

F.No. 22-19/2020-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

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Dated: ____ September 2020

OFFICE MEMORANDUM

**Subject: Joint Communication from Special Procedures,
Office of the High Commissioner for Human Rights – Draft
EIA Notification – Reg.**

The Ministry is in receipt of an email from the Ministry of External Affairs regarding Joint Communication addressed to Hon'ble EAM from the Special Rapporteur wherein certain concerns were raised regarding some provisions of the draft EIA notification and its impact on the effectiveness and transparency of the environmental regulatory framework in India with environmental impacts that interfere with the full enjoyment of all relevant rights, including the rights to life, health, food, water and, sanitation, housing, culture and a safe, clean, healthy and sustainable environment.

2. The detailed point wise reply is provided below:

(i) Several exemptions such as Exemption of several large industries and projects from public consultation have been included in the draft notification which may cause environmental damage.

Reply: No exemptions have been given to large industries & projects from public consultation In fact, in the Draft Environmental Impact Assessment (EIA) Notification, 2020 the number of activities, exempted from public hearing, has been reduced from 9 in EIA 2006 [Refer clause 7(III) of EIA 2006] to 7 activities in Draft EIA 2020 [Clause 14(2) of Draft EIA 2020]. In Draft EIA 2020, the public consultation has been proposed for exemption only in case of certain category of projects or activities in respect of MSME sector and projects adopting clean technology.

(ii) Draft notification does not require the publication of information or holding of public consultations for projects labelled by the Central Government as 'involving strategic consideration';

Reply: The categorization of projects under 'defence and other strategic

considerations' has also existed in EIA Notification 2006. This has not been changed. The said projects shall continue to be appraised and shall require EIA.

(iii) Concern regarding proposal to allow post-facto clearance of projects commenced without obtaining the required environmental clearance;

Reply: The draft EIA Notification 2020 does not provide for ex post facto clearance to violation cases. The environmental clearance, if issued, to the project shall only be prospective and shall be effective from the date of its issuance. Any violation of the EIA Notification, 2006, that is in force, under the Environment (Protection) Act, 1986 results in contravention under the Environment (Protection) Act, 1986 itself, thereby attracting the provisions of Section 15/19 of the said Act. Section 15 of the Environment (Protection) Act, 1986 provides for penalty or imprisonment or both for contravention of the Act. In the same manner, a violation of any provisions in the EIA, 2020 shall also attract the penal provisions of Section 15 of Environment (Protection) Act, 1986.

The Clause 22 (14) of the draft EIA Notification 2020 clearly specifies that the project proponent is liable for action under Section 15/19 of the Environment (Protection) Act, 1986 which provides for penalty or imprisonment or both in case of contravention of the Act. In addition, the draft notification also lays down additional liability on the project proponent for having caused damage to the environment through assessment of such damage and through remedial and community augmentation plans (reference clause 22(5) of the draft notification).

(iv) Draft notification extends projects' compliance reporting time frame from 6 months to 1 year including critical sector such as mining. At the same time, it reduces the period for the public to comment from 30 days to 20 days;

Reply: Under clause 20(4) of the draft, the frequency of submission of compliance reports changed from six-monthly to annually in order to align with the requirements of other Acts and Rules. However, there are provisions for late filing fee and deemed revocation of prior EC without prior notice in case of failure to submit reports for a period of three consecutive years. Therefore, while reducing the frequency on one hand stricter provisions have been introduced for better compliance.

Since, faster modes of communication channels through mobile telephony, social media, etc. are available to a wide cross section of the public & other stakeholders, the notice period for public comments has been proposed to be reduce from 30 days to 20 days.

Joint Communication further sought Government's observation on the

following matters for which reply is as below:

(i) Any additional information and comments on the issues raised;

Reply: Additional detailed information regarding the provisions of the draft EIA Notification is provided as annexure.

(ii) How do the provisions of the draft notification correspond with India's obligation under international law?

Reply: The draft EIA is not in contravention to the stand taken by India as a party to any International Treaty/Law. As envisaged in the treaties/laws, the draft EIA Notification 2020, inter-alia, promotes the environmental cause and sustainable development; removes redundancies; encourages modernization and less polluting options; brings defaulters into the environmental regime with requisite action, penalty and remediation; and introduces standardization and a technology driven process.

