

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

**IN THE MATTER OF: -**

Society for Protetion of Environment & Biodiversity (SPENBIO) .... Applicant

*-Versus-*

Union of India & Ors. .... Respondent (s)

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Date: 29.05.2025

Place: New Delhi

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**SETTLED BY:**

Mr. Sanjay Upadhyay  
*[Senior Advocate]*

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**OBJECTIONS BY THE ORIGINAL APPLICANT TO THE REPLY DATED****24.12.2024 OF THE RESPONDENT NO. 1, MINISTRY OF ENVIRONMENT****FOREST AND CLIMATE CHANGE**

MOST RESPECTFULLY SHEWETH: -

1. That the Original Applicant 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".
2. That on 18.08.2023, this Hon'ble Tribunal issued Notice while recognizing that the issued 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”). The MoEF&CC was also directed consider whether the Framework can become part of HOWM Rules.

3. That subsequently, MoEF&CC filed its Compliance Affidavit dated 02.04.2024 in the matter. In view thereof, the Applicant filed its Objections dated 09.04.2024 to the said Reply of MoEF&CC, which may also be read as a part of the present Objections being submitted by the Applicant herein.
4. That on 09.09.2024, this Hon’ble Tribunal directed for a fresh report responding to the main allegations in the OA and in pursuance thereof, Reply Affidavit dated 23.12.2024 was filed by MoEF&CC 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 Reply of MoEF&CC and accordingly, the present Objections are being filed.
6. That the MoEF&CC, in its Reply Affidavit dated 23.12.2024, has submitted that it had issued Direction dated 27.09.2024 under Section 5 of the Environment (Protection) Act, 1986 to all SPCBs and CPCB.
7. That at the outset, it is pertinent to note that while the said Direction dated 27.09.2024 has been purportedly issued for better implementation of the HOWM Rules by the SPCBs, the said direction *does not contain any reference or make any mention* of the Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products. Interestingly, SPCBs have been directed to ensure closure of unauthorized units and ensure disposal of hazardous wastes by Hazardous Waste Treatment, and Disposal Facilities (TSDFs): without first being required to comply with the procedure prescribed in the Framework which is sine qua non for proper implementation of the HOWM Rules. This defeats the entire purpose of the Framework which was intended to bolster the implementation of the HOWM Rules, 2016 by ensuring that hazardous wastes

are not passed off as by-products and escape the strict scrutiny of the HOWM Rules.

8. That this omission of Framework in the direction issued by the MoEF&CC clearly shows that, despite five years since the Framework was issued in 2019, no tangible and concrete steps have been adopted to ensure its implementation in both letter and spirit. Merely directions are being issued to create an illusion of compliance with the Orders of this Hon'ble Tribunal, without any significant change in the conditions at the grassroot level.
9. That notwithstanding the Framework, the Reply dated 23.12.2024 of MoEF&CC is also conspicuously silent on the extent of implementation of the said Direction which was issued in 27.09.2024.
10. That as per the Directions, SPCBs were required to *inter alia* - close down units generating hazardous wastes without possessing valid authorization; ensure maintenance of manifest system by units for all types of hazardous waste as required under HOWM Rules; ensure submission of Annual Returns by units to SPCBs regarding the generation and management of hazardous wastes. Significantly, SPCBs were also directed to levy penalties on non-complying units as required under Rule 23(2) of HOWM Rules and submit Action Taken Report to CPCB *within 20* days from the date of the directions. Further, CPCB would review the ATR and submit comments/ remarks to MoEF&CC for further action.
11. That despite the direction being issued on 27.09.2024 and the twenty days having long elapsed, the MoEF&CC has failed to specify as to how many units have been closed down for having been operated without authorization and whether any environmental compensation has been imposed against such units. Further, nothing has been mentioned regarding the extent of adoption of manifest system. More importantly, no information has been provided qua the penalties levied on

erring units and whether such penalties have been realized. Equally significant, there is no mention of whether the Action Taken Reports have been submitted by all the SPCBs and whether the extent of compliance has been found to be satisfactory. Details of consideration of said ATRs by the CPCB and MoEF&CC have also not been provided.

