BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTH ZONE) AT CHENNAI

APPEAL No. 29/2020

BETWEEN

S.K. Vijay Kumar ... Applicant

AND

SEIAA, Karnataka & Others ... Respondents

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Advocate for Respondent No. 1

Place: Bangalore

Date: 20/04/2023

BEFORE THE NATIONAL GREEN TRIBUNAL (SOUTH ZONE) AT CHENNAI

APPEAL No. 29/2020

BETWEEN

S.K. Vijay Kumar ... Applicant

AND

SEIAA, Karnataka & Others ... Respondents

REPORT FILED BY RESPONDENT No. 1 (SEIAA, KARNATAKA) AS PER THE ORDER DATED 01/02/2023

The Respondent No. 1 begs to submit as follows: -

1. It is respectfully submitted that the 2nd Respondent M/s Resonance Laboratories Private Limited had initially submitted application to MoEF & CC on 20/07/2017 seeking EC for change in product mix in the existing manufacturing facility under violation category as per the Notification bearing No. S.O. 804 (E) dated 14/03/2017.

2. It is respectfully submitted that the 2nd Respondent submitted application to SEIAA on 11/04/2018 seeking EC for change in product mix in the existing manufacturing facility under violation category as per the Notification bearing No. S.O. 1030 (E) dated 08/03/2018.

3. It is respectfully submitted that the application of 2nd Respondent was considered by SEAC during its meeting held on 19/05/2018 and decided to recommend to SEIAA for issue of ToR for conducting EIA study and submission of EIA report. Accordingly, SEIAA issued ToR on 15/06/2018 for conducting EIA studies in accordance with EIA Notification. The ToR consisted of a) Standard Terms of Reference b) Specific Terms of Reference and c) Additional Terms of Reference. In Additional Terms of Reference, the following terms were also included.

   8) Assessment of ecological damage with respect to air, water, land and other environmental attributes. The collection and analysis of data shall be done by an environmental laboratory duly notified under the Environment (Protection) act 1986, or any environmental laboratory accredited by NABL, or a laboratory of a Council of Scientific and Industrial Research (CSIR) institution working in the field of environment.

   9) Preparation of EMP comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefits derived due to such violation.

   10) The remediation plan and the natural and community resource augmentation plan to be prepared as an independent chapter in the EIA report by the accredited consultants.

4. It is respectfully submitted that the Respondent No. 2 got the EIA study conducted and submitted the final EIA report to SEIAA on

28/04/2020, after holding public consultation on 28/01/2020 in accordance with EIA Notification 2006. As per Sl. No. 10 of Additional ToR, the Respondent No. 2 has made "Assessment of Ecological Damage with Respect to Air, Water, Land and other Environmental Attributes and EMP comprising Remediation Plan and Natural and Community Resource Augmentation Vis-à-vis Ecological Damage Assessed and Economic Benefits Derived" as an independent chapter in the EIA report. Copy of Chapter 13 of EIA Report filed by Respondent No. 2 with SEIAA is furnished herewith and marked as **DOCUMENT No. 1.**

5. It is respectfully submitted that SEAC appraised the proposal during its meeting held on 07/05/2020 duly considering all the facts and circumstances and recommended to SEIAA for issue of EC to the project. During the appraisal at SEAC, the committee reviewed the proposal and asked the proponent to include and come up with the profit and expenditure statement and to calculate remediation plan. During the appraisal, it was observed that the project in question had necessary approval from KSPCB for its manufacturing activity and the project was shown under loss during the violation period and hence the approach of carbon credit as per Kyoto Protocol was considered appropriate and recommended the proposal for issuing of EC. The SEIAA

considered the recommendation made by SEAC during its meeting held on 29/05/2020 and decided to grant EC. Accordingly, EC was issued to Respondent No. 2 vide letter dated 24/08/2020.

6. It is respectfully submitted that the Kyoto Protocol for assessing carbon foot print during violation period was adopted during appraisal not only for Respondent No. 2 but in other projects also under similar facts and circumstances including M/s Chandra Life Sciences Private Limited, M/s Vani Organics Private Limited and M/s Chorus Labs Private Limited.

7. It is respectfully submitted that Sub-paragraph 6 of Paragraph 13 of the Notification bearing No. S.O. 804 (E) dated 14/03/2017 issued by MoEF & CC was amended vide Notification bearing No. S.O. 1030 (E) dated 08/03/2018 which reads as under:

> "(6) – The Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, as the case may be, shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance"

It is further submitted that the above sub paragraph only provides for or guarantees the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the

ecological damage assessed and economic benefit derived due to violation but does not prescribe any specific methodology for assessing or imposing penalty for damage to the environment during violation period while appraising violation cases.

8. It is respectfully submitted that in this regard, as per the directions of the National Green Tribunal (PB) in OA 593/2017 (WP (CIVIL) No. 375/2012), CPCB has formulated a committee to look into the issue. Accordingly, the committee has formulated a methodology for assessing environmental compensation and action plan to utilize the fund in its report dated 15/07/2019. Chapter 1 of the said report deals with Environment Compensation to be levied on Industrial Units. Cases considered for levying Environmental Compensation are as follows:

   a) Discharges in violation of consent conditions, mainly prescribed standards/consent limits.
   b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
   c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring Systems.
   d) Accidental discharges lasting for short durations resulting into damage to the environment.
   e) Intentional discharges to the environment – land, water and air resulting into acute injury or damage to the environment.
   f) Injection of treated/partially treated/untreated effluents to ground water.

