

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PPRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 502 OF 2023

IN THE MATTER OF: -

Society for Protection of Environment & Biodiversity (SPENBIO) Applicant

-Versus-

Union of India & Ors. Respondent (s)

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Date: 29.05.2025

Place: New Delhi

DRAWN AND FILED BY:


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OBJECTIONS BY THE ORIGINAL APPLICANT TO THE ACTION TAKEN**REPORT DATED 23.12.2024 OF THE RESPONDENT NO. 2 CENTRAL****POLLUTION CONTROL BOARD**

MOST RESPECTFULLY SHEWETH: -

1. That the Original Application has been filed raising substantial question of environment regarding non-implementation of 'Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products' (hereinafter "**Framework**") issued by Respondent No. 2, Central Pollution Control Board (hereinafter "**CPCB**") in September, 2019. Pertinently, the said Framework was issued to remedy the gap in the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (hereinafter "**HOWM Rules**") in that the same does not clearly establish when a material generated from any production process should be considered as "by-product" or "waste" (including hazardous waste).
2. That on 18.08.2023, this Hon'ble Tribunal issued Notice while recognizing that the issues raised require further consideration. Further, this Hon'ble Tribunal directed Respondent No. 1, Ministry of Environment, Forest and Climate Change (hereinafter "**MoEF&CC**") to take immediate measures for proper

implementation of the said Framework in consultation with CPCB and the State Pollution Control Boards (hereinafter “**SPCB**”).

3. That subsequently, CPCB filed its Action Taken Report dated 22.11.2023 in the matter. In view thereof, the Applicant filed its Objections dated 09.04.2024 to the said Action Taken Report of CPCB and the said Objections may be read as part and parcel of the present Objections.
4. That on 09.09.2024, this Hon’ble Tribunal directed CPCB to file a fresh report responding to the main allegations in the OA and in pursuance thereof, Action Taken Report dated 23.12.2024 has been filed by CPCB in compliance with Order dated 09.09.2024 of this Hon’ble Tribunal.
5. That on 24.12.2024, this Hon’ble Tribunal granted liberty to the Applicant to file Rejoinder/Objections to the above Action Taken Report dated 23.12.2024 of the Respondent No. 2, CPCB and accordingly, the present Objections are being filed.
6. That at the outset, it is reiterated that while it was the Respondent No. 2, CPCB itself which issued the said Framework after recognizing its requirement, it is unfortunate to note that there is yet no effective implementation despite more than five years having elapsed since issuance of the said Framework on 23.09.2019. This Hon’ble Tribunal may kindly take strict note of the same and Order accordingly.
7. That the Respondent No. 2, CPCB, in its Action Taken Report dated 23.12.2024 has acknowledged at Page 260 the key role played by the Framework in critically discerning when a material generated from a production process should be considered as a “by-product” and when it should be considered as a “waste”. Further, that in case a “waste” escapes as a “by-product”, the waste may get out of the ambit of the HOWM Rules, 2016 and could, thus, carry the risk of adverse impacts on human health and environment. Further, at Page 261 of its Action Taken Report, the CPCB has also discussed the “Guiding Factors” outlined in the

Framework and admitted that the identification of a material as a by-product requires a case-to-case assessment considering factors such as the production process and the demand and supply within the State. Thus, the mandate for implementation of the Rules lies with the SPCBs/PCCs. It is, however, humbly submitted by the Applicant herein that while the ground level implementation and monitoring is the mandate of the SPCBs/PCCs, the HOWM Rules (Schedule VII) do make the CPCB dutybound to:

- i. Co-ordinate activities of the SPCBs/PCCs;
- ii. Conduct training courses for authorities dealing with management of hazardous and other wastes;
- iii. Recommend standards and specifications for treatment and disposal of wastes and leachates, recommend procedures for characterization of hazardous wastes;
- iv. Inspect facilities handling hazardous wastes as and when necessary;
- v. Maintain sector specific documentation to identify waste for inclusion in the Rules;
- vi. Prepare and update Guidelines to prevent or minimize the generation and handling of hazardous and other wastes;
- vii. Prepare and update guidelines/Standard Operating Procedures for recycling, utilization, pre-processing, co-processing of hazardous and other wastes;
- viii. Prepare annual review report on management of hazardous waste; and
- ix. To undertake any other function assigned to it by the Respondent No. 1, MoEF&CC.

