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Rajamanickam P <gsaipsn@gmail.com>

Comments and observations from AIPSN on draft EIA notification 2020

1 message

Rajamanickam P <gsaipsn@gmail.com> Mon, Jun 29, 2020 at 1:51 PM
To: eia2020-moefcc@gov.in
Cc: secy-moef@nic.in, "Raghunandan D." <raghunandan.d@gmail.com>, Sabyasachi Chatterjee <chatsab99@gmail.com>, "Krishnaswamy, S." <mkukrishna@gmail.com>

29.6.2020

To
The Secretary, Ministry of Environment, Forest and Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj
New Delhi - 110003
e-mail address: eia2020-moefcc@gov.in

Sir,

Sub: Comments and observations on draft EIA notification 2020 inviting comments from the public
Ref: Draft EIA notification S.O. 1199(E) dated the 23rd March, 2020 issued by MoEF&CC

Following the extension of the notice period for draft Environment Impact Assessment Notification(EIA), 2020 till 30th June, we offer the following responses to different specific provisions in the Draft EIA Notification 2020 (henceforth Draft EIA 2020) for your consideration and **also insist that the responses received and discussions be placed transparently in a public accessible website.**

The cover letter and the comments are also attached as a pdf file for your reference.

Do acknowledge receipt of this response.

Thanking you in anticipation and with regards

Yours sincerely

P.Rajamanickam
General Secretary, AIPSN

AIPSN Response to Draft EIA Notification 2020

AIPSN Organization, is a Network of 40 major State-level Member Organizations and is the largest network of organizations working on science and society issues focusing mainly on S&T policy, impact on people particularly the poor and marginalized, and promotion of scientific temper. We were among those who had asked for an extension of the earlier deadline for submitting responses to the Draft EIA Notification 2020 to the Ministry of Environment, Forest and Climate Change (MoEFCC) and are grateful for the extension till 30 June 2020. However, it would have been better if some more time had been given to enable wider consultation and more intensive discussions, which have been highly constrained during the Covid19 pandemic and the various restrictions imposed during it. In any case, we are submitting our Response based on internal deliberations and discussions with different grassroots groups and communities within the constraints of time and Covid19-related restrictions.

In broad terms, we have been observing that the MoEFCC has been issuing various notifications and orders, besides taking many decisions that dilute earlier environmental regulations. Perhaps these steps are being taken because the Union Government feels that this will assist in raising the rank of India in international “Ease of Doing Business” indices. However, in our considered opinion, these dilutions have had a negative impact on the environment and on the lives and livelihoods of hundreds of millions of people dependent on it. It has also emboldened manufacturing, mining and infrastructure industries to start projects and conduct operations in an environmentally destructive manner and without consideration for affected communities. We feel the Draft EIA Notification 2020 too is yet another step in the same general direction and further dilutes rather than strengthens environmental regulations in India which is the true mandate of the MoEFCC. We also wish to point out that all these measures put together will have a cumulative impact on India’s Sustainable Development Goals targets which the country has committed itself to in international fora.

With this background, we offer the following responses to different specific provisions in the Draft EIA Notification 2020 (henceforth Draft EIA 2020) for your consideration and also insist that the responses received and discussions be placed transparently in a public accessible website.

1) **Introductory Paragraphs**: At the outset, Draft EIA 2020 begins by giving a background referring to the earlier EIA Notification 2006, the necessity it spelled out for Prior Environmental Clearance (Prior-EC) by the Centre or the concerned State, the 2017 Notification dealing with violations especially starting construction, undertaking expansion or making modifications, and various Judicial and NGT rulings calling for strengthening of monitoring and compliance. It is then stated that the main purpose of Draft EIA 2020 is to “lay down the procedure to bring such violation projects under the regulations in the interest of the environment at the earliest point of time rather than leaving them unregulated and unchecked, which will be more damaging to the environment.” However, detailed perusal of the different provisions made in Draft EIA 2020 show, as discussed further below, that in fact Draft EIA 2020 does not strengthen compliance with environmental regulations but dilutes these very provisions and condones violations, thus weakening environmental protection and regulation.

2) **Clause 3: Definitions**- Some definitions in Draft EIA 2020 have serious implications. While these have discussed under relevant Clauses where they appear, brief mention may be made here at the outset itself.

i) Clause 3(8) Capital Dredging is defined as “removal of virgin material from the sea bed” alone, and does not cover non-maintenance dredging of river beds, contrary to EIA Notification 2006 which covered both. This is important because capital dredging of river beds for new projects can have considerable environmental and social impact especially on fishers and others. It is strongly urged that the term Capital Dredging include sea as well as rivers and other fresh water bodies.
ii) Clause 3(16) Corporate Environmental Responsibility (CER) defines it to mean that part of the Environment Management Plan (EMP) which the project holder is mandated to implement in the immediate surroundings of the Project arising ether out of the public consultations/hearings or the EIA conducted for the Project. This is an unnecessarily restrictive definition of CER. The EMP covers what the Project holder is required to do as part of the Project itself and should be counted as part of Project Costs, whereas

CER should be what the project holder does over and above the EMP as a part of the company's responsibility towards the environment and society in general, much like Corporate Social Responsibility.