After considering various factors including the policy implementation issues, the committee has come up with the

following formula for levying the Environmental Compensation which is **EC = PI x N x R x S x LF.** Copy of the CPCB Committee report dated 15/07/2019 is furnished herewith and marked as **DOCUMENT No. 2.**

9. It is respectfully submitted that during the appraisal, it was observed by SEAC that the project in question had obtained EC for the project vide letter bearing No. DEE 117 EPC 91 dated 20/08/1992 and also necessary approval from KSPCB for manufacturing of Active Pharmaceutical Ingredients (API). The project was shown under loss during the violation period. For change in product mix in the year 2012, the Respondent No. 2 has obtained CFO from KSPCB. Since the activities of Respondent No. 2 during violation period did not cause any environmental damage as per EIA report and no economic benefit was derived by Respondent No. 2 due to violation and since the change in product mix without modified EC were not covered under the cases considered for levying environmental compensation by the CPCB committee, the method of adopting Kyoto Protocol for assessing environmental damage due to carbon footprint was considered appropriate by SEAC after due deliberations instead of applying CPCB formula.

10. It is respectfully submitted that in the backdrop of absence of any specific method for assessing environment damage and levying penalty against violators during violation period while appraising such cases, in order to end the ambiguity, the MoEF & CC has issued an Office Memorandum dated 07/07/2021 providing Standard Operating Procedure (SoP) as directed by NGT in various cases for levying penalty against violators during violation period which is now being followed. Copy of O.M. dated 07/07/2021 is furnished herewith and marked as **DOCUMENT No. 3.**

11. It is respectfully submitted that relevant provisions for imposing penalty in violation cases during violation period for expansion Projects is given at:

> Para 12(b)(ii) - **Where operation/production with expanded capacity have commenced:** 1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the violation period.
>
> Para 12(2) – The percentage rates, as above, shall be halved if the project proponent suo-moto reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12. It is respectfully submitted that at the time of appraisal of the project in question by SEAC, it was opined that since the project proponent has obtained CFO from KSPCB for change in product mix and other necessary approvals and that there was no damage

to the environment during violation period as per EIA report and that the project was running under loss, it would be appropriate to assess damage to environment by adopting Kyoto Protocol. After deliberations, it was also decided that it would not be appropriate to apply CPCB guidelines for levying environmental compensation in the instant case as it was not covered under the cases considered for levying environmental compensation by the CPCB committee.

13. However, with MoEF & CC, OM dated 07.07.2021 which is binding, the process has been now initiated by SEIAA and the Hon'ble NGT will be informed of the same.

Date: 19.04.2023
Place Bangalore

Member Secretary
SEIAA, Karnataka

MEMBER SECRETARY
SEIAA, KARNATAKA.

CHAPTER 13

ASSESSMENT OF ECOLOGICAL DAMAGE WITH RESPECT TO AIR, WATER, LAND AND OTHER ENVIRONMENTAL ATTRIBUTES.

EMP COMPRISING REMEDIATION PLAN & NATURAL & COMMUNITY RESOURCE AUGMENTATIONPLAN VIS-À-VIS ECOLOGICAL DAMAGE ASSESSED & ECONOMIC BENEFITS DERIVED

Chapter 13

Assessment of Ecological Damage with Respect to Air, Water, Land and Other Environmental Attributes. Emp Comprising Remediation Plan & Natural & Community Resource Augmentation Plan Vis-À-Vis Ecological Damage Assessed & Economic Benefits Derived

13.1 Introduction

M/s. Resonance Laboratories Pvt. Ltd. is located at Plot No. 8C and 9A, KIADB Industrial Area, Bashettihalli, Doddaballapur-561203 Taluk, Bengaluru Rural District, Karnataka.

The Company is manufacturing bulk drugs, APIs and intermediates which has been classified as a red category industry as described in schedule 5(f) - Synthetic Organic Chemicals - bulk drugs and intermediatesof the EIA notification S.O.1533(E) dated 14-09-2006.

13.1. A. Historical and Current Activities at the Site

The industry obtained Consent for Establishment (CFE) and Consent for Operation (CFO) for 5 products with a capacity of 37.64 TPA from Karnataka State Pollution Control Board (KSPCB) on 08.05.1992 & 04.04.1994 respectively i.e., prior to EIA Notification 1994. Company changed its product mix and added new products in the year 2012 to manufacture 9 products at a reduced capacity 10.29 TPA and in 2015 to manufacture 19 products at a capacity of 10.86 TPA with valid consents from the KSPCB. These changes in product mix are done without Prior Environmental Clearance (EC). Therefore, the KSPCB has directed the Industry to obtain Environmental Clearance for the change in product mix and restricted the consent only for the five old products which were being manufactured prior to 2012. The present CFO from KSPCB is valid up to 30.06.2021.

The proposed activity falls under the schedule 5 (f) Synthetic Organic Chemicals and Category 'B' as per the EIA Notification 2006 and project is considered under violation category as per Notification by MoEF& CC vide S.O. 804(E) dated 14th March 2017.

13.2 Preamble to Assessment of Ecological Damage if any, EMP Comprising Remediation Plan & Natural & Community Resource Augmentation plan & Economic Benefits due to Violation

SEIAA, vide letter no. No. SEIAA 15 IND (VIOL) 2018 dated 15-6-2018 recommended Terms of Reference for EIA study and preparation of EIA report which is line with the Number S.O. 804(E) dated 14th March 2017.

In the ToR for EIA & preparation of EMP the following points are included.

- Assessment of ecological damage with respect to air, water, land and other environmental attributes.
- Preparation of EMP comprising remediation plan & natural & community resource augmentation plan corresponding to the ecological damage assessed & economic benefits derived due to violation.
- The remediation plan & natural & community resource augmentation plan to be prepared as an independent chapter in EIA report.
- To conduct Public Hearing.

