Manthan Adhyayan Kendra
मंथन अध्ययन कद्र

29 Jun 2020

To,
Secretary,
Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan,
Jor Bagh Road,
Aliganj,
New Delhi-110 003

SENT BY: EMAIL to eia2020-moefcc@gov.in

Subject: Comments on the Draft Environment Impact Assessment Notification, 2020
PART 3 of 3: "Comments on Specific Provisions and Clauses."

Dear Sir,

Please find enclosed the PART 3 of 3 part comments by Manthan Adhyayan Kendra, Pune on the Draft Environment Impact Assessment Notification, 2020. Manthan Adhyayan Kendra is an organization researching and monitoring issues of water, environment and development.

With this email / letter, we are enclosing PART 3 of our comments, namely "**Comments on Specific Provisions and Clauses**." The other parts have already been sent separately. The other two parts are:

Part 1: "Comments specific to provisions related to Inland Waterways." [Already sent on 29 Apr 2020]

Part 2: Comments related to restructuring of the EIA/EC process and amendments needed in Draft 2020 Notification for the same. [Already sent on 29 Apr 2020]

We also want to state that given the many gaps and problems with the Draft 20202, as shown in parts 1,2, and 3 of our comments, we suggest this draft be scrapped altogether and a new comprehensive EIA/EC framework be brought out.

We hope these comments will be considered and incorporated in the final Notification. We request you to please send us acknowledgement of the receipt of these comments.

Sincerely,

Shripad Dharmadhikary, Coordinator, Manthan Adhyayan Kendra, Pune

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Comments from Manthan Adhyayan Kendra, Pune
on EIA draft Notification 2020

PART 3 -COMMENTS ON SPECIFIC PROVISIONS AND CLAUSES

PROCEDURAL COMMENTS

1. This new Draft EIA notification 2020 should be made available in every official language mentioned in the 8th schedule of the constitution. This is to ensure effective public participation.
2. Public consultations should not be limited just to seeking comments on the soft copy of the draft, as this will leave out many people from participating. Regional or state level consultations should be organised, especially in areas where environment is badly affected and / or likely to be so affected.

COMMENTS ON SPECIFIC PROVISIONS AND CLAUSES - LIST

The comments on specific provisions and clauses are listed below and elaborated after the list.

3. Include River-Bed Dredging In The Definition of Capital Dredging
4. Revamp Concept, Definition and Process of Environment Impact Assessment and EIA Report
5. Definition of Expansion Should be the Dictionary Definition with No Lower Limits to Assess Impacts
6. Change Criteria and Framework of Categorisation of Projects in A, B1 and B2 Category
7. Include Decommissioning in the Project Life Cycle
8. Scope of Public Consultation Should not be Narrowed Down
9. Levelling of Land Prior to EC Should Not be Allowed
10. Lack of Transparency on “Strategic Considerations” is Too Sweeping
11. Restructuring and Reforming the EAC
12. Restore Right of EAC to Prescribe Additional TOR
13. Validity of ToRs and ECs is Excessive: Reduce It
14. Baseline Data Should be Collected for the Full Year
15. For Assessing Expansion Use all Data Available

16. EAC Should have Powers to Seek Extra Studies As Needed

17. Minutes of EAC Meetings Should be Public Right Away after the Meeting

18. Concealment or Submission of False Information Should lead to Automatic Rejection

19. Significant Amendments to EC Should Requirement Additional EIA and Public Hearing

20. All Documents to be Made Available in Public Domain

21. Compliance Monitoring to be Every Six Months

22. Liability for Violations in Case of Transfer of EC

23. Who can take cognisance of violations

24. Provision for Post Facto Clearance in Case of Violations Be Deleted

25. Addressing Non-Compliance is Very Weak

26. Don't Use DMF for Implementation of EMP

27. List of Projects Exempted from EC is too Sweeping

28. Schedule Entries

COMMENTS ON SPECIFIC PROVISIONS AND CLAUSES – DETAILED REASONING AND RECOMMMENDATIONS

3. Include River-Bed Dredging In The Definition of Capital Dredging

Relevant Provisions: Clause 3(8) defines "Capital dredging" as a "one-time process" involving removal of virgin material from the sea bed …

Our Reason/Justification: As river-bed dredging also has huge environmental impacts, and many of the inland waterways will require capital dredging in rivers, the definition should include dredging from river bed also. Further, capital dredging is often, but not always, only a one time process.

