

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL****WESTERN ZONE BENCH, PUNE****AT PUNE**

ORIGINAL APPLICATION NO.60 OF 2021 (WZ)

ARYAVART FOUNDATION

**APPLICANT****VERSUS**

HEMANI INDUSTRIES LTD. &amp; ORS

**RESPONDENTS****OBJECTIONS TO THE REPORT OF COMMITTEE DATED  
22<sup>ND</sup> DECEMBER 2021 ON BEHALF OF THE  
RESPONDENT No.1****MAY IT PLEASE THE HON'BLE TRIBUNAL:**

The Respondent No.1 herein is filing its objections in respect of the report of the Committee dated 22<sup>nd</sup> December 2021 as under: -

1. The Methodology devised by the Committee in calculating the Environmental Compensation is erroneous. The same is not accordance with the formula devised by the CPCB in the case of Paryavaran Suraksha Manch.
2. The Environmental compensation is to be calculated when there is gross violation and it seems that due to such particular violation environment is damaged up to some extent. In such case Statutory authority issuing Direction under Section 33A, 31A and Sec (5) i.e. Closure order under Water Act 74, Air Act 81 and E(P) Act 86.

As per Joint Inspection Report in this matter, Committee has considered Notice of Direction also. Part of the same is reproduced here for ready reference.

In case GPCB not issued any directions during last five years, the number of days of violation is considered from the date of visit. The joint team has considered continual violation of the industry with respect to wastewater management because of the fact that the final disposal quality of the wastewater found non-complying the discharge conditions based on the last five years' data.

**EC1 was calculated for following cases:**

- 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

As per this method, the Environmental Compensation shall be based on the following formula:

$$EC1 = PI \times N \times R \times S \times LF$$

Where:

PI= Pollution Index of industrial sector, as the concerned industries falls in the Red Category, its Pollution Index is 80

N= Number of days for which the violation took place is considered from the first date of NOD/ direction with respect to wastewater management issued by GPCB to the industry since 01.04.2016 till 29.11.2021 (Date of Hearing of the matter before Hon'ble NGT).

In case GPCB not issued any directions during last five years, the N is considered from the date of visit. The joint team has considered continual violation of the industry with respect to wastewater management because of the fact that the final disposal quality of the wastewater found noncomplying the discharge conditions based on the last five years' data.

R= A factor in Rupees (Rs.) for EC is Rs. 250/day

S= Factor for scale of operation is 1.5 for large scale, 1.0 for medium scale and 0.5 for small or micro scale.

LF= Location Factor is 1 as the population of the area is less than 1 million.

These values have been applied to the formula for EC1 determination for the industries and GIDC where non-compliance observed.

3. The second part of the calculation is to be calculated as under: -

### **EC2 was calculated for following cases:**

Where mismanagement of hazardous waste was observed, stored quantity of hazardous or other wastes, which may have caused environmental damages, may be proportionate to extent of damages thereof.

The Environmental compensation EC2 may, therefore, be directly correlated with the quantity of hazardous or other waste under reference as per Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

Under such wide variables, the following quantity based environmental compensation EC2 calculation in Rupees may be used and be imposed on violating facility /operator:

$$\mathbf{EC2 = Q \times ERF \times R}$$

Where,

Q is noticed or observed quantity (in MT) of hazardous or other wastes which have not been managed in compliance with various provisions of the

Acts/Rules/Guidelines/conditions of the authorisation/directions issued by CPCB/SPCB/PCC/MoEF&CC

ERF = Environmental Risk Factor which is a number denoting the increasing degree of risk to the environment and human health due to the scenarios = 1.5 (When hazardous and other wastes is disposed at unauthorized place or handed over or sold to unauthorized party)

R= Environmental Compensation factor, which may be taken as Rs. 30,000 (as per referred guideline).

4. The Primary objection to the calculations of the Environmental Compensation by the Committee is that the Committee has considered the notice of Directions as the date of default, whereas in other cases pertaining to the State of Gujarat, the date of closure directions was considered as the date of default. Unfortunately, no explanation has been given in that regard. Hence, the calculations submitted are totally erroneous. Secondly, the Committee did not examine the documents and also afforded an opportunity of hearing to the Respondent No.1. The Respondent No.1 has come to know about the Environmental Compensation only when the present report came to be filed. This is a breach of principles of natural justice. The Committee has also not considered that the Respondent No.1 has also paid Environmental Compensation amounting to Rs.1 crore earlier.
5. The Respondent No.1 submits that all violations do not impact on environment at par. For example, 250 COD limit. But how much excess is very important. In case the Respondent No.1 it is marginally more than prescribed limit. Chemical Oxygen demand parameter is very complex and finally discharged in sea.