3) **Clause 4(3) defines Permissible Construction work before Prior-EC/EP** as erecting fencing around the project site, but allows "leveling of land without tree felling" and "geo-technical investigations if any." Levelling of land can fundamentally alter the use of the land after such activity and should not be permitted. Geo-technical investigations which could include test-wells, mineral prospecting could also have serious, even irreversible impact on the environment and should not be permitted without Prior EC/EP.

4) **Clause 5. Category B2 Projects exempt from Appraisal and Public Hearing** Several types of Projects and activities have been placed by Draft EIA 2020 under Category B2 under which no examination by the Appraisal Committee at either Centre or State/UT level is required, and Prior-Environment Permission (Prior-EP) may be obtained at the relevant level without such Appraisal. Such Projects are also exempt from the requirement for Public Hearing/Consultation. Various types of Projects or Activities placed under Category B2 as Listed in the Schedule include many Projects/Activities with significant impact on the environment, as well as in most cases and on human lives and livelihoods as well, and hence require EIA, Appraisal and Public Hearing. Therefore, the following types of Projects/Activities listed in the Schedule under Category B2 should be shifted to Category B1 (or as otherwise indicated) requiring EIA, Appraisal and Public Hearing, with brief justification for such a shift with additional comments being offered against each:

1) **Item 2a) Oil & Gas Exploration**: Even exploratory drilling can have serious environmental and related human impact as evidenced by public protests in the fertile Cauvery delta region in Tamil Nadu against permissions given earlier this year. The very recent blowout and fire at OIL Well No.5 in the Baghjan Oil Fields also saw an adjacent exploratory workover, with subsequent order by the Assam State Pollution Control Board to close all OIL wells in the area in view of the perceived risk in the whole region, although the order was later withdrawn for reasons best known to them. Further, if exploration yields positive results, this increases likelihood of EC being granted for actual drilling and operation of oil/gas wells with even further environmental impact especially in ecologically sensitive areas. Thus such Projects/Activities be shifted to Category B1.

2) **Item 10f) Foundries, Rolling Mills etc**: Such Projects, which are not too small, may also be problematic and may be shifted to B1.

3) **Item 16) Chlor-Alkali/Halogen Units**: Plants with capacity < 300 tons/day have been placed in Category B2 provided they are located within Industrial Estates. However, since many Industrial Estates are located near population centres, or population centres have come up near these Estates, proper EIA and Appraisal should be done under Category B1.

4) **Item 32) Water Aerodromes for Commercial Use** can have considerable environmental impact on coastal or river/lake ecosystems and therefore should be removed from Category B2 and placed in Category B1.

5) **Item 34) Various EEZs, Industrial estates**: Estates/Zones over 500 ha and without any Projects of Categories A and B1, along with Estates/Zones of any area if it houses at least 1 Category B2 Project, are in Category B2 which is an over-generous leeway given, for instance Estates/Zones of massive size with potential for causing huge environmental damage would be exempt from appraisal! Only Estates/Zones under 500 ha with only Category B2 Projects should fall under this Category.

6) **Item 37) Capital Dredging for Inland Waterways Projects** can have considerable ecological damage along river banks and river beds and require Appraisal. Anomaly arises in the case of Inland Waterways classified as B2 because "Capital Dredging" has been defined wrongly as applying only to sea-based projects (as discussed above), so these should be shifted to Category B1.

7) **Item 42) Construction & Area Development Projects** have been a contentious issue for long. The government had earlier exempted all area development, housing and other construction projects between 20,000 and 150,000 sq. metres from the need to obtain environmental clearances, placed them under the purview of local authorities which would integrate environmental requirements into building bye-laws and approvals. This was however overruled by the NGT as a violation of the 2006 Notification. Draft EIA 2020 now attempts to skirt this ruling by placing Projects of 20,000-50,000 sq.mts of built-up area in Category B2 and exempting them from Appraisal, while requiring only Projects of 50,000-1,50,000 sq.mts of built-up area to seek Appraisal. Such Projects have also been exempt from Public Hearing. It is recommended that all Projects having more than 20,000 sq.mts build-up area be placed in Category B1, and all Projects with built-up area more than 1,50,000 sq.mts be placed in Category A.