M/s. Resonance Laboratories Pvt. Ltd. has established pollution control system for control of water pollution, air pollution and hazardous waste management system to meet the conditions stipulated in consents issued by KSPCB. There are sufficient checks and controls to ensure that the recipient environment is well protected.

Monitoring and analysis of environmental attributes viz. air, water, soil has been carried out by NABL accredited Vsix Analytical Labs Pvt. Ltd., Bengaluru.

13.3 Brief Description of the Site

M/s. Resonance Laboratories Pvt. Ltd. is located in KIADB Industrial Area, Bashettihalli, Doddaballapur. Location maps are in *EIA* report, Chapter 2, Section 2.3. Table 13.1 provides land use pattern of the project site and Table 13.2 provides immediate surroundings of project site.

Table 13.1: Land-use pattern

S. No	*Land Use*	*Existing Area Break up*			
		Sq. m	*Acres*	*Ha*	*%*
1	Built-up area	2266.5	0.56	0.23	07
2	Roads + building perimeter	3237.5	0.8	0.32	10
3	Greenbelt	10683.9	2.64	1.07	33
4	Vacant Land for future development	16187	4.0	1.61	50
	Total	**32374.9**	**8.00**	**3.23**	**100**

Table 13.2: Immediate surroundings of project site

Sl. No.	Direction w.r.t. project site	Particulars
1	West	KIADB Plot No. 9B
2	North	Textile park
3	South	KIADB Plot No. 12H, 13A & 11A
4	East	KIADB Plot No. 8A & 8B

Note: Bashettihalli with a population of 7943 (Census 2011) is the nearest place of habitation located at ~0.50 km (West)

13.4 Assessment of Ecological/ Environmental Damage

13.4 A. Introduction

Ecological study is basically a tool for the regulator to assess the damage if any on the surrounding environment due to human activities viz. industrial, developmental, agricultural etc. The approach to the study is to assess the impact on the environmental attributes due to industrial activities.

Assessing the ecological impacts means identification of source of pollution, pollutants, its pathway, presence of any sensitive receptors, measurement of environmental attributes and impact assessment. Consequent to the study, environmental management plan comprising of remediation plan to address the impact on natural & community resources is prepared.

13.4 B Present scenario

M/s. Resonance Laboratories Pvt. Ltd. is located in KIADB industrial area, Bashettihalli, Doddaballapur and here there are five bulk drug manufacturing units in Doddaballapur Industrial area and Estate.

Pollutants generated: The major sources of air pollution are process section, boiler, Thermic fluid heater and DG set. The sources of water pollution are from the industrial process effluent comprising High TDS and low TDS, these two streams are separated and handled separately.

Presence of sensitive receptors: There are no sensitive receptors like monuments of archaeological importance, national parks, bio-reserves, wildlife sanctuary, world heritage sites, etc. in the study area.

However,

- Two reserve forests viz. Gundakolipura & Palanjogahalli are located within the study area at a distance of 7.72 km towards West & 6.58 km towards north west respectively. But there is no impact on the same due to industrial activity.

- There are no significant lakes in the study area. However, the nearest lake is Nagar kere, Doddaballapura at a distance of 3.8 km towards north west. There was no water in the lake during the reconnaissance survey.
- The nearest human settlement is Bashettihalli at a distance of ~0.50 km towards West. The population is 7943 people as per Census report 2011. The Study area in 10 km radius has 57 villages.

13.4.C Zone of influence

MEASUREMENT OF ENVIRONMENTAL ATTRIBUTES: The environmental attributes air, water and soil quality are assessed and the details are in Chapter 3 of EIA report.

Zone of influence are the areas/resources that may be affected by the biophysical changes caused by the project and associated activities. The extent of the zone of influence will depend on:

- species, communities and ecosystems likely to be affected; and
- temporal and spatial scale of potential effects on them.

Zone of influence will differ for different ecological features and for different development activities.

The "effect area" of various activities of M/s. Resonance Laboratories Pvt. Ltd. i.e. zone of influence where impacts are likely to occur is within the plant site under normal working conditions and not more than 500 m from the boundary during worst-case scenario for air and land environment as;

- ✓ Adequate mitigation measures are taken up for maintaining the quality of environmental attributes as per legal norms. Details in *Table 13.4* of this report.
- ✓ Nagar kere is the nearest waterbody located at a distance of 3.8 km towards north west and Venkatapura lake about 800 mts from the plant site from the industry. No effluent is discharged directly or indirectly into any water body. The wastewater generated is segregated into low & high TDS streams at the source itself. Low TDS stream is treated along with the domestic effluent, mixed with treated RO reject from fresh water treatment plant & re-used for green-belt development & high TDS stream is sent to CETP after primary treatment.
- ✓ There are no national parks, bio-reserves, wildlife sanctuary, world heritage sites in the surrounding area.
- ✓ There are no monuments or structures of archaeological importance in the vicinity.

13.4.D. Environmental status of study area

Three months data from January, to March 2019 has been collected for environmental attributes like air, water, soil, noise etc., within a radius of 10 km to assess the environmental status around the industry area. Summarized results are presented below.

1) AIR ENVIRONMENT

Short-term monitoring was conducted at eight locations around the proposed project site. During the study period, concentrations of PM_{10}, $PM_{2.5}$, SO_2, NO_x, CO, NH_3 etc. were measured. From the observations, it is seen that the concentration of pollutants under consideration in all the locations monitored are within the specified limits of NAAQS - MoEF as per the notification dated 16th November 2009 for industrial, residential & rural areas.

