

MAHARASHTRA POLLUTION CONTROL BOARD

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No. MPCB/AS(T)/TB/B- 894

Date : 01/03/2016.

C I R C U L A R

Sub:- Implementation of the Enforcement Policy.


Ref.: 1) Board's Notification dtd. 29/02/2016.

As per the directions vide judgment dtd.16/05/2014 of the Hon'ble National Green Tribunal, Western Zone Bench, Pune, Board has formulated the draft Enforcement Policy to integrate various aspects including inspections, monitoring, standards, compliances, directions, remedial measures and filing of complaints before various Courts as per the provisions of the Environment (Protection) Act, 1986 & other Environmental Laws, based on culpability, environmental damages, severity of pollution, repeated violations etc.

Board has finalized and published the Enforcement Policy vide Notification dtd. 29/02/2016 after obtaining comments of the CPCB and refining by conducting one day workshop of SPCBs officials.

Therefore, to comply with the directions of the Hon'ble National Green Tribunal, Western Zone Bench, Pune vide judgment dtd.16/05/2014, henceforth it is directed to implement the Enforcement Policy.

This Circular comes in force with immediate effect.


(Dr. P. Anbalagan, IAS)
Member Secretary

For information:

Hon'ble Chairperson, M.P.C. Board, Mumbai.

To,

All HODs/TA, CC-CAC Cell, M.P.C. Board, Sion, Mumbai.

All ROs/ All SROs/ All FOs, M.P.C. Board.



महाराष्ट्र शासन राजपत्र असाधारण भाग दोन

वर्ष २, अंक १३]

सोमवार, फेब्रुवारी २९, २०१६/फाल्गुन १०, शके १९३७

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असाधारण क्रमांक २०

प्राधिकृत प्रकाशन

MAHARASHTRA POLLUTION CONTROL BOARD, MUMBAI

ENFORCEMENT POLICY

NOTIFICATION

No.MPCB/AS(T)/B-848.—WHEREAS, Maharashtra Pollution Control Board (MPCB) had framed Uniform Integrated Policy for Consent Management. AND WHEREAS, in pursuance of the Judgment & Order passed by the Hon'ble National Green Tribunal (Western Zone) Bench, Pune in the Application No.30/2013 filed by Shri Vinesh M. Kalwal v/s State of Maharashtra & 3 Ors. dtd.16/05/2014, directed MPCB to frame the Enforcement Policy within a stipulated period; AND WHEREAS, the Draft Enforcement Policy prepared by the MPCB was placed on the website of MPCB in the Public Domain, calling objections/ suggestions/recommendations for necessary modifications in the month of October, 2014;

AND WHEREAS, the Draft Enforcement Policy was further communicated *vide* letter dtd.3/11/2014 to the Environment Department, Urban Development Department, Rural Development Department, Public Health Department and Directorate of Municipal Administration, Government of Maharashtra. AND WHEREAS, further Public Notice was issued, calling the objections, suggestions & recommendations from the public at large within stipulated period. Similarly, the objections were called from all the CETPs, Industries Associations & all CHWTSDFs;

AND WHEREAS, the Draft Enforcement Policy was further placed before the MPC Board in its 163rd Meeting held on 3/2/2015 for necessary approval and after necessary approval, it was further placed on the website of the Board. The Board has taken into consideration Enforcement Mechanism suggested in the Draft Enforcement Policy placed before it and decided to approve the norms laid down under the provisions of the Environment (Protection) Act, 1986 & Rules made thereunder by effective implementation thereof through Consent Management, subject to the condition that on the basis of adopting further changes in the policy taking into consideration experience & legal tools, necessary modifications can be done with the approval of the Member Secretary, MPCB from time to time;

AND WHEREAS, in compliance of directions issued by Hon'ble National Green Tribunal in the disposed off an Application No.30(THC)/2013 (WZ), the Board has further decided to revise its policy and therefore, constituted a Committee for covering all the aspects of compliance verification, pollution intensity and impact of legal actions, culpability & remediation efforts in an integrated manner, of all HoDs by Office Order dtd.12/08/2015;

AND WHEREAS, the Draft Enforcement Policy duly modified by the Committee was further circulated to NEERI. However, in pursuance of the order dtd.30/10/2015, it was submitted to the CPCB for necessary comments and was further placed before 165th Meeting of the MPCB held on 14/10/2015 for kind perusal. AND WHEREAS, the Revised Draft Enforcement Policy after amendment, further placed on the website of the Board and a Public Notices were issued in the leading newspaper 'Indian Express' dtd.17/11/2015 and further submitted to CPCB *vide* letter dtd.9/11/2015 with a request to give its views ;

AND WHEREAS, a Joint Workshop was conducted on 23/2/2016 at MPCB (HQ) Office by circulating the comments received from the CPCB, as suggested by the CPCB. In the said Workshop, officials of Tamilnadu, Gujarat & Maharashtra State Pollution Control Boards along with Expert from NEERI and Pollution Control field participated. After due deliberations, the Board has finalized Enforcement Policy after perusal of Enforcement Policy and other details pointed out by both the Boards and taking into consideration the comments of the CPCB on the Enforcement Policy submitted to it, as under:

MPCB has framed the Enforcement Policy to integrate various aspects including inspections, monitoring standards, compliances, directions, remedial measures, filing of complaints before various Courts as per provisions of various Environmental Laws based on culpability, environmental damages, severity of pollution, repeated violations etc.

