



REFORMS IN ENVIRONMENTAL GOVERNANCE

WITH SPECIAL REFERENCE TO

ESTABLISHMENT OF
NATIONAL ENVIRONMENT ASSESSMENT AND MONITORING AUTHORITY
(NEAMA)

DISCUSSION PAPER
FOR COMMENTS

MINISTRY OF ENVIRONMENT & FORESTS
GOVERNMENT OF INDIA

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Introduction

In line with the discussion paper on NEPA dated May 25, 2010, the consultative process has been taken forward. A clearer picture is emerging on the mandate of NEPA as a structural response along with process refinements to address the various issues. It is a part of the larger agenda of environmental regulatory reforms. The aim of this Discussion Paper is to invite comments from the civil society and other stakeholders regarding the issues mentioned in the paper.

2. Background

2.1 Rapid industrialization and infrastructure development in the last decade coupled with population growth and urbanization has exerted tremendous pressures on the environment. The existing regulatory institutions at the Central and State levels have been unable to cope up effectively with the rising environmental challenges. It is now well recognized that the hiatus between the environmental statutes and their compliance is becoming wider. It is apparent that the traditional systems of command and control for environmental regulation have been stretched to their limits. The mechanism of criminal prosecution of environmental offenders has also failed to yield the desired results.

2.2 The regime of environmental clearance which took shape under the environment impact assessment notification under the Environment (Protection) Act, 1986, involves grant of prior clearance to major projects by MoEF and to relatively minor projects by State Environment Impact Assessment Authorities (SEIAAs). While the number and complexity of the projects being processed for environmental clearance has increased

manifold, the capacity and resources available with MoEF and its agencies to manage them have remained limited.

2.3 The Prime Minister in his address during the ‘National Conference of Ministers of Environment and Forests’ held on August 18, 2009 had suggested that the Government should consider the setting up of a National Environment Protection Authority. The Minister for Environment and Forests has also recently articulated the three key elements of the design of the environmental clearance conditions: *“First, the conditions must be objective and measurable, so that it is clear what is to be done and whether it has been complied with. Second, the conditions must be consistent and fair, so that similar projects are given similar conditions to adhere to. Finally, the conditions must not impose inordinate financial or time costs on the proponents (which would render them impractical).”*

2.4 The recent report of the High Powered Committee on Statutory Clearances constituted by the MoEF and chaired by the Secretary, Planning Commission as well as the inputs given by IIT, Delhi in the course of their on-going study on NEPA, both reflect the need for building elements of transparency, accountability and predictability in the clearance process. The executive summary of the draft report of IIT, Delhi is annexed with this paper.

2.5 To address these issues and as a part of a larger regulatory reforms exercise, it is proposed to establish a National Environment Assessment and Monitoring Authority (NEAMA). The proposed Authority is intended to be an autonomous, professional, multi-disciplinary, appraisal and monitoring agency, with scientific and analytical rigour, for EIA and

CRZ management. The reason for a change in nomenclature from the earlier proposed NEPA is that globally EPAs are positioned to deal with development of discharge standards and their compliance and enforcement. In the Indian context, this position is occupied by the CPCB and the SPCBs, which are proposed to be strengthened in parallel. NEAMA is expected to have substantial complementarity with the CPCB-SPCB regime.

2.6 An amendment to the Environment (Protection) Act of 1986 is proposed to establish the NEAMA and also to take care of certain other pressing needs in environmental management, in line with global best practices. The penalties provided under the Act for contravention of its provisions are proposed to be hiked upwards. In addition, a civil administrative adjudication system is envisaged to ensure fast-tracking of the imposition of penalties on environmental offenders. The section of the Act related to issue of directions needs to have an express provision for furnishing of suitable bank guarantees for specific performance and for restoration of the damaged environment.

2.7 Industrial self-monitoring, reporting and verification process needs to be refined and appropriate provisions are needed in the body of the E(P) Act itself. Disclosure statements need to be put in the public domain to ensure oversight by the civil society and its appropriate linkage with the regulatory regime. It is also imperative that an enabling provision be made in the Act for regulatory authorities to levy and collect fees for specific services. This would go a long way in making these bodies financially autonomous and thus, more effective.

3. The EIA Notification, 2006

3.1 The re-engineered Notification of 2006 involves four stages in impact assessment, viz., screening, scoping (ToR), public hearing and environmental appraisal. Projects have been categorized into Category 'A' and 'B' depending upon their pollution potential. The Category 'A' projects are examined by the Expert Appraisal Committees (EACs) constituted by MoEF twice, at scoping and appraisal stages. Based upon the recommendations of the EAC, MoEF is supposed to either grant the environmental clearance to a project subject to certain conditions or reject it. Specific timelines have been notified for various stages of the process.

