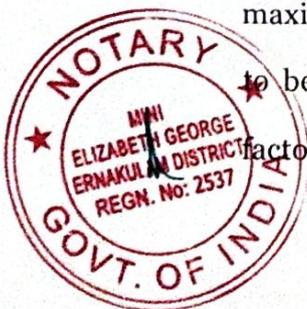


"6 (II) The fund allocation for the CER shall be deliberated in the EAC or SEAC or DEAC, as the case may be, with a due diligence subject to **maximum percentage** as prescribed below for different cases:.....

4. It is thus evident that the Guidelines prescribe the maximum percentage and the CER under the guidelines was to be worked out based, *inter alia* on the social need assessment, R&R plan, EMP etc for the project. Further the District Collector can add or delete activities as per the requirement of the district. The proposed activities are also to be restricted to the affected area around the project.
5. The percentage itself **is a maximum** of 2% for Capital Investment less than 100 crores, 1% for Capital Investment between 100 crores to 500 crores and 0.5% for Capital Investment between 1,000 Crores to 10,000 crores.
6. The original estimate of the project was Rs.935 crores and the CER maximum standard was 1% of the same. However, the project proponent had filed before the 1st respondent an amended projection of about Rs.1024 crores as capital cost as evident in the EC dated 8th March 2019 at Page 2 Paragraph 2(xii) granted to the project proponent.
7. It is stated that for all projects above Rs.1000 crores, the CER guidelines is a maximum of 0.5% of the Capital Investment which would translate to a value of approximately 5 crores at the maximum. The CER is not a fixed mandatory figure and is instead to be fixed on the basis of the type of project and various other factors. A predominantly housing project, such as that of the



project proponent, unlike an industrial project ought to typically be assessed under the lower end of the spectrum of the maximum limit fixed. This, in the submission of the Respondent would also be in line with the object of ensuring that housing costs don't increase with added burdens. The Companies Act,2013 in any event prescribe CSR at the company level out of the funds of the company separately and thus CSR funding is taken care of separately in law. Further, this OM is in the nature of guidelines and are not in the nature of a mandatory condition. The discretion of fixing appropriate projects has been prescribed in the OM itself.

8. In the instant case, the project proponent has committed towards the CER as follows which, in the submission of the Respondent herein, is appropriate considering the nature of the project:

Particulars	Recurring Expenses	Non-Recurring Expenses
Promotion of Education	Rs.1,40,000/-	Rs.3,30,000/-
Healthcare	Rs.2,50,000/-	
Environmental Sustainability	Rs.3,00,000/-	Rs.5,50,000/-
TOTAL	Rs,6,90,000/- (over a period 10 years) Rs,69,00,000/-	Rs,8,80,000/-
	(Rupees Seventy-Seven Lakhs Eighty thousand only)	Rs. 77,80,000/-

9. The Project proponent states that the above activities have been identified by the Socio-economic expert as stated in the Environment Assessment Report. The project proponent also states that in the EC that is granted the following SPECIFIC CONDITIONS are reflected: -



As per the Ministry's Office Memorandum F.No.22-65/2017-IA.III dated 1st May 2018, the project proponent is required to prepare and implement Corporate Environment Responsibility (CER) Plan. As per para 6(II) of the said O.M. appropriate funds shall be earmarked for the activities such as infrastructure creation for drinking water supply, sanitation, health, education, skill development, roads, cross drains, electrification including solar power, solid waste management facilities, scientific support and awareness to local farmers to increase yield of crop and fodder, rain water harvesting, soil moisture conservation works, avenue plantation, plantation in community areas etc. The activities proposed under CER shall be restricted to the affected area around the project. The entire activities proposed under the CER shall be treated as project and shall be monitored. The monitoring report shall be submitted to the regional office as a part of half yearly compliance report, and to the District Collector. It should be posted on the website of the project proponent.

10. This figure of CER has been found to be appropriate in the judgment of the EAC. The petitioner has not set forth any reason why such CER is inappropriate or in any manner contrary to the guidelines. There is no basis to state that 2% should be fixed as CER.
11. It is also pertinent to state that the subject OM was challenged before the Hon'ble Delhi High Court in WP(C) No.13252/2019 in CREDAI, NCR Vs. UOI. Consequent thereto and upon receipt of several representations, the OM of 1.5.2018 stood superseded by Office Memorandum bearing F.No.22-65/2017-IA.III dated 30.9.2020 and the imposition, on the basis of percentage of project cost, has been done away with. The guideline now prescribes specific condition in physical terms without specifying any monetary basis. A copy of the OM of 30.9.2020 that is now applicable is being filed herewith.
12. However, the project proponent was subject to the approval process under the OM of 1.5.2018 which was prevalent at that time. Despite the challenge before the Delhi High Court as also the subsequent supersession of the guidelines, the Respondent herein solemnly undertakes that having committed to such CER, it would ensure compliance with such commitment, notwithstanding the challenge to and the subsequent supersession.



