

The Draft EIA Notification, 2020: *Reduced Regulations and Increased Exemptions*

Part II: Comparison of the Draft EIA Notification, 2020 and the Zero Draft of
the EIA Notification, 2019



Comparison of the Draft Environmental Impact Notification, 2020 and the Zero Draft of the Environment Impact Notification, 2019

The Draft EIA Notification, 2020,¹ recently came under scrutiny from the High Courts of Delhi and Karnataka. On 30th of June 2020, the High Court of Delhi in *Vikrant Tongad v Union of India*² extended the time period for sending comments up till 11th August 2020 and also ordered the Ministry of Environment, Forests and Climate Change (MoEFCC) to publish the draft notification in 22 languages which are specified in the VIIIth Schedule of the Constitution of India, 1950 before 10th July 2020. Thereafter, on 8th July 2020 the High Court at Karnataka in *United Conservation Movement Charitable Welfare and Trust v. Union of India*³ also directed the Ministry to give wide publicity to the draft notification so that even during the pandemic, citizens will be in a position to engage with the same. In further hearings, on 16th July 2020, the Karnataka HC was not satisfied with the manner in which the Ministry had been pursuing giving publicity to the draft. The HC told the Ministry that unless sufficient steps are taken to publicise the translated versions of the draft, they would indefinitely stay the draft notification.

In their statement of objection filed in the case on 22nd July 2020, the Ministry claims to have circulated a Zero Draft of the EIA Notification to all States Governments, State Level Environmental Impact Assessment Authorities and State Pollution Control Boards / Union Territory Pollution Control Committees on 15th April, 2019.⁴ Additionally, the Ministry also submitted that they were under no obligation to translate the copies pursuant to the order of the Delhi HC, and said that an appeal had been filed with the Supreme Court against the decision of the Delhi HC.⁵ The Ministry equates the Zero Draft circulated in April 2019 and the 2020 draft notification as one and the same and thereby claims to have facilitated enough publicity for the draft. However, the zero draft mentioned in their statement of objection was only shared as an office memorandum with various state-level administrative bodies, when the entire country was focusing on the 2019 Lok Sabha elections.⁶ Even the immediate response from activists and researchers on the Zero Draft of 2019, which can be found [here](#), [here](#) and [here](#), were based on the copy of the draft which was shared with an activist by an unofficial source.

The Zero Draft of 2019 and the Draft EIA 2020 Notification are however significantly different and cannot be considered as the same document. The 2020 draft notification has many additional provisions which were not present in the Zero Draft of 2019, such as post-facto clearances,

¹ Gazette Notification, S.O.1199 (E) dated Mar 23, 2020, available at: http://environmentclearance.nic.in/writereaddata/om/6998FGGHOI_Gaztte_EIA2020_Comments.pdf

² WP(C) No 3747 of 2020 and CM Appeal 13426 of 2020 (High Court of Delhi)

³ WP 8632 of 2020 (High Court of Karnataka)

⁴ Akshay Deshmane, [EIA 2020: Documents Show How Modi Govt Misled Karnataka High Court](#), Huffpost, July 28, 2020.

⁵ Akshay Deshmane, [EIA 2020: Documents Show How Modi Govt Misled Karnataka High Court](#), Huffpost, July 28, 2020.

⁶ Office Memorandum dated April 15, 2019, available at: https://imgs.mongabay.com/wp-content/uploads/sites/30/2019/05/22103405/Zero-Draft-EIA-Notification-2019-for-comments_compressed1.pdf

introduction of environmental permission for B2 category projects, blanket exemption to projects applying for expansion or modernisation with capacity enhancement upto 50% from public consultation process, reduced notice period for holding public hearing and a reduced frequency for submission of Post-EC compliance reports by the project proponent. Some of the major differences between the Zero Draft of 2019 and Draft Notification of 2020 are listed out below, followed by a clause-by clause comparison of the two drafts.

Major Differences between the Zero Draft EIA of 2019 and the Draft EIA Notification of 2020

Requirement of prior Environmental Clearance/ Environmental Permission:

- The Draft EIA 2020 introduces the concept of Environmental Permission (EP) for category B2 projects, which would allow several projects to not undergo the EIA process. No such concept is present in the Zero Draft of 2019.
- The Draft EIA 2020 allows for the leveling of land to take place even before an Environmental Clearance (EC). The Zero Draft of 2019, in line with the 2006 Notification allows only for the securing of land by building temporary sheds or fencing the area.

Stages in the EIA process:

- The Draft EIA 2020 expedites the timelines for processing the clearances for projects by reducing the number of days within which certain activities need to be completed. The Zero Draft of 2019 is more along the lines of the 2006 Notification with respect to the timelines and thus does not allow for such an expedited process to be carried out. For example:
 - Appraisal has to be carried out within a period of 60 days from the receipt of an application as per the Draft EIA 2020, while the same is 80 days in the Zero Draft of 2019.
 - The notice period provided before conducting a public hearing is for 30 days in the Zero Draft of 2019 which is the same as the 2006 notification as opposed to 20 days prescribed in the Draft EIA 2020.
 - The recommendations of the Expert Appraisal Committee (EAC)/State level Expert Appraisal Committee (SEAC) have to be considered by the regulatory authority and a decision has to be made within 45 days in the Zero Draft of 2019. The same has been reduced to 30 days in the Draft EIA 2020.