Our Suggestion: Capital Dredging be defined as: "means an infrequent, usually but not always first time, process involving removal of sediment, which is generally virgin material from the sea bed or river bed to create, or deepen a shipping channel in order to serve larger ships. This includes dredging activity inside and outside the ports or harbours, channels, river ports and terminals ;"

4. Revamp Concept, Definition and Process of Environment Impact Assessment and EIA Report

Relevant Provisions: Clause 3(23) defines "Environment Impact Assessment (hereinafter referred to as 'EIA') Report" as the document prepared by the Project Proponent through an ACO for the proposed project based on the Terms of Reference prescribed by the Regulatory Authority and as per the generic structure given in the Appendix-X of this notification;

Our Reason/Justification: When an EIA is prepared by the Project Proponent, this represents a significant conflict of interest as the PP is keen to show that his proposed project does not have many impacts, else it may get rejected or at least have higher mitigation costs. Similar conflict exists in the PP selecting the ACO, and making a direct payment to it. Moreover, when the EIA is prepared by the ACO, as is done today, local communities, especially affected communities are completely left out. They not only have deep understanding of the local environment, but as affected people, have a right to ensure that impacts are fully assessed. Thus, current method of EIA leads to lack of credibility and quality of EIAs, and inadequate participation.

Our Suggestion: EIA should be prepared by an independent, credible agency – like an EIA Unit which could be autonomous - which will select the ACO based on a existing roster. Payments should be made by PP to the EIA Unit, which will pay the costs of carrying out the EIA. Methodology of preparing the EIA must include joint preparation by ACO and local communities. A peer review of the EIA should be carried out by the EIA Unit and a plagiarism check should be a standard feature before accepting any EIA.

In this matter, it is important to note that the Rule for the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* that deal with the Social Impact Assessment (SIA) offer a very good framework which can be adopted by the MoEFCC here.

So we suggest that the definition, as well as other provisions relating to the EIA Report and its preparation be amended accordingly.

We also suggest, as detailed in the Part 2 of our submissions that EIAs of individual projects must be located within higher level impact assessments like strategic impact assessment, regional impact assessment and sectoral impact assessments. These higher level impact assessments should be carried out before and independently of project level assessments and must be updated on regular basis.

5. Definition of Expansion Should be the Dictionary Definition with No Lower Limits to Assess Impacts

Relevant Provisions: Clause 3(26) defines: "Expansion" to mean any increase in project parameters like area, production as, but "beyond the limits specified for the concerned project", in the schedule or prior-EC or prior-EP, as the case may be, obtained.

Our Reason/Justification **:** This means that if expansion is below this limit, then it won't be counted as expansion. Such limits are then used to provide for whether the project needs to

do any EIA, public hearing or get EC/EP. This is not correct as there could even small "expansions" that have major impacts.

The provisions related to expansion in Clause 16(1) that layout level of scrutiny and public consultation for expansion are problematic as they link these to extent (quantum) of expansion and not impact of expansion. For e.g. they imply that a mine could expand capacity thru "modernisation" up to 25% and not need an EIA, nor any Public Hearing even with 50% increase in capacity. But impacts would be quite high.

Our Suggestion: The definition of "expansion" should be the dictionary definition, and every project that wants to expand any of the parameters should undergo "screening" and based on this, the level of scrutiny can be decided. Public hearing should be mandatory for all expansion cases.

6. Change Criteria and Framework of Categorisation of Projects in A, B1 and B2 Category

Relevant Provisions: The Draft 2020 categorises projects as A, B1 and B2 with B2 projects not requiring to do any EIA, public hearing and in overwhelming cases not having to go through the appraisal process. General conditions as per Clause 3(30) provides for appraisal of a B1 category project at the central level if certain conditions are met, but the project category does not change.

