

Suggested amendments to the Ministry of Environment and Forests Environment Impact Assessment Notification dated 14 September 2006

New standards for environmental clearances

1. **Acceptable impact standard:** The Environmental Protection Act/ Rules shall be amended to define criteria for acceptable/ unacceptable impact (1), and specify the following standards: a) A risk standard for acceptable carcinogenic and non-carcinogenic toxic risks, b) Allowable ecological footprint (eco-footprint) standard, c) An area vulnerability standard, d) A conflict potential standard, e) An allowable environmental cost standard.

How EIAs shall be done

2. **UNEP guidelines:** To help improve the quality of Environment impact assessments (EIAs), the United Nations Environmental Programme Goals and Principles of EIAs (2) shall be followed in letter and in spirit.
3. **EIA guidelines to be prepared:** Detailed guidelines for doing EIAs shall be prepared by a committee constituted by the Environmental Impact Assessment Authority (EIAA, see point 23 below), and translated into all Indian languages recognized by the Indian Constitution. These guidelines shall also contain methods for doing risk analysis, eco-footprinting, vulnerability assessment and mapping, conflict analysis and environmental costing methods.

Who will do EIAs

4. **Potentially impacted people to do EIAs:** The potentially impacted people (3) of a proposed project/ facility shall supervise/ do the EIA and submit it under their signatures to the EIAA and other regulatory authorities. Technical portions of the EIA may be sub-contracted to consultants recognized by EIAA. The project/ facility proponent shall provide all necessary information and non-monetary assistance for doing the EIA.

Proposed project/ facility siting

5. **Alternate sites to be identified:** The project proponent shall identify and provide details in Form 1 (Appendix 1 of the Ministry of Environment and Forests [MoEF] Notification dated 14 Sept 2006) for a minimum of at least two distinct alternate candidate sites for consideration by regulatory authorities.

6. **Greenfield sites to be identified:** The EIAA may constitute a committee to identify and demarcate greenfield sites all over the country for different types of projects/ facilities within the next 5 years that meet the standards for environmental clearance.
7. **Siting guidelines to be updated:** Guidelines for site selection may be prepared by a EIAA constituted committee, and translated into all languages recognized by the Indian Constitution.

Environmental clearance

8. **Additional information to be provided by project proponent:** Additional information to be provided in Form 1 of the MoEF Notification dt 14 Sept 2007 shall be: a) Category of proposed project/ activity as per Schedule in MoEF Notification dt 14 Sept 2006, b) List of products/ services to be provided, if any, along with capacities, c) Material safety data sheets of raw materials, storages, intermediate and byproducts, waste products and final products, if any.
9. **Pre-classification of projects in category B1:** Types of projects/ facilities that fall into Category B1 may be notified. The EIAA may be given discretionary powers to classify additional types of projects, other than those notified, as Category B1 projects.
10. **Standardized TORs:** Standardized base terms of reference (TOR) for doing EIAs for Category A and B1 projects may be prepared by the EIAA. Depending on site conditions, the EIAA may specify additional terms for specific projects.
11. **Public hearings:** Public hearings shall be open to all. No waiver of public hearings shall be permitted under any circumstance. All statements made in the public hearings shall be recorded and appended to the EIA.
12. **Acceptable impact standards to be met for environmental clearance:** A necessary, though not sufficient condition, for the grant of prior environmental clearance for a proposed project/ facility, or the expansion of an existing one, shall be that it must not violate acceptable impact criteria and other standards (see in Point 1 above).
13. **Best technologies, materials and practiced to be made mandatory in environmental clearance:** The EIAA, with the help of Pollution Prevention Boards (see Point 26 below) shall identify and publish/ update every two years for each industry/ facility, the best available technologies, materials and practices that help minimize environmental impacts. Environmental clearance conditions for proposed projects/ facilities shall specify only such technologies, materials and practices, as identified, unless the EIA report for a proposed project/ facility is able to identify better technologies, materials and practices that improve environmental protection.