5) **Clause 5(7) Defence, Security and "Strategic" Projects** This clause specifies that all projects concerning national defence and security, or involving "other strategic considerations as determined by the Central Government," shall require prior EC/EP from the Ministry whatever the original category of the project, which is understandable since defence is exclusively a Union subject. However, it is disturbing that the clause further states that "no information relating to such projects shall be placed in public domain." There are two distinct unacceptable provisions here.

First, many such projects such as shipyards, testing ranges, coastal military bases etc can and do have considerable ecological and social impact. It is a patent infringement on the right to life and livelihoods of affected communities that they do not have access to any information based on which they could object to or otherwise voice their concerns with respect to such Projects. Military or intelligence matters relating to specific projects need not be placed in the public domain but other relevant facts such as area and number of villages to be covered, discharges into the air and onto land, sea, river or other water bodies etc should be disclosed so that affected parties may assess potential ecological and social impact.

Secondly, blanket authority bestowed on the Central Government to deem any project as involving "strategic considerations" allows for too much leeway to arbitrarily declare all sorts of Projects such as, for instance, nuclear power plants, oil wells and rigs etc as "strategic" and hence escape public scrutiny.

Non-military facts relating to military/security Projects should be made available in the public domain, and this Clause should not permit declaration of other types of projects as "strategic."

The related provision in Clause 14(1)c stating that the "Regulatory Authority may decide on the feasibility and requirement of Public Hearing and/or consultation in the case of defence projects" should also be amended in line with the above.

6) **Clause 7 State/UT Environment Impact Assessment Authority** It is often found that the State Pollution Control Board (PCB) acts as the Secretariat of the State/UT EIA Authority, and Project Proponents often apply to it for, and obtain, permission to set up or operate, even without Prior EC/EP, as happened with the recent LG Polymers Vishakhapatnam. Case. A specific para should therefore be added to this Clause to the effect that State/UT PCBs or any other Agency are not authorized to act on behalf of the State/UT EIA Authority and are not empowered to grant EC/EP

7) Clause 14(2) Public Consultation exempts a wide variety of Projects from Public Consultations whether in the form of written submissions or in the form of Public Hearings. This is not only highly objectionable from the point of view of environmental protection which is the goal of the various Environmental Acts and the EIA Notifications, it is also completely unacceptable in a democracy. As stated while discussing the B2 Category of Projects above, many of these Projects potentially have considerable environmental and social impact, and it is inconceivable that potentially affected people and other stakeholders are not given an opportunity to voice their concerns and objections. Exemptions from Public Consultations/Hearings should therefore be withdrawn for the following types of Projects.

(i) Projects covered by this include "all Category B2 Projects and activities," already discussed such as No.s 10(f), 16, 17, 19, 20, 21, 23, 24, 25, 27, 36, 40 within Notified Industrial Estates, and No.s 42 and No.43 (Construction and Area Development

Projects, and Elevated Roads respectively) in the Schedule, defence/security and other "strategic" Projects as discussed above, and "all linear Projects under item 31 (oil and gas pipelines) and 38 (Highways) in Border Areas."

(ii) It may specifically be noted that highways in border areas need not be linear, especially in mountain areas and may indeed have considerable environmental impact in ecologically sensitive areas such as in mountains, glacial areas etc.

(iii) Further, it is stated that for "linear projects" passing through a National Park or Sanctuary or Coral Reef or other Ecologically Sensitive Area public consultation "shall be limited to [these district (s)]." As is well known, such Projects can also cause substantial ecological damage in adjoining districts as well, so this provision should be withdrawn.

(iv) Such blanket exemptions from public consultations and public hearings are abhorrent under the relevant Environmental Protection Acts and should be dropped from Draft EIA 2020.

(v) **Appendix-1 Clause 3.1** under the head Procedure of Public Consultation, states that a "minimum notice period of twenty days shall be provided to the public for furnishing their responses," compared to the 2006 Notification under which this period was 30 days. It is difficult enough for local affected people such as fishers, coastal people, tribals and hill peoples etc to study all relevant documents, without being pushed into a small window of a mere 20 days. It is suggested that the Notice period for public consultations/hearings be extended to 60 days.

(vi) Public Hearings/Consultations and consent of gram Sabhas should be mandatory in all Scheduled Areas as per the Panchayats (Extension to Scheduled Areas) Act 1996.

8) **Clause 19 (1) I d: Validity of Prior-EC or Prior-EP** for mining projects has been extended from 30 years in EIA 2006 to 50 years covering the entire expected life of the Project, all of which has been inexplicably placed under Construction/Installation phase. During this prolonged period, most of which would definitely cover operation of the mine, all sorts of changes and modifications would take place, with potential environmental impact. It is recommended that Prior-EC/EP be provided for 30 years after which the project holder be required to seek fresh EC/EP based on updated information.