In view of the above, it is humbly submitted that besides conducting consultations that are few and far in between, the Respondent No. 2, CPCB has not clarified or even mentioned whether it has carried out any inspections of its own or whether

it has introduced any interim measures or clarifications or revisions to the Framework for better implementation based on ground level application of the Framework by the SPCBs/PCCs.

8. That while the Respondent No. 2, CPCB had asked all SPCBs/PCCs to adopt the Common Application Form for Identification of material as 'waste' and 'by-product' as well as to report on implementation of the Framework annually along with the Annual Report on Hazardous Waste Management (Page 220/Annexure II of Affidavit dated 08.04.2024 by CPCB), no material has been placed on record to reflect compliance of such directions. In fact, the common reporting format for the same was circulated by the CPCB to all SPCBs/PCCs as late as on 12.07.2024 and in any case the same has not even been placed on record in the current proceedings. The Respondent No. 2, CPCB may accordingly be directed to bring on record the reporting format issued by it to all SPCBs/PCCs to report compliance on the Framework of 2019.
9. That at Page 263 of its Action Taken Report dated 23.12.2024, the Respondent No. 2, CPCB claims to have issued a direction dated 27.11.2024 under Section 5 of the Environment (Protection) Act, 1986. The said direction, *inter alia*, sought the SPCBs/PCCs to direct field inspecting teams to examine whether the by-products being utilized by any industry has been classified as such in accordance with the Framework and whether the Authorizations granted by the SPCBs/PCCs reflect the same. Further, the SPCBs/PCCs were also directed to provide a list of Hazardous Wastes classified as "By-product" along with their annual generation quantity. In this regard, it is humbly submitted by the Applicant herein that while further consultative meetings were held with the SPCBs/PCCs on 06.12.2024 and 09.12.2024, there is nothing to reflect whether there was even a follow up on its own direction dated 27.11.2024 regarding action taken by field inspecting teams, amendment to Authorizations granted by SPCBs/PCCs in case of classification of

any waste as a by-product as well as whether any list was provided by even a single SPCB/PCC. In the absence of any Minutes having been placed on record by the CPCB, it is extremely difficult to ascertain whether a genuine effort was even made to ensure compliance of the Framework by the Respondent No. 2, CPCB.

10. That the Chart provided at Page 264 to 266 of the Action Taken Report dated 23.12.2024 filed by the Respondent No. 2, CPCB, is without any supporting material and is inadequate to reflect whether there has been any actual compliance with the Framework at the ground level. Moreover, the bare Chart does reflect the shocking state of affairs, as illustrated from the below observations:

- i. CPCB has noted at 44 places that “Information has not been provided by the SPCB/PCC” (abbreviated as “INP”);
- ii. No information at all has yet been provided by the States of Sikkim, Manipur and Meghalaya;
- iii. The States of Assam, Madhya Pradesh and Gujarat are the only ones that have received applications for identification of material as “by-product” but none have been classified as such; and
- iv. State of Gujarat is the only one where a waste has received the recommendation of the TEC to be classified as a by-product (Hydrochloric acid generated from Chlorinated Paraffin Wax having concentration >32%).

11. That, in view of the above, the Applicant humbly submits that the Respondent No. 2, CPCB in its Action Taken Report dated 23.12.2024 has failed to reflect whether it intends on examining the functioning of the TECs, as formed, to ascertain their adherence to the Framework of 2019. Moreover, there is no information on record to clarify whether any action is being taken in situations where units generating hazardous waste are also, in effect, utilising material that is generated incidentally

as a byproduct without the mandated categorization as envisaged in the Framework of 2019.

