

Enforcement Framework for Effective Implementation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

July 2019



Central Pollution Control Board

(Ministry of Environment, Forest & Climate Change, Government of India)

**Parivesh Bhawan, East Arjun Nagar,
Shahdara, Delhi – 110032**

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1. Background

The Govt. of India has notified Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, as amended thereof, (herein after called as HOWM Rules, 2016) for the safe and environmentally sound management of hazardous and other wastes. The Rules lay down provisions for storage, packaging, transportation, recycling, utilization, pre-processing, co-processing, treatment, import, export, offering for sale, transfer or disposal, etc. of the hazardous and other wastes (“hazardous waste” and “other wastes” have been defined under the said Rules).

Enforcement of the HOWM Rules, 2016, would ensure safe and environmentally sound handling and management of hazardous and other wastes. The State Pollution Control Boards (SPCBs)/Pollution Control Committees (PCCs) have been entrusted with duty to ensure compliance of the various provisions stipulated under the Rules through monitoring and taking of actions against defaulters as per Rule 21 of the Rules.

In order to remove ambiguity in regulatory actions as well as bring transparency, predictability and consistency in enforcement for actions, it is felt to develop an enforcement framework for effective implementation of these Rules based on principle of proportionality and precautionary principle. These guidelines have, therefore, been prepared with the said objectives.

This framework includes various enforcement tools, tracking of Non-compliances, categorization of non-compliances and approach for application of the said enforcement tools in cases of non-compliances of the HOWM Rules, 2016.

2. Salient Features of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 Pertaining to Occupiers

Occupier of any factory or premises as defined under Rule 3(1)(21) of the Rules, *means a person who has, control over the affairs of the factory or the premises and includes in relation to any hazardous and other wastes, the person in possession of the hazardous or other waste.*” It is responsibility of the occupier for safe and environmentally sound management of hazardous and other wastes as stipulated under Rule 4 of the HOWM Rules, 2016.

The occupier is required to obtain authorisation from the concerned SPCB/PCC for handling, generation, collection, storage, packaging, transportation, use, treatment, processing, recycling, recovery, pre-processing, co-processing, utilisation, offering for sale, transfer or disposal of the hazardous and other wastes and shall carry out the same as per the authorisation granted and provisions stipulated under the HOWM Rules, 2016. The occupier is also required to maintain records and manifests and submit annual returns as stipulated under the Rules. The Rules also lays down provisions for import and export of hazardous and other wastes for the purpose of recycling/recovery/reuse/utilisation.

3. Enforcement tools

(a) Issuance of directions for closure or stoppage of electricity or water supply or any other services

HOWM Rules, 2016, have been notified under the Environment (Protection) Act, 1986, and section 5 of the Act empowers Central Government to issue directions to any person, officer or any authority for closure, prohibition or regulation of any industry, operation or process; or stoppage or regulation of the supply of electricity or water or any other service and such person, officer or authority shall be bound to comply with such directions.

The Central Government in exercise of powers conferred under section 23 of the Environment (Protection) Act, 1986, has delegated the above powers under section 5 of the said Act to the Chairmen of SPCBs/PCCs and CPCB, vide various notifications by. Copies of such notifications of delegation of powers to Chairman of SPCBs/PCCs is given at **Annexure I** for ready reference. Therefore, SPCBs/PCCs and CPCB too have the powers conferred under the aforesaid section 5 of the Act.

Procedures of issuing the aforesaid directions under section 5 of the Environment (Protection) Act, 1986, including opportunity or no opportunity of being heard, have been laid down under Rule 4 of the Environment (Protection) Rules, 1986, notified by the Central Government under the Environment (Protection) Act, 1986.

(b) Imposition of liability for damages caused to the environment or third party including financial penalty for violation of provisions under HOWM Rules, 2016

The HOWM Rules, 2016, lays down provisions with regard to liability for damages caused to the environment or third party including financial penalty for violation of provisions of the Rules under Rule 23 of the said Rules.

CPCB has issued “Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty” for implementing the aforesaid provisions of Rule 23. The guidelines include description of liabilities, approach for valuation of the same, methodology for levying financial penalty, role of SPCB/PCC and other stakeholders etc. SPCBs/PCCs are required to follow procedures laid down under these guidelines while enforcing the aforesaid provisions of Rule 23. Copy of the said guidelines is available at CPCB website i.e https://cpcb.nic.in/uploads/hwmd/Guidelines_Environmental_Damages_Costs_200116.pdf.

(c) Imposition of Environmental Compensation

The Hon’ble National Green Tribunal, Principal Bench, New Delhi through its various orders has directed the regulatory authorities (i.e CPCB/SPCBs/PCCs) to assess and recover the environmental compensation for the damages caused

to the environment apart from prohibiting the polluting activities or prosecution so as to render polluting activities to be unprofitable.

Relevant text of various orders of the Hon'ble National Green Tribunal in this regard is given at **Annexure II** for ready references.