The Board has decided to take into consideration pollution potential, pollution load, serious damage caused or likely to be caused on the basis of verification report in respect of visit/s, surprise inspection/s, monitoring and sampling with reference to environmental standards/consented standards, compliance of consent conditions, environmental norms etc. The Board has further decided to concentrate more on highly polluted 17 categories of industries, operations or processes.

The Board will also take into consideration complaint/s investigation, report/s, more particularly recurring serious complaints in respect of serious environmental pollution causing nuisance/pollution or apprehended pollution for redressal of such complaints on the basis of facts and circumstances of the case/s.

The Board will further carry out cumulative and comprehensive environmental impact study in appropriate cases to identify various contributing factors responsible for causing damage to the environment through reputed institutions like IIT, Powai; NEERI; ICT; M.S. Baroda University; G.S.D.A. to decide remedial and restoration measures to be undertaken along with the cost of remediation to be borne by the polluters for taking time-bound remedial measures.

After due deliberations with the representatives of Tamil Nadu and Gujarat State Pollution Control Board, experts from the pollution control field as well as after perusal of the comments of C.P.C.B. on the Amended Draft Enforcement Policy, the MPCB has finalized general and specific Enforcement Mechanism to be followed on case to case basis as may deem fit necessary in the given situation as under:-

1. Effective Consent Management:

The Consent being the basic document through which stringent conditions are being imposed for prevention, control & abatement of pollution at source, so as to minimize and mitigate any such envisaged potential impact on environment / receiving bodies. Consent not only regulate establishment of new industry, expansion or modernization of existing industry, operation or process but also ensure compliances of existing industry, operation or process by imposing more stringent conditions to adopt Advanced Cleaner Technologies. The Board will concentrate more on precautionary principles while granting consents to the industries imposing the concept of Advanced Cleaner Technologies, adoption of concept of Waste Minimization, Resource Conservation, possibility of incorporating Life Cycle Approach and finally disposal of waste in an environmental sound & scientifically safe manner. The Board has already established Technology Development Cell for identification of above technologies.

(A) MPCB's initiatives in effective consent management :—

The Board has taken following effective measures with regard to the "Make-in-India Initiative" under State of Maharashtra for expediting the statutory permissions.

- (a) Simplified application form has been devised to obtain consent for Green Category of industries ;
- (b) The period for scrutiny of consent application and grant of consent has been reduced to 60 days from that of 120 days statutory period ;
- (c) The visit and sampling norms have been made more easy to follow and reliance has been kept on self certification at the time of grant of renewal of consent ;
- (d) The auto-renewal scheme on the basis of self certification has been made applicable to all category of industries, more particularly for Green and Orange Category industries, it has been made more simplified ;
- (e) The online submission, scrutiny of application for consent and online grant thereof have been adopted in the MPCB ;
- (f) The renewal of consent has been granted for minimum five years and maximum upto 05, 10 and 15 years for Green, Orange and Red category of industries respectively ;
- (g) MPCB has joined the scheme of "Single-Window" system at MAITRI (Investment Facilitation Cell) for considering grant of consents after statutory period of 120 days from authority at Single-Window ;
- (h) Randomized Risk Based inspection & Sampling (RRBIS) scheme has been introduced for monitoring of various polluting activities, where the Field Officer from other area will cause 25% visit, inspection and sampling from the randomized computer generated list, so as to bring the element of 3rd person monitoring in regular system to bring more reliability and transparency in monitoring ;
- (i) In compliance of Maharashtra Right To Service Act, 2015, the provision for Appeals against non-grant of consent upto Regional Officer level consents have been introduced in the MPCB.

(B) Refusal / Revocation of the Consents and Forfeiture of Bank Guarantee :—

In case, the compliance is not secured within stipulated time provided to concern industry, the Board shall initiate action for forfeiture of Bank Guarantee and wherever there is evidence of substantial compliances provision for considering extension of time for securing complete and thorough compliance by forfeiting proportionate bank guarantees only. The uniform procedure for imposing bank guarantees and its forfeiture with reference to degree of non compliance has been already adopted from 2011 onward. Wherever there is continual non-compliance, in spite of sufficient opportunities and with extension of time is given by the Board (not more than 3 times), after third extension, further stringent actions such as refusal/revocation of consent and further final directions of closure etc shall be initiated. However, in cases of serious violations, no second opportunity and extension of time will be granted. The refusal / revocation order will be issued as may deem fit in the circumstances of particular case.

(C) Uniform integrated approach for consent management :—

The MPC Board has adopted "Uniform Integrated Approach for Consent Management." The said policy is under implementation. This policy basically takes into consideration material balance aspect to ensure that nothing is finding its way into the environment in contravention of consent conditions and to the extent possible, most conservative approach will be adopted in use of natural resources like water, raw material, energy etc. The sector specific approach by identifying highly vulnerable pollution streams and imposing more stringent conditions in the consent to regulate such streams have been adopted. Here, the classifications of industries by CPCB based on pollution potential, various directives issued by the CPCB and other Forums as well as various statutory guidelines and circulars issued by the Competent-Authorities from time to time shall be taken

into consideration. The following specific measures are taken by the Board for effective consent management for prevention, control and abatement of pollution.

