

Aug 11, 2020

To,

Secretary,  
Ministry of Environment, Forest and Climate Change (MoEFCC),  
Indira Paryavaran Bhawan, Jor Bagh Road, New Delhi - 110003.

Hon. Secretary,

Ref: (1) Draft Environment Impact Assessment Notification, 2020 vide S.O. 1199(E) dt. 23.03.2020.  
(2) W.P.(C) 3747/2020 & CM APPL.13426/2020, High Court of Delhi, dt. 30.06.2020.

**Sub: Comments and Objections to Draft Environment Impact Assessment Notification, 2020**

We write to you as a group of concerned citizens and in our capacity as ecologists and conservation biologists to place on record our comments and objections to the Draft Environment Impact Assessment Notification, 2020 (hereinafter referred to as 'Draft Notification 2020').

Four recent catastrophic events have brought to fore (a) how undermining environmental safeguards can put ecosystems and local communities at risk as has happened with the Vizag Gas leak<sup>1</sup> and Baghjan oil well blow-out<sup>2</sup>, (b) the role of landscape fragmentation and wildlife trade in the spread of zoonotic diseases like the ongoing COVID-19 pandemic<sup>3</sup>, and (c) the link between climate change and locust swarms<sup>4</sup>. These events make amply clear the need for sound environmental governance and regulation.

EIAs provide a regulatory framework to assess environmental impacts of development projects and are an important tool to ensure (a) legal assessment of environmental and social impacts and (b) public participation in the process, prior to setting up or expanding industrial and infrastructure projects. But, the Draft Notification 2020 considerably relaxes critical guidelines and restrictions that safeguard environmental and public health while seeking 'to make the process more transparent and expedient', and additionally entertains extraneous considerations such as 'ease of doing business'.

While the EIA Notification, 2006 warrants critical revision owing to procedural lapses and issues of inadequate post-clearance monitoring and compliance, among others, the Draft Notification 2020 further dilutes extant provisions, and is now in contravention of the statutory foundation of its parent legislation, the Environment (Protection) Act, 1986, and of the mandate and purpose of the MoEFCC itself.

The Draft Notification 2020 also violates the Directive Principles of State Policy and other constitutional provisions for environment protection and our right to a healthy environment. It is antithetical to

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<sup>1</sup> [Vizag gas leak: Don't have green nod, company told state last May. The Indian Express. May 8, 2020.](#)

<sup>2</sup> [How Malleable Laws, Pliant Panels Helped OIL Secure Clearance to Drill in Biodiverse Area. The Wire. June 4, 2020.](#)

<sup>3</sup> [Bloomfield LSP. \(2020\). Global mapping of landscape fragmentation, human-animal interactions, and livelihood behaviors to prevent the next pandemic. Agriculture and Human Values. doi: 10.1007/s10460-020-10104-x.](#)

<sup>4</sup> [Locust swarms and climate change. United Nations Environment Programme Feb 6, 2020.](#)

environmental jurisprudence including the Public Trust Doctrine, Sustainable Development, Polluter Pays Principle, Precautionary Principle (and Principle of 'New Burden of Proof'), Intergenerational Equity, and Doctrine of Non-Regression. Further, the Draft Notification 2020 impedes India's commitments as a signatory to important international conventions including the Rio Declaration, 1992 and the Paris Agreement, 2015.

While the proposed EIA Notification, 2020 is being issued in exercise of the Central Government's powers conferred by sub-section (1), and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), we draw attention that the overarching provision enabling so is 'for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution'. The Draft Notification 2020 is, therefore, legally untenable since it does not enable either purpose.

Our primary objections to the Draft Notification 2020 include —

1. The overarching dilution of the EIA process through (a) the grant of exemption to a greater number of project types from prior environmental clearance, (b) continued haphazard categorisation of projects, (c) increase in the threshold limit for project capacity, (d) increased duration of validity of EC, and (e) restrictions on Appraisal Committees on seeking additional studies, is not consistent with the stated objective of 'bringing projects under regulation in the interest of the environment' of said Notification.
2. The provision to regularise violations through the grant of *ex post facto* environmental clearances will encourage procedural non-compliance and *fait accompli* scenarios. Such a provision, which effectively grants amnesty to violators, defeats the very purpose of the EIA and does not in any way serve the stated purpose of environment protection. We refer to you the observation of the Supreme Court<sup>5</sup> that " ... environment law cannot countenance the notion of an *ex post facto* clearance. This would be contrary to both the precautionary principle as well as the need for sustainable development".
3. Disenfranchisement of public participation in the EIA process through reduction in notice period for public hearing, exemptions from public consultations to various categories of projects, and restriction on the persons reporting violations.
4. The inadequacy of the post-clearance compliance and monitoring mechanism through reduction in compliance reporting requirements, prescription of token penalties for non-submission of self-compliance reports, and restriction on the categories of persons/designations on whose application/reporting a cognizance of the violation shall be made.