3. This issues with the approval of the competent authority.

Sharath
30/9/2020
(Sharath Kumar Pallerla)
Scientist 'F'/Director
IA (Policy)

To

Smt. T. Uma,
Deputy Secretary (UNES),
Room No 1043, Jawaharlal Nehru Bhawan,
Ministry of External Affairs, New Delhi

Annexure

Additional information on the issues raised

1. Public Hearing in draft EIA notification 2020.

Sl No.	Project or activities listed under 14(2) of EIA, 2020	Whether Public consultation exempted		Remarks
		Under EIA, 2006	Under EIA, 2020	
1	modernization of irrigation projects falling under the item 4 of the Schedule	Yes	Yes	No change
2	All projects falling under items 10(f), 16, 17, 19, 20, 21, 23, 24, 25,	Yes	Yes	No change

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	27, 36, 40 of the schedule located within Notified Industrial Estates			
3	All projects falling under item 42 and 43 of the Schedule	Yes	Yes	No change
4	All Category 'B2' projects and activities	Yes	Yes	No change
5	All projects concerning national defence and security or involving other strategic considerations as determined by the Central Government	Yes	Yes	No change
6	all linear projects under item 31 and 38, in Border Areas	Yes	Yes	No change
7	All the off-shore projects located beyond the 12 Nautical Miles	No	Yes	No human population in the core and buffer areas

2. Requirement of environmental clearance

Sl No.	Project or activities listed under 26 of EIA, 2020	Whether prior environmental clearance exempted		Remarks
		Under EIA, 2006	Under EIA, 2020	
1	Extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. as per their customs	Yes	Yes	No change. The exemption is only limited to extraction of ordinary clay or sand by manual mining, by the Kumhars (Potter) to prepare earthen pots, lamp, toys, etc. The exemption has been proposed in view of this being a small activity with low impact potential and carried for a particular occupation purpose.
2	Extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles	Yes	Yes	No change. The exemption is only limited to extraction of ordinary clay or sand by manual mining, by earthen tile makers who prepare earthen tiles. The exemption has been proposed in view of this being a small activity with low impact potential and carried for a particular occupation purpose

3	Removal of sand deposits on agricultural field after flood by farmers	Yes	Yes	No change. The exemption is only limited to removal of sand deposits on agricultural field after flood by farmers. This is an essential activity to make the field amenable for cultivation besides being small activity with low impact potential and carried for cultivation purpose
4	Customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village	Yes	Yes	No change. The exemption is only limited to customary extraction of sand and ordinary earth from sources situated in Gram Panchayat for personal use or community work in village. This is basically small activity with low impact potential and carried for a particular occupation purpose
5	Community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts	Yes	Yes	No change. The exemption is only limited to community works like de-silting of village ponds or tanks, construction of village roads, ponds, bunds undertaken in Mahatma Gandhi National Rural Employment and Guarantee Schemes, other Government sponsored schemes, and community efforts in the rural areas. It ought to be appreciated that such community efforts are basically small activities, with low impact potential and carried out to upkeep and maintain the village infrastructure and employment in the rural areas
6	Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc	Yes	Yes	No change. The exemption is only limited to extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. This is basically small activity required all along the length of the project. The activity has low impact potential and is to be encouraged to avoid transportation of the earth from longer distances.
7	Dredging and de-	Yes	Yes	No change. The exemption is

	silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management			being proposed in view of the very nature of activity being important for overall upkeep of the respective facilities viz dams, reservoirs, weirs, barrages, river, and canals. It may be appreciated that dredging and desilting is necessary for the purpose of their maintenance, upkeep and disaster management besides being small activity with low impact potential and carried to upkeep and maintain the village / agriculture infrastructure.
8	Traditional occupational work of sand by Vanjara and Oads in Gujarat vide notification number GU/90(16)/MCR-2189(68)/5-CHH, dated the 14th February, 1990 of the Government of Gujarat	Yes	Yes	No change. The exemption is only limited to traditional occupational work of sand by Vanjara and Oads in Gujarat which is basically a small activity with low impact potential and carried for a particular occupation purpose
9	Manual extraction of Lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional Community	Yes	Yes	No change. The exemption is only limited to manual extraction of Lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community. This is basically a small activity with low impact potential and carried for a particular occupation purpose
10	Digging of well for irrigation or drinking water purpose	Yes	Yes	No change. The exemption is only limited digging of well for irrigation or drinking water purpose. This is basically small activity, low impact potential and carried for a domestic purpose or irrigation purpose.
11	Digging of foundation for buildings, not requiring prior-EC or prior-EP, as the case may be	Yes	Yes	No change. The exemption is only limited digging of foundation for those buildings that themselves do not require prior-EC or prior-EP, as the case may be. This is basically a small