(a) Sector- Specific Approach for Consent Management

In 2011, the CAC had taken review of earlier legal actions and decided to adopt Uniform Integrated Approach not only in grant of consent/s, but also issuance of directions and accordingly, decided to implement Enforcement Mechanism in respect of procedure to be followed uniformly while grant of consent/s and also about compliance matrix. Such implementation started of late in 2011 onwards. MPCB has identified sector specific industries for the purpose of imposing stringent conditions to regulate highly polluted stream of pollution arises from such activity, by adopting sector specific approach for sugar & distilleries, textile processing, steel industries, cement industries, power plants etc.

MPCB has initially identified highly polluting industries and accordingly adopted sector specific approach for regulating such type of industries through grant of consent/s from 2011 onwards. Sector-specific approach has been adopted for effective consent management and improving the compliance level up to 95% in respect of important conditions imposed in the consent granted to Sugar and Distillery, Textile Processing Cement Plants, Steel Plants and Power Plants respectively. For compliance of those important conditions, reasonable time period prescribed in the consent granted to such units and to ensure time bound compliance of such conditions, uniform BGs have been prescribed. While imposing such conditions the aspects of waste minimization, recycle/reprocess/reuse/re-circulate and recovery of material taken into consideration. The BG regime will be followed as a last resort to secure the compliance, but ensuring that the compliance will be more cheaper than submission of BG and forfeiture thereof, so that the industries will prefer to comply with the conditions rather than facing forfeiture of BG and continuing non-compliance. The element of remedial measures and restoration along with cost thereof will be incorporated in the Bank Guarantees, so that in case of failure to take remedial measures, out of forfeiture of bank guarantee, through reputed institutions, remedial measures can be taken with the cost of forfeiture of Bank Guarantee.

(b) Stringent Conditions for Pollution Prevention :—

The present approach is to impose and implement industry specific conditions for pollution prevention on the basis of its pollution potential in a time bound manner. While imposing conditions, the Consent Granting Authorities focus more on the waste minimization, by adopting waste reduction by insisting for providing of cleaner-technologies consisting of recycling, reuse, reprocess and recovery to the extent possible. Wherever possible, the Lifecycle Approach is adopted, by keeping proper material balance etc. Just to cite an example, the Bank Guarantee Regime for the power plant was discussed in the 13th Consent Appraisal Committee Meeting held on 5th October 2013 for sector-specific approach for the Power Plant. After due deliberations, it was decided to lay down specific separate BG Regime for old & new power plants with reference to different standards laid down under the provisions of the Environment (Protection) Rules, 1986. The necessary Guidelines have been formulated in respect of implementation of BG Regime for both the old and new power plants with reference to the exceeding percentage of non-compliance of the standards/conditions stipulated in the consent, on the basis of compliance percentage with reference to time frame given for compliance, taking into consideration verification report and the manner in which, the non-compliance is to be confirmed/decided.

However, as far as BG Regime for Power Plant is concerned, once the ESP is installed, the emissions are required to be defined with reference to the documentation on the basis of which, amount of BG can be forfeited with percentage of non-compliance, including handling & disposal of fly ash as well as CAAQMs results and operation & maintenance of pollution control devices. The forfeiture Regime for various bank guarantees in respect of the BG Regime for power plants has been defined. Similarly, BG Regime for old & new power plants,

as per Environment (Protection) Rules, 1986, has been specified on the lines of above Forfeiture Matrix. The sectorial review is being taken on yearly basis.

(c) Target for securing sector-specific compliance :—

In Sector-Specific Approach for Consent Management, the MPC Board has identified highly vulnerable aspects of pollution being caused from the identified sectors, such as Sugar and Distillery, Textile Processing, Cement Plants, Steel Plants and Power Plants respectively. In order to regulate highly vulnerable waste streams, MPCB has prepared an Action Plan to secure compliance of 80% initially and targeted compliance level upto 95% in a time-bound manner by imposing necessary conditions, granting reasonable time period in the consent renewal for taking improvement measures. After expiry of period granted for making improvement, MPCB takes action to secure the above compliance level through grant / refusal / revocation of consent/s of non-complied industries and initiating other stringent actions like issuance of prohibitory orders, filing of applications before appropriate Court of Law for various directions including restraining apprehended pollution, filing of prosecution and issuance of various directions including closure, prohibition or regulation of polluting activities.

More thrust has been given on the enforcement of conditions stipulated while granting consent through effective monitoring and surveillance at the field level. After expiry of the periods granted for implementation of the said conditions on the basis of monitoring reports, further actions shall have to be initiated including forfeiture of bank guarantees, regulation of highly polluting activities with reference to best available technologies (reduction of pollution load by imposing conditions for recycle, reuse of treated effluent, restricting generation of effluent commensurate with land availability/disposal system, reduction of production quantity in exceptional cases, imposing conditions for use of clean fuel- such as CNG/Natural Gases, refusal / revocation of consent; closure, prohibition or regulating highly polluting activities etc. However, depending upon seriousness, the Competent-Authority (Consent Granting Authority) may take decision for refusal/revocation of Consent with reference to the degree of pollution / impact on environment after giving one opportunity of hearing.