12. That even for the State of Gujarat, wherein one waste has received the recommendation of the TEC to be classified as a by-product, the information submitted by the Respondent No. 2, CPCB does not reflect whether any final decision was taken by the SPCB based on the recommendation of the TEC and whether further directions were issued to the generator to obtain revised consents and authorization.
13. That, further, the Respondent No. 2, CPCB at Page 263 (second last Para) has merely accepted the suggestion of the SPCBs/PCCs that notification of the Framework as a part of the Rules may not be necessary. No further discussion in this regard, by the MoEF&CC or the CPCB, has been submitted. This is despite clear directions of this Hon'ble Tribunal to the contrary.
14. That, pertinently, the Respondent No. 2, CPCB, has failed to mention any compliance in respect of instances where a waste is covered as an item listed in Column 3 of Schedule I of the HOWM Rules besides also being covered under the ambit of the Environment Impact Assessment Notification, 2006. In this regard, the Framework envisages the generator to apply (under the project/activity category from which the material gets generated) to the concerned authority for obtaining Environmental Clearance ('EC') for the production of material as by-product. The studies to be conducted for this purpose should include the aspects given in Appendix-I and Appendix-II to the present Framework of 2019 and preparation of the material's Safety Data Sheet.
15. That, to elaborate on Para 13 above, the Framework stipulates at Page 42 of the Original Application that a total number of 128 types of hazardous wastes are generated from 38 different industrial processes listed in the Schedule-I of the HOWM Rules. A comparison of this list with the projects/activities prescribed in

the EIA Notification, 2006 shows that the establishment or any change in the activities of the 28 of these 38 processes would require obtaining EC from the prescribed authority. A total of 99 types of wastes are generated from these 28 processes. The rest of the 10 processes generate 29 types of wastes. This implies that the consideration for any type of waste that gets generated from any of the processes appearing in Schedule-I of HOWM Rules and also covered in the projects/activities listed in the EIA Notification, as “by-product” requires the generator to seek EC from the concerned prescribed authority for such a production. In this regard, no submission has yet been forthcoming from the Respondent No. 2, CPCB.

16. That, from the above submissions, it is clear that the Action Taken Report dated 23.12.2024 filed by the Respondent No. 2, CPCB has been superficial in that key information and details concerning the implementation of the Framework of 2019 have been missed out.
17. That in view of the abysmal implementation of the Framework of 2019 even after more than five years of its issuance, it is most humbly prayed by the Applicant herein that this Hon’ble Tribunal may accordingly pass strict Orders.

Date: 29.05.2025

Place: New Delhi

DRAWN AND FILED BY:



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[Senior Advocate]

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-Versus-

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AFFIDAVIT

I, Sri Prasoon Pant, aged about 49 years, S/o Late Prof. Mahesh Chandra Pant, R/o 17 D, 108 Konark Enclave, Vasundhara, Ghaziabad, Uttar Pradesh – 201012, do hereby solemnly affirm and state as under:

1. That I am the Policy Director and Programme Planner as well as the authorized representative of the Society for Protection of Environment and Biodiversity (SPENBIO), which is the Applicant in the above captioned Original Application. Further, I am familiar with the facts and circumstances of the case and am competent to swear this Affidavit.
2. That I have read and understood the contents of the accompanying Objection and the same has been drafted by my counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Application are true and correct to the best of my knowledge.

I identified the deponent who has signed in my presence

Gitupali Singh
D/5607/2023

P. Pant
DEPONENT

VERIFICATION:

I, the above-named Deponent do hereby verify that all the facts mentioned in the Affidavit are true to my knowledge and no part thereof is false and nothing material has been concealed therefrom.

Verified at On this day of May, 2025.

NOTARY (Govt. of India)
Neelam Sharma
Advocate
Ct. No. 105A, Gate No. No. 11,
Pauze House Courts,
New Delhi-110007
(M: 9899109301)

7 MAY 2025

P. Pant
DEPONENT





Service in SPEnBIO Vs. Union of India & Ors. [OA. No. 502 of 2023/PB]

1 message

ELDF <eldflegal@gmail.com>

Thu, May 29, 2025 at 2:04 PM

To: Balendu Shekhar <balendushekhar@gmail.com>, sakshi popli <sakshipopli@gmail.com>

Cc: Eisha Krishn <eisha@eldfindia.com>, Gitanjali Sanyal <gitanjali@eldfindia.com>, Surya Gupta <surya@eldfindia.com>

Dear Sir/Ma'am

Please find the attached copy of the Objections by the Applicant to the Action Taken Report dated 23.12.2024 of the Respondent No. 2 Central Pollution Control Board in the above-mentioned case.

Thanks & Regards

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Sameer Manher*Clerk**Enviro Legal Defence Firm**29, Presidential Estate LGF,**Nizamuddin East New Delhi – 110013**Ph. No. 011-40573181***Objections to CPCB.pdf**

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