Our Reason/Justification: This way of categorisation leaves a large number of projects (the B2 projects) out of the scope of any meaningful scrutiny. This is a problem because many of the B2 category projects have serious environmental impacts – for example, inland waterways. Also, exempting B2 category projects from General conditions is problematic for the same reasons. Last but not the least, even in categories of projects that usually may smaller impacts – e.g. small hydro – individual projects could have high impacts. Given this, there is no rationale in exempting *any* project from a proper EIA and appraisal.

An appraisal process ensures that the project proponent has taken every measure to curtail all the social and environmental impact arising due to that project. The procedure of Issuance of prior-EP (Environmental permission) by merely checking for the completion of the project application and providing clearance is virtually no scrutiny in terms of protection of environment.

Draft 2020 proposes only an EMP report for B2 projects and no EIA. But an EMP report without an EIA is really meaningless and illogical – how can you manage the impacts that you don't know? Given that many category B2 projects have very high impacts, a full and proper EIA is a must.
Our Suggestion: The categorisation of A and B should be changed back to the earlier framework where category A are project to be examined at the central level and B at the state level. Category A projects should be subjected to full EIA, public hearing, appraisal etc. Category B projects should undergo a screening process, which will determine the level of EIA that needs to be carried out for the projects, though *every project would need to have its impact assessed through a proper EIA*. Public hearing should be mandatory in case of all

projects across all the categories without any exemption. This will also restore the autonomy of the SEAC to the extent of deciding how to treat B category projects.

General conditions that require a B category project to be assessed as an A category should apply to all B category projects. The general conditions should 10 km as the distance criteria and not 5 km as is being proposed for some cases now.

7. Include Decommissioning in the Project Life Cycle

Relevant Provisions: Clause 3(44) defines "Project Life" to include phases of (iii) redundancy or closure or dismantling;

Our Reason/Justification: Project closure in case of several projects would include a process of "decommissioning the project" which would, among other things, include disposal of wastes generated and site remediation. This is not captured in the words "dismantling" or "closure".

Our Suggestion: The word "decommissioning" should be added in the part (iii) of the phases.

8. Scope of Public Consultation Should not be Narrowed Down

Relevant Provisions: Clause 3(46) defines "Public Consultation" to mean "the process by which the concerns of local affected persons and others, who have plausible stake in the environmental impact of the project, are ascertained with a view to appropriately take into account all such material concerns while designing the project." Clause 14(2)(e) lists projects and activities that are exempt from any public consultation. Clause 14(8) allows doing away with a public hearing if local situation is found not to be conducive.

Our Reason/Justification: The use of the word "plausible stakes" can be used as a criteria to exclude from the public consultation many people who are concerned about the environmental impacts of the project. A public consultation should be genuinely public. It may be mentioned here that the Article 51A (g) of the Constitution lists protecting and improvement the environment as the fundamental duty of every citizen; this Article gives every citizen a plausible stake in the public hearing, so the words plausible stake are really redundant. Excluding any citizen from the public consultation is tantamount to obstructing her or him from performing this constitutional duty. The Notification cannot be above the Constitution.

Other provisions related to Public Hearing are also problematic as they do not explicitly require that draft EIAs should be made available on websites of MoEFCC, respective state pollution control board and project promoter; require draft EIA to be available only "till Public Hearing is over" (Appendix I, Cl 2.2) and that there is no provision to provide full EIA in local (not necessarily State) language. Often, the EIA even in local language is too technical for the local communities to understand fully.

The public hearing is the only forum where people directly affected by the project have a chance to give their opinion. Under circumstances, giving exemption from public

consultation to any project is undermining democratic principles and transparency. Hence, it has to be used in the rarest case.

Further, for the same reason, cancelling a public hearing because local situation is not conducive is highly problematic. Often, this is precisely because the local sentiment is against the project.

Our Suggestion: The words 'plausible stake in the environmental impact of the project' should be removed from the definition of Public Consultation and should be replaced with the words "any concerned person".