The MoEFCC is tasked with keeping India on track to achieve sustainable development and environmental stewardship but the malafide design of the Draft Notification 2020 derails that possibility. **We urge you to revoke the Draft Notification, 2020**, and that any proposed amendment to the EIA notification be

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<sup>5</sup> [Civil Appeal No. 1526 of 2016 dated April 01, 2020](#)

undertaken outside the lockdown period, after wider public consultation, and discussion by the Parliamentary Standing Committee on Science & Technology, Environment & Forests.

Specific comments to the Draft Notification 2020 are provided in the next section.

Sincerely,

1. Tarun Nair, MSc, Conservation Biologist
2. Swapna Nelaballi, PhD student, University of Michigan
3. Priya Singh, MSc, Wildlife Biologist
4. Akshay Surendra, PhD Student, Yale School of the Environment
5. Anish Andheria, PhD, Conservationist & Wildlife Biologist
6. Rohit Chakravarty, PhD student, Leibniz Institute for Zoo and Wildlife Research, Germany
7. Mayank Kohli, Phd, Ecologist
8. Pradeep Koulgi, MSc, Wildlife Biologist
9. Aathira Perinchery, biologist-turned-journalist
10. Suman Jumani, University of Florida
11. Uddipana Kalita, MSc Wildlife Biology and Conservation
12. Chetana, MSc Wildlife Biology and Conservation
13. Ajith Kumar, Ecologist
14. Shasank Ongole, Researcher
15. Rohit Jha, Senior Research Fellow, WII
16. Sachin Sridhara, PhD, Ecologist
17. Kadambari Devarajan, PhD Candidate, University of Massachusetts at Amherst
18. Biang La Nam Syiem, PhD student, Deakin University
19. Anonymous, MSc, Wildlife Biologist, Dehradun
20. Varun Goswami, PhD, Conservation Scientist

Copy to:

1. Geeta Menon, Joint Secretary, [menong@cag.gov.in](mailto:menong@cag.gov.in)
2. Chairman, Parliamentary Standing Committee on Science & Technology, Environment & Forests

1. **Clause 3(21,22&30):** The Draft Notification 2020 restricts ‘Eco-sensitive areas’ and ‘Eco-sensitive zones’ to only include Eco-sensitive areas/zones officially notified by the MoEFCC. This clause would exempt projects from procuring Prior Environmental Clearance (prior-EC) or Prior Environment Permission (prior-EP) for projects in other ecologically important and fragile landscapes - reserved/protected forests, floodplains, wetlands, grasslands, deserts, sacred groves, watershed areas, habitats of vulnerable flora and fauna, etc., that are not officially notified by the MoEFCC. If implemented this will cause large scale and irreversible damage to these areas that provide critical ecosystem services, and support livelihoods of local communities.
2. **Clause 3(43&55):** The Draft Notification 2020 has diluted the definition of the term ‘project’ by failing to include all connected/dependent components (for e.g. transmission lines, access roads, tunnels, etc.) of projects. To add, the Draft Notification 2020 restricts study area to a uniform radius of 10 & 5 km from the project boundary for category A & B projects respectively, irrespective of i) regional, scientific and technical considerations and ii) the fact that projects will differ in their spatial, temporal and cumulative impacts. Such dilutions will help projects evade comprehensive EIAs that adequately assess direct and indirect impacts of projects.
3. **Clause 3(60):** The Draft Notification 2020, does not recognize non-compliance to conditions of the prior-EC or prior-EP granted by the regulatory authority as a violation as per the definition of the term ‘violation’. This reduces accountability and permits violations.
4. **Clause 4(3):** The Draft Notification 2020 states that ‘construction work’ will not include “*securing land by fencing or compound wall; temporary shed for security guard(s); leveling of the land without any tree felling; geo-technical investigations*”. This allows project proponents to initiate any or all of the aforementioned activities as per project requirements prior to obtaining an EC/EP. For certain habitats such as grasslands, sand-dunes/ deserts, scrubland, wetlands, floodplains, etc. that are naturally devoid of tree cover this will result in severe, irreversible and detrimental alterations to the ecosystem.
5. **Clause 5(5&6) & 10(3):** The Draft Notification 2020 exempts some category B2 projects from being placed before the EAC for detailed scrutiny by experts. This exempts such projects entirely from the possibility of undergoing the rigorous EIA process of screening, scoping, preparation of EIA, public consultation and appraisal by EAC. Instead, decisions on these category B2 projects will be taken by the Regulatory Authority alone. Approval will be based on evaluation of an EMP (environment management plan) prepared despite the absence of an EIA, verification of completeness of the application based on which EP will be granted. This not only severely undermines the role of the EAC but will also be detrimental to the environment.
6. **Clause 5(7):** The Draft Notification 2020 calls for a blanket exemption from placing any information in the public domain for a widely interpretable category of projects: “*all projects concerning national defence and security or involving other strategic considerations, as determined by the Central Government...*”. This creates room for executive discretion to exclude

