

ACTION TAKEN REPORT

(as on 31.12.2003)

**on the
Directives of the Supreme Court of India
in the matter of W.P.(C) No. 657 of 1995
October 14, 2003.**



**MAHARASHTRA POLLUTION CONTROL BOARD
Kalptaru Point, Sion Circle, Sion (East)
Mumbai 400 022**

**GOVERNMENT OF MAHARASHTRA
DEPARTMENT OF ENVIRONMENT &
MAHARASHTRA POLLUTION CONTROL BOARD**

Subject: ACTION TAKEN REPORT, as on 31.12.2003

Reference: Orders of the Hon'ble Supreme Court of India, dated 14.10.2003 regarding management of hazardous wastes.

1.0 Background

The Hon'ble Supreme Court of India is considering a public interest litigation regarding management of hazardous wastes in India vide Civil Writ Petition no. 657 of 1995. As per the orders of the Supreme Court, the Government of India in the Ministry of Environment of Forests (MoEF), appointed a high powered Committee (HPC) in 1997 under the Chairmanship of Prof. M.G.K. Menon. The HPC submitted its final report to the Supreme Court in January 2001. The report is comprehensive and dealt with several aspects as given in the terms of reference (14 nos.) concerning several aspects related to the implementation of regulations and hazardous wastes management. The Court considered the recommendations contained in the HPC report and passed a detail order, dated 14.10.2003, directing the concerned authorities to take follow up action in a time bound manner. Further, the Court also appointed a Monitoring Committee, under the Chairmanship of Dr. G. Thayagarajan, to oversee the compliance of the directives issued by the Court. The Monitoring Committee is also required to submit quarterly report to the Court regarding action taken by all concerned.

This action taken report is submitted by Maharashtra Pollution Control Board (MPCB) indicating the follow up taken by MPCB, Maharashtra Industrial Development Corporation (MIDC) and the Environment Department, Government of Maharashtra.

2.0 Excerpts from the Court Order

Hazardous Wastes are highly toxic in nature. The industrialization has had the effect of generation of huge quantities of hazardous wastes. These and other side effects of development gave birth to principles of sustainable development so as to sustain industrial growth. The hazardous waste required adequate and proper control and handling. Efforts are required to be made to minimise it. In developing nations, there are additional problems including that of dumping of hazardous waste on their lands by some of the nations where cost of destruction of such waste is felt very heavy. These and other allied problems gave

birth to Basel Convention. The key objectives of the Basel Convention are:

“to minimize the generation of hazardous wastes in terms of quantity and hazardousness;
to dispose of them as close to the source of generation as possible;
to reduce the transboundary movement of hazardous wastes.”

2. Due to alarming situation created by dumping of hazardous waste, its generation and serious and irreversible damage, as a result thereof, to the environment, flora and fauna, health of animals and human beings, the petitioner approached this Court under Article 32 complaining of violation of Article 14 and 21 of the Constitution of India.

3. The petitioner has, inter-alia, relied upon the Basel Convention. The Basel Convention was signed by India on 15th March, 1990 and ratified on 24th June, 1992.

4. From time to time various affidavits have been filed in this matter by Ministry of Environment and Forests (for short MoEF) and Pollution Control Boards. The aspects that have been considered and reflected in various orders that have been passed and are further required to be considered and appropriate directions issued relate to the provisions of Hazardous Waste (Management and Handling) Rules, 1989 (for short H.W. Rules), the implementation of these Rules and other connected issues relating to hazardous waste. These Rules have been amended during pendency of this petition, the latest amendment being of 23rd May, 2003.

5. Considering the magnitude of the problem and the extent of hazardous waste generated, this Court issued notices to all the State Governments, Central Pollution Control Board and State Pollution Control Boards so as to identify the problem, identify the extent of such waste, availability of the disposal sites and various other aspects relevant to minimising the generation, its proper handling and disposal with a view to safeguard the environment degradation.

6. By order dated 5th May, 1997, this Court, inter alia, directed that no authorisation/permission would be given by any authority for the import of hazardous waste items which have already been banned by the Central Government or by any order made by any Court or any other authority and no import would be made or permitted by any authority or any person, of any hazardous waste which is already banned under the

Basel Convention or to be banned hereafter with effect from the dates specified therein. In view of the magnitude of the problem and its impact, the State Governments were directed to show cause why an order be not made directing closure of units utilising the hazardous waste where provision is not already made for requisite safe disposal sites. It was further ordered that cause be shown as to why immediate order be not made for closure of all unauthorised hazardous waste handling units.

7. We have extensively perused the record with the assistance of learned counsel. The material on record demonstrates that proper attention was not paid by the concerned authorities in implementing H.W. Rules, 1989. These Rules were amended with effect from 6th June, 2000 and further amended on 23rd May, 2003. The problem is not as much of absence of the Rules as it is of implementation. If the Rules are amended, but not implemented the same remain on paper. If H.W. rules as in 1989 had been properly implemented, the problem would not have been as grave as faced now. Likewise, if the Rules as amended in the year 2000 were implemented, the problem would not have been as grave as it is presently.

8. Our attention has been drawn by Mr. Parikh, learned counsel for the petitioner, to various orders that have been passed by this Court commencing from 19th October, 1995 till date, to various affidavits that have been filed on behalf of the MOEF, Central Pollution Control Board (CPCB) and others which substantially amount to an admission of the authorities about lack of various basics so as to handle the issue. One of the such elementary aspect is lack of correct information as to the extent of the hazardous wastes. At one stage it was represented that the total quantity of hazardous wastes generated in the Country was in the region of 2000 tonnes per day which worked out to be 0.7 million tonnes per year. At a later stage the figure rose to more than 4.4 million tonnes per year. This is just one illustration.

