4th National Conclave of Mines & Minerals 2018
(Environmental Clearance)

Presented By: Dr. Satish C. Garkoti
• Impact Assessment and Forest Conservation Divisions are entrusted with the work relating to Environmental Clearance (EC) and Forest Clearance (FC) to project(s).

• Policies formulation related to EC and FC.

• Regulations for protection and improvement of environment and safeguarding the natural resources in sustainable manner.
• Stockholm Conference of 1972 – proclaimed protection and improvement of the human environment as a major issue.

• Urged the nation states to preserve the natural resources of the earth including air, water, land, flora and fauna for the benefit of all the people and for their posterity.

• Earth Summit, 1992 was another landmark towards the protection and conservation of environment, where two important principles namely, (i) the concept of sustainable development and (ii) the inter generational equity were declared.
• The term “environment” was introduced in the Constitution of India for the first time by the 42nd Amendment in 1976.

• Article 48A of the Constitution under Part-IV dealing with Directive Principles of State Policy states as under:

"48A. Protection and improvement of environment and safeguarding of forests and wild life -The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

• Article 51A was introduced as a separate part known as “Fundamental Duties”. Clause(g) of this article states as follows:

“(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”
• Article 246 divides the subject for legislation in Union, State and Concurrent List.
• Article 248(1) exclusively empowers Parliament to make any law with respect to any matter not enumerated in the Concurrent List or State List – **Residuary Powers**

• Environment is not included in any of the list (List I, II or III) in distribution of legislative power, any matter not included in the list shall be subject matter of Central government.

• Article 253 empowers Parliament to legislate for giving effect to any international treaty, agreement or convention.

• Entry 14 of Union List (Article 246) provides for “entering to treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”.

• By virtue of these provisions, the Environment (Protection) Act, 1986 enacted.
• EIA in India started in 1978 with river valley projects.
• Subsequently EIA extended to large public sector projects requiring PIB clearance.
• First EIA Notification was issued on 27\textsuperscript{th} January, 1994
• Present EIA was notified on 14\textsuperscript{th} September, 2006
• More than thirty Amendments have been made so far.
EIA NOTIFICATION 1994 (27.01.1994)

( Major Minerals more than 5 Ha)

EIA NOTIFICATION 2006 (15.09.2006)

( Major & Minor Minerals more than 5 Ha)


( Major & Minor Minerals irrespective of the size of Mining Lease )
Ease of Doing in grant of EC

Delegation of Powers to State Level and District Level Impact Assessment Authority

- Centre
  - EIA 1994 (> 5 Ha)
  - EIA 2006 (> 50 Ha)

- State, SEIAA
  - EIA 2006 (< 50 Ha)

- District, DEIAA
  - S.O. 141(E) 15.01.2016 (< =5 Ha)
CATEGORIZATION OF PROJECTS

Developmental activity

Category A

EC by MoEFCC

Category B (B1 & B2)

Apply in Form-I for screening

Category B2 (<= 5Ha)

EC by SEIAA

DEIAA-Mining of Minor Minerals

If GC applicable (>25 Ha Minor)

Note: GC is not applicable for River Bed Mining Project on account of Inter-State Boundary
Ease of Doing in grant of EC

Delegation of Powers to State Level and District Level Impact Assessment Authority - Under Process

Centre

EIA 1994 (> 5ha)
Amendment EIA 2006 (> 100 Ha)

State, SEIAA

Amendment EIA 2006 (< =100 Ha)

District, DEIAA

S.O. 141(E) 15.01.2016 (< =5 Ha)
CATEGORIZATION OF PROJECTS

Developmental activity

Category A
EC by MoEFCC

Category B (B1 & B2)
Apply in Form-I for screening
EC by SEIAA

Category B2 (<= 5Ha)
DEIIAA-Mining of Minor Minerals

Note: GC is not applicable for River Bed Mining Project on account of Inter-State Boundary
Definition of EIA

Environmental Impact Assessment is

A formal process for identifying:

• likely effects of activities or projects on the ENVIRONMENT, and on human health and welfare.
• means and measures to mitigate & monitor these impacts

Environment is broadly interpreted: physical, biological, and social.

In EIA, the term “impacts” is used instead of “effects of activities.”

What is an impact?
What is an impact?

The impact of an activity is a deviation (a change) from the baseline situation that is caused by the activity.

To measure an impact, we must know what the baseline situation is.

