining and c. industries. The broader contours of environmental damage assessment of these three sectors would vary significantly in its content, scope of investigation and analytical processes to assess the damages. Considering the present scope of this report, the report only deals with damage assessment aspects of violation cases. In fact, most of the literature on environmental damage assessment is related to unauthorised effluent discharges, ecological damages, chemical accidents, ground water contamination, hazardous waste disposal etc. Though, there is also a serious and urgent need of developing India specific protocols for such environmental damage assessment as a part of enforcement strategy and interventions, the report does not deal with these aspects and the scope strictly remains limited to damage assessment for violation cases as per MoEFCC notification dated 14.3.2018, with main focus on Building and construction projects as per the requirement of DoE and SEIAA.

7. Legal background: The "Polluter Pays" principle as interpreted by Supreme Court^{3,4} means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferers as well as the cost of the reversing the damaged ecology. The precautionary principle and the polluter pays principle have been accepted as part of the law of the land. It is thus settled by Supreme Court that one who pollutes the environmental must pay to reverse the damage caused by his acts. In *Vellore Citizens' Welfare Forum v. Union of India and Ors.*: AIR1996SC2715, the precautionary principles and polluter pays principle were held to be part of the environmental law of the country. It was held that the polluter pays principle means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of sustainable development.
8. The use of liability assessment following instances of physical damage or pollution of environmental resources has long been a feature of national legislations. The restitution and restoration aspects have been part of Water (P&CP) Act, 1974, but unfortunately no specific guidelines or protocol have been established so far. There are also not much of established success stories of restitution which can provide some guidance. The National Green Tribunal Act, 2010 specifically provides provisions for restitution, restoration and compensation in case of environmental damages or incidences of environmental degradation, on strict liability basis. However, no technical guidelines or procedures are available for such environmental damage assessment or restoration or compensation etc except one prepared for CPCB for liability assessment

³ Enviro-Legal Action vs. Union of India 1996 (2) JT 196

⁴ (1997)1SCC388B . W.P.(C) No996: M.C. Mehta Vs Kamal Nath and ors.

for HW disposal.⁵ Still however, there are no published case studies regarding application of these guidelines.

9. For example, the US Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) has provided for the clean-up of hazardous waste sites since 1980 and requires resource damage assessment for this and similar instances of environmental injury. In Europe, the Environmental Liability Directive (ELD 2004/35/EC) now applies a common approach to assessment which aims to prevent and remedy environmental damage by holding those responsible liable for remediation. However, while there are prescribed procedures for remediation, there remain the difficulty of how to achieve an equivalent level of habitat quality to that, which existed before an incident and how to account for interim losses, including losses to social wellbeing.
10. Damage as defined by the ELD presupposes that liability can be identified. Where this is possible, the ELD allows for three types of remediation:
 - a. Primary remediation to restore a damaged resource or impaired service to its baseline condition;
 - b. Complementary remediation when a site cannot be fully restored using primary remediation and which involves intervention or improvements to habitat at another site which is physically or geographically linked in terms of species/ habitats or human interactions;
 - c. Compensatory remediation in cases where there are interim losses before ecological functions can be fully restored or replaced.
11. Liability to the government for clean-up costs and natural resource damages under CERCLA is generally joint and several, unless the defendant can show that the harm is divisible or another reasonable basis for apportionment. However, in the present case, as there is only single project, there is no occasion to consider proportioning the liability. The entire liability (absolute) on the complementary basis stands against the

⁵ Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty, published by CPCB 2016.

project proponent, as the remediation and restoration of construction site is not envisaged.

12. A number of US courts have applied the "Gore factors," so named because they were part of a 1980 proposed amendment to CERCLA sponsored by then-Senator (now Vice President) Albert Gore (which was not ultimately enacted):
 - a. the ability of the parties to show that their contribution to a discharge, release or disposal of a hazardous waste can be distinguished;
 - b. the amount of the amount of hazardous waste involved; - the degree of toxicity of the hazardous waste involved;
 - c. the degree of involvement by the parties in the generation, transportation, treatment, storage, or disposal of the hazardous waste;
 - d. the degree of care exercised by the parties with respect to the hazardous waste; and
 - e. the degree of party cooperation with government officials.
13. Federal courts have also applied the following other equitable factors:
 - a. the relative fault of the parties in causing the release of the hazardous materials;
 - b. the knowledge and/or acquiescence of the parties in the contaminating activities;
 - c. the benefits received by the parties from the contaminating activities;
 - d. the relative clean-up costs incurred as a result of the released hazardous wastes;
 - e. the financial resources of the parties involved;
 - f. contracts between the parties bearing on the subject;
 - g. circumstances and conditions of property conveyance in cases involving successive owners; and
 - h. any traditional equitable defences as mitigating factors.
14. Role of Consultants: The PP and industries generally take advise of the NABET approved consultants for preparation of EIA report and also, for

completing EC procedure. These consultants are 'accredited' consultants duly recognised by NABET after careful evaluation of their capabilities and understanding of environmental law and regulations besides technical competence. In other words, these consultants have been given special recognition and also, the MoEFCC notification has especially mandated that all the EIAs and EC procedures needs to be done only through NABET approved consultants, carving out a niche business for these consultants. Such a recognition and special business opportunity will obviously entail with 'responsibility' cast upon these consultants to advise the project proponents on compliance, identify the non-compliance and also, bring it to notice of project proponents/regulators at the first instance while advising the project proponents to ensure timely compliance. It is therefore necessary that the role of such consultants, if they are associated with the project proponents during the occurrence of such violation or immediately thereafter, needs to be critically examined in order to ensure that these consultants perform their duty to ensure compliance in a more effective way. The proposed damage and liability assessment exercise needs to cover these aspects which will ensure that the non-compliances in future are brought to the notice of project proponents and regulator in time, for timely enforcement and compliance actions.

15. Considering the above discussions, it is proposed that in this phase of report, methodologies for damage assessment and liability evaluation are proposed for building and construction projects, with following considerations;
 - a. These methodologies are for the projects (construction and industries) which are in 'permissible' in the area where project is located and are included in 'regulated' activity as per EC regulations and associated notifications. The methodology cannot be and should not be applied for the projects in non-conforming zone.
 - b. These methodologies are evolved only to consider limited violation in terms for initiating the project activities without EC. They cannot and should not be applied in case of any case pollution or degradation incident for which separate methodologies need to be developed and adopted.

