

Calling the Bluff

Revealing the state of
Monitoring and Compliance of
Environmental Clearance Conditions



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Preface

Several organisations, social and environmental movements have been concerned with the process of environmental decision making for development projects for over two decades. Many of these have been closely monitoring the decision-making for specific projects and the legal and technical framework within which these processes are located. However, there has been little focus on the official processes of monitoring following the grant of clearance to projects.

The Monitoring Unit housed in the Ministry of Environment and Forests (MoEF) collects the Monitoring Reports (MR) and Compliance Reports (CR) that are submitted by its Regional Offices and project proponents. But this data is not used for any analysis of the problems or inadequacies of the present system of monitoring and to find ways to improve it. Infact, though the Ministry maintains a record of the number of projects granted clearance by it each year, there is no data to show the level of compliance achieved by these projects. So it is not wrong to conclude that the Ministry only holds the number and rate of clearance as a measure of its performance as against the environmental performance of the cleared project and not its ability to ensure compliance.

It is in this context that Kalpavriksh undertook a study of the compliance of conditions by projects granted environment clearance by the Ministry of Environment and Forests. The issues related to these aspects are deeply entrenched in the current environmental clearance process and we have tried to highlight compliance and monitoring issues as symptomatic of this. This report is a result of a study aimed at arriving at a comprehensive understanding of the non-compliance of environmental conditions that exist across sectors of projects at a national level. So far, studies done by organisations and environmental groups have focussed on specific geographical areas or sectors such as industries or mining or specific themes such as pollution. We have not come across any such studies done by the MoEF, other government departments or agencies.

The purpose of the study was to analyse the data available with the MoEF and determine the extent of non-compliance. Though it is known and accepted widely that this problem exists, we felt it necessary to analyse the degree to which it exists, the causes of the problem and the specific areas (sectors/regions/types of conditions) where it is amplified. In the case of five projects, we have also correlated the observations in the monitoring/compliance reports with the impacts at the project sites. The study has also sought responses from the MoEF on the current protocol for monitoring, recording of violations as well as action taken. All of the above have formed the basis of the conclusions of the study which are listed in the end.

The methodology to put together this study included:

1. An analysis of the compliance and monitoring reports of all projects cleared in 2003 available at the regional offices of the MoEF procured through Right to Information Act, 2005. All the reports made available by the six regional offices were tabulated and analysed condition wise, region wise and sector wise.

2. Interviews with the Regional Offices on the monitoring protocol followed and issues related to it.
3. Indepth field investigations of five project sites along with local partner organisations to contrast the findings with the information reported in the monitoring and compliance reports . This includes site visits, interviews with concerned official and local communities as well as secondary data analysis.
4. Seeking written responses from the MoEF central and regional offices on the monitoring mechanisms followed, number of show cause notices issued and other related processes.

This publication contains a printed document and a data CD. The document is a synthesis of field investigations, secondary data analysis of projects granted clearance in 2003 and written responses to RTI applications. We also locate the problem of non-compliance within the framework of the larger environment clearance regime.

The CD contains five case studies; regional fact sheets on each of the six regional offices; and scans of all the responses to Right to Information applications (excluding the monitoring and compliance reports of the 2003 projects). Also contained in the CD are photographs highlighting impacts due to non-compliance at the sites investigated.

The failure of the Ministry and the project proponent to ensure compliance must not be seen merely as administrative deficiencies. The larger problem, which is of a terribly faulty environmental decision making process that results in the clearance of almost all projects, good or bad, begs to be set right. These projects have real and irreversible impacts on the environment and people.

We hope that, findings of the study put together in this report can be used by regulatory authorities, political constituencies, environmental groups, movements and activists to address the problems of environmental decision making process of which compliance is a significant outcome.

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Examining the Compliance of Conditional Clearances

I. INTRODUCTION

As per the Environment Impact Assessment (EIA) notification, 2006 (earlier 1994), activities such as mining, power generation, construction of roads/highways and the setting up of various kinds of industrial projects need to be preceded by a process of assessing potential environmental impacts and conducting a public hearing before they can be granted permission to begin construction. It is only after the completion of these mandatory steps and the appraisal of project documents by a thematic expert committee that a project is granted environmental clearance.

The need for a sound environmental clearance regime was felt as environmental and social impacts of infrastructure and industrial projects were mounting, permanently altering landscapes, destroying livelihoods and wrecking human and animal communities. These impacts have been severe when projects have been located in ecologically sensitive habitats and when they have added to the load in critically polluted areas.

In the period 1986–2006, India's Ministry of Environment and Forests (MoEF) granted formal environmental clearance to 4,016 development and industrial projects. Following the issuance of the new EIA notification in 2006, the MoEF granted environmental clearance to 2,016 projects till August 2008, i.e., an average of 84 projects a month. In contrast, 25 projects were rejected clearance in the period 2006–2008.

With every permission granted, the MoEF and its thematic expert committees put forth a set of conditions which needs to be followed during the construction and/or execution of the projects. These conditions range from general ones of following standards and stipulations prescribed by environment laws to more specific ones based on the nature of the project and the region where it is likely to be set up. For instance, clearance conditions for hydroelectric projects include extra care regarding the dumping of debris generated during construction and controlled blasting. In the case of industrial projects, the conditions include the establishment of effluent treatment plants and continuous monitoring of various parameters including air, noise and water pollution levels.

The MoEF, the agency with the responsibility of monitoring the environmental performance of projects cleared by its central office in New Delhi, has six regional offices set up in Chandigarh, Shillong, Lucknow, Bhopal, Bhubaneswar and Bangalore. The officers here conduct site visits and maintain records of violations by projects. The developers submit six-monthly compliance reports to these offices.

Table 1: Region-wise list of development projects granted environmental clearance from 1986 to 2006

S.No.	Regional offices*at	Industry	Mining	Thermal power	River valley and HE	Infra-structure	Construction	Total
1.	Lucknow for Central region	153	284	50	62	69	2	620
2.	Chandigarh for Northern region	222	9	19	98	13	11	372
3.	Bhubaneswar for Eastern region	101	144	56	49	112	18	480
4.	Bhopal for Western region	535	228	94	109	161	92	1,219
5.	Bangalore for Southern region	589	326	130	121	49	40	1255
6.	Shillong for Northern region	6	4	13	32	13	2	70
	Total	1,606	995	362	471	417	165	4,016

Source: Response to RTI application dated 20 December 2006

*States Covered Under the Regional Offices

Central region: Uttar Pradesh, Uttaranchal and Rajasthan

Northern region: Jammu & Kashmir, Punjab, Haryana, Himachal Pradesh, Chandigarh and Delhi

Eastern region: Jharkhand, Orissa, West Bengal, Bihar and Andaman & Nicobar Islands

Western region: Madhya Pradesh, Chattisgarh, Maharashtra, Gujarat, Dadar & Nagar Haveli, and Daman & Diu

Southern region: Andhra Pradesh, Goa, Karnataka, Tamil Nadu, Kerala, Pondicherry and Lakshadweep

North-Eastern region: Arunachal Pradesh, Assam, Manipur, Meghalaya, Tripura, Nagaland, Mizoram and Sikkim.

The consequences of these conditions are manifold from the legal, scientific and organizational points of view. First, they are considered to be the mechanism through which environmental impacts of an activity or process are minimized or mitigated. The conditions laid down by the expert committees and the MoEF may also be in response to concerns raised by local communities and concerned citizens about potential environmental damage. Non-adherence to one or more of these conditions would mean nothing less than a violation of the commitment made by project proponents to reduce the impacts of their project.

The impacts of non-adherence are faced by the community that lives in proximity to the project during this period of time. In most cases, there is a huge time lag between the act of violating and the recording of the violation. The evidence of violation often do not remain until they are recorded. Even if the violations do remain and are recorded, the legal process of booking the violators and compensating the victim monetarily, or in other ways, is time consuming. None of the above processes ensure the complete undoing of the impact caused due to the violation.

In many instances, projects are cleared based on conditions that detailed studies and assessments should be carried out and mitigation measures determined based on these studies. This practice makes it evident that projects are to be cleared irrespective of their impacts and the optimal outcome that can be expected is a management of impacts that are identified through these studies, post facto.