13. The Respondent accordingly states that they shall earmark the specific sum as committed of Rs.77,80,000 and for such of the projects and shall submit the same to the Regional Office of the 1st respondent MoEF and to the District Collector as provided in the guidelines along with posting the same on their website. As stated therein, such compliance shall be reported to the MoEF and the District Collector.

It is therefore prayed that this Hon'ble Tribunal may be pleased to take this affidavit setting out the basis for arriving at the CER on record together with the commitment of the Respondent notwithstanding the subsequent supersession of the guidelines and the challenge to the same and pass such further or other as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.



Solemnly affirmed at Ernakulam on this the 28th day of July 2021 and signed his name in my presence

Before Me,

Notary Public, Ernakulam



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in the Notary
Register

28/07/2021

MINI ELIZABETH GEORGE
ADVOCATE & NOTARY
G. C. D. A. BUILDING
NEAR PASSPORT OFFICE
PANAMPILLY NAGAR P. O.
COCHIN - 682 036

F.No.22-65/2017-IA.III

Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi – 110003
e-mail: sharath.kr@gov.in

Dated: 30th September, 2020

Office Memorandum

Sub: Deliberation on the commitments made by project proponent and requirements to address the concerned raised during the public consultation and prescribe as specific condition(s) while recommending the proposal, for prior environment clearance, in physical terms in lieu of Corporate Environment Responsibility (CER) – regarding.

This is in supersession of the OM of even number dated 1st May, 2018, regarding guidelines in respect of Corporate Environment Responsibility. Ministry is in receipt of several representations regarding imposition of certain percentage of project cost or expansion cost as Corporate Environment Responsibility. Further, the said OM was also challenged before the Hon'ble High Court of Delhi in WP(C) No. 13252/2019 in the matter of CREDAI, NCR *Versus* Union of India and Ors.

The matter has since been examined in the Ministry and it is hereby decided that henceforth the Expert Appraisal Committee or State Level Expert Appraisal Committee shall deliberate on the commitments made by the project proponent to address the concerns raised during the public consultation and prescribe specific condition(s) in physical terms while recommending the proposal, for grant of prior environment clearance instead of allocation of funds under Corporate Environment Responsibility

Further, it is directed that all the activities proposed by the project proponent or prescribed by the Expert Appraisal Committee or State Level Expert Appraisal Committee, as the case may be, shall be part of the Environment Management Plan.

This issues with the approval of competent authority.


(Sharath Kumar Pallerla)
Scientist 'F'/Director (IA-Policy)

To,

1. Chairman and Member Secretary of Central Pollution Control Board

2. Chairpersons and Members of all the Expert Appraisal Committees
3. Chairpersons and Member Secretaries of all the SEIAA/SEACs
4. Chairpersons and Member Secretaries of all SPCBs/UTPCCs
5. Member Secretaries of all the Expert Appraisal Committees
6. All the officers of IA Division

Copy for information to:

1. PS to Minister for Environment, Forest and Climate Change
2. PS to MoS for Environment, Forest and Climate Change
3. PPS to Secretary (EF&CC)
4. PPS to AS(RA) / AS(RSP)
5. PPS to JS(GM) / JS(AKN)/JS(SKB)
6. Website, MoEF&CC
7. Guard File.


(Sharath Kumar Pallerla)
Scientist 'F'/Director (IA-Policy)

F.No.22-65/2017-IA.III

Government of India

Ministry of Environment, Forest and Climate Change

Impact Assessment Division

Indira Paryavaran Bhawan

Jor Bagh Road, Aliganj

New Delhi – 110003

Dated: 1st May, 2018

Office Memorandum

Sub: Corporate Environment Responsibility (CER) – reg.

The Environment Impact Assessment (EIA) Notification, 2006, issued under the Environment (Protection) Act, 1986, as amended from time to time, prescribes the process for granting prior environment clearance (EC) in respect of certain development projects/activities listed out in the Schedule to the Notification.

