



New Delhi
9 February 2018

The Secretary
Ministry of Environment, Forest & Climate Change
Government of India
New Delhi

Subject - Comments on draft amendment of the EIA Notification 2006 of 18 December 2017

Dear Sir

EIA Resource and Response Centre (ERC) is a national level voluntary programme, keeping a watch on EC and FC processes. ERC regularly engages with MoEF&CC and its expert committees providing comments and suggestions on important proposals under consideration for clearances as well as on policy and law issues.

Here, we are sending few suggestions on Draft Amendment of EIA Notification 2006 dated 18 December 2017.

BACKGROUND

On 18th December, 2017, Ministry of Environment, Forest and Climate Change has come up with the draft amendment notification in the EIA Notification 2006. The draft notification involves change in threshold values for categorisation in Category A to Category B for mining of non-coal minerals and irrigation projects; and exclusion of irrigation project with threshold limit of less than 5000 ha of Culturable Command Area from the purview of EIA Notification; and relaxing process for Townships and Area Development Projects in some situations.

DISCUSSION

No basis for amendment to increase threshold limit for non-coal minerals

The proposed amendment does not provide any basis for bringing in the changes. The preamble does not discuss any reason / justification of increasing the threshold limit for shifting the cases of non-coal minerals involving mining lease area < 100 ha from Central to State Expert Appraisal Committee/SEIAA.

No basis for excluding certain irrigation projects

No reason / justification or scientific paper to substantiate the reason behind excluding the irrigation projects involving < 5000 Ha of Culturable Command Area from the purview of EIA Notification 2006 has been provided.

Dilution of appraisal

Shifting of projects from Central Expert Appraisal Committee (EAC) to State level Expert Appraisal Committee (SEAC) will in some way dilute the project appraisal as this is less stringent at SEAC level. ERC carried out an analysis of ten States' minutes of SEAC and SEIAA meetings for the year 2016. Some of the conclusions have been -

- There is hardly any rejection by SEAC-SEIAA on environmental ground.
- The overall proceedings before the SEAC and SEIAA reveal indifference in these bodies to undertake detailed scrutiny which is required under the EIA Notification. The projects are considered in a mechanical manner and approvals are granted without close consideration of key environmental issues.
- There does not appear to be a uniform pattern of the meetings of SEIAA, rather they are scattered over the year and have been held different number of times for different States. Further, the number of meetings is not dependent upon the number of projects before SEIAA. For example, Uttar Pradesh had 1358 projects to be appraised before it and held only 21 meetings i.e. on average 64 projects in each meeting.
- Of the 1358 projects appraised in Uttar Pradesh in the year 2016, maximum projects were non-coal mining / mining of minor minerals (726 projects).

Shifting of more number of projects to SEAC and SEIAA will not only create burden over the committees which would result in the quality of the appraisal getting further compromised.

Impacts of amendment of Schedule 1 (a)(i): Mining of Minerals projects

The draft amendment notification involves change in threshold values for categorisation in Category A to Category B for mining of non-coal minerals. While previously projects < 50 ha of non-coal mine lease area were being considered at the State level now this value has been proposed to be increased to <100 ha.

As has been indicated in the note above, there would be increase in number of projects appearing before the SEAC /SEIAA for appraisal and approval. Quality of EIA reports prepared by EIA consultants for non-coal mining of Category B projects is dismal.

It is suggested that at least the EIA report of the non-coal mining projects from 50 ha up to 100 ha should be prepared by EIA consultants for non-coal mining of Category A.

Impacts of amendment of Schedule 1 (c)(ii): Irrigation projects

Irrigation projects in India are of 3 types: Major (>10,000 ha CCA), medium (2,000-10,000 ha CCA) and minor (<2,000 ha CCA) and the projects comprise of dams, bunds, canals and other such schemes, which are made over rivers. Rivers, as per Schedule VII of the Constitution of India, fall under the Union List giving the Centre exclusive control over them. Irrigation falls within the State List and the State governments have power to legislate on it.