2) NOISE ENVIRONMENT

Noise level monitoring was conducted at eight locations within the study area representing industrial and residential areas. The field observations during the study period indicate that the ambient noise levels in both industrial and residential areas are within the CPCB limits during day and night as prescribed under EP Rules and the Noise pollution (regulation and Control) Rules 2000.

3) SOIL ENVIRONMENT

The soil analyzed at eight locations in the study area is almost neutral to alkaline. Nitrogen, phosphorous and potassium are sufficient.

4) WATER ENVIRONMENT

Eight groundwater samples were collected in the study zone including project site and surroundings and analyzed for their physico- chemical characteristics to evaluate the existing status of water quality. The ground water analysis results indicate that the parameters are within the maximum permissible limits of the drinking water standards (IS: 10500-2012) in the absence of alternate source except for Total dissolved solids & total hardness at few locations.

In addition, reconnaissance survey was conducted and eight lakes were identified in the study are. However, none of them had any water during the monitoring period. The lakes identified are Nagar kere, Bisuvanahallikere, Sivapuralake, Venkatapura lake, Aradeshanahalli lake, Kodaturukere, Doddatumkurkere, Palanikere.

5) HISTORICAL GOOGLE IMAGERY

Historical and the latest google maps of the project site were compared. They are shown below.

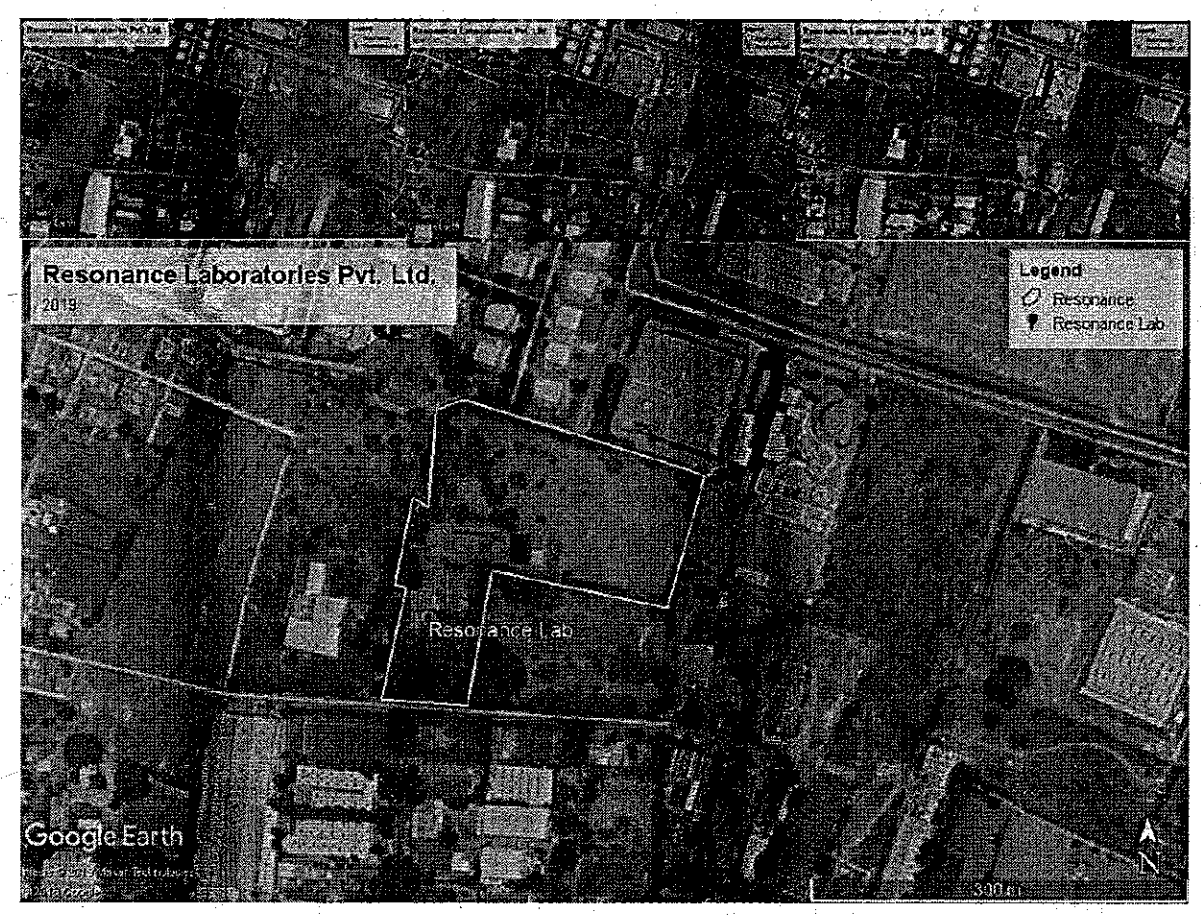

Figure 13.1: Historical google maps

Observations

Comparison with the historical Google images within the site shows no change in vegetative cover. Grass- cutting is done in open area for future development for safety measures. There are currently around 450 trees within the premises.

13.4.E. Impacts & mitigation measures for sources of pollution during operation phase

Mitigation measures to control air pollution & water pollution and for optimum management of hazardous waste is tabulated below. Table 13.3 provides details of mitigation measures for sources of pollution during operation phase.