3.2 The six Appendices to the said Notification incorporate details like the application format, mechanism of public hearing, the skill set required for the members of EAC, etc. The Notification is a marked improvement over the earlier EIA Notification of 1994 and promotes transparency and inter-sectorality.

3.3 However, there are resource and capacity constraints in the Ministry and both structural reforms and process refinements are required for effective implementation.

4. The Need for NEAMA

4.1 Due to rapid economic growth in the country, there has been a quantum jump in the number of projects requiring environmental clearance including CRZ clearance. The emergence of sunrise sectors and adoption of newer industrial technologies calls for a higher level of application of technical knowledge. However, commensurate increase in

resources for project appraisal and the necessary institution building for the same has not taken place.

4.2 NEAMA is a structural response for filling up the gaps in four critical areas. They are:

4.2.1 Present Appraisal process is not a continuous process. The present EAC approach with multiple part-time experts has limitations also in terms of efficiency, institutional memory, consistency and accountability.

4.2.2 There is a need of refinement in terms of development of standardized databases which shall be used exclusively for the purpose of clearance. These databases have to be maintained and authenticated by designated public sector agencies. A scientific application of this data along with environmental costs evaluation practically feasible only in a multidisciplinary institution like NEAMA.

4.2.3 Moreover, the dual role of the Government in both appraisal as well as approval results in a perception of conflict of interest, which is avoidable.

4.2.4 The Regional Offices of MoEF are presently engaged in the monitoring of environmental clearances. These Regional Offices have capacity constraints in terms of manpower and infrastructure. Moreover, such a regulatory function which involves site inspections, issue of directions and also legal processes related to prosecution, cannot be discharged at the level of Government and there is a need to have a professional body to take care of such functional demands.

4.3 At present, there is a vacuum in terms of a national level NEIAA, a role which is presently being played by the MoEF. A full-fledged body with dedicated full-time expertise is needed, apart from discharging appraisal functions, to coordinate the functioning and provide technical support to the SEIAAs and the State Coastal Zone Management Authorities (SCZMAs) and also provide inputs for policy to the Central Government.

4.4 The present NCZMA is another case in point. It has been vested with a plethora of responsibilities related to coastal zone planning and management. However, it is practically embedded in the MoEF and is largely comprised of officials of GoI and other public sector organizations in their ex-officio capacities. It does not have dedicated staff and has hardly any field presence.

5. **The NEAMA**

5.1 The proposed NEAMA shall be a professional autonomous body with domain experts, technological finesse and field outreach, which will discharge the following functions related to EIA and CZM under the Environment (Protection) Act, 1986:

- (a) Appraising projects or activities for environmental clearance or otherwise;
- (b) Monitoring compliance to the conditions imposed in the environmental clearances and initiating enforcement action;
- (c) Advising the Central Government in development of policies and guidelines on pro-active environmental management including environmental clearances;
- (d) Supervising and coordinating the functioning of the SEIAAs and SCZMAs and providing technical assistance and guidance;

- (e) Appraising area specific coastal management plans and integrated coastal zone management plans received from State Coastal Authorities;
- (f) Examining the proposals for changes and modifications in classification of Coastal Regulation Zone areas in the coastal zone management plans submitted by the State Coastal Authorities and making specific recommendations to the Central Government therefore;
- (g) Carrying out and sponsoring investigations and research relating to carrying capacity, coastal zone planning and management and other preventive aspects of environmental management;
- (h) Facilitating national databases of environmental information and dissemination thereof including environmental clearances and their monitoring;
- (i) Performing such other functions as may be prescribed.

5.2 In order to execute these functions, NEAMA shall be equipped with multi-disciplinary manpower with functional competencies in areas like environmental science, environmental engineering, marine science, related disciplines like geology, hydrology and forestry, environmental economics, IT and GIS, law HRD and financial management. The authority would also recommend the consultants from a standard list of empanelled consultants to the Project Proponent for preparation of environment impact assessment report.

5.3 There shall be a Chairperson assisted by full-time Members who shall have domain specialization & professional competencies in their respective disciplines. They will have a fixed tenure. Express provisions shall be made to avoid any conflict of interest. The Thematic Appraisal Committees (TACs) shall be embedded in the architecture of NEAMA. These committees will be headed by a full-time Member/Chairperson, and additional domain specialists, if required, may be co-opted from empanelled institutions on a part-time basis. However, a significant part

of the composition of these committees shall be drawn from in-house experts from within NEAMA.