2. Sustainable development has many important facets/components like social, economic, environmental, etc. All these components are closely inter-related and mutually re-enforcing. Therefore, the general structure of EIA document, under Appendix-III to the notification, prescribes inter-alia public consultation, social impact assessment and R&R action plan besides environment management plan (EMP).

3. Section 135 of the Companies Act, 2013 deals with Corporate Social Responsibility (CSR) and Schedule-VII of the Act lists out the activities which may be included by companies in their CSR Policies. The concept of CSR as provided for in the Companies Act, 2013 and covered under the Companies (Corporate Social Responsibility Policy) Rules, 2014 comes into effect only in case of companies having operating projects and making net profit as also subject to other stipulations contained in the aforesaid Act and Rules. The environment clearance given to a project may involve a situation where the concerned company is yet to make any net profit and/or is not covered under the purview of the aforesaid Act and Rules. In such cases, the provisions of aforesaid act and Rules will not apply.

4. In the past, it has been observed that different Expert Appraisal Committees / State Expert Appraisal Committees (EACs/SEACs) have been prescribing different formulation of the Corporate Environment Responsibility (CER) and no common principles are followed. Several suggestions have also been received in this regard which inter-alia states that Greenfield projects and Brownfield projects should be treated differently; no CER should be prescribed whereas there is no increase in air pollution load, R&R, etc., besides streamlining percentage of CER.

5. The Ministry has carried out a detailed stakeholder consultation which inter-alia included meeting with Ministry of Petroleum & Natural Gas, Ministry of Power, Chairmen EACs, FICCI, ASSOCHAM, Gujarat Chamber of Commerce and Industry amongst others.

6. In order to have transparency and uniformity while recommending CER by Expert Appraisal Committee (EAC) / State level Expert Appraisal Committee (SEAC) / District level Expert Appraisal Committee (DEAC), the following guidelines are issued:

- (I) The cost of CER is to be in addition to the cost envisaged for the implementation of the EIA/EMP which includes the measures for the pollution control, environmental protection and conservation, R&R, wildlife and forest conservation/protection measures including the NPV and Compensatory Aforestation, required, if any, and any other activities, to be derived as part of the EIA process.
- (II) The fund allocation for the CER shall be deliberated in the EAC or SEAC or DEAC, as the case may be, with a due diligence subject to **maximum percentage** as prescribed below for different cases:

S.No	Capital Investment / Additional Capital Investment (in Rs)	Greenfield Project - % of Capital Investment	Brownfield Project - % of Additional Capital Investment
I	II	III	IV
1.	≤ 100 crores	2.0%	1.0%
2.	> 100 crores to ≤ 500 crores	1.5%	0.75%
3.	> 500 crores to ≤ 1000 crores	1.0%	0.50%
4.	> From 1000 crores to ≤10000 crores	0.5%	0.25%
5.	> 10000 crores	0.25%	0.125%

- (III) The activities proposed under CER shall be worked out based on the issues raised during the public hearing, social need assessment, R&R plan, EMP, etc.
- (IV) The proposed activities shall be restricted to the affected area around the project.
- (V) Some of the activities which can be carried out in CER, are infrastructure creation for drinking water supply, sanitation, health, education, skill development, roads, cross drains, electrification including solar power, solid waste management facilities, scientific support and awareness to local farmers to increase yield of crop and fodder, rain water harvesting, soil moisture conservation works, avenue plantation, plantation in community areas, etc.
- (VI) The entire activities proposed under the CER shall be treated as project and shall be monitored. The monitoring report shall be submitted to the regional office as a part of half-yearly compliance report, and to the District Collector. It should be posted on the website of the project proponent.
- (VII) The District Collector may add or delete the activities as per the requirement of the District.
- (VIII) The EAC can vary the above percentage of CER subject to proper diligence, quantification and justification. The EAC based on appraisal, should clearly suggest the activities to be carried out under CER.
- (IX) This CER is not applicable in name change, transfer and amendment involving no additional project investment. In case of amendment in EC involving additional expenditure, CER will be applicable only on the additional expenditure as per column-IV of the table given in para 6(II) above.

7. This issues in supersession of all earlier OMs and guidelines issued in this regard.

8. This issues with the approval of competent authority.

(Sharath Kumar Pallerla)
Director (IA-III-Policy)

1. Chairman, CPCB
2. Chairmen of all the Expert Appraisal Committees
3. Chairperson/Member Secretaries of all the SEIAA/SEACs
4. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
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