16. Damage Assessment and Remediation cost:

The notification of 14.3 2017 describes the rationale for assessment of environmental damage costs and remediation costs as under;

"6. The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

7. The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority. "

16. Three aspects emerge from the above as under;

- a. The project proponent needs to develop remediation action plan commensurate with the environmental damage assessed and also, the economic benefit derived due to violation of EC.
- b. The PP also needs to develop natural and community Resource Augmentation plan (NCRAP) along with the cost. This is not linked with the environmental damage or economic benefits accrued from violation.
- c. Both the remediation and NCRAP needs to be implemented by PP independently which needs to be verified by regulatory authority. There is no time limit or verification methodology defined for such implementation. Still however, the time limit can always be

considered by authority as a part of EMP while approving the EMP and EC.

17. The literature and references available on environmental damages are mainly related to environmental degradation resulting from waste disposal or degradation of forest. The important aspects in the design of remediation program can be as under;

- a. Damage assessment and significance;
 - i. Definition of the status of the resource prior to the incident causing damage; (Baseline)
 - ii. Assessment of the scale of damage; (Services and beneficial use of site)
 - iii. Impact assessment; (modeling) and;
 - iv. Determining whether damage is 'significant'. (Significance threshold and integrity of site)
- b. Primary restoration options,
 - i. With an aim to restore the damaged resource and, if possible, return the resource to baseline (pre-incident) conditions
 - ii. Setting restoration targets;
 - iii. Identifying primary restoration options;
 - iv. Selecting primary restoration options; and
 - v. Estimating interim losses
- c. Compensatory restoration options.
 - i. Setting the objectives for compensatory restoration options;
 - ii. Monetary compensation and/or resource compensation;
 - iii. Identifying the compensatory options; and
 - iv. Selecting the compensatory options.

18. Generally, the remediation and restoration need to be designed based on either of the three following approaches in order to design, select and determine the scale of the compensatory restitution and restoration options

- a. **Service-to-service approach:** Accept a one-to-one trade-off between the services that are lost due to damage and the services that are created through compensatory restoration. Reasonable to make this

assumption if the replacement resources are of the same type, quality and of comparable value.

- b. **Value-to-value approach:** Used for scaling of Class II and II options, i.e. when the assumption of a one-to-one match between lost services and compensatory services is not necessarily valid. The approach estimates the economic value of interim losses and the economic value of the services generated by the compensatory restoration option.
- c. **Value-to-cost approach:** Within this approach, restoration is scaled by equating the cost of the restoration plan to the value (in monetary terms) of losses due to the injury. This approach is only suitable when damage is relatively minor.

The remediation plan also needs to be proactive on futuristic issues and need to consider following;

- should be the result of an evaluation process based on, but not limited to the following :
 - The cost to carry out the option;
 - Time it will take for the restoration to be effective;
 - Extent to which each option is expected to return the damaged resource to its baseline;
- Likelihood of success of each option;
- The extent to which each option will prevent future damage (flowing from the initial incident), and avoid collateral damage as a result of implementing the option;
- The extent to which each option generates benefits for the damaged and/or other natural resources beyond returning the damaged resource to its baseline; and
- The effect of each alternative on public health and safety

19. The total environmental damage needs to be assessed based on the environmental restoration cost required considering the above-mentioned project related attributes and as per the settled legal principles, such assessment need to be based on 'absolute' liability principle.

The notification refers to covering mainly three aspects in overall damage assessment studies prior to consideration of such violation cases, namely;

- Opportunity cost: benefits accrued due to early implementation of project without obtaining the mandatory EC and shall also include Cost for deterrence (penalty) for violation of EC regulation which needs to consider factors like project proponents track record, factors contributing to environmental damage etc.
- Environmental damage cost to be assessed based on the available data
- Cost of remediation and restoration.

20. While working on these themes, it would be necessary to keep in mind that the entire exercise is being under the provisions of the EC regulation 2006, as amended and the Environmental protection Act. It is also necessary to note that there are hardly any scientific studies to assess the environmental damages in holistic manner and also, there are very few cases where environmental restoration and restitution has fully been achieved. However, they are related to remediated of contaminated sites and/or contaminated ground water. There are several cases where the SC, HCs and NGT have ordered remediation and restoration, but there are hardly any studies where both restitution/restoration and damage assessment has been carried out simultaneously. It would therefore be necessary to adopt an approach which may be advoc in nature but based on scientific approach. There could be uncertainty in damage assessment but as already held by judicial pronouncements, the uncertainty in environmental damage and restoration on a positive side, towards preserving environment (precautionary principle) is acceptable, while demonstrating the good efforts in assessing the same.
21. Economic Benefit Assessment: One of the important aspects of this notification is inclusion of concept of economic benefits accrued due to violation of EC regulations. Traditionally, this concept has always been integrated in effective enforcement of standards and regulations all over the world because any violation or relaxation in environmental regulations, would result into economic advantage, rather in many cases, environmental norms are violated to derive economic advantages and benefits. In order to ensure that the compliance is encouraged, it would

be in the best interest to develop some tools to incorporate financial disadvantage for the non-compliance.

22. Violators obtain an economic benefit from violating the law by delaying compliance, avoiding compliance or achieving an illegal competitive advantage. In delaying compliance, the violators eventually comply, but they use the money that should have been spent on compliance. The violators then use that money for profit-making investments. In a very simple sense, the violators "gain" the interest on the amount of money that should have been invested in pollution prevention and control measures. When an offender avoids compliance, it essentially does not incur the costs that would have been necessary to come into compliance. The third type of economic benefit is derived from an illegal competitive advantage. It is necessary to have reliable methods to calculate any significant economic benefit of non-compliance. The existence of a well-defined and substantiated methodology strengthens the enforcement agency's position in case of eventual appeal of the assessment.