- There are significant differences in the public consultation (PC) clause in the Zero Draft of 2019 and the Draft EIA 2020 in terms of timelines and the nature and number of projects which have been given exemption from the PC process. For example- the Draft EIA 2020 gives a blanket exemption to all the projects with a capacity enhancement up to 50% from the PC process which is not the case with the Zero Draft of 2019.

Committees:

- The Zero Draft of 2019 mandates the Member Secretary (MS) of the State Level Environment Impact Assessment Authority (SEIAA) to be familiar with the environmental laws. No such requirement is there in the Draft EIA 2020, which simply states it is expected that MS is to be familiar with the environmental laws.
- The Draft EIA 2020 places restrictions on the EAC/SEAC to ask for additional studies during the process of appraisal, but no such restriction is present in the Zero Draft of 2019.
- The Draft EIA 2020 allows a mechanism to constitute multiple EAC/SEAC/DEAC if the Ministry deems it necessary. No such provision is part of the Zero Draft of 2019.

Post-Compliance Monitoring:

- The requirement to submit compliance reports is an annual requirement in the Draft EIA 2020. The Zero Draft of 2019 however requires a bi-annual submission of compliance reports as given in 2006 Notification.

Post-Facto Clearances:

- There is no concept of creating a process to grant post-facto environment clearances in the Zero Draft of 2019. However, this has been one of the most criticised inclusions in the Draft EIA 2020.

Modernisation/ Expansion Projects:

- Blanket exemptions with respect to expansion/modernisation projects have been given in the Draft EIA 2020. Several key requirements of the EIA process are not required for capacity enhancements upto 50%. The Zero Draft of 2019, also allows for exemptions to be given for capacity enhancements upto 50% but it provides for this to be done on a case to case basis after due diligence is conducted by the EAC.

Categorisation of Projects (Schedule to the Notification):

- The schedule of projects in both the Zero Draft of 2019 and the Draft EIA 2020 are very different, there are many projects which were put under Project A in the Zero Draft of 2019 and now have been put directly in Category B2 in the Draft EIA 2020 (which doesn't require EIA or PC and gets an EP online) such as water aerodromes, elevated roads and aerial ropeways in ecological sensitive areas. There are also many additions in the schedule of Draft EIA 2020 which were not there in Zero Draft of 2019, e.g. oil exploration, inland waterways and heliports as category B2.

Table of Comparison

Provision	Zero Draft 2019	Draft EIA 2020
Requirement of Prior Environmental Clearance (EC)/ Environmental Permission (EP)	The Zero Draft of 2019 has the same requirements for a prior EC as is in the Draft EIA 2020, but it does not have the concept of an EP.	<p>The Draft EIA 2020 speaks of requiring an EC or an EP for new projects, modernisations and expansions depending on its category.</p> <p>For category A, B1 and B2: If the project is required to be placed before an Appraisal Committee, the project will require an EC.</p> <p>For category B2: If the project is not required to be placed before an appraisal committee then it will require an EP.</p>
<p>Analysis: One of the major criticisms of the Draft EIA 2020 was the creation of the new category of Environmental Permission, which can be assigned to a large variety of projects. These include small and medium industries engaged in cement grinding, bulk pharmaceutical drugs production, river valley projects below 25 MW capacity and onshore and offshore oil and gas exploration. This category of EP was not present in the Zero Draft of 2019, which meant that lesser projects would be exempted from having to undergo the EIA process.</p>		
Leveling of land	The Zero Draft of 2019 does not allow for any construction work to be undertaken prior to an EC except for the securing of land	The construction work which can be undertaken prior to EC herein includes leveling of the land, in addition to the earlier exclusions.

	which includes the setting up of temporary sheds and fencing.	
<p>Analysis: The Zero Draft of 2019 is similar to the 2006 Notification with respect to this provision. Unlike the Draft EIA 2020 which allows for the levelling of land before the grant of an EC, the Zero Draft of 2019 only allows for the securing of the land through building temporary sheds or constructing fences.</p>		
<p>Expert Appraisal Committee (EAC), State Level Expert Appraisal Committee (SEAC) and District Level Expert Appraisal Committee (DEAC)</p>	<ul style="list-style-type: none"> - Sector specific EAC to be constituted - State Government to forward names of the members and chairman to the Central Government 30 days prior to expiry of the tenure of existing SEAC. Central Government to constitute SEAC within 30 days from the receipt of names. If the state government fails to forward the names within the time period as mentioned above, the Central Government may constitute the SEAC without the concurrence of the State Government. - DEAC to be constituted by the Central Government - SEAC and DEAC to have a fixed term of 3 years 	<ul style="list-style-type: none"> - If deemed necessary by the Ministry, more than one EAC for a particular sector can be constituted. Power has also been given to the Ministry to constitute more than one SEAC/DEAC. - State Government to forward names of the members and chairman to the Central Government 45 days prior to expiry of the tenure of existing SEAC. If the State Government or Union Territory Administration fails to comply with the given timeline, the Ministry has power to constitute a SEIAA without any consultation with the State Government. - District Administration or State Government to forward names of the members and chairman to the SEIAA 45 days prior to expiry of the tenure of existing DEAC. If the District Administration or State Government fails to comply with the given timeline, the SEIAA has power to constitute a DEAC without any consultation. If the SEIAA fails to constitute DEAC within the timeline as notified from time to time, the Ministry will have the power to constitute DEAC for such period till the concerned SEIAA does not constitute the DEAC. - SEAC to have tenure of 3 years. Power to extend the tenure by 3 more months has been given under certain circumstances.