CPCB in compliance with orders dated 12/4/2019 of the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in the matter of Original Application No. 804/2017 (Earlier O.A. No. 36/2012) With M.A. No. 1302/2018 in Interlocutory Application No. 63 in W. P. (C) No. 657/199 (Rajiv Narayan & Anr Versus Union of India & Ors. With The Research Foundation for Science, Technology and Natural Resource Policy Versus Union of India & Ors.), has prepared and submitted document on "Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016". Copy of the same is available at <https://cpcb.nic.in/NGTMC/HW/Deter-EnvComp-Recovered-Vio-HOWMRules-2016.pdf>

(d) Prosecution for imprisonment with fine

Section 15 of the Environment (Protection) Act, 1986, lays provisions of punishment with imprisonment including fine in case of failure to comply with or contravenes any of the provisions of the Act, or the rules made or orders or directions issued thereunder.

Section 19 of the Environment (Protection) Act, 1986, stipulates about cognizance of the offence to be taken by the Hon'ble Court on complaint made by Central Government or any authority or officer authorised in this behalf by that Government. The said section 19 is reproduced as below:

The Central Government has authorised various authorities and officers for the purpose along with the jurisdiction vide notifications under the said Act and compiled copy of the same is given at **Annexure III**. The authorised authorities and officers require to file complaint for the said offence in the District Court.

*Relevant abstract of the Environment (Protection) Act, 1986; Environment (Protection) Rules, 1986 and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 is given at **Annexure-IV** for ready reference.*

4. Monitoring/Tracking of Non-compliances

(a) Through technology interventions:

Most of the provisions stipulated under the HOWM Rules 2016 applicable to hazardous and other wastes handlers (such as quantity of wastes generation, day wise record maintenance of waste generation & its storage, wastes sent to authorised recyclers/utilizers/pre-processors/co-processors/disposal facility operators, waste movement manifest documents & their reconciliation, etc.) can be tracked with application of information technology.

A suitable software with features of entering the data by waste handlers w.r.t. day wise record maintenance, manifest document, etc. as stipulated under the

HOWM Rules 2016, may be developed which can easily trace non-compliances so as to enable SPCBs/PCCs in identifying/tracking and acting upon the same. Further, camera at the facility and GPS based movement of hazardous or other wastes linked to the said software may also be very helpful in identifying violations.

Central Pollution Control Board is in process of developing such software. However, till such software is developed, SPCBs/PCCs may develop their own system with suitable information technology based application for identifying non-compliances and enforcing provisions stipulated under the regulations.

(b) Through Filed Investigation

Inspection of hazardous and other waste handling units is important tool to verify if such units are practicing environmentally safe waste management practices, complying with various conditions laid down under the authorization granted by SPCBs/PCCs and the HOWM Rules 2016, etc. Verification of various documents like manifest documents, annual returns, etc. submitted by the units shall also be taken into account while enforcing HOWM Rules. Following may be adopted for monitoring the compliances of HOWM Rules, 2016, in case of hazardous and other waste handling units:

(i) Periodic inspections

The hazardous and other waste generating units shall be inspected periodically and actions shall immediately be taken for violations, if any.

Selection of hazardous and other waste handling units for the aforesaid inspection may be carried out with the help of technology for fair selection. In this regard, a simple software may be developed featuring list of all the waste generators.

(ii) Frequent monitoring of units engaged in waste collection/ recycling/ utilization/ pre-processing/ co-processing/ disposal and import of wastes

Units engaged in recycling/utilization/pre-processing/ co-processing/disposal, are involved in handling of wide range of wastes from different industries and therefore needs to be closely monitored through frequent inspection of such units.

Such waste collection/recycling/utilization/pre-processing/ co-processing/ and importer of hazardous and other wastes may require inspection/ monitoring by SPCBs/PCCs preferably once in 03 months, whereas, common TSDFs may be inspected once in a month.

(iii) Random verification in case of interstate movement of hazardous and other wastes

Hazardous and other wastes are often transported to other State/UT for recycling/ utilization/ pre-processing/ co-processing/disposal. Random verification of waste reaching to such facilities in other State/UT shall be

carried out by both the SPCBs/PCCs (sender and receiver State/UT). Further, SPCB/PCC (of receiving waste) shall also check accounting of wastes received by such facilities and also ensure they do not exceed their authorised waste handling capacity.

(iv) Investigation of Complaints

Any complaint related to hazardous and other waste shall be examined properly and depending upon nature of complaint a thorough investigation shall be done so as to identify non-compliances, if any.

(v) Sampling & Monitoring in case of accidental or illegal discharge/disposal or fire of hazardous and other wastes for fixing liability and financial penalty

Accidental or illegal discharge/disposal or fire of hazardous and other wastes may often lead to air/water (surface or ground water)/soil contamination. In such incidences, proper sampling & analysis are required to be carried out by SPCBs/PCCs, as outlined in the aforesaid “Guidelines for Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty” published by CPCB, which would be helpful in imposing appropriate liability and financial penalty, as applicable.

5. Categorization of Violations

For the purpose of imposing financial penalty and environmental compensation, various violations of HOWM Rules, 2016, can be broadly classified into the following two categories:

A. Category A: Only procedural violations of HOWM Rules, 2016, which has not caused damage to environment or third party

Certain violations of HOWM Rules, 2016, are procedural violations in nature and do not cause any damage to environmental or third party.

