

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 502 OF 2023

IN THE MATTER OF:

SOCIETY FOR PROTECTION OF ENVIRONMENT

AND BIODIVERSITY (SPENBIO)

...APPLICANT

-VERSUS-

UNION OF INDIA & ORS.

...RESPONDENTS

NDOH: 24.12.2024

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Dated: 23.12.2024

**Report in the matter of O.A No. 502/2023 on implementation of CPCB's
"Framework on Identification of Materials Generated from Industrial
Processes as Wastes or By-Products"**

Background

Industrial processes generate products and other material which may also include waste(s) and by-product(s). The by-products are un-intended material that gets generated as part of the production process, but may have usage as such in downstream process for manufacturing new material of economic value. However, effective usage of by-product depends on quantity generated and demand in market for consumption of the same. Effective utilization of by-product material may lead to conservation of resources.

In order to provide distinction between classification of material as "waste" or "by-product" the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOWM Rules, 2016) have defined "waste" under Clause 3(1) (38) of the HOWM Rules, 2016 as follows:

Waste means materials that are not products or by-products, for which the generator has no further use for the purposes of production, transformation or consumption. The explanation incorporated further for the purposes of this clause states as follows:

(i) *Waste includes the materials that may be generated during, the extraction of raw materials, the processing of raw materials into intermediates and final products, the consumption of final products, and through other human activities and excludes residuals recycled or reused at the place of generation; and*

(ii) *By-product means a material that is not intended to be produced but gets produced in the production process of intended product and is used as such.*

Industrial units may have classified some intermediate industrial process material, other than product, as by-product instead of waste as the same may have potential for downstream use. These self-declared by-products may also have hazardous constituents that may cause damage to the environment, if not managed in an environmentally sound manner or if not accounted for complete utilization.

Thus the distinction between - when a material generated from a production process should be considered as a "by-product" and when it should be considered as a "waste", is required to be discern critically. In case a "waste" escapes as "by-product", it may get out of ambit of the HOWM Rules 2016 and could carry the risk of adverse impacts on human health and environment.

Framework for Identification of Industrial Material as by-product:

Considering the above and as per the recommendations of the Monitoring committee constituted by Hon'ble NGT in the matter of O.A No 804/2017,



Central Pollution Control Board (CPCB) in 2019 has prepared "Framework on Identification of Materials Generated from Industrial Processes as 'Wastes' or By-Products" and circulated the said framework to all SPCBs/PCCs vide letter dated 23/09/2019 for its implementation.

The issues related to non-implementation of aforesaid framework was raised before the Hon'ble NGT in the matter of O.A No. 502/2023 wherein Hon'ble tribunal noted remarks of the Applicant's counsel regarding hazardous waste passing as by-product and non-implementation CPCB's framework by SPCBs including non-constitution of Technical Expert Committee (TEC) by SPCBs as mandated under the framework. The Hon'ble NGT vide its orders dated 09/09/2024 directed CPCB to "file a fresh report by way of affidavit responding to the main issue involved in this OA as also the observations which have been made above."

In this regard, it is humbly submitted that the "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products" outlines the steps/criteria along with guiding factors for identification of material as "waste" or "by-product" based on the prefeasibility study; Environmental Impact and Risk Assessment studies confirming absence of any adverse impacts and risks associated with the use of the material as substitute in any other process.

The "Guiding factors" (but not limited to) outlined in the framework are:

- (i) The material fits into the definition of "by-product" as defined under clause 3(1)(38) of the HOWM Rules, 2016.
- (ii) Various constituents/contaminants and their concentration in the material are known.
- (iii) The material doesn't require special purification/pre-processing when compared with the raw material which is intended to be substituted by the material.
- (iv) The material meets BIS specification or other prescribed standards of the product intended to be substituted by material.
- (v) Consumption of the material is known and there is sufficient and established demand for such consumptions.
- (vi) Consumption of the material does not cause adverse impact on effluent emission/waste generation at the process where the same is intended to be used.
- (vii) The constituents/contaminants present in the material do not have environmental impact and risk at its intended end use.

The identification of a material as a by-product needs to be assessed on a case-by-case basis, considering factors such as the production process, and also the



demand and supply especially within the State. Given that the mandate for implementation of the Rules lies with States, the responsibility for evaluating the material's suitability for by-product rests with the State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs).

