

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, NEW DELHI

Appeal No. 47 of 2024

National Fertilizers Limited

--Applicant

Versus

Punjab Pollution Control Board and Others

--Respondents

In Re: Appeal under section 16(g) read with section 18 of the National Green Tribunal Act, 2010 assailing the order bearing no.412 dated 09.10.2024 passed by the Punjab Pollution Control Board.

Reply by way of affidavit of Er. Ramandeep Sidhu, Environmental Engineer, Punjab Pollution Control Board, Regional Office, Bathinda, in compliance of order dated 05.12.2024.

I, the above-named deponent, do hereby, solemnly affirm and state as under:

Respectfully Showeth:

1. That briefly submitted, the Appellant has filed the present appeal under Section 16(g) read with Section 18 of the National Green Tribunal Act, 2010 challenging order no. 412 dated 09.10.2024 passed by the Punjab Pollution Control Board whereby environmental compensation of Rs.11,88,00,000/- has been imposed on the appellant for violating the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and degrading and damaging the environment.

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2. Along with the Appeal the appellant has also filed I.A. No. 605/2024 for stay of operation of impugned order.
3. That vide order dated 05.12.2024 the Hon'ble National Green Tribunal has issued notice to the respondents to file their response in the case. The pointwise reply of the Punjab Pollution Control Board to the appeal case may kindly be read in the following paragraphs.
 - I. That the contents of paragraph I) relating to the address of the counsel of the appellant for service of notices need no reply.
 - II. That the contents of paragraph II) relating to the address of the respondents for the services of the notices need no reply.
 - III. That the contents of paragraph III) relating to the filing of the present appeal u/s 16(g) read with section 18 of the National Green Tribunal Act, 2010 challenging the order no. 412 dated 9.10.2024 of the respondent Punjab Pollution Control Board whereby, Environmental Compensation of Rs. 11,88,00,000 (Eleven Crore Eighty-Eight Lakh Only) has been imposed upon the appellant are a matter of record.

However, the contents of this para mentioned in point no. (i) to (iv) are denied being incorrect. The reply to the contentions raised by the appellant in these points may kindly be read as under:

- (i) It is wrong hence denied that the respondent Punjab Pollution Control Board has issued the order in the complete absent of the power to impose such compensation and complete non-application of mind.
- (ii) The grant of authorization on 03.10.2023 valid upto 31.03.2024 to the appellant by the Board cannot absolve the appellant of the non-compliances and liability for penalty. The authorization under the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 from 3.10.2023 to 31.03.2024 and on other occasions was granted by the Board with conditions and one of the specific conditions was that in case, the industry fails to comply with the above conditions of authorization as well as provisions of the Hazardous



and Other Wastes (Management and Transboundary Movement) Rules, 2016 and / or any other environmental law applicable to the industry and Rules, Circulars and Directions issued by the Board from time to time, the Board shall be constrained to take action against the industry under the provisions of the Pollution Control Laws.

- (iii) Further contention of the appellant that the appellant's unit is non-polluting unit is devoid of merit as the unit of the appellant is red category unit falling under the 17 categories of highly polluting industries. The carbon slurry which has been stored by the appellant has been declared as hazardous under category 18.2 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
- (iv) The further contention of the appellant that the Environmental Compensation has been imposed without mentioning the violation is also devoid of merit as the storage of hazardous waste namely carbon slurry of category 18.2 of the said rules is a grave violation for which Environmental Compensation has been imposed by the Punjab Pollution Control Board.

The Board has rightly passed the order bearing no.412 dated 09.10.2024 after considering all the facts and circumstances of the case.

- IV. That the contents of paragraph IV) of the appeal are denied being incorrect that the order passed by the Board is liable to set aside as it is wholly arbitrary passed without any application of mind and it does not indicate under which provision of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, the order has been passed. It is also not mentioned as to what particular damage to air, water or land has been caused, what is the basis on which penalty is imposed and how the quantification of penalty imposed has been done.