Once a project is granted clearance, the levels of compliance achieved depend on the project authorities or on the agencies to which funds are made available for implementation of conditions, such as compensatory afforestation, local area development, and so on. The experience with compliance has not been encouraging, as is evident from the observations filed in this report.

It has been noticed that very few project authorities submit the mandated six-monthly compliance reports. Even among those who do, it is not in their interest to indicate non-compliance in their own submissions, as that can make them liable to legal action and show cause notices. A detailed examination of specific projects reveals that there is a huge difference between what is being reported and what exists on the ground.

II. OVERALL PICTURE OF COMPLIANCE

a) Extent of Non-Compliance by Project Authorities

This section attempts to ascertain the degree of non-compliance of conditions in two ways. The first is through an analysis of all the projects that have been granted clearance in the year 2003 and monitored by the six regional offices. This is primarily based on the data that was obtained through applications made to the MoEF under the Right to Information Act.

Table 2: Degrees of non-compliance of clearance conditions for projects cleared in 2003¹

S.No.	Region	No of projects cleared	No. of projects with MRs	0-30% non-compliance	30-60% non-compliance	60-90% non-compliance	Above 90% compliance
1.	Central	8	6 ²	3	1	2	0
2.	Eastern	20	11	4	7	0	0
3.	Northern	6	5	1 ³	2	1	1
4.	North Eastern	3	3	1 ⁴		1	1
5.	Southern ⁵	75	52	21	19	11	1
6.	Western	111	16 ⁶	0	1	11	4
	Total	223	93	30	30	26	7

Note: Some projects have not figured in this analysis. This is because, in some cases, only a monitoring letter was available instead of a report even though monitoring had been done, and in some other cases, the details of monitoring or reports were not available through the RTI. There were 19 projects for which monitoring reports were not available or construction had not been started and therefore analysis was not carried out. Details of this are available in the individual fact sheets provided in the Data CD.

¹The figures in Table 2 indicate the degree of non-compliance shown by projects.

² Two projects were not monitored because construction had not begun.

³ The MR of this project reported only 'complied' against each condition without any explanations that could be used to verify the extent of non-compliance in actuality.

⁴ This was complete non-compliance as per the MR received.

⁵ No monitoring reports were available for 16 projects, and only monitoring letters were available for 7 projects.

⁶ Only 14 projects out of these have been considered for analysis as the MRs of 2 projects indicated that construction had not begun.

This quantification is based on the information provided in the compliance and monitoring reports. As per data available from the MoEF, 23 projects in the Southern region have no monitoring reports. In the Western region, only 16 out of 111 projects have MRs. Out of a total of 223 projects, only 91 (two projects with MRs had not begun construction) could be analysed for degree of non-compliance as only those projects had MRs.

The problems related to the quality of monitoring and the quality of reporting will be discussed more in the next section. At this stage it is important to understand that one cannot take the reporting in the compliance or monitoring reports as given. The reasons for this can be summed up as:

- The project authorities rarely report on non-compliance in their submissions reports. Even if a condition is currently not complied with, it would be referred to as ‘agreed to comply’ or ‘will be complied’.
- More importantly, the monitoring reports based on which the above analysis is determined, is not always based on site verifications. The availability of monitoring reports does not necessarily imply that the regional office has carried out a site visit before the preparation of the report. (Details in the next section.)

One study also included the verification of data reflected in the compliance reports submitted by project authorities and the monitoring observations reported by MoEF regional offices. The six investigative case studies that have been put together to conduct this analysis bring out clear differences in the reporting in compliance and/or monitoring reports and the situation on the ground. Some examples/instances are:

- In the case of the Parbati II Hydroelectric Project in District Kullu of Himachal Pradesh, there has been continued dumping of muck/debris in rivers and down the hill slopes ever since the project construction work was initiated in the year 2000. While these observations were made in the monitoring reports and site visits from September 2003 to April 2007, they were regularly denied in the compliance reports submitted by the project proponent National Hydro Power Corporation (NHPC).
- In the case of the second expansion of the Jindal Steel and Power Limited (JSPL) plant in District Raigarh of Chhatisgarh, there was a clear discrepancy between the reporting in the compliance report submitted by the project authorities and the situation on the ground. During our investigation in the area in August 2007, we observed that there was an open pond near the railway line where effluent from the plant had been collected. In the only available monitoring report (2003) for the project, it has been reported that this is a gross violation and corrective action must be taken. However, since the pond is located outside the boundary of the plant, the locals use it for various purposes such as bathing and washing. JSPL has put up a board stating that the pond is their property, but that does not deter the locals from using it. There are also no visible measures to stop this use. There were several such observations that have been recorded in the complete case study on JSPL’s non-compliance.
- With reference to the condition related to the development of a green belt around the Sterlite Copper Smelter plant in Tuticorin, some interesting facts emerged. The 2006 monitoring states that 6 ha area was developed into a green belt in 2004–2005, and the remaining 2 ha was proposed for 2006–2007. The compliance reports also reported the same. According to the clearance letters of the original plant and expansion, a total of 29 ha was to be developed as a green belt, thereby rendering the non-compliance of this condition. However, neither the compliance nor the monitoring report acknowledges that. During our interview with the DFO in May 2008, he highlighted that in the two years of him being there, he had neither been contacted or nor his opinion sought by Sterlite. According to the compliance reports, Sterlite had developed the green belt in consultation with the DFO. However, the DFO confirmed that there was no record of the same in his office.
- In the case of the Kameng Hydroelectric project in Arunachal Pradesh, information in the monitoring reports from 2006 onwards clearly indicated that the project is violating a critical condition as parameters of the project itself have changed. The February 2006 report states that the height of the

Bichom Dam has been reduced from 96.5 m to 75 m and the site has also been shifted about 300 m upstream. This will lead to changes in the scope of submergence, cost, area affected, and is a violation of the environmental clearance letter condition that states that if there is 'any change in the scope of the project, project would require a fresh appraisal'. The report further adds that since the project is violating provisions of the EIA notification, the project authorities should be directed to obtain all the necessary clearances so that they may be in compliance with the law. The subsequent monitoring report of September 2006 remains non-committal to the issue. Responses from NEEPCO (the project authorities), dated 7 April 2008, to an RTI application state that there has been no change in location of any structure as mentioned in the EIA report at the time of the grant of clearance.

III. HOW DOES MONITORING TAKE PLACE¹

The organizational capacity of the MoEF poses a big challenge to environmental compliance. The ministry is hampered by the sheer lack of human power in the regional offices to monitor the compliance of these conditions.

However, this limitation has not been considered in the design of the environmental clearance process itself. Data obtained under the Right to Information Act show that from September 2006 to August 2008, the MoEF has granted clearance to 2,016 projects. There has been a quantum jump in the number of projects that apply for and receive clearance. This is as desired by the changes made to the EIA notification, the regulation governing the clearance process. The consequence of this speeding up and 'improved efficiency' in the clearance granting process is that the burden of monitoring has also grown. Currently, the six regional offices with approximately two to three scientists each have to monitor over 6,000 projects that are either operating or under construction. Even though this consequence was expected when the EIA reform process was being undertaken, monitoring procedures received no attention at all.

In response to a Right to Information application filed on 7 September 2007, the MoEF responded on 8 October 2007 (Letter no. F.J.11013/320/2007-IA-II (M)) that it does not maintain a centralized comprehensive data on the degree of compliance or non-compliance. The ministry does, however, keep a record of the number of projects granted clearance. It appears from this that the ministry may not have an estimate of the extent of compliance achieved by projects that it has granted clearance to under the EIA process. This is a serious lacuna in its functioning that may greatly limit its ability to address the problems that exist in the environmental clearance process and its specific function of monitoring the compliance/non-compliance demonstrated by projects given environmental clearance with specific conditions for the mitigation/management of environmental and social impacts.

