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**SUBMISSION ON THE DRAFT ENVIRONMENT
IMPACT ASSESSMENT NOTIFICATION, 2020**

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SUBMITTED TO

MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
(MOEF&CC)

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Ministry of Environment, Forest and Climate Change (MOEF&CC) has published the draft notification of the “Environment Impact Assessment Notification, 2020” vide S.O. 1199(E) dated the 23rd of March 2020 in the official gazette on 11th April 2020. It has invited objections or suggestions on the proposals contained in the draft notification. The present submission is in response to the said notice by MOEF&CC thereunder. We request the Secretary, MOEF&CC, to accept this submission on record.

APPEAL/PRAYER

We understand the challenges in front of the Government to balance economic growth and environment protection. Historically, these are often mutually exclusive paradigms and hence, have been at constant conflict with each other. If history is to stand witness to this, it may be noticed that these dialectical paradigms, although opposing, can be and must be pursued in parallel. It is our prayer to the honourable ministry and Government of India to ensure that its policies, including EIA, do not favour one over the other.

It is the utmost duty of the State to uphold and protect the fundamental rights of its citizens. Right to Clean Environment has been declared as a fundamental right by the honourable Supreme Court under the provision of Article 21. Further, protection and improvement of the environment by the State is also implicit in the Directive Principles laid out in the Indian Constitution for building a welfare state. Particularly, Article 47 mandates improving public health as one of its primary duties, which is inherently linked to improvement and protection of the environment.

Herein, we wish to bring to the notice of MOEF&CC that protection of the environment is a social, social, and economic issue. While the objective of protecting industry from harassment of officials is important, it must not be done by diluting environment protection norms which are vehemently and continuously violated in practice. Former is an issue of administrative governance and must be dealt so. Compliance to environmental norms can be made easy by streamlining the compliance process, rather than diluting the compliance requirements.

Resorting to dilution of norms is likely to result in dissatisfaction from civil society. In the absence of appropriate legitimacy from stakeholders, the spate of cases in courts is likely to increase, which shall create an uncertain environment for private investments in India. Hence, such steps shall be counter-intuitive to the purpose of proposed reforms.

Lastly, Prime Minister Shree Narendra Modi has worked hard to build India’s image as a responsible Nation, committed towards climate action and environmental protection. Dilution of norms shall directly counter the work done by honourable Prime Minister and lower India’s stature as a climate responsible nation.

Hence, we appeal to the honourable ministry to consider our submission in context of jurisprudence, climate responsibility, inclusive development, safe investment ecosystem and India’s global stature.

1. Definitions - “General Condition”

- The category of projects falling under the category of B2 are exempted from the definition of General Conditions.
- Both industrial and development activity related projects in the areas mentioned in (a) and (b) shall cause impact on the surrounding ecosystems, wildlife corridors, landscape continuity. Thus, leading to increase in severeness of the natural disasters and wildlife-human conflict.
- Hence the projects or activities listed under Category B2, must be brought under the purview of General Conditions.

2. Definitions - “Study area”

- The extent of study area for category A projects is the immediate surrounding area within an aerial distance of 10 km around the boundary of the project. And for category B it is 5 km around the boundary of the project.
- different categories of projects will have different spatial, temporal, and cumulative impacts. For example, the impact of a thermal power plant extends to hundreds of kilometres.
- It is suggested that the minimum study areas should be specified separately for each sector- specific Standard TORs by the respective EACs, and allow the EAC to increase the study area if found necessary in Specific TORs

3. Definitions - “Violation”

- The construction work or installation or excavation on site or expanded the production and / or project area beyond the limit specified in the prior-EC without obtaining prior-EC or prior-EP, are considered under violations.
- But the violations and non-compliance of the conditions of approved EC are not considered in the definition of violation. It is suggested to include the same under the ambit of the definition of violation.

4. Requirement of Prior Environment Clearance or Prior Environment Permission`

- The construction work for the purpose of securing the land by fencing or compound wall; temporary shed for security guard(s); levelling of the land without any tree felling; geo-technical investigations is not included in the purview of the notification
- These above activities will result in change of the land use-land cover and leave permanent footprints causing significant irreparable and irreversible damage to ecosystem and the habitats including wildlife corridors

- This change reflects the dilution of standard set by EIA Notification of 2006 and should not be consider under the current draft

5. Categorisation of projects and activities

- It is proposed to not place any information related to projects concerning national defence and security or involving other strategic considerations, as determined by the Central Government in public domain.
- This change from the EIA Notification of 2006 where only public consultation is exempted for such projects leads to creating blanket exemption for all information as determined by the domain of executive to exclude public engagement.
- It is therefore suggested to revert the changes proposed in the draft to the standard set under EIA Notification 2006.

