May, 2017 Vol II

AIR LAW & POLICY Reporter

An update on legal and policy development in the field of Air Pollution in India

ONE STEP FORWARD, TWO STEPS BACKWARD

We are living in the age of contradictions. Nothing exemplifies it better than the approach of the Court and the Government in dealing with the issue of air pollution. The Supreme Court and the National Green Tribunal have aggressively taken up the issue of controlling air pollution, at least in the National Capital Region. The Graded Response Action Plan, the regulation on furnace oil, the introduction of 'destination buses', mechanical cleaning of roads, control over stubble burning are some of the initiatives taken by the Court in addressing the issue of air pollution. However, what is a cause of serious concern is that series of amendments and notifications have been made by the Ministry of Environment, Forest and Climate Change as well as CPCB exempting a range of activities from application of the Air (Prevention and Control of Pollution) Act, 1981. Consent under the Air Act will no longer be required for residential buildings as well as a range of industries categorised as 'white industries'. Not a thought has been given as to how such exemption will impact the air quality. The Building and Construction sector which is a major contributor to air pollution as well as other environmental impact have been largely exempted from the Environment Impact Assessment process. All this has been done in the name of 'Ease of Doing Business'.

Air pollution cannot be tackled unless we take a comprehensive and coordinated approach to deal with it. The Pollution Control Boards lack institutional capacity to deal with air pollution.

Information obtained under RTI revealed that most Pollution Control Board continue to be headed by IAS and IFS officers despite specific direction of the National Green Tribunal that only people with specialised knowledge should occupy these posts.

There seems to be no seriousness on the part of either the Government or the power companies in implementing the emission norms for Thermal Power Plants notified in December 2015. Power projects continue to be approved by the Expert Appraisal Committee without reference to the new standards. There is very remote likelihood that the standards will be enforced at all. In such a situation, it will be again the Courts which will have to pass directions to the Government to implement the new emission norms. The Government on its part will view it as a case of 'judicial overreach'. As the tug of war takes places between the Judiciary and the Executive, it is the health of the people and countless flora and fauna which will bear the fatal consequences of air pollution.

This edition of the Air Law and Policy Reporter covers the orders and directions of both Supreme Court and National Green Tribunal as well as largely regressive orders issued by the MoEF&CC with respect to air pollution.

Ritwick Dutta

IS GRAP THE ULTIMATE SOLUTION?

The Central Pollution Control Board framed and submitted a Graded Response Action Plan (**GRAP**) for different categories of National Air Quality Index (**AQI**) as directed by the Supreme Court in the case *MC Mehta Vs. UoI vide* its order dated 2nd December 2016.

The GRAP divides AQI into six categories: Good (0-50), Satisfactory (51-100), Moderately polluted (101-200), Poor (201-300), Very poor (301-400) and Severe (401-500) and elaborates the actions that must be taken by Delhi and NCR (Uttar Pradesh, Haryana and Rajasthan) according to the pollution levels in the respective states. The purpose of the GRAP is for Delhi and NCR (**States**) to take effective steps to combat public health emergencies and keep the general public informed and updated on the level of air pollution.

While the step to formulate GRAP is definitely a stride forward towards controlling air pollution, there are some gaps that exist which require deliberation.

- For starters, the GRAP states, "for the purpose of smog alert and pollution emergency action **the data from the available monitoring grid in Delhi will be considered for entire NCR** as it is a common air shed". This raises a number of questions:

a) The sources of the pollutants may be located in any one of the said states. Eg. crop burning in Punjab or a particular industrial cluster. For the pollutant to first reach Delhi, then show up on the readings in Delhi and then finally take action is time consuming, inaccurate and renders the purpose of GRAP futile in other states.

b) The need for certain actions to curb pollution may be region specific and declaring action based on the readings of only one state may be ineffective and unnecessary rendering a standstill in the states where such actions need not be taken. The actions are required to be taken after informed deliberation with respect to the source of pollution.

c) Resorting to an umbrella action in all States based on the air quality readings in one state is certainly dubious.

- **Issue of Air Monitoring Stations**

The entire GRAP has been formulated with actions that depend on the AQI collected in the monitoring stations in Delhi. The need to take actions depending on the data collected through various monitoring stations located around NCR (Delhi, Uttar Pradesh, Haryana and

Rajasthan) and Punjab (for actions related to stubble burning only) has already been stressed upon herein above. The issue that then comes forward is the availability of operating, automatic and reliable monitoring stations in these States. The AQI will depend on the number of monitoring stations and their locations. The data from these stations are essential to the successful implementation of GRAP and therefore the need to establish more monitoring stations in the said regions, distributed evenly between industrial and residential areas is important.

- **One of the largest causes and contribution of air pollution are the pollutants from other states.**

The GRAP overlooks the factor that air pollution transcends physical boundaries. If the air pollution in other states is not controlled and they continue to pollute, then the actions taken under GRAP will have no effect. Moreover, the actions under GRAP are mandated upon Punjab only to the extent of crop burning related activities, it overlooks other factors of contribution in Punjab. In an analysis conducted by eRc (EIA Resource and Response Centre, Delhi), for the year 2016, mining of minor minerals form almost 54 percent of the entire project work undertaken in Punjab and almost 40 percent of the projects are construction activities, both of which are huge contributors to air pollution. The effectiveness of GRAP would therefore be much more if similar measures are extended to other states.