2. Implementation of Polluter Pays Principle :—

The Regime for forfeiture of BG on the basis of "Polluter Pays Principle" subject to the degree of non-compliance as stated above and for continuous non-compliance, it will be more costlier than securing compliance, so that the project will prefer to secure compliance, rather than "Pay for Pollution", which is decided as below :-

(i) In case of substantial compliance is secured, upto 25% of the bank guarantee to be forfeited and top up with double the amount of forfeiture by granting additional time of 25% proportionate time granted for securing total compliance as per earlier directions.

(ii) In case of medium compliance is secured as defined above, above 25% upto 50% of BG to be forfeited on the basis of % of non-compliance and top up with double the amount of forfeited BG and granting 50% proportionate time of total period granted as per earlier directions.

(iii) In case of non-compliance below 25%, above 50% upto 100%, BG to be forfeited on the basis of % of non-compliance and top up with double the amount of forfeited BG proportionately and giving additional proportionate period with reference to the earlier total period granted by the Board.

(iv) In case of 100% compliance, the earlier directions given for non-compliance will be withdrawn and bank guarantees will be returned immediately.

If non-compliance of conditions observed, based on the non-compliance level (25% - 50% - 75% and above), BGs will be proportionately forfeited and proportionate time will be granted with top up of forfeited BG while granting further extension of time to secure remaining compliance after obtaining double the amount of forfeited BG. After second extension, if physical steps are taken for compliance of conditions, on the basis of the progress, decision in respect of further

extension of time, if required or initiating further stringent action including refusal/revocation of consent, issuance of prohibitory orders, making applications to the JMFC for restraining apprehended pollution, filing of prosecution and/or stoppage of such polluting section etc. can be initiated on the basis of the recommendation of consent granting authority taking into consideration seriousness of non-compliances. While initiating actions for refusal/revocation/review of consent conditions, due procedure laid down by the Board will be followed, which is already placed on the website of MPCB in respect of consent management. The norms for visit and surprise inspections, investigation of complaints, formation of squads for surprise visits, inspections and sampling, and for initiating various legal actions will be prescribed separately in due course of time. While initiating actions, a number of visits, surprise inspections, sampling and analytical reports as well as investigation of complaint reports will be taken into consideration.

It was further decided that instead of procuring bank guarantees for compliance of all conditions, the bank guarantees will be insisted only for the purpose of up-gradation of Effluent Treatment Plants/Air Pollution Control Systems /Pollution Control Systems. The Gujarat Pollution Control Board's model for Bank Guarantee Regime in the cases of enforcement of up-gradation in the existing pollution control devices will be followed, after exhausting the initial remedies, such as show cause notice; in case of non-compliance of show cause notice, directions (proposed directions/interim directions/final directions) are issued, in appropriate cases filing of prosecutions and where no compliance is reported, after giving sufficient opportunity to the industry concern to secure compliance, then, forfeiture of bank guarantees.

It was also decided to discourage obtaining of the bank guarantees for various submissions of mandatory documents like hazardous waste returns, cess returns, e-waste submissions etc. Instead of that, in such cases, the consents will not be renewed / granted, so that without submission of mandatory returns on the basis of bank guarantees, consents will not be granted. This will automatically result into compliance in respect of mandatory submissions before grant of consent.

It was decided that more reliance will be on obtaining bank guarantees for further improvement in the form of performance bank guarantees, which will be maximum upto 10% of the capital investment proposed on the improvement of pollution control measures. The operational bank guarantees will be insisted more on 17 highly polluting category industries on the basis of operational cost of pollution control devices. The amount of bank guarantees will be further increased in cases of critically polluted industries identified by the Board on the basis of their performance in the last year and also on the basis of incidence of serious pollution caused damage to the environment etc. While imposing bank guarantees, the criteria for improvement measures capital expenditure proposed and the highly polluted industries with past record will be taken into consideration. However, the forfeiture of bank guarantees will be last resort for initiating actions.

The amount of forfeiture of bank guarantee will be deposited in separate fund in the account of "Environment Improvement & Environment Compliance Fund". This fund will be utilized for initially to take remedial measures in respect of incidence of pollution caused in that area, intensive monitoring of the said area, common environment issues to be solved in that area, installation of CCTV and link up to the Board's website, Data Management & Awareness etc. The guidelines issued by the CPCB in respect of expenditure to be incurred on environment improvement out of cess funds and the guidelines framed by the GPCB in respect of the utilization of amount of forfeiture of bank guarantees will be followed while spending the amount of forfeiture of bank guarantee credited to the above fund.

3. Miscellaneous :

(A) Definition of specific violations :

The following definitions have been incorporated in the Enforcement Policy in respect of level of non-compliances.

(I) Average compliance- where compliance level is 75% and below 100% :—It shall mean and include an act or omission or commission by a person causing damage to environment

due to failure of compliance of the provisions of this Act or rules made or order or direction issued there under in the manner as may be prescribed and is not a substantial damage or non-substantial damage to the environment.

