

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
Original Application No. 101/2023 (WZ)**

Nagesh Vinayak DhamaleApplicant(s)

Versus

MPCB & Ors.Respondent(s)

Affidavit in Reply on behalf of Maharashtra Pollution Control Board i.e. Respondent No. 1 and 2

I, Manchak Jadhav, Age – 53 years, Occupation – Service, the Sub-Regional Officer of the Maharashtra Pollution Control Board at Pimpri Chinchwad having my office address at 02nd Floor, Jog Center, Wakdewadi, Pune – 411 003 do hereby state on solemn affirmation as under –

- (1) I am filing this Affidavit in Reply on behalf of Respondent No.1 & 2 - Maharashtra Pollution Control Board (MPCB) in compliance of the order dated 03/10/2023 passed by this Hon'ble Tribunal.
- (2) I say and submit that this Hon'ble Tribunal vide Order dated 03/10/2023, directed the Respondent-Board to submit affidavit stating therein all the facts about penal charges imposed on Respondent No.5-M/s. Apex Builders i.e. Project Proponent (PP), alongwith the Circulars dated 12/07/2022 and 29/03/2023.
- (3) I say and submit that Respondent Board has issued Show Cause Notice for refusal of Consent to Operate (part-I) vide letter dated 29/3/2023.



2021 is exempted for submission of application for Consent/Authorization. A copy of the circular dated 29/3/2023 is attached and annexed herewith as an **Annexure- II.**

- (7) I say and submit that accordingly, Respondent Board has deducted covid exemption period from 1st April, 2020 to the 31st March, 2021 i.e. 365 days from total violation period calculated towards violation of consent to operate by Respondent PP i.e. $(1023 - 365 = 658)$, hence Respondent Board has considered total 658 days i.e. $(658 \div 365) = 1.802739726$ years of violation for calculation of penal fees.
- (8) I say and submit that as per the directions issued by CPCB u/s 18(1)(b) of the Water and Air Acts dated 07/03/2016, for Harmonization of Classification of industrial sectors under Red / Orange / Green / White categories, the construction project of Respondent-PP is categorized under "Red Category" as domestic effluent discharge is more than 100 KLD.

Penal Fees calculation is as below:

$$\begin{aligned} \text{Red category} &= 5 \text{ times of one term consent fee X no. Of} \\ &\quad \text{years of violation} \\ &= 5 \times 125000 \times 1.802739726 \\ &= 11,26,712/- \end{aligned}$$

Thus, the total Penal charges as above as per provisions of penal fees for occupiers violating consent regime prescribed under the Water (Prevention and Control of



Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 i.e. without obtaining consent to operate from the Respondent Board, was Rs. 11,26,712/- (Rupees Eleven lakh Twenty Six Thousand Seven Hundred Twelve Only).

- (9) Respondent PP has deposited penal fees of Rs. 11,26,712/- to Respondent Board on 04/08/2023 vide transaction TXN2308000798 through online payment in portal system.
- (10) I say and submit that, after receipt of the penal fees of Rs. 11,26,712/- from the Respondent-PP, the Respondent Board has granted Consent to Operate (part-I) for Building Construction project having total plot area 9292.15 Sq Mtr. & Completed construction BUA of 28861.77 Sq Mtr. out of total Construction BUA 29409.18 Sq. Mtr. vide letter dated 08/08/2023, which is valid up to 30/06/2024, by imposing condition to submit Bank Guarantee of Rs.10 Lakhs. Respondent PP has submitted said Bank Guarantee of Rs.10 Lakhs to Respondent Board.

Solemnly affirmed on this ... 06th day of October, 2023 at Pune.