The draft notification proposes to increase the scope of appraisal by SEAC five-fold. SEAC which used to appraise irrigation projects of < 10,000 ha are proposed to be appraising projects < 50,000 ha of Cultivable Command Area ('CCA') as these would fall in Category 'B' (five-fold increase in threshold value). The effect of this dilution is two-fold:

- (a) Effect on States: Rivers are the largest source of water for irrigation, apart from sourcing potable water, groundwater recharge, domestic use, industrial use etc. Rivers flow through multiple States and in some cases, even countries. The EIA Notification 2006 envisaged that all medium and minor irrigation projects go to the state for appraisal while major irrigation projects go to the Centre.

Major irrigation project (>10,000 ha CCA) require considerable amount of water from a river. If the state that proposes such a project lies in the upstream of the river, such a project will affect the states that lie in the downstream of such river, which can be seen in the various irrigation/industrial projects in the upstream of Mahanadi River in the state of Chhattisgarh, impacting water availability downstream. The larger the size of the project, greater its impact would be downstream.

Majority of irrigation projects are < 50,000 ha CCA, however the water requirement and impact of such projects can affect multiple States. In such cases, handing the major project over to the State Environment Impact Assessment Authority of a particular State where the project is proposed would keep other concerned States in the dark about such projects even though they depend on the river and are likely to be affected by it.

In States that cultivate sugarcane, paddy or other water intensive crops, the requirement of water is extremely high for areas much lesser than 50,000 ha CCA. For example, in Maharashtra, the water requirement is generally higher, which is seen in case of Tapi Lift Irrigation with 32,072 ha of Culturable Command Area, which consume 6.51 TMC for irrigation, where as in case of Karnataka, Tubashi Bableshwara Lift Irrigation project having Culturable Command Area of 42,500 ha consumes 3.8 TMC of water. Appraisal of such projects, if done by the States, can greatly affect the lives and livelihoods of people, especially for projects proposed in states which lie upstream. **The appraisal, if done at the State level, will not be able to contemplate the impact of the project entirely and affected States will not be able to raise objections to the project since they are unaware of it.**

Subjective ‘environmental benefits’ due to change in irrigation technology

Amendment notification states that change in irrigation technology having ‘environmental benefits’, leading to increase in CCA but not in dam height and submergence, will not require EC.

- (a) It is unclear as to what criteria is considered or which authority is consulted when establishing what has ‘environmental benefits’ There must be a standard to determine which technology is more environmentally beneficial than the other. In absence of the same, application of this condition would be arbitrary.
- (b) In case of change in technology and/ or CCA, even though a fresh EC may not be required, the existing EC must be amended to reflect the change. Further, increase in CCA without a fresh EC can be contradictory to the impugned notification itself, and introducing such a condition will only make it easier for project proponents to circumvent the provisions of the Notification. For example, if an irrigation project is < 50,000 ha and receives EC from SEIAA and later on, increase the CCA to > 50,000 ha by introducing some so called new technology, the project will not require a fresh EC, even though the project has now become a Category ‘A’ project which requires appraisal from MoEF&CC.

Dilution of EC for Schedule 8 (b): Township and Area Development Projects

The draft notification seeks to dispose of the application of 'General Conditions' for Township and Area Development Projects. 'General Conditions' list out conditions whereby Category B1 projects must be appraised as Category A project in certain situations. This is done in case the project is located within 5 km from the boundary of (a) Protected Areas (notified under the Wildlife (Protection) Act, 1972), (b) Critically Polluted Areas identified by CPCB, (c) Eco-Sensitive Areas notified under the Environment (Protection) Act, 1986, and (d) Inter-State and International Boundaries.

These areas are ecologically or otherwise sensitive areas, and thus, the environmental and social impacts of projects in these areas are high.