- **The actions specified are not preventive but restorative in nature.**

Although the need of the hour in the States are restorative actions, given the fact that the AQI has been way above the NAAQ standards consistently and steps to bring the same down need to be emphasized upon more, addressing and mandating preventive actions are also extremely important. For example some of the actions when AQI crosses the NAAQ standards include stopping garbage burning, enforcement of pollution control regulations, strict vigilance for visibly polluting vehicles, enforcing dust control rules etc which are basic actions that require constant enforcement and not just when the levels of particulate matter increase above the NAAQ standards. The GRAP therefore appears completely and strictly defensive in nature and calls for covering preventive actions as well.

- **Issue with information dissemination**

The methods of information dissemination proposed in the GRAP include “information dissemination through social media and mobile apps to inform people about the pollution levels” the specified manner of information dissemination completely disregards the larger part of India’s population that does not have access to internet and smart phones.

- **Issue of implementation.**

While the GRAP has divided AQI into different categories and suggested different steps to be taken when the AQI fall in the respective category the issue with respect to implementation of the same rises especially in a situation when the rise in pollutants is sporadic.

Moreover, the actions including shutting down of brick kilns, stone crushers etc means shut down in four entire states. Furthermore, for actions such as “intensifying public transport” means introduction of more public buses and more construction for metro connectivity which are long term processes and need to be planned and executed much before the AQI reaches the said standards in order to ensure timely accomplishment. Moreover the entire course, i.e. from data collection to dissemination to the concerned authorities, who will then deliberate upon the methods to implement the said action could take time for the actions to finally get implemented at ground level. Not to forget,

meteorological factors may change the entire scenario in a very short span of time.

The GRAP also could have additionally considered the decision of focusing more on the importance of research and development along with air pollution related data collection in order to ensure increase in the understanding of the pollution situation in India and effective methods to tackle the same.

REFERENCES

1. *M.C. Mehta Vs. Union of India*, WP (Civil) No. 13029/ 1985

DEVELOPMENTS IN THE NGT ORDERS ON AIR POLLUTION – *VARDHAMAN KAUSHIK CASE*

The National Green Tribunal, Principal Bench (**Tribunal**) on November 10, 2016 passed various directions with the aim to curtail the critical levels of air pollution in the state of Delhi. Six months have passed and what are the steps undertaken by the State in compliance with the Tribunal's orders?

Waste Burning

As of December 21, 2016, it was observed that nearly 336 persons had failed to pay the environmental compensation for violating the Tribunal's with respect to banning waste burning in the open and 1082 persons who failed to take precautions during construction failed to pay environmental compensation despite having been called upon by notice and challans.

The Tribunal, on 6th March 2017, observed that there was some indiscriminate burning of waste in dumping sites at Ghazipur and Bhalswa, Mukraba Chowk. The Tribunal recognizing the gravity of such waste burning, constituted a Committee consisting of Member Secretary, Central Pollution Control Board; Member Secretary, Delhi Pollution Control Committee and Chief Engineers of the respective Municipal Corporations who were directed to visit the site on the same day and submit a report to the Tribunal. The Tribunal directed that the Secretary Urban Development, NCT, Delhi shall be Chairman of the Committee and shall personally visit the site. They were directed to collect air and gases samples and analyse the same in relation to all its possible constituents.

Construction

As on January 30, 2017, Notices were issued to a total of 1403 persons who were challaned either for violating of the directions of the Tribunal in relation to construction activity or for burning of municipal solid waste and other waste in the open. Out of these 270 or so among the Noticees appeared and 71 of them had paid environmental compensation that has been imposed under the order of the Tribunal. As per the Corporation, they received Rs. 63,50,000/- on that account. The Tribunal granted two weeks time to pay environmental compensation and stated that in the event they fail to pay compensation within two weeks, the same shall be recovered from the Noticees as arrear of land revenue in terms of the Civil Procedure Code and laws in force by the concerned S.D.M. of the respective areas.

The Tribunal took note of the defaulters on 26th April 2017 and directed bailable warrants to the sum of Rs 25,000/-against noticees who were not present before the Tribunal. The Tibunal directed payment of Rs 1 Lakh as Environmental Compensation to the noticees who were present and did not contest.

Traffic Congestion

Vide its Order dated January 30, 2017 the Tribunal directed that hawkers and rickshaw pullers cannot park their rickshaws on metal road and carriageways as they cause traffic congestions.

The Tribunal vide its order dated 20th April 2017, directed NCT Delhi and the other concerning departments of State to introduce destination buses (buses that will go from point A to point B without stopping anywhere in between) with effect from 1st May 2017. The route for experiment bases would start from Dwarka, Rohini, Janak Puri, CGO Complex and Badarpur Border and go towards Central Secretariat, Shashtri Bhawan, Krishi Bhawan, Connaught Place, Nehru Place and such other centres where large number of offices are located. The timing will coincide with normal office hours. Further, the Tribunal directed that NCT Delhi and Joint Commissioner of Police, Traffic shall duly advertise, w.e.f. 25th April, 2017 information daily for the public at large. In its order dated 21st April 2017, the Tribunal directed increase in the number of destination buses and the same should be at least 40.