Action taken by CPCB for implementation of the By-product framework:

In compliance to the orders of the Hon'ble NGT in the aforesaid matter, Central Pollution Control Board has taken the following steps to ensure effective implementation of the CPCB's "Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-Products:

- Conducted consultative meetings on 09/11/2023 with SPCBs/PCCs and MoEF&CC to review the status of implementation of the aforesaid framework and sought status of implementation of the said framework including constitution of Technical Expert Committee (TEC) as required under the framework and issued letters dated 10/11/2023 and 17/11/2023 seeking information from the SPCBs/PCCs.
- Prepared a "Common application form for industries for identification of material as 'waste' or 'By-product' in concurrence with MoEF&CC and communicated the same to all SPCBs/PCCs for its adoption vide letter dated 02/04/2024. CPCB also communicated to all SPCBs/PCCs to submit the information related to implementation of the framework annually along with the Annual report on Hazardous Waste Management.
- Conducted review meeting on 13/05/2024 to discuss the status of implementation of the framework for identification of Industrial material as "Waste" or "By-product" and issues being faced by SPCBs/PCCs in effective implementation of the said framework.

In the said meeting, SPCBs/PCCs were requested to expeditiously constitute TEC as per the said framework; adopt the common application form communicated by CPCB and sensitize their Regional Officers/field officials about the CPCB's said framework to ensure cross checking the classification of materials during their routine inspections and if any material is found to be claimed as "by-product" by the industrial unit, the said unit be directed to apply for classification of material under the framework.

- A common reporting format prepared to ensure uniformity in the reporting on the status of implementation of the framework by all the SPCBs/PCCs and communicated the same to all SPCBs/PCCs vide letter dated 12/07/2024 for submitting information along with annual inventory report on hazardous waste management.



- Issued direction dated 27/11/2024 under Section 5 of Environment (Protection) Act, 1986 to all SPCBs/PCCs for effective implementation of the framework on the following:

1. Ensure that identification and declaration of any material (generated from the industrial process) as “by-product” shall be carried out as per the criteria and guiding factor laid down under the CPCB’s “Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-products”.
2. Constitution of the Technical Expert Committee for processing of applications received for identification of Materials Generated from Industrial Processes as Wastes or By-Products as per the CPCB’s Framework. (to SPCBs/PCCs not constituted TEC).
3. Application for proposals for identification of Materials Generated from Industrial Processes as By-product, be made by the applicant to the SPCB/PCC only in the Common Application form as communicated by CPCB vide its letter dated 02/04/2024. Weblink of the application form in this regard be made available in public domain.
4. Issue necessary directions to the field inspecting teams of the Board to examine (during routine inspection) that any industrial process material being utilized as by-products, is classified as per the CPCB,s framework and stipulated in the authorisation granted by SPCB/PCC.



Submit status on the implementation of the CPCB’s framework as communicated vide letter dated 12/07/2024. The same be also placed in public domain by providing a weblink. The details of the link be also provided to CPCB.

6. Provide the list of Hazardous Waste (listed in Schedule –I, II, III of HOWM Rules, 2016) classified as “By-product”; along with their annual generation quantity.

The status of compliance was reviewed by CPCB in meetings with SPCB/PCCs during 06/12/2024 and 09/12/2024 along with officials of MoEF&CC, wherein SPCBs/PCCs were asked to take necessary steps and to submit updated status of compliance. Further, in the said meeting, representatives of SPCBs/PCCs have suggested that the provisions presently available under the HOWM Rules, 2016, and the Framework prepared by CPCB are sufficient to address the issues of "waste" and "by-product" and their management and a notification of the same as part of Rules may not be necessary.

The status on implementation of the framework for identification of material as “waste” of “By-product” as received from the SPCBs/PCCs is as below:



S. No.	State/UT	TEC Constituted	Common Application form adopted	Directed field inspecting officials to verify claimed By-products	Number of Application received and Material Classified
1.	Andaman and Nicobar Islands	No Industry generating HW			
2.	Andhra Pradesh	Yes	INP	INP	INP
3.	Arunachal Pradesh	Yes	INP	INP	INP
4.	Assam	Yes	Yes	Yes	01 Application received, No material classified as By-product
5.	Bihar	Yes	Yes	INP	No Application has been received
6.	Chandigarh	Under Process	Implementation will be ensured once TEC is constituted		
7.	Chhattisgarh	Yes	INP	Yes	INP
8.	Dadra and Nagar Haveli and Daman and Diu	Yes	Yes	Will Ensure	No Application has been received
9.	Delhi	Yes	No Large scale 17 category unit is operating in Delhi. No By-product has been reported by operating MSMEs. No Proposal received so far.		
10.	Goa	Yes	In process of uploading format on Portal	Yes	INP



