BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

(Under Section 18 read with Section 14 of the National Green Tribunal Act, 2010)

ORIGINAL APPLICATION NO. 269 OF 2025

IN THE MATTER OF:

Association of Fly Ash Products Manufacturers (AFAPM)
… Applicant

Versus

Ministry of Environment, Forest & Climate Change & Ors.
… Respondents

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REJOINDER TO THE REPLY FILED BY THE RESPONDENT NO. 1

MOST RESPECTFULLY SHOWETH:

PRILIMINARY SUBMISSIONS:

1. That at the outset, it is respectfully submitted that the contents of the Reply Affidavit filed by Respondent No.1 are misconceived, contrary to record, and fail to address the core environmental concerns raised in the present OA.
2. That the Applicant reiterates that the present OA is not challenging the competence of the Central Government per se, but the arbitrary, irrational and environmentally counter-productive provisions introduced in the Ash Utilisation Notification, 2021 and its subsequent amendments.
3. That the averments made in the OA are reaffirmed and reiterated. The Reply filed by Respondent No.1 is liable to be rejected being evasive, incomplete and not addressing the substantive issues raised by the Applicant.

PARA WISE REPLY

4. That the contents of Para 1 to 3 do not call for any comments being matter of record and formal in nature.

5. That the contents of Para 4 and 5 as stated are wrong and hence denied. The Applicant has not challenged the competence of the Ministry but has specifically challenged the manner in which statutory powers have been exercised, resulting in dilution of environmental objectives.

It is denied that the Notification dated 31.12.2021 represents an effective regulatory framework. On the contrary, the OA clearly demonstrates that the said notification has defeated the original objectives of the 1999 regime, namely; (1) Conservation of topsoil; (2) Prevention of dumping of fly ash; (3) mandatory utilisation in construction.

6. That the contents of Para 6 to 8 as stated are wrong and hence denied. The Respondent's claim of proper stakeholder consultation is incorrect and unsubstantiated. The Applicant has specifically pleaded that; (1) objections were not duly considered; (2) outcomes of consultations were not reflected in final notification. It is respectfully submitted that the Hon'ble Tribunal may call for the entire record of objections and suggestions to verify the procedural irregularity and non-application of mind.

7. That the contents of Para 9 as stated are wrong and hence denied. The denial is incorrect. The omission of **"Pond Ash"** from the core responsibility clause is a serious legal and environmental defect, as; (1) Pond Ash constitutes a major portion of accumulated ash; (2) It poses significant environmental hazard if left unregulated. The OA specifically seeks restoration of original terminology (1999

Notification), which included; (1) Fly Ash; (2) Bottom Ash; (3) Pond Ash.

8. That the contents of Para 10 as stated are wrong hence denied. The contention of the Respondent that imposing a priority or structured hierarchy of utilization would defeat the objective of achieving 100% ash utilization is misconceived and contrary to both environmental logic and the historical regulatory framework.

It is respectfully submitted that a rational and purpose-oriented prioritization of ash utilization does not defeat, but rather advances the object of the Notification, inasmuch as:

i. The primary objective of the Fly Ash regime since 1999 has consistently been conservation of topsoil by substituting burnt clay bricks with ash-based products, which necessarily requires prioritization of utilization in the brick/block manufacturing sector;

ii. In absence of such prioritization, ash tends to be diverted to low-value or non-critical uses, while environmentally harmful practices such as excavation of topsoil for red bricks continue unabated, thereby defeating the core environmental purpose of the notification;

iii. A complete absence of hierarchy results in unregulated and inefficient allocation of ash, leading to continued dumping/ponding in the form of slurry, which is precisely what the Notification seeks to prevent.

iv. It is further submitted that the Respondent has incorrectly equated "priority utilization" with "rigidity". The Applicant is not seeking an inflexible or exclusionary regime, but a guided and environmentally aligned order of preference, ensuring that high-impact sectors such as ash-based construction materials are given due precedence.

v. In fact, the experience under the amended regime demonstrates that absence of prioritization has led to:

i. continued degradation of fertile topsoil due to reliance on burnt clay bricks;

ii. increased air pollution from brick kilns; and

iii. failure to achieve effective and meaningful 100% utilization of ash in an environmentally sustainable manner as stipulated in the objective clause of notification.

Therefore, the Respondent's apprehension is misplaced, and the proposed prioritization is both legally permissible and environmentally imperative to give true effect to the object of the Notification.