On 20th April 2017, the Tribunal directed the Joint Commissioner of Police to ensure construction of appropriate walls at Rao Tula Road (RTR) and fix red light blinkers. The wall, at the point where the bridge starts, was directed to be extended by at least 2-3 mtr and wherever U-turns have been provided, the red light blinkers shall be fixed to ensure there is no unruly overtaking and traffic jams at such points.

Mechanical cleaning of the roads

The South Delhi Municipal Corporation filed an application with respect to purchasing Road Sweeping Machines which are diesel operated and stated that CNG and Petrol operated sweeping machines are not available in the market. The Tribunal directed for constitution of a Committee to conduct or get conducted market survey to find out if the road sweeping machines are not available in variant of fuel CNG and Petrol. If such machines are not available, the NCT Delhi would direct purchase of these machines for the purpose of road sweeping/cleaning and other allied purposes. If such machines are available then efforts would be made to purchase preferably CNG or petrol operated machine as opposed to diesel operated machine.

On 30th March 2017, the Tribunal received application for registration of 4 diesel vehicles which are BS IV compliant and are to be used for mechanical cleaning/sweeping of roads in Greater NOIDA and for registration of Dust Sweeping Commercial Diesel Truck. The Tribunal allowed for registration upon the condition that the vehicles are (i) BS-IV Compliant (ii) have GPS installed and (iv) will be used only for cleaning and sweeping of road/ dust sweeping respectively.

The Tribunal on 20th April 2017 directed NCT Delhi and all the Corporations to ensure that vacuum cleaning machines start operating in areas of Delhi where the roads are wide enough, positively by 1st May, 2017.

Phasing out old vehicles

Public Utility Service Vehicles will only be registered if (i) it has a GPS installed (ii) it is BS IV compliant (iii) used only for the said public utility service. All the vehicles older than 10 years are directed to be scraped and registration of new trucks would be subject to dismantling of old truck and obtaining scrapping,[1] trucks for maintenance of sewage system under Delhi Jal Board, [2] municipal corporations[3] among others.

With respect to petroleum and LPG carriage vehicles belonging to BPCL, IOCL and HPCL, the Tribunal on 30th March 2017 directed:

[1] *Vardhaman Kaushik Vs UoI* order dated December 5, 2016

[2] *Vardhaman Kaushik Vs UoI* order dated January 1, 2017

[3] *Vardhaman Kaushik Vs UoI* order dated March 30, 2017

- All the vehicles under different contracts in NCR Delhi and the diesel vehicles which are admittedly more than 10 years old and are BS-I and BS-II compliant shall be withdrawn forthwith from the road.
- Managing Directors of all these companies shall be personally liable for compliance of this order.
- Within two weeks from today, the Managing Directors of all the three companies along with representatives of the contractors shall hold a meeting and submit to the Tribunal a complete programme in regard to phasing out of all the diesel vehicles which are more than 10 years old and are BS-III compliant. Registration of these vehicles shall not be renewed by the RTO, Delhi and the RTOs falling in NCR, Delhi.
- The Special Commissioner (Traffic) Police, Delhi shall also ensure compliance of this order without default and delay.

Selection of a model district for stoppage of burning of agriculture/crop residue

On the 6th of January 2017, in the case *Vikrant Kumar Tongad Vs. Environment Pollution (Prevention Control) Authority & Ors* (O.A. No. 118/2013), the State of Punjab submitted that they have taken District Patiala as Model District for the purposes of prevention and control of air pollution resulting from crop residue burning. State of Haryana also submitted that they have taken District Karnal as a Model Village for that purpose.

The States made these submissions based on the high rural population and high agricultural activities carried out in these areas.

The Tribunal directed the concerned Secretary of the States to:

- File a complete Action Plan in relation to these Districts;
- Collect a baseline data as a first action;
- Put on record the measures that they propose to take in furtherance to the judgment of the Tribunal;
- In case any proposal has been submitted to the Union Ministry, the same is to be dealt with immediately.

City Gas Distribution Network

Petroleum and Natural Gas Regulatory Board has stated that they will invite bid for installation of City Gas Distribution Network and will ensure that CNG is provided to all the cities particularly the cities falling in the NCR Delhi and even at a distance of 200Kms from Delhi in the State of Uttar Pradesh, Punjab, Haryana and Rajasthan. They have stated that they will complete the network in all the cities by December 2017.[4]

Plea seeking to lift ban on old diesel vehicles

The NGT heard a plea seeking to lift ban on old diesel vehicles on 26th April 2017 and 27th April 2017. The matter was argued by the additional Solicitor General Pinky Anand who represented the Delhi Government and stated in her arguments that diesel vehicles were not major contributors to air pollution and CNG and petrol driven vehicles were as bad. This statement was backed by her on the fact that diesel technology has improved a lot in the last few years.

The Court has reserved its judgment on the same.