Table 13.3: Mitigation measures

Environmental impacts	Mitigation measures
AIR ENVIRONMENT	
➢ Manufacturing process	➢ Manufacturing process involves closed operations in controlled reactors. ➢ The process emissions from the reactors are condensed using condensers and recovered. ➢ The other process off gases are scrubbed using packed column scrubbers (four nos.) and the emissions are let out through chimneys of 17 m AGL (4 no.s).
➢ Storage of raw materials	➢ Raw materials are stored in a designated concreted and enclosed area. ➢ The solvents are contained in HDPE drums/ glass bottles with proper lids and stored in secured manner in a separate yard. The solvents are charged into reactors by using vacuum pump to minimize fugitive emissions.
➢ Storage of products	➢ Products are stored in a designated concreted and enclosed area in closed containers in a secured manner.
➢ Movement / Transportation of raw materials and products	➢ Raw materials are transferred in closed containers from warehouse to production block. ➢ Finished products are transferred in double LDPE bags in closed containers. ➢ The process area is provided with abundant natural light and ventilation and high roofs to disperse the fumes/gases to the outside atmosphere; preventing the increase of ground level concentrations (GLC'S) as it gets dispersed. ➢ AHUs (Air Handler Units) are provided for circulation of fresh air final at centrifuge and powder processing area. All other process areas are well ventilated with meshed openings to outside.
➢ Operation of boilers, thermic fluid heater & DG sets	➢ The emissions from DGs, boilers & thermic fluid heater are let out through combined stacks of height 17 m AGL, 21 m AGL respectively.
WATER ENVIRONMENT	
(a) Domestic sewage	Domestic sewage is treated along with low TDS effluent & RO reject from fresh water treatment plant is mixed and treated effluent is used for landscaping & green-belt development.
(b) Trade effluent	➢ Trade effluent is segregated into high TDS and low TDS at source. ➢ Low TDS effluent along with sewage is treated in biological treatment plant and treated effluent is used for greenbelt after mixing with the RO rejects from the fresh water treatment plant. ➢ High TDS effluent is disposed to CETP after primary treatment.
(c) Storm water	➢ Storm water drain is kept separate and there is no mixing of effluent or any discharges or spillages. ➢ Rain water storage tank of 300 cum capacity to collect the roof top rainwater is existing within the premises. It will be reused for domestic purposes.

	➢ For groundwater recharging, it is proposed to provide recharging pits along the inner periphery of size 1.2 m dia. x 2.5 m deep. These recharging pits will be filled with graded media comprising of boulder at bottom and coarse aggregates at top to facilitate percolation of harvested rainwater to recharge ground water table.
HAZARDOUS WASTE	
(a) Storage	➢ Designated hazardous waste storage area secured by proper roofing on impervious platform. ➢ Hazardous waste storage room of 22.72 SQM is provided.
(b) Handling	PPEs like face mask & nitrile gloves are provided.
(c) Disposal	To disposal facilities authorized by Karnataka State Pollution Control Board (KSPCB).
NOISE	
(a) Operation of DG sets	➢ DG sets is provided with in-built acoustics. They are installed in dedicated utility area, where the access will be restricted. Also, the use of PPE (ear plugs) is mandatory in this area. ➢ Green belt at the project boundary will further act as noise barrier and help in attenuation of noise.
(b) Operation of reactors during the manufacturing process.	➢ Use of PPE (ear plugs) is mandatory in this area.

Financial Allocation & Budgetary Provision for Environment Management Plan (EMP)

Budgetary provisions for EMP is tabulated in Table 13.4.

Table 13.4: Budgetary provisions for EMP

Sl. No.	Description	Financial provision in Rs./annum - recurring cost
RECURRING COST		
1.	Personal protection safety gadgets and health care	3,00,000
2.	Tree plantation and landscaping measures (578 saplings @ Rs100 per each)	58,000
3.	Environmental monitoring (air, noise, water and hazardous waste)	2,92,400
4.	Maintenance of online monitoring system	1,00,000
5.	Hazardous waste management & wastewater treatment operation and maintenance	21,60,000
	TOTAL	29,10,400
CAPITAL COST (proposed)		
6.	Rainwater harvesting & groundwater recharging structures 10 nos @ Rs 10000	1,00,000
7.	Tree plantation (578 saplings@ Rs300 per each)	1,73,500
8.	Online monitors for treated effluent (pH, SS, BOD and COD)	25,00,000
	TOTAL	27,73,500

13.4.F. Assessment of ecological damage and suggested remediation measures

M/s. Resonance Laboratories Pvt. Ltd. is an existing industry established in the year 1992 and in operation from 1994. The unit had obtained EC, for 5 products with a capacity of 37.64 TPA, vide F. No. DEE 117 EPC 91 dated: 20.08.1992 valid up to 2012.

In 2012, the unit had gone for expansion from 5 to 9 products with a capacity of 10.29 TPA & obtained CTE & CTO.

The unit expanded from 5 products with a capacity of 37.64 TPA to 9 products with a capacity of 10.29 TPA and to 19 products of same capacity, without prior Environmental Clearance as per EIA Notification 2006 and its amendments. So, the project falls under violation category as per violation notification vide S.O. 804(E) dated 14th March 2017.

Hence, 2012 is considered as the base year for environmental/ecological damage assessment that is the year where the industry has violated the EIA Notification 2006, ie., started manufacturing new products without the Prior Environmental Clearance and made an economical gain.

Assessment of environmental / ecological damage with respect to air, water, noise, soil/land, flora & fauna, occupation health and other environmental attributes due to construction & operation of the industry are presented under:

13.4.1 Construction Phase

There is no construction activity from 2012 till date.

13.4.2 Operation Phase

Environmental / ecological damage has been assessed from financial year 2012-13 till 2018-19.. Assessment of environmental / ecological damage, remediation measures during Operation Phase are shown in Table 13.5.