9. That the contents of Para 11 as stated are wrong hence denied being misconceived and misleading. The mere constitution of a Committee under the chairmanship of CPCB, as referred to by the Respondent, does not cure the inherent defects and illegality embedded in the impugned Notification, nor does it address the substantive issues raised in the present OA.

It is respectfully submitted that the Respondent has failed to place on record any material to demonstrate:

i. what concrete steps have been taken by the said Committee till date,

ii. whether any binding recommendations have been made, and

iii. whether such recommendations have resulted in any tangible improvement in fly ash utilization or environmental outcomes.

In absence of any such disclosure, the constitution of the Committee remains a mere formality without demonstrable impact, and cannot be relied upon to justify the impugned provisions.

10. That the contents of Para 12 as stated are wrong hence denied. It is further submitted that the Respondent's reliance on pricing parity through CPWD/PWD Schedule of Rates is wholly arbitrary and contrary to the statutory scheme. The said pricing condition:

i. finds no basis in the earlier regulatory regime from 1999 till 2021, where utilization of fly ash products was treated as an environmental mandate and not subjected to market parity conditions;

ii. has the direct effect of discouraging adoption of fly ash-based products, as their usage becomes conditional rather than mandatory, thereby diluting enforceability;

iii. creates an artificial and discriminatory classification, as such pricing restrictions have not been imposed on

other eco-friendly or conventional construction materials.

It is most respectfully submitted that the issue of fly ash utilization cannot be reduced to a pricing mechanism, particularly when it concerns environmental compliance and prevention of pollution. In this regard, it is pertinent to submit that even as per CPCB monitoring and periodic assessment of fly ash utilization by Thermal Power Plants (TPPs), there has been:

a. persistent shortfall in achieving effective utilization,

b. continued dependence on ash pond storage and slurry disposal, and,

c. absence of a robust, enforceable mechanism ensuring sector-wise utilization.

Despite such regulatory oversight, the Respondent has failed to ensure strict compliance or accountability, and instead has introduced provisions which further dilute the mandatory nature of utilization.

Therefore, instead of strengthening enforcement based on CPCB monitoring and audit mechanisms, the Respondent has shifted focus towards price control and market mechanisms, diluted the earlier mandatory framework, and failed to address the core issue of environmentally sound utilization of ash.

Accordingly, the reliance on Committee mechanisms and pricing parity is misplaced, ineffective, and contrary to the objectives of the Environment (Protection) Act, 1986, and deserves to be rejected.

11. That the contents of Para 13 as stated are wrong hence denied being misconceived and legally untenable. The stand of the Respondent that mandatory use of fly ash products in private construction cannot be enforced through central notification is wholly erroneous and contrary to the scheme of environmental law.

It is respectfully submitted that:

i. The **Environment (Protection) Act, 1986** empowers the Central Government to issue binding directions to ensure protection and improvement of environment, including regulating materials used in construction where environmental impact is directly involved;

ii. The regime of **mandatory utilisation of fly ash-based products has been consistently in force since the Notification of 1999**, and has always contemplated implementation through local bodies, development authorities and construction regulating agencies;

iii. The Respondent itself has acknowledged that implementation is to be carried out through municipal bye-laws and local authorities, which clearly establishes that such mandate is legally permissible.

However, the Respondent has failed to address the most critical issue, namely, complete lack of enforcement and monitoring for more than two decades.

It is submitted that despite statutory mandates existing since 1999 (i.e., for over 25 years):

(a) there is no effective monitoring mechanism to ensure compliance in private or individual construction;

(b) local authorities have either not amended their bye-laws in true spirit or have failed to enforce them;

(c) no system of mandatory reporting, verification or accountability has been implemented;

(d) rampant use of burnt clay bricks continues unchecked, leading to large-scale topsoil degradation.

In absence of any enforcement framework, the so-called delegation to local authorities has resulted in complete regulatory vacuum, rendering the environmental mandate ineffective in practice.

It is further submitted that the Respondent cannot take shelter under the autonomy of local bodies to justify inaction. On the contrary, it is incumbent upon the Central Government to (1) lay down clear, enforceable mandates, (2) prescribe monitoring and reporting mechanisms, and (3) ensure uniform implementation across States.

Therefore, the prayer of the Applicant seeking mandatory use of fly ash-based products in construction projects as well in private and individual residential construction for personal usage, coupled with a robust compliance mechanism, is not only legally sustainable but imperatively required to give effect to the environmental objectives of the statutory framework.

12. That the contents of Para 14 and 15 as stated are wrong hence denied being misconceived and contrary to the statutory framework. The Respondent has failed to furnish any legal basis to justify the effective delegation of regulatory control over fly ash management to the Ministry of Power, which is contrary to the scheme and object of the Environment (Protection) Act, 1986.

