

# MAHARASHTRA POLLUTION CONTROL BOARD

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Date: 20/3/2012

## CIRCULAR

Sub : Procedure for issuance of refusal / revocation order and reconsideration of cases on the basis of further compliance / remand back by the Appellate Authority/review of those orders by the Competent Authority on account of the merit of the case.

The procedure for refusal / revocation / review of consent has already been circulated alongwith the Circular for Consent Management as under :

### A. Water (Prevention and Control of Pollution) Act, 1974 -

- (i) Revocation of Consent :- Section 27 (2) (a) of the Water (Prevention and Control of Pollution) Act, 1974 specifically provides for revocation of consent conditions. It provides that a State Board may review from time to time any condition imposed u/s 25 / 26 of the Water (PandCP) Act, 1974. It shall serve on the person to whom consent is granted, a notice making any reasonable variation of or revoking any condition.

Therefore, it becomes necessary that before revocation of consents, a notice shall be served on the affected person, pointing out the non-compliance and reasons for revocation. Then, after considering any clarification/reply, if any received, further action can be taken after period of notice is over. Revocation be resorted to only after following the said procedure.

- (ii) Refusal Of Consent : Section 27 (1) of the Water (Prevention and Control of Pollution) Act, 1974 provides for refusal or withdrawal of consent. It further provides that if the industry, operation or process or treatment and disposal system or extension or addition thereto or the outlet is so established not to comply with the conditions imposed by the Board to enable it to exercise its right to take samples of the effluent. Section 27 of the said Act further provides for issue of appropriate notice before refusal of consent.

### (iii) Review of Consent:

A State Board is empowered to review from time to time not only any conditions imposed under Section 25/26 of the Water (PandCP) Act, 1974, but also refusal of any consent under those Sections, but by issuing a notice making any reasonable variation and revocation of any condition, wherever it requires

Water Act, 1974 in Section 27 provides for review of conditions imposed u/s 25/26 of the said Act or refusal order or consent order. The review will be done by the higher officer/authority than the officer / authority, who has been empowered to grant / refuse consent.

B. Air (Prevention and Control of Pollution) Act, 1981

- (i) Revocation of Consent :-Section 21 (4) in its proviso provides that it shall be open to the State Board to cancel such consents before the expiry of the period, for which, it is granted, if the conditions subject to which, such consents are granted are not fulfilled. It also provides that a reasonable opportunity of being heard shall be given to the person concerned.

In short, in case of revocation of consents, it becomes necessary to bring on record non-compliance of consent conditions and to give a reasonable opportunity of being heard before revocation. Therefore, first of all a show cause notice, pointing out the non-compliance/s and intention to revoke consent in case of non-compliance shall be issued. After receipt of replies / objections to such show cause notice, if necessary, an opportunity of hearing in person can be extended by the officer/ authority before revocation of consent. If the authority / officers satisfied about the grounds of revocation after extending personal hearing, he may issue revocation order in respect of such consent.

- (ii) Refusal Of Consent :Section 21 (4), proviso, provides for a reasonable opportunity of being heard shall be given to the person concerned before refusal of consent. The procedure being prescribed for revocation of consent can also be followed up in refusal of consent.

- (iii)Review of Consent Section 21(6) of Air Act, 1981 provides that if due to technological improvement or otherwise, the State Board opines that all or any condition requires variation, it may do so after giving reasonable opportunity to concern person therefor. Similar procedure can be followed, which is prescribed for revocation / refusal of consent as above.

The review will be done by the higher officer/authority than the officer / authority, who has been empowered to grant / refuse consent.

- C. Hazardous Waste (Management and Handling) Rules, 1989 empowers State Pollution Control Board to cancel an authorization issued under the Rules or suspend it for such a period as it thinks fit, if in its opinion, the authorized person has failed to comply with any of the conditions of the authorization or with any provisions of the Act or these Rules. Here also, it is provided in Rule 6 that an opportunity to show cause shall be given and after recording reasons therefor, authorization can be suspended or cancelled. The State Pollution Control Board to give proper directions in case of suspension or cancellation of authorization to the concerned person for safe storage of hazardous waste.