If there is non-compliance in a specific project that is reported by a regional office, then show cause notices are issued by the same office. This was confirmed by responses to RTI applications both by the MoEF, New

¹ The responses from regional offices compiled in this section are based on RTI replies received from each office. The reference for each of these responses is:

- a) Northern: Letter dated: 17 September 2007 F.No.3-174/2007/RO(NZ)-2507
- b) Southern: Letter dated: 26 February 2008, F.No. SPA/2(1)/RO(SZ)/ RTI
- c) Eastern: Letter dated: 1 February 2008, F.No. 6-11-(19)/Env-FCE
- d) Western: Letter dated: 3 March 2008, F.No. 1-11/2007(FOR)/493
- e) Central: Letter dated: 13 February 2008, F.No. II/ENV/RTI/1/6/2006/964
- f) North-Eastern: Letter dated: 11 February 2008, F. No. RO-NE/E/RTI/2006/2698

Delhi, and also the regional offices. However, in their response to another RTI application on 12 December 2007, the MoEF states:

‘Record of the number of show cause notices issued or the details thereof is not maintained in the Ministry. No specific guidelines have been issued to the regional offices regarding the issuance of show cause notices. The regional office issue the show cause notices as and when the need arises or whenever the Ministry requests them’ [(Letter no. F.J.11013/444/2007-IA-II (M.CELL)].

A Right to Information application was filed in December 2008 seeking the details of the minutes of the meeting held to review the functioning of regional offices from 2004 to 2008. The response from the MoEF indicated that seven meetings had been held from 2005 to 2007. During these meetings, the regional offices articulated several concerns, such as the advice/inputs from the regional offices are not taken at the time of according environmental clearances; the Central Pollution Control Board(CPCB)/State Pollution Control Board(SPCB) do not send the compliance report for air and water consent conditions, which makes monitoring difficult for the regional offices; copies of orders of environmental clearances are not being sent to regional offices regularly; and most of the project authorities are not complying with the conditions of occupational health and safety. The regional offices also suggested that projects prior to 19 September 1990 should be closed and monitoring be discontinued. One suggestion made was that random checking should be carried out especially in the case of highly polluting industries. Another suggestion made was that as in the state of Chattisgarh, regional offices could utilise the service of the state government for monitoring purposes.

To ascertain the manner in which each regional office of the MoEF views the scope of monitoring, the frequency and what has been the performance over the years, a series of Right to Information applications were filed. These applications reveal some critical regional and sectoral differences/perceptions. Each of the responses has been detailed out in the specific sections here.

a) Protocol for Monitoring followed by Regional Offices

Table 3: Monitoring Protocol by Regional Offices	
RTI Question: What are the norms and protocols recommended by the MoEF to be followed by the officers of the regional offices who go for inspection of projects to monitor the compliance of environmental clearance conditions?	
Regional office	Response
Northern regional office	As such there are no norms and protocols recommended by the MoEF for inspection of projects to monitor environmental compliance condition.
Southern regional office	No specific norms or protocols are recommended by the MoEF, New Delhi, for the officers of regional offices who go for inspection of projects to monitor the compliance of environmental clearance conditions.
Eastern regional office	Eastern Regional (RO) office monitoring the projects as per the mandate given by the MoEF. RO has been monitoring the projects to review the implementation and safeguards laid down for projects/activities when environmental clearance is accorded as per the target fixed.
Western regional office	1. Monitoring of projects granted environmental clearance is undertaken by the regional office of the ministry 2. PA submits six-monthly compliance/progress reports to the regional office on the implementation of the environment stipulation of the environmental clearance (EC), which are reviewed by the regional office, and shortfalls, if any, are communicated.
Central regional office	After receipt of the EC a preliminary letter is sent to project authorities to obtain status of the project, name and address of the nodal officer with phone/fax, etc. Accordingly, the project site is visited to verify the status of compliance. Non-compliance of EC conditions is communicated to the project authorities after monitoring. In case of repeated non-compliance show cause notice is issued to project authorities.
North-Eastern regional office	The norms and protocols followed by this regional office are austerely according to the mandate of the MoEF for reviewing the implementation of environmental measures/safeguards by the project proponents. Thereafter, the status of compliance is sent to the ministry/project proponent to do the needful. The scientists appointed by the MoEF conduct monitoring of the compliance of the environmental clearance condition.

There is some contradiction and lack of clarity in the information provided by the regional offices. The MoEF has not issued any specific guidelines to the regional offices on the issuance of show cause notices. Therefore, there is a high scope of discretion and subjectivity in the monitoring process. Interviews with the officers of the regional offices also reiterated this.

b) Regularity of Monitoring

The regularity of monitoring and the submission of monitoring and compliance reports reflect a dismal reality. As mentioned earlier, at present there are over 6,000 projects that need to be monitored by the six regional offices of the MoEF, with two to three scientists each. Presented here are responses from the six regional offices on how regularly they are able to monitor a project.

Table 4: Frequency of Monitoring by Regional Offices

RTI Question: What is the frequency of monitoring per project?

Regional office	Response
Northern regional office	The thumb rule applicable to all regional offices of the MoEF is that all projects accorded environmental clearance should be visited once a year. Highly polluting industries as identified by the Pollution Control Board (PCB), however, are to be monitored twice a year.
Southern regional office	No fixed frequency is followed for monitoring of projects.
Eastern regional office	Significant projects in the region are selected for monitoring based upon the ecological sensitivity and importance as per the earlier inspection reports, half-yearly compliance reports submitted by the project authorities, public representations received, if any, and directions received from the ministry from time to time.
Western regional office	Projects are selected for monitoring considering parameters like ecological sensitivity of the area, magnitude of the project, earlier compliance performance, public representations if any, and directions from the ministry, if any.
Central regional office	Monitoring is carried out depending upon the nature of the project.
North-Eastern regional office	The frequency of monitoring of a project depends upon its significance, which is usually based on the ecological sensitivity, people's perspective, status of six-monthly compliance report and directives from the ministry.

Table 5: NUMBER OF OFFICIALS IN THE REGIONAL OFFICES FOR MONITORING

RTI Question: How many officers from the regional offices are designated the responsibility for monitoring?

Regional office	Response
Northern regional office	This office has/had only two field officers for inspection of projects to monitor environmental clearance in our jurisdiction against sectioned posts of four. Hence, project visits are made barely once a year.
Southern regional office	Four officers from regional office, Bangalore, are designated for the responsibility of monitoring.
Eastern regional office	The scientists appointed by the ministry in the regional office are entrusted with the job of monitoring of projects.
Western regional office	Officers of the rank of Deputy Director and above have been conferred powers of entry and inspection under Sections 10 and 11 of the Environment Protection Act, 1986. Presently, in the regional office in Bhopal, there are three such officers.
Central regional office	Scientists of the regional office are entrusted with monitoring the work.
North-Eastern regional office	At present, two scientists in this regional office have been designated the responsibility for monitoring.

Other than this, Table 6 clearly depicts the frequency with which monitoring and compliance reports are generated. This analysis is a compilation from the data received through Right to Information applications for information on all projects granted clearance in 2003.

Table 6: FREQUENCY OF REPORTS GENERATED FOR PROJECTS GRANTED CLEARANCE IN 2003 IN ALL REGIONS

S.no.	Region	No. of projects cleared	No. of projects with MR/s	No. of projects with 6 monthly CR	No. of projects with 6 monthly MR	No. of projects with annual CR	No. of projects with annual MR	No. of projects with full compliance as per MR	No. of projects with no CR
1.	Central	8	6 ¹	0	2	0	2	0	0
2.	Eastern	20	11	0	0	2	1	0	4
3.	Northern	6	5 ²	0	0	1	1	1	0
4.	North-Eastern	3	3	0	0	1	1	0	0
5.	Southern	75	52	0	0	3	0	1	30
6.	Western	111	16	1	0	6	0	0	39
7.	TOTAL	223	93	1	2	13	5	2	73

Notes:

MR: Monitoring Report; CR: Compliance Report

The above table only depicts the availability of monitoring and compliance reports on a six monthly and annual basis.

¹ Two projects were not monitored because construction had not begun.

² One project was not monitored because construction had not begun.

Out of 223 projects, only 150 projects have reported compliance at least once in the years between 2003 and 2007. In the Southern region alone, 30 out of 75 cleared projects have never submitted a compliance report.

Only 93 out of 223 projects granted clearance in the year 2003 have MRs. Regions with a large number of cleared projects, such as South and West, have been able to monitor projects least, as indicated in the absence of MRs for several projects. In the Western region, 21 industrial projects out of 83 do not have even a single MR or CR. However, the existence of a monitoring report does not necessarily imply that monitoring or site inspection has taken place. In fact there are several instances where the monitoring reports are either a copy of the concurrent compliance report or of previous compliance reports.