REFERENCES

1. *Vardhaman Kaushik Vs UoI* & Ors (O.A. 21 of 2014)
2. *M.C. Mehta Vs. Union of India, WP (Civil) No. 13029/ 1985*

[4] *Vardhaman Kaushik Vs UoI* & Ors (O.A. 21 of 2014) Order dated 21st April 2017

3. *Vikrant Kumar Tongad Vs. Environment Pollution (Prevention Control) Authority & Ors* (O.A. No. 118/2013)

DEVELOPMENTS IN THE SUPREME COURT ORDERS ON AIR POLLUTION – *MC MEHTA CASE*

Monitoring Stations

The CPCB submitted a compilation of documents that the Tribunal considered and recorded in its order dated 2nd December 2016 and the CPCB appears to upgrade the central control room by purchasing automated machines and set up:
UP – 12 manual and 8 real time stations across 7 districts
Haryana – 9 real time and 24 additional subsequently
Rajasthan – 2 real time
Delhi – 28 already exist, additional 20 to be set up.
The timeframe for the same was laid as 6 months from this day (i.e. May 31, 2017). The Tribunal directed CPCB to submit a status report at the end of six months period.

As per the Order dated 6th February 2016, the process of setting up of monitoring units in the National Capital Region of Delhi (NCR) is ongoing and will be completed by 31st May, 2017. The Court directed that an amount of Rs.2.5 crores be released out of the deposited fund of Rs.19.01 crores (deposited with the Central Pollution Control Board (CPCB) towards Environmental Protection Charge (EPC)) as on 27th January 2017 for the purchase of monitoring units.[5]

Functioning of Pollution Under Control (PUC) Centres set up in various parts of Delhi:

Details of the functioning of the Centres are not available as of now, a final, proper and accurate response with regard to the functioning of the PUC Centres after a thorough inspection of each one of them is awaited. NCR-EPA on 7th April 2017 requested for further extension of time for filing report till April 15th 2017.

EPCA has been requested to expand the scope of its study by including PUC Centres not only in Delhi but also in NCR.[6]

In order dated 28th April 2017, the Court acknowledged receipt of the Report on the Assessment of Pollution under Control (PUC) Programme in Delhi and NCR submitted by EPCA. The learned Solicitor General stated that some of the recommendations in the report can be implemented by the Central Government in consultation with the Government of Delhi and NCR. The Court directed that the learned Solicitor General will inform the Court on the recommendations that can be implemented without any difficulty on 26th July 2017.

Use of pet coke and furnace oil in NCR:

The Court stated that as per the Environment Pollution (Prevention & Control) Authority (EPCA) the sulphur content in pet coke and furnace oil is extremely high and that is a major cause of pollution in Delhi and NCR.

On 6th March 2017, the Court had directed EPCA to prepare a report regarding use of pet coke and furnace oil. The EPCA thereby in compliance with the order of this Court dated 6th March, 2017 prepared and issued a report mandating acceptable fuels and recommending ban on sale and use of furnace oil and pet coke in NCR and the same was recorded by the Court on 7th April 2017.

Graded Response Action Plan under sub-section (1) of Section 3 of the Environment (Protection) Act, 1986: A notification dated 12th January, 2017 has already been issued and the

[5] *M.C. Mehta Vs. Union of India* Order dated 6th February, 2017

[6] *M.C. Mehta Vs. Union of India* Order dated 6th February, 2017

Graded Response Action Plan has also been notified on the same date.

Comprehensive Action Plan

The Court vide its Order dated 6th February, 2017 directed all the concerned authorities namely the EPCA, the Government of Delhi as well as the Governments of NCR i.e. Governments of Haryana, Rajasthan and Uttar Pradesh along with CPCB hold a joint meeting within a period of two weeks from today and thereafter come up with one comprehensive plan merging all three plans.

On 7th April 2017, the Court recorded the report given by the Environment Pollution (Prevention & Control) Authority (EPCA) for the National Capital Region. The report is a comprehensive action plan for air pollution control with the objective to meet ambient air quality standards in the National Capital Territory of Delhi and National Capital Region, including States of Haryana, Rajasthan and Uttar Pradesh.

Requirement for Vehicles to be BS-IV Compliant

The Supreme Court, in its order dated 29th March 2017 directed as under:

- On and from 1st April, 2017 vehicles (two wheeler, three wheeler, four wheeler or commercial) that are not BS-IV compliant shall not be sold in India by any manufacturer or dealer.
- All the vehicle registering authorities under the Motor Vehicles Act, 1988 are prohibited for registering such vehicles on and from 1st April, 2017 except on proof that such a vehicle has already been sold on or before 31st March, 2017.

The detailed reason for the same was given by the Court in its order dated 13th April 2017.

REFERENCES

1. *M.C. Mehta Vs. Union of India*, WP (Civil) No. 13029/ 1985

RESTRUCTURING OF POLLUTION CONTROL BOARDS – *RAJENDRA BHANDARI CASE*

The National Green Tribunal vide its order dated 24.08.2016 in the case *Rajendra Singh Bhandari Vs State of Uttarakhand and Ors* (Original Application No 318/2013), directed all the State Governments/ Union Territories to constitute the Pollution Control Boards (**PCB**) strictly in accordance with Section 4 of the Water (Prevention and Control of Pollution) Act 1974 (**Water Act**) and Section 5 of the Air (Prevention and Control of Pollution) Act 1981 (**Air Act**). The said sections require the Chairman and the Member Secretary of the PCB to be a person having special knowledge or practical experience in respect of matters relating to environmental protection, or a person having knowledge and experience in administering institutions dealing with the environmental matters. The judgment elaborated on these specified criterions and stated that where such criterion are not met then the state must cancel/ withdraw the appointment of Chairman and/or Member Secretary, as the case may be, and simultaneously take steps for appointment of Chairman/ Member Secretary who are eligible to be appointed to these posts in accordance with the provision of the Act, criteria and guidelines stated in this judgment.