MoEF&CC's "Manual on norms and standards for environment clearance of large construction projects" provides that while choosing the site for large construction projects, some of the concerns are:

1. Location of site with respect to existing eco-system on site: Development of new construction projects should not have a negative impact on the existing bio diversity and ecosystem of the site. In this framework it is further stated that, sites for new developments should be carefully assessed in context of the wider environment particularly in relation to the habitats dwelling on site or on adjacent sites. There may exist on the site some rare or endangered species of plants and animals, such sites are considered unsuitable for development. The site(s) selection can be an effective approach in minimising the requirement of mitigation measures. Project siting restrictions depend on the sensitivity of the site and its surrounding environment and the following considerations should be made while selecting a site.
2. Ambient environment quality in the region: Levels of air, noise and water pollution should be surveyed and considered carefully before implementing the building design. For example: High level of air, noise and water pollution and location near pollution sources such as heavy traffic roadways should be considered carefully to implement residential building. It has been further recommended that the existing air quality of the site must be assessed to determine if it falls under the permissible average levels as prescribed by Central Pollution Control Board (CPCB). It should also be ensured that the development would not further deteriorate the air quality. Air quality monitoring involves estimation of concentration levels of suspended particulate matter (SPM), Respirable suspended particulate matter (RSPM), Sulphur dioxide (SO₂), oxides of Nitrogen (NO_x) and Carbon monoxide (CO) in the study area.

The Apex Court in *Goa Foundation v. Union of India (2011) 15 SCC 791* ordered to declare the area around a Protected Area under the Wildlife (Protection) Act, 1972 as an Eco-sensitive zone, wherein prior clearance is required to carry out certain activities. The purpose for demarcating ESZ is, it acts as a buffer zone that reduces the stress of human activity on wildlife.

The intention of the judiciary in matters pertaining to ecologically sensitive areas is very clear; to provide extra protection and prohibit or control the pressure on these areas caused due to human activity.

Critically Polluted Areas are highly detrimental, not only to human life, but also to the environment. The CAG audit report published in 2017 probed into the process of

environmental clearance as well as post clearance monitoring and found that there has been a failure on the part of the Regional Offices of MoEF&CC to monitor compliance of environment clearance conditions by the project proponents. Township and Area Development Projects involve intensive construction and entails stone grinding, cement mixing, usage of sand and fly ash, all of which are major sources of fugitive dust emission that causes air pollution. The National Green Tribunal has passed several orders and directions against the use and storage of construction material in *Vardhaman Kaushik v. Union of India*.

SEIAA and SEAC are the authorities which scrutinize majority of Township and Area Development projects to ensure compliance with various legislations in place for environment protection. However, a study into the appraisal process shows the lacklustre attitude of the authority in the same. For example, analysis of projects appraised by Haryana SEAC in 2016 shows that out of 583 projects that came before SEAC, only 1 project was rejected EC.

SUGGESTIONS

Non-Coal Mining : Quality of EIA reports prepared by EIA consultants for non-coal mining Category B projects is dismal as is evident from documents of sand mining, stone quarrying etc appearing before SEAC/SEIAA we regularly review. It is suggested that at least the EIA report of the non-coal mining projects from 50 up to 100 ha should be prepared by EIA consultants for non-coal mining Category A projects.

Irrigation Projects : Rivers are covered under the Union List. One of the reasons behind this is that rivers flow through multiple states and even countries. If larger irrigation projects e.g. 10,000 ha CCA or greater are left to states, it can result in conflicts between Centre and States, and between States. To avoid unnecessary dispute between States no change in Schedule 1 (c)(ii): Irrigation projects should be made. Major irrigation projects should be appraised at Central level only.

Environmental Benefits (irrigation projects) : Amendment notification states that change in irrigation technology having environmental benefits, leading to increase in CCA but not in dam height and submergence, will not require EC. In such case, the Ministry should identify and list technology changes which can bring 'environmental benefits' and quantification of such benefits to qualify for such exemption. In case the CCA increase crosses the threshold value for category B, there should be fresh appraisal for category A.

Township and Area Development Projects : The 'general conditions' should not be done away with since greater scrutiny is required for ecologically or otherwise sensitive areas. The environmental and social impacts of projects in these areas are high.

We are sure, MoEF&CC would consider and acknowledge the suggestions made, and let us know of the action taken. Thanks, with regards

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