Table 13.5: Assessment of environmental / ecological damage, remediation measures - Operation Phase

Sl. No	*Env. Attributes*	*Causes of impact*	*Impacts*	*Probable damage*	*Preventive measures adopted*	*Actual damage*
1	Ambient air	Operation of DG sets (100 kVA X 1 no. & 160 kVA - 1 no.)	• Flue gas emissions • Diesel consumption	Effect on air quality.	• Used as stand by source of power. • Emissions controlled by two stacks each of 17 m height AGL.	Minimum effect on air quality as pollution control measures are in place. Flue gas emissions from the year 2012 to 2019 • PM_{10} - 3.49 t • SO_2 - 1.73 t • NO_x- 18.33 t Assuming max 30 h operation of DG sets per month for the period from financial year 2012-13 till 2018-19. Diesel consumption from financial year 2012-13 till 2018-19is about 103 KL.
		Operation of boilers (200 kg/h X 1 no. & 600 kg/h X 1 no.)	• Flue gas emissions. • Fuel: HSD		Emission controlled by combined stack of 21 m height AGL.	Minimum effect on air quality as pollution control measures are in place. Flue gas emissions during the period 2012-18 • PM - 36.73 t • SO_2 - 25.2 t • NO_x- 23.51 t

						HSD consumption from financial year 2012-13 till 2018-19is 349 KL.
2	Noise	Operation of DG sets & process section	Noise generation	Increased noise levels within the industry premises & outside.	• DGs are housed in a room which acts as a noise attenuator. • Persons working in high noise zones are provided with appropriate PPEs. • Also, ambient noise levels are ensured to be within the standards by inbuilt in design of mechanical equipment and building. • Regular maintenance of equipments& machinery. • Vegetation (tree plantations) along the periphery and at various locations within the industry premises is grown to act as barrier.	No increase in ambient noise levels within the industry premises as is evident from the baseline monitoring reports. Day: 60.3 dB(A) L_{eq}& Night: 52.8 dB(A) L_{eq}
3	Water - surface & ground	• Water consumption for process,	• Raw water consumption. • Wastewater generated	• Use of raw water for operation of the industry.	• Trade effluent is segregated into high TDS and low TDS at source.	• Raw water consumption for operation of the industry from financial year 2012-13 till 2018-19is

		domestic use. • Effluent discharge.	from industrial process & domestic sources.	Water source is borewells within the industry. • Untreated wastewater if disposed will effect surface, groundwater quality & soil.	• Low TDS effluent along with sewage is treated in biological treatment plant and treated effluent is used for greenbelt. This practice is being followed from June 2018. Upto June 2018 low TDS effluent was also disposed to CETP. • High TDS effluent is disposed to CETP. • Domestic sewage is treated in septic tank. Outflow from septic tank is mixed with low TDS effluent & RO reject and treated in in-house effluent treatment plant. Treated low TDS effluent will be re-used for landscaping & green-belt development.	to the extent of 37,630 KL. • Total effluent generation from financial year 2012-13 till 2018-19is o High TDS effluent - 549 KLD o Low TDS effluent - 2,094 KLD o Domestic sewage - 2,030 KLD • Negligible effect from wastewater as low TDS industrial effluent is completely treated along with domestic sewage & re-used for green-belt & high TDS effluent is disposed to CETP.
4	Storm water / rainwater	Rainwater harvesting & groundwater recharging	Loss of rainwater	Waste of natural resource.	Rainwater harvesting. Groundwater recharging pits.	• Rain water storage tank of 300 cum capacity is constructed to collect the rain water and will be

						reused for domestic purposes. • It is proposed to provide 10 recharging pits along the inner periphery with recharging pit of size 1.2 m dia. x 2.5 m deep. These recharging pits are filled with graded media comprising of boulder at bottom and with coarse aggregates to facilitate percolation of harvested rain water to recharge ground water table. • The maximum storm water lost from the site considering peak rainfall month during the period from financial year 2012-13 till 2018-19is 24,864 m^3.
5	Solid & hazardous waste	Industrial activities	Generation of solid & hazardous wastes.	• Leaching of chemicals/ hazardous waste. • Effect on soil & discharge	• All the hazardous waste generated are stored in a secure manner in a dedicated storage area and disposed to KSPCB authorized agencies.	Total quantity of hazardous waste disposed through authorized agencies from financial year 2012-13 till 2018-19are • Used oil - 3.4 KL

				along with rainwater runoff. • Effect on health of people handling the waste. • Odour nuisance from domestic garbage.	• MOUs / work orders are made with authorized disposal agencies. • Domestic garbage is segregated at source. Organic domestic waste is composted and used for garden. The inorganic waste is collected in bins and disposed to waste collection system of the local authority.	• Waste /residues containing oil (Oil soaked cotton and oil filters - 0.223 MT • Process residue and waste (distillation residue) - 17.75 MT • Spent solvent - 27 MT • Emptywaste chemicals drums - 100 no.s/annum • Spent carbon/ Spent catalyst - 4.015 MT • Off specification products - 2.986 MT • Used PPEs (mask, gloves/shoe covers, head caps) - 6.515 MT • Contaminated packing materials - 8.554 MT • Filter material - 5.218 MT
6	Soil / land cover	Industrial activities	Industrial activities	Soil contamination due improper storage of hazardous waste, raw materials and products. Management of	• Detailed in points 3, 4, 5 & 7.	Nil