(II) **Medium compliance – where compliance level is from 25% but is less than 75% :** It means damage to environment which is neither a minor violation or a substantial damage and shall be determined in the manner as may be prescribed;

(III) **Substantial non-compliance – where compliance is less than 25% (non-compliance is more than 75%) :** It means damage to environment whether by release of environment pollutant or environment pollution or handling of hazardous substance or any other substance or otherwise determined in the manner as may be prescribed, by which the environment is affected or likely to be adversely affected by such damage or by its consequences due to –

- (a) Direct violation of a specific statutory environmental obligation of the occupier; or
- (b) any act or omission of the occupier or negligence on his part (whether by an accident or otherwise); or
- (c) carrying out any project or activity or operation or process by the occupier ; which causes serious environmental damage.

(IV) **“Substantial / Total Compliance, where compliance level is 100% :** It means that the compliance is made in respect of all conditions/ standards / norms stipulated under various Environmental Laws.

(V) **Zero Liquid Discharge (ZLD) :** The earlier concept of ZLD which include not only zero liquid discharge in to environment by total recycling, reuse, reprocess, re-circulate or recover of liquid waste, thereby not discharging any waste into the environment but also application of treated liquid effluent after achieving standard on land for irrigation purpose, thereby ZLD was including disposal of treated effluent/application thereof on land for irrigation/plantation purposes.

New definition of ZLD : Now it has been decided that ZLD needs total utilization of liquid effluent in the process itself. Process includes recycle/ reuse/reprocess/recover or combination thereof, thereby nothing is discharged into the environment (stream or on land) therefore it becomes necessary to define separately land application or disposal on land.

(VI) **Disposal on land :** It was thought necessary that in order to avoid confusion about ZLD with that of disposal on land shall not be treated as ZLD because if standard is not achieved, discharge of liquid effluent will definitely cause environment damage. Therefore, disposal on land shall be strictly scientific in compliance of E(P)A Standards/Board Standards, whichever is stringent and will not cause any environment damage. Accordingly, above two definitions about ZLD and Disposal of treated effluent on land scientifically after achieving standard have been incorporated or strict implementations thereof.

Earlier, ZLD in respect of disposal of total treated effluent on land for irrigation purpose has been defined as per disposal on land and not ZLD. Similarly, discharge of effluent in violation of consent conditions, For example condition for disposal on land for irrigation purpose will be treated as violation, if the effluent is discharged into river or stream.

(B) Categorization of Violations :—

The policy frame work for initiating legal action has already been decided, wherein, the time limit to adopt improvement measures duly supported by the bank guarantees for various compliances have been spelt out. The proportionate compliance levels have been categorized in 3 categories as under:—

- (a) Substantial non-compliance – where compliance is less than 25% (non-compliance is more than 75%).
- (b) Medium compliance – where compliance level is from 25% but is less than 75%.
- (c) Average compliance- where compliance level is 75% and below 100%.
- (d) Substantial/Total compliance- where compliance level is 100%.

The stages of compliance particularly for new installations of equipments, the exceedance of pollution discharge and submission of mandatory returns/documents :-
The compliance level *vis a vis* non-compliance in % will be decided with reference to not only the installation of equipments for pollution control devices, but also taking into consideration the discharge of pollutants on the basis of exceeding standards, observations in the visit and surprise inspections, investigation of complaint reports, compliance of statutory permissions including EC, C to E and C to O as well as mandatory submissions like hazardous wastes returns, cess returns, submission of feasibility/proposal for up-gradation on the basis of feasibility study for deciding adequacy of pollution control devices with regard to the up-gradation, environment statement, provision of online monitoring system / monitoring mechanism, operational issues like scientific operations, segregation of strong streams, leakages in processes, emission level in the environment, disposal of pollutants into environment, provision of adequate land for disposal, submission of bank guarantees and concrete proposal for further improvement etc.

It has been decided that 40% weightage will be given for installation of adequate and suitable pollution control arrangements (In case, the process is predominantly water polluting, then out of 40% weightage, 30% will be given for providing adequate and suitable ETP and Disposal arrangement and 10% will be given to other waste management. However, where process is predominantly (mainly) air pollution potential, 30% will be given for providing adequate and suitable APCS and 10% for other waste management (effluent/ HW/MSW etc.). But where the activity is mainly hazardous waste generating, 30% weightage will be given for scientific waste management and disposal. For example, in case of BMW generation, for proper collection, transportation and disposal to common facility, 30% weightage will be given. Similarly, where activity is generating MSW mainly, 30% weightage will be assigned to MSW generation, its collection, segregation, transportation and scientific disposal thereof). Thus depending upon the major source of pollution like water effluent/air emissions/ hazardous/ solid waste, out of 100% compliance, 40% weightage will be given to adequate waste management provision. The remaining 10% weightage will be given to other wastes other than predominant generation of waste.

Further out of 100% compliance level, 40% weightage will be given for proper operation and maintenance of waste management with reference to achieving standards. Further 20% weightage will be given to mandatory submission of documents, such as application for consent, cess returns, HW returns, environment statement submission etc. However, where inspite of provision of adequate waste management system, if it not operated, 40% weightage given to provision of waste management system will be treated as total non-compliance as if such waste management is not provided, on account of its non-operation in that particular month, even though such non-operation is reported once in a month whereas though it was operational on other days. The non-compliance observed on specific date will be treated as a non-compliance after the previous date of visit, when it was observed to be complied, if the concerned project proponent has not informed well in advance immediately about such non-compliances with appropriate reasoning to the satisfaction of the authority.

