



Ministry of Environment and Forests
GOVERNMENT OF INDIA



WORKSHOP ON REFORMS IN ENVIRONMENTAL REGULATION:

**WITH SPECIFIC REFERENCE TO ESTABLISHMENT OF
NATIONAL ENVIRONMENT PROTECTION AUTHORITY**

DISCUSSION PAPER

May 25, 2010



DISCUSSION PAPER:

On the establishment of a proposed National Environmental Protection Authority

[A] BACKGROUND

This discussion paper deals with the proposed reforms in environmental regulation with specific reference to the establishment of National Environment Protection Authority (NEPA). This has been prepared to facilitate the discussions during the National Level Workshop being held on the 25th of May 2010. This Workshop itself is unique inasmuch opinions are being solicited at the drawing board stage itself. This is being done to ensure that the consultation process is meaningful and draws participation from an expansive range of stakeholders.

Why is there a Need for a New Authority?

- Rapid industrialization and infrastructure development in the last decade coupled with rates of accelerated migration, population growth and urbanisation has exerted tremendous pressure on the environment. The regime of environmental clearance which took shape under the environmental impact assessment notifications under Environmental (Protection) Act, 1986, involves grant of clearances to major projects by MoEF and to relatively minor projects by State Environment Impact Assessment Authorities (SEIAAs). The existing regulatory institutions at the Central and State levels have been unable to cope effectively with the resultant environmental challenges. It is now well recognized that the hiatus between the environmental statutes and their enforcement is becoming wider. While the number and complexity of the projects being processed for environmental clearance has increased manifold, the capacity and resources available with MoEF and its agencies to manage them have remained limited.
- The need for reforming the environmental clearance mechanism and for strengthening the compliance and enforcement of environmental laws and regulations has been stressed and highlighted in the report of the *Steering Committee on the Environment and Forests Sector of the Planning Commission for the Eleventh Five Year Plan (2007)* and the *192nd Report of the Department Related Parliamentary Standing Committee (2008)*. The weaknesses in the present institutional framework have also been examined in studies by prominent civil society organizations such as the Centre for Science and Environment and Kalpavriksh Environmental Action Group.
- To address these shortcomings, and as part of a larger administrative and regulatory reform agenda, the MoEF now proposes to establish the National Environment Protection Authority. The proposed Authority is intended to be a professional, science-based licensing and monitoring agency that is autonomous and free from outside control.



[B] CHARACTERISTICS OF THE PROPOSED NEPA:

I. Independent and autonomous regulator particularly for the grant of Environmental and CRZ clearances:

- *Traditional Model is Dysfunctional:*
It has been contended that the traditional departmental structure is not best suited to play the dual role of policymaker as well as regulator. This stems from the premise that public interest is best served by insulating decision making from extraneous influences in critical and complex domains like environmental regulation. Therefore, it is desirable to establish a professional and an independent regulator to discharge the regulatory functions of MoEF including the grant and monitoring of clearances.
- *Role of Ministry:*
The Ministry will stand divested of its clearance functions and will concern itself with the larger functions of policymaking.

II. Role and functions of NEPA vis-à-vis CPCB and others:

- *Clearance Functions to stand Transferred:*
The clearance and regulatory functions being performed by the Ministry mainly the grant and monitoring of environmental clearances and coastal regulation zone clearances may be transferred to the NEPA. However, projects of strategic importance (for instance nuclear projects) may be appraised by NEPA but may need MoEF's final approval.
- *Coordination and Supervision:*
The functions of NEPA will include coordination and supervision of the functioning of the State Environment Impact Assessment Authorities (SEIAAs) and the State Coastal Zone Management Authorities (SCZMAs).

The National Coastal Zone Management Authority (NCZMA) at the central level may be subsumed by the NEPA. The NEPA will also undertake the execution of scientific studies like carrying capacity studies for industrial units, coastal zone planning etc.

- *Dedicated Oversight of State's Compliance and Enforcement Programme:*
Leadership in enforcement has to be provided by a single dedicated agency which should also oversee and coordinate the compliance and enforcement programme of the SPCBs, SEIAAs and SCZMAs (with whom is vested the primary responsibility for enforcement).

