

The Ministry of Environment, Forest and Climate Change circulates drafts proposing amendments to certain environmental laws; seeks comments

The Ministry of Environment, Forest and Climate Change (“**MoEFCC**”) has released:

1. draft notifications dated July 19, 2024, for the amendment of the Water (Prevention and Control of Pollution) Rules, 1975 (“**Water Rules**”), Air (Prevention and Control of Pollution) Rules, 1982 (“**Air Rules**”), Environment (Protection) Rules, 1986 (“**EP Rules**”), Public Liability Insurance Rules, 1991 (“**PLI Rules**”) and Environment Relief Fund Scheme, 2008; and
2. draft guidelines dated July 19, 2024, for devising a uniform mechanism for the grant of consent along with the regulations for exempting certain categories of industries have also been notified.

These amendments have been proposed for public consultation granting time for submission of comments. The changes are in consonance with the recent amendments to various environmental statutes, which are summarized below:

I. Draft guidelines for SPCBs/PCCs regarding uniform consent fee and grant, refusal or cancellation of consent to establish or consent to operate

The guidelines are to be followed by the concerned State Pollution Control Boards (“**SPCBs**”) or Pollution Control Committees (“**PCCs**”) for grant, refusal or cancellation of Consent to Establish (“**CTE**”) and Consent to Operate (“**CTO**”) under the Water (Prevention and Control of Pollution) Act, 1974 (“**Water Act**”) and Air (Prevention and Control of Pollution) Act, 1981 (“**Air Act**”).

Key highlights

1. **Validity of CTE:** In case of projects requiring Environment Clearance (“**EC**”), the CTE will be valid as per the EC granted to such project. In project/activity which does not attract EC, the CTE will be granted with a minimum validity period of 5 (five) years initially which may be further extended by a maximum period of 2 (two) years, on request (i.e. maximum validity will be 7 (seven) years from the issue of CTE.)
2. **Consent fee:** The SPCBs/PCCs may prescribe the consent fee which may be maximum 20% higher than the fee estimated as per the methodology set out in the appendix to the guidelines.
3. **Common Consent and Authorisation:** The guidelines provide that the concerned SPCBs and PCCs will adopt a single step procedure for issuing a Common Consent and Authorisation (“**CC&A**”) under the Water Act, Air Act and authorisations granted under the rules enacted under the Environment (Protection) Act, 1986 (“**EPA**”).
4. **Guidelines for grant of CTE:**
 - a) **Application:** The project proponent must submit the CTE application with requisite information and the applicable fee.

- b) **Siting Criteria:** The project proponent must comply with the sector specific siting criteria applicable on it. In case sector specific siting criteria is not available, the general guidelines framed by the respective state government will be followed which will take into consideration factors such as category of project, nearest boundary of surface water body, distance from settlement, educational institute, place of worship, archaeological monuments, national park, etc.
 - c) **Site verification:** The concerned officer of the SPCB/PCC will conduct inspection of proposed site to verify the information submitted in the application and submit detailed observations.
 - d) **Grant of CTE:** CTE will be granted considering the verification report with applicable general and specific conditions.
5. **Guidelines for grant of CTO:** Once the industry is established as per the conditions prescribed in the CTE, it is required to obtain CTO.
- a) **Application:** The project proponent must submit an application seeking CTO with details regarding compliance of the CTE conditions.
 - b) **Verification:** An officer of the SPCB will inspect and verify the industry in respect of the compliance of CTE conditions and installation of pollution control devices to submit a detailed report of compliance of monitoring with CTE conditions.
 - c) **Grant of CTO:** CTO will be granted considering SPCB recommendations with applicable general and specific conditions.
 - d) **Compliance monitoring:** The frequency of monitoring of CTO conditions for red, orange and green category will be half yearly, annually and one in two years respectively.
6. **CPCB Portal:** An online portal must be developed by CPCB to act as an interface between all the stakeholders for grant, refusal and withdrawal of CTE/ CTO and also be a single point repository regarding management and implementation of the guidelines.
7. **Timelines for processing consent applications:** The guidelines prescribe fixed timelines to be followed by the concerned SPCBs/PCCs while considering application for CTE/CTO in respect of red, orange and green category industries. In case of unjustified delay in grant of CTE/CTO, the guidelines provide for action to be initiated against the responsible officer of SPCB/PCC under Section 48(2) of Water Act and Section 38(A) of the Air Act.

Conclusion

The guidelines are intended to

- a) Enhance the ease of doing business by minimising the compliance burden of industries.
- b) Reduce duplication of work at the SPCB/PCC level.
- c) Ensuring uniformity in the consent mechanism across the country.