The weightage of non-compliance will be calculated on the basis of the period for the year, which will be further calculated for a month in percentage. Therefore, the non-compliance level will be decided on the basis of pollution potential annually, causing damage to the environment with reference to the non-compliance. In deciding such non-compliance level and remediation cost for the period of non-compliance, the criteria will be finalized in consultation with reputed institutions like NEERI, IIT Powai, Fisheries Department, NIO, Expert Agriculture Institute/ Department etc. As far as hazardous waste non-compliance is concerned, the cost of remediation is well defined in the rules itself taking into consideration land fillable/ Incinerable waste. Similarly, HW Rules further provide for imposition of fines with the approval of CPCB, which will be followed in cases of non-compliances of Hazardous Waste Management, causing pollution. It is understood that now the liability for environmental pollution in terms of cost of remediation is being incorporated under the Environmental Laws, which post facto such incorporation, the said provisions will be followed. MPCB will prepare appropriate manual/SOP for imposing the

liability for non-compliance with reference to a period of non-compliance in consultation with various reputed institutions/experts and will be separately followed such standard operating practice in due course of time.

The compliance criteria can be decided in three parts with reference to installation of adequate and suitable pollution control arrangements (overall 40% weightage with reference to Compliance);

Statement showing the % given to installation/completion of work in respect of adequate and suitable pollution control devices.

Sr. No.	Particulars of Compliance	% given for Compliance
1.	Submission of concrete proposal	10%
2.	Placing of order.	10%
3.	Actual % of work completed	
Out of remaining 20% weightage, actual % work completion will be calculated with reference to 100%- of 15% installation weightage excluding 5% for stabilization		
4.	100% completion of installation work	15%
5.	Stabilization of PCS after completion of 100% installations	5%

(A) Statement showing compliance level in respect of 40% weightage given for O & M

Sr. No.	Particulars of O&M with reference to source of pollution (water/Air/HW/MSW/Other Waste).	% given for Compliance
1.	O & M of PCS where process is water polluting in nature on the basis of last three samples-analytical reports	% of compliance will be decided on average basis w.r.t. EPA standards
2.	Where activity is having Air pollution potential in nature on the basis of last three samples-analytical reports	—do—
3.	Where activities are both air and water polluting	% of both reports of monitoring of effluent and emissions of last three results on average basis will be taken into consideration.
4.	Where activity is mainly generating HW/MSW/BMW as the case may be	% of compliance on the basis of proper collection, transportation, treatment and disposal will be taken into consideration.

Note : Where the activity is both water and air polluting and also generating other wastes like HW, BMW, MSW, Fly Ash etc., 40% weightage will be spread across on the basis of pollution potential of such mixed sources of pollution.

3. Statement showing 20% weightage given to mandatory submission of documents

Sr. No.	Particulars of documents to be submitted	% given for Compliance
1.	HW Returns	
2.	Environment Statement	
3.	Cess Returns	
4.	Battery collection and reprocessing returns (Wherever is applicable)	
5.	E waste (Wherever is applicable)	
6.	Fly Ash (Wherever is applicable)	
7.	Feasibility study of PCS	
8.	Any other submission (wherever is applicable)	

Note: 20% weightage will be divided into No. of mandatory submission equally.

Statement showing % non-compliances, which will be taken into consideration at the time of initiating various legal actions.

Sr. No.	Particulars of Non-compliances	Action proposed
(1)	(2)	(3)
1.	For achieving ZLD	On the basis of % of discharge into environment with reference to exceeding standards, non-compliance level will be decided. Where in-spite of ZLD condition, effluent/ pollutants discharged into environment, it will be treated as violation of ZLD condition and for such discharge of pollution load; appropriate legal action will be initiated including measures for restoration by issuance of appropriate directions duly supported by BG of approximate restoration cost.
	Land Application for Treated Effluent	The disposal on land without achieving standards land application will be treated as non compliance and on the basis of % of exceedance of EPA standards, action will be initiated and the remediation cost for taking remedial measures for restoration will be recovered on the basis of the report from reputed institution/expert agency for utilization thereof for restoration.
2.	Scientific disposal of treated effluent	On the basis of % exceedance in respect of standards laid down under the provisions of EP Act, 1986 further action will be initiated including restoration measures by issuance of appropriate directions duly supported by BG of approximate restoration cost.
3.	Provision of adequate land for disposal	% of treated/undertreated/untreated effluent discharge outside land for disposal and % of exceeding parameters, non-compliance will be taken into consideration while initiating action. The effluent generation will be restricted with production quantity commensurate with availability of land.
4.	Discharge of effluent/ emissions in contravention of consent conditions	On the basis of discharge quantity and exceeding parameters %, further action will be initiated by issuance of appropriate directions duly supported by BG of approximate restoration cost.

However, where inspite of providing full-fledged treatment or without providing any treatment, pollutants are discharged into environment without any treatment, it will be treated as 100% non-compliance and accordingly, further action will be initiated.