				activity with low impact potential and carried for construction of buildings for which no EC is required.
12	Excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate or any other Competent Authority	Yes	Yes	No change. The exemption is only limited to excavation of ordinary earth or clay for plugging of any breach caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of District Collector or District Magistrate or any other Competent Authority. This activity is to cater to the requirements in case of emergency and carried to protect the village / agriculture infrastructure
13	Activities declared by State Government under legislations or rules as non-mining activity	Yes	Yes	No change. The exemption is only limited to those activities that have been declared by State Government under legislations or rules as non-mining activity to cater the requirements and needs of the local people
14	Solar Photo Voltaic (PV) Power projects, Solar Thermal Power Plants and development of Solar Parks, etc	Yes	Yes	Solar Photo Voltaic (PV) Power projects, Solar Thermal Power Plants and development of Solar Parks, etc. are low impact potential activity. Besides such activities are for the purpose of renewable energy, which is environment friendly . Further the emissions and discharges are meagre. In any case this activity didn't attract the provisions of EIA Notification, 2006. Clarification to this effect has been issued through office memoranda from time to time. Now, same has been integrated in the notification to bring clarity and to avoid the ambiguity.
15	Research and Development activities for the projects listed in the	No	Yes	This activity has been introduced in Draft EIA 2020 for the first time. However, the exemption is limited to Research and

	schedule subject to laboratory scale operations where and no commercial production is involved			Development activities for the projects listed in the schedule subject to laboratory scale operations where and no commercial production is involved are low impact potential activity and for the purpose of research and development. Further the emissions and discharges are meager.
16	The projects which are not covered in the schedule, proposed to carry out or establish in the premises of the projects for which prior-EC or prior-EP, as the case may be, was already granted	Yes	Yes	In the first place such projects did not require EC as they are not part of the schedule. They shall not be subjected to EC just because they are being undertaken in the premises of projects that required EC. Therefore the clause is inserted to bring clarity and to avoid the ambiguity
17	Individual industries including proposed industrial housing within such notified Industrial Estate with homogeneous type of industries such as Items 16, 18, 24, 25 or those Industrial Estates with predefined set of activities (not necessarily homogeneous), so long as the Terms and Conditions for the industrial estate are complied with (Such estates/complexes must have a clearly identified management with the legal responsibility of ensuring adherence to the terms and conditions of prior-	Yes	Yes	No change. This is a clarification to bring the clarity and to avoid the ambiguity. The same provision is also available in EIA Notification, 2006 as special condition as a part of schedule to the notification.

	EC and who may be held responsible for violation of such terms and conditions throughout the life of the Industrial Estate)			
18	Industrial Estate with project area below 500 hectares and not housing any industry of category 'A' or 'B1' or 'B2' project listed in the Schedule	Yes	Yes	No change. This is with a view that if in any industrial estate with area below 500 hectares none of the projects require EC, then such industrial estate per se shall also not require EC. This clause is more in the nature of clarification so as to bring the clarity and to avoid the ambiguity.
19	Coal and non-coal mineral prospecting	Yes	Yes	No change. Coal and non-coal mineral prospecting is temporary activity, low impact potential and carried for proving the mineral deposit.
20	Seismic surveys which are part of exploration surveys for offshore and onshore oil and gas including coal bed methane and shale gas, provided the concession areas have got previous conditions of prior-EC or prior-EP for physical survey	Yes	Yes	No change. Seismic survey is temporary activity with low impact potential and carried for proving the hydrocarbons.
21	Minor Irrigation projects involving culturable command area up to 2000 hectare	Yes	Yes	No change. The exemption is only limited to minor Irrigation projects involving culturable command area up to 2000 hectare which is a small activity with low impact potential and under minor irrigation facility
22	Thermal Power plants using Waste Heat Recovery Boilers (WHRB) without any auxiliary fuel	Yes	Yes	No change. Thermal Power plants using Waste Heat Recovery Boilers (WHRB) without any auxiliary fuel is low impact potential and it is to promote the heat recovery so as to reduce the greenhouse gas emission and for