It is respectfully submitted that the regulation, utilization, allocation and disposal of fly ash being an environmental pollutant/waste arising from thermal power plants squarely falls within the exclusive domain of MoEF&CC under the Environment (Protection) Act, 1986 and the notifications issued thereunder. Any dilution of such control by permitting another Ministry to frame operational or allocation mechanisms amounts to abdication of statutory responsibility.

The Respondent has sought to justify the role of the Ministry of Power on the ground of administrative convenience; however, such justification is legally untenable. It is settled law that statutory powers coupled with environmental obligations cannot be delegated in a manner that defeats the very object of the parent statute.

It is further submitted that the impugned framework has, in effect, enabled the Ministry of Power to introduce auction-based and market-driven mechanisms for allocation of fly ash, which transforms fly ash from an environmental liability into a commercial commodity, prioritizes revenue considerations over environmental utilization, and results in preferential access to highest bidders, thereby

excluding a large number of Micro and Small Enterprises (MSEs) engaged in ash-based product manufacturing.

This approach is directly contrary to the earlier regulatory regime, wherein fly ash was required to be supplied free of cost or at concessional rates, equitable access to manufacturers was ensured, and the focus remained on maximizing environmentally sound utilization rather than monetization.

The present mechanism, by contrast, has resulted in:

i. artificial scarcity and price escalation due to auction dynamics;

ii. denial of access to genuine end-users who are unable to compete in bidding processes; and

iii. diversion of fly ash utilization away from priority environmental sectors.

It is submitted that such a framework amounts to a colorable exercise of power, whereby environmental regulation is indirectly converted into a revenue-generating mechanism, defeating the object of the Environment (Protection) Act, 1986.

In absence of any statutory provision permitting such delegation, and in view of the adverse environmental and regulatory consequences, the impugned arrangement deserves to be held ultra vires, arbitrary and liable to be set aside.

13. That the contents of Para 16 as stated are wrong hence denied being misconceived and legally untenable. The contents of the present paragraph are denied being incorrect

and misleading. The environmental compensation mechanism prescribed at the rate of ₹75 per square foot of built-up area is wholly arbitrary, irrational and fundamentally flawed, as it is based on an area-centric approach rather than an ash-utilization-based metric.

It is respectfully submitted that environmental compliance in the present context is directly linked to the quantity of fly ash utilized, and therefore, any compensation mechanism must necessarily be tonnage-based and not area-based. The impugned provision fails this basic test inasmuch as:

i. the built-up area has no direct or consistent correlation with the quantity of fly ash consumed, which depends upon the nature of construction, type of materials used, and volume of masonry units;

ii. the same built-up area may involve widely varying quantities of ash utilization, rendering the present mechanism arbitrary and incapable of measuring actual compliance;

iii. it allows developers to avoid utilization of fly ash altogether by merely paying a nominal amount, thereby converting a mandatory environmental obligation into an optional financial levy.

It is further submitted that as per BIS standards, including IS 12894:2002 and IS 16720:2018, fly ash constitutes approximately 60% to 70% of a standard fly ash brick, and utilization is inherently linked to the volume and weight of masonry materials used, not merely the constructed area.

In this backdrop, the Applicant has rightly proposed a compensation mechanism of ₹1500 per ton of fly ash, which is:

i. directly linked to actual ash utilization,

ii. scientifically measurable and verifiable,

iii. consistent with the scheme of Para C of the Notification dealing with environmental compensation, and

iv. capable of ensuring real compliance rather than notional adherence.

The present area-based mechanism suffers from serious consequences:

i. it decouples environmental liability from actual pollution impact,

ii. permits continued use of burnt clay bricks and other non-compliant materials, leading to topsoil degradation;

iii. fails to deter non-compliance, as the levy is nominal and easily absorbable as a project cost; and

iv. results in illusory compliance without achieving actual utilization of ash.

It is further submitted that neither the Respondent nor any authority has placed on record any empirical study, data or rationale to justify adoption of ₹75 per sq. ft. as a benchmark, or its correlation with ash generation, utilization targets or environmental impact.

In absence of any such scientific basis, the provision is manifestly arbitrary and violative of Article 14 of the Constitution of India, apart from being contrary to the objectives of the Environment (Protection) Act, 1986.

It is most respectfully submitted that the failure of the present framework is further aggravated by complete lack of enforcement, inasmuch as:

i. no material has been placed to show that penalties under this provision have been effectively imposed;

ii. there is no mechanism to verify actual utilization of fly ash in construction; and

iii. Central and State authorities have continued to shift responsibility without ensuring compliance on ground.