In the Southern region, the two NHAI highway projects for Widening and Strengthening of 4/6 Lane of NH5 from Rajamundry to Dharmavaram and from Gundagolanu to Rajamundry, have absolutely similar MRs. Information on the number of trees cut, drain constructed, number of people affected, amount paid for compensation and other details are identical. These projects appear to be two contiguous portions of a highway project but for which separate clearances have been sought. Ironically, the MRs produce the same data for both the projects. It is not possible that the number of people affected or trees to be cut are identical. Similarly, there is another NHAI project, Widening and Strengthening of the highway from Visakhapatnam (km 2/8) to Ichapuram (km 233/0) in the state of Andhra Pradesh, which also reports on the similar lines as the earlier two NHAI projects. For the condition, 'All the haul roads shall be maintained by the project proponents. The project proponent shall also maintain and repair, as necessary the village/Panchayat access roads leading to the highway which will be used by them for transportation of the construction materials', all three projects state the same thing in their MRs, without any change in language.

In the 500 MW Prototype Fast Breeder Reactor at Kalpakkam, Tamil Nadu, of the Indira Gandhi Centre for Atomic Research, reporting for several special conditions in the MR site visited on 22 September 2004 is identical to that of the compliance report submitted on 18 October 2004 by the proponent. It does not reflect independent observations by the Southern regional office. This is especially true for conditions related to the temperature in the water condenser, rainwater harvesting, disaster management plan, educating local people about the plant and conducting health surveys.

Table 7: Number of Projects Monitored by Regional Offices

<i>S.No.</i>	<i>Regional office (RO)</i>	<i>Number of projects cleared from 1986–2006</i>	<i>Number of projects monitored by ROs as of 2008</i>
1.	Central	620	No data available from RO
2.	Eastern	480	84–119
3.	Northern	372	187
4.	North-Eastern	480	No data available from RO
5.	Southern	1,255	187–299
6.	Western	1,219	180

It can be concluded that on an average every regional office is able to monitor a project once in every three or four years depending on the number of projects to be scrutinized in that particular region. This can be deduced from the figures of the number of projects monitored every year (these are approximated figures) shared by the regional offices during interviews and through RTI responses. For instance, the Eastern region office monitors between 84 and 119 projects every year, i.e., 2004–2008. However, figures indicate that the number of environment clearances in the region between 1986 and 2006 was 480. Similarly, the Southern region has been able to monitor from 187 to 299 projects every year from 2004 to 2008. The officers of the Southern region state that not more than 15–20 per cent live projects come within the monitoring net each year. In the absence of clear guidelines, the projects for monitoring are ‘self-selected’ and the thumb rules used are: 17 categories of projects identified as highly polluting by the CPCB, those that have never been monitored and those showing unsatisfactory compliance are paid more attention in the selection process. In an interview with the officials at the Northern region office on 28 July 2008, it was indicated that the regional office at that point had 550 projects to monitor. In the previous year the officers had achieved monitoring of 187 projects and the target for the coming year was 200 projects. The acting RCCF of the Western region informed us in an interview that the office monitored 180 projects in the year 2006–2007. This was done by three scientists (60 projects each) within a working year of 120 days.

It is important to note that the above-mentioned figures of the number of projects granted clearance in every region is up to 2006. Following the enforcement of the EIA 2006 notification, over 2,000 projects have been granted clearance in two-and-half years.

c) Surprise Visits and Show Cause Notices

Table 8: Surprise Visits Undertaken	
RTI Question: Do the authorities of the regional offices, MoEF, make surprise visits to the projects for the monitoring of environmental clearance conditions? If yes, please provide a list of such surprise visits made during 2004–2008.	
Regional office	Response
Northern regional office	The authorities of the NRO, MoEF, do not make surprise visits for monitoring the projects. However, this office does participate with the concerned zonal office of the CPCB in conducting joint surprise visits based on units shortlisted by the MoEF HQ and the CPCB HQ.
Southern regional office	No surprise visits are made by authorities of the regional office, MoEF.
Eastern regional office	The regional office undertakes surprise inspections of projects based on the issues and subjects of importance.
Western regional office	There is no information available as per the records.
Central regional office	Surprise visits are not initiated by this office.
North-Eastern regional office	Yes, the regional office makes surprise visits. During the financial year 2007–2008 (up to 31 January 2008), surprise visits were conducted in a total of five sites.

Table 9: Issuing Show Cause Notices

RTI Question: Please provide lists of projects, where the regional office has issued show cause notices in the last four years or has taken any such action against non-compliance of clearance conditions.

Regional office	Response
Northern regional office	Details not asked in the RTI application.
Southern regional office	Total nine projects were issued show cause notices in 2004–2008 (till February 2008).
Eastern regional office	Total ten projects were issued show cause notices in 2004–2008 (till February 2008).
Western regional office	During 2004–2008 (till February 2008), nine industries have been issued show cause notices/explanation letters.
Central regional office	During 2004–2008 (till February 2008), seven projects have been issued show cause notices.
North-Eastern regional office	During 2004–2008 (till February 2008), twelve projects have been issued show cause notices.

The response of the regional officer at the Raigarh office of the Chhatisgarh Environment Conservation Board (CECB) revealed an interesting fact which is relevant to the regional office of the MoEF too. The project being referred to here is the expansion of the JSPL in the district. There is only one monitoring report from the Western region office of the MoEF. Despite very strong observations about the ongoing violations by the plant operations,

Constructions without Clearances

On 28 March 2007, an RTI application was filed by a member of Kalpavriksh before the MoEF regarding the status of environmental clearance as well as compliance and monitoring reports of the Star City Mall in East Delhi. The MoEF responded that it had not received any proposal for environmental clearance for the construction of the mall. Further, two separate RTI applications on the same subject had been filed before the CPCB on 26 April 2007 and the Delhi Pollution Control Committee (DPCC) on 30 April 2007.

Response dated 1 May 2007 from the CPCB indicates that CPCB had not been aware of any construction of the Star City Mall, and hence the matter was transferred to the MoEF and the DPCC for necessary action under Section 6(3) of the Right to Information Act, 2005. The response dated 25 May 2007 from the DPCC also indicated that the DPCC has not granted any clearance to the Star City Mall under any Act. At the same time, following the receipt of the RTI application from the MoEF and the CPCB, the DPCC issued a notice dated 18 May 2008 to M/s Star City Mall regarding non-compliance of mandatory provisions under Section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974. According to this, no person without prior consent of the DPCC shall establish or take any steps to establish any industry, operation or process or treatment and disposal system. Using the Act, the DPCC issued a show cause notice seeking explanation from the project authorities as to why prosecution proceedings should not be initiated against the project proponent or the establishment should not be closed under the appropriate provisions of the Act.

The incident brings to light that, as we speak of compliance of projects granted clearance by the MoEF, there are scores of projects that are operating without some or all clearances that are to be obtained from agencies in charge of environment protection. The present rates of non-compliance calculated in this report as well as the discussions in the MoEF and regional offices are only based on the projects which are within the monitoring net because they have sought clearances and obtained it. There are several projects which are not within this net, such as the Star City Mall.

there was no show cause notice issued or any action taken. The regional officer at the CECB's regional office, R.K.Sharma, who would monitor the air and water pollution aspects, clearly indicated that when violations are observed, they no longer issue show cause notices. Instead, cases are filed against the company in the District Sessions Court. As of August 2007, there were no final orders in any case. Earlier the cases were related directly to non-compliance, such as the required pollution control devices were not installed; now they involve impacts of pollution. A substantial amount of the officials' time is spent on these cases and in the court.

Even in cases where the RO takes cognisance of violations and issues show cause notices, the MoEF fails to follow up with relevant action to adequately redress the problem. The regional offices do not have the authority to take punitive action like impose fines or revoke clearances but can only issue show cause notices. It has been observed in the case of some projects that despite repeated notices or warnings issued by the regional office, the clearance of the project has remained status quo. For example, in the Northern region, a bulk drug unit in Patiala was granted clearance in the 2003. The environment clearance letter clearly stated that that the ‘Ministry may revoke or suspend clearance if implementation of any of the above conditions is not satisfactory’. However, no action ever seems to have been taken against repeated violation/non-compliance. The project proponent had stated illness and non-compliance for three-and-a-half years, but no punitive action was taken. Even if the unit had not begun operation, the MoEF had complete authority to revoke clearance based on repeated non-compliance.

d) Lack of Coordination between Monitoring Agencies

Monitoring of projects is done by at least three agencies. While the regional office of the MoEF looks at the environmental clearance of a project, it is the Forest Department that tracks the compliance of the conditions laid down at the time of the grant of forest clearance under the Forest Conservation Act, 1980. Other than this, the Pollution Control Board regional office monitors compliance of the conditions under the ‘Consent to Establish’ and ‘Consent to Operate’. There are several aspects of these separate conditions which are common. For instance, the dumping of muck in designated places so as to prevent any damage to forest land is likely to be a condition in all three sets of permissions.