(C) Specific Actions in case of serious violations :—

However, in case of serious environmental pollution, causing serious public nuisance, specific orders passed by the various quasi-judicial and judicial forums, the consent granting authority will initiate more stringent action including restraining apprehended or existing pollution, closer of highly polluting section of industries, making application to the Courts for appropriate orders, filing of prosecution, closure/prohibition/ regulation of activities etc. The consent granting authority may in appropriate cases refuse / revoke consents or review conditions granted in earlier consent as the case may be, till corrective actions are taken or effective steps are taken to prevent, control or abate pollution including remedial and restoration measures.

In cases of common facilities of local bodies, industries, it was decided that after exhausting necessary remedies and actions as per the provisions of various Environmental Laws, such as issuance of prohibitory orders restraining apprehended pollution, issuance of appropriate directions to the defaulters as per the provisions of the Water and Air Acts, issuance of proposed/ interim/final directions, grant of consent/authorization with more stringent conditions, refusal/ revocation of consent/authorization and filing of prosecution, CPCB directions etc., it was thought that the best course can be to approach Hon'ble NGT in unresolved substantial questions relating to the environment protection, which may arise due to continuous and serious non-compliances of important environmental norms, causing serious pollution, in spite of a number of remedies exhausted by the Board.

While granting "Consent to Establish," necessary stringent conditions will be imposed taking into consideration the local conditions. For example, in the dense industrial area, taking into consideration the nearby residential areas, cleaner technologies will be insisted for achieving most stringent standards. Precautionary measures will be suggested for such areas such as those in line with studying carrying capacity and determining emission cleansing potential of particular area in discussion and also assigning methods for enhancing environmental capacity for accommodation of emission of need be. While granting "Consent to Operate" to such type of industries, after due verification of the consent conditions and precautionary measures undertaken, "Consent to Operate" will be considered. While granting first "Consent to Operate," a detailed verification will be done, more particularly of highly polluting category of industries.

(D) Conditions for Remediation / Restoration to be incorporated/ imposed for damage caused to the environment in Consents / Directions of Defaulting Industries :—

While granting "Renewal of Consent," wherever the said industry found responsible for causing serious environmental pollution, the concerned industry shall be directed to prepare a comprehensive plan for remediation / restoration through the reputed institutes like NEERI / IIT Powai / ICT, Matunga / National Institute of Oceanography / Central Ground Water Board (CGWB)/ State Ground Water Board (SGWB) / Rahuri Krishi Vidyapeeth/Konkan Krishi Vidyapeeth / Fisheries Department /M.S. University of Baroda / NITIE / ARAI / Savitribai Phule Pune University, Pune / Central Institute of Road Transport (CIRT), Pune etc. and submit such report with time-bound action plan to the MPCB. Such report can also be directly got prepared at the cost of defaulting industries by the MPCB and based on the recommendations in respect of remedial and restoration measures, MPCB may issue appropriate directions to the concerned defaulting industries and also incorporate such conditions in the "Renewal of Consent" after extending an opportunity of hearing to them. Thus, through grant of "Renewal of Consent," the remediation and restoration plan will be implemented in a time bound manner. In case of non-compliances within stipulated time period, MPCB may consider refusal/revocation /review of earlier consent conditions. In appropriate cases, highly polluting activities can be stopped till effective steps are taken for implementing remediation / restoration plan.

4. Enforcement of compliance of various environmental norms through various actions under the provisions of environmental laws (Violations & Actions) :—

The Board has been empowered to initiate various actions under the provisions of various Environmental Laws, more particularly the Water (Prevention & Control of Pollution) Act, 1974; the Water (Prevention & Control of Pollution) Cess Act, 1977; the Air (Prevention & Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986 respectively. It becomes necessary to formulate the priority and guidelines for integrating the actions with reference to no. of surprise/regular inspections, the reports of sampling in numbers, investigation of complaints, intensity of pollution, period of non-compliance and its impact on the surrounding environment. After due deliberations, the following criteria are adopted:-

Sr.No.	Category/ Scale of Organisation	No.of visits and samples with dates	Prescribed Standards	Actual Results	Disposal of the Pollutants into Environment	Period & Percentage of compliance - level	Action Proposed
1	Red / Orange / Green SSI/MSI/ LSI		pH BOD COD SS TDS HM TPM		On Land / Into Surface Water / Under ground resources / Atmosphere/ environment	a) Up to 25%, b) 25% up to 50% (c) 50% up to 75% d) above 75%	As mentioned below.

Actions Proposed:

(a) **Warning Notice (WN)/Letter of Warning/Visit and Inspection Report:** Where non-compliance is less than 25% not having serious impact, WN/Warning letter/Visit and Inspection report can be issued pointing out the observations in respect of a no. of earlier visits, the sample reports having exceedance in percentage, pointing out specific non-compliances observed in the visits and giving warning to take corrective measures within stipulated time period ;

This should be issued immediately after visit and inspection / surprise visits and sampling, pointing out specific non-compliances observed during said visit, without waiting for analytical reports or samples collected during the course of visit. The observations should be made to point out characteristics of pollutants, operation and maintenance of pollution control devices, requirement of improvement/up-gradation on the basis of earlier visits and analytical reports, specifying % non-compliance on the basis of weightage given for the compliance/non-compliance with recommendations to initiate further action as per delegation of powers.