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				energy conservation
23	Crushing and screening (sizing of ore) without up gradation process of ore	Yes	Yes	No change. Crushing and screening (sizing of ore) without up gradation process of ore is small scale activity, low impact potential and involves only physical activity. This is a clarification to avoid ambiguity
24	Secondary metallurgical foundry units,-			
	non-toxic, involving furnaces such as to Induction Furnace or Electric Arc Furnace or Submerged Arc Furnace or other gas-based furnaces, with capacity	Yes up to 30000 TPA	Yes up to 100000 TPA	Secondary metallurgical foundry units, non-toxic, involving furnaces such as Induction Furnace or Electric Arc Furnace or Submerged Arc Furnace or other gas-based furnaces, with capacity below 5 TPH (about 30,000 TPA) was exempted in the EIA Notification, 2006 also. The Induction Furnace or Electric Arc Furnace or Submerged Arc Furnace or other gas-based furnaces of higher capacity in the advancement of technology in this category are less polluting and it is feasible to recover the waste heat . The foundry units had the tendency to set up multiple units of less capacity thereby bringing inefficiencies in the project. With increased threshold the units shall be more energy efficient with minimal pollution load
	non-toxic, involving furnaces such as to cupola and other furnaces using coal or briquettes with capacity up to 60,000 ton per annum	Yes up to 30000 TPA	Yes up to 60000 TPA	The advancement in the technological changes in cupola, the threshold values have been increased from 30,000 TPA to 60,000 TPA
	re-cycling units registered under Hazardous and Other Waste Rules, 2016	Yes	Yes	No change. The activity is regulated under Hazardous and Other Waste Rules, 2016
25	Stand-alone re-rolling mills,-			
	involving pickling	Yes up to	Yes up to	Stand-alone re-rolling millshave

	operation with a capacity up to 1, 00,000 ton per annum	to 30000 TPA	to 100000 TPA	low impact potential. Keeping the involvement of pickling operations, the threshold values have been increased from 30,000 TPA to 1,00,000 TPA. However, the emissions / discharges shall be regulated through the consent mechanism under Air and Water Acts from SPCBs
	not involving pickling operation with a capacity up to 2, 00,000 ton per annum	Yes up to 30000 TPA	Yes up to 200000 TPA	Stand-alone re-rolling mills have low impact potential. Keeping no involvement of pickling operations (i.e. no use of acids), the threshold values have been increased from 30,000 TPA to 2,00,000 TPA. However, the emissions / discharges shall be regulated through the consent mechanism under Air and Water Acts from SPCBs.
	not involving pickling and no requirement of fuel for re-heating	Yes up to 30000 TPA	Yes for all projects	Stand-alone re-rolling mills have low impact potential. It has been exempted because there is no use of chemicals and clean fuel is used. However, other emissions / discharges shall be regulated through the consent mechanism under Air and Water Acts from SPCBs.
26	Change in product mix for Ordinary Portland Cement (OPC), Portland Pozzolana Cement (PPC), Portland Slag Cement (PSC), Masonary cement or any other type of cement within the sanctioned capacity of conditions of prior-EC	Yes	Yes	No change. Change in product mix was allowed within the sanctioned capacity of conditions of prior-EC. This is a clarification to avoid ambiguity
27	Stand-alone projects for melting of 'coal tar pitch'	Yes	Yes	No change. Melting of 'coal tar pitch' is physical activity and low impact potential.
28	Stand-alone Granulation of single super phosphate	Yes	Yes	No change. Granulation of single super phosphate powder is physical activity.

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	powder			
29	Neem coating of fertilizers or fortification of fertilizers, provided that the total production does not exceed the sanctioned capacity of prior-EC plus the weight of the coating or fortification material used	Yes	Yes	No change. The Neem coating of fertilizers or fortification of fertilizers is physical and blending process. Therefore, it has been exempted from requirement of prior EC.
30	Processing of paraffin wax	Yes	Yes	No change. The provision in EIA, 2006 was implicit. It has now been made clear in the draft EIA 2020 to avoid ambiguity
31	Extraction of Alkaloid from Opium	Yes	Yes	No change. Extraction of alkaloid from Opium does not involve any synthesis. The provision in EIA, 2006 was implicit. It has now been made clear in the draft EIA 2020 to avoid ambiguity
32	Manufacturing of products from polymer granules or manmade fibers from granules or flakes or Chips	Yes	Yes	No change. LABSA from LAB does not involve any synthesis. The provision in EIA, 2006 was implicit. It has now been made clear in the draft EIA 2020 to avoid ambiguity.
33	Manufacturing of Linear Alkyl Benzene Sulphonic Acid (LABSA) from LAB	No	Yes	No change. LABSA from LAB does not involve any synthesis. The provision in EIA, 2006 was implicit. It has now been made clear in the draft EIA 2020 to avoid ambiguity.
34	Country Liquor (e.g. based on Mahuwa flower, Cashew, etc.) units up to capacity of 10 kilo liter per Day	Yes	Yes	It has been exempted because the activity is SSI involves use of NTFP and house hold activity for many of Tribal communities for trade.
35	Paper or paper board manufacturing from waste paper or ready pulp without deinking or bleaching or	Yes	Yes	No change. the paper or paper board manufacturing from waste paper or ready pulp without deinking or bleaching or decolorizing is re-cycling industry and low impact potential.