In reply, it is submitted that no ground is made out to set aside the order dated 09.10.2024 passed by the respondent Punjab Pollution Control Board for imposition of Environmental Compensation upon the appellant. It is clarified as under:

- i) relevant to mention here that it is relevant to mention here that in exercise of the powers conferred under the Environment (Protection) Act, 1986, the Ministry of Environment, Forest and Climate Change, Government of India has notified the Hazardous Waste (Management and Transboundary Movement) Rules, 2016 vide notification no. GSR no. 395 (E) dated 04.04.2016. Under the said rules, the carbon residue in production of nitrogenous and complex fertilizers has been categorized as "Hazardous Waste" under Category 18.2 of Schedule - I.
- ii) The Hon'ble National Green Tribunal has noticed in its order dated 08.01.2024 that despite unjustified continued storage of carbon slurry by NFL, Bathinda and also inaction/delay on their part in disposal thereof in accordance with mandatory statutory provisions, no action has been taken by the State Pollution Control Board for imposition of environmental compensation and also prosecution of the defaulting officers/officials.
- iii) The Hon'ble National Green Tribunal has further directed the Punjab Pollution Control Board vide order dated 28.08.2024 to take further action for imposition of Environmental Compensation on NFL, Bathinda for past violations and recovery thereof in accordance with Law.
- iv) An opportunity of hearing was given on 05.09.2024 to the appellant by the Board for violation of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, with issuance of notice u/s 5 of the Environment (Protection) Act, 1986 vide letter no. 3876 dated 22.08.2024.



- v) The industry has failed to dispose of the hazardous category 18.2 carbon slurry and hence made itself liable to be proceeded against.
 - vi) The industry has failed to reply for unjustified continued storage of carbon slurry and also in action / delay on their part in disposal thereof. Subsequently the Board has issued orders for imposition of Environmental Compensation.
- V. That the contents of paragraph V) are wrong hence that manifest errors have been committed by the Board and the impugned order proceeds to ignore certain basic and vital facts which, in terms of the HWM Rules, 2016 themselves, limit the ability of the Appellant to freely deal with or dispose of the hazardous material under consideration. In this regard, it is submitted that the appellant has to act for the disposal of the hazardous waste in accordance with the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and not as per his own discretion.

Array of Parties

1. That the contents of paragraph 1. of the appeal relating to the status of M/s National Fertilizers Limited are a matter of record.
2. That the contents of paragraph 2. of the appeal are a matter of record. The Punjab Pollution Control Board being the prescribed authority is implementing the provisions of the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986 and the rules made thereunder in the State of Punjab.
3. That the contents of paragraph 3. of the appeal are a matter of record. However, the State of Punjab has no role to perform in the case and the main contesting party is the Punjab Pollution Control Board. Hence the state of Punjab is only a proforma party.
4. That the contents of paragraph 4. relating to the Central Pollution Control Board are a matter of record.



5. That in reply to the contents of paragraph 5. of the appeal it is submitted that M/s Shubham Sales Company has not been authorized by the Punjab Pollution Control Board to deal, distribute, lift carbon slurry as alleged in this para. However, as per the knowledge and record available with the office of the Punjab Pollution Control Board, the company has been authorized by the Haryana State Pollution Control Board to deal with the carbon slurry.
6. That the contents of paragraph 6. of the appeal may be considered as matter of record as no such record is available with the office of the answering respondent relating to M/s Metal Scrap Trading Corporation Limited.