The central agency should also develop uniform guidelines on compliance and enforcement and also be responsible for the capacity building of the SPCB personnel. This is important as currently there is a tenuous link between SPCBs and the CPCB in this regard. This can be done by the newly created NEPA for all the three agencies. Alternatively NEPA can be given supervision and oversight for the SEIAAs and SCZMAs and a restructured and strengthened CPCB will discharge this function with regard to the SPCBs.



III. An empowered and diverse governing body:

- *Large Body of Professionals:*
A multi-member professional governing body, the selection of which is merit based, is an important component to ensure the independence of NEPA. The Authority will be larger than the existing CPCB both in terms of numbers as well as dedicated officials. This body will include scientists, lawyers and economists to provide a multi-disciplinary approach to environmental protection.
- *Diverse Governing Body:*
The governing body of NEPA may have a combination of full-time and part-time members. The full-time members will be selected based upon their functional qualifications and domain knowledge. Part-time members can represent government, local bodies, industry associations and civil society. The selection of the fulltime members has to be done by a High Powered Selection Committee in a fair and transparent manner. Similarly, the members should have fixed tenure and not be removed except for cause and after independent enquiry.
- *Accountability to Parliament:*
The Central Government may guide NEPA in its functioning by giving policy directions in writing on issues involving public interest. However NEPA will be accountable to the Parliament, through the MoEF, for its functioning (akin to TRAI and Prasar Bharti).

IV. Allocation of greater resources:

- *Increased Capacity:*
Greater resources in terms of manpower, finance and functional autonomy will be provided to ensure the independence of NEPA. In addition to adequate financial support from Government, NEPA may charge fees for its services e.g. processing clearance applications etc. to generate its own resources. The governing body of NEPA will be empowered to prepare its own budget and incur expenditures.
- *Resource Audits:*
The accounts and audit of the authority will be within the purview of Comptroller and Auditor General of India.

V. Enhanced penalties:

- *In Addition to the EPA:*
The penalties provided under EPA 1986 for contravention of its provisions are very low and have to be enhanced substantially to have a deterrent effect.

VI. Administrative adjudication system to improve compliance :



- *Current Redressal System Inadequate:*
Currently the State Pollution Control Boards have a limited number of actions that they can take against a violator. The judicial enforcement system with regard to environmental statutes has been demonstrated to be inadequate. There is a need to introduce a civil administrative adjudication mechanism which will enable the enforcement authorities to resolve violation cases administratively in a time bound manner and impose adequate penalties which can act as a deterrent to environmental offenders.
- *Certain Offences to be Adjudicated by NEPA:*
NEPA/CPCB/SPCBs officials will bring before the adjudicating officers complaints related to certain offences for imposition of civil penalties. This remedy is only for cases revolving around the violation of the terms of clearance and other statutory violations. The factors to be taken to determine the civil penalties and the maximum penalty which can be imposed will be provided in the statute. The appeals against the orders of the adjudicating officers may go to the National Green Tribunal.
- *Based on Pre-existing Legislative Models:*
This concept of administrative adjudication finds place in certain recent legislations in India like the Information Technology Act, 2000, SEBI Act, 1992 and the Food Safety and Standards Act (FSSA), 2006.

VII. Self-monitoring and self-regulation by Industry:

- *Comprehensive Guidelines on Self-regulation:*
The NEPA will also define a self-regulation system in addition to the regime proposed. The present inspection based enforcement system has to be supplemented by making it mandatory for industry to self-monitor, report and certify compliance. For instance, industries will be required to publish environmental audit reports at periodic intervals of hypothetical six months each. Enforcement authorities can use the information published by the industry to determine compliance and take enforcement action.
- *Social Audit by Civil Society and other Stakeholders:*
Stakeholders like citizen groups and civil society organisations should be able to do social audit of the statutory disclosures made by the industry and trigger enforcement action. Civil penalties through administrative adjudication can be imposed for non-reporting, mis-reporting or other violations.



[C] MODEL OPTIONS FOR DISCUSSION

I. Current Functions of CPCB and SPCBs:

Currently the CPCB discharges the following broad functions:

- Scientific body looking after the development of environmental standards;
- Management of ambient monitoring networks;
- Laboratory management;
- Research and development;
- Overall technical guidance to the Ministry of Environment and Forests; and
- Coordination of the functions of the SPCBs.