Though there are several references available for such assessment particularly by USEPA and also, several state environmental agencies besides OECD, One of the good case studies is prepared by OECD and is available at <http://www.oecd.org/env/outreach/46959936.pdf>.⁶ The study illustrates a key principle that in order to deter future non-compliance, a fine should at a minimum eliminate any financial gain or benefit the operator has obtained as a result of his non-compliance. The "benefit component" of a fine corresponds to the delayed or avoided compliance costs or the illegal competitive advantage and puts the violator in a less favourable situation compared to those who comply with the requirements in a timely manner. The additional penalty amount, or the "gravity component", should reflect the seriousness of the offence and the operator's behaviour. USEPA has also elaborate case studies on such efforts and has also developed the penalty and financial models that can be used to analyze the financial aspects of enforcement actions. <https://www.epa.gov/enforcement/penalty-and-financial-models>. BEN (S.8.0) - Calculates a violator's economic benefit of noncompliance from delaying or avoiding pollution control expenditures. The model requires the date the violation occurred, the date of compliance, the costs of

⁶ REMOVING ECONOMIC BENEFITS OF ENVIRONMENTAL VIOLATIONS IN AZERBAIJAN: Case Study Report, By OECD

compliance and the year the costs were estimated, and the date the penalty will be paid. Still however, no much work has been done in Indian context on this principle of effective environmental governance, particularly enforcement.

All such economic benefit assessment needs to be carefully designed in case of construction projects as scope and extent of construction in such building cases are rather governed by local municipal rules particularly for built up area, FSI, requirement of open area, parking etc. In many cases, the municipal laws are amended and some modifications are made in available permissible limits for the above criteria. The general trend in building industry is to initiate the construction in anticipation of such amendments and modification. And therefore, in order to assess the economic benefits, it is proposed to consider the applicable laws on the date of violation, rather than while assessment of the damages and benefits accrued. The allowable built up, FSI, open space etc only shall be considered and any violation of these ground should also be assessed as economic benefits. Based on the actual data, three scenarios can be envisaged for violation of EC regulations by Building construction Industry;

- A. The construction work is fully/partly completed without EC and the flats/commercial area is already sold to third parties.
- B. The construction work is started and some amount has been received from third party, but now the work is stopped.
- C. The construction work is started but no amount has been received from any third party.

23. One such approach adopted by Indiana government ⁷ elaborately discusses the matrix of calculations for the penalties for environmental violations. Though, presently, this approach paper does not deal with penalties, but the process and structured approach adopted therein, can suitably be adopted in the present study.

Violators Track record: As referred in above references, the violators track record and also, action subsequent to noticing the violations play an important role in formulation of environmental restoration and

⁷ INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT NONRULE POLICY DOCUMENT,
https://www.in.gov/idem/ctap/files/nrpd_enf-002.pdf

restitution program. Hon'ble Supreme Court in CIVIL APPEAL NO. 10854 OF 2016 decided on 10th August 2018 has elaborately considered such aspects and it is necessary to adopt the same approach while dealing with the EC violators.⁸

- 24. Proposed Framework:** Considering the discussions above, following broad approach and framework is suggested to derive the environmental damage cost which needs to be considered while appraising the remediation plan and the costs associated with such proposed remediation costs. Moreover, such cost needs to be appropriately accounted for the opportunity costs which *inter alia* should include the factors related to environmental track record of the project proponents. The proposed framework is suggestive in nature and is an attempt to develop a framework for such assessment in future, based on scientific evidence. Moreover, this framework is essentially for cases of violation of EC regulations in terms on obtaining the EC by construction projects and is not aimed to be used as enforcement tool in case of violation of EC conditions and/or incidences of pollution of environmental degradation. Still however, the SEAC can expand the scope of such assessment and costing with reference to any specific incidence on case to case basis, particularly where construction is carried out at industrial sites and/or there are complaints of pollution due to construction which will further strengthen such appraisal process. It is necessary to collect some specific information from the project proponents to assess such cost of remediation and also, opportunity cost. Therefore, a set of information is proposed to be called from PP as under. Some of the information could be repetitive but it would be worth to have all such relevant information at a place to understand the process.

⁸ https://www.sci.gov.in/supremecourt/2016/37233/37233_2016_Judgement_10-Aug-2018.pdf

25. Information Required:

A. Project details;

1	Name and address of Project	
2	Name of Directors	
3	Total construction completed (built-up area as per EC notification):	
4	Total construction proposed, built-up area as per EC notification	
5	Whether the project has any EC; if yes, give details including approved built up area	
6	Total cost of the project and total cost of the project already executed? Also, give total cost of the project constructed without EC.	
7	Date of commencement of project	
8	Date of violation of EC regulation (please justify with documentary evidence)	
9	Date of first submission of information of such violation to the SEIAA or SEAC, if self-notified, along with stoppage of construction work	
	1. No. of days of violation (9-8)	
10	Name and address of Environmental consultant, with date of engagement of such consultant	
11	Any other case of EC violation is reported or pending or decided earlier for projects where any of	

	the directors are involved? If yes, give details	
12	Any court case related to EC violation pending or decided against any of the directors including High Court, NGT and sessions court?	

B. What can be the attributes for environmental damages: The PP and consultant needs to describe the details of each attributes in qualitative and quantitative manner; for example;

1. Air pollution: construction dust, noise, demolition dust
2. Water: incremental sewage increase, extra water pumped from foundations
3. Soil: excess foundation excavation, excess ground foot print
4. Noise: extra time required for construction,
5. Loss of vegetation: additional trees cut (type, age and number of trees with its significance)
6. Transport and material handling

C. Description of activities contributing to the environmental damage and degradation;

A.	Demolition, site preparation	
1	Whether any demolition work was carried out prior to EC? If yes what is date of commencement of demolition and also date of completion of demolition?	
2	Whether such demolition or site had some asbestos, industrial waste or contaminated soil or hazardous waste etc and if yes, how these types of waste have been segregated and disposed?	
3	If the project is located on any industrial site, whether any due diligence or environmental	

	status of site was assessed? If yes, give details	
4	State the quantity of demolition waste disposed from the site, including quantity and disposal location along with location map and photographs	
5	Any air quality (including noise) monitoring done during demolition work? If yes, results	
6	Whether building plan and layout approved and permission from local authorities is taken to commence the work prior to demolition work	
7		
B.	Construction stage	
1	Date of commencement of construction and completion of construction, if any	
2	Whether the construction carried out is strictly as per the sanction plan given by concerned local authority? If yes, please provide such certification	
3	In the additional construction, how much construction material including, sand, bricks, cement etc was required to be transported? No. of trucks and its average haulage?	
4	How many labours were engaged in construction, average per day?	
5	Whether, the additional construction work, over and above valid EC, if so available, has any additional ground foot print? If yes please state, ground foot print in sqm as per EC approved	