Therefore, the existing area-based compensation mechanism is not only conceptually flawed, but also practically ineffective, and has resulted in a situation where; environmental obligations are rendered optional; compliance remains theoretical, and the objective of achieving 100% ash utilization continues to remain unfulfilled.

It is, therefore, respectfully submitted that unless the compensation framework is restructured on a tonnage-based model, directly linked to actual fly ash utilization, the same will continue to defeat the purpose of the Notification and enable continued environmental degradation.

14. That the contents of Para 17 as stated are wrong hence denied being misconceived. It is not in dispute that the

obligation of utilization of fly ash within a radius of 300 km has been provided in the notification. However, the Respondent has failed to explain what tangible results have been achieved from such provision over the years, and how mere existence of a provision without enforcement can be treated as compliance.

It is respectfully submitted that while the Respondent claims that adequate provisions have been made, the ground reality demonstrates that:

i. despite the mandate being in force since earlier notifications and continued in the present framework, effective utilization within the 300 km radius has not been ensured in practice;

ii. there is no uniform enforcement mechanism across States, leading to inconsistent and selective compliance;

iii. no system of mandatory verification, certification or reporting has been operationalized to monitor whether construction agencies are actually using fly ash-based products.

It is further submitted that the Respondent has failed to address a critical issue, namely, why enforcement and implementation have not been made compulsory despite passage of more than two decades since the inception of the fly ash regulatory regime (1999 onwards). The continued reliance on enabling provisions without ensuring enforceability reflects:

i. regulatory inaction and lack of accountability,

ii. absence of binding compliance mechanisms, and

iii. failure to translate policy into implementation.

The situation is further aggravated by the introduction of the price-related proviso, which has diluted the mandatory nature of utilization by making it conditional and discretionary, thereby allowing construction agencies to avoid compliance on economic grounds.

It is submitted that the Respondent cannot take shelter under the argument that "provision exists", when in fact: (1) the provision has not been effectively enforced, (2) no credible data has been produced to show actual compliance levels, and (3) environmental objectives of reducing topsoil excavation and preventing ash dumping remain unfulfilled.

The absence of a mandatory reporting framework, defined roles and accountability of authorities, and penal consequences for non-compliance, has rendered the 300 km obligation largely ineffective and illusory in practice.

Therefore, the Applicant has rightly sought:

i. strict and mandatory enforcement of the utilization requirement;

ii. a robust monitoring and reporting mechanism, including certification by construction authorities; and

iii. a clear accountability framework fixing responsibility on implementing agencies.

It is submitted that unless the said obligation is converted from a directory provision into an enforceable mandate, supported by monitoring and penalties, the object

of the Notification will continue to be defeated despite its existence on paper.

15. That the contents of Para 18 as stated are wrong hence denied being misconceived. The reliance placed by the Respondent on draft amendments under consideration is wholly misplaced and does not in any manner cure the illegality in the impugned notification.

It is respectfully submitted that mere issuance of draft amendments cannot be a defence to justify an otherwise arbitrary and defective regulatory framework, particularly when:

i. the Applicant had already participated in the consultative process and had submitted detailed objections and suggestions pursuant to the draft notification dated 22.04.2021;

ii. the said objections, including core issues relating to priority utilisation, pricing mechanism, mandatory use in construction, and equitable access to fly ash, were not incorporated in the final notification dated 31.12.2021;

iii. even in subsequent amendments dated 30.12.2022 and 01.01.2024, the fundamental concerns raised by the Applicant continue to remain unaddressed.

It is further submitted that the Applicant was constrained to approach this Hon'ble Tribunal only after it became evident that:

a) the consultative exercise was not reflected in policy formulation,

b) repeated representations have not resulted in substantive correction, and

c) the impugned provisions continue to operate to the detriment of environmental objectives.

The Respondent has failed to demonstrate that the proposed draft amendments seek to address 1. the arbitrary pricing proviso; 2. absence of mandatory utilisation in construction, 3. lack of priority-based utilisation framework, or 4. the issue of delegation leading to commercialisation of fly ash.

It is submitted that ongoing or proposed amendments cannot defeat the present cause of action, particularly when the impugned provisions are already in force and operational, they are causing continuing environmental harm, including topsoil degradation and improper ash disposal, and there is no certainty as to if and when such amendments will be finalised.