During the investigations related to the case studies, we attempted to speak to each of these agencies and also sought their responses on whether there is indeed any coordination between them to carry out the monitoring. This includes joint inspections, sharing of monitoring reports, undertaking joint site visits and joint action against violators. Among the six case studies, joint inspections have been conducted only in the case of the Parbati II Hydroelectric project in Himachal Pradesh.

Ironically, in none of the instances did we see ongoing coordination between the MoEF regional offices, the Pollution Control Boards and the Forest Department. In the case of the compliance of the Parbati II Hydroelectric Project, independent monitoring of the project is being carried out by the regional offices of the MoEF, the Pollution Control Board and the Forest Department along with the Department of Science and Technology. Strong observations were made by each one of the agencies on the regular non-compliance of the conditions by each project authority, i.e., the National Hydro Power Corporation (NHPC), but no action that was strict enough was taken to deter the violators from repeating the violations. The Northern Regional Office (NRO), which is the farthest monitoring agency from the project site, needed to take cognisance of the monitoring/investigation reports of the other agencies as this would have strengthened the monitoring process, but unfortunately, this did not happen. Though the illegal dumping of muck was observed by the NRO as well, it was only the Department of Science and Technology which ordered the stoppage of work by the project on one occasion on the basis of unscientific disposal of muck/debris.

In the case of the JSPL plant in Raigarh, Chhatisgarh, an interview with the regional officer of the CECB, R.K.Sharma, highlighted that no joint inspection and monitoring takes place. Discussions with the Forest Department and the regional office of the Tamil Nadu Pollution Control Board in Tuticorin have also indicated the lack of coordinated efforts by the agencies in the case of the Sterlite Copper Smelter plant in Tuticorin.

ENVIRONMENT
Impact
ASSESSMENT

☒ **No problem**

☐ **Some problem**

☐ **Big problem**

REPORT PREPARED BY EVERGREEN CONSULTANCY SERVICES

IV. PROBLEMS WITH DRAFTING OF CLEARANCE CONDITIONS

a) Multiple Conditions within One Condition

Very often there are multiple conditions for the same function/activity listed within environmental clearance conditions. In many ways this is like having sub-conditions within a single condition. There is a critical issue that arises when project proponents report on the compliance of these conditions. Only one part of the condition is responded to, and therefore it is impossible to fathom whether all aspects of the condition have been complied with or not. Some examples are:

While indicating follow up on these it is noticed that the CRs very often only partially report on one or the other condition and not in its entirety. This is in no way adequate, as one does not get a complete picture of the compliance of all aspects of the conditions. It is also very difficult to monitor such joint conditions unless the authorities decide to refer to them individually during investigations and in MRs.

S.no.	Projects	Condition	Remarks
1.	Rampur Distillery (Rampur, Uttar Pradesh)	The industry should ensure that the treated effluent and stack emissions from the unit within the norms stipulated under the EPA Rules or SPCB whichever is more stringent. In case of process disturbances or failure of pollution control equipments adopted by the unit, the respective unit should be shut down and not be restarted until the control measures are rectified to achieve desired efficiency.'	The response in the CR is 'treated effluents are within norms' and the final MR available of 2006 states 'complied'.
2.	Tikaula Distillery unit of M/s Tikaula Sugar Mills Limited (Muzaffarnagar, U.P)	'As reflected in the EMP, the spent wash generated shall be treated in biomethanation digester followed by composting with pressmud. Land and other requirements shall earmark a separate area of 14 acres for biocomposting and storage of pressmud and finished products. Spent wash storage shall not be more than 30 days. The company shall monitor the soil and groundwater quality in the compost and project area on a regular basis and submit half-yearly reports to SPCB and the Ministry.'	The reporting on such conditions in the MR is highly inadequate and does not give a clear idea of the level of compliance achieved on such conditions.
3.	Exploratory Drilling Operations in the Bay of Bengal off Orissa Coast by M/s Reliance Industries Limited	'...the exploration activities should be confined to a maximum of one and a half months between May and September each year to ensure complete protection of the Olive Ridley Turtles. Under no circumstances, the exploratory activities should be undertaken between 1st October and 30th April. Further M/s RIL should prepare a contingency plan to prevent oil spill and also for control of damage to the marine ecosystem in case of oil spillage. The above plan should be submitted to the Ministry before taking up the exploratory activities.'	One condition has both the duration of exploratory activities as well as contingency plan for oil spill. Each one of these needed to be spelt out separately. The reporting in the only available CR is only about the contingency plan.
4.	Mining projects in the Southern region (Penna Cement Industries Ltd, Limestone Mine [1.5 MTPA] of M/s Chanakya Cements Ltd Kotapaddu limestone Mine of M/s Prism Cement Ltd)	'OB dumps should be stacked at earmarked sites on a temporary basis. Back filing should begin after 10th year of operation. Monitoring and management of rehabilitated areas should continue until the vegetation becomes self-sustaining. Compliance status should be submitted to the ministry on yearly basis'	The CRs of 2007 report that there has been no OB generation at the site.

S.no.	Projects	Condition	Remarks
5.	Foundry unit projects in the Southern region	In the foundry projects, a special condition states, 'Dust suppression and dust extraction systems should be provided to control fugitive emissions at material handling points. The shot-blasting unit should operate in a closed condition. Emissions from the furnaces should be passed through the wet closed condition. Emissions from the induction furnaces should pass through the wet scrubber and fume extraction system. The scrubbed waste water evaporated through the impervious solar evaporation pond. Fugitive emissions should be controlled, regularly monitored for SPM and record maintained'	This long set of conditions are all clubbed and mixed. As a result, many important aspects have invariably gone not reported in compliance and monitoring reports.
6.	Lower Subansiri HE Project (Arunachal Pradesh)	'Fuel depot may be opened at the site to provide the fuel (kerosene/wood/LPG). Medical facilities as well as recreational facilities should also be provided to the labourers.'	While the MRs take a strong view on the issue of fuel supply, it does not report on medical and recreational facilities at all. With this kind of situation the MRs do not give any idea of the other part of the condition.

b) Vague Conditions, Vague Compliance

One of the critical issues to reckon with is that it is impossible to monitor conditions which are drafted vaguely in the environmental clearance letter. The description of the condition makes it difficult for both the project developer to comply as well as the regional officer to monitor. During the analysis there were several instances that came forward.

In most projects there are references to broad and unclear conditions like, '*greenbelt of adequate width and density*' should be provided to mitigate the effect of fugitive emissions around the plant in the industrial projects of the region; or '*Adequate provision of fire fighting facilities is kept*' in the project construction of E-type transit accommodation at Mus Bay in Car Nicobar in the Andaman and Nicobar Islands. Another instance is in a condition like '*... Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality*' in the Widening of Durgapur Expressway in West Bengal. Also '*Adequate precautions*' should be taken during transportation of the construction material so that it does not affect the environment adversely in the proposed fishing harbour project at Harwood Point in West Bengal.

Each one of the conditions is very important to be complied with. However, without specifications on how this would be done or indicating parameters for the same, the levels of 'adequacy' can be very subjectively interpreted and accordingly complied with. Conditions need to be more precisely worded so that there can be a check on the accuracy of the steps towards its compliance. For instance, the conditions on preventing damage to sand dunes, mangroves, and wetlands state that 'the sand dunes, if any, on the site should not be disturbed'; or 'the mangroves, if any, on the site should not be disturbed in any way'; and 'no excavation or dumping shall be allowed on wetlands, forest areas or other ecologically valuable or sensitive locations, if any are present'. There is a need to specifically mention the ecologically sensitive ecosystems near the project and also specify measures that need to be taken to achieve the conditions laid out. In the absence of such clear conditions, the reporting on these remains as 'complied' or 'agreed to comply' without any further details on how it has been achieved.