11.	Gujarat	Yes	Yes	Yes	Yes-05 applications received in FY 23-24, none of the material has been classified as By-product
12.	Haryana	Yes	INP	INP	INP
13.	Himachal Pradesh	Yes	Yes	Yes	No Proposal received so far
14.	Jammu and Kashmir	Yes	INP	INP	INP
15.	Jharkhand	Yes	INP	INP	INP
16.	Karnataka	Yes	INP	INP	INP
17.	Kerala	Yes	Yes	Yes	INP
18.	Ladakh	No HW producing industry is UT of Ladakh, TEC will be constituted once such industry is setup in Ladakh			
19.	Lakshadweep	No industry producing HW			
20.	Madhya Pradesh	Yes	Yes	Yes	01 Application received; no material classified as By-product.
21.	Maharashtra	Yes	INP	INP	
22.	Manipur	Information not provided			
23.	Meghalaya	Information not provided			
24.	Mizoram	Under Process	There are no industries in the State that process hazardous substance and generate hazardous waste. However, it will be strictly enforce when such kind of industries arise in the State		
25.	Nagaland	Noted for Compliance	Yes	Yes	No application received so far,



					framework will be adopted when any application will be received.
26.	Odisha	Yes	Yes	Yes	Yes- No Proposal received so far
27.	Puducherry	Yes	Yes	Yes	Yes-
28.	Punjab	Yes	Yes	Yes	INP
29.	Rajasthan	Yes	INP	INP	INP
30.	Sikkim	Information not provided			
31.	Tamil Nadu	Yes	Yes	Yes	No Application has been received
32.	Telangana	Yes	INP	INP	INP
33.	Tripura	Yes	INP	INP	INP
34.	Uttar Pradesh	Yes	INP	INP	INP
35.	Uttarakhand	Yes	INP	INP	INP
36.	West Bengal	Yes	Yes	Yes	No Proposal received so far

Note: INP-Information not provided by SPCB/PCC

As per the response received from the SPCBs/PCCs:

- 27 States/UTs i.e. Andhra Pradesh; Arunachal Pradesh; Assam; Bihar; Chhattisgarh; Delhi; DDDNH; Goa; Gujarat; Haryana; Himachal Pradesh; Jammu & Kashmir, Jharkhand; Karnataka, Kerala; Madhya Pradesh; Maharashtra; Odisha; Punjab; Puducherry; Rajasthan; Tamil Nadu; Telangana; Tripura; Uttarakhand, Uttar Pradesh and West Bengal have constituted TEC
- 03 States/UTs i.e. Chandigarh; Mizoram & Nagaland are under process of constitution of TEC.




- 03 UTs i.e. Andaman & Nicobar Island; Ladakh and Lakshadweep informed that there are no HW generating/processing industry.
- Information has not been received from 03 States i.e. Sikkim, Manipur, Meghalaya.
- Adoption of Common Application form and Steps taken for implementation:
 - 15 States/UTs namely Assam; Bihar; Chhattisgarh; Daman, Diu, Dadar & Nagar Haveli; Goa; Gujarat; Himachal Pradesh; Kerala; Madhya Pradesh; Nagaland; Odisha; Puducherry; Punjab; Tamil Nadu & West Bengal have adopted Common application form and/or directing regional offices/field offices to evaluate the materials claimed as By-product by industrial units during their routine inspections.
- Identification of Industrial material as By-product:
 - Assam, Madhya Pradesh & Gujarat have received applications for identification of material as “By-product” in the FY 23-24. However, none of the material claimed in such applications have been identified as By-product.
 - Gujarat has identified Hydrochloric acid generated from Chlorinated Paraffin Wax having concentration >32% as by-product as per recommendation of Technical Review Committee forwarded by MoEF&CC letter dated 23/02/2023.

In view of the status reported above, the following is submitted for Consideration:

1. SPCBs/PCCs may conduct inventory of the by-products being generated and used in industrial processes and ensure that identification and declaration of any material (generated from the industrial process) as “by-product” shall be carried out as per the criteria and guiding factor laid down under the CPCB’s “Framework on Identification of Materials Generated from Industrial Processes as Wastes or By-products”.
2. SPCB/PCCs may convene periodic meetings of Technical Expert Committee for reviewing the status of by-products and wastes being generated and utilised in the State along with processing of proposals for identification of Materials Generated from Industrial Processes as Wastes or By-Products as per the CPCB’s Framework.
3. SPCB/PCCs may issue necessary directions to the field inspecting teams of the Board to examine (during routine inspection) that any industrial process material being utilized as by-products, is classified as per the CPCB’s framework and stipulated in the authorisation granted by SPCB/PCC.