9. In the order dated 4th August, 1997 it was observed that all State Governments have not taken steps required under the applicable laws as well as earlier directions of the Court and have not placed before the Court all material facts inspite of considerable time having been given. It has been further observed that all the authorities do not appear to appreciate the gravity of situation and need for prompt measures being taken to prevent serious adverse consequences. Even Central Government was not given full information by all the State Governments about the compliance of the directions of this Court. Under these circumstances, it was observed that an appropriate Committee deserves to be constituted to ensure that needful is done to arrest further growth of the problem. Learned counsel for the petitioner and the learned Additional Solicitor General were requested to furnish

the names of suitable persons including experts who could be appointed to such Committee. In this background, by order dated 13th October, 1997 a High Powered Committee (HPC) with Prof. MGK. Menon as its Chairman was constituted to examine all matters in depth relating to hazardous waste and to give a report and recommendations at an early date. The fourteen Terms of Reference on which the High Powered Committee was required to give its report and recommendations are :

“(1) Whether and to what extent the hazardous wastes listed in Basel Convention have been banned by the Govt. and to examine which other hazardous wastes, other than listed in Basel Convention and Hazardous Wastes (Management and Handling) Rules, 1989, require banning.

(2) To verify the present status of the units handling hazardous wastes imported for recycling or generating/recycling indigenous hazardous wastes on the basis of information provided by respective States/UTs and determine the status of implementation of Hazardous Wastes (Management and Handling) Rules, 1989 by various States/UTs and in the light of directions issued by the Hon’ble Supreme Court.

(3) What safeguards have been put in place to ensure that banned toxic/hazardous wastes are not allowed to be imported.

(4) What are the changes required in the existing laws to regulate the functioning of units handling hazardous wastes and for protecting the people (including workers in the factory) from environmental hazards.

(5) To assess the adequacy of the existing facilities for disposal of hazardous wastes in an environmentally sound manner and to make recommendations about the most suitable manner for disposal of hazardous wastes.

(6) What is further required to be done to effectively prohibit, monitor and regulate the functioning of units handling hazardous wastes keeping in view the existing body of laws.

(7) To make recommendations as to what should be the prerequisites for issuance of authorisation/permission under

Rule 5 and Rule 11 of the Hazardous Wastes (Management and Handling) Rules, 1989.

(8) To identify the criteria for designation of areas for locating units handling hazardous wastes and waste disposal sites.

(9) To determine as to whether the authorisation/permissions given by the State Boards for handling hazardous wastes are in accordance with Rule 5(4) and Rule 11 of hazardous waste Rules, 1989 and whether the decision of the State Pollution Control Boards is based on any prescribed procedure of checklist.

(10) To recommend a mechanism for publication of inventory at regular intervals giving area-wise information about the level and nature of hazardous wastes.

(11) What should be the framework for reducing risks to environment and public health by stronger regulation and by promoting production methods and products which are ecologically friendly and thus reduce the production of toxics?

(12) To consider any other related area as the Committee may deem fit.

(13) To examine the quantum and nature of hazardous waste stock lying at the docks/ports/ICDs and recommend a mechanism for its safe disposal or re-export to the original exporters.

(14) Decontamination of ships before they are exported to India for breaking."

10. The High Powered Committee comprised of experts from different disciplines and fields as would be apparent from the following:-

1. Dr. Claude Alvares (scientific aspects of environmental damage and their impacts on society, legal aspects, Basel Convention, accountability to the public),

2. Dr. D.B. Boralkar (chemistry, pollution control, Basel Convention, experience at CPCB and SPCB in enforcement of regulations);
3. Dr. Mrs. Indrani Chandrasekharan (chemistry, formulation of legislation, Basel Convention, experience at MOEF);
4. Dr. V.K. Iya (chemistry and biomedical aspects, public involvement);
5. Shri Prem Chand (non-ferrous metals and industry);
6. Dr. K.R. Ranganathan (environmental studies, pollution control and functioning of CPCB, accountability to the public);
7. Dr. A.K. Saxena (environmental engineering, experience at National Productivity Council on hazardous waste management projects, particularly landfill technology);
8. Dr. P.K. Seth (aspects of health and hazardous wastes; industrial toxicology);
9. Dr. Sudhir Singhal (issues relating to oil);
10. Shri Paritosh Tyagi (pollution control, institutional mechanisms and experience as a former Chairman, CPCB);
11. Dr. R.R. Khan, Director, Ministry of Environment and Forests & Member-Secretary;
12. Dr. T.S.R. Prasad Rao, Director, Indian Institute of Petroleum, Dehra Dun (represented by Dr. Himmat Singh, Deputy Director).

11. With the assistance of Mr. Sanjay Parikh, learned counsel appearing for the petitioner, Mr. AND. Rao, learned counsel appearing for the Central Government and Mr. Vijay Panjwani learned counsel appearing for Central Pollution Control Board, we have gone through the extensive report submitted by High Powered Committee. At the outset, we wish to place on record our gratitude for the efforts made and dedication shown by HPC in preparation of the report and recommendations made therein after indepth study of numerous facets of the problem.

