

150

590

91

MAHARASHTRA POLLUTION CONTROL BOARD

☎ : 24010437/4701/24020781
24037124/5273/24044489

Fax : 24024068

Visit us on :

<http://mpcb.mah.nic.in>

Kalpataru Point, 3rd and 4th Floor,
Sion Matunga Scheme Rd.No.8
Opp. Cine Planet cinema,
Near Sion Circle, Sion (E),
Mumbai - 400 022.

By R.P.A.D./Fax/Hand Delivery
No.BO/PandL Div.I/B-1158

Date: 18/02/2008 / 07/03/2008

CIRCULAR

Sub : Procedure for revocation / refusal / review of consents /
Authorizations

The Consent Appraisal Committee in its meeting held on 22/01/2008 has recommended that a detailed procedure shall be laid down in respect of revocation / refusal / review of consents / Authorizations in conformity with the provisions of Environmental Laws and principles of natural justice. A procedure for revocation / refusal / review of consents/authorizations, after perusal of the provisions of the Environmental Laws and principles of natural justice is 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 (Pollution Control) 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.

: 3 :

- 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.

- D. **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.

- E. **The Recycled Plastics Manufacture and Usage Rules, 1999 with the Maharashtra Bio-Degradable Garbage (Control) Act, 2006** :- Manufacture of plastic has been classified as a 'Green' Category. However, taking into consideration the impact of plastic carry bags and containers on the environment, the provision for grant of registration for manufacturers of carry bags or containers of virgin or recycled plastics made in the amended rules of 1999 in 2003. Similar provision is also made under the Maharashtra Bio-Degradable Garbage (Control) Act, 2006. The procedure followed in respect of consent for grant, refusal / revocation or review can be followed in respect of applications under the above rules.

- F. **Municipal Solid Wastes (Management and Handling) Rules, 2000** provides for grant of authorization for setting up waste processing and disposal facility including landfill for a given period and after the validity is over, a fresh authorization shall be required. It does not specifically provide for suspension of authorization, as such.

The Batteries (Management and Handling) Rules, 2001 – Since, MPCB is the prescribed Authority for ensuring compliance of the provisions of these rules, MPCB has to ensure that each recycler has obtained registration from the Ministry of Environment and Forests, Govt. of India or an agency designated by it and also submitted annual returns in the Form-7 to the Board, before grant / renewal of the consent. While renewal of consent to the battery manufacturers, the compliance of the provisions of the rules are to be ensured.

H. **Maharashtra Govt. EIA Notification, 1997, as amended from time to time and EIA Notification issued by MoEF, Gol dtd.14/09/2006.**

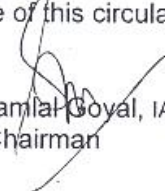
As per Maharashtra Govt. EIA Notification, 1997, it is essential that prior to grant of environment clearance, consent to establish is required to be obtained and then, Environment Clearance will be granted by the Govt. of Maharashtra. After Environment Clearance, Consent to Operate will be granted.

However, as per Circular issued by the Ministry of Environment and Forests, IA Division, Govt. of India vide No.F.No.J-11013/41/2006 – IA-II (I) dtd.21/11/2006, the grant of Consent to Establish by the State Pollution Control Board and prior Environment Clearance are two separate legal requirements and de-linked. But, before grant of Consent to Operate, it becomes necessary to ensure that Environment Clearance is granted.

Therefore, in case of Maharashtra Govt. EIA Notification, 1997, the consent to establish will be granted first, then Environment Clearance will be granted and then only, Consent to Operate will be granted. In case of EIA Notification dtd.14/09/2006, Consent to Establish can be granted even before / after Environment Clearance because it has been de-linked with the grant of Environment Clearance. But, Consent to Operate can be granted only after receipt of Environment Clearance from MoEF, Gol/State Govt.

Such cases of revocation, refusal or review of consent shall be legally examined as far as the provisions of the Acts are concerned and principles of natural justice to be followed.

This is issued with the approval of the Consent Appraisal Committee. The delegation of powers will be exercised from the date of issue of this circular.


(Shyam Lal Goyal, IAS)
Chairman

Encl: As above.

Copy f.w.cs.to –

1. Shri Ramanath Jha, Principal Secretary, Home (Transport Deptt., Mantralaya, Mumbai (Member- CAC, MPCB) – for information.
2. Shri S.T. Dabhade, Technical Advisor, MIDC, Mumbai (Member-CAC, MPCB) – for information.
3. Shri Sanjay Khandare, Member Secretary, MPCB and CAC – for information.

Copy to:

- 1) I/C Water Pollution Abatement Engineer/I/c Air Pollution Abatement Engineer/ Principal Scientific Officer/Chief Accounts Officer/Sr. Law Officer(PandL Divn.I and II)/Sr. Administrative Officer, MPCB, Mumbai – for information and necessary implementation.
- 2) Regional Officer-HQ/PandP/Co-Ordination/PCI-II/Project Leader(Zoning Atlas), MPCB, Mumbai – for information and necessary implementation.
- 3) Law Officer (PandL Divn.I and II)/Statistical Officer, MPCB, Mumbai – for information and necessary implementation.

Copy to:

- 1) Regional Officer- Mumbai/Thane /Navi Mumbai/Raigad/Kalyan/Pune/ Nashik/Aurangabad/Nagpur/Amravati/Kolhapur – for information and necessary implementation.
- 2) Incharge-Central Lab., Navi Mumbai- for information and necessary implementation.
- 3) Incharge, Regional Lab., Pune/Nagpur/Aurangabad/Thane/Chiplun/Nashik – for information and necessary implementation.
- 4) Sub-Regional Officer-Mumbai-I/II/III/IV / Thane-I/II/Tarapur-I/II / Navi Mumbai-I/II/Taloja/Raigad-I/II/Mahad / Kalyan-I/II/III / Pune-I/II/Pimpri-Chinchwad/ Satara/Solapur/Nashik/Jalgaon-I/II/Ahmednagar/ Aurangabad-I/II/Latur/ Nanded/ Parbhani/Nagpur-I/II/Bhandara/Chandrapur / Amravati-I/II/Akola/ Kolhapur/Sangli/ Ratnagiri/Chiplun. – for information and necessary implementation.
- 5) All Sub-Regional Officers at HQ for information and necessary implementation..