Further there should be an explicit provision that the *full* Draft EIA will be made available in soft copy on the websites of MoEFCC, respective state pollution control board and project promoter and will remain there in perpetuity. Last but not the least, draft EIA in full must be made available in local language (which may be different from state language).

A process must be provided for where camps are held in several parts of the affected area where the draft EIA is explained in simple terms to local people and their queries answered so that they have a proper understanding of what the EIA says. This will help them participate in an informed manner in the Public Hearing.

No project or activity should be exempted from public consultation, except specific projects involving national defence and security, and these should be also defined very strictly (See our point no. 10) and even in such cases attempts must be made to provide as much chance to people to express their opinion as possible. Liner projects must include public consultation through their right of way, and not just where they pass ecologically protect areas, as they can have serious impacts everywhere. (E.g. canals can disrupt drainage).

If local situation is not conducive, various methods of making it conducive should be tried, but under no circumstances should a public hearing be done away with.

Time available for public hearing process has been shortened, that needs to be restored to the EIA 2006 provisions.

9. Levelling of Land Prior to EC Should Not be Allowed

Relevant Provisions: Clause 4(3) excludes 'fencing and compound wall' and 'levelling of the land without any tree felling' from definition of 'construction work' allowing such levelling to take place before obtaining EC.

Our Reason/Justification: Both these can have impacts on the environment, for example, compound wall can affect drainage.

Our Suggestion: Both these activities should be not be included in the exclusions of "construction" and neither should be permitted before EC.

10. Lack of Transparency on "Strategic Considerations" is Too Sweeping

Relevant Provisions: Clause 5(7) talks about "All projects concerning national defence and security or involving other strategic considerations, as determined by the Central Government" and says that "no information relating to such projects shall be placed in public domain".

Our Reason/Justification: This is a too sweeping an exemption and put large discretion in the hands of Central Government and liable to be misused.

Our Suggestion: The projects given exclusion of information must be very sharply and narrowly defined, and any discretionary power must have proper procedure of scrutiny by an independent body like the NGT and the clause should provide for use only in exceptional circumstances. Even in projects accepted as involving national defence or strategic considerations, information should be provide to general public after redacting sensitive parts.

11. Restructuring and Reforming the EAC

Please see Part – 2 of our submissions for detailed submissions on this aspect.

Relevant Provisions: The relevant provisions provide for the composition of the EAC, its functioning and eligibility criteria for the chair among other things. Clause 6(2) provides that the tenure of the EAC shall not be more than three years.

Our Reason/Justification: While the chair of EAC should be strictly filled only by person having experience in environmental sector, we find often retired bureaucrats with little grounding in environment being appointed Chair. No member is full time and hence they are not able to do justice to the load of the number of projects and the study that is needed to be able to assess properly.

Our Suggestion: Primary and necessary criteria for selecting the person for Chair of EACs should be outstanding environmentalist or ecologist, or eminent environmental policy expert who has a demonstrated contribution to environmental conservation and sustainable development. The criteria in Draft 2020 also allow Chair to be appointed from someone who is eminent and has experience "in management or in public administration dealing with various developmental sectors." This criteria can be stated as at most an additional advantage over and above the environmental experience and strictly cannot be in lieu of it.

12. Restore Right of EAC to Prescribe Additional TOR

Relevant Provisions: Clause 12(4) says that "In case, the Regulatory Authority does not refer the matter to the Appraisal Committee within 30 days of date of application in Form-I, sector specific Standard ToR shall be issued, online, on 30th day, by the Regulatory Authority."

Our Reason/Justification: This mean the Expert Appraisal Committee loses the right to issue ToR or reject project at ToR stage in case Regulatory Authority does not refer the project to it. This places too much discretion in the hands of Regulatory Authority not to refer the matter to EAC for grant of ToR, and undermines the EAC.

Our Suggestion: Drop this section of the provision and provide explicitly that Regulatory Authority must refer all applications to EAC, and that the EAC retains its right to issue additional ToR no matter when it first examines the project for scoping.