12. The Report has highlighted the areas which result in generation of the hazardous wastes and the limited area on which the High Powered Committee focussed its attention, namely, industrial operations (solid, liquid, gaseous waste) including industries recycling hazardous waste and others as detailed in paragraph 1.3 relating to scope of work. Out of 14 Terms of Reference, on ToR No. 13 the High Powered Committee submitted its Report on 20th April, 1998, on consideration whereof, directions were issued in terms of the order dated 10th December, 1999.

13. The ratification of Basel Convention by India shows the commitment of our country to solve the problem on the principles and basis stated in the said document. The decision stated to have been taken by 65 conference parties by consensus to ban all exports of hazardous wastes from Organisation for Economic Co-operation and Development (OECD) to non-OECD countries immediately for disposal and in the beginning of the year 1998 for recycling are, therefore, required to be kept in view while considering the number of items to be banned. It also deserved to be noticed that having regard to the broad outlook in framing the Terms of Reference including therein not only the aspects of imported hazardous wastes but also management of indigenous hazardous wastes, the HPC has rightly not confined itself just to the crisis situation that has arisen from continuous illegal import and dumping of hazardous wastes, but had also gone into the systemic weaknesses that had developed as a result whereof there was slow progress in handling the problem. HPC has observed that the problems raised by indigenous processing of toxic substances such as lead and waste oil and by industrial processes that generated these as also by methods of disposal like incinerators and landfills to be far more serious and of far greater magnitude than those associated with the import of such waste. In this view various aspects of indigenous generation and handling of hazardous wastes have been examined in depth. Having regard to this approach, we agree with conclusion drawn by HPC that MOEF made no concerted or consistent efforts which necessarily have to be of a promotional, educational and co-ordinating nature – to show the implementation of H.W. Rules, 1989. We hope that on the matter in issue, henceforth, there would not be any lack of serious and concerned action on the part of MOEF.

14. On 23rd September, 2003, Mr. Parikh filed a brief summary of directions required to be issued on the basis of the recommendations of High Powered Committee and also indicated therein the aspects on which MOEF agreed and also the aspects which are now covered by amendment of H.W. Rules, 1989, by Notification dated 23rd May, 2003. The aspects to which MOEF has agreed are stated in their affidavit dated 13th September, 2003. The MOEF shall ensure that the agreement does not remain only on paper. The directions sought for by the petitioner to which MOEF has agreed shall be implemented in letter and spirit. The implementation wherever it is to be done by the MOEF, should be done forthwith and wherever it is required to be done by any other Ministry or authority or agency, the Nodal Ministry/MOEF shall ensure that it be so implemented. In case of any doubt or dispute, it would be the responsibility of MOEF to satisfy this Court. Further, the Ministry shall also develop a mechanism to ensure that wherever its directions are not implemented, necessary action is taken against those who are responsible for it. If any Inter-Ministerial consultation is required, the lead is to be taken by MOEF to see that such consultation taken place and effective measure are taken.

15. First, the legal principles in brief may be noticed.

The legal position regarding applicability of the precautionary principle and polluter pays principle which are part of the concept of sustainable development in our country is now well settled. In **Vellore Citizens' Welfare Forum vs. Union of India & Ors.** [(1996) 5 SCC 647], a three Judge Bench of this Court, after referring to the principles evolved in various international conferences and to the concept of "sustainable development", inter alia, held that the precautionary principle and polluter pays principle have not emerged and govern the law in our country, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have been held to have become part of our law. Further, it was observed in Vellore Citizens' Welfare Forum's case that these principles are accepted as part of the customary international law and hence there should be no difficulty in accepting them as part of our domestic law. Reference may also be made to the decision in the case of **A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and Ors.** [(1996 5 SCC 718)] where, after referring to the principles noticed in Vellore Citizens' Welfare Forum's Case, the same have been explained in more detail with a view to enable the Courts and the Tribunals or environmental authorities to properly apply the said principles in the matters which come before them. In this decision, it has also been observed that the principle of good governance is an accepted principle of international and domestic laws. It comprises of the rule of law, effective State Institutions, transparency and accountability and public affairs, respect for human rights and the meaningful participation of citizens in the political process of their countries and in the decisions affecting their lives. Reference has also been made to Article 7 of the draft approved by the working group of the International Law Commission in 1996 on "Prevention of Transboundary Damage from Hazardous Activities" to include the need for the State to take necessary legislative, administrative and other actions" to implement the duty of prevention of environmental harm. Environmental concerns have been placed at same pedestal as human rights concerns, both being traced to Article 21 of the Constitution of India. It is the duty of this Court to render justice by taking all aspects into consideration. It has also been observed that with a view to ensure that there is neither danger to the environment nor to the ecology and, at the same time, ensuring sustainable development, the Court can refer scientific and technical aspects for an investigation and opinion to expert bodies. The provisions of a covenant which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can be relied upon by Courts as facets of those fundamental rights and hence enforceable as such (see **People's Union for Civil Liberties Vs. Union of India &**

Anr. [(1997) 3 SCC 433]. The Basel Convention, it cannot be doubted, effectuates the fundamental rights guaranteed under Article 21. The rights to information and community participation for protection of environment and human health is also a right which flows from Article 21. The Government and authorities have, thus to motivate the public participation. These well-shrined principles have been kept in view by us while examining and determining various aspect and facets of the problems in issue and the permissible remedies.