Analysis: The Draft EIA 2020 mentions that the Ministry can constitute more than one EAC for a particular sector if it deems necessary. It also gives the Ministry the power to constitute more than one SEAC/DEAC. This push may be on the backdrop of a more expedited appraisal process for clearance.

Another difference between the Zero Draft of 2019 and the Draft EIA 2020 is the increase in time period from 30 days to 45 days within which the State Government has to forward the names of members to the Central Government.

<p>State Level Environment Impact Assessment Authority (SEIAA)</p>	<ul style="list-style-type: none"> - Mandates that the Member Secretary should be familiar with the environmental laws - State Government should forward names of the members and chairman to the Central Government 30 days prior to expiry of the tenure of existing SEIAA. The Central Government should constitute SEIAA within 30 days from the receipt of names. If the state government fails to forward the names within the time period as mentioned above, the Central Government shall constitute the SEIAA. - The tenure is fixed at 3 years 	<ul style="list-style-type: none"> - There is no mandate for the Member Secretary to be familiar with the environmental laws. Rather, the Draft EIA 2020 only mentions that it is expected the member secretary is familiar with environmental laws. - State Government should forward names of the members and chairman to the Central Government 45 days prior to expiry of the tenure of existing SEIAA. If the State Government or Union Territory Administration fails to comply with the given timeline, the Ministry has power to constitute a SEIAA without any consultation. - SEIAA to have tenure of 3 years. Power has been given to the Ministry to extend the tenure by 3 more months under certain circumstances.
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Analysis: The difference between the Zero Draft of 2019 and the Draft EIA 2020 is the increase in time period from 30 days to 45 days within which the State Government has to forward the names of members to the Central Government. Zero Draft of 2019, puts an obligation on the Central Government to constitute SEIAA within 30 days from receiving the names. However, there is no such obligation on the Central Government which is mentioned under the Draft EIA 2020.

Another difference between the two drafts is obligation on the Governments to appoint a Member Secretary familiar with environmental laws. Where the Zero Draft of 2019 obligates that only a person familiar with environmental laws can be appointed, the Draft EIA 2020 only mentions that it is expected of the Member Secretary to be aware of environmental laws. This may pave the way for bureaucrats with little or no knowledge of environmental law to be a part of the green clearance mechanisms.

District Level Environment Impact Assessment Authority (DEIAA)	<p>- Lays down a detailed process for constitution and functioning of the Authority. The Authority is to approve projects falling under category B2 related to mining of minor minerals as mentioned under the schedule.</p>	<p>- The Draft EIA 2020 does away with the DEIAA</p>
<p>Analysis: The Zero Draft of 2019 mentions a detailed procedure for constitution and functioning of the DEIAA. The authority was to approve projects falling under category B2 related to mining of minor minerals as mentioned under the schedule. The Draft EIA 2020 does away with the DEIAA which means that a project that is appraised at the district level will get clearance from the SEIAA.</p>		
Categorisation	<p>All projects under Category ‘A’, ‘B1’ or ‘B2’ in the Schedule including expansion, modernisation or any change of product mix or any change in process of existing projects shall require prior-EC from the Ministry or the SEIAA/UTEIAA or DEIAA.</p> <p>It mentions an expert standing committee, which will review the project categorisation for any project or activity. The committee has power for site inspection of any project or activity in this regard.</p>	<p>All projects under Category ‘A’, ‘B1’ or ‘B2’ in the Schedule including expansion and modernisation of existing projects shall require prior-EC or EP from the Ministry or SEIAA or UTEIAA.</p> <p>All projects concerning national defence and security or involving other strategic considerations, as determined by the Central Government, shall require prior-EC or prior-EP, as the case may be, from the Ministry without any change in the category of the project. Further, no information relating to such projects shall be placed in public domain.</p> <p>Technical Expert Committee will be constituted by the Central Government comprising maximum 10 members. It will undertake categorisation or re-categorisation of projects on scientific principles, including any streamlining of procedures and any other tasks assigned to the committee. The tenure of the committee is five years and it has the power to visit any site connected with any project or activity for the purpose of assessing the environmental impact.</p>

Analysis: Both Zero draft and Draft EIA 2020 exempts defence projects and projects of other strategic consideration from public hearing, the Draft EIA 2020 notification additionally mentions that these projects will only be appraised at central level and information regarding it will not be made available in the public domain.

