

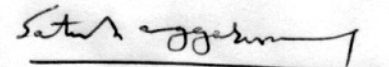
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Ministry of Environment & Forests
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Dated the 25th August, 2010

**Sub: Committee constituted to examine the issues relating to
Monitoring of Projects – Regarding.**

Ministry of Environment & Forests had constituted a Committee under the Chairmanship of Additional Secretary to examine the issues relating to Monitoring of Projects. The Committee has prepared a draft paper suggesting a new approach to monitoring. The draft paper enclosed herewith is put up for inviting comments / suggestions from all concerned before the report of the Committee is finalized. All concerned are requested to give their comments on the Draft Approach Paper latest by 15th September, 2010.



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DRAFT PAPER

Monitoring Compliance of Environment / CRZ Clearance Conditions – A New Approach

1.0 Background:

1.1 The Environment (Protection) Act, 1986 being administered by Ministry of Environment & Forests is an Umbrella Act for protection and improvement of environment and for matters connected therewith. Under the said Act, Ministry has brought out two Notifications namely (i) Coastal Regulation Zone (CRZ) Notification, 1991 and (ii) Environment Impact Assessment (EIA) Notification, 1994 superseded by EIA Notification, 2006 to regulate developmental activities. The CRZ Notification is an area specific Notification applicable only in coastal areas as specified in the said Notification while EIA Notification has its jurisdiction throughout the country. Under the EIA Notification, all developmental activities / processes listed there under are required to obtain prior environmental clearance under the provisions thereof as per the procedure prescribed there under.

1.2 The clearances under CRZ Notification are granted by State Coastal Zone Management Authorities (SCZMAs) / UTCZMAs within the jurisdiction and by MoEF for larger projects. Clearances under EIA Notification, 2006 are granted by MoEF for Category 'A' projects and by State Level Impact Assessment Authorities (SEIAAs) / UT IAAs for Category 'B' projects. While granting environmental clearances under both these Notifications, various conditions and environmental safeguards are stipulated which are required to be implemented by the project proponent during various stages of project cycle. The conditions so prescribed / stipulated are required to be monitored for their effective implementation.

1.3 Besides, the environmental clearance under both these Notifications as mentioned above, the respective SPCBs / UTPCCs grant 'Consent to Establish' and 'Consent to Operate' to various projects under the provisions of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981. While issuing these consents, conditions relating to emission and discharge limits as well as other conditions are stipulated. Implementation of these conditions is also required to be monitored for their effective implementation.

1.4 Ministry of Environment & Forests had during the last few years undertaken review of the regulatory framework relating to environmental clearance and as a result the EIA Notification, 1994 was superseded by the re-engineered EIA Notification, 2006. The regulatory framework relating to coastal regulation zone is also presently under review. It has been realized that while the regulatory

framework has been reviewed and made more comprehensive and effective, the monitoring mechanism in place for effective implementation of the stipulated conditions and environmental safeguards in the project cycle also needs to be reviewed and strengthened to make it more effective and transparent.

1.5 Accordingly, a Committee was constituted on 14th December, 2009 under the Chairmanship of Additional Secretary (Impact Assessment) to examine the issues relating to monitoring of projects in the light of EIA Notification, 2006 and inputs contained in the Prof. Swaminathan Report, 2009. The contents of this paper are based on deliberations of this Committee which are being put up as the draft for seeking comments of all concerned in this regard.

2.0 Present System of Monitoring:

2.1 The implementation of the conditions stipulated while granting environmental clearance is monitored by the six Regional Offices of Ministry of Environment & Forests located at Chandigarh, Lucknow, Bhopal, Bhubaneswar, Bangalore and Shillong as per their respective jurisdiction. Besides, the Regional Offices of MoEF, violations of CRZ Notifications are monitored by the National Coastal Zone Management Authority (NCZMA) and State Coastal Zone Management Authorities (SCZMAs). The consent conditions under Water and Air Act are monitored for their implementation by the respective SPCBs / UT PCCs.

2.2 As per the provisions of the EIA Notification, 2006 and as specifically stipulated in the EC letters, the project proponent is also required to submit six monthly reports relating to the status of implementation of the stipulated conditions to the respective Regional Office of MoEF. These reports are also analysed by the Regional Office as well as in the monitoring cell of MoEF. Recently, MoEF, as part of making the whole system of monitoring more transparent, has been asking the project proponent to put the monitoring reports on their website to make it available in the public domain.

3.0 Limitations in the existing system of Monitoring:

3.1 The existing system of monitoring has been analysed to identify the gaps and limitations for their improvement. It has been observed that the existing system of monitoring suffers from short comings due to (i) procedural and administrative deficiencies, (ii) inadequate infrastructure and trained technical manpower and (iii) Legislative deficiencies. The major identified gaps are enumerated as under:-

- All the conditions are not monitored with equal effectiveness;

- The Regional Offices of MoEF are not equipped with laboratory facilities and as such there are limitations in sampling and analysis;
- Monitoring by the zonal offices of CPCB and regional offices of SPCBs is essentially limited to the monitoring of conditions relating to emission and discharged standards (pollution control conditions);
- Monitoring by SCZMAs does not meet the challenges involved keeping in view the magnitude of work;
- The monitoring results by private labs (3rd party monitoring) are unreliable;
- Self monitoring by industries is not very effective;
- Lack of transparency due to non availability of monitoring reports on the website of the regulatory authority as well as the proponent;
- Limited availability of trained and skilled manpower with the regulatory authorities keeping in view the quantum of work involved;
- The Environment (Protection) Act as it exists today neither deterrent nor punitive enough.