6. The Respondent No.1 submits that a joint visit was conducted on 25<sup>th</sup> October 2021 and the following remarks were recorded, the explanation on the part of the Respondent No.1 is as under: -

**(a) The industry is discharging wastewater to GIDC drain without complying with CCA discharge norms**

During sampling of M/s Hemani Industries by committee, it was found COD found 356 mg/L against 250 mg/L limit. While result of pollutant at Pumping Station A found COD 9023 mg/l BOD: 1985 mg/l Ammonical Nitrogen 113 mg/l and Phenol 24.3 mg/l found.

The Respondent No.1 submits that the Environmental Damage compensation is calculated for the visited non-complying industries. However, the overall condition of wastewater management in the area is not limited to the visited industries. The other industries in the area may also contribute to the condition. However, the industries visited cover the regular non-complying industries in the area as per records of GPCB. The Committee in the report has also recorded as under: -

*As it is observed that most of the industries in the area do not meet the discharge standard as per CCA and the installed CETP of 40 MLD capacity is presently defunct. Therefore, all necessary measures to be taken for making the Installed CETP in operation.....*

(b) Foaming and scum deposition at the top of clarifier was observed.

The Respondent No.1 submits that it is part of operation of ETP

(c) The industry needs to operate ETP properly to meet the discharge standards

The Respondent No.1 is upgrading the same on regular basis and is showing results as well.

- (d) The installed capacity of incinerator is less than the permitted quantity. The industry needs to provide adequate capacity of incinerator and operate it efficiently.

There is no mandatory condition in CCA for installation of Incineration having specific capacity. Generally, method and modality for disposal of Hazardous and toxic liquid waste are specified in term of Technology. Additional waste generated is being sent by the Respondent No.1 to common facilities.

- (e) The industry found storing HW in open area, the HW storage shed provided was not having proper leachate collection and transfer to ETP facility. Present stock of about 2500 MT of MEE salt, 200 MT of ETP sludge stored for disposal of CHWT SDF. In addition, drums containing incinerable HW (more than 500 drums) found stored in open area inside the premises.

As per Policy, all TSDFs are closed during monsoon. All Industries are required to store their respective waste in factory premises. Accumulation of such waste shows that we are not disposing waste and waiting for reopening of waste TSDF. Quantum of Hazardous waste stored in premises should not be criteria for Environment Damage compensation. No ground water is affected. As per Guidelines Environmental Damages Costs, no criteria are applicable to Respondent No.1.

(f) Physical conditions of some of the drums were dilapidated/corroded. The Respondent No.1 submits while handling waste drums, there is chance of damage. The Respondent No.1 has developed pacca (RCC) flooring in premises, for leakages are recollected and ensure that it does not percolate in ground. No ground water is affected.

(g) Mishandling of High COD wastewater, leakages, storage of high organic residue from CMAC plant in open etc. has potential to contaminate soil and groundwater in and around the premises of the industry.

The Respondent No.1 submits while handling waste drums, there is chance of damage. The Respondent No.1 has developed pacca (RCC) flooring in premises, for leakages are recollected and ensure that it does not percolate in ground. No ground water is affected.

(h) Moreover, it has also resulted in release of VOCs observed during visit. During visit there was an operational issue of the VOC. However, VOC meter has been provided.

(i) Records for the generation of high COD wastewater was not maintained by the unit.

The Respondent No.1 submits that it is maintained. The Committee has not given the Respondent No.1 an opportunity of hearing, else this would have been explained.

- (j) The industry is not complying with CCA condition to provide guard pond to store the wastewater for at least 48 hours.

The Respondent No.1 submits that the necessary tank has been provided and in case of any discharge issue or drainage problem the Respondent No.1 has closed or closes down industrial operations which has effluent prone operation.

- (k) The industry need to take adequate steps to comply with the CCA conditions, provide proper storage facility of HW and dispose the presently stored HW as per the CCA conditions.

The Respondent No.1 submits that it has complied with the said observation and the same can be verified.

- (l) Proper records for the operation of ETP, MEE, incinerator, ATFD etc., were not available onsite. Records for the generation of high COD wastewater process plant wise were reportedly not maintained.

The Respondent No.1 submits that all records are available on site.

7. The Respondent No.1 thus submits that the methodology used by the Committee is erroneous and thus needs to be reconsidered/recalled. The Hon'ble Tribunal may consider this fact and issue appropriate directions.

Pune

Date 01/02/2022



Advocate for Respondent No.1