public participation in scrutinizing such projects. This also goes against the 2020 Draft Notification's attempt to maintain transparency.

7. **Clause 12(1&4):** The Draft Notification 2020 in an attempt to reduce delays in issuance of environmental clearances significantly dilutes the scoping process through issuance of standard ToRs. Specifically, it states that only certain projects will be referred to the EAC, while others will be allowed to commence baseline data collection based on a standard ToR prior to deliberation by the EAC. This restricts the functioning of the EAC and does not take into account the fact that different projects at different locations will have different environmental impacts.
8. **Clause 12(3):** The Draft Notification 2020 also proposes granting of standard ToRs within 7 days to certain expansion projects without the need for deliberation by the EAC. Apart from undermining the advisory role of the EAC, this provision creates room for project proponents to propose projects at a lower capacity at the onset, as they will have an opportunity to evade critical evaluation by the EAC for any subsequent expansion.
9. **Clause 12(8):** The Draft Notification 2020 in yet another attempt to suppress the role of the EAC, states that proposals seeking amendment of ToR within the validity period of the prescribed ToR and prior to public consultation, may be referred to the EAC, if required. This wording makes this critical step optional.
10. **Clause 13(2&6):** The Draft Notification 2020 proposes, in preparing an EIA report, baseline data collection can be limited to one season (except monsoon) for all projects other than river valley projects. This is a major departure from existing regulations and a grossly inadequate stipulation. Given that spatial and temporal factors vary from season to season, it will be impossible to adequately assess impacts of a project if baseline data collection is limited to one season. To add, the Draft Notification 2020 allows EC to be granted on the basis of outdated baseline data by stipulating that "*Baseline data,....., can be collected at any stage, irrespective of the application for the scoping. However, such baseline data shall not be older than three years at the time of submission of draft EIA Report....*". This means that baseline data collection can commence without deliberation and prescription of project specific ToR for data collection, by the EAC. This significantly weakens the scoping process.
11. **Clause 14(9):** The Draft Notification 2020 stipulates that it is sufficient for project proponents to upload a summary of the Draft EIA Report to the State Pollution Control Board (SPCB) or the Union Territory Pollution Control Committee (UTPCC) websites prior to public consultation. This helps project proponents evade public scrutiny of critical information.
12. **Clause 14(Appendix-I (3.1.)):** To add, it is not sufficient if notice of public hearing is published in one national and one regional vernacular newspaper as per current stipulation. This helps project proponents evade public scrutiny and thus meaningful public participation by publishing in newspapers that are not widely circulated/distributed.

13. **Clause 14(Appendix-I (3.1.)):** The Draft Notification 2020 has reduced the notice period for public hearing from 30 to 20 days. This time period is grossly inadequate for relevant stakeholders and other members of the general public to thoroughly scrutinize the EIA document that contains scientific and technical information, and requires a legal understanding of issues pertaining to the project. This often entails reaching out to relevant scientific and legal experts to communicate, discuss and understand the information and thereafter furnish a comprehensive response.
14. **Clause 15(7):** The Draft Notification 2020 states that “*No fresh studies shall be sought by the Appraisal Committee at the time of appraisal, unless new facts come to the notice of the Appraisal Committee and it becomes inevitable to seek additional studies from the project proponent and same shall be clearly reflected in the minutes of the meeting.*”. This does not clearly stipulate that additional studies that arise during the course of appraisal but after completion of the public consultation process are required to be placed before the public. Thus, it cannot be ensured that the state fulfills its duty to facilitate and encourage public awareness and participation by making all information widely available.
15. **Clause 16(7):** The Draft Notification 2020 states that “*No increase in pollution load’ certificate issued by the SPCB or UTPCC on recommendation of Technical Committee constituted under Air (Prevention and Control of Pollution) Act, 1981 or Water (Prevention and Control of Pollution) Act, 1974, shall also be considered in place of EIA and EMP required under column (5) and column (6) of the table given at sub-clause (1) above.*” Such certification cannot replace the EIA and EMP as project impacts are not restricted to air and water pollution alone. A comprehensive EIA must be carried out to assess various environmental impacts that may include but are not limited to: land use/cover, ecology, biodiversity, hydrology, ecosystem services, public health, cumulative impacts of existing projects and the proposed project, etc..
16. **Clause 17(4):** The Draft Notification 2020 states that “*On expiry of the period specified for decision by the Regulatory Authority under sub-clause (2) above, the decision of the Regulatory Authority, and the final recommendations of the Appraisal Committee shall be public documents.*”. This does not clearly stipulate a timeframe for placement of crucial information in the public domain. Timely availability of such information in the public domain is a requirement to ensure meaningful public engagement with the EIA process.
17. **Clause 17(5):** The Draft Notification 2020 excludes recommendation from the NBWL and ESZ Monitoring Committees as a prerequisite to process applications for prior-EC or prior-EP for projects proposed in Eco-sensitive Zones and Areas.
18. **Clause 17(6&7):** The Draft Notification 2020 states that in case of concealment and submission of false/misleading information, the EC will be rejected and cancelled, and the EIA consultants/coordinator will be blacklisted. This is not stringent enough.
19. **Clause 18:** The Draft Notification 2020 does not clearly specify cases and circumstances under which amendments in the prior-EC or prior-EP can be sought by project proponents. This lack of