The qualifications specifically mentioned by the Court in the judgment filter down to the following:

i. **Special Knowledge**
   - M.Sc. in Environmental Science / Environmental Management or,
   - M.E./M. Tech in Environmental Engineering or,
   - An equivalent degree,
   - Accompanied with adequate experience in the field.

ii. **Practical Experience:**
- Degree in Science with Botany/ Zoology/ Chemistry or an allied subject
- Actual experience in environmental protection

iii. **Knowledge and experience in administering institutions:**
- Basic degree in Science with subject related to environment
- Experience in the field.

In view of this judgment, we (LIFE) filed RTIs to all the states seeking information with respect to:

a) The action taken in compliance with the above-mentioned NGT order;
b) Details of the current Chairman and Member Secretary including:
   - Name
   - Date of appointment
   - Qualifications
c) Curriculum Vitae of the current Chairman and Member Secretary.

The review of information received through the RTI illustrates a very disappointing status of compliance to the NGT order dated 24.08.2016. While a majority of the states have not taken any measures to comply with the NGT order and reappoint their respective Chairman and Member Secretary of the Pollution Control Board, others states (Jharkhand, Lakshdweep, Manipur, Madhya Pradesh and Uttarakhand) have failed to provide us with the requested RTI information.

The states of Maharashtra and Andhra Pradesh have stated that they have filed Civil Appeal against the case before the Supreme Court of India and the states of Punjab and Assam have stated that they have filed review application before the NGT on the order of the Hon'ble NGT. The state of Uttar Pradesh has even gone ahead to say that the Uttar Pradesh Pollution Control Board is not respondent in Original Application No. 318/2013.

With respect to the action taken, the State Puducherry has stated that process has been initiated to create posts of Chairman and Member Secretary for PPCB. Only the state of Goa has actually gone ahead and taken action. They have issued a notification dated 24th November 2016 of Goa State Pollution Control Board (Qualification and other Terms and Conditions of Service of the Chairman and Member Secretary) Rules 2016. On 22nd November 2016 the Stated Department of Environment invited applications for appointment to the post of Chairman and Member Secretary. The state however did not provide us with the information on the qualification of the current Chairman and the Member Secretary of the PCB.

When scrutinized strictly according to the specific qualifications laid down by the Tribunal and as per the information provided to us, only three states (Himachal Pradesh, Kerala and Mizoram) fulfill the educational qualification for both the Chairman and the Member Secretary of the respective Pollution Control Board as per the RTI information.

REFERENCES

1. *Rajendra Singh Bhandari Vs.State of Uttarakhand O.A. No. 318 of 2014*
2. *Information collected from different Pollution Control Board through RTIs filed by LIFE.*

MoEF NOTIFICATION – EASE OF DOING BUSINESS, HOUSING FOR ALL AND AIR POLLUTION

The Ministry of Environment, Forest and Climate Change (MoEF&CC) vide its Notification dated 9th December, 2016 made amendments to the EIA Notification 2006 in exercise of the powers under the Environment (Protection) Act, 1986 and the Environment (Protection) Rules, 1986.

As per the amended notification, environmental conditions will be integrated with building permission which will be granted by the local authorities. For this purpose, states will be required to incorporate environmental conditions in their respective building bye-laws and relevant State Laws.

No separate Environmental Clearance will be required from the MoEF&CC for individual buildings. A self declaration Form stating compliance with the environmental conditions, Form 1A, certification by the Qualified Building Environment Auditor and a specified fee transferred in separate accounts will be enough to get a building permission from the local authority.

Furthermore, the said notification has exempted all the residential building construction projects from the purview of Consent to Establish and Consent to Operate under required under the Air Act, 1981 and Water Act, 1974.

Before this notification, under the said scheme, all building and construction projects ranging between 20,000 sqm and 1,50,000 sqm of built up area had to undertake environmental clearance procedure. They were mandated to submit Form IA along with a conceptual plan. Following this, an appraisal procedure was carried out by the concerned State Level Expert Appraisal Committee (SEAC) who would then give its recommendations accordingly.

The Urban Local Bodies, under the amended notification, have been given the power of issuing environmental clearance which would be integrated within the building permission. After completion of construction of building, the local authority will be responsible to check the revised compliance undertaking, based on which they will deal with any kind of non-compliance based on the existing mechanism. However, the State Governments are yet to come up with the suitable law for imposing penalties for non-compliances of the environmental conditions and parameters.

The notification has completely disregarded the objective and the very purpose the Section 3 (2) (v) of the Environment (Protection) Act, 1986 as well as the Rule 5 (3) (d) of Environment Protection Rules, 1986 by permitting a blanket relaxation of restrictions which were obligatory under the EIA Notification on the construction sector. It is to be stressed here that Section 3 of the Environment Protection Act gives the Central Government the power to take measures to protect and improve the environment, and Rule 5 prohibits and restricts activities which could deteriorate the environment.