For instance, non-submission of annual return within the stipulated time period to SPCB/PCC (as required under Rule 20(2) of the Rules), non-maintenance of records (as required under Rule 20 (1) of the Rules) no prior intimation to SPCB of the States of transit in case of inter-state movement (as required under Rule 18(5) of the Rules, 2016), etc. by the authorised occupier. In such cases, though there have been violations of provisions of the Rules which are procedural requirements in nature but has not caused damaged to the environment. However, financial penalty would be applicable in such cases for violations of each and every relevant provision of the HOWM Rules, 2016, as outlined under section 7 of this document.

B. Category B: Violations causing environmental damage including procedural violations

Enforcement Framework for Effective Implementation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

These are violations of the HOWM Rules, 2016, causing environmental damages including procedural violations of the Rules. The same may further be classified into two categories as below:

(i) Category B1: Cases where mismanagement of hazardous or other waste has resulted or resulting into environmental damage and such damages liability including assessment of remediation required can be assessed in terms of cost also by applying provisions laid down under CPCB's "Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty".

For example, disposal of hazardous or other waste on land or surface/ground water by an occupier, operator, transporter, importer, exporter, etc. as the case may be, has been identified by SPCB/PCC and damages to the environment and remediation work as well as cost thereof can also be assessed by SPCB/PCC in accordance with the said guidelines.

In such cases, liability of the responsible party (occupier, operator, transporter, importer, exporter, etc., as the case may be) can be fixed in terms of various required activities and amount of money required in such activities (i.e. taking up immediate Emergency Response Plan Measures such as containment of hazardous or other waste; assessment of contamination and required remediation work, and; execution of selected remediation plan) in accordance with provisions laid down under the said CPCB's "Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty"¹. The responsible party (occupier, operator, transporter, importer, exporter, etc., as the case may be) is required to pay bank guarantee to SPCB/PCC and compensation liability (loss of property, loss of crop, loss of life, treatment cost towards human health impacts, etc.) as suggested in the guidelines.

Besides above liability, financial penalty would also be imposed as given under section 7 of this document.

¹ https://cpcb.nic.in/uploads/hwmd/Guidelines_Environment_Damages_Costs_200116.pdf

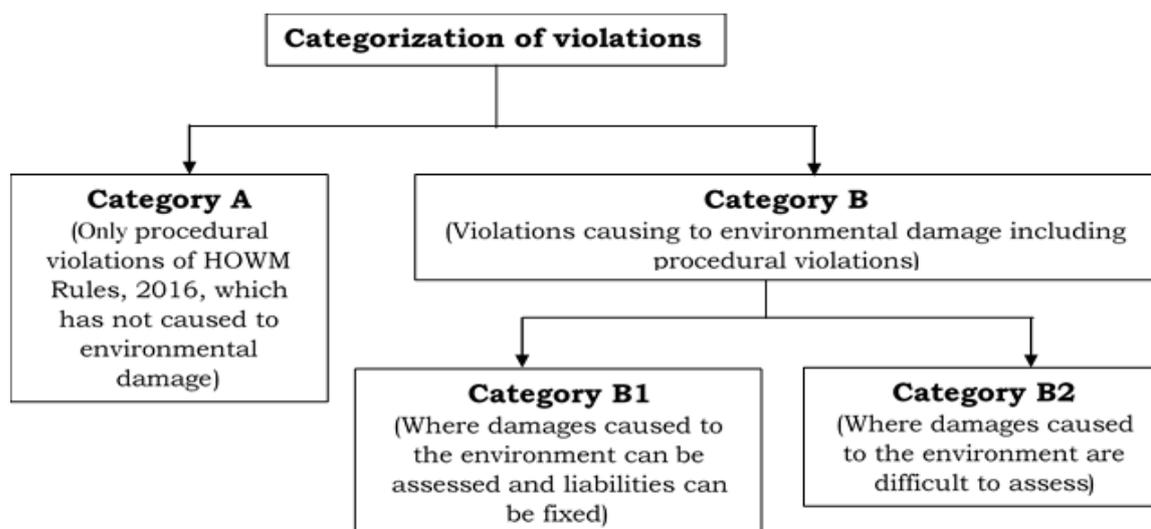


Figure1: Categorization of violations

- (ii) **Category B2:** Cases where mismanagement of hazardous or other waste may have caused environmental damage and such damages & remediation required including cost thereof are difficult to assess.

For example, an authorised occupier, operator, transporter, importer, exporter, etc., as the case may be, of hazardous or other wastes has illegally disposed hazardous or other waste on place which is unidentifiable or even if identified, damages to the environment and remediation work as well as cost thereof is difficult to be assessed by SPCB/PCC. Such difficulty may arise due to very small quantity of wastes involved in such acts, wastes disposed along with municipal solid waste, wastes may have been washed off with runoff water, etc. In such cases, it may be difficult to assess damages caused to the environment and liability of the responsible party (occupier, operator, transporter, importer, exporter, etc., as the case may be) as well as cost thereof.

Under such circumstances, methodology for imposing financial penalty and environmental compensation may be followed as outlined in section 7 of this document.