On the other hand, the SPCBs are primarily responsible for inspections of industries and ensuring compliance and enforcement of these laws through consent mechanism and issue of directions. The CPCB is also doing monitoring and implementing marginal measures for enforcement and carries out a small number of inspections every month under its environmental surveillance programme.

II. Proposed Manner of Creation:

NEPA is proposed to be created by amending the Environment (Protection) Act, 1986 so that it has adequate standing and carries statutory authority. Similarly the administrative adjudication mechanism, self-monitoring system and enhancement of penalties will also be introduced by amending the Environment (Protection) Act, 1986.

III. Feasible Options

Regarding the other regulatory functions under the EPA 1986 including the monitoring and enforcement of effluent and emission standards, there are two options:

Option A:

NEPA to Focus on Grant and Monitoring of Clearances:

One possibility is that NEPA can focus exclusively on the grant of environmental and coastal zone regulation clearances. It can additionally look into dimensions like carrying capacity studies and coastal zone planning.

This will involve monitoring the conditions associated with the clearances and initiating enforcement action in case of violations.

CPCB to be Strengthened and to Ensure Enforcement:

CPCB will be upgraded in terms of capacity and functions. It will continue with its current functions i.e. its scientific functions and regulatory functions including monitoring and enforcement of emission and effluent standards. CPCB will now monitor on a large and universal scale cases of environmental violations as opposed to its current case-to-case approach. But, this will entail strengthening the CPCB substantially in terms of manpower and re-engineering particularly in its regional offices to be able to provide leadership in enforcement and monitoring.

Advantage:



Ministry of Environment and Forests

GOVERNMENT OF INDIA

The advantage in this option is that an existing institution can be strengthened and one can build on the available foundation, infrastructure and the expertise and experience gained.

Disadvantage:

This model will require a major re-engineering of the CPCB and its organisational culture. Industrial units might have to deal with two agencies at the central level. NEPA will be responsible for ensuring adherence to the conditions stipulated in the clearance conditions and will monitor during the pre-commissioning stage and CPCB will be monitoring the compliance to discharge standards post-commissioning.

Option B:

All Regulatory Functions Transferred to NEPA:

NEPA may look after all the regulatory functions including EIA, CRZ clearances, HSM authorisations and also monitoring and enforcement of effluent and emission standards.

CPCB to Focus on Scientific Research and Development of Standards:

CPCB will focus on the scientific dimensions like research and development, laboratory management, development of standards and managing ambient monitoring networks. NEPA along with the SPCBs will be responsible for monitoring and enforcement of the environmental laws.

Advantage:

The advantage with this option is that there will be single agency at the central level to deal with compliance and enforcement and the jurisdiction between the regulatory and scientific agencies is clearly delineated.

Disadvantage:

The disadvantage is that NEPA will be a new institution and there are bound to be logistical problems during the transitional phase. In the unique Indian context where there is consent mechanism as well as environmental clearance system and both are required in parallel for most of the projects, monitoring the clearance conditions as well as the discharge standards by a single agency can be cumbersome. Moreover withdrawal of regulatory powers from CPCB and the introduction of a new system might take longer for SPCBs to adapt to.



Ministry of Environment and Forests

GOVERNMENT OF INDIA

[D] OBJECTIVES OF THE WORKSHOP

The subject “Reforms in Environmental Regulation” is vast and complex and, a plethora of solutions and innovative regulatory mechanisms are in place in different countries. The endeavour of this exercise is to focus on a few options which can be implemented in a practical fashion in the Indian context. The suggestions of the participants are not just welcome, but also necessary to take these initiatives to their logical conclusion. To this end, the workshop seeks to address the following issues:

- 1. Should NEPA alone take care of both clearance and monitoring of effluent and emission standards or should CPCB be strengthened to monitor effluent and emission standards?**
- 2. Should there be a more vigorous relationship in terms of oversight and guidance by NEPA over the functions of the SPCBs?**
- 3. What are the powers and functions that NEPA should be endowed with to bring about a holistic environment protection regime?**
- 4. What should be the composition of NEPA?**
- 5. Any other suggestions or recommendations that will improve environmental governance through the agency of this independent authority.**