Further, the notification also takes away the authority to enforce penalty against project proponent as provided under the provisions of the Environment (Protection) Act, 1986; Air (Prevention and Control of Pollution) Act, 1981 and the Water (Prevention and Control of Pollution) Act, 1974. Residential buildings of with upto 1,50,000 sqm of built-up area will not require any Consent to Establish and Consent to Operate under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981.

At present, violations or non-compliance against any of the conditions given under the Environmental Clearance as part of the EIA Notification, 2006 are punishable under the provisions of Section 15 of the Environment (Protection) Act, 1986. The punishment include imprisonment upto five years and/or a fine upto one lakh rupees (with additional fine which may extend to five thousand rupees every day during which such failure or contravention continues after the conviction for the first such failure or contravention). Further the non-compliance of any conditions of the Clearance can be addressed under the provision of Section 14-16 of the National Green Tribunal

Act, 2010. The consequences of non-compliance with the EIA Notification or the non-compliance of the conditions on which Environmental Clearance is granted have been clearly spelt out by the Environment (Protection) Act, 1986.

The new amendment will completely close this window of challenging any violation with respect to environmental conditions.

The impact of the said notification has been envisaged from the environmental perspective as well. One of the major environmental impacts of the notification will be felt immensely on the state of air pollution, given that construction projects are one of the primary sources of air pollution.

As per a study on the impact of construction and building on environment by Willmott Dixon, 23% of the global air pollution and 50% of the climate change gases are attributed to building and construction projects. Possible impacts on local air quality during construction include fugitive dust emission from land clearing, excavation, hauling, dumping, spreading, grading, traffic over unpaved roads. According to US Environmental Protection Agency (US EPA), an overall emission rate of about 1.2 tons of particulate matter per acre per month of active construction occurs from all phases of land clearing activities if no fugitive dust control measures are adopted.

The use of various raw materials including sand and gravel in building and construction projects, transportation of raw material and use of various machines are the main contributors to air pollution during the construction phase. Furthermore, the sector of manufacturing raw material for use in construction projects e.g Indian brick kiln sector, results in environmental emission of particulate matter, black carbon, sulphur dioxide (SO_2), Oxides of Nitrogen (NOx) and Carbon Monoxide (CO). Stone quarries and stone crushing units also causing emission of pollutants into the atmosphere. Apart from this, they affect the surrounding area including paddy field and plantation within 200 meters of the quarry site in terms of crop production and plant health degradation. [7]

REFERENCES

1. Ministry Of Environment, Forest and Climate Change Notification dated 9th December, 2016

CONSENTS NO LONGER REQUIRED FOR BUILDING / CONSTRUCTION / AREA DEVELOPMENT AND TOWNSHIP PROJECTS: CPCB

Further to the Notification dated 9th December 2016, that exempted building and construction projects covering an area up to 1,50,000 sq. m. from the purview of EIA Notification 2006, the Central Government released another circular adding on to the burden of causes for air pollution.

The Central Pollution Control Board (CPCB) vide its Circular dated February 2, 2017 exempted White category industries from obtaining Consents under the Water Act and Air Act stating, "information to concerned SPCB is sufficient".

The Circular further states:
"iii. There should not be any need to obtain Consent to Establish for Building / Construction Projects / Area Development Projects and Township Projects, which are

[7] Sreenivasa, Ravana Reddy R V, Socio-Economic and Environmental Perception of Inhabitants of A Quarry Area – A Case Study of Bidadi, Bangalore Rural District, International Journal of Engineering Science Invention ISSN (Online): 2319 – 6734, Volume 3 Issue 4, April 2014. Available at: http://www.ijesi.org/papers/Vol(3)4/Version-4/B0344011022.pdf

mentioned in serial no. 8(a) and 8(b) of Schedule of Projects in EIA Notification, 2006. For such projects, Environmental Clearance shall suffice subject to the condition that there should be a permanent member from *SPCB in the State Leven EIA Authority to represent the views of SPCB.*
Further, all the projects requiring Environmental Clearance either from State Level EIA Authority or MoEFCC may be exempted from obtaining the Consent to Establish. Such projects may be directly granted CTO subject to EC and installation of pollution control devices."

While the notification was brought about in pursuance of 'ease of doing business', the crucial facet that requires reconsideration is the fact that the executive power provided by the Environment (Protection) Act, 1986 and the Rules there under is the power to enact stringent measures that would further the protection and improvement of the environment.

The Act does not grant the power to dilute and relax existing provisions that ensure environment protection. The notification is therefore in excess of the powers granted by the EP Act.