	layout and current proposed layout?	
6	Whether the expansion was carried out simultaneously with EC approved work? If not give details of time frame? If yes, please give incremental additional time required for construction of additional area	
7	Is there any change in foundation design, i.e. depth of foundation, basement etc. that were done due to additional area? If yes, what is the additional soil quantity excavated for such incremental foundation depth? Where it is disposed?	
8	What is the quantity of top soil removed and how it is managed?	
9	Also, if water is encountered at such foundation depth, what is the volume of water pumped for such additional depth of excavation?	
10	How much additional water was required for curing and construction purpose? Source of water?	
11	Rain Water harvesting details	
12	Solar light, water heating details	
13	Use of fly ash bricks ensured? Details thereof	
14	Whether any noise or air pollution control measures taken, if so what are they?	
15	Whether any air quality and noise level monitoring done	

	during construction stage, if yes attach results	
16	Whether any third-party rights are created on the construction without EC?	
17	<p>Whether any of the construction without EC has already been occupied?</p> <p>If yes, number of families given such occupation.</p> <p>Also give total commercial area being used presently. Also state type of commercial activity i.e. offices, shops, hotels, restaurants etc.</p>	
18	How many flats sold which are in the area of EC violation and total sale value of such flats	
19	How much commercial area sold which is in area of EC violation and total sale value of such commercial area.	
C	Commissioning of project	
1	Date of when the project was made operational either by giving possession of residential or commercial areas of the project?	
2	How many families are staying in project?	
3	What is total water supply to project, source and quality	
4	Total sewage generation m3/day	
5	STP details,	
6	Treated wastewater disposal	
7	Any DG sets, are they complying the norms	

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26. The notification provides for *"The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance."* It can be seen from the provision that EMP is required to have two components i.e. 1. Remediation plan and 2. Natural and community resource augmentation plan. They are required to be corresponding to the ecological damage assessed and economical profit derived due to the violation.

Considering the broad conspectus and the need to evaluate the ecological assessment which will vary from project to project, site to site and also, will be subject of very detailed relative assessment. In absence of standard protocol and guidelines, it is proposed to adopt an advoc approach only for construction projects within the parameters specified by the notification. It is proposed to have broadly two components i.e. environmental damages and secondly economic benefits derived. The economic benefits derived can suitably take into account the construction stage besides the role and environmental performance record of the project proponent.

And therefore, the EMP and natural resource augmentation plan shall not only cover the ecological damages but also, the track record of project proponents and the economic benefits derived. As regards the ecological damages, a protocol which is rather based on basic environmental impacts like soil disposal, noise, air pollution, water pollution etc has been prepared by Gujarat SEAC, which is further modified to incorporate additional factors. The protocol format presented below is required to be prepared and certified by approved environmental consultants who are required to submit an undertaking certifying correctness of the data presented.

Format of Assessment of Environmental Damages

Attributes	Scope of saving on account of environmental measures	EMP cost	
		Recurring cost, per day (Rs.)	Non-recurring cost (Rs.)
Air Pollution	Water requirement for sprinkling (KL/day): Cost of 1 KL water (Rs):		
Water Pollution	A. Cost of water requirement: a). Construction phase: b). Operation phase: B. Cost of sewage treatment, reuse & disposal: a). Construction phase: b). Operation phase: C. Quantity of water pumped out during excavation and a lumpsum cost of Rs. 50 per cum for such unauthorized water extraction and disposal D. cost of construction & maintenance of recharge well:		
Soil environment	In case of demolition has carried out, the cost of demolition waste management plan needs to be discussed and finalized as non-recurring cost.		
	In case there is some hazardous waste like asbestos or the site is located on industrial area where hazardous chemical or waste was handled, the cost based on due diligence of the project site, as given by consultants. (the report must include soil analysis, water analysis, MPCB consent copies, manifest of HW if any). This requires critical examination from SPCB.		
	Cost of preservation of top soil & excavated earth to be considered. [Area (m ²)xdepth (m)x sp. Gravity (kg/m ³)x cost per ton (Rs.)]		

Noise and Vibration	For damage due to noise pollution & vibration, the cost of barricades around the project site should be considered. [perimeter (m) x height of the barricade(m) x cost of the sheet)		
Green Belt	In case of any tree cutting without EC cost of Rs. 10000/- per tree apart from any statutory action for such tree cutting if any, Cost of planting & maintaining trees (Number of trees as per the bye-laws) Cost of compensatory tree plantation (5 trees for each tree cut)		
RH/OHS	Cost of workers benefit to be considered in view of Building and Other Construction Workers' Welfare Cess Act, 1996		
	A. cost of health checkup of workers: B. cost of safety measures including PPEs:		
Total			

27. The economic benefits derived can be either on both costs saved on not taking appropriate environmental protection measures and also, the benefits derived by going ahead with project to gain commercial gains. This aspect has also been considered by Gujarat SEAC, by apportioning only 10% amount of profit which is considered to be 20% construction costs including the land value. All the standard literature including regulatory guidelines referred above incorporate such commercial economic benefits accrued from early going ahead by starting and commissioning project without obtaining EC. It is therefore necessary to incorporate such consideration in assessing the economic benefits which can be deterrent factor in future cases. At the same time, it is necessary that there should be a consideration for such cases where the project

proponent has applied for EC but for some reason or other the EC is not considered and granted without assigning any reason beyond a reasonable time frame. It is proposed to incorporate following scenarios for such economic benefit assessment;

- The construction (residential/commercial) under violation, where the construction is stopped after some time:
- The construction (residential/commercial) under violation and where the full construction area is occupied by the third party:
- The construction area (residential/commercial) under violation where the partial construction is occupied by the third party

Economic benefit derived can be broadly considered as 10% of Ready reckoner cost⁹ of the construction under violation if it is already occupied (fully or partially) or reasonably in advance stage of completion¹⁰ (more than 50%). In case, the construction is still not in advance stage of completion (less than 50%) and no occupation is given, then the benefits can be taken as 5% of ready reckoner cost for the construction in violation. The notification does not refer to any proportioning of the economic benefits and hence, deemed profit is taken for arriving at economic benefits in the present approach. This aspect could be seriously challenged by the proponents, however, in the absence of any leverage given in notification, such approach seems to be reasonable and consistent considering the spirit of notification. These figures are taken at random basis considering bare minimum 10% profit on the ready reckoner rate and does not truly reflect the economic benefits accrued due to sale. However, such amount can be taken up as starting point which can further evolve in future. However, it is imperative and necessary to ensure that these additional costs are required to be borne by Project proponent and cannot be and shall not be passed on to the consumers. In fact, the customers are entitled to seek any other legal remedy for any compensation etc as per prevailing laws.