It is a settled principle that existence of a draft or proposed policy cannot validate an existing illegality, nor can it be used to postpone judicial scrutiny of a defective statutory framework. It is further submitted that the Respondent's approach reflects a pattern of issuing draft notifications, conducting consultations in form, and thereafter failing to incorporate substantive stakeholder concerns, thereby rendering the entire process procedural rather than meaningful.

In view of the above, it is respectfully submitted that the plea of draft amendments is illusory, non-responsive,

and does not address the core grievances raised by the Applicant, and therefore deserves to be rejected.

16. That in view of the foregoing submissions, it is respectfully submitted that the Reply Affidavit filed by Respondent No.1 is evasive, generalized and fails to deal with the specific and substantive issues raised in the Original Application. The Respondent has failed to rebut, either on facts or in law, the core issues raised by the Applicant, inter alia:

- **a.** dilution of the mandatory utilisation regime, thereby defeating the environmental objectives underlying the fly ash framework;
- **b.** arbitrary and irrational pricing condition, which has rendered compliance conditional and diluted enforceability;
- **c.** exclusion and dilution of pond ash management, resulting in continued environmental hazard;
- **d.** impermissible delegation of regulatory control to the Ministry of Power, leading to commercialisation and auction-based allocation of fly ash; and
- **e.** complete failure of enforcement and monitoring mechanisms, rendering the statutory provisions ineffective in practice.

It is further submitted that the Respondent has not placed any material on record to demonstrate (1) actual improvement in fly ash utilisation levels, (2) effective implementation within the 300 km mandate, or (3) imposition of penalties for non-compliance.

The Reply, therefore, does not address the real issues but instead seeks to justify the impugned framework on

theoretical grounds, ignoring the ground realities of continued non-compliance, topsoil degradation, and environmental harm.

In these circumstances, the impugned provisions of the notification, as challenged in the present OA, are liable to be set aside or suitably modified, so as to restore the original environmental objectives and ensure effective utilisation of fly ash.

APPLICANT

THROUGH

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Date: 30 .04.2026
New Delhi

SERIAL NO. 222
DATE : 29/4/26

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

20

ORIGINAL APPLICATION NO. OF 2025

IN THE MATTER OF :

Association of Fly Ash Products Manufacturers (AFAPM)
... Applicant

Versus

Ministry of Environment, Forest & Climate Change & Ors.
... Respondent

NOTARY ISHAQ MOHAMMED Area KOTA (Raj.) Regd. No. 1077 Exp. Dt. 16-01/2030 GOVT. OF INDIA

AFFIDAVIT

I, Rajendra Singh S/o Late Ramnarayan Singh, aged about 59 years R/o 7C 13, Mahaveer Nagar Extension, Kota (Rajasthan)–324009, do hereby solemnly affirm and states as under;

1. That I am the founder member of the applicant association and has been duly authorized to file the present OA and as such I am well conversant with the facts and circumstances of the present case and is competent to swear this present affidavit.

2. That I have gone through the contents of the accompanying Rejoinder to Reply filed by MoEF&CC. The same has been drafted as per my instructions. The contents of the same are true and correct to the best of my knowledge and nothing material has been concealed there from.

DEPONENT

ATTESTED
29/4/26
ISHAQ MOHAMMAD
NOTARY, KOTA (RAJ.)

VERIFICATION

I, the deponent above named do hereby verify that the contents of this affidavit are true and correct to the best of my knowledge derived from the records and nothing relevant has been concealed therefrom. Verified at Kota, Rajasthan on this 29th day of April, 2026.

RY
OHAMMED
KOTA (Raj.)
Regd. No. 1077
Exp. Dt. 16-01/2030
GOVT. OF INDIA

DEPONENT

IDENTIFIED BY
manish

ATTESTED
ISHAQ MOHAMMAD
NOTARY, KOTA (RAJ.)
29/4/26

Gmail V.K. Shukla <madhavnassociates@gmail.com>

Service in OA No. 269 of 2025 titled as "Association of Fly Ash Products Manufacturers (AFAPM) vs MoEF & CC & Ors.

1 message

V.K. Shukla <madhavnassociates@gmail.com> Thu, Apr 30, 2026 at 12:58 PM

To: Jai Bansal <bansal.jai@gmail.com>, mefcc@gov.in
Cc: "V.K. Shukla" <vkslawoffices@gmail.com>

Mr. Jai Bansal
Adv for MoEF & CC

Sir,
PFA copy of rejoinder to your reply filed on behalf of MoEF&CC in the abovesaid OA.
Regards

--

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Final rejoinder to reply by R-1 MoEF CC.pdf
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