6. Approach for Application of Enforcement Tools

Approach for application of enforcement tool among the available tools (as outlined in section 3 of this document) may be linked to nature of violations. Accordingly, the following approach for application of enforcement tools may be used:

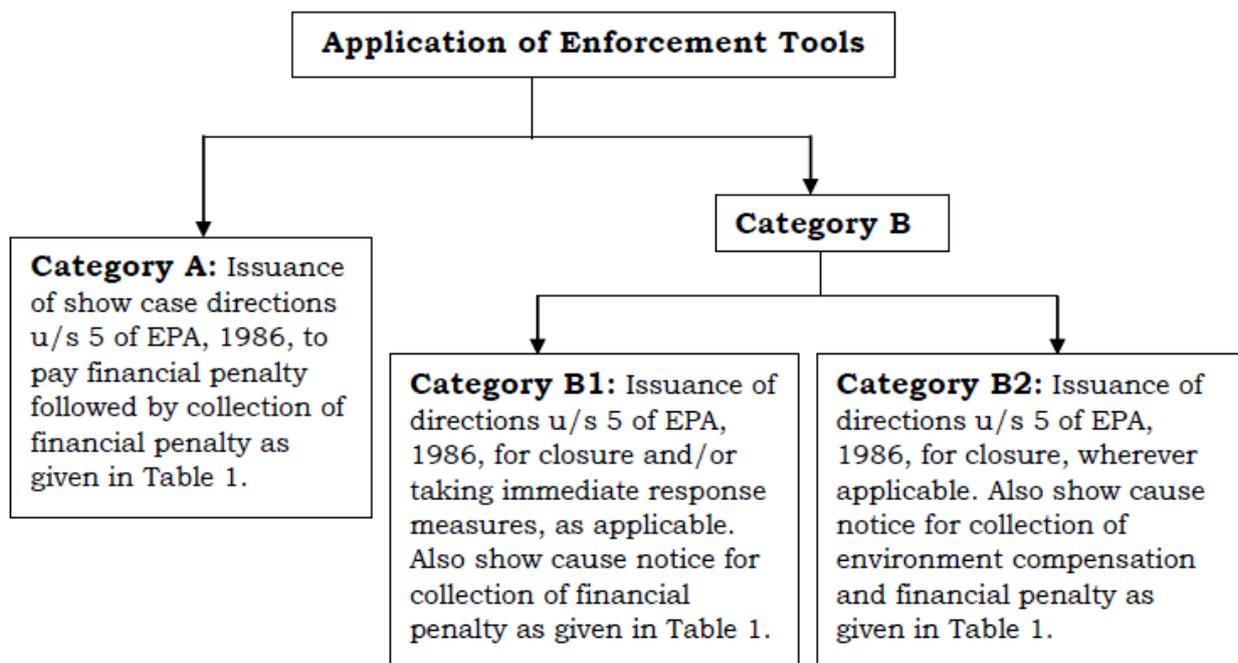


Figure 2: Approach for application of enforcement tools in brief

Detailed approach for application of various enforcement tools (as given in section 3 of this document) vis-à-vis category of violations has been given in Table 1 below:

Table 1: Category of violations and Enforcement Tools

Sl. No.	Category of Violations	Enforcement Tools
1.	Category A (as described in section 5 of this document)- Only procedural violations of HOWM Rules, 2016, which has not caused to environmental damage or third party.	Directions to show-cause u/s 5 of the EPA, 1986, about why financial penalty be not levied outlining various procedural violations observed by SPCB/PCC/CPCB. This shall be followed by directions to pay financial penalty on each of such violations after considering objections, if any, in response of such notice. The penalty amount be derived as outlined in the guidelines ² prepared by CPCB in this regard. In case of non-submission of financial penalty within stipulated

² "Guidelines on Implementing Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty" which has been circulated to all SPCBs/PCCs and copy is also available at CPCB website https://cpcb.nic.in/uploads/hwmd/Guidelines_Environmental_Damages_Costs_200116.pdf

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Sl. No.	Category of Violations		Enforcement Tools
			time period, deterrent amount to be imposed and action be initiated as per the CPCB document ³ .
2.	<p>Category B (as described in section 5 of this document) - Violations causing to environmental damage including procedural violations</p>	<p>Category B1: Cases where mismanagement of hazardous or other waste has resulted or resulting into environmental damage and such damages including assessment of remediation required can be assessed.</p>	<p>The unit may be directed u/s 5 of the EPA, 1986, without any opportunity of being heard to:</p> <p>(i) take up immediate Emergency Response Plan Measures such as containment of hazardous or other waste, assess damages and execute remediation plan along with submission of bank guarantee, as outlined in CPCB guidelines¹, as the case may be, and;</p> <p>(ii) close industrial or other activities, in cases where there is likelihood of a grave injury to the environment due to continued industrial or other activities.</p> <p>Besides above, collection and imposition of financial penalty for violation of various provisions of the HOWM Rules, 2016, as outlined above for Category A violation shall be followed including imposition of deterrent amount in case of non-timely submission of financial penalty.</p> <p>In case unit fails to comply with the directions, the unit shall be closed and cases be filed u/s 15 of the EPA, 1986, wherever applicable.</p>
		<p>Category B2: Cases where mismanagement of hazardous or other</p>	<p>In cases where there is likelihood of a grave injury to the environment due to continued industrial or other activities, the unit may be directed</p>

³ "Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016", and copy of the same is available at <https://cpcb.nic.in/NGTMC/HW/Deter-EnvComp-Recovered-Vio-HOWMRules-2016.pdf>