5.4 The TACs of the authority would appraise the projects and recommend to MoEF for grant or rejection of Environmental Clearance. It is proposed that the appraisal of strategic projects shall continue to be done at the level of MoEF. MoEF would be the final authority that would approve/reject the clearance. In case of rejection, MoEF would pass a detailed speaking order for the rejection of clearance.

5.5 It is proposed that NEAMA shall be operating through its Head Office as well as a network of zonal offices in order to have an effective penetration countrywide.

5.6 NEAMA will also be supported by grant-in-aid from the Central Government. There is a proposal to amend the E(P) Act, 1986 to enable such institutions to charge fees. Once this stream of revenue is opened, the authority may charge processing fees which would enable it achieve financial autonomy.

6. Benefits of NEAMA

6.1 Ensuring Institutional Memory and Avoidance of Conflict of Interest

As a recognised international best practice, project appraisal is done by specialized bodies and the Government does not step into this domain. The configuration and positioning of NEAMA takes care of the efficiency, accountability and institutional memory issues on one hand and the conflict of interest issues on the other.

6.2 Standardization of Databases and Integration with Decision-Making : Objectivity and Consistency

As on date, the data provided by the project proponents is not consistent and there is no authenticated source for furnishing information related to air quality, water quality, forest status or coastal zone conditions. It is proposed that CPCB may be the repository of geo-spatial real-time and time series data on air and water quality, FSI on the forest survey data and the National Centre for Sustainable Coastal Management (NCSCM) for the coastal eco-systems, land-use and shoreline related data. These three agencies shall also be authenticating authorities for the same. All these databases may be used in an integrated fashion by the NEAMA for the purpose of clearance along with assessment of environmental cost. This shall ensure objectivity and consistency in appraisal.

6.3 Improving Compliance and Enforcement of Clearance Conditions: Sustainable Development

A professional body like NEAMA shall be better placed in conducting rigorous spot inspections in addition to utilizing supplementary regulatory instruments like third party assessments and industrial self-monitoring reports for the purpose of analysis and responsive corrective action. Such a body will also be better placed to effectively implement performance related risk and cost measures for environmental mitigation through issue of directions along with furnishing of bank guarantees in order to ensure mid-course corrections

related to compliance with environmental clearance conditions. Moreover, the robust Legal Division of NEAMA will go a long way in appropriately defending the decisions in courts of law thereby reducing the legal complications.

6.4 System of Checks and Balances : Accountability

Disaggregating the task of impact assessment by involving NEAMA in the appraisal of projects and the MoEF in their final approval is expected to build a system of checks and balances in the grant of environmental clearances leading to greater accountability and enhanced quality in decision-making. Repositories of authenticated databases in independent institutions will further bolster this process.

6.5 Strengthening Coastal Zone Management

The proposed NEAMA is expected to subsume the present NCZMA and provide a robust framework for review of coastal management plans and enforcement of Coastal Zone Regulations. Towards this end, NEAMA shall be coordinating with the SCZMAs and the NCSCM.

7. **Epilogue**

Structural response with process refinements in the current environmental clearance system is needed along with innovative regulatory mechanisms to further streamline environmental governance and promote sustainable development in the country.

We are putting this document in the public domain for comments and inputs over the next three weeks so that we can further refine this concept.

We look forward to your comments.

(Annexure : One)

EXECUTIVE SUMMARY

of the Report

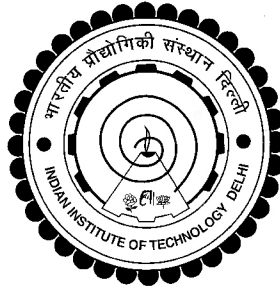
Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)

For Ministry of Environment & Forests, GoI

by

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EXECUTIVE SUMMARY

The project titled ‘Scope, Structure and Processes of National Environment Assessment and Monitoring Authority (NEAMA)¹ given by MoEF to IIT Delhi consortium had the broad mandate for developing the objectives, structure and core processes of the proposed NEAMA.

The findings and recommendations of the project are based on a) an analysis of various research and committee reports, b) a critical review of the implementation of EIA notification 2006, CRZ notification 1991 and proposed CZM Notification 2010, c) a review of the international practices d) field visits to CPCB, SPCB (Maharashtra, Gujarat & Punjab), regional office of MoEF, Maharashtra Coastal Zone Management Authority , Punjab PCC, IA and CRZ divisions of MoEF; and e) stakeholder consultations with the industry, civil society and government representatives.