4.0 Classification of EC / CRZ Conditions:

The EC / CRZ conditions may be classified into four categories based on the project cycle and would need to be monitored at each stage. The focus of monitoring will depend upon the nature of the condition and the stage at which it is being monitored. The four stages of monitoring based on project cycle are:-

- Pre-construction Phase
- Construction Phase
- Operation Phase
- Post Operation / Decommissioning Phase.

4.1 Pre-construction and Construction Phase:

The EC conditions during pre-construction and construction phases are such which may essentially require physical monitoring only. Such conditions may relate adherence to the approved layout plan, obtaining all the regulatory clearances, implementation of R&R plan, addressing the social issues, earmarking of space for various facilities, provision for waste disposal, rainwater harvesting, topsoil management, provision of infrastructure facilities for construction workers etc.

Projects especially relating to construction sector, highways, river valley and hydro-electric projects, ports and harbor would have their impacts essentially during

construction phase and hence would require rigorous monitoring of EC conditions during construction phase.

4.2 Operation Phase:

The EC conditions during operation phase would require sampling and analysis to ensure their adherence to the prescribed emission and discharge standards and to ensure that the national ambient air quality standards are not violated. In case of industrial projects such as chemical industry, metallurgical industries, thermal power projects etc. the maximum impacts will be during their operation phase due to emission and discharges which need to be monitored and kept under control. It would also need to be ensured that recycling and reuse is practiced for optimization of resource utilization and waste minimization and management. Safety of operation and the conditions related there with such as mine safety, dump slope stabilization, breach of tailing pond / ash dyke, storage of hazardous chemicals would require special attention and monitoring. In addition, occupational health aspects, completion of R&R, activities relating to CSR, greenbelt development and plantations and other issues which gain importance during operation phase and their effective implementation would be a pre-requisite for ensuring sustainable development. Besides, sharing of information in the public domain particularly relating to environmental scenario in the area, pollution load (discharges and emissions) from the project / activity is also required to be carried out during this phase.

4.3 Post Operation / Decommissioning Phase:

Post operation / de-commissioning phase attains significant importance in certain specific projects such as mining (reclamation and restoration of mined out areas and mine closure), site closure for TSDF and de-commissioning of nuclear power plants and related facilities. Monitoring of EC conditions and environmental safeguards during post operation phase would be very much desirable and critical in respect of such projects.

5.0 New Approach to Monitoring EC / CRZ Compliance:

Keeping in view the limitations of the existing system of monitoring and analysis of the EC conditions during different stages of project cycle, a new approach to monitoring of EC / CRZ compliance has been envisaged which is based on the following components:-

- (i) Generation of synergy amongst the available resources in terms of manpower laboratory facilities and other infrastructure.
- (ii) Involvement of specialized agencies / institutions in monitoring EC compliance.
- (iii) Transparent self monitoring by project proponent.
- (iv) Enhancement of penalty and Environment (Protection) Act.
- (v) Use of IT / Space Technology for inter agency coordination, putting information in public domain and checking of CRZ violations.

5.1 Synergy of available Resources:

Synergy amongst the various agencies presently involved in monitoring namely CPCB, SPCBs, SCZMAs and the Regional Offices of MoEF need to be generated so as to maximize the output with minimal constraints on the resources. The laboratory facilities and related field infrastructure available with the CPCB and SPCBs may also be optimally utilized for sampling and monitoring of emission and discharges from various units as also to utilize the results of air and water quality network established by these organizations.

Third party monitored data may also be crossed checked by SPCBs for their reliability and authenticity. It would also helped in establishing a reliable data base on environmental parameters in different regions of the country, which may be useful in establishing the trend and decision making for sustainable development planning.

5.2 Involvement of Specialized Agencies / Institutions in EC Compliance Monitoring:

The various specialized agencies / institutions, depending upon their area of expertise may be associated with the EC compliance monitoring. Based on the preliminary exercise, some of the institutions have been identified for their possible association (the list is representative and not comprehensive) as given below:

Area	Possible Institutions
Physical Monitoring during pre-construction and construction phase	ROs of MoEF
Air Pollution, Water Pollution, compliance with emission/discharge standards, Hazardous Waste Management	CPCB, SPCBs / UTPCCs
Green Belt / Plantation / Compensatory	ICFRE, FSI, ICAR, WII, Central Soil and

Afforestation, Catchment Area & Command Area Development, Biodiversity Conservation	Water Conservation Research and Training Institute
OB / Tailings Management Mine Closure Plan Mine Safety	IBM, Central Mining Research Institute, Indian School of Mines DGMS
Energy Efficiency Building Layout, Rainwater Harvesting and other conditions for construction projects	BEE School of Planning and Architecture
Radioactive Pollutants Nuclear Waste Management	Health Physics Division, Environmental Surveillance Labs, BARC AERB
Marine / Oceanography related issues and CRZ Issues	NIO, Goa, NIOT, Chennai, NCSCM, SAC, Ahmedabad and SCZMAS

5.3 Transparency in Self Monitoring by Project Proponent:

To ensure transparency in monitoring of compliance of EC conditions by the project proponent, the results of monitoring need to be shared with all concerned to allay any apprehension regarding the working of the unit. The following action on the part of the project proponent may help achieve the same.