- 14. Environmental clearance to be obtained prior to financial closure:** Environmental clearance for a proposed project/ facility shall be obtained prior to finalization of the detailed project report and financial closure for the project (4).
- 15. Validity of prior environmental clearance:** The validity of a prior environmental clearance shall be for 2 years for all projects/ facilities, and upon expiry of which a fresh application for clearance may be made.
- 16. Project proponent shall pay a fee for the environmental clearance:** The project proponent shall pay an appropriate fee to the EIAA for obtaining the environmental clearance, including the preparation of an EIA if necessary, a part of which will be given to the impacted persons for doing the EIA.
- 17. Guidelines for proposed project appraisal:** The EIAA shall prepare guidelines for project appraisal and translate them into all Indian languages recognized by the Indian Constitution.

Post project monitoring

- 18. PHSRI:** One of the mandatory compliance conditions for all projects/ facilities shall be the reporting of annual quantities of all pollutant emissions (including greenhouse gases and hazardous substances)—gaseous, liquid, solid (including sludge), biological, radiological—released to air, water (surface and groundwater), and soil (surface and by injection into sub-surface soils), both onsite and offsite (locations to be reported). The Central Pollution Prevention Board (CPPB—see Point 26 below) shall maintain a register of Pollutants and Hazardous Substances Release Inventory (PHSRI).
- 19. Mandatory environmental clearance conditions:** A project/ facility attributable health risk, its eco-footprint, actual conflict that it has caused, and a computation of its environmental costs (externalities) should be done once every two years by the impacted community. The project/ facility's CFO may be denied if these indices indicate any undue impact on the environment. The impacted community may hire an EIAA recognized consultant and use the consent fees paid by the industry for having this work done.

Capacity building

- 20. Potentially impacted people shall be provided training to do EIAs:** To help impacted people do EIAs, requisite training shall be provided to them by EIAA.
- 21. Certification:** A certification process for consultants who wish to assist impacted communities do EIAs should be instituted. The certification may be renewed every five years on proof of fulfillment of certificate-issue conditions.

- 22. Continuing education and orientation:** Continuing education and orientation on environmental impact assessment shall be provided by educational institutions and other professional bodies to all those involved in doing, appraising or just understanding EIAs—local self governments, consultants, regulatory authorities, non-government organizations, trade unions, industry, associations, public.

Regulatory authority

- 23. EIAA:** An EIA Authority (EIAA) shall replace the MoEF/SEIA structure specified by MoEF's September 2006 EIA Notification. The EIAA shall be an autonomous body with the same powers as the Election Commission, with concomitant accountability to discharge their duties with due diligence and within timeframes defined by the EPA Act/ Rules, in particular regarding taking decisions on proposed projects/ facilities. It will have a decentralized structure similar to that of the SEIAAs in the MoEF September 2006 EIA Notification. The link ministry for the EIAA shall be MoEF.
- 24. CFE/ CFO to be handed over to local self governments:** The grant of Consent for operation of existing (CFO) facilities may be handed over to local self governments—Panchayat Raj Samitis (PRSSs), Zilla Prishads (ZPs), municipalities and municipal corporations five years hence (5). The grant of Consent for establishment (CFE) for proposed projects/ facilities may be handed over to local self-governments five years after CFO granting authority is handed over.
- 25. PCBs to be wound up:** Pollution Control Boards (PCBs—Central and State) and Pollution Control Committees (Union Territory) may be wound up five years after CFE granting powers are handed over to local self-governments.
- 26. PPB to be set up:** Simultaneous to the winding up of PCBs, Pollution Prevention Boards (PPB—Central, State and Union Territory) may be set up. They will take over the promotional and residual functions of the PCBs, including advising industry and government on how best to minimize pollution and risks from anthropogenic activity, monitoring environmental quality and making environmental quality appraisals, setting of standards that are improvements over those set by the Central Pollution Prevention Board, and collection of cess from industry and distributing a part of it to PRSSs and ZPs.

Integrating development plans with environmental protection

- 27. EIAA to work with Planning Commission:** The EIAA may work closely with the Planning Commission in order to integrate development plans with environmental protection.

Transparency

28. Public domain documents: All documents pertaining to the environmental clearance process, except those that are of proprietary information, shall be treated as public domain documents.