The baseline situation is the existing environmental situation or condition in the absence of the activity.

The baseline situation is a key concept in EIA.
The baseline situation

In characterizing the baseline situation, many **environmental components** MAY be of interest.

The components of interest are those that are likely to be affected by activity—or upon which activity depends for its success.

<table>
<thead>
<tr>
<th>Component</th>
<th>Factors of Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>Water</td>
<td>Quantity, quality, reliability, accessibility</td>
</tr>
<tr>
<td>Soils</td>
<td>Erosion, crop productivity, fallow periods, salinity, nutrient concentrations</td>
</tr>
<tr>
<td>Fauna</td>
<td>Populations, habitat</td>
</tr>
<tr>
<td>Env Health</td>
<td>Disease vectors, pathogens</td>
</tr>
<tr>
<td>Flora</td>
<td>Composition and density of natural vegetation, productivity, key species</td>
</tr>
<tr>
<td>Special ecosystems</td>
<td>Key species</td>
</tr>
</tbody>
</table>
DIFFERENCE FROM 1994 NOTIFICATION

Transparent, decentralized and efficient regulatory mechanism to:

• Incorporate necessary environmental safeguards at planning stage
• Involve stakeholders in the public consultation process
• Identify developmental projects based on impact potential instead of the investment criteria
DEVELOPMENTAL ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE(EC)

- All new projects/activities listed in the Schedule;
- Expansion and modernization of existing projects or activities listed in the Schedule with addition of capacity beyond the limits specified.
- Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.
Stages in Prior Environmental Clearance Process

Stage I: Screening

Stage II: Scoping

Stage III: Public Consultation

Stage IV: Appraisal

Note: The Expert Appraisal Committees (EACs) at the Central Government, SEACs at the State or Union territory level and DEAC at the district level shall screen, scope and appraise projects or activity in category ‘A’, ‘B1 and B2’ and ‘B2’ projects for mining of minor minerals of lease area less than and equal to five hectare respectively. EAC, SEACs and DEACs shall meet at least once every month.
• MoEFCC has constituted EAC at Central level for Scoping and Appraisal of projects.
• There are 8 EACs for seven sectors.
• MoEFCC has notified SEAC/SEIAA at state level based on proposals received from State Government.
• EAC/SEAC may inspect sites (during screening, scoping and appraisal)

• EAC/SEAC shall not have more than 15 regular members.

• Chairperson may co-opt an expert as a member.

• Time period for Committees -3 years.

• All members will be part-time and expenditure to be borne by MoEFCC for EACs and by State Government(s) for SEACs.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Time mentioned in EIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOR</td>
<td>30 days</td>
</tr>
<tr>
<td>Completion of appraisal</td>
<td>60 days after receipt of EIA/EMP report</td>
</tr>
<tr>
<td>The regulatory authority conveys decision</td>
<td>45 days</td>
</tr>
</tbody>
</table>

105 Days required for decision on EC
# EC and TOR granted in last four Years

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>EC</th>
<th>TOR</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 2014 to Dec 2014</td>
<td>199</td>
<td>503</td>
<td>702</td>
</tr>
<tr>
<td>2015</td>
<td>718</td>
<td>504</td>
<td>1222</td>
</tr>
<tr>
<td>2016</td>
<td>360</td>
<td>455</td>
<td>815</td>
</tr>
<tr>
<td>2017</td>
<td>535</td>
<td>845</td>
<td>1380</td>
</tr>
<tr>
<td>Jan 2018 to 30th June 2018</td>
<td>230</td>
<td>323</td>
<td>553</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>2042</td>
<td>2630</td>
<td>4672</td>
</tr>
</tbody>
</table>
Environmental Clearance granted to the projects from 26.05.2014 to 30.06.2018

<table>
<thead>
<tr>
<th>S. No</th>
<th>Sector</th>
<th>No of EC Granted</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Industry</td>
<td>890</td>
</tr>
<tr>
<td>2</td>
<td>Non Coal Mining</td>
<td>347</td>
</tr>
<tr>
<td>3</td>
<td>Coal Mining</td>
<td>109</td>
</tr>
<tr>
<td>4</td>
<td>Infrastructure/CRZ/Buildg.</td>
<td>623</td>
</tr>
<tr>
<td>5</td>
<td>Nuclear &amp; Defence</td>
<td>12</td>
</tr>
<tr>
<td>6</td>
<td>Thermal</td>
<td>42</td>
</tr>
<tr>
<td>7</td>
<td>River Valley</td>
<td>27</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td><strong>2050</strong></td>
</tr>
</tbody>
</table>
Ease of Doing in Grant of EC