⁹ The ready reckoner cost is taken as most rational and documented cost available. Other cost that were also considered, were construction cost, sale price etc., but assessing those cost could itself be a complicated and arbitrary process and can lead to inconsistency which can be avoided by taking ready reckoner cost for such consideration. This ready reckoner cost is to be calculated using relevant ready reckoner rate for the year of appraisal of violation by SEIAA and total built area of construction under violation.

¹⁰ The stage of construction needs to be certified by concerned local body (municipal corporation and councils etc.) along with undertaking by the PP.

28. In addition to above environmental damage costs, it is necessary to incorporate certain consideration for the environmental track record of the project proponent as a part of economic benefits accrued by the proponents and it is proposed that for each of earlier or similar other EC violation in other projects being developed by project proponents and/or any one of its directors shall be accounted for Rs. 10,00,000/- (Rs. Ten lakhs) in the community action plan. This consideration directly stems from Gore's correction referred earlier. This will surely bring the frequent and habitual defaulters on a common platform which is a significant step for future compliance enforcement. The regular defaulters will find such a criteria as a 'reputation risk' which itself will trigger the compliance in future. The final amount towards remediation, and natural and community resource augmentation action plan can be summation of these three aspects or the amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III dated 01/05/2018, whichever is higher.

29. Calculation of Cost of remediation plan and natural & community resource augmentation plan

Sr	Description	Details	Amount
1.	Total of recurring cost	Cost arrived from above table per day X number of days in violation	
2	Non-recurring cost	Cost as arrived from above table	
3.	Economic benefits accrued due to violation	10% of ready reckoner cost of the construction under violation if it is already occupied (fully or partially) or in reasonably advance stage of construction (more than 50%).	
		5% of ready reckoner cost of the construction under violation, if no occupation is given in violation construction and the construction under violation is still not in advance stage of construction (less than 50%) and	
		Incremental cost of Rs. 10 lakhs for each EC violation by PP or its directors observed at any other projects in last 3 years	
4	Cost of remediation plan and natural & community resource augmentation plan	Sum of 1, 2 and 3 above or amount equivalent to the CER amount as per the MOEF&CC's office Memorandum No: F NO 22-65/2017-IA-III dated 01/05/2018, whichever is higher.	

30. It is manifest from the language of the notification that the spirit of notification is twofold; firstly, there needs to be a deterrent action against EC violation and secondly, there needs to be sufficient environmental restoration and restitution of the presumed environmental damages which generally occur in the surrounding due to construction projects. In the present case, most of the construction projects are located in urban areas of Mumbai and Pune and hence, in order to ensure that the local community really gets benefitted by such planned environmental restoration program, it is proposed that majority of such environmental restoration/restitution shall be carried out within 5 km of the project location. However, this aspect will be deliberated further.
31. Another important aspect of the notification is that the PP needs to give a bank guarantee of equivalent amount and such bank guarantee will be returned on verification of implementation of such EMP by regional office of Ministry, and further recommended by SEAC and only thereafter, SEIAA can take a decision on return of BG. The notification contemplates inclusion of such action plan as part of EMP. However, it is required to note that the proposed remediation and community restoration program will have to be carried out ex-situ i.e. not at construction site and therefore, the project proponent will not have mechanism to carry out such complementary remedial actions in the areas which are not under his control. One of the options is conducting such activities similar to CSR. Be that as it may, it is an admitted fact that there is a significant gap in such verification of compliance through environmental regulatory authority and therefore it would be difficult for SEAC and SEIAA to take a decision in this regard.
32. In order to simplify the entire process, it is proposed that the proposed EMP cost can be attributed to overall environmental development works in a fixed appropriate percentage which will avoid ambiguity and inconsistency. Though such a scheme of restoration may not be ideal scenario for any environmental restoration program, but as in the present case, we are strictly dealing with ex-situ restoration or rather environmental improvement program, such a practice can be most appropriate and effective. However, such practice cannot be adopted for

any future on-site restoration/restitution and is not a substitute 'pay and pollute' formulae for well established legal principle of 'polluter pays'.

33. The actual cost of remediation proposed at site can be given separately, duly certified by the environmental consultant which can be considered by SEAC and SEIAA before considering the amount which can be reduced from the cost arrived at above. However, such remediation is not expected to cover mandatory requirements of compliance or EMP, and needs to cover only exclusive efforts of environmental damage remediation.
34. Based on discussions with DoE, following areas have been identified for resource allocation through such EMP cost, which are subject to final decision, for both activities and allocation, by SEIAA and Govt of Maharashtra;

Sr. No	Description of Activity	% allocation	Implementing agency	Remarks
1	Afforestation (can include plantation, garden development)	25	Social forestry and Local body	The afforestation can be either through social forestry or the Local body. Preferably within 50 km from project site
2	Water conservation program (Jalyukt shivar, etc)	25		Preferably within 50 km radius of project site
3	Urban environment and sanitation (can include swatcha Bharat, playground development, urban ground-water recharge schemes etc)	20	Local body	
4	Sewerage lines and STP, solid waste management,	20	Local body	

5	Urban pollution initiatives	air/noise control	10	Local body	
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35. Implementation strategy: DoE on recommendation of SEIAA can lay down the implementation strategy and protocol to ensure timely execution of project which is the essence of such restoration program. The project proponent will be required to deposit such apportioned funds of the proposed EMP with concerned authorities and the confirmation of deposit of such funds will be the compliance of such EMP efforts at the project proponents end. Still however, he needs to get engaged with concerned departments to ensure that the amount is effectively spent in time bound manner. A committee under Secretary, DoE can take a review at least once in two months of the progress of such works. The concerned authorities can be asked to maintain separate account for the funds received under this scheme. The outer limit for execution of the projects could be maximum 2 years, and if any amount still remains unspent then the same will be reverted back to DoE by concerned department which can conduct specific state level programs from such funds.