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Sl. No.	Category of Violations	Enforcement Tools
	waste may have caused or causing environmental damage and such damages & remediation required is difficult to assess	<p>u/s 5 of the EPA, 1986, to close such industrial or other activities without any opportunity of being heard.</p> <p>For imposing and collecting financial penalty for violation of various provisions of the HOWM Rules, 2016, similar procedure as outlined above for Category A violation shall be followed.</p> <p>In addition to the above financial penalty, Environment Compensation (EC) towards the damages caused to the environment shall also be imposed as per the CPCB document³ including deterrent amount for non-timely submission of the EC as per the said document.</p> <p>In case unit fails to comply with the directions, the unit shall be closed.</p>
3.	Repeated Violations despite imposing liability/environmental compensation and financial penalty or directions or both	<p>Authorisation of the habitual and repeated violators of Category A be cancelled and the unit be closed u/s 5 of the EPA. Whereas in addition to the said actions, case be filed u/s 15 of the EPA, 1986, in case of habitual and repeated Category B violators.</p> <p>Further, the deterrent amount of EC and financial penalty be imposed in case of such repeated violators as per the CPCB document³</p>

³ "Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016", and copy of the same is available at <https://cpcb.nic.in/NGTMC/HW/Deter-EnvComp-Recovered-Vio-HOWMRules-2016.pdf>

³ "Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016", and copy of the same is available at <https://cpcb.nic.in/NGTMC/HW/Deter-EnvComp-Recovered-Vio-HOWMRules-2016.pdf>

Apart from above category of violations vis-à-vis enforcement tools, following scenarios may also be considered alongwith enforcement tools to be adopted:

- The occupiers not displaying relevant information about hazardous waste outside their factory gate (as directed by the Hon'ble Supreme Court vide orders dated 14/10/2003 in the matter of WP NO. 657/1995; Research Foundation for Science Technology and National Resource Policy Versus Union of India & Anr) - Issue show cause or be close down under section 5 of the Environment (Protection) Act, 1986,
- The occupier handling significant quantity of hazardous waste and has not applied for authorization for such wastes- Issue closure directions along with environmental compensation for damages caused to the environment. In case such unit does not close its unit or does not deposit the environmental compensation, as directed, proceedings under section 15 of the Environment (Protection) Act, 1986, be initiated.

7. Assessment of Financial Penalty and Environmental Compensation

In compliance with orders dard 12/4/2019 of the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in the matter of Original Application No. 804/2017 (Earlier O.A. No. 36/2012) With M.A. No. 1302/2018 in Interlocutory Application No. 63 in W. P. (C) No. 657/199 (Rajiv Narayan & Anr Versus Union of India & Ors. With The Research Foundation for Science, Technology And Natural Resource Policy Versus Union of India & Ors.), CPCB has prepared and submitted document on "Determination of Environmental Compensation to be recovered for violation of Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016", Copy of the same is available at <https://cpcb.nic.in/NGTMC/HW/Deter-EnvComp-Recovered-Vio-HOWMRules-2016.pdf>

For calculating environmental compensation pertaining to Category B2 violations (as described in section 5 of this document), methodology as outlined in aforesaid CPCB document shall be followed. Further, the financial penalty as outlined in the aforesaid document may be followed including the imposition of deterrent amount for non-timely submission of Environmental Compensation and Financial Penalty.

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**DELEGATION OF POWERS TO THE STATE POLLUTION
CONTROL BOARDS/POLLUTION CONTROL COMMITTEES**

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 8th January, 1997

S.O. 23(E).- In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under Section 5 of the said Act to the Chairman, State Pollution Control Boards/Committees as given in the Table below, to issue directions to any industry or any local or other authority for the violations of the standards and rules relating to hazardous wastes notified under the Environment (Protection) Act, 1986, subject to the conditions that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government such a course of action is necessary in the public interest:-

TABLE

Sl. No.	Name of Board/Committee	Jurisdiction
1	2	3
1.	Andhra Pradesh State Pollution Control Board	Whole of State
2.	Arunanchal Pradesh State Pollution Control Board	Whole of State
3.	Assam State Pollution Control Board	Whole of State
4.	Bihar State Pollution Control Board	Whole of State
5.	Goa State Pollution Control Board	Whole of State
6.	Gujarat State Pollution Control Board	Whole of State
7.	Haryana State Pollution Control Board	Whole of State
8.	Himachal Pradesh State Pollution Control Board	Whole of State
9.	Jammu & Kashmir State Pollution Control Board	Whole of State
10.	Karnataka State Pollution Control Board	Whole of State
11.	Kerala State Pollution Control Board	Whole of State
12.	Maharashtra State Pollution Control Board	Whole of State

13.	Madhya Pradesh State Pollution Control Board	Whole of State
14.	Manipur State Pollution Control Board	Whole of State
15.	Meghalaya State Pollution Control Board	Whole of State
16.	Mizoram State Pollution Control Board	Whole of State
17.	Nagaland State Pollution Control Board	Whole of State
18.	Orissa State Pollution Control Board	Whole of State
19.	Punjab State Pollution Control Board	Whole of State
20.	Rajasthan State Pollution Control Board	Whole of State
21.	Sikkim State Pollution Control Board	Whole of State
22.	Tamil Nadu State Pollution Control Board	Whole of State
23.	Tripura State Pollution Control Board	Whole of State
24.	Uttar Pradesh State Pollution Control Board	Whole of State
25.	West Bengal State Pollution Control Board	Whole of State
26.	Committee, Andaman & Nicobar Union Territory	Whole of U.T.
27.	Committee, Chandigarh Union Territory	Whole of U.T.
28.	Committee, Dadra & Nagar Haveli Union Territory	Whole of U.T.
29.	Committee, Daman & Diu Union Territory	Whole of U.T.
30.	Committee, National Capital Territory of Delhi	Whole of N.C.T.
31.	Committee, Lakshadweep Union Territory	Whole of U.T.
32.	Committee, Pondicherry Union Territory	Whole of U.T.