For categorisation and re-categorisation of projects both the Zero Draft 2019 and Draft EIA 2020 propose the constitution of a committee for undertaking this task. This is likely to curtail participation of the public in this process, rendering these changes to be brought about in a non-transparent and undemocratic manner. The Draft EIA 2020 goes a step further and grants wider power to the constituted committee. It mentions that the Technical Expert Committee can undertake any ‘other tasks’ assigned to it by the Ministry. However, there is no clarity on what kind of tasks would be assigned to the committee under the garb of ‘other tasks’ leaving it ambiguous.

<p>Stages in the prior EC process</p>	<p>For projects in all Categories, there are four stages in the EC process. These are:</p> <ul style="list-style-type: none"> - Scoping - Preparation of an EIA/ Environmental Management Plan (EMP) - Public Consultation - Appraisal 	<p>For Category A and B1 the EIA process includes-</p> <ul style="list-style-type: none"> - Scoping; - Draft EIA; - Public Consultation; - Final EIA; - Appraisal; - Grant/Rejection of EC; <p>For category B2 projects-</p> <ul style="list-style-type: none"> - Preparation of EMP; - Appraisal/ Checking documents completed or not; - EC/Environment Permission
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Analysis: In both the drafts, one major change from the 2006 Notification which can be observed is the removal of the screening requirement for projects. The implications of the same can be found in Part I of this analysis.

<p>Scoping</p>	<ul style="list-style-type: none"> - Provides for the issuance of standard Terms of Reference (ToR) without reference to an Appraisal Committee. There is no time limit specified within which the same has to be carried out. <p>Validity period of ToRs is fixed</p>	<ul style="list-style-type: none"> - Issuance of standard ToRs without reference to Appraisal Committee for the following projects- <ol style="list-style-type: none"> 1 All Highway projects in Border Areas; 2 All projects, proposed to be located in notified industrial estates;
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	<p>at:</p> <ul style="list-style-type: none"> - River Valley and Hydroelectric Projects: 4 years - All other projects: 3 years <p>These can be extended by a period of one year if an application is made within the validity period of the ToR.</p>	<p>3 All expansion proposals of existing projects having Prior EC;</p> <p>4 All Building construction and Area development projects covered under entries of column (4) against item 42 and 43 of the Schedule.</p> <ul style="list-style-type: none"> - In case, the Regulatory Authority does not refer the matter to the Appraisal Committee within 30 days of date of application in Form-I, sector specific Standard ToR shall be issued; - Validity of ToR for River valley projects will be 5 years. For all other projects it will be 4 years.
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Analysis: The ToRs were valid for a shorter period in the Zero Draft of 2019 as compared to the Draft EIA 2020. There was a possibility of extending the ToR but that could only be done upon submitting an application to the regulatory authority. This is of great significance since if the ToRs are valid for a longer duration, the data for the preparation of the EIA and EMP gets dated.

Unlike the Draft EIA 2020 which specified that for certain projects a ToR will be issued within 7 days, the Zero Draft of 2019 does not specify a definite time period within which this needs to be carried out.

<p>Preparation of EIA and EMP</p>	<ol style="list-style-type: none"> 1. It gives details about collection of baseline data for the EIA report. 2. The EIA report is to be prepared by environment consultant organisations which are accredited for a particular sector with the NABET. 	<ol style="list-style-type: none"> 1. It gives details about collection of baseline data for the EIA report. 2. The EIA report is to be prepared by an Accredited EIA Consultant Organisation (ACO) which is accredited for a particular sector. The ACO is accountable for the contents of the EIA in addition to the project proponent. 3. Category B2 projects shall require only an EMP and not EIA.
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Analysis: The Zero Draft of 2019 does not make the accredited organisation also accountable for the contents of the EIA in addition to the project proponent, as done by the Draft EIA 2020.