Major findings and recommendations in this summary are classified under three sections. Section I brings out the need, scope and fundamental principles for the design of NEAMA . Sections II and III present structure and process related recommendations respectively.

MAJOR FINDINGS & RECOMMENDATIONS

Section I: Need, Scope & Fundamental Principles for NEAMA

1. Though there are institutions like CPCB and SPCB for handling issues of pollution control and post commissioning monitoring of projects at the Centre and State levels respectively, the core processes of granting EIA and CRZ clearances, preparation of CZM plans and post clearance monitoring (till commissioning stage) have no well defined institutional framework and are housed in the Ministry of Environment & Forests, GoI. The need for a body like NEAMA arises from the rapid industrial and infrastructural development in the last decade, which has exerted tremendous pressure on environment. The number and complexity of the projects being processed for environmental clearance has increased multi-fold whereas the capacity and resources available with MoEF and its agencies have remained limited.
2. Clearance conditions have three key elements. They are objective and measurable, consistent and fair, and economically and technologically viable.

¹ Earlier proposed to be NEPA, but with a modified scope of the organization, it is now named National Environment Assessment and Monitoring Authority’ to reflect the scope of its operation.

3. Our review of the international practices reveals most countries have independent, specialized institutions for conducting EIA, Coastal Zone Management and Post Clearance Monitoring.
4. We analysed the implementation of EIA 2006 notification and the proposed CZM notification 2010 in terms of policy, structure and process level issues. **Almost all the problems in implementing these notifications relate to structure and processes.** Key issues are mentioned below
 - a. The presence of MoEF in both the appraisal and approval processes leads to a **perception of conflict of interest.** The Member Secretary (who, according to the 2006 notification, was supposed to be the Secretary) is involved in the processing, appraisal and approval of the EIA applications.
 - b. Lack of permanence in the Expert Appraisal Committees leads to **lack of continuity and institutional memory** leading to poor knowledge management.
 - c. Current EIA and CRZ clearances rely predominantly on the data provided by the project proponent and the **absence of authenticated and reliable data** and *lack of mechanisms to validate the data provided by the project proponent* might lead to **subjectivity, inconsistency and inferior quality of EIA reports.**
 - d. Though the EIA notification requires several documents like ToRs (for every project), minutes of public hearing meetings (for each project), EIA report (with clearance conditions) and self-monitoring reports to be put in public domain (predominantly on the website), this has not been done for lack of institutional mechanisms. This leads to a perception of **lack of transparency** in the processes.
 - e. Several studies have pointed toward the poor monitoring of the clearance conditions. Huge gaps in monitoring and enforcement of clearance conditions actually defeats the very purpose of grant of conditional environmental clearance.
5. Based on the observations made above (para 2), international benchmarks and a review of several committee reports, the following three principles are used as loadstars for the design of NEAMA.
 - a) Independence of appraisal and approval process (to address conflict of interest issues).

- b) Objectivity/predictability in the appraisal process through use of authenticated, reliable and valid scientific (real-time/time series) data procured through independent agencies, institutional memory and permanence in the Appraisal committees.
NEAMA to be scientific, economic and analytical tools driven.
- c) Transparency in the process and outcomes of appraisal and monitoring by putting them in the public domain predominantly through the website.
- d) The body should have a statutory foundation to ensure autonomy.

Section II: Structure Related Recommendations

6. The three broad objectives of NEAMA would include a) Processing EIA, b) Processing CRZ clearances and preparing coastal zone management plans and c) Monitoring of compliance conditions in pre-commissioning stage and coordinate during the post-commissioning phase upto the validity period of the clearance.
7. Given the mandate of NEAMA, National Coastal Zone Management Authority (NCZMA) would be subsumed in NEAMA.
8. Authenticated data on air and water quality to reside with CPCB, on forest with the FSI and on coastal regime with the NCSCM.
9. Additionally, in view of the ambiguity in the functioning and control of State Environment Assessment Authorities (SEIAAs) and State/ Union Territories Coastal Zone Management Authorities, an additional objective of NEAMA would also be the coordination and guidance of these two bodies.
10. NEAMA would derive powers from the EP Act, 1986 (Powers of entry & inspection, Power to direct utilities to maintain registers and furnish reports, Authority to prosecute for offences, Power to take samples, Power to give directions and Power to appoint its own officers).
11. However certain amendments are recommended in EP Act, 1986 which include a) Power to Charge a fee from the Project Proponent; b) Power to take bank guarantees as a performance enforcement measure, and c) Power to determine and levy financial fines for non-compliance, non-filing of self-monitoring reports, false data, misrepresentation and any other violation of the EIA notification 2006 and proposed CZM notification 2010.