[No.1(35)/96-PL]
VIJAY SHARMA, Jt. Secy.



भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 944]
No. 944]नई दिल्ली, बुधवार, नवम्बर 3, 2004/कार्तिक 12, 1926
NEW DELHI, WEDNESDAY, NOVEMBER 3, 2004/KARTIKA 12, 1926

पर्यावरण और वन मंत्रालय

अधिसूचना

नई दिल्ली, 2 नवम्बर, 2004

का.आ. 1211(अ).—केन्द्रीय सरकार, पर्यावरण (संरक्षण) अधिनियम, 1986 (1986 का 29) की धारा 23 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम की धारा 5 के अधीन उसमें निहित शक्तियों को पर्यावरण (संरक्षण) अधिनियम, 1986 के अधीन अधिसूचित परिसंकटमय अपशिष्ट से संबंधित मानकों और नियमों के अतिक्रमण के लिए किसी उद्योग या किसी स्थानीय या अन्य प्राधिकरण को निदेश जारी करने की शक्ति, इन शक्तों के अधीन रहते हुए नीचे सारणी में दिए गए अनुसार अध्यक्ष, राज्य प्रदूषण नियंत्रण बोर्डों को, प्रत्यायोजित करती है कि यदि केन्द्रीय सरकार की यह राय है कि इस प्रकार की कार्यवाही करना लोकहित में आवश्यक है, केन्द्रीय सरकार शक्तियों के ऐसे प्रत्यायोजन को प्रतिसंहत कर सकेगी या वह स्वयं उक्त अधिनियम की धारा 5 के उपबंधों का अवलंब ले सकेगी :—

सारणी

क्रम सं.	बोर्डों के नाम	अधिकारिता
1	2	3
1.	छत्तीसगढ़ पर्यावरण संरक्षण बोर्ड	सम्पूर्ण राज्य
2.	झारखंड प्रदूषण नियंत्रण बोर्ड	सम्पूर्ण राज्य
3.	उत्तरांचल पर्यावरण संरक्षण और प्रदूषण नियंत्रण बोर्ड	सम्पूर्ण राज्य

[सं. 1(35)/96-पी.एल.]

सुधीर मित्तल, संयुक्त सचिव

MINISTRY OF ENVIRONMENT AND FORESTS

NOTIFICATION

New Delhi, the 2nd November, 2004.

S.O. 1211(E).—In exercise of the powers conferred by Section 23 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby delegates the powers vested in it under Section 5 of the said Act to the Chairman,

3289 GU/2004

(1)

State Pollution Control Boards, as given in the Table below, to issue directions to any industry or any local or other authorities for the violations of the standards and rules relating to hazardous wastes notified under the Environment (Protection) Act, 1986, subject to the conditions that the Central Government may revoke such delegation of powers or may itself invoke the provisions of Section 5 of the said Act, if in the opinion of the Central Government, such a course of action is necessary in the public interest:—

TABLE

S.No.	Name of the Boards	Jurisdiction
1	2	3
1.	Chhattisgarh Environment Conservation Board	Whole of State
2.	Jharkhand Pollution Control Board	Whole of State
3.	Uttaranchal Environment Protection and Pollution Control Board	Whole of State

[No. 1(35)/96-PL]

SUDHIR MITAL, Jt. Secy.

Various orders of the Hon'ble National Green Tribunal to the regulatory authorities (i.e CPCB/SPCBs/PCCs) to assess and recover the environmental compensation for the damages caused to the environment

- (i) In the matter of OA No. 95/2018 (M.A. Vo. 1029/2018): Aryavart Foundation Vs. M/s Vapi Green Enviro Ltd. & Ors, vide orders dated 11/01/2019 has passed the following orders:

"... (25) This was considered in the recent order of the Tribunal (by four Member Bench) in Paryavaran Suraksha Samiti and Anr. Vs. Union of India & Ors.⁴, Parveen Kakar & Ors. Vs. Ministry of Environment & Forests & Ors.⁵ and in News Item published in "The Asian Age" Authored by Sanjay Kaw titled "CPCB to rank industrial units on pollution levels"⁶ wherein this Tribunal held that:

"11. Needless to say that it will be open to the SPCBs/Committees and CPCB to take coercive measures including recovery of compensation for the damage to the environment on 'Polluter Pays' principle as well as also to direct taking of such precautionary measures as may be necessary on the basis of 'Precautionary principle'."

- (ii) In the matter of OA No. 593/2017 (WP (Civil) No. 375/2012): Parayavaran Suraksha Samiti & Anr. Vs. Union of India & Ors., vide orders dated 03/08/2018 has passed the following orders:

"... (vi) The Central Pollution Control Board may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs Central Pollution Control Board may also assess and recover compensation for damage to the environment and the said fund be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the Central Pollution Control Board within three months from today..."