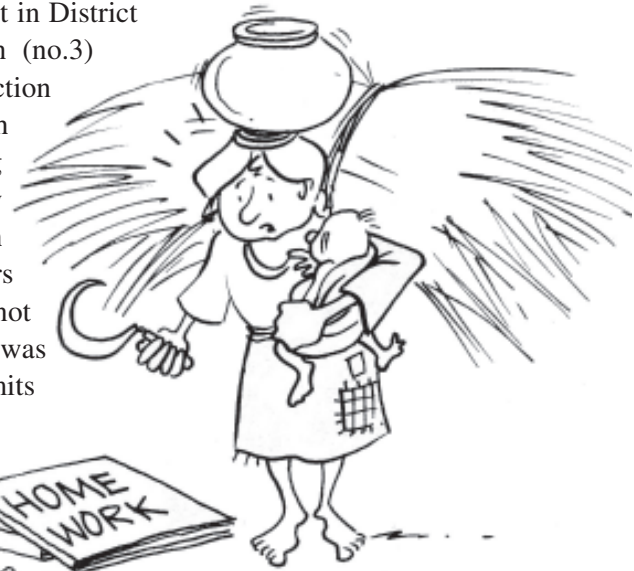
In certain situations the conditions to be complied with are very specific to the stage/period of construction or operation of the project. It is necessary to clearly specify in the condition itself the period during which it will be

applicable. Deciphering the non-compliance of the condition gets difficult without this. For instance, ‘The project authorities shall undertake patrolling and inspection of the pipeline regularly for detection of faults as per OISD guidelines and continuous monitoring of pipeline operation.’ There are no details on whether this should be done during construction and/or following construction and whether it is for the entire life of the project.

Some examples of this are:

- The Allahabad Bypass Project has a condition that, ‘Proper river training works shall be carried out before construction’; or ‘Every care shall be taken to minimize disturbances to the river flow and the aquatic flora and fauna during the bridge construction/Laying of foundations and pier work’; or ‘The rest areas, lay-byes, parking places, and other such wayside locations should be suitably enhanced using best horticultural practices.’ With no parameters in place, it is impossible to monitor such conditions or even show compliance.
- The condition of minimum flow of water to be maintained after the construction of the Lower Subansiri Hydropower Project is part of the EC letter, but it does not specify the time period during which it needs to be done. As a result of this, reporting on this condition is difficult to analyse for the period in which the CR or MR has been prepared. While laying down these conditions, parameters needed to be made more specific to facilitate both monitoring and compliance. In the same project there is another condition wherein it is critical to put down the time frame for compliance to be achieved, i.e., for Rehabilitation and Resettlement (R&R). No timelines have been stated for either the setting up of a committee or completion of the process. As a result, both the compliance and monitoring reports consistently state the progress in achieving R&R with no clear timelines for completion. The latest available MR of 2006 states, ‘There are 38 families instead of 36 families who are being affected after construction of the project. Monitoring committee has been set up on 13th November 2003. R&R sites in the tune of 40 ha viz. Tahrap for Gengi village and Sib Rijo for Sebrite village both of which are about 2 km away from the original habitation, have been identified jointly by District administration and project affected families (PAF). The multidisciplinary committee in its meeting on 2nd January 2006 said that State Govt. has to expedite the handing over of the proposed land in time for rehabilitation.’
- In the case of Chamundeshwari Sugars, the monitoring report for this condition states that ‘...Noise levels are observed to be within the limit. However there is no monitoring by the project authorities. Hence it is suggested to them to carry out the regular noise monitoring.’ So, if monitoring of the noise levels is important to maintain the limit, the condition as stipulated becomes incomplete.
- Another example of vague condition is in the clearance for Laying of Hyderabad to Kakinada Gas/Hydrocarbon Pipeline in Andhra Pradesh by M/s Gas Transportation and Infrastructure Company Limited. Here, one general condition states, ‘During the project construction phase, *adequate care* must be exercised for protection to public life, wildlife, forest power line buildings etc. in the vicinity of pipeline and consonance with local government regulations’. The term ‘adequate care’ leaves it open-ended as a parameter for compliance. There are no specifics on what and how this will actually be done and to what extent, and so it has been left to the interpretation of the project proponent.
- Similarly, in the project Dock Line from Tanker Berth at Cochin Port to Irappanam Marketing Terminal of IOCL, the condition states, ‘It shall be ensured that due to the project, there is no adverse impact on the drainage of the area and recharge of ground water. No ground water should be tapped in the project area falling in CRZ.’ This does not indicate the kind of activities the proponent cannot carry out which will harm the drainage of the area. The kind of activity depends on the proponent’s understanding of damage, which cannot be relied on.

- In the case of the Nira Deoghar Irrigation Project in District Pune, Maharashtra, there is General Condition (no.3) related to 'All the labourers engaged for construction works should be thoroughly examined by health personnel and adequately treated before issuing them work permit.' The compliance statement by the project proponent limitedly reports that 'Health personnel are frequently checking the labourers who are working at site.' This reporting does not give any indication as to whether the check-up was indeed carried out prior to the grant of work permits or not. Unless verified from records at the site level, there would not be any clarity.



The 'Hidden Impact' of Environmental Degradation

- In the Expansion of Bulk Drug Unit of M/s Alpha Remedies Limited at GIDC, the monitoring report states for the condition related to the establishment of a green belt, 'there is some place available N-28 plot which houses the office building for development of greenery. PA shall improve that plot by plantation'. The point of having a green belt is to mitigate pollution around the industry/plant and is not supposed to be merely around the office building. The monitoring is conducted by officials who are aware of the clause but still mention such things in the reports, which appears to be a cover up for the project proponent.
- In the M/s Visaka Industries Limited in West Bengal (manufacturing asbestos cement sheets and accessories), a special condition states '...in addition, the asbestos fibre count in the work zone area should not be monitored by an independent Monitoring Agency like NIOH, ITRC/NCB etc on a six-monthly basis'. The MR 3 dated 27 April 2006 states, 'monitoring being done by PA and WBPCB and all pollutants within parameters. However, an independent specialized agency to do the monitoring must be engaged as stipulated by the MoEF', and the MR 1 states 'LISTED AS NEEDS SPECIAL ATTENTION. Project Authorities are carrying out measurement of pollutants in the work zone once a month by an independent agency M/s J.R. Labs, Hyderabad. Continuous measurement of pollutants in the work zone however, is not being carried out by the Project Authorities'. Therefore, it is very unclear from the two different kinds of reporting done by the MoEF officials as to which can be taken as compliance of the condition.
- In the Kirari Limestone Mine of M/s Lafarge India Limited, located in Villages Kirari & Chorbhatti, Tehsil Janjgir, District Janjgir Champa, Chattisgarh, the only available compliance report of 2004 mentions 'will be complied'. It is impossible to determine whether the project is complying with the given conditions or not. Moreover, there is no monitoring report or subsequent compliance report available to verify it.
- In another project, Expansion of Distillery Unit from 75 KLPD to 95 KLPD in Satara of M/s Krishna Sahakari Sakhar Karkana Limited, the monitoring reports state, 'Agreed to comply' for the condition ECC6 General Condition, 'the project proponent shall also comply with all the environmental protection measures and safeguards recommended in the EIA report'. There is only one monitoring report of 2004 which merely reports that the project proponent has agreed to comply with the condition without further commenting on it or carrying out any verification.