Facts in Brief for Filing the Present Appeal: Reply thereof:

1. That the contents of paragraph 1. of the appeal are a matter of record.
2. That the contents of paragraph 2. of the appeal are a matter of record. However, it is submitted that as per the record available with the Board the leftover carbon slurry amounting to approximately 39600 MT was stored in appellants unit of National Fertilizers Limited, Bathinda in the designated carbon slurry ponds. The carbon slurry which was earlier considered to be a byproduct of manufacturing of fertilizer by National Fertilizers Limited, Bathinda, now falls under the definition of hazardous waste under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and as such hazardous waste in the form of carbon slurry has been stored by National Fertilizers Limited, Bathinda.
3. That the contents of paragraph 3. of the appeal are a matter of record that before the year 2016, the carbon slurry did not attract the provisions of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
4. That the contents of paragraph 4. of the appeal are a matter of record. However, it is submitted that the case no. 72 of 2019 mentioned in this para by the appellant relates to disposal of carbon slurry by M/s NFL, Bathinda to the firm M/s Carbo Chem Industries which was not having any authorization of the Board. The NFL, Bathinda was asked by the Punjab Pollution Control Board


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vide letter no. 6891 dt. 14.11.2018 not to sell the remaining carbon slurry of 3 ash ponds to any traders and shall dispose of the same with the prior approval /authorization of Punjab Pollution Control Board only to those recyclers who are having valid permission from the concerned SPCB to reprocess this hazardous waste. M/s. NFL, Bhatinda was also asked simultaneously to explain as to how they have given tender to the firm who has not any permission for reprocessing of this kind of hazardous waste from PPCB. It is in this background that the M/s Carbo Chem Industries was imposed Environmental Compensation by the Board. A copy of relevant order dated 03.07.2019 of the Hon'ble National Green Tribunal passed in Original Application No. 72 of 2019 is enclosed herewith as **Annexure-A** for kind perusal of the Hon'ble Tribunal. The liability of the appellant for unjustified storage of carbon slurry for a long period of time is separate case and cannot be connected with the matter (OA No.72 of 2019) mentioned in this para.

5. That the contents of paragraph 5 of the appeal relating to the filing of Original Application no.620 of 2022 before the Hon'ble National Green Tribunal by Kaushal Kishore Vishwakarma are a matter of record. However, after the consideration of the matter and the averments made in the application, the Hon'ble National Green Tribunal has also impleaded M/s National Fertilizers Limited Plant, Bathinda as one of the respondents and during the proceedings of the case in Original Application No. 620 of 2022 before the Hon'ble National Green Tribunal, the violations being committed by M/s National Fertilizers Limited, Bathinda under the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 were also unfolded. Action has accordingly been taken against M/s National Fertilizers Limited, Bathinda.

SHOW CAUSE NOTICES

6. That the contents of paragraph 6 of the appeal issuance of the notices by the Board on 29.07.2021 (no.2834 dated 29.07.2021) and 14.11.2023 (No. 3521 dated 14.11.2023) are a matter of record. However, it is relevant to mention here that the Board is issuing notices to the appellant since the year 2016 for



the disposal of carbon slurry lying in the carbon slurry ponds in the premises of the appellant unit.

7. That the contents of paragraph 7 of the appeal relating to the issuance of notices u/s 5 of Environment (Protection) Act, 1986 by the Board to the appellant on 22.12.2023 (no. 3809 dated 22.12.2023), dated 12.02.2024 (no. 816 dated 12.02.2024) and 22.08.2024 (no. 3876 dated 22.08.2024) are a matter of record. However, it is relevant to mention here that the notices issued to the appellant clearly state and mention the violations committed by the appellant under the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The facts of this para are denied being incorrect that the above-mentioned notices issued by the Board lacked clarity regarding the grounds of the violations, were unsustainable and non-indicative in nature. As such the contents of this para are wrong hence denied that the notices issued by the Board are arbitrary, illegal, null, void and bad in law.
8. That the contents of paragraph 8 of the appeal regarding a request letter dated 24.10.2024 submitted by the appellant to withdraw the order dated 09.10.2024 issued by the respondent Punjab Pollution Control Board are a matter of record. The order bearing no.412 dated 9.10.2024 for imposition of Environmental Compensation amounting to Rs. 11,88,00,000/- was issued by the Board after due consideration of the matter relating to the violations of the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and in the background of the orders dated 08.01.2024 and 28.08.2024 passed by the Hon'ble National Green Tribunal after affording due opportunity of hearing to the appellant. The request of the appellant for withdrawal of the order of imposition of Environmental Compensation cannot be allowed by the Board, hence no reply was given.