- (iii) In the matter of OA No. 807/2018 and OA No. 996/2018: News item published in "The Times of India" Authored by Paras Singh Titled "Ignoring NGT orders, Mayapuri 'graveyard' spews toxic fumes" and News item published in "The Times of India" Authored by Paras Singh Titled "In factory setting, Mayapuri's scraping through" vide orders dated 29/01/2019 has passed the following orders:

"...Thus, strong precautionary and remedial measures are required, as earlier observed by this Tribunal in some cases⁷. Heavy amounts of damages must be recovered for any illegal polluting activities found. In the present case, despite severely polluting activities, the statutory authorities are consistently failing to perform their duties of recovering damages caused to the public health and to environment and have chosen to shut their eyes in breach of trust reposed by law..."

- (iv) In the matter of OA No 739/2018: Residents of Gram Panchayat Varahiya versus State of M.P, the Hon'ble National Green Tribunal, Principal Bench, New Delhi, in its order dated 21.02.2019

⁴ O.A. No. 593/2017 Order dated 03.08.2018: The Tribunal directed CPCB to take penal action against those accountable for failure in setting up CETPs/ETPs/STPs and to recover compensation for damage to the environment.

⁵ O.A. No. 661/2018, Order dated 08.01.2019: The Tribunal stated that the Pollution Control Board had failed to perform its duties in taking statutorily mandated coercive measures under Section 31A of the Air (Prevention and Control of Pollution) Act, 1981 and 33B of the Water (Prevention and Control of Pollution) Act, 1974 or initiating prosecution. This Tribunal directed CPCB to exercise its statutory powers to determine and recover damages for violation of environmental norms by the respondent therein.

⁶ O.A. No. 1038/2018, Order dated 13.12.2018.

⁷ O.A. No. 681/2018, O.A.No. 400/2017, order dated 02.11.2018: wherein the Tribunal directed the authorities to take immediate steps to stop activities that are contributing to the pollution and prepare action plan.

has referred to the various orders of the Hon'ble Tribunal pertaining to recover compensation for the damages caused to the environment. The same is reproduced as below:

"...7) Form the above, it is clear that inspite of fact that the stone crushers have been found to be operating illegally, no compensation has been assessed and recovered for causing damage to the environment by illegally activities. As laid down by this Tribunal repeatedly⁸, the Regulatory Authorities are not only required to prohibit illegal polluting activities but they are also required to recover compensation for the damage caused apart from prosecution or other steps so as to render polluting activities to be unprofitable. Failure to do so many call for action against the regulatory authorities themselves..."

"...7) the Regulatory Authorities are not only required to prohibit illegal polluting activities but they are also required to recover compensation for the damage caused apart from prosecution or other steps so as to render polluting activities to be unprofitable. Failure to do so many call for action against the regulatory authorities themselves..."

⁸ Order dated 04.01.2019 in Threat to life arising out of coal mining in south garo hills district v. State of Meghalaya & Ors., OA No. 110(THC)/2012, Order dated 11.01.2019 in Aryavrat Foundation Vs M/s Vapi Green Enviro Ltd. & Ors., O.A. No. 95/2018, Order dated 16.01.2019 in Compliance of Municipal Solid Waste Management Rules, 2016, OA No. 606/2018, Order dated 24.01.2019 in Mayank Manohar & Paras Singh, Reporter Times of India v. Govt. of NCT of Delhi & Ors., OA No. 601/2018.

**OFFICERS AUTHORISED FOR TAKING COGNIZANCE OF OFFENCES
NOTIFICATION**

S.O. 394(E).-In exercise of the powers conferred under clause (a) of section 19 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby authorises the officers and authorities listed in column (2) of the Table hereto for the purpose of the said section with the jurisdiction mentioned against each of them in column (3) of that Table:

TABLE

Serial No	Officer	Jurisdiction
(1)	(2)	(3)
1.	Any Director, Joint Secretary, Adviser or Additional Secretary to the Government of India in the Department of Environment, Forests and Wildlife,	Whole of India
2.	The Chairman or Member-Secretary of the Central Pollution Control Board constituted under section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974).	Whole of India
3	The Government of the State (represented by the Secretary to the State Government incharge) of environment.	Whole of State
4	The Chairman or Member-Secretary of the State Pollution Control Board constituted under section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or a State Pollution Control Board constituted under section 5 of the Air (Prevention and Control of Pollution) Act, 1981(14 of 1981).	Whole of State
5.	Collector.	Whole of Revenue District
6.	Zonal Officers of the Central Pollution Control Board who have been delegated powers under sections 20,21,23 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and section 24 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981).	Area as laid down by the Central Board