V. UNDERSTANDING THE COMPLIANCE OF CONDITIONS

a) Which Conditions Are Less Complied with and Why

In every environmental clearance letter there are a set of specific and general conditions for every project. Some conditions are very critical to the social and environmental impacts of the project, and if these are not complied with, then it defeats the purpose of environmental safeguards. For instance, the analysis that follows will show that conditions like effluent treatment/disposal, green belt, disposal of solid waste, special measure for wildlife, important studies have not been complied with. Presented here is an analysis of some critical conditions and the extent of non-compliance:

Table 10: Sector wise non-compliance of specific Conditions

I. INDUSTRY

S. no.	Type of condition	No. of projects with the condition ¹							Region-wise non-compliance as per available MRs						
		N	S	E	W	C	NE	Total	N	S	E	W	C	NE	Total
1.	Effluent treatment and discharge	3	34	9	61	4	-	157	3	8	1	7	2	-	21
2.	Emission of particulate matter	-	29	9	52	4	-	94	-	8	2	11	2	-	23
3.	Groundwater quality	3	9	-	9	2	-	23	2	4	-	2	0	-	8
4.	Green belt	4	46	9	62	4	-	125	1	28	5	10	3	-	48
5.	AAQ monitoring stations	2	29	5	44	3	-	83	2	21	2	9	2	-	36
6.	Influent and effluent monitoring stations	2	30	4	8	4	-	48	2	21	2	2	1	-	28
7.	Rainwater harvesting	2	28	7	55	2	-	94	1	12	5	11	1	-	30
8.	Dust suppression and dust extraction	-	22	5	-	-	-	27	-	8	4	-	-	-	12
9.	Pollution control equipment with DG sets			8	-	-	-	8			6	-	-	-	6

Notes:

As in the case of Tables 2 and 6, this analysis of non-compliance of specific conditions is based on the available MRs for projects in different regions.)

¹This does not reflect the total number of projects in the region, but the total number of projects in the region which had this condition.

II. MINING

(The assessment in this section has severe gaps as both Eastern and Western regions had mining projects but no MRs wherein the compliance of conditions could be understood.)

S. no.	Type of condition	No. of projects with the condition ¹							Region-wise non-compliance as per available MRs						
		N	S	E	W	C	NE	Total	N	S	E	W	C	NE	Total
1.	Backfilling of mines and monitoring rehabilitation of mining area	-	4	-	1	-	-	5	-	2	-	-	-	-	2
2.	Measures to prevent siltation and reutilisation of water	-	4	-	-	-	-	4	-	2	-	-	-	-	2
3.	Vehicular pollution	-	3	-	1	-	-	4	-	2	-	-	-	-	2
4.	Community welfare measures	-	2	-	-	-	-	2	-	2	-	-	-	-	2
5.	Construction of wall around mining area to avoid overburden flow	-	1	-	-	-	-	1	-	1	-	-	-	-	1
6.	Sewage and waste water treatment	-	2	-	3	-	-	5	-	1	-	-	-	-	1
7.	Ecodevelopment plan and afforestation measures	-	2	-	2	-	-	4	-	1	-	-	-	-	1
8.	Environment lab and environment management cell	-	5	-	4	-	-	9	-	2	-	-	-	-	2

Notes:

As in the case of Tables 2 and 6, this analysis of non-compliance of specific conditions is based on the available MRs for projects in different regions.)

¹ This does not reflect the total number of projects in the region, but the total number of projects in the region which had this condition.

² There were two mining projects in this region, neither of them had MRs. Therefore, an assessment could not be done.

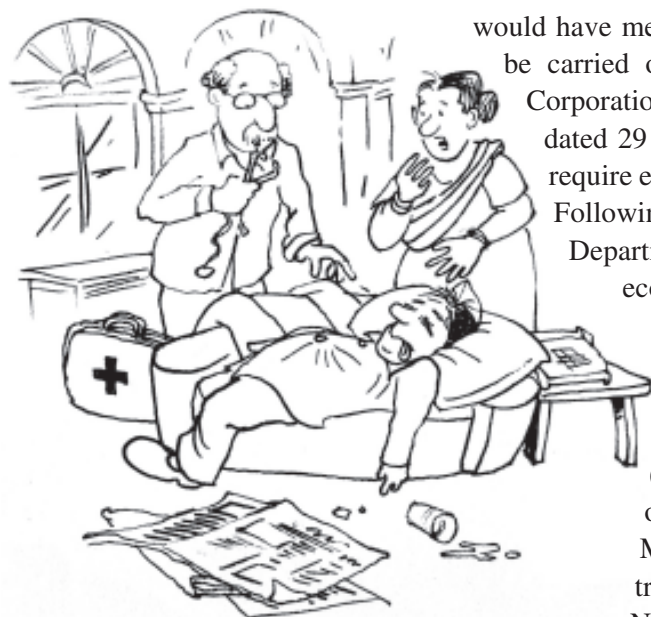
³ There were 13 mining projects, none of them with MRs. Therefore, an assessment could not be done.

III. INFRASTRUCTURE															
S. no.	Type of condition	No. of projects with the condition ¹							Region-wise non-compliance as per available MRs						
		N	S	E	W	C	NE	Total	N	S	E	W	C	NE	Total
1.	Provision of longitudinal drains, culverts and underpasses	-	1	1	-	1	-	3	-	1	0	-	0	-	1
2.	Felling, Relocation & plantation of trees	-	7	2	2	1	-	12	-	5	1	-	1	-	7
3.	Use of fly ash in project construction	-	4	1	-	1	-	6	-	3	0	-	1	-	4
4.	Adequate precautions during transportation of construction material	-	5	1	2	1	-	9	-	2	0	-	0	-	2
5.	Leveling of roads	-	4	-	-	1	-	5	-	2	-	-	1	-	3
6.	Setting up of an environment management cell and/or full fledged laboratory	-	16	1	2	1	-	20	-	7	0	-	0	-	7
7.	Noise barriers at suitable locations	-	-	1	-	1	-	2	-	-	1	-	1	-	2
8.	Disaster management Plan/ Accident Mitigation measures/ Emergency preparedness plan	-	14	-	2	-	-	16	-	7	-	-	-	-	7
9.	Social upliftment scheme, community awareness and employment of local people	-	5	-	2	-	-	7	-	2	-	-	-	-	2
10.	No anchoring of ships on coral reefs, berthing only at wharves/ No destruction of corals/ mangroves	-	1	4	1	-	-	6	-	1	-	-	-	-	1
11.	Oil and grease spillage in harbour area	-	1	-	-	-	-	1	-	1	-	-	-	-	1
12.	Necessary steps for mitigating pollution from the ships and other facilities	-	1	-	-	-	-	1	-	1	-	-	-	-	1
<i>Notes:</i> As in the case of Tables 2 and 6, this analysis of non-compliance of specific conditions is based on the available MRs for projects in different regions.) ¹ This does not reflect the total number of projects in the region, but the total number of projects in the region which had this condition. ² No MRs were available for 8 out of 11 infrastructure projects granted clearance in 2003.															

b) How Conditions Get Modified to Ensure Compliance

There is yet another peculiar phenomenon that occurs when it comes to the way environmental conditions are addressed. There are instances where either conditions are modified so that they don't need to be complied with at the first instance, or justifications and explanations render it unnecessary for the conditions to be followed.

One instance is of the environmental clearance of the Mumbai-Pune Expressway project in Maharashtra. The environmental clearance letter specifically highlighted that a separate clearance needed to be sought for the Lonavala-Khandala Bypass, which is a critical component of the project. Ecologically it is one of the most sensitive areas of the Mumbai-Pune Expressway. The separate clearance



Doc... What is your assessment of the impact he has suffered on hearing he has got the Environment Ministry and not Industry?

would have meant that an EIA and public hearing would have had to be carried out. However, Maharashtra State Road Development Corporation (MSRDC), the project authority, submitted a letter dated 29 December 1999 to the MoEF that the bypass does not require environmental clearance as it costs less than Rs 50 crore.²

Following this, in a letter dated 4 August 2000, the Public Works Department informed that the bypass is not going through any ecologically sensitive area. This was agreed to by the

MoEF as on 31 December 2000 (as indicated in the sixth compliance report by the MSRDC) and no separate clearance was sought for this section. A letter by Samir Mehta, Bombay Environmental Action Group (BEAG), to the DCF (Central) at the MoEF regional office in Bhopal dated 24 August 2000 indicates that the MSRDC has not given the correct calculation and has tried to evade the requirement of environmental clearance.

No cognisance was taken of this observation at that point or even after.

In an RTI response dated 23 May 2008, the MSRDC informed one of the Kalpavriksh members that the alignment of the Lonavala-Khandala Bypass is generally the same as that approved in the Development Plan. Further, 'As per the office record cost estimate of work is Rs.104.35 crores and expenditure for the work is Rs.195.18 crores for the Lonavala-Khandala bypass. Contract letters, reports and audit statements were said to be unavailable in the MSRDC office.' This clearly indicates that the estimate of Rs 50 crore was wrongly presented so as to avoid the condition of a separate environmental clearance for the bypass.