4. CPCB may review the status of implementation of framework annually, and the status may be reported in annual inventory report of hazardous wastes.


(B Vinod Babu)
Scientist 'F'
CPCB

Date:- 20/12/2024



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

IN THE MATTER OF

Society for Protection of Environment and Biodiversity (SPENBIO)

Applicant

VERSUS

Union of India & Ors.

Respondents

AFFIDAVIT

I, B Vinod Babu, aged about 59 years, working as Scientist 'F' in Central Pollution Control Board and having office at the Parivesh Bhawan, East Arjun Nagar, Delhi - 32, do hereby solemnly affirm and sincerely state as follows:

1. That the deponent is authorized representative to represent CPCB in the present case, and as such, I am well conversant with the facts and circumstances of the present case on the basis of the information derived from the official records, and hence, I am competent and authorized to verify, sign and swear this affidavit on behalf of the Respondent CPCB.
2. That the accompanying report may be read part and parcel of the present affidavit.
3. That the accompanying report has been drafted and filed under my instructions and authority the contents thereof of are true and correct on the basis of the record maintained during ordinary course of business of CPCB and available records and documents and the contents of the same are read over and explained to me and are not repeated herein for the sake of brevity.



ATTESTED
B Vinod Babu
NOTARY PUBLIC
GOVT. OF INDIA

B Vinod Babu
DEPONENT

21 DEC 2024

VERIFICATION

Verified at Delhi on this 21 DEC 2024 day of December 2024 that the contents of the above reply are correct and true on the basis of the record of the cases as mentioned in the day to day affairs of the CPCB. Nothing has been concealed therefrom or mis-stated.




DEPONENT

ATTESTED

NOTARY PUBLIC
GOVT. OF INDIA

21 DEC 2024

Item No. 17

Court No. 1

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

Original Application No. 502/2023

Society for Protection of Environment
and Biodiversity (SPENBIO)

Applicant

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 09.09.2024

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE DR. A. SENTHIL VEL, EXPERT MEMBER**Applicant: Mr. Sanjay Upadhyay, Senior Advocate (Through VC) with Ms. Eisha
Krishn, Ms. Gitanjali Sanyal & Mr. Surya Gupta, Advs.Respondent: Mr. Balendu Shekhar & Ms. Tanisha Samanta, Advs. for CPCB
Ms. Sakshi Popli, Adv. for MoEF & CC (Through VC)**ORDER**

1. In this original application, the Tribunal is examining the issue of non-implementation of the 'Framework on Identification of Materials Generated from Industrial Process as Wastes or By-Products', 2019.

2. The submission of Counsel for the Applicant is that for want of improper implementation of the framework contained in the Guidelines of 2019, the hazardous waste is passing as the byproduct. He has submitted that most of the products have not been properly classified and that, every State PCBs/PCCs is required to constitute a Technical Expert Committee (TEC) to formulate TOR for conducting the environmental impact and risk assessment studies and preparation of safety data sheets. Till now, 23 SPCBs/PCCs have constituted the TEC and other States/UTs have not even constituted the TEC. He submits that appropriate directions under section 5 of the Environment

(Protection) Act, 1986 and 18.1.b. of the Water (Prevention and Control of Pollution) Act, 1974 are required to be issued by the competent authorities to ensure proper implementation of the framework of 2019.

3. Learned Counsel for the Central Pollution Control Board (CPCB) seeks time to file a fresh report by way of affidavit responding to the main issue involved in this OA as also the observations which have been made above.

4. The submission of learned Senior Counsel for the Applicant is that the framework of 2019 should form part of the rule for its effective implementation. It is also submitted that the consequences of environmental damage could be huge on account of the non-implementation of the framework of 2019.

5. Though initially no one had appeared for Respondent No. 1 but when the order was dictated at that stage, Ms. Sakshi Popli, learned Counsel has appeared virtually for Respondent No. 1. The Respondent No. 1 is directed to file the reply by way of an affidavit responding to the issue involved in the OA and keeping in view the observations made above within 8 weeks.

6. List on 24.12.2024.

Prakash Shrivastava, CP

Sudhir Agarwal, JM

Dr. A. Senthil Vel, EM

September 09, 2024
Original Application No. 502/2023
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