Notes

1. Acceptable/ unacceptable impact: Defining criteria for acceptable/ unacceptable will decrease the subjectivity of decision-making by regulatory authorities. The proposed project/ facility will be unacceptable if any of the following standards are not met:

a) **Risk (to human health) standard.** The standard may be set for carcinogenic and non-carcinogenic risks posed by human activity. It may be defined as not exceeding an additional lifetime cancer risk of one in a million chance for carcinogenic agents, and not exceeding a hazard index (HI—ratio of exposure to toxic concentration of an agent to its reference concentration that is known to be the maximum concentration that causes no health effects) of one for non-carcinogenic agents, respectively, for exposures of anthropogenic origin, and other than of background origin. While computing health risk at a site, the cumulative risk due to all existing exposures, except due to background ones, must be added to the risks posed by proposed facility, and the cumulative risk may not exceed the defined standard.

b) **Allowable ecological footprint standard.** Eco-footprint analysis measures the ratio of human activity in a given area to its capacity to sustain it, both factors expressed in land units (land required for agriculture and forest produce, builtup areas, power generation, carbon sequestration, water area required for fisheries, area required for biodiversity, etc). The Allowable eco-footprint standard may be defined as the ratio of the eco-footprint of all industry and services in an area to the bio-capacity of that area (both factors being expressed in land units).

c) **Area vulnerability standard.** Area vulnerability analysis identifies, measures and maps a) the general vulnerability of receptors, eg, sections of the population due to economic, social, age, gender, genetic factors, soil conditions, vulnerability to livelihoods (crops, fishing, etc), forests and biodiversity, monuments, of an area due to all external impingement of various types and magnitudes, b) the specific vulnerability of some or all these receptors to the specific impingement that the proposed project/ facility will make on them, eg, if an area where a water-polluting industry is proposed, has drinking water lakes, the specific vulnerability of the area to the proposed project will be of particular importance. The standard will define a general vulnerability threshold for an area and a specific vulnerability threshold (to a proposed project), both of which are to be met independently.

d) **Conflict potential standard.** Conflict analysis measures potential conflict that a project may cause, in combination with other activity, in an area. A proposed project/ facility may not exceed the conflict potential standard that it may cause along with other projects/ facilities existing in the area.

e) **Environmental cost standard:** Environmental impact costing puts an economic value to the impact of a project/ facility on the environment and on human health. A proposed project/ facility may not exceed an environmental cost standard that may not exceed a determined fraction of the project cost at current value.

EIAs must mandatorily do risk and conflict assessment, area vulnerability analysis and vulnerability mapping of the impacted area, ecological footprint analysis for the proposed project; and assess whether the proposed project/ facility meets the required standards after considering the contribution of other

anthropogenic activity. Panchayat Raj Samitis, Zilla Parishads, municipalities and municipal corporations may compute the bio-capacities and do general vulnerability analysis and mapping for their villages and towns every two years, after receiving training for doing them.

2. **UNEP Goals and Principles of Environmental Impact Assessment, 17 June 1987**

The Governing Council of UNEP adopted the Guidelines in Resolution GC14/ 25; they were 'endorsed' by UNGA Resolution 42/184 (1987).

Text

Environmental Impact Assessment (EIA): EIA means an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development.

The EIA goals and principles set out below are necessarily general in nature and may be further refined when fulfilling EIA tasks at the national, regional and international levels.

Goals

1. To establish that before decisions are taken by the competent authority or authorities to undertake or to authorize activities that are likely to significantly affect the environment, the environmental effects of those activities should be taken fully into account.

2. To promote the implementation of appropriate procedures in all countries consistent with national laws and decision-making processes, through which the foregoing goal may be realized.

3. To encourage the development of reciprocal procedures for information exchange, notification and consultation between States when proposed activities are likely to have significant transboundary effects on the environment of those States.

Principles

Principle 1: States (including their competent authorities) should not undertake or authorize activities without prior consideration, at an early stage, of their environmental effects. Where the extent, nature or location of a proposed activity is such that it is likely to significantly affect the environment, a comprehensive environmental impact assessment should be undertaken in accordance with the following principles.

Principle 2: The criteria and procedures for determining whether an activity is likely to significantly affect the environment and is therefore subject to an EIA, should be defined clearly by legislation, regulation, or other means, so that subject activities can be quickly and surely identified, and EIA can be applied as the activity is being planned. (I refer at the end of the page).

Principle 3: In the EIA process the relevant significant environmental issues should be identified and studied. Where appropriate, all efforts should be made to identify these issues at an early stage in the process.