29. For design and setting up of disposal facility as provided in Rule 8-A of HW (M&H) Rules, the Criteria for Hazardous Waste Landfills published by CPCB in February, 2001 and the Manual for Design, Construction & Quality Control of Liners and Covers for Hazardous Waste Landfills published in December 2002 shall be followed and adhered to. Along with the affidavit of Mr. M. Subba Rao, filed on 13th September, 2003, Annexure II sets out status of hazardous waste disposal sites. According to the said Annexure, 89 sites were identified out of which 30 were notified. Mr. ADN Rao, on instructions, states that out of 30, 11 common landfills are ready and operational – two in Maharashtra, one in Andhra Pradesh and eight in Gujarat and that some of these landfills are in accordance with the Criteria and Manual aforesaid. The steps shall be taken to expedite the completion of the remaining landfills. In this view, steps should be taken of shifting of hazardous waste from wherever it is permissible to these landfills. The transport of hazardous waste would be in accordance with Rule 7 and the Guidelines issued by CPCB from time to time. Mr. Panjwani states that the guidelines are ready. Let the same be issued forthwith.

30. MONITORING :

The CPCB shall issue guidelines to be followed by all concerned including SPCB and the operators of disposal sites for the proper functioning and upkeep of the said sites.

36. Nothing much seems to have been done. It is, therefore, imperative to direct the Central Government to consider in detail and with all seriousness, the recommendations of restructuring and other suggestions which flow from the aforequoted part of the Report. The Central Government and MOEF would also consider the strengthening of Hazardous Substance Management Division but not at the cost of weakening the other divisions.

38. Next we consider the aspect of units that are operating without any authorisation or in violation of the conditions of authorisation issued under H.W. Rules, 1989 as amended up to date. There are

many such Units as per report of HPC. [See HPC Report at *B: Present status of units handling Hazardous Wastes included in ToRs.2,6, 7 and 9*]. State Pollution Control Boards and Pollution Control Committees are directed to close forthwith such Units.

41.1 Further, for effective implementation of the directions and to regulate the hazardous waste it is necessary to strengthen the SPCBs and CPCB by providing them the requisite infrastructure and manpower so that they can issue the necessary guidelines to monitor the handling of the hazardous wastes as suggested under Term of Reference No. 12, in particular, the suggestion as contained at serial nos. 3,4,6 & 7.

42. The HPC has found Hazardous Waste dumped in open and has stated that :

“ The HPC has concluded that the hazardous wastes situation in India is fairly grim:

Hazardous wastes, found dumped in the open environment have been the cause of widespread pollution of ground water, creating drought-like situations in areas traditionally not lacking in water suppliers. Public hearings conducted by the HPC in several cities brought forward pleas and representations of distress from affected victims and harsh complaints about lack of response from statutory authorities. The authorities appear to have ignored several warnings, reports, investigations and studies that highlighted zones of ecological degradation due to indiscriminate dumping and disposal of hazardous wastes. The HPC noted that there was a lack of policy and vision at the highest level. This has resulted in a very poor management system. This situation cannot be allowed to continue.”

43. The authorities are directed to ensure that hazardous wastes are not allowed to be discharged in open dumps and on violation thereof prompt action be taken as per law.

49. In respect of collection and transportation of used oil from different sources, authorities shall ensure that the same are sold to registered refiners or recycler and they give an undertaking to refine or recycle in terms of the Rules.

50. There seems to be an urgent need to develop the design criteria for incinerators to safeguard the environments so as to have proper and efficient working of incinerators close to the place of generation of hazardous wastes.

51. The HPC has comprehensively dealt with under Chapter 6.2 aspect of Right of Information and public involvement in hazardous waste issues, while considering the future agenda of taking hazardous waste aspect seriously.

52. Section 3(2)(12) of Environment Protection Act, 1986 stipulates collection and dissemination of information in respect of matters relating to environment pollution. Principle 10 of Rio Declaration recognizes the right to receive information and community participation with particular emphasis on hazardous materials. The said principle reads as under :

“Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment, that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

53. Principle 4 stipulates that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

54. Principle 19 stipulates that the States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse trans-boundary environment effect and shall consult with those States at an early stage and in good faith.

56. The suggestion is that an extensive awareness generation campaign should be taken by regulatory agencies. The HPC has prepared a list of Themes and short T.V. Programmes on hazardous wastes. All these aspects require a serious consideration by the concerned authorities.

57. The legal position has already been noticed. Clearly, the Right to Information and Community Participation necessary for protection of Environment and Human Health is an ineliniable part of Article 21 and

is governed by the accepted environment principles. The Government and the authorities have to motivate the public participation by formulating the necessary programmes.

59. The ship breaking operation referred to above cannot be permitted to be continued without strictly adhering to all precautionary principles, CPCB guidelines and taking the requisite safeguards which have been dealt extensively in the report of precautionary principles, CPCB guidelines and taking the requisite safeguards which have been dealt with extensively in the report of HPC which include the aspect of the working conditions of the workmen.

61. The Report suggests that action against the importer for illegal import as per Customs Act, 1962 may have to be taken. Further, it notices that Central Board of Excise and Custom, Ministry of Finance were requested to ensure action against the importers of illegal consignments of hazardous waste.

62. Broadly there are two aspects of the matter; one relating to those illegal imports which have been cleared and the consignments have already found its way to the market. These alleged illegal imports were made few years back. In respect of this category of illegal imports, we direct that action against all concerned shall be taken by the concerned authorities in accordance with law.