9) **Clause 22: Violation Cases** These contain some of the most egregious provisions of Draft EIA 2020, effect of which is to gloss over violations, pave the way for their regularization, and enable continuous operation of violators without having to worry about Environmental rules or Regulatory Authorities, all at the cost of the environment. Violations of course, as defined in the Draft EIA 2020 itself, refers to Projects that have started construction, installation or even operations, or expanded or modernized beyond the limits permitted, without Prior Environmental Clearance or Prior Environmental Permission.

(i) **Clause 22(1)** states that violations would be taken cognizance of based on application of the project proponent itself, reporting by any Government authority, found during the Appraisal process, or found during application by the Regulatory Authority. The Clause should be amended to also take cognizance of violations being brought to the attention of relevant authorities by local residents, civil society organizations, lawyers or other stakeholders who have, amazingly, been excluded from this provision.

(ii) Subsequent Paras of Clause 22 spell out various means and methods for the regularization of such Projects, despite their flagrant violation of Environmental Laws, clearly in the knowledge of the project proponents since any industrialist knows that Prior EC/EP is required. Only those Projects that are simply not permissible in the area concerned, or those Projects that are environmentally not sustainable in the area, in other words such projects that would not have obtained Prior EC/EP had they applied for it, would be closed down. These various means include fines, mandatory environmental remedial measures for damage caused etc.

(iii) These provisions clearly amount to post-facto regularization of violations and grant of EC as, for instance, is being pursued in the case of LG Polystyrene in Vishakhapatnam which had been operating for years without EC. The effort made by the Ministry in 2017 through a Notification towards the same end, albeit as a one-time amnesty provision, had been struck down by the NGT. The very idea of post-facto EC was declared by the Supreme Court as late as April 2020 to be "in derogation of the fundamental principles of environmental jurisprudence and is an anathema to the EIA Notification." The attempt by Draft EIA 2020 to give this provision a backing through a fresh Notification is ethically atrocious and is bad in law. These entire provisions should therefore be removed. If at all such a provision is required to be made, in view of the Ministry and regulatory Authority turning a blind eye over the years to perhaps hundreds of such violations, then it should be a one-time amnesty provision with a time frame of not more than 1 year from the date of Notification with a strict stipulation that no future violation will be tolerated at any cost.

(iv) The same applies to Clause 23 as well.

10) . **Clause 26: Projects exempt from requiring Prior-EC/EP** Some of the projects covered by this Clause are intended to permit artisanal activities such as extraction of potters' clay etc. Surprisingly, however, many projects with known and considerable environmental and social impact have also been included under this Clause. It is strongly urged that the following types of Projects be removed from this Clause and placed under the Schedule for Category B1 or B2 Projects (after being amended as suggested here):

- Clause 26(14): Solar Photo Voltaic (SPV) power projects, Solar Thermal power plants and Solar Parks, which have well-known environmental impacts including diversion of agricultural land, excess demand on subsoil water etc.
- Clause 26(15): R&D Activities for Activities in Schedule is too broad a categorization. For instance a Fast Breeder Reactor or a Test Well may also be described as an "R&D Project." This sub-category should be better defined
- Clause 26(19): Coal and non-coal mineral prospecting which can cause considerable ecological damage, quite apart from the larger extraction projects that may follow
- Clause 26(21): Minor irrigation Projects with command area upto 2000 ha should not automatically be exempt from Prior-EC/EP
- Clause 26(24)(a, b): Secondary metallurgy Units are not free of air pollutants, effluent streams and solid wastes including metals, and cannot be exempt from Prior EC/EP
- Clause 26(24)(c): Recycling Units registered under Hazardous & Other Waste Rules 2016 involve considerable toxic and other wastes, and certainly should not be exempt from Prior EC/EP
- Clause 26 (25)(a): Re-rolling Mills with Pickling especially of the scale mentioned will certainly involve effluent streams and will require Prior EC/EP
- Clause 26(36): Defence Manufacturing units or strategic units for explosives etc: the idea that Units under the Ministry of Defence do not require Prior EC/EP is astounding to say the least, since it can be nobody's case that these Units do not cause pollution. Such Units should be required to obtain Prior EC/EP based on disclosure of such information relating to pollutants generated and measures taken to reduce discharge of pollutants as per relevant industry standards. This is especially so since the Schedule (Item 30) lists explosives etc Projects under Category B1, assuming these to be non-Defence Units?
- Clause 26(39): Maintenance dredging should clarify that (as per the suggested amended Definition of Capital Dredging) that this does not apply to dredging and removal of virgin material from beds of rivers, lakes or other fresh water bodies.

For clarifications contact:

P. Rajamanickam 9442915101 D. Raghunandan 9810098621

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