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|-------------------|---|---|
| 7. | Regional Officers of the State Pollution Control Board who have been delegated powers under section 20, 21 and 23 of the Water (Prevention and Control of Pollution) Act, 1974. | Area as laid down by the State Board |
| 8. | Regional Officers of the State Pollution Control Board who have been delegated powers under section 24 of the Air (Prevention and Control of Pollution) Act, 1981. | Area as laid down by the State Board |
| ¹ [9. | Any Regional/Zonal Officers or a Director in charge of a Region/Zone of the Ganga Project Directorate. | Zonal/Regional area as laid down by the Ganga Project Directorate |
| 10 | Any Deputy Secretary, Director, Joint Secretary or Additional Secretary to the Government of India in the Ganga Project Directorate. | Whole of the State in which the Ganga Action Plan is under implementation] |
| ² [11. | Joint Secretary (:Legal) in the Department of Environment., Forests and Wildlife, Ministry of Environment & Forests, New Delhi – 110003. | Whole of India] |
| ³ [12 | Chairman or Member Secretary of the Committee notified under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 in respect of Union Territories. | Whole of Union Territory] |
| ⁴ [13 | Seed Inspector(s) | Area(s) as laid down by the respective State Govts. in the Notification issued under Clause 12 of the Seeds Controller Order, 1983] |

Note : Principal Notification No. S.O. 394(E), published in Gazette No. 185, dt.16.4.1987. Nos. 9 and 10 and entries relating thereto inserted vide S.O.237(E), dt.29.3.89 published in the Gazette No. 171, dt.29.3.89. S.N. 11 and entries relating thereto inserted vide S.O.656(E), dt.24.8.1989 published in the Gazette No.519, dt. 21.8.1989

¹ Inserted by S.O.237(E), dated 29.3.1989.

² Inserted by S.O.656(E), dated 21.8.1989.

³ Inserted by Notification S.O.624(E), dated 3.9.1996.

⁴ Inserted by Notification G.S.R.587(E), dated 1.9.2006

Annexure-IV

Relevant Abstract of Environment (Protection) Act, 1986; Environment (Protection) Rules, 1986 and Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016

➤ **Environment (Protection) Act, 1986 –**

"Section 5. POWER TO GIVE DIRECTIONS

Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.³

Explanation--For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct--

- (a) the closure, prohibition or regulation of any industry, operation or process; or*
- (b) stoppage or regulation of the supply of electricity or water or any other service".*

"15. PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT AND THE RULES, ORDERS AND DIRECTIONS

- (1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.*
- (2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years."*

"19. COGNIZANCE OF OFFENCES

No court shall take cognizance of any offence under this Act except on a complaint made by:

- (a) the Central Government or any authority or officer authorised in this behalf by that Government,²⁰ or*
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid."*

➤ **Environment (Protection) Rules, 1986**

"4. Directions

- (1) Any direction issued under section 5 shall be in writing.*
 - (2) The direction shall specify the nature of action to be taken and the time within which it shall be complied with by the person, officer or the authority to whom such direction is given.*
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(3) (a) The person, officer or authority to whom any direction is sought to be issued shall be served with a copy of the proposed direction and shall be given an opportunity of not less than fifteen days from the date of service of a notice to file with an officer designated in this behalf the objections, if any, to the issue of the proposed direction.

(b) Where the proposed direction is for the stoppage or regulation of electricity or water or any other service affecting the carrying on any industry, operation or process and is sought to be issued to an officer or an authority, a copy of the proposed direction shall also be endorsed to the occupier of the industry, operation or process, as the case may be and objections, if any, filed by the occupier with an officer designated in this behalf shall be dealt with in accordance with the procedures under sub-rules (3a) and (4) of this rule:

Provided that no opportunity of being heard shall be given to the occupier if he had already been heard earlier and the proposed direction referred to in sub-rule (3b) above for the stoppage or regulation of electricity or water or any other service was the resultant decision of the Central Government after such earlier hearing.⁹

(4) The Central Government shall within a period of 45 days from the date of receipt of the objections, if any or from the date up to which an opportunity is given to the person, officer or authority to file objections whichever is earlier, after considering the objections, if any, received from the person, officer or authority sought to be directed and for reasons to be recorded in writing, confirm, modify or decide not to issue the proposed direction.

(5) In case where the Central Government is of the opinion that in view of the likelihood of a grave injury to the environment it is not expedient to provide an opportunity to file objections against the proposed direction, it may, for reasons to be recorded in writing, issue directions without providing such an opportunity.

(6) Every notice or direction required to be issued under this rule shall be deemed to be duly served

(a) where the person to be served is a company, if the document is addressed in the name of the company at its registered office or at its principal office or place of business and is either-

(i) sent by registered post, or

(ii) delivered at its registered office or at the principal office or place of business;

(b) where the person to be served is an officer serving Government, if the document is addressed to the person and a copy thereof is endorsed to this Head of the Department and also to the Secretary to the Government, as the case may be, in-charge of the Department in which for the time being the business relating to the Department in which the officer is employed is transacted and is either-

(i) sent by registered post, or

(ii) given or tendered to him;

(c) in any other case, if the document is addressed to the person to be served and-

(i) is given or tendered to him, or

(ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business or is given or tendered to some adult

member of his family or is affixed on some conspicuous part of the land or building, if any, to which it relates, or

(iii) is sent by registered post to that person;

Explanation.-For the purpose of this sub-rule,-

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "a servant" is not a member of the family.

➤ ***Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016***

"23. Liability of occupier, importer or exporter and operator of a disposal facility.-

(1) The occupier, importer or exporter and operator of the disposal facility shall be liable for all damages caused to the environment or third party due to improper handling and management of the hazardous and other waste.

(2) The occupier and the operator of the disposal facility shall be liable to pay financial penalties as levied for any violation of the provisions under these rules by the State Pollution Control Board with the prior approval of the Central Pollution Control Board."