RELEVANT PROVISIONS OF LAW

9. That the contents of paragraph 9 of the appeal relating to the reproduction of the provisions of Section 5 of the Environment (Protection) Act, 1986 are a



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matter of record. The remaining contents of this para are correct hence admitted that the main issue involved in the present case relates to the management of hazardous waste which is covered under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 framed under the Environment (Protection) Act, 1986.

10. That the contents of paragraph 10 of the appeal relating to the reproduction of Rule 4 relating to the responsibilities of the occupier for management of hazardous and other wastes; Rule 5 relating to responsibilities of State Government for environmentally sound management of hazardous and other wastes; Rule 6 relating to grant of authorization for managing hazardous and other waste; Rules 8 relating to the storage of hazardous and other wastes and Rules 9 relating to utilization of hazardous and other wastes are a matter of record.
11. That the contents of paragraph 11 of the appeal are correct hence admitted being matter of record relating to the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
12. That in reply to the contents of paragraph 12 of the appeal, it is submitted that respondent no. 4 is not the only authorized contractor dealing in carbon slurry. If the appellant cannot find some company for the disposal of carbon slurry in a scientific manner in the domestic market in India, the appellant is at liberty to float an International Tender so that the carbon slurry is disposed of in a sound environmental manner. In the State of Punjab, Common Treatment, Storage and Disposal Facility (CTSDSF) for hazardous waste is in existence at Village Nimbuan, Tehsil Dera Bassi, District SAS Nagar. Hence, the contention raised in this para that the appellant is left with no other choice, but to recourse and depend on respondent no.4 to lift the entire quantity of carbon slurry lying in the appellant's unit is denied being incorrect.

RENEWAL OF AUTHORIZATION GRANTED TO THE APPELLANT

13. That the contents of paragraph 13 of the appeal are a matter of record. That the appellant was granted authorization by the Board from time to time for



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generation, collection, storage and disposal of hazardous waste with the condition that the appellant shall ensure to get the carbon slurry lifted to the authorized recycler at the earliest. It is relevant to mention here that the authorization was granted with certain conditions and one of the condition was that in case, the industry fails to comply with the above conditions of authorization as well as provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and / or any other environmental law applicable to the industry and Rules, Circulars and Directions issued by the Board from time to time, the Board shall be constrained to take action against the industry under the provisions of the Pollution Control Laws.

14. That the contents of paragraph 14 of the appeal are denied being incorrect that the Respondent cannot on one hand grant extension of the authorisation and during the continuance of such authorisation impose compensation on the Appellant for alleged violation on the basis of which such extension was granted on the first place. The authorization from time to time was granted by the Board to the appellant with conditions and one of the condition was that in case, the industry fails to comply with the above conditions of authorization as well as provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and / or any other environmental law applicable to the industry and Rules, Circulars and Directions issued by the Board from time to time, the Board shall be constrained to take action against the industry under the provisions of the Pollution Control Laws. As the appellant has failed to comply with the conditions of the authorization and the provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, the Board has imposed Environmental Compensation in accordance with the scale of compensation determined by the Central Pollution Control Board as mentioned herein below.

In the matter of Original Application No. 804/2017 (Earlier O.A. No. 36/2012) With M.A. No. 1302/2018 in Interlocutory Application No. 63 in W. P. (C) No. 657/199; Rajiv Narayan & another Versus Union of India & others With the Research



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Foundation for Science, Technology and Natural Resource Policy Versus Union of India and others, the Hon'ble National Green Tribunal, Principal Bench, New Delhi directed the Central Pollution Control Board, vide orders dated 12.04.2019, to determine the scale of compensation to be recovered for violation of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016. The Central Pollution Control Board has accordingly prepared the methodology for calculating financial penalty and compensation for various violations of the provisions of the HOWM Rules, 2016, in cases of the facilities requiring authorization under the said Rules, 2016.