अधिसूचित प्रयोगशाला या राष्ट्रीय जांच और अशांकन प्रत्यायन बोर्ड द्वारा प्रत्यायित प्रयोगशाला या वैज्ञानिक और औद्योगिक अनुसंधान परिषद् की पर्यावरण के क्षेत्र में कार्य कर रही प्रयोगशाला द्वारा किया जाएगा।";

(घ) उपपैरा (6) के स्थान पर निम्नलिखित उपपैरा रखा जाएगा, अर्थात्:-

"(6) विशेषज्ञ मूल्यांकन समिति, यथास्थिति, राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति पर्यावरणीय प्रबंधन योजना, सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना से मिलकर बनने वाली पर्यावरणीय प्रबंधन योजना को उपदर्शित करेगी, जो कि मूल्यांकन किए गए पर्यावरणीय नुकसान और पर्यावरणीय अनापत्ति की शर्त के उल्लंघन के कारण उदभूत आर्थिक फायदे की तत्स्थानी होगी।";

(ङ) उपपैरा (7) के स्थान पर निम्नलिखित उपपैरा रखा जाएगा, अर्थात्:-

"(7) परियोजना प्रस्तावक से सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना की रकम के समतुल्य बैंक प्रत्याभूति को राज्य प्रदूषण नियंत्रण बोर्ड के पास प्रस्तुत करने की अपेक्षा होगी और राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति द्वारा या प्रवर्ग 'क' परियोजना के लिए मात्रा की सिफारिश विशेषज्ञ मूल्यांकन समिति द्वारा की जाएगी और इसको विनियामक प्राधिकरण द्वारा अंतिम रूप दिया जाएगा तथा बैंक प्रत्याभूति को पर्यावरणीय अनापत्ति अनुदत्त करने से पूर्व जमा किया जाएगा और उसे मंत्रालय के प्रादेशिक कार्यालय, विशेषज्ञ मूल्यांकन समिति, यथास्थिति, राज्य या संघ राज्यक्षेत्र विशेषज्ञ मूल्यांकन समिति तथा विनियामक प्राधिकरण के अनुमोदन के पश्चात् सुधारकारी योजना और प्राकृतिक तथा सामुदायिक संसाधन आवर्धन योजना के सफलतापूर्वक कार्यान्वयन के पश्चात् निर्मुक्त किया जाएगा।";

[फा. सं. जेड-11013/22/2017-आईए-II(एम)]

ज्ञानेश भारती, संयुक्त सचिव

टिप्पण: मूल अधिसूचना का.आ. 804(अ), तारीख 14 मार्च, 2017 द्वारा प्रकाशित की गई थी।

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

NOTIFICATION

New Delhi, the 8th March, 2018

S.O. 1030(E). —Whereas, the Ministry of Environment, Forest and Climate Change *vide* notification number S.O.804(E), dated the 14th March, 2017 (hereinafter referred to as the said notification) has notified the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance as mandated under the Environment Impact Assessment Notification, 2006 [S.O.1533 (E), dated the 14th September, 2006];

And whereas, the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the Ministry) in the said notification *inter alia*, directed *vide* sub-paragraph (2) of paragraph 13, that in case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority, are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level;

And whereas, the Ministry has received a number of proposals relating to all sectors covered under category A and category B, for consideration in pursuance of the said notification;

And whereas, the Ministry is in receipt of representations from the public representatives and Industrial Associations, requesting delegation of powers to the respective States to deal with the violation cases for operational reasons and expediting the proposals;

And whereas, the National Green Tribunal, Principal Bench at New Delhi *vide* their order dated the 27th November, 2017 in similar matters in OA No.570/2016 titled M/s Anjli Infra Housing LLP Vs Union of India & others, OA No.576/2016 in the matter of M/s Ankur Khusal Construction LLP Vs Union of India & others and OA No.579/2016 in the matter of Anjli Infra Housing LLP Vs Union of India & others, has passed directions for consideration of the projects at the State level and pass appropriate orders in regard to grant/refusal of the environmental clearance in accordance with law;

And whereas, in view of the above, the Central Government finds it necessary to amend the said notification number S.O.804(E), dated the 14th March, 2017 by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 regarding inviting objections and suggestions from persons likely to be affected thereby, in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, namely:-

In the said notification, in paragraph 13, -

- (a) for sub-paragraph (2), the following sub-paragraph shall be substituted, namely:-

“(2) In case the projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernisation, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and the projects or activities covered under category A of the Schedule to the Environment Impact Assessment Notification, 2006, including expansion and modernisation of existing projects or activities and change in product mix, shall be appraised for grant of environmental clearance by the Expert Appraisal Committee in the Ministry and the environmental clearance shall be granted at Central level, and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.”;

- (b) for sub-paragraph (4), the following sub-paragraph shall be substituted, namely:-

“(4) The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.”;

- (c) for sub-paragraph (5), the following sub-paragraph shall be substituted, namely:-

“(5) In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants, and the collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board

for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.”;

- (d) for sub-paragraph (6), the following sub-paragraph shall be substituted, namely:-

“(6) The Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, as the case may be, shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.”;

- (e) for sub-paragraph (7), the following sub-paragraph shall be substituted, namely:-

“(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by the Expert Appraisal Committee for category A projects or by the State or Union territory level Expert Appraisal Committee for category B projects, as the case may be, and finalised by the concerned Regulatory Authority, and the bank guarantee shall be deposited prior to the grant of environmental clearance and released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after recommendation by regional office of the Ministry, Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee and approval of the Regulatory Authority.”.

[F.No.Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

Note: The principal notification was published vide number S.O.804(E), dated the 14th March, 2017.

