

# Critical Analysis of According Prior Environmental Clearance

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## ABSTRACT

This paper presents the critical analysis of the process followed for according Prior Environmental Clearance to various developmental projects in the Country. The Environment Impact Assessment (EIA) notification of 14<sup>th</sup> Sept 2006 issued by the Ministry of Environment and Forest (MOEF), Govt. of India has made it mandatory for all developmental projects to obtain prior environmental clearance. These activities have been covered under eight various categories. A systematic process has been laid down in the notification for giving the environmental clearance. Specific time frame has also been allotted to various steps involved in the process of prior environmental clearance. With the intention to simplify the process, all the projects have been classified in A or B categories depending on the threshold limit. A category Projects are cleared by MOEF while Prior Environmental Clearance to B Category Projects is accorded by The State Level Environmental Assessment Authority (SEIAA) constituted in various states by the Ministry. It is observed that clearance is given on the basis of the information given by the proponent. The various parameters are not given any credit depending on the degree of damage they may cause. Human factor in the clearance process plays a decisive role defeating its objectivity. It is proposed to develop a systematic model for analysis of the probable threats to the environment due to a proposed activity.

## Keywords

environmental impact assessment, environmental clearance

## 1. INTRODUCTION

With the intention to keep a proper balance between development and threat to the environment, the environment protection act of 1986 was enacted by the Govt. of India (GOI). Exercising the powers conferred by the above (Environment Protection Agency 1986) Act, GOI issued a notification No SO 1533 on 14<sup>th</sup> Sept 2006. The intention of Govt. (MOEF) was to put certain restrictions and prohibitions on new projects or activities or on the modernization or expansion of the existing projects throughout the country based on their potential environmental impact.

It was realized that the above task is a huge task and a delay in the process of environmental clearance will have a direct impact on the developmental project and will also lead to the cost escalation. Hence a systematic process for according prior environmental clearance has been introduced.

## 2. The Process

The EIA notification of 14<sup>th</sup> September 2006 states that the projects falling under the following eight categories require a prior environmental clearance from a regulatory authority.

- Mining, extraction of natural resources and power

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generation

- Primary processing
- Materials production
- Material processing
- Manufacturing and fabrication
- Service sector
- Physical infrastructure including environmental services
- Building construction and area development project

With a view to speed up the clearance process a national level regulatory authority for clearing "A" category projects have been constituted at Ministry level whereas for the clearance of "B" category projects, the regulatory authorities have been constituted at state level consulting the concerned State Govt. These SEIAA have been delegated powers to accord prior environmental clearance to B category Projects at state level. The SEIAA will base its decision on the recommendations of state level expert appraisal committee (SEAC) constituted as per the provisions of the same EIA notification. The SEAC will comprise of the experts from various fields who can assess the possible threats to the environment by a particular activity. The environmental clearance process will comprise of four stages namely:

- Screening (only for "B" category projects)
- Scoping.
- Public consultation.
- Appraisal.

## 2.1 Screening

This stage deals with the scrutiny of the application submitted in the prescribed form I for determining, whether the project requires further environmental studies for preparation of environmental impact assessment (EIA) before granting a prior environmental clearance to the project. This will further categorize the project into B1 or B2 (B1 requiring EIA report while B2 does not require it).

## 2.2 Scoping

All the B1 category projects need to be suggested a comprehensive terms of reference (TOR) addressing all relevant environmental concerns in respect of the proposed activity. The SEAC will finalise the TOR on the basis of the information furnished by the project proponent. SEAC can visit the proposed site if necessary.

The TOR shall be conveyed to the proponent within a period of 60 days from the date of submission of form I or IA. The regulatory authority can reject the proposal on the recommendations of SEAC. It should be communicated to the proponent within 60 days from the date of submission of form I or IA stating reasons for rejection.

## 2.3 Public Consultation:-

It is the most important step involved in the whole process. The public consultation has been included in the process to ascertain the concerns of the affected local people and others who have a possible stake in the environmental impacts of the projects. Public consultation is mandatory for all A and B category projects except some exemptions. This mainly includes construction activity. In the public consultation process objections and suggestions are collected from the public during meeting at proposed site or received in writing.

I Public hearing is conducted at site in the presence of District Collector or his representative and officers of the concerned state pollution control board. The process of public consultation should be completed within a period of 45 days.

II The written responses from the concerned persons having plausible stake should also be obtained and incorporated in the final EIA report. The concerned state pollution control board shall invite responses from such concerned persons by placing Form I and summary of EIA report submitted by the proponent on their web site.

III. The proponent shall address all the environmental concerns raised during public consultation or received in writing, in the final EIA report before submitting it to the regulatory authority for consideration.