	Decolorizing			Therefore, it has been exempted from requirement of prior EC.
36	Manufacturing unit under the Ministry of Defence or strategic units for explosives, detonators, fuses including management and handling units or depots under the Ministry of Defence	Yes	Yes	This activity is already exempted under the provisions of EIA Notification, 2006. Further, the exemption is only limited to unit under the Ministry of Defence or strategic units.
37	Air strips that do not involve bunkering or refueling facility and / or Air Traffic Control including non-commercial airstrips	Yes	Yes	No change. The exemption is only limited to non-commercial airstrips.
38	Common Effluent Treatment Plant (CETP) proposed for projects which by themselves do not require prior-EC. If any of the existing or proposed member units of the said CETP produces or proposes to produce any product requiring conditions of prior-EC, then the CETP shall need prior-EC	Yes	Yes	No change. This is a clarification to bring the clarity and to avoid the ambiguity. The same has been clarified in EIA Notification, 2006 read with amendment dated 19 th December, 2018.
39	Maintenance dredging	Yes	Yes	No change. The exemption is only limited to maintenance which is carried to upkeep the ports
40	Micro enterprises in respect of project against item numbers 8(a), 8(b), 9, 10(f), 11(a), 11(b), 20, 24, 25(d) and 27 and small enterprises in	No	Yes	These activities are small in nature and has minimal impact on the environment. Further, the exemption is only limited to Micro enterprises and small enterprises in respect of certain categories

respect of project against item numbers 10(f), 24 and 27			
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3. Provisions for handling violation projects

The draft EIA Notification 2020 does not violate the provisions of Environment (Protection) Act, 1986 and does not provide for *ex post facto* clearance to violation cases. The Environment Clearance shall be granted only prospectively as also held by the Hon'ble Supreme Court in the case of Common Cause Vs. Union of India. the Hon'ble courts have, *inter alia*, deliberated on various facets involving "violation" cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. *Indian Council for Enviro-Legal Action Versus Union of India* (the Bichhri village industrial pollution case) (1996 [3] SCC 212); *Alembic Pharmaceuticals Ltd. Versus Rohit Prajapati &Ors.* (2020 SCC Online SC 347); and *Hindustan Copper Limited Versus Union of India* (2014 SCC online JHAR 2157). The salient extracts of the judgments is as below:

Issue 1: Proposal for grant of Environmental Clearance in violation cases -- **to be considered on merits:**

i. **Hon'ble High Court of Jharkhand:**

Hindustan Copper Limited *Versus* Union of India (2014 SCC online JHAR 2157) [28th November, 2014]

Held: *Action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent.*

The proposal for **environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws.**

ii. **Hon'ble Madras High Court:**

Puducherry Environment Protection Association vs. The Union of India W.P.No.11189 of 2017 [13.10.2017]:

Held: The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has**

to be in the negative [para 27].

It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms. [para 29]

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

- i. **Hon'ble Supreme Court:**Common Cause Vs. Union of India (WP (Civil) # 114 of 2014) [2nd Aug. 2017]:
Held: The Environment Clearance will come into force not earlier than its grant;;

Issue 3: 'Principles of Proportionality' – to be applied:

- i. **Hon'ble Supreme Court -**Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati &Ors (Appeal # 1526 of 2016)[1st April, 2020]:

Held:*"this Court must take a balanced approach which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord with the Principle of Proportionality".*

Issue 4: 'Polluters pays' principle – to be applied.

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Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of E (P) Act, 1986.

(i) **Hon'ble Supreme Court:**

Indian Council for Enviro-Legal Action Vs. Union of India (the Bichhri village industrial pollution case)(1996 [3] SCC 212) [13th. February, 1996]:

Held:

- a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions** ... and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....

b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the "**Polluter Pays**" **Principle**. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".