clarity creates room for corrupt practices such as applying for amendments in the EC to enable substantial changes and additions rendering meaningless the rigour of the EIA process.

20. **Clause 19(1(II)):** The Draft Notification 2020 states that the period of validity of the EC for the operational phase of all projects, except mining, will be “*perpetual for the remaining life of the project*”. This is not a realistic stipulation given that the EC is granted based on the EIA study that is based on scientific knowledge and environmental conditions at that time, which will change over time.
21. **Clause 20 (4&5):** The Draft Notification 2020 states that it is sufficient for project proponents to submit a yearly self-compliance report instead of a half-yearly report as mandated under the current EIA Notification. Reducing the frequency of reporting will help project proponents evade regular monitoring that is critical to ensure maintenance of environmental safeguards and compliance to conditions of the EC. Further, the Notification has introduced penalties for non-submission of self-compliance reports - a fee of Rs. 500, Rs.1000 and Rs. 2500 per day for category B2, B1 and A projects. The proposed amounts are not large enough to have the desired impact on projects that stand to benefit by lakhs to crores of rupees.
22. **Clause 22(1&2):** The Draft Notification 2020 states that complaints against non-compliance of EC conditions can be raised by: “(a) *suo moto application of the project proponent; or (b) reporting by any Government Authority; or (c) found during the appraisal by Appraisal Committee; or (d) found during the processing of application, if any, by the Regulatory Authority.*” and “*The cognizance of the non-compliance of conditions of prior-EC or prior-EP, as the case may be, shall be made based on the suo moto reporting by the project proponent or reporting by any Government Authority or found during the appraisal of Appraisal Committee or during the processing of application if any by the regulatory authority*”. There is no provision for general citizens to raise concerns against the project or activity. This disempowers the general public and is a direct attack on their legal and constitutional rights to participate in the protection and governance of the environment by being able to raise concerns against project proponents found to be violating environmental laws in place and/or carrying out projects or activities that are damaging to the environment and ecology.
23. **Clause 22(15):** The Draft Notification 2020 proposes to grant Consent to Operate or Occupancy Certificate prior to issuance of EC or EP. Granting post-facto clearance goes against the Precautionary Principle and will encourage project proponents to commence operations before a thorough assessment of impacts can be made and also removes the opportunity for stakeholders to put forth their concerns before environmental changes occur from commencement of the activity or project..
24. **Clause 23(6&7):** The Draft Notification 2020 replaces “*Failure to comply with any of the conditions may result in withdrawal of the clearance and attract provisions of Environmental (Protection) Act, 1986*” from the 2006 Notification, with “(6) *On conclusion of the proceeding, the Expert Committee shall make categorical recommendations to the project proponent for time bound action plan for compliance of the conditions of prior-EC conditions and the amount of the*

*bank guarantee deposited as an assurance for the purpose of compliance with the SPCB or UTPCC, as the case may be.” and “(7) The bank guarantee will be released after successful implementation of the action plan and on the recommendations of the Regional office of the Ministry or Regional Directorate of CPCB in case of Category “A” projects; SPCB or UTPCC in case of the Category “B” projects.”* This dilutes the legal provisions in the parent act, encourages the unsustainable and environmentally detrimental ‘pollute and pay’ model and limits the power of the Regulatory Authority to suspend/cancel EC for non-compliance to conditions of prior-EC or prior-EP.