13. Validity of ToRs and ECs is Excessive: Reduce It

Relevant Provisions: Clause 12(7) puts the validity of The Terms of Reference for River valley projects at 5 years, and for all others at four years from the date of issue. Similarly, Clause 19 puts validity of EC for construction / installing phase for mining projects at 50 years, river valley projects at 15 years and others at 10 years.

Our Reason/Justification: Validity of ToR for 4 to 5 Years is too high. A lot can change in those 4-5 years in that landscape. Even the validity of baseline data collected by the project proponent to prepare EIA reports is given 3 years in this new draft itself. Similarly, validity of EC as above is also very high, for same reasons.

Our Suggestion: Validity of ToRs in all cases should be 2 years. Validity of EC for all projects should be maximum 7 years.

14. Baseline Data Should be Collected for the Full Year

Relevant Provisions: Clause 13(2) requires baseline data to be collected for one season other than monsoon for EIA Report in respect of all projects other than River Valley projects.

Our Reason/Justification: Baseline data collected for one particular season, that also excluding monsoon, is not enough to assess the year-round environmental impact of the project. Basic environmental principles say that the each season has a different role to play in the life cycle of flora – fauna and ecology.

Our Suggestion: Baseline data should be prepared for all the seasons for all projects.

15. For Assessing Expansion Use all Data Available

Relevant Provisions: Clause 13(7) says “The post-project monitoring data collected through an environment laboratory duly notified under Environment (Protection) Act, 1986 shall also considered for expansion or modernization of the projects.”

Our Reason/Justification: Why only data collected through ‘environment laboratory’; because, if it is exclusive to them, will things like CEMS not be accounted for as part of post project monitoring data to be considered while expansion/modernisation of projects?

Our Suggestion: All available data including CEMS data should be considered for assessing expansion in addition to data collected as post-project monitoring by an environmental lab.

16. EAC Should have Powers to Seek Extra Studies As Needed

Relevant Provisions: Clause 15(7) says **"**No fresh studies shall be sought by the Appraisal Committee at the time of appraisal, unless new facts come to the notice of the Appraisal Committee and it becomes inevitable to seek additional studies from the project proponent and same shall be clearly reflected in the minutes of the meeting."

Our Reason/Justification: This is the first time EAC will see the EIA; so it may want fresh studies. Often, the EIA itself will reveal gaps that need more studies. This provision is unnecessarily restrictive and tends to cast a shadow on the discretion of the EAC and undermines it.

Our Suggestion: Delete this clause.

17. Minutes of EAC Meetings Should be Public Right Away after the Meeting

Relevant Provisions: Clause 17(4) states that "On expiry of the period specified for decision by the Regulatory Authority under subclause (2) above, the decision of the Regulatory Authority, and the final recommendations of the Appraisal Committee shall be public documents."

Our Reason/Justification: This means that the minutes of the EAC would not be out till 30/45 days.

Our Suggestion: This provision should be dropped and replaced by one which says that minutes of the EAC meeting including recommendation of the EAC should be made public in a week after the meeting. And the decision of the regulatory authority be made public soon as it is taken and formalised.

18. Concealment or Submission of False Information Should lead to Automatic Rejection

Relevant Provisions: Clause 17(6) says that **"**Concealment and/or submission of false or incorrect or misleading information or data … shall make the application liable for rejection, and cancellation of prior-EC or prior-EP….shall be decided by the Regulatory Authority, after giving a personal hearing to the project proponent, and following the principles of natural justice."

Our Reason/Justification: This is problematic as this allows time for the project proponent to continue with activities that can make the project *fait accompli*. Moreover, making such concealment or false information only "liable" for rejection is to leave open a loophole to let them escape consequences.

Our Suggestion: The process of personal hearing of the project proponent should be limited to and related to establishing that the concealment of information or submission of false information has happened. Once this is established, rejection of proposal or cancellation of EC if granted, should be automatic. As should the black-listing of the ACO, EIA coordinator, and the Project Promoter. PP should not be allowed to apply again with this or any other project for 2 years. Project itself should have to start application process de novo. Clause 17(7) that enables for Ministry to take action on blacklisting should make such balcklisting automatic on cognisance of false or incorrect or misleading data.