The CPCB portal will immensely benefit the companies as a single window portal for all states to secure integrated and seamless process for the companies, while ensuring transparency. The last date for submission of comments on the proposed notification is September 17, 2024.

II. Proposed exemption to certain categories of industries/activities from mandatory requirement of prior consent under the Air Act and Water Act

On July 19, 2024, MoEFCC published draft notifications regarding exemption to certain categories of industrial plants from consent mechanism as per Section 21 of the Air Act and Section 25 of the Water Act.

Key highlights

1. **‘White’ category activities:** The draft regulations envisage that industries/activities categorised as ‘white’ by the CPCB be exempted from the mandatory condition of obtaining CTE and CTO from the SPCBs and PCCs. Such industries must intimate about their operations to the SPCBs/ PCCs in the form of a self-declaration. The SPCBs / PCCs must maintain a list of such industries/ activities separately.
2. **Projects requiring EC:** The project/activities requiring EC under the Environmental Impact Assessment Notification, 2006 are proposed to be exempted from obtaining CTE separately, viz:
 - a) While considering the EC application, the concerned SPCB/PCC will examine the project and communicate its comments to the authority within 30 (thirty) days. If required, the SPCB/PCC may undertake inspection of the site and seek additional information from project proponent before sending its comments.
 - b) The authority granting EC will consider the comments shared by the SPCB/PCC for inclusion of additional conditions.
 - c) CTE will be integrated with EC and additional conditions required by SPCBs be included in the EC.
 - d) Such project/activities must obtain the CTO in all such cases before starting their operations.
3. Industries not falling under the categories mentioned above are required to obtain CTE and CTO from SPCB/PCC.

Conclusion

The recent amendments to the Air Act and Water Act granted power to the Central Government to exempt certain industries/activities from seeking consent to enhance trust-based governance and the ease of doing business. The proposed regulations streamline the consent process seeking to remove the additional requirement of CTE for industries which need an EC since the EC process is quite comprehensive and invariably covers all aspects covered in a CTE. The last date for submission of comments on the proposed notification is September 17, 2024.

III. Proposed amendments to rules enacted under EPA, Air Act and Water Act for providing procedure for initiation of matters and imposition of penalties for violations

Proposed amendments to the Water Rules, the Air Rules and the EP Rules (collectively referred to as the “**Rules**”) enacted under the Water Act, Air Act and the EPA seek to operationalise the recent amendments made in the Air Act, Water Act and the EPA. Violations of these legislations will be adjudicated by an Adjudicating Officer (“**AO**”) who will determine and impose penalties for such violations.

Key highlights

1. **Appointment of AO:** The Secretary in-charge of the Environment Department of the State Government or Union Territory administration or any other officer not below the rank of secretary can be the ex-officio AO.
2. **Cognizance and processing of matters:** The Processing Officer (“**PO**”) authorised to take cognizance of violations within their respective jurisdictions are listed in the appendix to each rule. The PO is required to
 - a) initiate a matter either on its own motion or on receipt of a representation;
 - b) ascertain if it is a matter fit for adjudication; and
 - c) present the matter to AO after exercising reasonable due diligence to bring on record all relevant facts and circumstances that need to be taken into account for imposing penalty.
3. **Inquiry by AO:**
 - a) Issuance of Notice: The AO shall issue notice to the concerned PO and the persons against whom non-compliance is alleged.

- b) **Admission/ Denial of allegations:** If the person admits to allegations presented by the PO, the AO will record such admission in its order along with the quantum of penalty imposed. In case where the person does not admit to allegations, the AO will give the person an opportunity to produce documents/ evidence as he may consider relevant for inquiry.
 - c) **Powers of AO:** The AO is vested with the powers of a Civil Court under the Code of Civil Procedure, 1908 for (i) summoning and enforcing attendance of any person and examining him on oath; (ii) requiring discovery and production of documents or other electronic records; and (iii) receiving evidence on affidavits.
 - d) **Order:** Upon consideration of allegations and defences, the PO will pass a speaking order either dismissing the allegations or imposing penalties.
 - e) **Timeline:** Adjudication of the matter will be completed within 3 (three) months after the first date fixed for inquiry, extendable to another maximum period of 3 (three) months if sufficient reasons exist.
 - f) **Parallel proceedings:** If the subject matter before the AO is already in question before the National Green Tribunal (“NGT”) or any other Court, the proceedings before the AO will run in parallel unless such proceedings have been explicitly stayed by the Court. All orders passed by the AO will be subject to the outcome of the proceedings before the NGT or any other Court.
4. **Factors for determining penalty:** The AO, while determining the quantum of penalty under the relevant Act, will consider factors like place of operation of project; size of project (large/medium/small); category of industry (red/orange/green); type of contravention (operating without environmental clearances, non-compliance of environmental safeguards/emission standards); quantum of deviation; health impacts; undue gains; repetitive nature of contravention etc.
 5. **Appeal:** The orders passed by the AO can be challenged before the NGT.
 6. **Penalty to be credited to the Environmental Protection Fund:** The penalty imposed by the AO under the Air Act, Water Act and EPA are credited to Environment Protection Fund (“EPF”).