				wastewater and storm water.		
7	Flora & fauna	Industrial activities	Industrial activities	Loss of flora & displacement of fauna	• The factory is in KIADB designated industrial area. • 33% of the total plot area i.e. 2.64 acres has been reserved for green-belt & landscape development. • At present there are about 450 trees of different species such as neem, mango, rain tree, silver oak, bamboo coconut etc.	No damage to the existing flora & fauna.
8	Socio-economics	Inflow of people to the area for employment	• Economic growth of the region. • Increased pressure on local resources & infrastructure facilities.	• Employment opportunities & generation of income. • Increased load on local resources & infrastructure facilities.	• At present, the industry has generated direct employment opportunities for 53 people out of which 40 are local people.The work force is likely to increase to 65 workers.	Overall positive impact as the industry has provided employment opportunities, promoted economic growth & increased income of local people.
9	Occupational health	• Workplace health hazards.	• Occupational health effect on employees.	• Health effects on employees.	• PPEs are provided to the employees based on need & workplace.	Negligible

					• Annual health check-up is conducted for all employees.	

Note: It is seen from the detailed study above that the violation of M/s. Resonance Laboratories Pvt. Ltd. is only regulatory lapse and the damage to the environment is negligible as all the measures stipulated in the CFO are followed.

13.5 Natural and Community Resource Augmentation Plan

The augmentation plan will be in conjunction with the damage assessment as stated earlier.

Activities for the augmentation plan can be classified in major categories as under:

A. Natural resource augmentation plan: includes
- Plantation in public places in the surrounding areas
- Avenue plantation

B. Community augmentation plan: will consist of
- Infrastructure development
- Providing portable drinking water facilities
- Providing infrastructure & other requisite facilities to Government schools

Various activities under the natural and community resource augmentation plan with allocated budget are detailed in *Section 13.7 below.*

13.6 Economic Benefits Derived Due to Violation

Economic benefits include the financial gains obtained by the industry through sale of products manufactured from 2012. The same is tabulated in Table 13.6.

Table 13.6: Economic benefits derived due to violation

Financial year	*Revenue from Operations, INR (1)*	*Cost of Materials Consumed, INR (2)*	*Changes in Inventories, INR (3)*	*Employee Benefit Expenses, INR (4)*	*Finance Costs, INR (5)*	*Other Administrative Expenses, INR (6)*	*Depreciation and Amortization Expenses, INR (7)*	*Profit/Loss, INR (8) = (1)-(2)-(3)-(4)-(5)-(6)-(7)*
2012-13	78,598,778	20,240,138	-784,461	20,982,074	79,148	38,787,962	4,404,459	**-5,110,542**
2013-14	150,685,095	33,282,318	1,158,010	31,309,126	245,375	51,189,203	4,705,782	**28,795,281**
2014-15	86,250,919	27,035,918	-1,649,440	37,374,696	207,372	36,451,884	5,396,220	**-18,565,731**
2015-16	84,238,043	18,490,836	103,381	36,893,429	131,230	31,910,044	4,648,760	**-7,939,637**
2016-17	51,738,465	15,518,878	307,030	31,719,654	168,821	23,898,108	4,459,586	**-24,333,612**
2017-18	86,813,913	14,294,032	1,199,857	38,551,035	178,781	23,354,875	4,223,465	**5,011,868**
2018-19	76,640,176	23,856,426	-875,061	50,330,852	82,818	20,428,602	3,903,333	**-21,086,794**
Total	**614,965,389**	**152,718,546**	**-540,684**	**247,160,866**	**1,093,545**	**226,020,678**	**31,741,605**	**-43,229,167**

Note: As seen from Tables above the industry has incurred a net loss of Rs. 43,229,167/- from 2012-19

13.7 Cost of Remediation& Measures to Improve Surrounding Areas with Timeline for Implementation

The financial allocation and budgetary provisions for damage remediation, measures for the improvement of the surrounding areas, Corporate Environment Responsibility (CER) with timeline for implementation are tabulated below.

13.8 Timeline for Implementation

The funds allocated for remediation & CER will be spent in the next three years for various activities are as specified in Table 13.7.

Table 13.7: Funds allocated for remediation & CER to be spent in the next three years

Natural Resource Augmentation					
Sl. No.	Commitment to the public consultation concerns raised	Total Budget Allocation, Rs. Lakhs	Proposed year of implementation		
			2020-21	2021-22	2022-23
			Financial provision in Rs. Lakhs		
1	Avenue plantation in community areas	2	0.6	0.7	0.7
	Total	**2**	**0.6**	**0.7**	**0.7**
Community Augmentation					
1	Providing drinking water facility to nearby village	0.5	0.2	0.1	0.2
2	Support to nearby Government school (school benches, computers etc. as per requirement)	1	0.3	0.3	0.4
	Total	**1.5**	**0.5**	**0.4**	**0.6**

Corporate Environmental Responsibility (CER)			
Sl. No.	Activity under CER	Fund Allocated (Rs. in Lakhs)	Time line (year wise)
1	Providing solar street light within the factory premises	5	2020-21
2	Plantation in community area	2	2020-22
3	Providing drinking water facility at villages	2	2020-21
4	Environmental education in schools under awareness program of KSPCB	2	2020-22
5	Augmenting the resource in government schools	4	2020-21
	Total	**Rs. 15 Lakhs**	

13.9 Implementation schedule of Planned Activities and Related Bank Guarantee

The proposed activities under the remediation, natural and community resource augmentation plan as well as EMP measures suggested/recommended will be implemented in a phased manner.

Amount fixed by the State Expert Appraisal Committee (SEAC) / State Environment Impact Assessment Authority (SEIAA) will be given as bank guarantee.