- The project proponent should ensure compliance with the stipulated conditions with the help of in-house team of experts
- The status of compliance should be reported to MoEF and its ROs, CPCB, SPCBs and also put on the website of the company, display board at a prominent place near the main gate
- Each unit should identified a senior person both at plant level and at company level who will be liable for non-compliance, analogous to the position of mines manager under the Mines Act.

5.4 Enhancement of Penalty under Environment (Protection) Act:

The existing quantum of penalty prescribed under the Environment (Protection) Act, 1986 is too meager and also the process involved imposing penalty is so cumbersome and time consuming that it makes the law neither deterrent nor punitive enough. It may, therefore, be desirable that:

- The quantum of penalty for non-compliance of the EC conditions may be made sufficiently high and there may not be any ceiling on the quantum of penalty amount for serious offences.
- Serious offences may be made cognizable by police and non bail-able.
- The process of imposing penalty need to be made swifter and prompt in terms of payment of penalty.

5.5 Use of IT / Satellite Technology:

With the emerging frontiers of technology particularly in the field of communication and information technology, it may be desirable to use this technology for enhanced inter-action and coordination among various regulatory agencies. The following guidelines may help in this regard:-

- The compliance reports may be put on the website and updated regularly based on the compliance status provided by the proponent as well as by the monitoring agencies.
- Action taken or proposed by Government Authority or Courts should also be put in public domain.
- Use of Satellite imageries for pollution monitoring and CRZ encroachments / violations should be encouraged.

6.0 Format of Reporting:

Based on the monitoring carried out by one of the agencies, reporting of the observations made during monitoring / inspections is an important aspect for taking effective follow up post monitoring action. It may, therefore, be desirable that a format of reporting is developed so that the reports submitted by various agencies / individuals are mutually cohesive. The conditions whose compliance is quantifiable such as air and water quality, emissions and discharges, quantity of waste generation, extent of recycling and reuse adopted in the project, area covered under plantation, area reclaimed, details of R&R and CSR etc should be reported in quantitative terms. The conditions which need to be complied over a period of time should be backed by a time bound action plan with pert chart to indicate the slippage, if any. Thus, the monitoring report should focus and bring out the following:-

- (i) Availability of all the requisite statutory clearances for the project.
- (ii) Compliance with the physical conditions.
- (iii) Compliance with the notified emissions and discharge standards.

- (iv) Compliance with the conditions required to be implemented *pari passu* with the project and the slippage, if any.

7.0 Analysis of Monitoring Report:

The monitoring reports need to be analysed to assess the degree of non-compliance for the purpose of initiating action under the provisions of Environment (Protection) Act, 1986. Based on the severity of non-compliance, actions may be contemplated against the non-compliant units.

8.0 Post Monitoring Actions:

Based on the analysis of monitoring report, actions may be initiatives at different levels. Cases where significant non-compliance have been reported such as violation of the prescribed standards, action may be initiatives by the Monitoring Cell in the Ministry based on the recommendations of the concerned Regional Office. In respect of cases where there is partial non-compliance such as slippage of targets, simple follow-up by the Regional Office may suffice. Even the partial non-compliance beyond a certain time frame may qualify in the category of serious non-compliance attracting actions under the EP Act. Thus, depending upon the degree of non-compliance and its severity, actions could be:

- Persuasive and
- Punitive

9.0 What will it involve?

To effectively implement the approach proposed in the preceding pages, for monitoring compliance of the EC / CRZ conditions, various actions would need to be taken which are summarized as under:-

- (i) Strengthening of Regional Offices of MoEF, CPCB and SPCBs.
- (ii) Discussion between identified institutions to decide on the details of the work and procedure to be followed in this regard.
- (iii) To develop a mechanism for funding of these institutions / agencies to be involved in the monitoring.
- (iv) Delegation of powers to these institutions / agencies under section 5 of the EP Act.

- (v) Amendment to EP Act to enhance the penalty for non-compliance.
- (vi) Innovative methods of involving various stakeholders such as Industry Association, NGOs and Civil Society.

10.0 Concluding Remarks:

The approach for monitoring compliance to the EC / CRZ conditions proposed in this paper is an outcome of the deliberation of the Committee based on the experience of various members and discussion held in this regard. This paper outlines the way forward for strengthening and streamlining the process for transparent monitoring mechanism. The draft paper has been prepared to initiate discussions and to see further comments from all concerned before finalizing the report of the Monitoring Committee.