The Supreme Court in *Assam Company v State of Assam and Ors.* [(2001) 4 SCC 202] held that "*a delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires of the Act.*"

Further, the Hon'ble Tribunal, in *S P Muthuraman v Union of India* [O.A. No 37 of 2015] held, *"the provisions of the Act of 1986, Rules of 1986 and the Notification of 2006 are statutory documents having the force of law. Providing a mechanism in exercise of administrative or executive power in complete deviation or disregard to the law in force, would be contrary to the basic rule of law. Besides it being in derogation to the environmental jurisprudence, it would also have adverse impacts upon environment and ecology of the area. There is greater need for compliance to the statutory provisions. Such compliance would be essential in the interest of the environment...."*

REFERENCES

1. Central Pollution Control Board (CPCB) Circular dated February 2, 2017
2. *Assam Company v State of Assam and Ors.* [(2001) 4 SCC 202]
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CPCB - PROPOSING ALERT SYSTEM FOR EQMS AND CEMS FOR USE OF CONTINUOUS REAL TIME EFFLUENT QUALITY AND AIR EMISSION MONITORING DATA

Central Pollution Control Board on 23rd December 2016 came up with a set of draft guidelines with an objective to streamline the issue of air pollution. The most astonishing fact which demands attention is that, almost all the guidelines inviting public comments are given merely 10 days time for receiving the comments. The drafts are also not circulated in any popular news paper, as such, to ensure bigger representation from the larger group of people. These factors defy the entire purpose of the need to make draft documents available in public place for comments.

17 categories of industries have installed online effluent quality monitoring system and air emission monitoring systems to give continuous readings on the pollution data. The equipment is connected with SPCB and CPCB server and data is being received at specific interval. At present SMS alerts are being sent to board and the industry by the server whenever there is deviation in the measuring value. However, there was no provision to check the failure in frequency level and to ascertain the severity of the problem.

The draft guideline has been put in place with the objective of addressing this issue of failure in the equipment reading and false data generation, which will eventually affect the interpretation of the air and water quality data.

The guideline has proposed four colour based alert system in the currently installed equipment. The colour specified alert will be sent based on the level of deviations, connectivity and frequency of the reading received. The colour sequence of Yellow, Orange, Red and Violet has been identified with Yellow being at the lower order (Level I) of violation and Violet being at the top most level (Level IV) of violations.

While the step to formulate this draft guideline is no doubt a welcoming step towards controlling air pollution, there are some gaps that exist which require deliberation and henceforth, we represented our submission as follows:

Why mix effluent & emission – two very separate issues

The document deals with equipment failure and exceedance of effluent and emission limits together. We are doubtful whether clubbing the two issues, as is being done presently, is the best approach forward since they are two very different things.

Two separate protocols (and therefore documents) are needed, so that each problem can be dealt with separately and properly. The problem with having a combined protocol for failures and exceedances is illustrated below.

The time interval of failure/exceedance is being considered as the sole parameter to determine the different hierarchy of the alerts, thereby, for example, not considering the intensity of the 2 effluent/emissions. Although time duration may be a suitable parameter for cases of equipment failure, it is unlikely to be enough in case of non-compliance. For example, it is stated that a yellow alert will be issued if the emission deviates from the norm by 60% for 8 consecutive days and similarly an orange alert would be issued if the time duration of the deviation is 32 days. What about the case if the exceedance is 600% for 8 consecutive days or even a shorter time span? To tackle issues like this, it may be better if a clear distinction is made between equipment failure and non-compliance with prescribed limits, possibly in two separate protocol documents.

It is important that parameters, thresholds and the limits being proposed are vetted by scientists and equipment manufacturers to ensure that they are within a reasonable and practical range.

Pollutants must get equal weightage despite the emission deviation

The average pollutant concentration is taken at 15 minute interval. We suggest that the interval needs to be changed to 30 minutes. Currently, when emission deviates from the norm by >60% for Thirty two (32) consecutive readings (for all pollutants), alerts are issued. We suggest to ranks the pollutants and issues the alerts based on the effects of each pollutants. This may be done by consulting the Epidemiologists.

Timely calibration of the instruments/system

This is an important pre-requisite, so as to ensure error free running and timely sending of alert in case of deviation. Therefore, frequency of calibration has to be given priority and need more detailing when talking about the protocol. It is not clear from the document whether the calibration of the equipment, after it is installed in the plants, is being considered.

Qualification of operators of the equipment

Since the protocol is very particularly talking about the current alert system to be more effective, therefore it is important to discuss the minimum qualification and capacity of the operator to run such system efficiently and effectively, as in most of the cases, the industries give less priority to the environmental issues and thereby end up running the plant by their fourth grade staff.

Action against non-compliance

The document is expressly for regulatory use of CEMS data, but in no place does it mention what corrective or penal action will be taken by the respective SPCBs/SPCCs in case of inaction or non-compliance, and what follow-up scrutiny will be carried out in case of red or purple or any other violations.

Transparency of operation

The reporting data should periodically be made available publicly to ensure transparency in monitoring and evaluation of stack emissions.

DRAFT GUIDELINES: PRE-PROCESSING AND CO-PROCESSING OF HAZARDOUS AND OTHER WASTES IN CEMENT PLANTS AS PER HAZARDOUS AND OTHER WASTE (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) RULES, 2016.

On 27th January, the abovementioned draft guideline was issued to address the concerns associated with the pre-processing and co-processing of hazardous and other waste in cement plants.

The draft guideline has listed down a number of waste components which can be used as alternative fuel and raw materials (AFR). According to the guidelines, there are streams of waste from the industrial process as well as from municipal solid waste which have the potential to be used as the raw materials and can act as an alternative fuel to ensure energy recovery.