## 2.4 Appraisal

It means the detailed scrutiny of the application, final EIA report submitted by the proponent and the objections and suggestions raised during public consultation. The expert appraisal committee has to take a final decision about granting or rejecting the prior environmental clearance on the basis of above information. The committee can also call the proponent or his representative for any clarification if required. The committee shall make categorical recommendations to regulatory authority for grant of prior environmental clearance on necessary terms and conditions or rejection of application mentioning reasons for same.

The process of appraisal shall be completed by the expert appraisal committee within a period of 60 days from the date of submission of final EIA report.

## 3. GRANT OR REJECTION OF PRIOR ENVIRONMENTAL CLEARANCE

I The regulatory authority shall consider the recommendations of the appraisal committee and convey its decision to the proponent within 45 days from the date of receipt of the recommendation of the appraisal committee.

II In normal circumstances, the recommendations of the expert appraisal committee shall be accepted by the regulatory authority. In case of disagreement, the regulatory authority can send the proposal back to the expert appraisal committee for reconsideration within 45 days of its receipt.

III. The expert appraisal committee shall reconsider the proposal and will send its views to the regulatory within a period of 60 days from the date of receipt.

IV. The decision of the regulatory authority after considering the views of expert appraisal committee shall be final and communicated to the proponent within 30 days.

V. If the proponent has not been communicated the decision by the regulatory authority within the stipulated time period mentioned above; the applicant is free to proceed as if the environmental clearance has been granted / denied as per the final recommendation of the expert appraisal committee.

## 4. Post Environmental Clearance

### Monitoring:-

- The project proponent has to submit half yearly compliance report in June and December every year in respect of the stipulated conditions imposed during grant of environmental clearance.
- All these reports should be placed on public portal by the concerned regulatory authority.

## 5. CRITICAL ANALYSIS OF THE PRESENT PROCESS

The present system of granting prior environmental clearance has two major stages

Actual grant / rejection of the prior environmental clearance on the basis of merits of the proposal.

- Post clearance monitoring.

Following lacunas have been observed in the prior environmental clearance process:

- The whole process is subjective one and lacks its objectivity. No weighted points for different parameters have been considered while granting clearance to a particular activity.
- No provision has been made in the notification to charge fees for seeking prior environmental clearance. Provisioning of charging fees will make the whole system self sustainable.
- Although the criteria for selection of chairman and members of the authority and the committee have been laid down in the notification, it should be adhered to by the concerned State Govt. and GOI while appointing chairman and members. Similarly some of the important sectors are not represented by an expert in the committee / authority, which ultimately affects the decision adversely.

- The SEIAAs have been constituted in almost all the states by the Ministry. But no systematic guidelines have been issued for appraisal. Hence all the authorities are working in isolation. A capacity building programme for the Chairman, Members and officials of SEIAA and SEAS should be conducted time to time.

Following lacunas have been observed in the post clearance monitoring process:

- a. The post appraisal monitoring is completely a grey area of the process. It is only mentioned in the notification that the proponent should submit half yearly monitoring report.

It is learned that the MOEF's zonal offices have been assigned the responsibility of monitoring in their respective areas. The Western zonal office of MOEF located at Bhopal is responsible for the monitoring of projects proposed in four states viz. M.P, Chattisgarh, Maharashtra, Gujarat. Looking to the number of projects and resources available, it seems to be only an eye wash. In absence of effective post clearance monitoring mechanism, safe and healthy environment can not be assured in the era of high speed development.

- b. An urgent need to build capacities of the Govt. agencies, communities, non – govt. organizations and judiciary is felt. Due to ignorance of local people about the provisions of EIA notifications, possible threats to environment due to a particular activity , environmental protection can not be ensured. Judiciary involved in the redressal is also ignorant about the provisions of the EIA notification. Good and healthy provisions of environmental laws can only be implemented in true spirit depending on the capacities of the officials, who are meant to do it.

## 6. CONCLUSIONS

Objective behind all the exercise carried out in granting prior environmental clearance is to maintain a justified balance

between the developmental activity and environmental degradation. The process of development has raised various complicated environmental problems to the natural resources, specially land and water. It is observed that the present system of assessment of possible environmental hazards due to a particular activity is not objective. The proposals are appraised on case to case basis depending on the information provided by the proponent. Involvement of human factor plays an important role in the process of clearance.

The lacunas found in the present process of assessment have been accepted by the then Union Minister for Environment Shri Jairam Ramesh in Hyderabad. As per a report published in Times of India dated 20<sup>th</sup> March 2011, it has been accepted that the EIA reports submitted by the proponents are not up to the mark. Even Govt. agencies are submitting EIA reports made by cut and paste process. It is felt that a systematic mathematical model should be developed considering various environmental parameters to be affected due to the proposed activity. This will be a scientific approach with a clear objective vision to the clearance process.

## 7. REFERENCE

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