

Ref. No. MCHI/GEN/13-14/019

July 19, 2013

To,
All Members of MCHI-CREDAI & MCHI-CREDAI Units

Sub: Consideration of proposals for TORs / Environment Clearance / CRZ, Clearance involving violation of the Environment (Protection) Act, 1986 / Environment Impact Assessment (EIA) Notification, 2006 / Coastal Regulation Zone (CRZ) Notification, 2011 - reg.

**Ref: (1) OM dtd. 27th June 2013
(2) OM dtd. 12th December 2012**

The Ministry of Environment & Forest has issued an OM dtd. 12th December 2012 for consideration of proposals for TORs/Environment Clearances etc. Ministry of Environment & Forest by office memorandum dated 27th June 2013 has inserted Sub-Para (IV) below Sub Para (iii) of para 5 of the Office Memorandum dated 12.12.2012.

The added paras are as under:-

(a) In case the project is at construction stage and the violation is on account of carrying out construction without valid EC/CRZ Clearance or in contravention of the conditions stated in the EC/CRZ Clearance, the construction activities will need to be suspended at the existing level till EC/CRZ Clearance is obtained or the required amendment to EC/CRZ Clearance is obtained.

(b) In case the project is in operation and the violation is on account of enhanced production beyond the capacity stated in the EC/CRZ Clearance, the production will need to be restricted to the capacity stated in the EC/CRZ Clearance till EC/CRZ Clearance is obtained for enhanced capacity. In case of operation without a valid EC/CRZ Clearance, the production will need to stop till the required EC/CRZ Clearance is obtained.

(c) In case the violation is on account of carrying out modernization of existing project and/or change in product-mix in an existing manufacturing unit, the status quo as existing prior to such modernization and/or change in product-mix will be maintained till the required EC/CRZ Clearance is obtained for the modernization and/or change in product-mix.

In case of any violation to aforesaid directions, legal action as per the provisions of the Environment (Protection) Act, 1986 will be taken against the Project Proponent and the case of TOR/EC/CRZ Clearance summarily rejected.

The copy of Office Memorandum dated 12.12.2012 & 27.06.2013 is enclosed for ready reference.

Regards,

A. H. Chheda
Legal Advisor, MCHI-CREDAI

No.J-11013/41/2006-IA.II(I)
Government of India
Ministry of Environment & Forests

Paryavaran Bhavan
C.G.O. Complex, Lodhi Road
New Delhi-110003

Dated: 27th June, 2013

OFFICE MEMORANDUM

Subject: Consideration of proposals for TORs / Environment Clearance / CRZ Clearance involving violation of the Environment (Protection) Act, 1986 / Environment Impact Assessment (EIA) Notification, 2006 / Coastal Regulation Zone (CRZ) Notification, 2011 – reg.

1. This Ministry, vide OM of even number dated 12.12.2012 on the subject cited above, has circulated guidelines for considering proposals for Terms of Reference (ToR) / Environment Clearance (EC) / Coastal Regulation Zone (CRZ) Clearance involving violations under the Environment (Protection) Act, 1986 / Environment Impact Assessment Notification, 2006 / CRZ Notification, 2011.

2. The matter has been further examined. It is felt that in addition to these guidelines circulated vide aforesaid OM dated 12.12.2012, in case of violation cases, the Project Proponent needs to be restrained, through appropriate directions under Section 5 of the Environment (Protection) Act, 1986 from carrying out any construction or operation activity without the required clearance or beyond the level / capacity stated in the existing clearance, as the case may be, till it procures the requisite EC / CRZ Clearance for the same.

3. In view of the above, it has been decided to insert the following as sub-para (iv) below sub-para (iii) of para 5 of the aforesaid OM dated 12.12.2012:

“(iv) Directions under Section 5 of the Environment (Protection) Act 1986 will be issued by MoEF to the Project Proponent in respect of the violations and compliance of Project Proponent obtained to such directions especially with regard to:

(a) In case the project is at construction stage and the violation is on account of carrying out construction without valid EC/CRZ Clearance or in contravention of the conditions stated in the EC/CRZ Clearance, the construction activities will need to be suspended at the existing level till EC/CRZ Clearance is obtained or the required amendment to EC/CRZ Clearance is obtained.

(b) In case the project is in operation and the violation is on account of enhanced production beyond the capacity stated in the EC/CRZ Clearance, the production will need to be restricted to the capacity stated in the EC/CRZ Clearance till EC/CRZ Clearance is obtained for enhanced capacity. In case of operation without a valid EC/CRZ Clearance, the production will need to stop till the required EC/CRZ Clearance is obtained.

...contd.2/-

(c) In case the violation is on account of carrying out modernization of existing project and/or change in product-mix in an existing manufacturing unit, the status quo as existing prior to such modernization and/or change in product-mix will be maintained till the required EC/CRZ Clearance is obtained for the modernization and/or change in product-mix.

In case of any violation to aforesaid directions, legal action as per the provisions of the Environment (Protection) Act, 1986 will be taken against the Project Proponent and the case of TOR/EC/CRZ Clearance summarily rejected.