Average number of days taken by MoEFCC for according Environment Clearance

- Prior to July 2014: 600 days
- 1st July 2014 - 31st May 2017: 201 days
- 1st June 2017 - 31st May 2018: 140 days
• Six monthly compliance Report of EC by Project proponent
• Inspection by Regional office
• SPCB & CPCB monitor the emission & effluent.
• Oversight of Public, NGT and Hon’ble Courts.
Ease of Doing in grant of EC

Policy Reforms

- Flexibility in obtaining Certified Compliance certificate
- Flexibility in baseline data collection
- Accreditation of Environmental Consultants
- Standard ToR
- Standard format for EC (Form-II)
• Exemption from PH for expansion of coal mining up to 40% of its capacity.
• Validity of ToR raised to 4 years for all projects and 5 years for HEP.
• De-linking EC and Stage-I FC of the linked coal mine with the EC of TPPs
• Transfer of environment clearance of cancelled coal block /iron ore in Karnataka, to legal person to whom such block is subsequently allocated without referring to EAC/SEAC.
• Ministry will find the possibility of extending the validity of EC obtained by the previous leasee for three more years, so that the new leasee gets the transfer in EC just after the e-auction process and thereafter PP obtains the fresh EC within 3 years. [Under Consideration in the MoEF&CC]
The Notification was issued vide S.O. 804(E) dated 14th March 2017 for grant of ToR and EC, 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 under the EIA Notification, 2006. Initially the period of 6 Months was provided and further one month has provided ending up to 13th April, 2018.

In cases of violation, action will be taken against the project proponent by the respective SPCB under the provisions of section 19 of the E(P) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the EC.

The projects under this category will be prescribed the appropriate ToR along with a specific ToR for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan for undertaking EIA and preparation of EMP.
The Ministry has issued O.M No z-11013/22/2017-IA.II(M) dated 15.03.2018 regarding implementation of S.O. 1030(E) dated 08.03.2018. In this O.M it has mentioned that to expedite the consideration of proposal (received up to 13.09.2017) it was decided that project/activities of category B shall be apprised by SEIAA/SEAC.

The Ministry has issued O.M No Z-11013/22/2017-IA.II(M) dated 16.03.2018 wherein the one month time period i.e. till 13.04.2018 was given to PP for applying in the violation portal.

The Ministry has issued O.M No 3-50/2017-IA.III(Pt.) dated 30.05.2018. to comply with the direction of Hon’ble SC made on 2.08.2017 in W.P(C) 114 of 2014 in matter of Common Cause vs Union of India & Ors. Vide this O.M MoEF&CC has asked the PP to submit an undertaking in the form of affidavit instead of NOC from State Government.
Hon’ble Supreme Court, vide judgment dated the 2\textsuperscript{nd} August, 2017 in the matter of \textit{Common Cause versus Union of India} and Ors., and 7\textsuperscript{th} February, 2018 in Special Leave to Appeal (Civil) No. 32138 of 2015 in the matter of \textit{Goa Foundation versus M/s Sesa Sterlite Ltd., & Ors.} \textit{inter-alia}, has directed:

- The validity of the EC granted for mining projects under the EIA Notification 1994 shall be five years,
- The annual production of 1993-94 or immediately preceding year shall be the base year;
- Interpreting section 21(5) of MMDR Act and directing payment of 100% penalty for illegal mining operations in respect of all the relevant statutes.

Note: In order to address above issues the S.O. No. 1530(E) dated 06.04.2018 was notified.
Validity of EC under EIA 1994/Base production year:

- Ministry has issued notification on 6th April, 2018 for dealing with the validity of EC / base production under EIA 1994.

- All such cases which has obtained EC under only EIA 1994 are required to submit their application to MoEF&CC for grant of EC under EIA 2006 within 6 months of the issuance of this notification. All such cases shall be considered by the EAC / SEAC, who shall decide on the due diligence including preparation of EIA Report and public consultation and the application shall be appraised accordingly for grant of EC.
Compliance of Hon’ble SC directions

Payment of Compensation:

• The PP shall give an undertaking by way of affidavit to comply with all the statutory requirements and judgment of Hon’ble SC dated the 2nd August 2017 in the matter of Common Cause versus Union of India and Ors. before grant of ToR/ EC.

