

Environment Ministry Issues Notification, Provides Six-Months Window to get Environmental Clearance

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The Ministry of Environment, Forest and Climate Change (MoEF&CC) has provided a six months window, as a one-time opportunity to the units, which have not obtained prior environmental clearance to apply for the same. Ministry of Environment, Forest and Climate Change (MoEF&CC) and State Environment Impact Assessment Authorities (SEIAAs) have been receiving proposals under the Environmental Impact Assessment (EIA) Notification, 2006 for grant of Terms of Reference (ToR) & Environmental Clearance (EC) for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior EC.

The Ministry had issued Office Memoranda (OM) dated 12.12.2012 and 27.06.2013 and laid down a process for grant of EC to such cases of violation. However, High Court of Jharkhand had passed an order dated the 28th November, 2014, declaring some of the provisions of said OM dated 12.12.2012 void and had further held that action for alleged violation would be an independent and separate activity. Subsequently the above two O.Ms were quashed by the NGT vide order dated 7th July, 2015, mainly on the ground that the Environment Impact Assessment Notification, 2006 provides for prior environmental clearance, so no procedure can be laid through O.Ms for post environment clearance. It was cited that O.M. cannot amend a notification, which is a subordinate legislation.

In view of the above, the Ministry issued the notification vide S.O 804 (E) dated 14.03.2017 to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked. As such units are more polluting if they are not brought under the environment compliance regime, but the process for such violators has to be stringent and punitive.

The salient features of notification are as follows:

- This is a one-time opportunity for six months to apply for environmental clearance to units which are in violation on date of the notification i.e. 14.03.2017.
- The States / SPCBs will take action under Section 19 of the E (P) Act, 1986 for violation.
- All the cases of violation, irrespective of category, will be appraised as category "A" projects by respective sector Expert Appraisal Committee (EAC) at Central level. So, violation cases can only be appraised at the level of Ministry.
 - The EAC will first examine the proposal with an angle that the project or activity is a permissible activity at the site on which it has come up. If it is not then the recommendation of EAC will be for closure.
 - Respective EAC will prescribe the specific ToR for assessment of ecological damage, Remediation Plan and Natural and Community Resource Augmentation Plan (NCRAP) in addition to general ToR required under EIA Notification, 2006 for undertaking EIA/EMP.
 - The idea is to take away the economic benefit (if any) derived by the company due to violation and pay for the remediation of damage caused due to violation.
 - The plan shall be prepared as an independent chapter in the EIA report by the accredited consultants. The collection and analysis of data for assessment of ecological damage shall be done by an environmental laboratory duly notified under E(P) Act, 1986 / accredited by NABL/CSIR.
 - The EAC shall stipulate the implementation of EMP, comprising remediation plan and NCRAP corresponding to the ecological damage assessed and economic benefit derived due to violation as a specific condition of EC.
 - The project proponent will also be required to submit a bank guarantee equivalent to the amount of remediation plan and NCRAP with the SPCB.
 - No consent to operate or occupancy certificate will be issued till the project is granted the EC.

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