12. Charging of a suitable fee from the project proponent would provide financial autonomy to NEAMA.
13. The Chairman and Full Time Board Members are to be from technical/scientific or environmental economics or environmental management backgrounds and to be appointed by the Central Government.
14. Part-time members are to be drawn from various stakeholder groups. A representative from the civil society/NGO is to be present on the Board as a part time member.
15. A code on conflict of interest is proposed to further bring in accountability of the apex level Board members. Broad guidelines for developing a code on conflict of interest are proposed, which includes general principles, nature and process of disclosures, acceptance of gifts and procedure for public to raise conflict of interests. These codes would apply to all and particularly to the Board, Full and Part-time members and the TACs (including the invited experts).
16. Expert Appraisal Committees are renamed as Thematic Appraisal Committees (TAC) and are to consist of 8 full-time members drawn from different divisions of NEAMA (like Survey & Research, Economic Costs, database management, EIA and CRZ Divisions), to respond to the need of continuity and institutional memory. Drawing experts from different divisions would also address the need for including diverse skill sets in TACs. External experts from empanelled Institutes/agencies may be invited on TACs on a case to case basis. TACs to be chaired by the Chairperson or full-time Members of the NEAMA.
17. NEAMA includes Survey & Research, Economic costs, Database Management divisions (for scientific data, analysis, interpretation and use), for scientific and analytical rigour which will lead to objectivity and predictability.
18. It also has a dedicated IT division to make all the reports available on the website to increase the transparency. Monitoring, compliance and enforcement to be done through the six zonal offices of NEAMA.
19. Monitoring and enforcement of the CRZ regulations to be addressed by NEAMA in conjunction with the State/UT Coastal Zone Management Authorities.

Section III: Process Related Recommendations

20. The appraisal of projects for EIA/CRZ clearances and review of coastal zone management plans is proposed to be done by NEAMA. Based upon the recommendations of NEAMA, the approval or otherwise shall be done at the level of MoEF.
21. Model ToRs are to be generated with the help of in-house Survey & Research, Economic Costs and Database Management divisions of NEAMA.
22. The entire process would be automated. Transparency in the EIA, coastal zone clearances and preparation of Coastal Zone Management plan, is sought to be increased by putting up a) ToRs (for every project), b) Minutes of public hearing meeting (for every project), c) Final EIA report with clearance conditions, d) Self monitoring reports e) Reports of inspections done by NEAMA staff and empanelled inspectors, on the NEAMA website.
23. There are well-defined steps in the process that use real-time as well as time-series scientific data (from both in-house expert divisions and outside experts) for validating the data provided by the project proponent and decision-making.
24. Project proponents may get authenticated data (from accredited institutions/agencies like CPCB, FSI and NCSCM) on payment of fee.
25. Calculation of economic cost of compliance conditions is required to be a part of the EIA report. To ensure compliance, it is recommended that the project proponent be asked to furnish a Bank Guarantee (objectively linked to the total cost of compliance conditions). This would ensure a) compliance on the part of the project proponent and b) imposition of realistic and monitorable conditions by the TAC.
26. Services of NCSCM may be taken for preparation of draft Coastal Zone Management plans.
27. Public hearing is to be included in the process of preparation of Coastal Zone Management Plans.
28. It is proposed that a NEAMA observer be present in public hearing meetings and the report of these observers be considered along with the minutes of the public hearing meetings.
29. Monitoring, compliance and enforcement is to be the responsibility of NEAMA. Monitoring is to be done through three mechanisms a) six-monthly self-monitoring report; b) inspections by the NEAMA staff; and c) inspections by authenticated and suitably qualified inspection agencies. The information on compliance and enforcement should be made available on the website of NEAMA and MoEF in public domain for social audit.

Monitoring has to be done with respect to the independent database, environmental standards and the conditions imposed in the clearance.”

30. By way of monitoring and enforcement, a warning is to be issued in the instance of failure to submit self-monitoring report in time. If the organization still does not respond, an economic fine is to be levied. For non-compliance, economic cost of non-compliance is to be assessed and charged from the organization for non-compliance. An amendment in the E(P) Act, 1986, may be needed for this purpose. In addition, directions under Section 5 of the Act, including directions of closure in extreme cases, may also be issued.
31. The competencies of the people in NEAMA need to reflect a) Scientific and analytical nature of the core processes and b) diversity of the skills required in the processes.