POLLUTER PAY'S PRINCIPLE

15. That in reply to the contents of paragraph 15 of the appeal, it is relevant to mention here that the Hon'ble Supreme Court of India has considered the Principles of Precaution, Sustainable development and Polluter Pay's and decided to strictly implement the same. The decisions so taken by the Hon'ble Supreme Court of India are summarized herein below:

- a) The concept of precautionary principle was considered in M.C Mehta versus Union of India and others and vide judgment dated 11.10.1996 and the Hon'ble Supreme Court of India held that the Precautionary Principle has been accepted as a part of the Law of the land.
- b) The concept of sustainable development was considered in M.C Mehta versus Union of India and others (1997) 2 SCC 353 and it was decided by the Hon'ble Supreme Court of India that the development is essential for the economy of the country but at the same time the environment and eco systems have to be protected.
- c) The Hon'ble Supreme Court of India has also considered the concept of Polluter Pay's Principle in Indian Council for Enviro



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Legal Action and others v/s Union of India and others (1996) 3 SCC 212 para 16, Vellore Citizens Welfare Forum v/s Union of India (1996) 5 SCC 647 para 12-18 and held that Polluter Pay's Principle is accepted principle and part of environmental law of the country without even specific statute.

It is further relevant to mention here that the Hon'ble National Green Tribunal has also issued directions in several cases to impose environmental compensation on non-complying units and has been directing the Central Pollution Control Board, all the State Pollution Control Boards including the Punjab Pollution Control Board to implement Polluter Pay's Principle. The Hon'ble National Green Tribunal has also issued directions in OA No. 620 of 2022 for imposition of Environmental Compensation upon the unit of the appellant.

16. That the contents of paragraph 16 of the appeal are a matter of record. However, the appellant has not undertaken the earnest efforts for the lifting and disposal of carbon slurry, which is category 18.2 hazardous waste under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
17. That the contents of paragraph 17 of the appeal are wrong hence denied that the action of respondent Board to impose Environmental Compensation on the appellant unit in the terms of Polluter Pay's Principle is arbitrary and illegal.

TESTING CONDUCTED, NON-HAZARDOUS

18. That the contents of paragraph 18 of the appeal may be considered as matter of record. However, it is submitted that in exercise of the powers conferred under the Environment (Protection) Act, 1986, the Ministry of Environment, Forest and Climate Change, Government of India has notified the Hazardous Waste (Management and Transboundary Movement) Rules, 2016 vide notification no. GSR no. 395 (E) dated 04.04.2016. Under the said rules, the carbon residue in production of nitrogenous and complex fertilizers has been



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categorized as "Hazardous Waste" under Category 18.2 of Schedule - I. In view of these facts of the case, it is irrelevant to contend that as per the test analysis the samples collected from the ponds indicated the carbon slurry lying in the ponds is non-hazardous as the hazardous contents are below the detectable limits as per the Schedule-II of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

19. That in reply to the contents of paragraph 19 of the appeal, it is submitted that the word "Environment" according to Section 2 (a) of the Environment (Protection) Act, 1986 includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property; "environmental pollutant" according to Section 2 (b) means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment and "environmental pollution" according to Section 2 (c) means the presence in the environment of any environmental pollutant. Though the appellant has got a study conducted of the ground water and carbon slurry pond, but there is no study relating the other aspects of the environment as mentioned in the definitions under the Environment (Protection) Act, 1986 as explained above.
20. That the contents of paragraph 20 of the appeal are denied being incorrect that the order passed by the Board is completely silent on actual violation and does not provide the methodology or the facts for calculating the compensation amount. In this regard, it is submitted that the Board has imposed the Environmental Compensation upon the appellant taking into consideration the Principles of Precaution, Sustainable Development and Polluter Pay's which according to the methodology and scale involved by the Central Pollution Control Board in Original Application No.804 of 2017 and adopted by the Punjab Pollution Control Board has been calculated to be Rs.11,88,00,000/-. Hence, the appellant was directed the vide order no.412 dated 09.10.2024 to deposit the amount of Rs. 11,88,00,000/- towards Environmental Compensation with the office of the Board.