25. **Clause 26 (Exception of projects):** The complete exemption from prior-EC or prior-EP for projects in the 40 listed cases is arbitrary and completely ignores well-documented and serious negative environmental impacts from these sectors. Such blanket exceptions will only encourage widespread resource exploitation, non-accountability, elite capture, and environmental degradation. Some glaring issues are listed below —

**(1) - (5):** These broad exceptions (1-5, 7, 8, 10-13), adopted from the 2016 Sustainable Sand Management Guidelines<sup>6</sup>, are predisposed to exploitation by the sand-, gravel-, and boulder-mining mafia that operate across the country, especially since mechanisms to monitor and regulate these activities are not being implemented, as identified in the 2020 Enforcement & Monitoring Guidelines for Sand Mining<sup>7</sup>. Considering impacts on freshwater ecosystems, channel dynamics and groundwater recharge, aggregate mining should not be exempt from prior-EC or pre-conditions as per the 2020 guidelines.

**(6)** Linear projects have some of the worst environmental impacts and there is absolutely no basis to exempt them from prior-EC or prior-EP. Please refer to documents on this subject from the National Board for Wildlife<sup>8</sup> and Wildlife Institute of India<sup>9</sup>. The terms 'extraction', 'sourcing', 'borrowing' and 'ordinary earth' are ripe for liberal interpretation and misuse, and will have disastrous consequences in ecologically important and fragile areas. Any proposed extraction or sourcing or borrowing of ordinary earth for the linear projects should be included in their application/proposal and be subject to prior-EC and all linear projects must compulsorily integrate their EIA and EMP.

**(7) and (39)** Rivers being natural ecosystems and habitats for several protected and endangered species should not be subjected to dredging and desilting for the purposes of maintenance, upkeep and disaster management as proposed for other man-made structures. These activities will disrupt river health, ecology and livelihoods through habitat degradation, disturbances, pollution and loss of productivity. The adverse impacts of dredging due its intrusive and disruptive processes is well documented — ranging from increased turbidity and release of settled pollutants and contaminants,

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<sup>6</sup> [MoEFCC. \(2016\). Sustainable Sand Mining Management Guidelines.](#)

<sup>7</sup> [MoEFCC. \(2020\). Enforcement & Monitoring Guidelines for Sand Mining 2020.](#)

<sup>8</sup> [Raman TRS. \(2011\). Framing ecologically sound policy on linear intrusions affecting wildlife habitats. Background paper for the National Board for Wildlife. 51 pp.](#)

<sup>9</sup> [WII \(2016\). Eco-friendly Measures to Mitigate Impacts of Linear Infrastructure on Wildlife. Wildlife Institute of India, Dehradun, India.](#)



to deterioration of water quality, and dissolved oxygen depletion due to resuspension of organic matter. Resuspension of sediment will result in pollutants and contaminants becoming bioavailable to aquatic organisms and this can lead to the bioaccumulation through the food chain, impacting biodiversity and fisheries-dependent people.

**(35)** Units manufacturing paper or paperboard from waste paper or ready pulp without deinking, decolorizing or bleaching and **(36)** units manufacturing explosives, detonators, fuses for the Ministry of Defence and other strategic units, are both exempted from obtaining prior-EC or prior-EP. This contravenes the Central Pollution Control Board's (CPCB) 2016 document on 'Revised Classification of Industrial Sectors' that lists both of these manufacturing units under the 'red category'<sup>10</sup>. The 'red category' includes highly polluting industrial units, with a Pollution Index of 60 and above, scored based on the quality of emissions, effluents and hazardous waste generated. Thus, such manufacturing activities that stand to cause high levels of environmental contamination cannot be exempted from thorough scrutiny.

**(40)** Small and micro enterprises have been exempted from obtaining prior-EC or prior-EP in the Draft Notification 2020. Further, the Ministry of Finance on 13.05.2020<sup>11</sup>, expanded the definition of Medium, Small and Micro Enterprises (MSMEs), such that many more industrial units are now classified as small or micro enterprises and thus, will be exempted from the EIA process. Many of these units are involved in manufacturing materials like cement, acid, organic chemicals, carbon rods, graphite rods, paints and varnishes. Such manufacturing units are classified under the 'red category' as per the CPCB document. Exempting 'red category' industries from appraisal under EIA will be damaging to the environment and will expose communities to greater health hazards.

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<sup>10</sup> Central Pollution Control Board, Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories, Feb 29, 2016

<sup>11</sup> ET Online, Finance Minister announces revised MSME definitions; no difference between manufacturing and service enterprises, Economic Times, May 26, 2020