The proposed amendments in the EP Rules provide the manner for utilisation of the EPF:

1. **Utilisation of EPF:** It can be utilised for installation of continuous air, water and noise monitoring stations; new/upgradation of environmental laboratories; preparation of research and development documents on industrial sectors/clean technologies; assessment of environmental damages, preparation of detailed project reports and remediation of contaminated sites; capacity building and strengthening of personnels at CPCB/SPCB etc., payment of salaries to contractual staff etc.
2. **Remittance to state:** 75% of the penalty amount accrued in the EPF will be remitted to the concerned State.
3. EPF will be monitored by a project management unit established by MoEFCC.

Conclusion

The proposed amendments in the Rules operationalise the amendments made in the Air Act, Water Act and EPA. They envisage a mechanism for faster determination and imposition of penalties. Prior to the amendments in the Air Act, Water Act and EPA, violations were tried at trial courts which increased the pendency of cases and would take years for the resolution. The proposed amendments provide a streamlined mechanism for determining violations under the Air Act, Water Act and EPA by allowing the AO to consider all the necessary material and aspects. This will also reduce the time taken by NGT in deciding cases because the factual position in the matter will have already been established before the AO and the NGT would not be required to issue directions for submission of factual reports. The last date for submission of comments on the draft amendments is September 16, 2024 for EP Rules and September 17, 2024 for Air Rules and Water Rules.

IV. Draft amendments to the Public Liability Insurance Rules, 1991 and Environmental Relief Fund Scheme, 2008

Proposed amendments to the PLI Rules and the Environment Relief Fund Scheme, 2008 seek to incorporate the amendments made to Public Liability Insurance Act, 1991 (“**PLIA**”) vide the Jan Vishwas (Amendment of Provisions) Act, 2023.

Key highlights

1. **Relief for public property:** Any person or entity who holds an interest in the public property affected by an accident can also claim relief or restoration of property under the PLIA.
2. **Relief for environmental damage:** The CPCB or SPCB can make an application for allocation of funds from the Environmental Relief Fund (“**ERF**”) for identification, assessment and remediation of the environmental damage which cannot be attributed to a particular company/industry.
3. **Publication of right to relief:** The industrial unit responsible for the accident shall publicise the right to claim relief for the people who may be affected by the activities of the industrial unit.
4. **Maximum relief:** The maximum aggregate liability of the insurer to pay relief under an award to several claimants of an accident is limited to INR 250,00,00,000 (Indian Rupees two hundred and fifty crore). In case of more than one accident the aggregate will not exceed INR 500,00,00,000 (Indian Rupees five hundred crore).
5. **Adjudication mechanism:** The adjudication mechanism envisaged for determination of violations and imposition of penalties under the PLI Rules is the same as the mechanism envisaged under the Rules.

The amendments proposed in the ERF Scheme, 2008 are as follows:

1. **Penalties and additional penalties to be included in the ERF:** The penalties, additional penalties and the interest or returns earned on the investments of the ERF will be accrued to the relief fund.

Conclusion

The proposed amendments seek to insert enabling provisions in consonance with the amendments proposed in the PLIA. The proposal provides that the application made by the CPCB and SPCB for compensating environmental damage will be scrutinised by the Central Government and the funds will be released upon such scrutiny. The CPCB or SPCB are required to maintain proper records and documentation of the utilisation of funds and are required to submit annual reports to the Central Government wherein the details regarding the progress of the environmental remediation activities are to be submitted. The last date for submission of comments on the draft amendments in PLI Rules and ERF Scheme, 2008 is September 17, 2024, and September 21, 2024, respectively.

Environmental Law, Climate Change and Energy Transition Practice

The Firm advises and acts in proceedings, arising in relation to various environmental statutes, before the National Green Tribunal, High Court/s and Supreme Court of India. We have done critical review of major environmental laws and an assessment of their assigned objectives. The firm has been regularly advising clients in matters relating to climate change and energy transition.

This Prism has been prepared by:











Amit Kapur
Joint Managing Partner



Nawneet Vibhaw
Partner



Prannoy Sebastian
Senior Associate

		
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For more details, please contact km@jsalaw.com

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