4. This issues with the approval of the competent authority.


(Dr. P.B. Rastogi)
Director

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To:

1. All the Officers of IA Division
2. Chairpersons / Member Secretaries of all the SEIAAs/SEACs
3. Chairman, CPCB
4. Chairpersons / Member Secretaries of all SPCBs / UTPCCs

Copy to:

1. PS to MEF
2. PPS to Secretary (E&F)
3. PPS to JS(AT)
4. Website of the MoEF
5. Guard File

No. J-11013/41/2006-IA.II(I)
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Dated 12th December, 2012

Office Memorandum

Subject: Consideration of proposals for TORs/Environment Clearance/ CRZ Clearance involving violation of the Environment (Protection) Act, 1986 / Environment Impact Assessment (EIA) Notification, 2006 / Coastal Regulation Zone (CRZ) Notification, 2011 - reg.

The Environment Impact Assessment Notification (EIA), 2006 and its amendments thereafter require all new projects or activities and / or expansion and modernization of existing projects or activities listed in the schedule to the said Notification with capacity beyond threshold limits prescribed thereunder, to obtain prior Environment Clearance under the provisions thereof. Similarly, CRZ Notification, 2011 imposes certain restrictions on the setting up and expansion of industries, operations or processes and the like in the CRZ.

2. Instances have come to the notice of this Ministry where without obtaining the required clearance under the aforesaid Environment Impact Assessment Notification, 2006 and / or CRZ Notification, 2011, the construction / physical / operation activities relating to the projects have been started at the sites. Such activities amount to violations under the Environment (Protection) Act, 1986 / EIA Notification, 2006 / CRZ Notification, 2011 (henceforth referred to as violations).

3. The cases for granting Environment Clearance / CRZ Clearance for such projects are at present being dealt with in terms of OM of even number dated 16.11.2010. Now, it has been decided in that in supersession of this OM, the procedure henceforth stated in this OM will be followed while dealing with such cases.

4. The violations could come to the notice of the Ministry at various stages of processing of the proposals, i.e.:

- i. Processing the case in the Ministry before referring the same to the Expert Appraisal Committee (EAC) for TOR / Environment Clearance / CRZ Clearance;
- ii. During the deliberations in the EAC meeting and recorded as such in the minutes of the meeting; and;
- iii. Processing the case in the Ministry after the receipt of recommendations of the EAC but before granting TOR / Environment Clearance/CRZ Clearance.

5. As soon as any case of violation comes / is brought to the notice of the Ministry / EAC, the Ministry / EAC will proceed to verify the veracity of the complaint through the concerned Regional Office of MoEF / State Government / CZMA. Of course, such a verification will not be required in case

the project proponent does not contest the allegation of violation. Once the Ministry / EAC is satisfied that it is a violation case, before proceeding any further in the matter, the following will need to be ensured in the matter:

- i. The matter relating to the violation will need to be put up by the Project Proponent to the Board of Directors of its Company or to the Managing Committee / CEO of the Society, Trust, partnership / individually owned concern for consideration of its environment related policy / plan of action as also a written commitment in the form of a formal resolution to be submitted to MoEF to ensure that violations will not be repeated. For this purpose, a time limit of 60 days will be given to the project proponent. In the meantime, the project will be delisted. In the eventuality of not having any response from the project proponent within the prescribed limit of 60 days, it will be presumed that it is no longer interested in pursuing the project further and the project file will be closed, whereafter the procedure will have to be initiated *de novo* by such project proponents.
 - ii. The State Government concerned will need to initiate credible action on the violation by invoking powers under Section 19 of the Environment (Protection) Act, 1986 for taking necessary legal action under Section 15 of the Act for the period for which the violation has taken place and evidence provided to MoEF of the credible action taken.
 - iii. The details of the project proponent and a copy of the commitment, etc., mentioned at (i) above will be put on the website of MoEF for information of all stakeholders.
6. Once action as per para 5 above has been taken, the concerned case will be dealt with and processed as per the prescribed procedure for dealing with cases for grant of TORs / Environment Clearance / CRZ Clearance and appropriate recommendation made by the EAC/decision taken by the Ministry as per the merit of the case.
7. It may be clarified that the consideration of proposals for giving TORs/ Environment clearance / CRZ clearance for violation cases will not be a matter of right for the project proponent. In cases of serious violations, the Ministry reserves the right to outrightly reject such proposals and not consider the same at all.
8. The aforesaid procedure, as stated in para 4 to 7 above will apply *mutatis mutandis* to the cases handled at the State level by the State Environment Impact Assessment Authorities (SEIAAs)/ State Level Expert Appraisal Committees (SEACs).
9. This issues with the approval of the competent authority.


12.12.12
(Dr. P.B. Rastogi)
Director

To:

1. All the Officers of IA Division.
2. Chairpersons/Member Secretaries of all the SEIAAs/SEACs.
3. Chairman, CPCB, N. Delhi.
4. Chairpersons / Member Secretaries of all SPCBs / UTPCCs.

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