आदेश

नई दिल्ली, 8 मार्च, 2018

का.आ. 1031(अ).—केन्द्रीय सरकार ने पर्यावरण (संरक्षण) नियम, 1986 के नियम 5 के उप नियम (3) के खंड (घ) के साथ पठित पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (1), उपधारा (2) के खंड (i) के उपखंड (क) और खंड (v) के अधीन जारी भारत सरकार की, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय में अधिसूचना संख्या का.आ.804(अ) तारीख 14 मार्च, 2017 (जिसे इसमें इसके पश्चात् उक्त अधिसूचना कहा गया है) द्वारा उन परियोजनाओं का जिन्होंने पूर्व पर्यावरण अनापत्ति प्राप्त किए बिना कार्य आरंभ कर दिया है और ऐसे मामलों को उल्लंघन माना गया है, का मूल्यांकन करने के लिए प्रबंध किया है।

और उपर्युक्त अधिसूचना के पैरा 13 के उपपैरा (1) द्वारा निर्देश दिया गया है कि यथास्थिति केन्द्रीय सरकार से अथवा उपर्युक्त अधिनियम के अधीन केन्द्रीय सरकार द्वारा विधिवत रूप से गठित राज्य पर्यावरण समाघात निर्धारण प्राधिकरण से, पूर्व पर्यावरणीय स्वीकृति प्राप्त किए बिना भारत के किसी भी भाग में प्रक्रिया या प्रौद्योगिकी अथवा दोनों में परिवर्तन सहित अतिरिक्त क्षमता के लिए शुरू की गई पर्यावरण समाघात निर्धारण अधिसूचना, 2006 [का.आ.1533(अ) तारीख 14 सितंबर, 2006] के अधीन पूर्व पर्यावरणीय स्वीकृति की अपेक्षा वाली परियोजनाओं अथवा क्रियाकलापों या मौजूदा परियोजनाओं अथवा क्रियाकलापों के विस्तार या आधुनिकीकरण को पर्यावरण संघात निर्धारण अधिसूचना, 2006 के उल्लंघन का मामला माना जाएगा;

और उपर्युक्त अधिसूचना में यह और उपबंध है कि ऊपर उल्लिखित परियोजनाओं और क्रियाकलापों से उपर्युक्त अधिसूचना के पैरा 13 के उपपैरा (2) से (7) में विनिर्दिष्ट प्रक्रिया के अनुसार सख्ती से निपटा जाएगा;

और पर्यावरण (संरक्षण) अधिनियम, 1986 की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपर्युक्त अधिसूचना के पैरा 13 के उप पैरा (4) के अनुसरण में सभी क्षेत्रों में उल्लंघन के मामलों का मूल्यांकन करने और केन्द्रीय सरकार को सिफोरिशें करने के लिए विभिन्न क्षेत्रों के विशेषज्ञों से मिलकर बनने वाली भारत सरकार, पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय, संख्यांक का.आ.1805(अ), तारीख 6 जून, 2017 की अधिसूचना द्वारा एक विशेषज्ञ मूल्यांकन समिति (ईएसी) का गठन किया गया था ;

और इस प्रकार गठित की गई विशेषज्ञ मूल्यांकन समिति में, श्री एस.के.श्रीवास्तव, वैज्ञानिक ई को उक्त समिति के सदस्य सचिव के रूप में पर्यावरण, वन और जलवायु परिवर्तन मंत्रालय के प्रतिनिधि रूप में नामनिर्देशित किया गया था।

और प्रशासनिक तथा प्रचालन संबंधी कारणों से, अतिक्रमण मामलों में कार्यवाई करने के लिए गठित की गई विशेषज्ञ मूल्यांकन समिति के सदस्य सचिव के रूप में यथास्थिति श्री एस.के.श्रीवास्तव, वैज्ञानिक ई के साथ वैज्ञानिक ई या वैज्ञानिक एफ या वैज्ञानिक जी का नामांकन प्रतिस्थापित करना समीचीन हुआ है;

और अतः अब, केन्द्रीय सरकार पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 3 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और उक्त अधिसूचना सं० का.आ.804(अ) तारीख 14 मार्च, 2017 के पैरा 13 के उपपैरा (4) के अनुसरण में भारत के राजपत्र, असाधारण, भाग II, खंड 3, उपखंड (ii), तारीख 6 जून, 2017 में प्रकाशित भारत सरकार की पर्यावरण वन और जलवायु परिवर्तन मंत्रालय संख्या का.आ.1805(अ), तारीख 6 जून, 2017 के आदेश में निम्नलिखित संशोधन करती है, अर्थात्:—

उक्त आदेश की सारणी में, क्रम सं० 11 के सामने, स्तंभ (2) में प्रविष्टियों के स्थान पर, निम्नलिखित प्रविष्टि रखी जाएगी, अर्थात्:—

"वैज्ञानिक ई या वैज्ञानिक एफ या वैज्ञानिक जी, यथास्थिति, पर्यावरण, वन और जलवायु परिवर्तन, मंत्रालय, जोरबाग रोड, नई दिल्ली-3।

[फा.सं.जेड-11013/22/2017-आईए-11(एम)]

ज्ञानेश भारती, संयुक्त सचिव

टिप्पण: मूल आदेश सं. का.आ.1805(अ) तारीख 6 जून, 2017 द्वारा प्रकाशित किया गया था।

ORDER

New Delhi, the 8th March, 2018

S.O. 1031(E).—Whereas, by the notification of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O. 804(E), dated the 14th March, 2017, issued under sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as the said notification), the Central Government has established an arrangement to appraise the projects, which have started the work without obtaining prior environmental clearance and such cases have been termed as cases of violation;

And whereas, vide sub-paragraph (1) of paragraph 13 of the said notification, it has been directed that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 [S.O.1533(E), dated the 14th September, 2006] entailing capacity addition with change in process or technology or both, undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006;

And whereas, the said notification further provides that the projects and activities referred above, shall be dealt strictly as per the procedure specified in sub-paragraph (2) to (7) of paragraph 13 of the said notification;

And whereas, in exercise of the power conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification, an Expert Appraisal Committee (EAC) was constituted by notification of the Government of India in the Ministry of Environment, Forest and Climate Change vide number S.O.1805(E), dated the 6th June, 2017 comprising members with expertise in different sectors to appraise and make recommendations to the Central Government as cases of violation in all the sectors;

And whereas, in this Expert Appraisal Committee so constituted, Shri S K Srivastava, Scientist E was nominated as representative of the Ministry of Environment, Forest and Climate Change as Member Secretary of the said Committee;

And whereas, due to administrative and operating reasons, it has become expedient to replace the nomination of Shri S. K. Srivastava, Scientist E with the Scientist E or Scientist F or Scientist G, as the case may be, as Member Secretary of the Expert Appraisal Committee constituted to deal with violation cases;

And now, therefore, in exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification number S.O.804(E), dated the 14th March, 2017, the Central Government hereby makes the following amendments in the order of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O.1805(E), dated the 6th June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 6th June, 2017, namely:-

In the said order, in the Table, against serial number 11, for the entries in column (2), the following entries shall be substituted, namely:-

"Scientist E or Scientist F or Scientist G, as the case may be, Ministry of Environment, Forest and Climate Change, Jorbagh Road, New Delhi-3".