19. Significant Amendments to EC Should Requirement Additional EIA and Public Hearing

Relevant Provisions: Clause 18(1) states "The project proponent shall make an online application in Form-4 to the Regulatory Authority concerned on the designated portal regarding any change in the terms and conditions of prior-EC or prior-EP, as the case may be." Subsequent clauses require appraisal in 45 days.

Our Reason/Justification: No mention is made of supplementary EIA or public hearing in case of significant amendments in the main clauses. The Form-4 does include in its check list of documents an addendum to EIA/EMP but there it is not mentioned in the main clauses.

Our Suggestion: Clauses must explicitly make the provision that EAC will ask for additional or supplementary EIA for significant amendments lime new ash pond, change in transportation method of coal, etc and also call for new public hearing.

20. All Documents to be Made Available in Public Domain

Relevant Provisions: Clause 20(2) says **"**The Regulatory Authority shall place the prior-EC or prior-EP, as the case may be, in the public domain on its designated portal."

Our Reason/Justification: It is not enough to place just the EC or EP in public domain. These are not sufficient to be able to understand full impact of project nor for ensuring follow up that proper mitigation is being implemented.

Our Suggestion: Along with EC, all relevant documents should be placed and remain available on the website including but not limited to Form-1 and all other applications, EIA, EMP, all related documents, additional and supportive studies carried out, compliance and monitoring reports, CEMS data etc.

21. Compliance Monitoring to be Every Six Months

Relevant Provisions: Clause 20(4) requires project proponent to submit compliance reports in respect of conditions stipulated in prior-EC / EP once a year.

Our Reason/Justification: This is not sufficient. EIA 2006 Notification requires six monthly reporting. Even the NGT, in its recent order in the Vizag styrene leakage case has observed that "The present scenario of monitoring once in 4.5 years and planned modification

resulting in monitoring in 2.5 years is farce and does not meet the requirement of law by any standards. As already observed monitoring has to be, as far as possible, quarterly and in no case less than twice a year." And "We are, thus, of the view that for meaningful monitoring, all Category A projects are monitored not less than twice in a year and all Category projects are monitored not less than once in a year." (OA 73/2020, Order Dated 1.06.2020, Principal Bench)

Our Suggestion: Compliance reports should be submitted by PP every six months.

22. Liability for Violations in Case of Transfer of EC

Relevant Provisions: Clause 21(1) discusses the process for transfer of EC to another legal entity.
Our Reason/Justification: While this requires the new holder of EC to give an undertaking that he / she will be bound by the EC conditions, this leaves a certain ambiguity regarding the liability of earlier holder of EC with regards earlier and ongoing violations as well as impacts.
Our Suggestion: In case of previous or ongoing violations/ environmental/health impacts, we suggest that the current holder of EC be held liable for all financial consequences as well as for mitigation and remedial actions (since EC is given to the project) but the earlier holder of EC be held responsible for any criminal liability.

23. Who can take cognisance of violations

Relevant Provisions: Clause 22(1) stats that for violation cases, the cognizance of the violation shall be made on the: -

(a) suo moto application of the project proponent; or
(b) reporting by any Government Authority; or
(c) found during the appraisal by Appraisal Committee; or
(d) found during the processing of application, if any, by the Regulatory Authority

Similar provision is there in Clause 23 (1) in dealing with compliances.

Our Reason/Justification: The absence of role for concerned citizen to also bring in complaints of violations is shocking, since in most cases it is citizens and citizen groups who have highlighted environmental violations. This will make is possible for concerned authority to refuse to take congniscance of citizen complaints.

Our Suggestion: Add to this list (in Clause 22 and 23 both): “complaint made and brought to the notice of the Appraisal Committee or Regulatory authority / MoEFCC by any concerned citizen/citizens/ citizen groups”.

Note: This is not-withstanding our total opposition to the provision for violations (and post-facto award of environmental clearances) which later on these comments we have suggested be deleted totally from Draft 2020.