<p>Public Consultation</p>	<p>1. PC shall have two components A) a public hearing (PH) at the site B) written responses from plausible stakeholders.</p> <p>2. PC to be undertaken for all Category A and Category B1 Projects or activities of new/ expansion/ modernisation proposals.</p> <p>3. All projects and activities located within industrial estates or parks are exempted from PC except ferrous & non-ferrous metallurgical industries, cement plants, lead acid battery manufacturing, skin/ hide processing, petroleum refinery & petro-chemical complexes, pulp & paper industries, thermal & nuclear power plants, coal washeries, mineral beneficiation etc.</p> <p>4. All expansion projects or activities with capacity expansion up to 50%, proposed within the existing premises without additional land acquisition & with prior EC granted on the basis of a PC, subject to compliance of the PC are exempted from conducting a PC except ferrous & non-ferrous metallurgical industries, cement plants, lead acid battery manufacturing, skin/ hide processing, petroleum refinery & petro-chemical complexes, pulp</p>	<p>1. In addition to the two components of PC as per 2006 notification, if required, based on the nature of the project PC through any other appropriate mode can be recommended by the EAC or the Regulatory authority.</p> <p>2. PC to be undertaken by Category A and B1 projects which are new or are expansion or modernisation proposals with capacity increase of more than 50%.</p> <p>3. Projects located within industrial estates like non-toxic secondary metallurgical industries, soda ash, skin/hide processing, acid, pesticide & fertilizer, organic chemical manufacturing, CETPs etc. are exempted from PC</p> <p>4. Exemptions have also been given to more than 20 project categories including off-shore projects and linear projects etc. from PC process.</p> <p>5. Time for SPCB/UTPCC to forward proceedings of the PH has been reduced to 40 days.</p> <p>6. Time to complete PH in case the regulatory authority engages a public agency/authority to carry out PH has been reduced to 40 days.</p> <p>6. Time for SPCB/UTPCC to place the summary EIA report on the website is increased to 10 days.</p> <p>7. Changes in Appendix on Procedure for Public Hearing- the SPCB/UTPCC have been given the power to look at the documents submitted by the project</p>
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	<p>& paper industries, thermal & nuclear power plants, coal washeries, mineral beneficiation etc.</p> <p>5. The Zero Draft of 2019 mentions 11 more projects that are exempted from PC.</p> <p>6. Time for SPCB/UTPCC to forward proceedings of the PH is 45 days (same as the 2006 notification).</p> <p>7. Time to complete PH in case the regulatory authority engages a public agency/authority to carry out PH is 45 days.</p> <p>8. Time for SPCB/UTPCC to place the summary EIA report on the website is 7 days. The authority can use other appropriate media to ensure wider publicity about the project.</p> <p>9. Appendix on Procedure for Public Hearing- on receiving the draft EIA report, the regional office of the MoEFCC and the SPCB/UTPCC should make arrangement to widely publicize the same, requesting the interesting persons to send their comments, also make the report available in select offices or public libraries or other suitable locations for inspection by the public.</p> <p>10. Time for SPCB/UTPCC to finalize date, time and venue of hearing is 7 days from receipt of the draft EIA.</p>	<p>proponent and decide if PH needs to be conducted in some additional or alternate place and inform the project proponent of the same within 15 days of receipt of the request. If they decide so then a period of 40 days would be given to the relevant authorities of the additional/alternative place to carry out the subsequent process.</p> <p>8. Time for SPCB/UTPCC to finalize date, time and venue of hearing has been increased to 10 days from receipt of the draft EIA.</p> <p>Minimum notice period to be provided to the public for their responses has been reduced to 20 days.</p> <p>9. PH could be presided over by District Magistrate/District Collector /Deputy commissioner or his or her representative not below the rank of Additional District Magistrate for Category A projects and Sub-Divisional Magistrate for Category B projects.</p>
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	<p>Minimum notice period to be provided to the public for their responses is 30 days (same as the 2006 Notification).</p> <p>11. PH could be presided over by District Magistrate/District Collector /Deputy commissioner or his or her representative not below the rank of Additional District Magistrate.</p>	
<p>Analysis: The Zero Draft of 2019 does not mention anything about a public hearing through “any other appropriate mode” while the same is included in the Draft EIA 2020.</p> <ul style="list-style-type: none"> - There is a significant difference between the projects exempted from PC in Zero Draft of 2019 and Draft EIA 2020. While the Draft EIA 2020 gives a blanket exemption to all projects with a capacity enhancement of more than 50% from conducting PC, the Zero Draft of 2019 does not do so. The set of project categories which the Zero Draft of 2019 mandates a PC for despite capacity enhancement within 50%, are all red category industries (i.e. highly polluting industries) as per the Central Pollution Control Board⁷. It is the same in case of exemption to industries located within an industrial estate. The projects for which the Zero Draft of 2019 mandates PC, the Draft EIA 2020 exempts them from the consultation process. The Zero Draft provides for more safeguards than the Draft EIA 2020. For example- the projects exempted from PC with a capacity enhancement within 50% are subject to the compliance of conditions of their prior EC issued on the basis of a public consultation and the fact that the expansion is being done within the existing premises of the project without acquisition of additional land. The Draft EIA 2020 does not mention any such pre-requirements for the expansion projects being exempted. - The timelines provided in the Zero Draft of 2019 are not as expedient as the Draft EIA 2020. The notice period for PH is 30 days instead of 20 days. The SPCB/UTPCC has 45 days to finish the process instead of 40 days. They are also mandated to use any appropriate mode to ensure wide publication of the project under the Zero Draft of 2019, which has not been mentioned in the Draft EIA 2020. 		
<p>Appraisal</p>	<p>1. The Zero Draft of 2019 provides that the project documents need to be scrutinised within 20 days of its receipt. Upon acceptance of the</p>	<p>1. Draft EIA 2020 provides that the application of the project proponent needs to be scrutinised for ToRs by the regulatory authority within 15 days of</p>

⁷ Central Pollution Control Board, [Final Document on Revised Classification of Industrial Sectors Under Red, Orange, Green and White Categories](#), Feb 29, 2016.