I know the affiant,

For & on behalf of Maharashtra Pollution Control Board i.e. Respondent No. 1 & 2

(Signature)
(Manchak Jadhav)

Sub-Regional Officer,
MPCB-Pimpri Chinchwad

BEFORE ME

(Signature)
MANCALA N. WAKHARE
ADVOCATE & NOTARY
GOVERNMENT OF INDIA

06 OCT 2023



MAHARASHTRA POLLUTION CONTROL BOARD

Tel: 24010437/24020781/24014701		Kalpataru Point, 2nd - 4th Floor
Fax: 24024068 / 24023515		Opp. Cine Planet Cinema,
Website: http://mpcb.gov.in		Near Sion Circle, Sion (E)
E-mail: ast@mpcb.gov.in		Mumbai-400 022.
No. BO/MPCB/AS(T)/Circular/B- 22 0712 FTS 0047		Date: 12/07/2022

CIRCULAR

Sub: Provision of penal fess for occupiers violating combine consent regime prescribed under Air/Water Act – reg.

Ref: Minutes of 178th Board Meeting held on 24/02/2022.

It is mandatory on the part of industries/entrepreneurs to obtain Consent to Establish and Operate under section 25/26 of the Water (Prevention & Control of Pollution Act) 1974, under section 21 of Air (Prevention & Control of Pollution) Act 1981 and Authorization under Hazardous & Other Waste (Management & Transboundary Movement) Rule 2016. However, it has been noticed that, often industries were found to be violating the aforesaid provisions and the violations noticed are as below:

1. To take effective steps towards establishment of project/unit without obtaining Consent to Establish from the Board
2. To take effective steps without revalidating Consent to Establish from the Board.
3. To start Commercial production/to hand over occupancy without obtaining Consent to Operate from the Board
4. To carry out expansion activity and applying directly for Consent to Operate without obtaining Consent to Establish of the Board.
5. To operate the activity without valid consent to operate of the Board and applying after lapse of validity period.
6. To store and disposal of Hazardous Waste not consistent with provisions of rules

The MPC Board has published Enforcement Policy for issuance of directions on account of degree of violation by imposing/forfeiting proportionate Bank Guarantee. The matter of such violations was discussed during Consent Appraisal Committee/Consent Committee and was decided to formulate the deterrent policy towards above mentioned violations and such other violations. Hence, it is important to discourage the defaulting industries by adopting "Polluter Pays" principal by imposing appropriate cost for violation of provisions of Environment enactments.

The MPC Board in its 178th Board meeting held on 24/02/2022 vide item No. 12 has considered to impose appropriate penal fees towards violation of Environmental enactments, the penal fees shall be imposed as below:



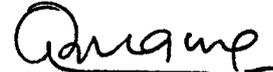
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Sr. No.	Violation	Cost of Violation
01	Taking effective steps towards establishment of project/unit prior to obtain Consent to Establish from the Board	Red Category: 5 times of one term consent fee X no. of years of violation*
02	Taking effective steps without revalidating Consent to Establish of the Board.	
03	Industry: Starting Commercial production prior to obtain Consent to Operate of the Board.	Orange Category: 3 times of one term consent fee X no. of years of violation*
	Infrastructure Project: Handing over possession prior to obtaining Consent to Operate of the Board and Occupancy certificate from Local Body.	
04	Operating the industry/activity without valid consent to operate of the Board and applying after lapse of validity period.	Green Category: 1 time of one term consent fee X no. of years of violation*

* Calculations of number of years shall be calculated on the basis of number of days of non-compliance.

The penal fees amount to be paid by PP through online e-payment gateway.

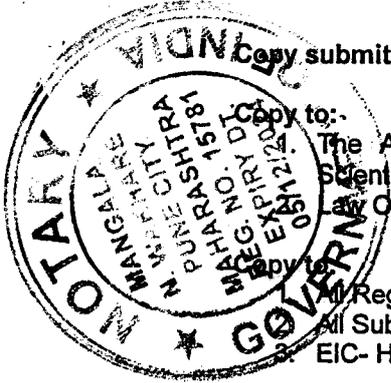
All the Officers of the Board should implement this circular scrupulously without fail.