24. Provision for Post Facto Clearance in Case of Violations Be Deleted

Relevant Provisions: The entire clause 22 proposes that in case projects have gone ahead with construction and operation without environmental clearance, they can secure post-facto clearances

Our Reason/Justification: This provision is completely against basic principles of environmental management as the appraisal has to be done before construction or operation begins, else impact, often irreversible can take place. Such a provision is also completely anti-thetical to the very notion of prior environmental clearances, which is the core of the EIA Notification as well as of the EIA process in India, precisely because environmental principles require EC and EIA to be done prior to the project construction. This provision will actually incentivise project promoters to skip the application for EC and go ahead with project construction and operation without EC.

The Supreme Court (Civil Appeal No. 1526 of 2016, Alembic Pharmaceuticals Ltd., Appellant Versus Rohit Prajapati & Ors.,Respondents, Order dated 4 April 2020) has also strongly criticised such provision, saying

> "The concept of an ex post facto EC is in derogation of the fundamental principles of environmental jurisprudence and is … detrimental to the environment and could lead to irreparable degradation… Allowing for an ex post facto clearance would essentially condone the operation of industrial activities without the grant of an EC. In the absence of an EC, there would be no conditions that would safeguard the environment. … environment law cannot countenance the notion of an ex post facto clearance."

Moreover, the provisions say that "The project proponent shall prepare the report of assessment of ecological damage" which is the most obvious and a serious conflict of interest.

Last but not the least, it allows the grant of post-fact EC on mere payment of fine (and does not insist on any criminal action or blacklisting of the project promoter), inverting the principle of "polluter pays" to its perversion "pay and pollute". The fine imposed is ridiculously low. For example, considering the highest fine (Clause 22(9)) for violation in a category A project, it is rupees 10,000/ day or Rs 36.5 lakh per year, which is a very small amount considering the benefit a project proponent makes from a category A project.

Our Suggestion: This entire provision should be scrapped. Any project found under construction or operating without EC should be shut down, and criminal and civil action taken against its project promoters and they should be blacklisted.

25. Addressing Non-Compliance is Very Weak

Relevant Provisions: Clause 23 deals with action on non-compliance to EC/EP conditions.

Our Reason/Justification: The only action that is proposed is for the non-compliance be reported to a Committee and if this committee finds non-compliance has happened, all it does it it asks the project promoter to comply! Since PP has not complied earlier, it's a moot

question as to why he will do so now. The only difference is that he has to submit a Bank Guarantee, which essentially means that he has to pay only a fine (at most) in case of repeat non-compliance. This entire provision is a sure incentive for non-complying, because after non-compliance in the first instance, and PP can always comply in the case the Committee asks it to comply with no fine or penalty.

Our Suggestion: Any instance of non-compliance even in the first instance should require substantial (and commensurate) penalties and not just an order to comply; and in case of non-compliance that can have health consequences, criminal action also. Repeat of non-compliance must call for higher penalties including suspension of operation of plant and cancellation of EC, depending on the level of offence.

Also, Clause 23(1) should be amended so that cognisance of non-compliance should be taken also on "complaint made and brought to the notice of the Appraisal Committee or Regulatory authority / MoEFCC by any concerned citizen/citizens/ citizen groups". (See

26. Don't Use DMF for Implementation of EMP

Relevant Provisions: Clause 24(3)(b) states that "The District Mineral Fund can also be used to augment the fund for implementation of EIA or EMP, as the case may be."

Our Reason/Justification: Funds from the district mineral foundations are there to be utilized only for the upliftment of the local people in mining affected area. This clause is enabling the project proponent to use funds from DMF for implementing programs like EMP, which are solely the responsibility of the project proponent. This is a mis-use of the DMF.

Our Suggestion: The DMF is to be used to ameliorate impacts of mining, should not be used for EIA/EMP implementation. The EIA/EMP should remain responsibility of Project proponent and part of cost of the project.

27. List of Projects Exempted from EC is too Sweeping

Relevant Provisions: Clause 26 lists projects or activities that are exempted from seeking EC/EP.

Our Reason/Justification: This list is too sweeping and includes a number of activities that have large impacts and should not be granted exemption from EC. We list them below in our suggestions with our reasons.