12. That, further, it is humbly submitted by the Applicant herein that the Respondent No. 1, MoEF&CC is also the nodal agency under the HOWM Rules to regulate the import of hazardous waste to actual users within the country. Despite this, there is not a whisper in the Replies dated 02.04.2024 and 24.12.2024 of the Respondent No. 1, MoEF&CC on the action taken by it to ensure that imported materials apprehended by it to be hazardous waste are not getting misclassified or sold as a by-product. In this regard, the Applicant had even produced (at Annexure A/3 of the instant Original Application, Page 58) tabulated data available with the Indian Chemical Council on various chemicals which have observed a surge in imports since December, 2017.
13. That in other words, the Reply Affidavit of MoEF&CC is extremely vague and bald and does not instill any confidence in the Authority. On the contrary, it appears that, aside from issuing direction on paper, scant attention has been paid to ensuring their actual implementation on ground. In this regard, it is important to note that this Hon'ble Tribunal, vide Order dated 18.08.2023, had principally entrusted MoEF&CC with the task of taking immediate steps for proper implementation of Framework. The relevant portion of Order dated 18.08.2023 reads as under: -

“The points as raised by the applicant require further consideration. Accordingly, *matter is referred to MoEF&CC* with the direction that in consultation with the CPCB and State PCBs/PCCs, *the MoEF&CC had to clarify and take immediate measures for proper implementation of*

*the Framework* on identification of material generated from industrial process as waste or by-product and to submit an action taken report before this Tribunal. MoEF&CC may also act on whether Framework can become the part of HOWM Rules. *In case of any need and requirement, the MoEF&CC/CPCB may take advise of the Technical Expert Committee, as required and to provide a prescribed form for application of identification of an alleged by-product as required under the Framework. Such exercise may be completed by the MoEF&CC/CPCB within three months” (Emphasis supplied)*

14. That in flagrant violation of the directions of this Hon’ble Tribunal, the MoEF&CC has failed to take any meaningful and proactive steps towards stronger implementation of the Framework.
15. That in addition, the MoEF&CC in its Reply has taken the view that incorporating the guidelines into the regulations may not be practicable as management of hazardous waste is a complex and evolving field and it would impede regular revisions. It may be noted that this Hon’ble Tribunal, vide Orders dated 18.08.2023, 23.11.2023 and 09.09.2024 had directed MoEF&CC to consider whether Framework can become part of HOWM Rules.
16. That at the outset, it is submitted that, apart from make the above sweeping observation, the MoEF&CC has failed to bring on record the Minutes of Meetings of the Review Meeting held on 06-09.12.2023 wherein the above issue was discussed. In the absence of Minutes of Meetings, it is difficult to ascertain the precise nature of deliberations that were held and whether any alternatives such as issuing Directions under Section 5 of Environment (Protection) Act, 1986 and Section 18 (1) (b) of the Water (Prevention and Control of Pollution) Act, 1974 have been considered as noted in Order dated 09.09.2024 of this Hon’ble Tribunal.

17. That further, it is also difficult to countenance the reasons provided by the MoEF&CC for not incorporating the Framework into the HOWM Rules. MoEF&CC, in its Reply, submitted that incorporating Framework (wrongly mentioned as Guidelines) into the Regulations is not practical as management of hazardous waste is “complex and evolving field” and this requires “regular revisions”, considering the challenges of ground-level implementation.
18. That it is submitted that the MoEF&CC appears to have rejected the idea of making Framework part of HOWM Rules *based on the supposed difficult nature of the task instead of being guided by the spirit of promoting expeditious and efficient implementation of the Framework*. It is submitted that HOWM Rules do not clearly establish as to when a material generated from a production process should be considered as ‘by-product’ and ‘waste’. As a result of this lacunae, hazardous waste could get misclassified as by-product such as Sulphuric acid produced by smelters and thereby escape the scrutiny of HOWM Rules and cause huge impact on the environment. Therefore, proper implementation of the Framework is necessary and essential for bolstering the implementation of HOWM Rules. However, the MoEF&CC seems to have overlooked this critical factor while taking the above categorical view to the detriment of the environment.
19. That notwithstanding the above, it is submitted that apprehension of the MoEF&CC that incorporating Framework in HOWM Rules would require regular revisions is baseless and misconceived. It is submitted that incorporating Framework in HOWM Rules would not necessitate regular revisions since the Framework mainly *lays down the methodology/ process* to be adopted for determining whether a material is ‘waste’ or ‘by-product’, while the final determination is left to the SPCBs based on the recommendations of Technical Expert Committee. The Framework provides a step-by-step process while

leaving it upon SPCBs/ PCCs to make a final determination of whether a material is 'waste' or 'by-product' on a case-to-case basis taking into all the relevant factors. This is evident from the fact that while laying down "Guiding Factors" for SPCBs for accepting a material as "by-products", the Framework explicitly notes that the said the applicability of these Guiding Factors would vary depending on the materials being generated and its intended use (refer Page 50 of the OA).