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21. That the contents of paragraph 21 of the appeal are wrong hence denied that there is no application of mind, no calculation and methodology adopted by the Board, Computation of environmental compensation is without any basis, illogical and based on no rational principle and there is violation of the Principles of Natural Justice. No ground is made out to set aside the orders passed by the Board for imposition of Environmental Compensation upon the appellant.
22. That the contents of paragraph 22 of the appeal are not related to the office of Punjab Pollution Control Board and it is an internal matter of the appellant with the respondent no.4. The appellant cannot rely upon such defense to escape liability of Environmental Compensation. The Board has passed a detailed order bearing no.412 dated 09.10.2024 for imposition of Environmental Compensation upon the appellant after affording due opportunity of hearing.
23. That the contents of paragraph 23 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.
24. That the contents of paragraph 24 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.
25. That the contents of paragraph 25 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.
26. That the contents of paragraph 26 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.
27. That in reply to the contents of paragraph 27 of the appeal, it is submitted the respondent Punjab Pollution Control Board has given reply to the appellant and the copy of the same is enclosed as Annexure-B.
28. That the contents of paragraph 28 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.



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29. That the contents of paragraph 29 of the appeal may be considered as matter of record. However, the same do not relate to the office of the answering respondent no.1.

30. That in reply to the contents of paragraph 30 of the appeal, it is submitted that it is the responsibility of the appellant to dispose of the carbon slurry in a scientific manner. The appellant should have contacted Common Treatment, Storage and Disposal Facility (CTSDF) for hazardous waste is in existence at Village Nimbuan, Tehsil Dera Bassi, District SAS Nagar. If the appellant cannot find some company for the disposal of carbon slurry in a scientific manner in the domestic market in India, the appellant is at liberty to float an International Tender so that the carbon slurry is disposed of in a sound environmental manner.

GROUND (reply thereof)

- A) That the contents of paragraphs A) are denied being incorrect that the order passed by the respondent Punjab Pollution Control Board for imposition of Environmental Compensation is void, arbitrary and bad in law and is liable to be dismissed. In this regard, it is submitted that the Board has drawn powers to impose Environmental Compensation upon the defaulters of pollution from various judicial pronouncements of the Hon'ble Supreme Court of India and the Hon'ble National Green Tribunal and this aspect has already been clarified in reply the preceding paragraphs and the facts in this regard have also been incorporated in the detailed order bearing no.412 dated 09.10.2024 passed by the Board for imposition of Environmental Compensation upon the appellant.
- B) That in reply to the contents of paragraph B) of the grounds, it is submitted that it is the responsibility of the appellant to dispose of the carbon slurry in a scientific manner. The appellant should have contacted Common Treatment, Storage and Disposal Facility (CTSDF) for hazardous waste is in existence at Village Nimbuan, Tehsil Dera Bassi, District SAS Nagar. If the appellant cannot find some company for the disposal of carbon slurry in a scientific manner in the domestic market in India, the appellant is at liberty to float an International Tender so that the carbon slurry is disposed of in a sound environmental manner