Our Suggestion: Following items should be taken off the list.

26 (6) Extraction or sourcing or borrowing of ordinary earth for the linear projects such as roads, pipelines, etc. – **Reason:** This can have large impacts on drainage patterns, wildlife corridors etc.

26 (7) Dredging and de-silting of dams, reservoirs, weirs, barrages, river, and canals for the purpose of their maintenance, upkeep and disaster management; - **Reason:** Such dredging can have large impacts, disposal of dredged material can have large impacts, this provision can be misused to exempt dredging for inland waterways from EC.

26 (14) Solar Photo Voltaic (PV) Power projects, Solar Thermal Power Plants and development of Solar Parks, etc. – **Reason**: Some of these are very large projects, require large stretches of land, can have significant impacts.

26(19): Coal and non-coal mineral prospecting; **Reason**: Can have large impacts, especially since such deposits are often in forest and high bio-diversity areas.

26(23): Crushing and screening (sizing of ore) without up gradation process of ore; **Reason**: Can have high impacts, including dust, increase in PM, effluent discharge.

Clause 26(39): Maintenance Dredging; **Reason**: This is one of the most intrusive activities and is done repeatedly and regularly, and has large impacts on riverine and coastal ecosystems and habitats. Will happen on a large scale as the inland waterways and Sagarmala programs are rolled out.

28. Schedule Entries

Relevant Provisions: These comments pertain to the various entires in the Schedule

Our Reason/Justification: Given below with the suggestions

Our Suggestion:

Overall: Eliminate the category B2 as proposed right now, that is, as a category that needs EP and not EC, for which neither EIA, nor public hearing nor appraisal is needed. Instead, restore the B2 as a sub-category of Category B where EIA and Public hearing is mandatory but level of EIA scrutiny may be less.

Note – for the purpose of our comments below, we are assuming that there will be no B2 as proposed in Draft 2020. Meaning of categorisation is as per Notification 2006, which means Category A are projects appraised at the centre and B are those appraised at the state level. All projects, including all those in category B will need EIA, public hearing and appraisal but for B2 category the EIA scrutiny may be of a lesser scale. All projects will undergo screening to decide the category and level of screening.

Entry 3: River Valley. It has been seen that even small hydropower projects can have large impacts. So all hydropower projects must be in category A except those below 25 MW which can be in Category B.

Entry 4: Similarly, all irrigation projects must be under category A or B. We suggest only those below 2000 ha of command area be in category B.

Additional in 3 and 4: There are many river valley projects that have huge impacts but may not be hydropower or irrigation projects. Any intervention in river for purposes like drinking water supply, flood control, embankments, river training works all must be included in the schedule. Any work that includes construction of a "large dam" as per ICOLD or CWC definition must be included in the Category A.

Entry 5: All washery reject based thermal power plants must be included in Category A, regardless of their capacity. These don't seem to be included anywhere in the Schedule.

Entry 7: Deals with Coal Washeries. Limit for inclusion in Category A at 1 MTPA is too high. We suggest that those higher than 0.25 MTPA of raw coal throughput should be in Category A. Washeries are highly polluting, hence this suggestion.

Entry 31 (a) and (b): Includes oil, gas and slurry pipelines in Category A, but only for those going through protected areas. All pipelines should be included, and all should be in Category A.

Entry 32: Includes airports, water heliports including water and terrestrial ports. EAC currently has included water aero ports as Category A projects. These should be inlcuded in Category B.

Also, a clarification is needed here that "water ports" here mean only water aero ports and not those included with waterways or river or sea ports.

Entry 37: Includes ports, harbours, breakwaters capital dredging, waterways. First, the entry should clarify that ports here include river ports or terminals associated with inland waterways.

Second, all projects in respect of inland waterways should be included in Category A projects. This is because they are have very high impacts, and that is also the recommendation of the expert committee of MoEFCC. (Please see Part 1 of our Submissions/ Comments for Details).

Third, maintenance dredging should also be included here with capital dredging and should be in Category A. This is what the EAC has also done in several cases right now. (E.g. Goa waterways given ToRs as Category A projects).

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