Therefore, the procedure issuing show cause notice before suspension, pointing out the non-compliance of conditions of authorization or the provisions of the Act / Rules, to consider reply / objections to the show cause notice, then, to issue suspension or cancellation order with directions for the safe storage of the hazardous waste will have to be followed before issuing suspension or cancellation order.

- C. The Bio-Medical Waste (Management and Handling) Rules, 1998 : The Rules provide for grant or renewal of authorization. The authorization shall be granted for a period of 3 years including an initial period of one year and thereafter renewal thereof.

There is provision for refusal of authorization after giving reasonable opportunity of being heard to the Applicant and after recording reasons thereof. Similarly, the prescribed authority may cancel or suspend an authorization in case of failure to comply with the provisions of the Act and Rules, after giving a reasonable opportunity to the occupier or operation of being heard. The procedure for refusal/revocation of consent can be followed in case of refusal / suspension of authorization.

Now, the issue arise in respect of what procedure for reconsideration of cases of refusal / revocation / review of consent can be followed during Appeal Period or after remand back of the refusal / revocation orders for reconsideration for grant of consent by the Appellate Authority, allowing the Appeal or review order issued by the Competent Authority in respect of refusal / revocation of consent on account of the merit of the case in respect of issuance of the review orders. The following situations may arise in case of refusal / revocation of consent, if refusal / revocation issued before taking stringent action, on the basis of latest verification report in respect of the non-compliance of the Refusal / Revocation Order after 30 days Appeal Period and specifically mentioning therein (Refusal Order) about 30 days Appeal Period is granted for the compliance of the Refusal/Revocation Order, on the basis of verification report with latest visit, inspection and sampling concern officer can initiate further necessary action including appropriate directions, submission of prosecution proposal, encashment of bank guarantee, if any etc. as deem fit in the case as under :

- (1) If Appeal preferred, further necessary action after Appeal Period over on the basis of latest report after Appeal Period, further taking steps as per delegation of powers.
- (2) If no appeal preferred and representation made to the Board, after 30 days Appeal Period over, on the basis of latest report, further necessary action can be taken.
- (3) Unless the matter is serious causing pollution, in Appeal Period, no substantive action shall be issued. If, it is causing serious pollution, then on the basis of substantive evidence without procedure to appeal, further necessary action can be initiated.
- (4) When Appeal preferred and no stay granted, further necessary action can be initiated as per the delegation of powers without prejudice to the order passed or being passed.
- (5) We may forfeit the amount of earlier application made for grant of consent, restricted to the refusal period only. If, the Competent Authorities including Appellate Authority set aside the refusal / revocation order on merit either allowing the Appeal and reminding it back to the Board for reconsideration or allowing the review of refusal / revocation order on merit of the case, then, the fees paid at the time of application for consent prior to refusal / revocation order can be adjusted. If, the Appeal is not allowed or the Competent Authority does not accept the grounds of review, then, the fees for the refusal/ revocation period is to be forfeited and for that period, afresh fees will have to be deposited by the applicant for the refusal period only.

  
 (Milind Mhaskar)  
 Member Secretary

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Copy submitted to: Hon'ble Chairman, MPCB, Mumbai – for favour of information.

Copy to:

1. Sr.Law Officer(P&L Divn.)/Joint Director (Water Pollution Control)/Joint Director (Air Pollution Control)/ Principal Scientific Officer/ Asstt.Secretary(Tech.)/Chief Accounts Officer/Joint Director(PAMS)/Regional Officer(HQ),MPCB, Mumbai – for information and necessary action. They are directed to circulate the said circular to the officers under their control.
2. The Regional Officer- Mumbai/Navi Mumbai/ Thane/Kalyan/Raigad/Pune/ Aurangabad/ Nagpur/Nashik/Kolhapur/ Amravati/ Chandrapur, MPCB – for information and necessary action. They are directed circulate the said circular to the officers including Sub-Regional Officers under their control.
3. Statistical Officer/l/c Law Officer(P&L Divn.), MPCB, Mumbai – for information and necessary action.
4. All Asstt.Law Officers, Policy & Law Divn, MPCB, Mumbai- for information & necessary action..
5. Asstt.System Officer, EIC Section, MPCB, Mumbai – for information and necessary action – He is instructed to place the said circular on the website of the Board in the link of various Standing Orders/Circulars issued by the Board.

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