63. The second aspect relates to the stock of aforesaid hazardous waste, lying at various ports/ICDs/CSFs. The question is as to the manner in which this stock be cleared from the respective ports/ICDs/CSFs. Such stock can again be divided into two categories; one, the category in respect whereof the import is banned under H.W. Rules, as amended up to date or falling under a banned category in terms of Basel Convention. Reference in this regard be also made to the order of this court dated 5th May, 1997 referred to hereinbefore. Out of the various consignments lying at aforesaid places, the consignments under this category shall have to be treated differently. Such consignments have either to be re-exported, if permissible, or destroyed at the risk, cost and the consequences of the importer. There cannot be any question of permitting these consignments making their way to the Indian soil.

64. The second category relates to such hazardous waste in respect whereof the ban is not complete and which hazardous waste is regulated since it is permissible to recycle and reprocess it within the given and permissible parameters by specified authorised persons having requisite facilities, under the Rules, as amended up-to-date. The consignments falling under this category shall be released/disposed of or auctioned, in terms of Rules, to the registered recyclers/re-processors. In case, after efforts, an importer of any of the

categories is not traceable, the consignment imported by such importer may be dealt with at the risk, cost and consequences of that importer. The consignment of such importer cannot be permitted to remain at the ports etc. for reason of the importer not being traceable.

65. These consignments in terms of the directions aforesaid shall be dealt with/disposal of/auctioned by the Monitoring Committee appointed pursuant to this order.

66. It appears from the Report that about 80% of country's hazardous waste is generated in the State of Maharashtra, Gujarat, Tamil Nadu and Andhra Pradesh. This may also show good industrial growth in those States. Be that as it may, to ensure that the generation of hazardous waste is minimum and it is properly handled in every State including the aforesaid States, in particular, it is necessary to appoint a Monitoring Committee to oversee the compliance of law, directions of this Court and Rules and Regulations.

67. MoEF has constituted a Standing Committee on hazardous waste to advise the Ministry on issues pertaining to hazardous waste and other related areas. The Terms of Reference of the said Committee are these:

- (a) **Characterisation of hazardous wastes:**
Identification of hazardous waste and characterization of the constituents that would render such wastes hazardous.
- (b) **Prohibition/restriction of Hazardous Wastes:-**
Identification and listing of hazardous wastes of prohibition/restriction for exports/imports and handling of these wastes.
- (c) **Environmentally Sound Technologies:-** Identification and listing of Environmentally Sound Technologies for Reprocessing and recycling of wastes, treatment and disposal; and
- (d) Any other matter requiring special advice from time to time.

The composition of the Committee is:-

Dr.G. Thayagarajan, Senior Secretary, COSTED, Chennai	Chairman
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Mr. V. Rajagopalan, Chairman, CPCB	Member
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Director, NEERI, Nagpur	Member
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Director, NML	Member
Director, IIP, Dehradun	Member
Director, NCL, Pune	Member
Dr.N.H. Hosabettu Secretary Director, HSM Div., MoEF	Member-
Director, IICT Member	Co-opted

68. We constitute a Monitoring Committee comprising of the aforesaid members as also Dr.Claud Alvares, NGO and Dr.D.B.Boralkar. This Committee shall oversee that the directions of this Court are implemented timely. It would also oversee that the aspects to which the Ministry has agreed are implemented in letter and spirit and without any laxity or delay in the matter. It would be open to the Monitoring Committee to co-opt a representative of the State Government or State Pollution Control Boards or any other person or authority as the Committee may deem fit and proper. **The Monitoring Committee shall file quarterly reports in this Court.**

70. In the above background, in addition to directions as afore-noticed, for the present, we issue the following further directions:-

70.1. SPCB:

(1) We direct all SPCBs/PCCS to implement the directions that may be issued by the Ministry of Environment and Forests (MoEF).

The SPCBs are directed to produce a comprehensive report on illegal hazardous waste dump sites in their jurisdiction. Reports should be based on inspection, assessment of the size of the dump site; age; whether the dump site is passive or active; whether any precautions have been taken to prevent damage to the environment. The SPCB will also take samples of the groundwater in the vicinity of the dump site at different point an prepare a report on contamination of the groundwater, if any, and if so, to what extent.

The SPCBs are directed to draw up a plan with financial estimates for immediate measures that may be required to stop environmental damage. A full scale rehabilitation plan should also be prepared, together with detailed estimate of costs. All these reports will be sent to the CPCB.

70.11.(11) Publication of Toxic Inventory & Community participation:-

SPCBs take steps to ensure that relevant important information on Hazardous Wastes should be displayed on notice boards and newspaper and communicated through radio, television and the Internet. SPCBs should ensure that all industries involved in hazardous chemicals and generating hazardous wastes display online data outside the main factory gate, on quantity and nature of hazardous chemicals being used in the plant, water and air emissions and solid wastes generated within the factory premises. If such data is not made available, the unit should be asked to show cause or even be asked to close down.

70.12.(12) RE: Location of Industrial Sites and Secured Landfills:-

The MoEF would consider the suggestion of HPC regarding development of National Policy for landfill sites. The suggestion is to the following effect:

“In industrialised countries, the selection of sites for disposal facilities lies with the Government. In view of this, a national policy needs to be developed for locating such centralised/common TSDFs. The location of final disposal facilities should be based on the total quantity of hazardous waste generated in the individual State. For effective monitoring and an economically viable facility, it is important to locate a centralised facility within a distance of about 100 km. of the waste-generating units. Those States which generate less than 20,000 tonnes per year of hazardous waste may be permitted to have only temporary storage facilities and then transfer the waste to the final treatment and disposal facilities in the nearby State. It is not necessary and also not advisable to develop a facility in each and every district and/or State as land is a valuable natural resources.”