(Ashok Shingare, IAS)
Member Secretary

Copy submitted to: The Hon'ble Chairman, MPC Board Mumbai- for favour of information

Copy to:-
The Assistant Secretary (Tech)/Joint Director (APC)/Joint Director (WPC)/Principal Scientific Officer/Regional Officer (HQ) MPC Board Mumbai
Law Officer/Statistical Officer, MPC Board Mumbai

1. Regional Officer, MPC Board
2. All Sub-Regional Officer, MPC Board
3. EIC- He is directed to place the circular on Board's website.



MAHARASHTRA POLLUTION CONTROL BOARD		
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Email :	jdwater@mpcb.gov.in	
Visit At :	http://mpcb.gov.in	

No.: MPCB/JD(WPC)/Circular/B-230329 FTS 0211

Date: 29/03/2023

CIRCULAR

Sub: COVID Pandemic-Lockdown period exempted from submission of application for consent/Authorization.

- Ref:** 1. MoEF&CC, GoI Notification dated 18.01.2021.
2. Govt of Maharashtra Order No. DMU/2020/CR.92/DisM-1 dated 29/04/2021.
3. Board's Circular No. MPCB/AST/Circular/TB-210507-FTS-0018 dated 07.05.2021.
4. 179th Board Meeting held on 11.01.2023.

It is mandatory on a part of every industry/entrepreneur/establishment to obtain valid Consent to Establish/Operate and Authorization from the Maharashtra Pollution Control Board under section 25/26 of The Water (Prevention & Control of Pollution) Act, 1974, under section 21 of The Air (Prevention & Control of Pollution) Act, 1981 and under rule 5 of The Hazardous & Other Waste (Management and Transboundary movement) Rule, 2016, combined consent and authorization under The Bio-Medical Waste Management Rule, 2016 and The Solid Waste Management Rule, 2016 and carry out commercial production activity by paying requisite consent/Authorization fees as decided by the Government/Board.

Government of Maharashtra has issued order during Pandemic period for imposition of restrictions. Consequent to outbreak of CORONA Virus (COVID-19) & lockdown situation, Maharashtra Pollution Control Board in the public interest had extended the validity of consent to establish /operate /renewal/ Authorisation/ CCAs by 31.07.2020 vide Board's Circular dated 31.03.2020, by 30.09.2020 vide Board's Circular dated 28.04.2020 and by 31.10.2021 vide Board's Circular dated 07.05.2021.

MoEF&CC, GoI vide Notification dated 18th Jan, 2021 has passed the order- "9A. Notwithstanding anything contained in this notification, the period from the 1st April, 2020 to the

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REC'D
EXP
05/11
OVER

NOTARY
MANGALA
N. WAKHARE
PUNE CITY
MAHARASHTRA
REG. NO. 1578
EXPIRY DT. 31/03/2024

.....2.....

31st March, 2021 shall not be considered for the purpose of calculation of the period of validity of Prior Environmental Clearances granted under the provisions of this notification in view of outbreak of Corona Virus (COVID-19) and subsequent lockdowns (total or partial) declared for its control, however, all activities undertaken during this period in respect of the Environmental Clearance granted shall be treated as valid."

The Board has issued Circular dated 12/7/2022 regarding provision of penal fees for occupiers violating combine consent regime prescribed under Air/Water Act.

Now therefore, the period from 1st April,2020 to 31st March, 2021 is exempted for submission of application for consent/Authorization. For this period only regular consent fees will be charged.

This circular is issued with approval of competent authority.


(Dr.Y.B.Sontakke)
Joint Director (WPC)

Copy Submitted for information to:

1. The Hon'ble Principal Secretary, Dept. of Env. & CC, GoM, Mumbai.
2. The Hon'ble Chairman, MPC Board, Mumbai.
3. The Member Secretary, MPC Board, Mumbai.

Copy to:

1. Joint Director (WPC)/Joint Director (APC)/Principal Scientific Officer/Asst. Secretary (Tech) /RO(HQ)/ RO(BMW) – MPC Board, Mumbai.
2. All Regional Officers, MPC Board.
3. All Sub-Regional Officer, MPC Board.