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- C) That in reply to the contents of paragraphs C), it is relevant to mention here that the authorization was granted with certain conditions and one of the condition was that in case, the industry fails to comply with the above conditions of authorization as well as provisions of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 and / or any other environmental law applicable to the industry and Rules, Circulars and Directions issued by the Board from time to time, the Board shall be constrained to take action against the industry under the provisions of the Pollution Control Laws. Hence, the order passed by the Board cannot be said to be bad in law.
- D) That the contents of paragraphs D) of the grounds of the appeal are wrong hence denied that there was no application of mind by the respondent Punjab Pollution Control Board in arriving at the figure of 11,88,00,000/- as Environmental Compensation. The facts have already been clarified in preceding paragraphs and in this regard the contents of reply given in paragraph 20 may kindly be read.
- E) That the contents of paragraphs E) of the grounds of appeal are repetition of the facts already mentioned in the appeal. In this regard, the reply in the preceding paragraphs including the reply given in paragraph 19 above may kindly be read.
- F) That in reply to the contents of paragraphs F) of the grounds of the appeal the reply given in paragraph 14 and 20 above may kindly be read.
- G) That the contents of paragraphs G) of the grounds of the appeal are wrong hence denied. The reply given in paragraph 14 and above may kindly be read.
- H) That the contents of paragraphs H) of the grounds, the reply given in paragraph 15 above may kindly be read.
- I) That in reply to the contents of paragraph I), the following facts are mentioned

$$\text{Environmental Compensation (EC)} = Q \times \text{ERF} \times R$$

Where, Q is noticed or observed quantity (in tonne) 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 (barring procedural violations which have not caused environmental damage)



ERF = Environmental Risk Factor which is a number (as given in Table 1 below) denoting the increasing degree of risk to the environment and human health due to the scenarios as given in the Table 1 of the guidelines.

Wastes found stored beyond the stipulated period (refer Rule 8 of the HOWM Rules, 2008) = 0.1

R= Environmental Compensation factor, which may be taken as Rs. 30,000.

- (i) For facility engaged in generation/ recycling/ utilizing/ disposing of hazardous or other waste and such wastes have never been handed over to common TSDF/ actual user:

Environmental Compensation (EC) = Q x ERF x R

$$= 39600 * 0.1 * 30,000$$

$$= \text{Rs. } 11,88,00,000/-$$

- J) That the contents of paragraphs J) of the grounds are wrong hence denied. The unit of the appellant is red category unit falling under the 17 categories of highly polluting industries. The carbon slurry which has been stored by the appellant for a long period of time has been declared as hazardous under category 18.2 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
- K) That the reply given in paragraphs J) above and also the reply given in preceding paragraphs may kindly be read as reply to the contents of paragraph K).
- L) That the reply given in paragraph 19) above may kindly be read as reply to the contents of paragraphs L) of the grounds.
- M) That in reply to the contents of paragraphs M) of the grounds, it is submitted the appellant is duty bound to safely dispose of the carbon slurry lying in its ponds, which has been declared as hazardous waste of category 18.2 under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.
- N) That in reply to the contents of paragraphs N) of the grounds, it is submitted that the office of the respondent Punjab Pollution Control Board is not concerned with respondent no.4 in any manner. The reply given in the



preceding paragraphs may kindly be read as reply to the contents of this para of the grounds of appeal.

LIMITATION

That the contents of the appeal mentioned under the heading limitation are a matter of record, hence need no reply.

PRAYER

It is, therefore, prayed that the appeal filed by the appellant for quashing of order bearing no. 412 dated 09.10.2024 passed by the respondent Punjab Pollution Control Board for imposition of Environmental Compensation may kindly be dismissed being devoid of merits in view of the submissions made herein above.

Deponent



(Ramandeep Sidhu)
Environmental Engineer,
Punjab Pollution Control Board,
Regional Office, Bathinda

Date: 03-01-2025

Place: Bathinda

Verification: |

I, the deponent above named, do hereby verify and state that the contents of the above affidavit are true and correct to the best of my knowledge and belief, as derived from the official record. No part of the above affidavit is false and nothing material has been concealed there from.