13.10 Conclusion and Recommendation

The industry is established in KIADB industrial area, Bashettihalli, Doddaballapur in accordance with the local area development plan. It can be concluded from the study that the operation of M/s. Resonance Laboratories Pvt. Ltd., bulk drugs, APIs and intermediates manufacturing industry without Prior Environmental Clearance has almost negligible ecological damageor environmental ramifications. All the necessary pollution control measures as per the stipulation of the KSPCB have been implemented. The existing activities have not led to contamination of ambient air, groundwater and soil as is evident from the baseline analysis reports.

It is seen from the detailed study that the violation of M/s. Resonance Laboratories Pvt. Ltd. is only regulatory lapse and the damage to the environment is negligible as all the measures stipulated in the CFO are followed.

Budgetary allocation with respect to remediation, natural and community resource augmentation plan is provided. Summary of the same is tabulated in Table 13.8 below.

Table 13.8: Budgetary allocation

Sl. No.	*Description*	*Financial provision in Rs. Lakhs*
2	Natural resource augmentation	2
3	Community augmentation	1.5
4	Corporate Environment Responsibility (CER)	15
	Total	**18.5**
Rupees Eighteen Lakhs Fifty Thousand Only		

In addition, annual recurring cost of Rs. 29.1 Lakhs will be incurred for EMP measures.

15/07/2019 Document No. 2

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Report of the CPCB In-house Committee on Methodology for Assessing Environmental Compensation and Action Plan to Utilize the Fund

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Abstract

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

Chapter-I: Environment Compensation to be levied on Industrial Units

1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

> *"The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months"* ***(Annexure-I).***

1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018,17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II.**

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III.**

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

Cases considered for levying Environmental Compensation (EC):

a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
d) Accidental discharges lasting for short durations resulting into damage to the environment.
e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
f) Injection of treated/partially treated/ untreated effluents to ground water.

1.3.1 In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

PI = *f* (Water Pollution Score, Air Pollution Score & HW Generation Score)

*Pollution Inde*x is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution *hazard from the industrial sector.*

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at a, b and c including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ₹
PI = Pollution Index of industrial sector
N = Number of days of violation took place
R = A factor in Rupees (₹) for EC
S = Factor for scale of operation
LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

a. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
b. N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
c. R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
d. S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
e. LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

**Population of the city/town as per the latest Census of India*
#LF will be 1.0 in case unit is located >10km from municipal boundary
LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	**10,000-60,000**	**6,250-37,500**	**5,000-22,500**

1.3.2 In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

1.4 Action Plan for Utilization of Environmental Compensation Fund

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

1.4.1. *When Environmental Compensation is calculated through the Pollution Index:*

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

a. Industrial Inspections for compliance verification
b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
d. Investigations of environmental damages, preparation of DPRs
e. Remediation of contaminated sites
f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.
Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

1.4.2. *When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:*

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

1.5 Recommendations

The Committee made following recommendations:

1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula "EC = PI x N x R x S x LF", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.

1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.

1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

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F. No. 22-21/2020-IA.III
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division
*****

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Date: 7th July, 2021

Office Memorandum

Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.

The Ministry had issued a notification number S.O.804(E), dated the 14th March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) ***for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process***".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that ***"...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country"***.

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn.The Ministry is also seized of different categories of 'violation' cases which have been

pending for want of an approved structural/procedural framework based on *'Polluter Pays Principle'* and *'Principle of Proportionality'*. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

7. Relevant Court Cases on the issue: It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases** and have **enunciated principles of 'Proportionality' and 'Polluter Pays'** in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014). The salient extracts of the judgements are as under:

Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:

i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014

Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws."***

ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017

Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating

pollution laws or the pollution, if any, can conveniently and effectively be checked. ***The answer necessarily has to be in the negative.***"

"29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms."

Issue 2: Environmental Clearance – Prospective & not ex-post facto:

Hon'ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017

Held: "(...) an EC will come into force ***not earlier than the date of its grant."***

Issue 3: 'Principles of Proportionality' – to be applied:

Hon'ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020

Held: "(...) ***this Court must take a balanced approach*** *which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord* ***with the principle of proportionality"***

Issue 4: 'Polluter pays' principle &
&
Issue 5: Costs for remedial measures implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

Hon'ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)

Held:

a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will ***include giving directions ...*** *and also the power to* ***impose the cost of remedial measures*** *on the offending industry and utilize the amount so recovered for carrying out remedial measures.....*

*b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.*

*c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the "**Polluter Pays" Principle**. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".*

8. Legal provisions:

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes *'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.*

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

9. Definition of Violation and Non-compliance:

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays**: Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

11. SOP for dealing with the violation cases:

Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1.	If no prior EC has been taken	Order to **close** its operation
2.	If prior EC is available for existing/old unit	Order to **revert the activity/ production** to **permissible limits.**
3.	If prior EC was not required for earlier production level but is now required	**Restrict the activity/production** to the extent to which prior EC was not required.

Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

Step: 3: Appraisal under EIA Notification, 2006

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

A. If not permissible:

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be ***closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

B. If permissible:

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

form/configuration/features then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

Note - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

12. Penalty provisions for Violation cases and applications:

a. **For new projects:**

i. **Where operation has not commenced**: 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]

ii. **Where operations have commenced without EC**: 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

b. **For expansion projects:**

i. **Where operation/production with expanded capacity has not commenced:** 1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.

ii. **Where operation/ production with expanded capacity have commenced:** 1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

13. Identification of Violation cases:

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment.Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior

Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.

iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.

14. This is issued with the approval of the Competent Authority.

09/7/2021

(Dr. Sujit Kumar Bajpayee)
Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).