(b) **Show Cause Notice (SCN) :** Where exceedance level is above 25% but not having serious impact on environment, SCN can be issued pointing out non-compliance % and observations with a no. of visits, and sampling as well as results thereof pointing out non-compliances and steps to be taken with show cause as to why further necessary action shall not be initiated in case, satisfactory reply not given and no effective steps are taken to comply with show cause notice. The % non-compliance on the basis of earlier record with reference to various parameters prescribed in the above statements should be pointed out with specific intimation to initiate further action including PD/Conditional Directions/filing of prosecution etc. The SCN will be issued under corresponding sections under which the conditions for compliances are imposed, such as Section 25/26/27 of the Water Act, Section 21 of the Air Act and concerned rules under which non-compliances are observed under the Environment (Protection) Act, 1986. The format for SCNs has been prepared and hosted on the Boards Web site.

(c) **Proposed Directions (PD)** : After SCN, if no steps are taken to comply within the reasonable time period or where the non-compliance and exceedance observed to be having impact on environment, PD can be issued on the basis of three analytical reports, pointing out the visits, sampling and exceedance above 50% with reference to standards and with reference to non-compliance of show cause notice as well as on the basis of % non-compliance/s given in the above statements.

(d) **Conditional Directions** : In order to secure compliance within stipulated time period, after issuance of the PD, on the basis of reply/no reply, subsequent to grant of opportunity of hearing, final conditional directions with time-frame to comply with the conditions imposed to be issued, within 45 days. If those conditions are not complied with, then prohibitory/restraining Orders to be issued to stop polluted discharge/emissions u/s 32 of Water & u/s 22 of Air Acts. If compliance is not done after issuance of prohibitory Order, then the application u/s 33 of Water/ u/s 22A of Air Act can be filed before JMFC / CJM for appropriate Orders.

(e) **Conditional Directions** : Where serious non-compliance is observed on the basis of regular/surprise visit / investigation of complaint and/or any report of committee, in such cases, where exceedance is above 75%, directions of closure/ disconnection of electricity/water supply/ essential service to the polluting activity can be issued and till effective steps are taken to comply with points addressed in respect of serious non-compliances, conditional permissions to restart manufacturing activities may not be granted. In order to incorporate the element of restoration/remediation, the Third Party will be appointed at the cost of polluter to prepare remedial / restoration plans with cost of remediation / restoration within stipulated period. Based on such report, while granting restart, conditions for taking restoration / remediation measures in a time-bound manner will be imposed and appropriate BG for ensuring the compliance of conditions imposed for restoration measures duly supported by cost shall be obtained. If non-compliance observed, BG can be forfeited and forfeited amount can be utilized on restoration measures through appropriate implementing agency.

(f) **Filing of prosecution** : After proper built-up of case in respect of continuous and serious non-compliances with documentary evidence, an action for filing of prosecution may be initiated. Wherever, non-compliances still continues, even after initiating various actions, in appropriate cases, Board may take recourse to approach Hon'ble NGT for specific performance. In appropriate cases of urgent nature, with the approval of Board, in the public interest, having no alternative, MPCB may execute certain works of pollution control, provided that the defaulter is not having the requisite resources and the activity needs to be continued in the interest of State and Public at large. However, this can be an exceptional remedy and the Board cannot be expected to perform the works of hardened defaulter, only because of it does not comply with environmental norms having sufficient resources.

Various aspects in respect of regular and surprise inspection, formation of a squad for such surprise inspection, monitoring of standards are being separately formulated. However, as far as visit, inspection and samplings norms are concerned, for each Field Officer, the frequencies prescribed by the MPCB from time to time shall be followed. As far as SCN is concerned, it will be issued on the basis of three consecutive analysis reports of joint vigilance sample. In case, after notice period, if no effective steps are taken, on the basis of further three reports, Proposed Directions (PD) shall be issued. If within 45 days no compliance steps are taken, then final conditional directions in respect of specific non-compliances shall be issued with implementation period. In spite of final conditional directions, if non-compliances continue, after the prescribed period in the said directions, then closure / prohibition / regulation of polluting activity, directions will be issued.

However, where grave and sudden circumstances exist, then final directions shall be directly issued pointing out grave and sudden circumstances, even without exhausting above actions in the manner prescribed therein, in order to prevent further serious damage to the environment or in order to prevent any unforeseen act, incidence / event causing apprehended pollution. However, while issuing final directions without exhausting above remedies/without extending opportunity

of hearing in exigencies of circumstances, the reasons for initiating such stringent action directly, will be incorporated in the final directions of closure, prohibition or regulation of polluting activities.

It was decided to define 3 incidences of violations for initiating actions, for Zero Liquid Discharge (ZLD):- It was decided to define specifically ZLD. It means that nothing is to be discharged into the environment and total treated effluent to be utilized in the manufacturing process itself.

It was decided that same level of violation should be penalized with same level of penalty and to do away with individual discretion, laying down objective tests for initiating various legal actions.

Since, enforcement mechanism is subject to improvement on the basis of execution of enforcement policy, in due course of time, the MPCB will make necessary improvement on the basis of its own experience, amendments in the various Environmental Laws and after perusal of various Orders passed by Hon'ble National Green Tribunal, High Court of Judicatures and Hon'ble Supreme Court of India.

This is issued with the approval of Hon'ble Chairperson,

DR. P. ANBALAGAN, IAS,

Member Secretary.