Deponent



(Ramandeep Sidhu)
Environmental Engineer,
Punjab Pollution Control Board,
Regional Office, Bathinda

Date: 03-01-2025

Place: Bathinda

Item No.06

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No.72/2019

Rakesh Singh

Applicant(s)

Versus

State of Punjab

Respondent(s)

Date of hearing: 03.07.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

For Respondent (s): Mr. Naginder Benipal, Advocate for PPCB

ORDER

1. The issue for consideration is the remedial action against storing of hazardous waste by M/s. Carbon Chemical Industries at Bhatinda, Punjab in violation of the Hazardous Waste Management Rules, 2016.
2. Vide order dated 26.02.2019, this Tribunal directed Punjab State Pollution Control Board to furnish a factual and action taken report. Accordingly, a report has been furnished vide the e-mail dated 05.04.2019 to the effect that huge quantity of carbon slurry was lying stored at the site and tentative quantity appears to be 3470 tones.
3. The relevant part of report is as follows:


**Environmental Engineer
Punjab Pollution Control Board
Regional Office, Bathinda.**

- “6. That the carbon slurry is covered at category no. 18.2 of HWM Rules, 2016. The firms i.e. M/s. Carbo Chem Industries had lifted this carbon slurry from M/s. NFL, Bhatinda through e-tender in the year 2017. M/s. NFL, Bhatinda was bound to sell this carbon slurry only to those industries which are actual users to reprocess such waste and are having valid permission from the concerned State Pollution Control Board and the same cannot be disposed off to the traders for trading purpose. So, the NFL, Bhatinda was asked vide letter no. 6891 dt. 14.11.2018 (Annexure-B) not to sell the remaining carbon slurry of 3 ash ponds to any traders and shall disposed off the same with the prior approval /authorization of Punjab Pollution Control Board only to those recyclers who are having valid permission from the concerned SPCB to reprocess this hazardous waste. M/s. NFL, Bhatinda was also asked simultaneously to explain as to how they have given tender to the firm who has not any permission for reprocessing of this kind of hazardous waste from PPCB.
9. That the said representation of the industry was considered by the Competent Authority of the Board and it was decided as under:
- a) The industry may be asked to make necessary arrangements for the storage of already stored carbon slurry in an environmentally sound manner as per HWM Rules, 2016..
 - b) The seal of the godown may be opened to take action on point no.1 above only after the industry disclose/intimate the approximate quantity of carbon slurry lying in the godown as already asked vide letter no. 4363 dt. 12.11.2018 so that the same may not be sold after opening the seal.
 - c) The industry may be directed not to sell/trading/transport the already stored carbon slurry without the prior

authorization/permission of the Board under the Provision of HWM Rules, 2016.

d) The industry may be asked to submit the information/documents already asked vide letter no. 4363 dt. 12.11.2018 and no. 6891 dt. 14.11.2018.

10. *That the seal of the industry was opened and the industry was asked vide letter no. 2230-31 dt. 17.01.2019 (Annexure-E) to comply with the following decisions as well as to apply for authorization under HWM Rules, 2016:*

- a) The industry will make necessary arrangements for the storage of already stored carbon slurry in an environmentally sound manner as per HWM Rules, 2016.*
- b) The industry shall not sell/trade /transport the already stored carbon slurry without the prior authorization/ permission of the Board under the provisions of HWM Rules, 2016..*
- c) The industry will submit the information /documents already asked vide letter no. 4363 dt. 12.11.2018 and no. 6891 dt. 14.11.2018."*

4. Thus, the report clearly shows violation of Hazardous Waste Management Rules, 2016.

5. In view of the above, we constitute of a Joint Committee comprising the representative of the CPCB and the State PCB to assess the compensation to be recovered from the industry in question for violation of the Hazardous Waste Management Rules, 2016. The nodal agency for compliance and coordination will be the State Pollution Control Board. The Committee may give its report within one month by e-mail at judicial-ngt@gov.in. Pending furnishing of such report, in view of facts emerging from the report

given after due notice to the concerned unit, the Punjab State PCB may require the industry to deposit interim compensation of Rs. 10 lakhs with the CPCB and also take steps to have the waste in question disposed of in accordance with the Hazardous Waste Management Rules, 2016, at the cost of the industry in question.

6. A copy of this order be sent to the CPCB and the State PCB by email.

List for further consideration on 13th September, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

July 03, 2019
Original Application No.72/2019
AK