They would also keep in view the suggestion of the areas which may be excluded from locating the landfill sites.

3.0 Scenario in Maharashtra

The HPC in its report indicated that about 4.4 million tons of hazardous wastes are generated in India. This was based on the information provided by the State Pollution Control Boards/Pollution Control Committees (SPCBs/PCCs). Out of this, 2.08 million tons of hazardous wastes are generated in the State of Maharashtra. There are 3427 hazardous waste generating industries, as per criteria in the Hazardous Wastes (Management & Handling) Rules, 1989 (prior to the

amendments in the year 2000 and 2003). Most of the HW generating units are located in and around Thane-Mumbai, along the coastal belt. It may be appreciated that the issue of management of hazardous wastes in Maharashtra is not comparable with other States in terms of volumes of waste, potential of the problem, approach to the enforcement, institutional requirements etc.

Maharashtra State Industrial Development Corporation (MIDC) has been notified by the State Government as authority under Rule 8 of HW Rules to promote development of common facilities for treatment, storage and disposal of hazardous wastes (CHWTSDF). Recently, two TSDFs at (a) Taloja and (b) TTC industrial areas of MIDC at New Mumbai have become operational. These are on Build-Operate-Own (BOO) basis. MIDC has planned TSDFs at Buti Bori (Nagpur & Amravati region), Shendre (Aurangabad region), and Ranjangaon (Pune, Kolhapur & Solapur region). There is also proposal to set up common HW incinerator at Mahad exclusively for industries at Mahad, Roha and Lote-Parshuram industrial estates. A note on steps taken by MIDC in collaboration with Maharashtra Pollution Control Board regarding development of TSDFs is placed at **Annex I** and summarized as below:

Sl.No.	Location	Capacity	Status
1	Taloja, New Mumbai	SLF: 120000 TPY Incinerator: 2.0 TPH	Operational (2002)
2	TTC, New Mumbai	SLF: 10000 TPY	Operational (2003)
3	Buti Bori (Nagpur)	SLF:50000 TPY Incinerator: 2.0 TPH	Operator short-listed through ICB. Lol to be issued by January, 2004.
4	Ranjangaon (Pune)	SLF: 50000 TPY Incinerator: 2.0 TPH	Operator short-listed through ICB. Lol to be issued by January, 2004.
5	Shendre (Aurangabad)	SLF: 50000 TPY Incinerator: 3.0 TPH	ICB in progress. Operator may be finalized by March, 2003.
6	Mahad	Incinerator: 3.0 TPH	ICB in progress. Operator may be finalized by March, 2003.

4.0 Compliance of directives

Directives of the Apex Court are being implemented in State of Maharashtra in right earnest and in letter & spirit. Maharashtra Pollution Control Board, State Environment Department and Maharashtra Industrial Development Corporation are collectively responsible for implementation of Hazardous Wastes (Management & Handling) Rules, 1989, as amended. A Special implementation team (SIT) has been set up in MPCB under the supervision of Dr. D.B.Boralkar, Member Secretary of MPCB. Dr. Boralkar is also Member of the Monitoring Committee appointed by the Hon'ble Supreme Court to oversee the compliance of the directives issued vide order dated October 14, 2003. Earlier, Dr. Boralkar was Member of the High Powered Committee (HPC) under the Chairmanship of Prof. M.G.K. Menon set up by the Central Government in the Ministry of Environment & Forests as per orders of the Hon'ble Supreme Court in the matter of CWP 657 of 1995 regarding management of hazardous wastes.

The S.I.T. consist of an expert especially recruited for the purpose and other environmental engineers/scientists. Composition of S.I.T. is given below:

- Dr. D. B. Boralkar : Member Secretary, MPCB
- Shri. G. N. Warade : Director, State Department of Environment (invitee)
- Shri. R. K. Das : Jt. Chief Exe. Officer (Environment), MIDC(invitee)
- Shri. S.V. Katole : Consultant (Environmental Scientist), MPCB
- Dr. A. R. Supate : Principal Scientific Officer, MPCB
- Shri. B.B. Nimbarte : Regional Officer (Chemical Engineer), MPCB
- Shri. S. S. Doke : Sub Regional Officer (Chemical Engineer),MPCB
- Shri Joy Thakur : Field Officer (Chemical Engineer), MPCB

Hazardous wastes generation in Maharashtra is half of the entire country – as per HPC report, 2001. The number of HW generating units is highest when compared with all the other States. In view of the enormity of the potential of the issues involved, it is practically difficult to meet the time frame given in the Court Order to comply with certain directives particularly the issuance of closure directives which involves elaborate procedure to be followed. Time schedule given to comply with the directives is the same for all the States and Union Territories. However, considering the specific situation of the issues related to

hazardous wastes management in Maharashtra, the Monitoring Committee may consider recommendation of certain relaxation in time limit for compliance, based on the merit of the case in terms of action taken by MPCB, MIDC and State Environment which would reflect the intent of the authorities concerned. Second meeting of the Monitoring Committee is being held in the office of MPCB, Mumbai on January 8-9, 2004.