• The undertaking inter-alia include commitment of the PP not to repeat any such violation in future.

• In case of violation of above undertaking, the ToR/Environmental Clearance shall be liable to be terminated forthwith.

• The EC will not be operational till such time the PP complies with SC order in the matter of Common Cause versus Union of India and Ors..

• State Government concerned shall ensure that mining operation shall not commence till the entire compensation levied, if any, for illegal mining paid by the PP through their respective Department of Mining & Geology.
WAY FORWARD-MoEFCC

• E- governance (auto generation of agenda, MoM, ToR and EC)

• Delegation to SEIAA/SEAC in mining and irrigation project

• Integrating EC conditions with building permissions

• Standard EC condition
• **Exemption from CTE**

Central Pollution Control Board issued advisory on 2\textsuperscript{nd} February, 2017 suggesting that all the projects requiring the environmental clearance either from SEIAA or MoEFCC may be exempted from the obtaining Consent to Establish. Such projects may be granted CTO subject to EC and installation of Pollution Control Devices.

• **Adaption of E-Governance to increase transparency**
  - Online receiving and processing of application.
  - Updating EC portal regularly.
  - Uploading of Minutes of Meeting within 5 working days on website.

• **Constitution of SEIAA/SEAC and DEIAA/DEAC.**

• **Adhering to the time lines prescribed in EIA Notification.**
THANKS
Mining leases for which EC has already been obtained by the previous leasee will find the possibility of extending the validity of EC obtained by the previous leasee for three more years, so that the new leasee gets the transfer in EC just after the e-auction process and thereafter obtains the fresh EC within 3 years.

Fresh Mining Leases

Fresh EC needs to be obtained
As per Ministry’s O.M No. J-11013/41/2006-IA.II(I)(Part.) dated 29.08.2017

a) The baseline data used for preparation of EIA/EMP reports may be collected at any stage, irrespective of the request for ToR or the issue thereof. However, such a baseline data and the public consultation should not be older than 3 years, at the time of submission of the proposal, for grant of Environmental Clearance, as per ToRs prescribed.

b) The validity of ToR is 4 years for Mining Projects.
Standard ToR

The Standard ToR for mining sector is available online and Project Proponent may start collecting baseline data ToR. This will save time in preparation of EIA Report.

FORM-II(EC)

The Ministry vide O.M 22-8/2018 IA.III dated 20.04.2018 prescribed the format for EC application. This Form will assist the PP and its consultant to provide the relevant information and documents required at EC Stage and will reduce the number of Additional Details Sought (ADS) by EAC and ultimately reduce the time for appraisal of the project.
Online Portal

The PP can apply for Environmental Clearance online and after grant of EC the EC letter will also be uploaded online.

The Ministry is upgrading the online portal and after up gradation the PP can apply for Environment, Forest, Wildlife and CRZ Clearance online with a single proposal number.

Dashboard shall be provided through which PP can monitor the status of all its applications.

The new portal will help the Ministry in generation of agenda, minutes of meeting and EC & ToR letters. This is turn save the processing time.

The new portal will have option for monitoring the time taken for processing the ToR/EC proposal at each stage. This will in turn help in real-time monitoring of the proposal and further reduce the time taken for processing of the proposal within the Ministry.
Delegation of more Power to SEIAA and DEIAA:

The applicability of General Conditions is reduced from 10 KM to 5 KM.

General Conditions is not applicable for River Mining Project on account of Inter-State Boundary.

The Project up to 25 Ha of Minor Minerals the General Conditions is not applicable.

The proposal up to 100 Ha can now be apprised in SEIAA.[Under Process]

The General Condition shall not be applicable for project in Cluster area up to 100 Ha.[Under Process]
POSSIBLE SOLUTIONS

• Auction Process needs to be completed before the expiry of the lease.

• The PP who got the mining lease in the auction now have sufficient time to obtain the Environmental Clearance.

• The IBM shall approve such mining plan subject to obtaining EC from MoEF&CC

• EC shall be operational subject to submission of executed lease deed.

• The installment shall be started after obtaining EC from MoEF&CC and for which 2 years time period should be given to PP.
POSSIBLE SOLUTIONS

• Many project delayed due to non-availability of District Survey Report (DSR). Thus the State should prepare the DSR for all minor minerals for all its districts.