Based on the past experiences of hazardous waste co-processing in India, the draft guideline draws our immediate attention.

- **Alternative Fuel & Raw Materials (AFR) Vs Wastage of Recyclable Materials**

Our country has still not been able to come up with an effective waste segregation practice. Rampant dumping of waste at landfill and/or burning of waste at landfills from all across the country are an example of the same. Composting of municipal solid waste has also failed as upto 60% of the input waste is discarded as composting rejects and finally land-filled. [8]

In the absence of an effective waste segregation practice, it is hard to get the segregated combustible fraction (SCF). As a result, mixed waste comprising of plastics will be burnt which will result into the emission of

[8] Ranjith Kharvel Annepu, Sustainable Solid Waste Management in India. Availablet at: http://www.seas.columbia.edu/earth/wtert/sofos/Sustainable%20Solid%20Waste%20Management%20in%20India_Final.pdf

dioxin and furan, the two known by-product of burning of toxic and urban waste.

Both these compound are carcinogenic and can cause cancer. It has been found that 0.006 pictograms of dioxin per kg of body weight per day is harmful and can lead to disruption of hormones; cancer; reduction of immunity; nervous system disorder; miscarriage; birth defects and deformation. [9]

At the same time, burning of mixed waste in the co-processing plant will also result in the loss of valuable recyclable materials, present in the municipal solid waste stream.

- **Reconsider the use of plastics & other packaging materials as AFR**

The guideline has suggested use of plastic and other packaging materials as an alternative fuel and raw materials (AFR). This will again result in the wastage of huge plastic waste irrespective of their category. Therefore it is important to specify the types of plastic that can be considered as AFR, so that recyclable plastic do not end up in combustion chamber.

The use of dried sewage sludge as a resource in terms of energy recovery will also entail economic viability of transportation of the same from the source of origin till destination. Therefore, the modality of connecting these two different arenas needs to be elaborated.

- **Waste Characterization & Presence of Heavy Metals**

Co-processing of hazardous waste along with industrial and other municipal solid wastes in cement kilns releases high levels of fine particulate matter and toxic heavy metals like lead, mercury, nickel, manganese, silica etc, which are known neurotoxins and nephrotoxins.

Silicon, according to the California Office of Environmental Health Hazard Assessment (OEHHA), if inhaled in the form of crystalline silica initially causes respiratory irritation and an inflammatory reaction in the lungs, and acute silicosis.

Given this scenario, it is therefore necessary to first conduct the waste characterization study well in advance for each and every waste stream to be accepted, in order to make sure no emission of mercury, lead, cadmium, silica, nickel or and other heavy metals into air.

- **Prior Environmental Clearance – a pre-requisite**

The guideline has echoed the MoEF&CC Notification No. S.O.3518 (E) dated 23.11.2016 and has maintained the stand that the use of wastes for co-processing in cement kilns does not warrant the requirement of environmental clearance. It is a gross violation of the provisions of the EIA Notification 2006 under the Environment (Protection) Act of 1986 and therefore should not be accepted as the cement plants tend to be converted into a hazardous waste landfill or a TSDF site, once the hazardous and other waste with toxic characteristics comes to the cement plants

It is also important to ensure that the trial runs of cement co-incineration plants must be carried out in a transparent and inclusive manner by seeking public comment or conducing public consultation with communities living around the cement plants. Otherwise, it is a gross violation of the Principle 3 of Holcim- GIZ Guidelines on co-processing, which talks about the necessity of having a community advisory panel.

- **Monitoring of Cement Industries**

The draft guideline mandated the industry to follow self-regulatory system to monitor emission of certain parameters including PM, SO_2 and NOx which will be further verified by the State Pollution Control Board and the Pollution Control Committee. This again raises doubt, as a RTI data analysis of 2014 showed

[9] UN Factsheet on 'Dioxins and their effect on human health' updated in June 2014

that, there are only 10 Environmental laboratories recognized by the CPCB under Section 12 (1) b of the Environment (Protection) Act, 1986, out of which, except Maharashtra, 10 out of the 11 states engaged in trial or full-time co-incineration of hazardous waste in cement plants do not even have a recognized laboratory in their Pollution Control Board. This state of affairs raises a serious doubt about the credibility of the monitoring data generated by these labs in case they were monitoring the emissions from the cement plants. [10]

Also as per a report, most of the SPCB lack of basic equipment to monitor dust emissions and they never tested for the heavy metals in the cement dust. [11]

- **Draft letter of intimation to SPCB**

This must take into account the quantum of each and every waste, to be sent to the cement plant for co-processing. This will help the concerned SPCB to cross check with the respective cement plant, whether they have the capacity to handle such quantum of waste or they still have the potential to receive more such waste.

There were data which says that, CPCB, the nodal authority in monitoring and maintaining the records pertaining to co-incineration around the country has no knowledge or records of the quantum of wastes being incinerated or the way in which co-incineration was being carried out, in at least 15 out of 39 plants where co-incineration is taking place. [12]

Therefore in this situation, it is highly desirable that, the pre-processing and co-processing of hazardous and other waste in cement plants must be given a second thought before allowing them to be operational.

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[12] *ibid*