5.0 Compliance of closure directions

The order of the Court actually reached at the level of implementation in first week of November, 2003 and immediately action was started to comply. The chronology of events and action taken in this regard is presented below:

- 13.11.2003 Plan of action decided in a high-level meeting taken by the State Environment Secretary. It was decided to start field survey immediately to identify defaulting units for closure action. Work started on inventorisation of HW. It was decided to issue public notice.
- 20.11.2003 Public Notice appeared in the leading news papers. Copy placed at **Annex-II**.
Jointly, the Member Secretary, MPCB and Jt. C.E.O. (Environment) of MIDC held meeting with office bearers of industry association namely CII, IDMA, ICMA Battery Plate Mfg. Association and few representatives of large industries such as HPCL, BPCL etc. Industry assured to cooperate in compliance of the court directives. It was appreciated that MPCB has adopted the approach of wide consultation and natural justice in the process of compliance of the Court orders. It is understood that other SPCBs are also following the similar action as done by MPCB.
Meeting was taken by the Member Secretary, MPCB with Manufacturers Associations, MIDC and Board Officers. Associations agreed to inform Supreme Court order and ensure compliance by member industries (**Annex-III**).
- 25.11.2003 Review meeting of Regional Officers was taken by the Member Secretary, MPCB. Minutes placed at **Annex-IV**. Decision was taken to set up Special implementation team and modalities decided for undertaking inventorisation.

- 01.12.2003 Meeting was organized by the ICMA at the World Trade Centre as a follow up to motivate the industries to comply with the conditions in the Authorisation. This attended by the Member Secretary and officers of the Board as well as Jt. C.E.O.(Environment) of MIDC. Minutes are placed at **Annex V**.
- 06.12.2003 Meeting taken by the Member Secretary with Dombivali CETP Association to emphasise early compliance.
- 11.12.2003 Meeting taken by the Member Secretary with Tarapur CETP Association to emphasise early compliance.
- 12.12.2003 Meeting taken by the Member Secretary with CHW TSDf operator at Taloja to sort out the difficulties faced by the industries in becoming member.
- 15.12.2003 Meeting taken by the Member Secretary with Mahratta Chamber of Commerce, Industry and Agriculture at Pune to clarify doubts of the industries regarding treatment and disposal of hazardous wastes as per rules and orders of the Court.
- 17.12.2003 Matter taken up with MIDC to expedite the work on development of remaining CHWTSDfS at Buti Bori (Nagpur), Shendre (Aurangabad) and Ranjangaon (Pune).
- 22.12.2003 Meeting with office bearers of TTC WMA (TSDf operator at TTC industrial area, New Mumbai. It was informed that they will be able to accept the HW from January, 2004.
- 23.12.2003 Meeting of Regional Officers was taken by the Member Secretary. List of industries was finalized for issuance of the closure directions. It was decided to complete the task by January 8, 2004.

It was decided that industries identified as per 1989 HW Rules shall be considered for issuance of closure directions. As per 1989 Rules, 3427 units have been identified as HW generators. Following is the status in terms of closure directions being issued by MPCB:

No. of industries operating without Authorisation: closure directions issued.	
No. of industries not complying with Authorisation: closure directions issued.	
No. of industries closed.	

Inventorisation of hazardous wastes as per 2003 Rules is in progress. During the course of inventorisation, industries found not complying with authorization or found operating without authorization shall be issued closure directions as per Court orders. This would be continuous process.

In view of the fact that CHWTSDFs are available within a reasonable distance (about 200 km) for HW generating units in 7 districts near Mumbai-Thane, closure directions were issued to (a) all non-complying units in these districts and (b) units operating without authorisation.

In case of industries in the regions of Nagpur, Aurangabad, Amravati, Kolhapur etc. where distance involved from CHW TSDF is more than 200 km, it was decided to permit on-site storage of HW for a period of six months. MIDC has informed that Lol shall be issued soon to the operators for CHW TSDF at Buti Bori (Nagpur/Amravati), Ranjangaon (Pune / Kolhapur) and Shendre (Aurangabad) so that they can start receiving wastes within a period of six months. Assurance to this effect is also given by the Hon,ble Minister of State for Environment to the Legislative Assembly in response to the Calling Attention Motion moved during the Winter session at Nagpur on 19.12.2003.

6.0 Clean technology for re-refining/recycling of used oil/waste oil

As per Rule 21 of the HW (M&H) Rules, 1989, as amended, it is mandatory for all industries to adopt clean technology within six months from the date of publication of amendment rules on May 21, 2003 failing which the registration shall cease to be valid. Further, the SPCBs are required to submit compliance report within three months to Central Pollution Control Board. The Court also ordered that re-refining/ recycling of used oil/waste oil shall be done through application of clean technology.

MPCB issued Public Notice in news papers informing all concerned regarding provisions under the rules and suspended authorizations issued to all used oil/waste oil re-refiners/recyclers. Member Secretary appointed an Expert Committee for verification of compliance in terms of clean technology applications. The committee consists of experts from University Department of Chemical Technology of Mumbai University, Central Pollution Control Board, Industry Association, M.P.C. Board Member and Regional Officer (HQ), MPCB. The Committee has started functioning since December 18, 2003. Public Notice and Office Order for verification committee are placed at **Annex VI and VII** respectively.