	<p>application, the documents will be placed before an appraisal committee, and the appraisal shall be carried out within 60 days of the acceptance of the application. The recommendations will be placed before the competent authority within 15 days for a final decision.</p> <p>Additional Conditions:</p> <ol style="list-style-type: none"> a. The project proponent shall be informed about the approval 15 days before the scheduled date of the EAC/SEAC meeting. b. Finalisation and display of meeting minutes within 5 days of the meeting being held. 	<p>receiving it. Once the application is accepted and placed before an appraisal committee, the process shall be completed within 45 days of the acceptance of the application by the appraisal committee.</p> <p>Additional conditions under this clause are as follows:</p> <ol style="list-style-type: none"> 2. Category B2 projects would be issued an online EP within 15 days of application. 3. The project proponent needs to be informed at least 10 days prior to the consideration of their proposal by the appraisal committee through an online system. 4. The appraisal committee cannot ask for additional studies at the time of appraisal unless new facts come to the notice of the committee. 5. Building and construction projects under B1 category which have a provisional certificate of green building shall be considered on priority.
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Analysis: The appraisal process in the Draft EIA 2020 needs to be completed within a period of 60 days of the receipt of the application. This is in stark contrast to the Zero Draft of 2019 which allows for 20 days of scrutiny of documents followed by an appraisal which can go on for 60 days, thus increasing the time period to 80 days from the receipt of the application.

There is no provision restricting the EAC/SEAC from carrying out additional studies during the appraisal process in the Zero Draft of 2019. The Draft EIA 2020 however expressly prohibits additional studies from being conducted.

<p>Prior EC for modernisation, changes in product mix, or changes in process</p>	<ul style="list-style-type: none"> - For modernisation or a change in the product mix or in the process of an existing unit an application will be made to the concerned EAC/SEAC. The applications will be considered by the EAC/SEAC within 60 days of its receipt. - For cases not exceeding 50% capacity enhancement, the EAC/SEAC will decide on the due diligence to determine if the preparation of an EIA report will be required. - In case there is a change in the configuration of the plant which does not lead to an increase in production or increase in pollution load, an EC will not be required. The project proponent will have to inform the SPCB in this case. - In case there is a change in product mix which does not lead to an increase in production or increase in pollution load, then an EC will not be required. In this case however a No Increase in Pollution Load Certificate shall need to be taken from the SPCB. 	<ul style="list-style-type: none"> - The definition of ‘Modernisation’ has been changed. As per the new definition modernisation is any change in the process or technology or change in the raw material mix or product mix or de-bottlenecking or increase in the number of working days or increase in the capacity utilisation of plant and machinery in the project including increase in the rate of excavation in the existing mine lease area etc. for which prior EC or prior EP, as the case maybe, granted by the regulatory authority. In addition to that, an entirely new section on legal requirements for modernisation/expansions has been included in the Draft EIA 2020. - Requirements for application for capacity enhancement: <ul style="list-style-type: none"> 10% increase: Revised EMP, no appraisal 10%-25% increase: Revised EMP, with appraisal 25%-50% increase: Revised EMP and EIA, with appraisal Above 50% increase: Full EIA process - These requirements listed above will apply to the cumulative increase in production capacity of the projects in reference to the previous EC, which will be calculated based on a method specified in the Draft EIA 2020. However this is not applicable to:
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		<p>A. projects falling in B2 which are converting to B1 or A Category through modernisation.</p> <p>B. projects which have not conducted a public hearing throughout their lifetime where PH was applicable as per the 2006 Notification.</p> <ul style="list-style-type: none"> - All applications with no increase in production capacity or increase only up to 10% shall be issued the EC online in case the application is accepted. - All applications with increase in production capacity from 10% to 50% the appraisal for EC shall be completed within 45 working days. - 'No increase in pollution load certificate' is to be issued by the SPCB/UTPCC on recommendation of the Technical Committee and the same can be considered in place of revised EIA and EMP while consideration of EC application or appraisal.
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Analysis: The Draft EIA 2020 attempts to create a regime for modernisation and expansion by giving several exemptions. While there are certain relaxations in the Zero Draft of 2019 as well, the ones in the Draft EIA 2020 are far more elaborate. The Zero Draft of 2019 states that for increase in capacity within 50%, the EAC/SEAC would have to carry out due diligence to determine the requirement of an EIA report. This means that these will be considered on a case to case basis rather than in a blanket manner as provided in the Draft EIA 2020.

The Zero Draft of 2019 does not place as much reliance on a No Increase in Pollution Load Certificate as opposed to the Draft EIA 2020 which allows this certificate to be used in place of a revised EIA and EMP.