20. That the contention of MoEF&CC that the Framework cannot be incorporated into HOWM Rules on account of regular revisions is also baseless because the Framework was issued in September 2019 by CPCB and since then *no revision/ amendment/ modification in the Framework has been made in the Framework* till date. This again shows that the justification provided by the MoEF&CC is merely an afterthought and is not based on actual ground realities, especially the consequences of environmental damage that is resulting from the non-implementation of the Framework.
21. It is further submitted, by way of an illustration with regard to LABSA units that by adhering to the framework, the CPCB has finally declared spent sulphuric acid from LABSA manufacturing as hazardous waste, however, on 3<sup>rd</sup> June 2024, the CPCB issued an SOP for use of Spent Sulphuric Acid generated during LABSA manufacturing in production of Single Super Phosphate (fertilizer). This SOP also presupposes that the said Spent Acid generated during LABSA manufacturing is a hazardous waste (category no. B-15 & C2 of Schedule II of HOWM Rules, 2016). Even after such declaration most of the LABSA manufacturing units across the country continue to flout this mandate and spent sulphuric acid is being sold unregulated and unchecked despite this being declared as a hazardous waste. As stated, this is just one of the examples where even after identification of a hazardous waste by CPCB, the SPCBs are allowing

sale of such product by LABSA manufacturing units across the country without even hazardous waste authorization.

22. That in view of the aforementioned submissions of the Applicant, it is most respectfully prayed that this Hon'ble Tribunal may take strict note of the lack of any material steps being taken by the Respondent No. 1, MoEF&CC to ensure proper implementation of the Framework and pass appropriate directions such that no hazardous waste is passed off as a by by-product.

Date: 29.05.2025

Place: New Delhi

**DRAWN AND FILED BY:**



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**SETTLED BY:**

Mr. Sanjay Upadhyay

*[Senior Advocate]*

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO. 502 OF 2023**

**IN THE MATTER OF:**

Society for Protection of Environment and Biodiversity ...Applicant

*-Versus-*

Union of India & Ors. ...Respondents

**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*

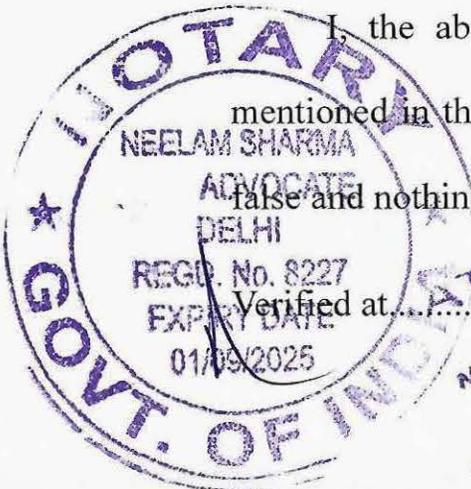
*Gitupali Singh  
D/5607/2019*

*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  
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Cn. No. 1854, Gate No. No. 11,  
Public House Courts,  
New Delhi-110007  
(M: 9899105301)*

**7 MAY 2025**

*P. Pant*  
**DEPONENT**



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**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 1:47 PM

To: Balendu Shekhar &lt;balendushekhar@gmail.com&gt;, sakshi popli &lt;sakshipopli@gmail.com&gt;

Cc: Eisha Krishn &lt;eisha@eldfindia.com&gt;, Surya Gupta &lt;surya@eldfindia.com&gt;, Gitanjali Sanyal &lt;gitanjali@eldfindia.com&gt;

Dear Sir/Ma'am

Please find the attached copy of the Objections by the Applicant to the Reply dated 24.12.2024 of the Respondent No. 1, MOEF & CC 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.pdf**

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