Principle 4: An EIA should include, at a minimum:

- (a) A description of the proposed activity;
- (b) A description of the potentially affected environment, including specific information necessary for identifying and assessing the environmental effects of the proposed activity;
- (c) A description of practical alternatives, as appropriate;
- (d) An assessment of the likely or potential environmental impacts of the proposed activity and alternatives, including the direct, indirect, cumulative, short-term and long-term effects;
- (e) An identification and description of measures available to mitigate adverse environmental impacts of the proposed activity and alternatives, and an assessment of those measures;
- (f) An indication of gaps in knowledge and uncertainties, which may be encountered in compiling the required information;
- (g) An indication of whether the environment of any other State or areas beyond national jurisdiction is likely to be affected by the proposed activity or alternatives;
- (h) A brief, non-technical summary of the information provided under the above headings.

For instance, this principle may be implemented through a variety of mechanisms, including: (a) Lists of Categories of activities that by their nature are, or are not, likely to have significant effects; (b) Lists of areas that are of special importance or sensitivity (such as national parks or wetland areas), so that any activity affecting such areas is likely to have significant effects; (c) Lists of categories of resources (such as water, tropical rain forests, etc.), or environmental problems (such as increased soil erosion, desertification, deforestation) which are of special concern, so that any diminution of such resources or exacerbation of such problems is likely to be 'significant'; (d) An 'initial environmental evaluation', a quick and informal assessment of the proposed activity to determine whether its effects are likely to be significant; (e) Criteria to guide determinations whether the effects of a proposed activity are likely to be significant.

If a listing system is used, it is recommended that States reserve the discretion to require the preparation of an EIA on an *ad hoc* basis, to ensure that they have the flexibility needed to respond to unanticipated cases.

Principle 5: The environmental effects in an EIA should be assessed with a degree of detail commensurate with their likely environmental significance.

Principle 6: The information provided as part of EIA should be examined impartially prior to the decision.

Principle 7: Before a decision is made on an activity, government agencies, members of the public, experts in relevant disciplines and interested groups should be allowed appropriate opportunity to comment on the EIA.

Principle 8: A decision as to whether a proposed activity should be authorized or undertaken should not be taken until an appropriate period has elapsed to consider comments pursuant to principles 7 and 12.

Principle 9: The decision on any proposed activity subject to an EIA should be in writing, state the reasons therefore, and include the provisions, if any, to prevent, reduce or mitigate damage to the environment. This decision should be made available to interested persons or groups.

Principle 10: Where it is justified, following a decision on an activity which has been subject to an EIA, the activity and its effects on the environment or the provisions (pursuant to principle 9) of the decision on this activity should be subject to appropriate supervision.

Principle 11: States should endeavour to conclude bilateral, regional or multilateral arrangements, as appropriate, so as to provide, on the basis of reciprocity, notification, exchange of information, and agreed-upon consultation on the potential environmental effects of activities under their control or jurisdiction which are likely to significantly affect other States or areas beyond national jurisdiction.

Principle 12: When information provided as part of an EIA indicates that the environment within another State is likely to be significantly affected by a proposed activity, the State in which the activity is being planned should, to the extent possible:

- (a) Notify the potentially affected State of the proposed activity;
- (b) Transmit to the potentially affected State any relevant information from the EIA, the transmission of which is not prohibited by national laws or regulations; and
- (c) When it is agreed between the States concerned, enter into timely consultations.

Principle 13: Appropriate measures should be established to ensure implementation of EIA procedures.

3. **Potentially impacted people:** The impacted community shall be represented by PRSs and ZPs in a 30 km radius around the proposed project site for a greenfield project. For an existing project, it will include, besides the above, representatives of the labour working on the project, represented by their recognized trade unions, where they exist.
4. **Environment clearance to be obtained prior to financial closure:** According to the Govindarajan Committee report on reforming investment approvals and implementation procedures, there was undue delay in obtaining environmental clearances. In the past, this was due to project proponents applying for environmental clearance after completing all other formalities. If, however, environmental clearance was sought at an early stage, it will not be a bottleneck .
5. Doing EIAs by impacted people for the next five years may be treated as training for them to take over managing their environments and exercising powers to grant CFE/CFOs.