6. Stages in the Prior Environment Clearance or Prior Environment Permission Process

- The Draft Notification introduces a new process of Prior Environmental Permission (EP) which is a substantially diluted requirement by making them not required to be placed before the Appraisal Committee.
- The process for the Prior- EP is comprised of a maximum of two stages.
 - Stage (1): Preparation of EMP Report,
 - Stage (2): Verification of completeness of the application by the Regulatory Authority; and
 - Stage (2): Grant or Rejection of Prior Environment Permission.
- Most Category B2 projects are exempted from the entire EIA process of screening, scoping, preparation of EIA, public consultation and appraisal by the SEAC. Only building and construction projects listed under column (5) of item 42 are proposed to be placed before the appraisal committee while the applications for prior EC will be straightaway decided by the regulatory authority without referring the same to the SEAC.
- The proposed removal of these stages for category B2 projects in the Draft Notification are major dilutions of the EIA process and undermine the role and functions of the SEAC and will have serious environmental consequences.

7. Scoping

- The proposal to adopt sector wise Standard ToR as developed by the Ministry without referring to the Appraisal Committee by the Regulatory Authority defeats the very concept of the EIA study to assess the impact of such projects on the surrounding environment.

- Different projects/activities have different impact depending on the location and hence the project specific ToR needs to be adopted.
- This also bypasses the level of scrutiny (including to reject the proposal) by the EAC/SEAC and thus undermining the advisory/recommendatory role of the Appraisal Committee. Hence these proposals to the draft notification must be removed.
- The proposal to make Regulatory Authority the discretionary power to recommend amendments in ToR to the Appraisal committee, dilutes the role of EAC and hence to be removed.

8. Preparation of Environment Impact Assessment Report

- The requirement for collecting baseline data for one season other than monsoon for EIA Report in respect of all projects is highly inadequate. The impacts of projects in the form of Air pollution vary upon seasonal, spatial and temporal factors which change from season to season.
- The provision to collect baseline data up to three years old at the time of submission of draft EIA Report to the SPCB or UTPCC for Public Consultation defeats the purpose of EIA. The information about other ongoing/existing projects at the time of the proposal might not be reflected if such old data is to be considered.
- The baseline data must only be collected after the application of the project proponent has been deliberated upon by the EAC for the grant of TOR.

9. Public Consultation

- The notice period for public hearing as prescribed in EIA Notification of 2006 is 30 days. It has been found to be inadequate considering the scientific and technical information and access to legal understanding of certain issues.
- The proposed notification has reduced the notice period for public hearing from 30 days to 20 days. It is therefore suggested that at least a period of 60 days shall be provided for the people to give their responses.

10. Appraisal

- The proposal in the draft notification to limit the Appraisal Committee from seeking fresh studies at the time of appraisal (unless new facts come to the notice) discourages the full functioning of the Appraisal authority.
- The need for additional studies may arise in the course of the appraisal, especially taking into account any concerns that might be raised at the stage of public participation and should not be included in the notification.

11. Procedure for grant of Prior Environment Clearance for modernisation

- The 'No increase in pollution load' certificate issued by the SPCB or UTPCC for modernisation projects cannot be a replacement of EIA and EMP as the environmental impact assessment of projects/activities are not limited to just air and water pollution.

12. Grant or Rejection of Prior Environment Clearance

- This restricts the timely access to information crucial requirement for any meaningful public engagement with the EIA process
- The Concealment and/or submission of false or incorrect or misleading information or data by the project proponent or ACO or EIA Coordinator or Functional Area Expert involved in the preparation of EIA Report should be limited to rejection/cancellation of the application and blacklisting of organisation or individual responsible but also be made liable and prosecuted for strict punitive action

13. Post-facto Environment Clearance

- The Draft Notification proposes to regularise industries which have commenced operations without obtaining prior EC. Granting post-facto Environment Clearance is against the Precautionary Principle which is the sole basis and objective of EIA regulations. This will encourage industries to commence operations and eventually get regularised by paying the penalty amount. This implicitly gives rise to a situation of 'fait accompli', where the damage to the environment is irreversible.

14. Dealing of Violation cases

The draft notification restricts the cognizance of the violation be made to (a) suo moto application of the project proponent; (b) reporting by any Government Authority; (c) found during the appraisal by Appraisal Committee; (d) found during the processing of application, if any, by the Regulatory Authority.

This not only undermines the legal and constitutional rights which empowers the citizens of the country to raise their concerns against any project or activity which is found to be violating the environment laws in force or causing damage to the environment and ecology of the country but violates the spirit of the EIA.

15. Schedule

- The Draft Notification 2020 has recategorised many projects from A & B1 categories under Category B2, exempting them from Scoping, EIA study, public consultation, and expert appraisal.
- This is an arbitrary exemption of a large range of activities from the EIA process and is against the concept of precautionary principle.