[F. No. Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

Note: The principal order was published vide number S.O.1805(E), dated the 6th June, 2017.

F. No.Z-11013/22/2017-IA.II (M)
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-110003

Dated: 15th March, 2018

OFFICE MEMORANDUM

Sub: Implementation of Notification S.O.1030 (E) dated 8th March, 2018 - reg.

The Environment Impact Assessment (EIA) Notification, 2006 under the Environment (Protection) Act, 1986 mandates the requirement of prior environmental clearance to the projects/activities listed in the schedule to the said Notification. These projects/activities have been categorized under category 'A' or 'B' and require appraisal and approval by the respective regulatory authorities at the Central/State level.

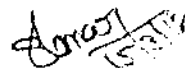
2. The Ministry has issued a Notification number S.O.804(E) dated 14th March, 2017 under the Environment (Protection) Act, 1986 to appraise and regularize the projects, already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by providing one-time opportunity to submit the request in this regard within 6 months.

3. In order to streamline and expedite consideration of proposals, it has now been decided that the projects/activities covered under category 'B', shall be considered by the SEAC/SEIAAs in the respective States/UTs. The Ministry has issued another Notification number S.O.1030 (E) dated 8th March, 2018, amending the Notification dated 14th March, 2017 to that extent.

4. In order to operationalize the Notification number S.O.1030 (E) dated 8th March, 2018, following directions are being issued for compliance with immediate effect: -

- i. The proposals received up to 13th September, 2017 on the Ministry's portal, shall be considered by the EAC or the SEAC/SEIAA in the respective States/UTs, as the case may be, in order of their submission.
- ii. All the proposals of category 'B' projects/activities pertaining to different sectors, received within six months only i.e. up to 13th September, 2017 on the Ministry's portal, but yet not considered by the EAC in the Ministry, shall be transferred online to the SEAC/SEIAAs in the respective States/UTs.
- iii. The proposals submitted directly for consideration of EC (in place of ToR), shall also be considered on the same lines, in order of their submission on the Ministry's portal.
- iv. All the projects of category 'B' pertaining to different sectors, although considered by the EAC in the Ministry and accorded ToR, shall be appraised for grant of EC by the SEAC/SEIAAs in the respective States/UTs.

- v. All projects/activities of all sectors, shall be required to adhere to the directions of Hon'ble Madras High Court vide order dated 13th October, 2017 while upholding the Ministry's Notification dated 14th March, 2017.


(Sharath Kumar Palleria)
Scientist "F" / Director

To,

1. The Chairman of all the SEAC/SEIAA of States/UTs
2. The Member Secretary of all the SEAC/SEIAA of States/UTs

Copy for information to:

1. PS to Minister for Environment, Forest and Climate Change
2. PS to MoS for Environment, Forest and Climate Change
3. PPS to Secretary (EF&CC)
4. PPS to AS (AKJ)/AS (AKM)
5. PS to JS (GB)/JS (JT)
6. All officers in IA Division
7. Website, MoEF&CC
8. Guard File

F. No.Z-11013/22/2017-1A.II (M)
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan,
Jor Bagh Road, New Delhi-3

Dated: 16th March, 2018

OFFICE MEMORANDUM

Sub: Compliance of the order dated 14th March, 2018 of Hon'ble High Court of Judicature at Madras in WMP Nos.3361 and 3362 of 2018, and WMP No.3721 of 2018 in WP No.11189 of 2017 - reg.

The Ministry has issued a Notification number S.O.804(E) dated 14th March, 2017 under the Environment (Protection) Act, 1986 to appraise and regularize the projects, already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by providing one-time opportunity to submit the request in this regard within 6 months.

2. Pursuant to the Ministry's Notification number S.O.1030(E) dated 8th March, 2018 regarding consideration of proposals by the Expert Appraisal Committee or the SEAC/SEIAA depending upon the categorization of projects/activities (A or B) listed in the schedule to the Environment Impact Assessment Notification, 2006, the Ministry has issued Office Memorandum on 15th March, 2018 (copy enclosed) to operationalize the same.

3. Hon'ble High Court of Judicature at Madras vide Order dated 14th March, 2018 in WMP Nos.3361 and 3362 of 2018, and WMP No.3721 of 2018 in WP No.11189 of 2017, has directed as under:


"24. In this view of the matter, considering that sub-clause (i)(d) of Stage III of paragraph 7(i) of parent notification as contained in item No. 8(a) of the Schedule being housing projects, we deem it necessary to clarify that projects and project proponents falling under category alone shall be governed by the 'public consultation' clause in the parent notification.

25. With regard to the prayer of MOEF for extension of time for submission of proposals by project proponents, we are of the view that it will serve the ends of justice if time is extended by 30 (thirty) days from the date of delivery of this order in open court."

4. In view of the above orders of Hon'ble High Court, following directions are being issued for compliance with immediate effect: -

- i. The project proponent, who have not submitted the proposals within six months window i.e. up to 13th September, 2017 in pursuance of this Ministry's Notification S.O.804 (E) dated 14th March, 2017, are required to submit the proposals within 30 days, to the EAC for category A projects or the SEAC/SEIAA in the respective States/UTs for category B projects.

- ii. (The project proponent, who have submitted the proposals on the Ministry's portal after 13th September, 2017, are also required to submit the proposals afresh within 30 days, to the EAC for category A projects or the SEAC/SEIAA in the respective States/UTs for category B projects.
 - iii. The projects/activities pertaining to all sectors, shall be considered as per the directions of Hon'ble High of Judicature at Madras vide Order dated 14th March, 2018 in WMP Nos.3361 and 3362 of 2018, and WMP No.3721 of 2018 in WP No.11189 of 2017.
 - iv. The directions issued vide this Ministry's OM dated 15th March, 2018 shall continue to apply.
5. This issues with approval of the competent authority.


(Sharath Kumar Pallerla)
Scientist F/Director

To,

1. The Chairman of all the SEAC/SEIAA of States/UTs
2. The Member Secretary of all the SEAC/SEIAA of States/UTs

Copy for information to:

1. PS to Minister for Environment, Forest and Climate Change
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8. Guard File