7.0 Inventorisation

As per Court orders, the inventorisation is required to be completed within three months by SPCBs. Information is required to be made public on regular basis. Following actions are taken by MPCB:

- Door-to-door survey is being done by the field staff. Information is being collected in Form 4.
- Quantification of accumulated or stored wastes is being done.
- Work is likely to be completed by the end of January, 2004.
- Data collected shall be placed on the website of the Board.
- Upgradation of website and updating the information etc. is included in the detail project proposal on computerization of activities in the Board to enhance efficiency and transparency in procedures. Approach paper for implementation of this project in two years @ estimated expenditure of Rs. 4.0 crores is placed at **Annex VIII**.
- Inventorisation report shall be submitted to C.P.C.B. by February, 2004.

8.0 Shifting of hazardous wastes from unauthorised dumps

The Court has directed that illegally dumped / unauthorisedly dumped hazardous wastes shall be lifted and sent to secured landfill (SLF). In case of hazardous wastes dumped in the industrial estates, MPCB has requested MIDC to immediately remove the wastes and send it to SLF. Copy of letter addressed to MIDC in this regard is placed at **Annex IX**. Regional Officers have been instructed to pursue the matter with MIDC. If required, suitable directions will also be issued to MIDC under section 5 of the Environment (Protection) Act, 1986.

In case of illegal dumps of hazardous wastes outside MIDC industrial estates, inventorisation is being made. MPCB shall prepare rehabilitation plan for this dump sites in per court orders.

9.0 Implementation of transport guidelines

The Hon'ble court's order indicated that transport of hazardous wastes shall be done strictly as per Rule 7 and guidelines issued by Central Pollution Control Board. In compliance with the orders of the Court MPCB issued directions to all hazardous waste generators, auctioneers, buyers, sellers, transporters and other concerned involved in the transportation of hazardous wastes that they must comply with the CPCB guidelines, failing which MPCB shall initiate legal action under the Environment (Protection) Act, 1986. Further, pending verification of the compliance of the guidelines, MPCB revoked authorizations issued to transporters of hazardous wastes. A Public

Notice was issued to this effect by MPCB in leading news papers which appeared twice with a gap of one week in December, 2003. Copy of the advertisement is placed at **Annex X**.

10.0 Strengthening of MPCB

Directive of the apex court mentioned at serial no. 26 is entitled as “Institutional Reforms: MoEF / CPCB / SPCBs / PCCs”. Time frame of 3 months is provided for implementation of the directive. MPCB has prepared proposals for strengthening of MPCB in terms of infrastructure laboratories and augmentation of manpower has been prepared. This is posed for consideration of the Board in its next meeting due to be held in second week of January, 2004. Proposal include following:

- Refurbishing of Regional Laboratory & Office at Aurangabad, Nagpur, Pune, Nasik, and New Mumbai.
- Purchase of additional floor area for Regional Laboratory at Nagpur, Head Quarters at Mumbai and Regional Office at Kalyan.
- Construction of new building for Central Laboratory at New Mumbai
- Construction of annexe for Regional Laboratory & Office at Aurangabad.
- Conference Room facilities and logistics upgradation at HQ.
- Procurement of laboratory equipments: imported and indigenous.
- Procurement of continuous air quality monitoring stations (imported automatic sophisticated instruments)
- Procurement of vehicles for field work.
- Reengineering of organizational structure of the Board including creation additional posts for scientists, engineers & supporting staff. Copy of the proposal forwarded to the State Government for approval is placed at **Annex XI**.

Estimated expenditure proposed to be incurred for the procurements and civil works mentioned above is @ about Rs.26.5 crores spread over a period of two years. This is excluding the cost of computerization (i.e. about Rs. 4.0 crores) and manpower. The expenditure is proposed to be met from the Fund of the Board.

11.0 Awareness programmes

Programmes for mass awareness, public participation and information are being planned involving print & electronic media and NGOs. Dtails are being worked out to formulate a proposal to engage services of a professional agency for this purpose. Coordination meeting of NGOs is

planned to be held at Pune in collaboration with CPCB. Financial assistance of Rs. 1.5 lacs is approved by CPCB for this purpose. Creation of one post of Public Relations Officer is under consideration by the State Government.

12.0 Rehabilitation of dump sites

Work on identification of illegal dumpsites outside MIDC industrial areas is in progress. Rehabilitation plan for the dump sites shall be prepared and sent to CPCB as directed by the Court. This work would be taken up by engaging services of expert consultants and is likely to be completed within six months. As for the illegal dump sites in the MIDC industrial areas, MIDC has informed to lift the hazardous wastes and send to secured landfills.

13.0 Display of information regarding authorisation

Directions are issued to industries to display information regarding authorization at the entry gates. Public Notice to this effect has been issued through leading news papers in the State. Copy enclosed at **Annex – XII**.

14.0 Ship-breaking

The ship breaking activities in Maharashtra is very limited as compared with that of Gujarat. Mostly ship breaking is undertaken at Mazgaon Dockyard, near Mumbai. MPCB is issuing directions to all the ship dismantling industries regarding strict compliance of the directions of the Supreme Court and making it mandatory to implement guidelines of CPCB for ship-breaking.

15.0 Burning of hazardous and non-hazardous wastes on beaches

An advertisement is being issued in all the leading newspapers in the State informing all concerned regarding prohibition of burning of hazardous and non-hazardous waste on beaches. MPCB will also issue suitable instructions to all sectoral departments in the State Government to comply with the directions of the Hon'ble Court. Further Field Officers of MPCB located along the coastal line shall also be informed to maintain vigil and report the violation for taking further legal action. State Government will also be requested for issuance of notification, if any, required for implementation.

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ANNEXURES