<p>Grant rejection Prior EC or of</p>	<p>1. The regulatory authority shall consider the recommendations of the EAC/SEAC and convey the decision to the applicant within 45 days of the receipt of the recommendations or within 105 days of the receipt of the complete application.</p> <p>2. If the regulatory authority does not accept the recommendation of the appraisal committee then they can ask for reconsideration within 45 days of the minutes of the meeting. The appraisal committee shall reconsider the matter in a further 60 days.</p>	<p>1. The regulatory authority shall consider the recommendations of the EAC/SEAC and convey the decision to the applicant within 30 days of the receipt of the recommendations or within 90 working days from the receipt of the complete application.</p> <p>2. If the regulatory authority does not accept the recommendation of the appraisal committee then they can ask for reconsideration within 45 days of the minutes of the meeting. The appraisal committee shall reconsider the matter in a further 45 days.</p>
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Analysis: There has been a 15-day reduction in the timeline within which the regulatory authority must convey the decision regarding grant/rejection of EC to the project proponent. The timelines given in the Zero Draft of 2019 are the same as the 2006 Notification.

<p>Validity of an EC</p>	<p>The validity period is as follows:</p> <ul style="list-style-type: none"> - Major Irrigation, River Valley projects and Nuclear Power Plants: 10 years of validity that can be extended by the regulatory authority by a period of 5 years maximum. - Mining Projects: Project life subject to a maximum period of 30 years. - All other projects: 7 years of validity that can be extended by 3 years. 	<p>The validity is divided into two phases:</p> <ol style="list-style-type: none"> 1. Construction 2. Operational <p>In the construction phase, the prior EC or the prior EP, as the case may be will be valid for:</p> <ul style="list-style-type: none"> - Mining: 50 years, subject to commencement of mining within the first 10 years. - River Valley, irrigation, Nuclear Power Projects: 15 years - Other projects: 10 years. <p>Special Provision for Mining projects: In case the project has not been able to extract the reserves within the project life estimated by the EAC, the EC for the</p>
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		same capacity and lease area may be granted upon recommendation by the EAC. The extension, however, cannot go beyond the period of the mining lease.
<p>Analysis: Herein, the Zero Draft of 2019 is more similar to the 2006 Notification as opposed to the Draft EIA 2020. This is because while retaining the validity period specified in the 2006 Notification for all projects, the Zero Draft of 2019 provides an option of extending the validity by a period of 3 years for most projects and by 5 years for River Valley, Hydroelectric and Nuclear Power Projects. The Draft EIA 2020 on the other hand gives an increased validity to projects by including the “optional extension” within the validity period.</p>		
Post EC Compliance	<p>Every project proponent is mandated to submit half yearly post-EC compliance reports on the 1st of June and the 1st of December, respectively.</p> <p>No clause on fine or suspension of EC for non-submission of the compliance reports.</p>	<p>This frequency has been reduced in the Draft EIA 2020. Project proponents are mandated to submit yearly post-EC compliance reports on the 30th of June. The Regulatory Authority may ask for compliance reports at a more frequent interval if deemed necessary. A daily fine of Rs 500 for B2, Rs 1000 for B1 and Rs 2500 for Category A projects has been imposed for non-compliance based on the categorisation of projects.</p> <p>Another provision for suspension of EC is added if the non-compliance with respect to submission of post-EC/EP compliance reports continues for 3 years consecutively</p>
<p>Analysis: The major difference between the Zero Draft of 2019 and Draft EIA 2020 is the reduction in the number of compliance reports from twice a year to just once a year. Zero Draft of 2019 is similar to existing EIA 2006 notification and suggests compliance reports to be submitted in every six months while the Draft EIA 2020 reduces the frequency to just once a year. The Draft EIA 2020 also has additional punitive measures for non-submission of compliance reports in terms of fines and suspension of EC.</p>		
Transferability of an EC	<p>Same as the Draft EIA 2020, there is a special sub-clause for coal mining projects:</p> <p>In case the allocation for a coal mine is cancelled, but it has a</p>	<p>Along with the transferability to a legal person within the validity period as was present earlier, two new situations have been added:</p>

	<p>valid EC, the EC can be transferred to the person who is subsequently allotted the coal block. This can be done without a No Objection Certificate and reference to the EAC/SEAC.</p>	<ul style="list-style-type: none"> - A prior EC granted can be split between two or more legal persons upon application to the Regulatory Authority. The recommendation of the EAC will however be required. - The prior EC which is granted to two or more people may be combined and transferred to another legal person. These projects however have to be located on contiguous land. Even in this case the EAC's recommendation will be required.
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Analysis: The Zero Draft of 2019 provided special amnesty to coal mines which had been de-allocated but had valid ECs. These ECs could be transferred to the next allottee which would not require an appraisal or an NoC. This provision is absent in the Draft EIA 2020, but other than that there is no difference between the provision in this case.

<p>Schedule</p>	<p>Schedule has 8 categories similar to EIA 2006 Notification.</p> <p>< 25 hectares of mining lease for minor minerals in B2</p> <p>No Exploration projects in Schedule</p> <p>Schedule does not have projects beyond 15 MW for energy plants.</p> <p>Pellet plants were in category A and B</p> <p>No inland waterways project in the schedule</p>	<p>Schedule has 43 categories (the erstwhile 8 categories have been further split) and there are many additions in terms of projects and industries in the new draft. Some examples of project categorization in Zero draft are given below:</p> <p><5 hectares of mining lease for minor minerals in B2.</p> <p>Exploration of offshore in B2</p> <p>5-15 MW energy plant on MSW in B2.</p> <p>Pellet plants are now in Category B or B2,</p> <p>Inland Waterways as B2</p> <p>Aerial ropeways in ecological sensitive</p>
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	<p>All aerial ropeways in Project A</p> <p>State highway expansion in ecological sensitive areas in category B</p> <p>Projects of elevated roads in category A</p> <p>Water aerodromes in Category A</p>	<p>areas in Category B2</p> <p>State highways expansion in ecological sensitive areas is in category B2 (does not require PH or EIA)</p> <p>Projects of elevated road in category B2</p> <p>Water aerodromes in Category B2</p> <p>Additions in the Schedule which were not there in Zero Draft of 2019 includes Manufacturing of explosives, detonators, fuses including management and handling activities, Heliports, CEZ, SIR, NIMZ, PCPIRs, Multi-modal corridors and ring roads added in schedule.</p>
<p>Analysis: The format of the schedule is different in Zero Draft of 2019 and Draft EIA 202. The Zero Draft 2019 follows a similar categorisation as EIA 2006 while Draft EIA 2020 has created a different format.</p> <p>There are numerous differences in the schedule proposed in Zero draft of 2019 and Draft EIA 2020, in terms of additions and removal of projects from one category to another or in the schedule. Secondly there are changes in benchmarks for categorisation across many industry types.</p> <p>Some main changes are addition of oil and gas exploration, heliports, inland waterways, aerial ropeways in ecological sensitive areas, state highways expansion in ecological sensitive areas as B2 category (which doesn't require PC or EIA).</p>		
<p>Post-facto Clearance</p>	<p>No concept of post-facto clearances</p>	<p>The Draft EIA 2020 paves way for violation projects to apply for an EC at any given time.</p> <p>According to it, a violation case can be reported in four different ways. It can be reported;</p> <ul style="list-style-type: none"> - By the project proponent themselves, - By a government authority, - By an appraising committee or - By a regulatory authority processing

		<p>the application.</p> <p>The appraisal committee will decide on the sustainability of the project. If the project is deemed to be sustainable, the appraisal committee will prescribe specific ToR for assessment of ecological damage, remediation plan and natural and community resource augmentation plan in addition to the standard ToR applicable to the project. If the appraisal committee decides that the project is not sustainable, it will order closure of the project.</p> <p>Once such ToR has been prescribed, the project has to prepare an EIA and also undergo public consultation and appraisal process.</p> <p>An application fee on a daily basis has been added based on the category of project. In case of self-disclosure, the fee shall be Rs. 1000 for B1, Rs. 2000 for B2 and Rs. 5000 for A. In any other case of violation discovery, the fee charged will be Rs. 2000 for B2, Rs. 4000 for B1 and Rs. 10000 for A. The Date of violation for each such application shall be deemed to be April 14th 2018. Also, there is inclusion of implementation of EMP with enhanced cost as a condition to EC and submission of bank guarantee equivalent to a remediation plan.</p>
<p>Analysis: While the Zero Draft 2019 does not mention anything about legalising violation projects, the Draft EIA 2020 has institutionalised the process for post-facto clearances⁸ with a detailed process and the option for a violation project to avail amnesty under this scheme at any given point of time.</p>		
<p>Clearance for building or construction</p>	<p>The following projects are to be stipulated environmental clearance from local authorities</p>	<p>No role of Municipalities, Development Authorities and District Panchayats for stipulating environmental clearance.</p>

⁸ Sumedha Pal, [Draft EIA Notification 2020: 'Compilation of Environmental Violations' Say Activists](#), News Click, Mar 13, 2020.

<p>projects</p>	<p>such as Municipalities, Development Authorities and District Panchayats while getting building permission:</p> <ul style="list-style-type: none"> - Project with built up area between $\geq 20,000$ sq. mtrs. and $< 50,000$ sq. mtrs; - Built-up area of $\geq 20,000$ sq. mtrs. and $< 1,50,000$ sq. mtrs. of industrial sheds, educational institutions, hospitals and hostels for educational institutions. 	<p>The following projects have been categorised as B2 and would require only Environmental Permission:</p> <ul style="list-style-type: none"> - Projects with $\geq 20,000$ sq. mtrs. and $\leq 50,000$ sq. mtrs. of built-up area; - $> 50,000$ sq. mtrs. and $\leq 1,50,000$ sq. mtrs. of built-up area projects having provisional ‘certificate of green building’ or relating to industrial sheds, educational institutions, hospitals and hostels for educational institutions.
<p>Analysis: The Zero Draft of 2019 mentions the role of local authorities for stipulating environmental conditions for certain building or construction projects. The Draft EIA 2020 classifies similar projects as B2 which would need an environmental permission and would not require an appraisal process. In addition to this, the Draft EIA 2020 has introduced the concept of certificate for green building for an expedited appraisal process which is granted on the basis of rating system issued by the Ministry from time to time.</p>		