In another case, the 2000 MW Lower Subansiri hydroelectric project coming up on the Arunachal Pradesh-Assam border was said to submerge a part of the Tale Valley Sanctuary and, therefore, required a clearance from the Standing Committee of the National Board for Wildlife (NBWL). In 2002-2003, the Standing Committee had observed that the project impacts important wildlife habitats and species well beyond the Tale Valley Sanctuary in both the upstream and downstream areas. Despite opposition of non-governmental members the project clearance was pushed through, but with the imposition of stringent conditions, which were also

² Up to 2002 all projects with an investment less than Rs 50 crore were exempt from the purview of the EIA Notification, 1994. In 2002, the investment limit was increased to Rs 100 crore.

reiterated by the Supreme Court of India (SC) in April 2004. In December 2008, the Standing Committee diluted two conditions imposed by it while granting clearance to the project in May 2003. The conditions of the NBWL became part of the forest clearance letter.

When the conditions were imposed in 2004, dam proponents raised no objection. It was only in May 2005, when the construction on the project had been substantially undertaken did they seek a review from the Supreme Court of two of the critical clauses that form the basis of the original clearance. The original conditions asked for declaration of the Reserved Forests in the catchment area as a sanctuary or national park and imposed a restriction on construction of dams in the upstream stretches of the River Subansiri. The SC had referred the matter back to the NBWL Standing Committee.

This committee diluted the ‘no dams upstream’ condition and said it would consider upstream projects on a case to case basis. This decision ignored the opinion of non-governmental members in the committee as well as civil society groups in Assam and Arunachal Pradesh which asked for a cumulative impact assessment of upstream projects and a carrying capacity study of the Subansiri river basin before deciding whether to dilute this condition. The protected area condition has been changed so that the Arunachal Pradesh government now needs to declare a smaller area of 168 sq. km as a sanctuary and ‘make serious efforts’ to bring an additional 332 sq. km Reserved Forest (RF) under the category of Conservation Reserve (CR) under the Wildlife Protection Act, 1972 in consultation with the MoEF. The latter part of the condition (declaration of CR) is legally non-enforceable because of the choice of words. The AP government’s fears about the impact of the proposed protected area on people may be currently misplaced as the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, states that no modification of rights or relocation from a sanctuary/national park can take place without the consent of local communities.

These diluted conditions will now be placed before the SC for final orders. Conservationists believe that granting conditional clearance to mega dams in ecologically sensitive areas and then diluting these conditions after construction work has begun, is a mockery of environmental clearance procedures.

VI. DISCREPENCY IN REPORTING BETWEEN REPORTS

There are several instances in the 2003 projects as well as the case studies looked at as part of this analysis wherein there are discrepancies in the information present in monitoring and compliance reports. These could either be differences between two or more monitoring or compliance reports for a project, or between the compliance report and monitoring report for a common period of a project. The inconsistencies in the reporting between CRs and MRs throw up some interesting observations. In some cases it shows that there is non-compliance despite compliance having been reported by the project authority; but in other cases there are instances where CRs show non-compliance and MRs indicate that conditions have been adhered to. Some examples from different regions are:

- The Tikaula Distillery Unit of M/s Tikaula Sugar Mills Limited, Muzaffarnagar, Uttar Pradesh, in the Central region, has a condition related to undertaking rainwater harvesting. The project authority sent the first compliance report in August 2006, three years after clearance. The CR stated that the rainwater harvesting plans are being prepared (therefore, implying that the condition has not been complied with). However, the monitoring report dated March 2006 says that this condition has been complied with.
- The compliance report for the expansion of the distillery unit of M/s The Simbhaoli Sugar Mills Limited, Ghaziabad, Uttar Pradesh, in the Central region, of April 2007 states that Ambient Air Quality (AAQ) stations have not been set up, and the project authorities have approached the Pollution Control

Board. However, the monitoring report of May 2006 (i.e., a year before) indicates that the AAQ stations have been set up in consultation with the concerned SPCB.

- In the case of M/s Ramco Industries Limited in West Bengal, in the Eastern region, there is discrepancy in reporting observed. The MR 1 dated 13 July 2005 states that an Environment Management (EM) Cell has been established similar to the CR 1 of 26 July 2005. However, the MR 2 dated 26 April 2006 states that the project is still to set up the EM Cell. In the same project, the MR 1 dated 13 July 2005 states that the project has obtained the authorization under Hazardous waste (H&M) Rules; however, the MR 2 dated 26 April 2006 says that the authorization is still to be obtained. It appears that the 2006 monitoring report has been far more vigorous and stands in contrast to the earlier MR of 2005.
- The EC for of M/s Ruchi Infrastructure Limited, Mangalore, Karnataka, in the Southern region, for edible oil storage tanks was granted in April 2003. However, the MR for the project reports that the construction of the project started on 2 November 2002, i.e., before the clearance. It has not been specified that this is a post-facto clearance or that illegal construction had taken place prior to clearance.
- In the Expansion of Dyes of M/s Dytint Specialities Private Limited at GIDC, Vatva, Ahmedabad, Gujarat, there is a condition related to rainwater harvesting. The CR 1 dated 4 May 2004 states 'complied', whereas the CR 2 dated 18 October 2005 states, 'Not feasible however we are using rainwater in our process during any rainy season'. This shows that the CR 1 has given faulty information and after two years of the project being granted clearance, the project proponent expresses inability to comply with the condition.

Some cases of reporting border the tragic and the humourous. In the Western region, all the projects of GIDC estate in Vatva, Gujarat were granted ex post facto environmental clearances. Surprisingly, they have all submitted identical compliance reports. Similarly, the Dyes Intermediate Project by M/s Pandesara Industries Private Limited in District Surat, Gujarat, has five compliance reports. All of them are exactly the same in content. None of these observations have been made by the MoEF. Such cases highlight that regular reporting does not mean anything positive in terms of monitoring or compliance. The MoEF's inability to address these issues may have resulted in reporting and monitoring being reduced to an administrative formality.

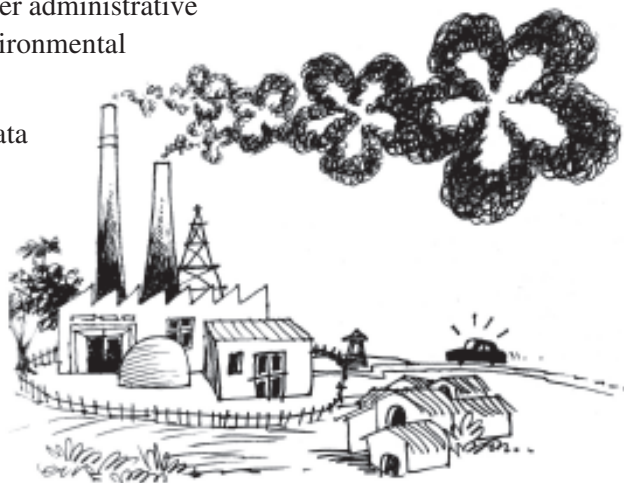
VII. CONCLUSIONS

Presented here are some of the key conclusions of this study which point to critical gaps and irregularities of the monitoring and compliance framework being practised in the country today.

- No consolidated information on monitoring at the MoEF:** The MoEF does not maintain a consolidated record of the compliance of environmental clearance conditions sent by project authorities. This has been admitted by the MOEF in response to an RTI application as stated earlier. As a result, it is impossible to gauge the levels or percentages of compliance/non-compliance from internal records of the MoEF of over 6,000 projects that have been granted clearance.
- No consolidated information on monitoring at regional level:** Similar records are also not maintained by the regional offices as consolidated information for all the states and projects under their jurisdiction.
- Inadequate infrastructure for monitoring at the regional offices:** The current infrastructure available at the regional office level does not even allow for annual monitoring of all the projects granted environmental clearance. The six regional offices of the MoEF currently have over 6,000

projects to be monitored by a staff strength of two to three officials each in each RO. These officials also have to handle other administrative responsibilities other than monitoring the environmental performance of projects.

- d) **Low frequency monitoring:** The MoEF's data reveals that on an average every regional office is able to monitor each project once in three or four years depending on the number of projects to be scrutinized in that particular region. For instance, the Eastern region office monitors between 84 and 119 projects every year, i.e., from 2004 to 2008. However, figures indicate that the number of environmental clearances in the region between 1986 and 2006 was 480. Many more projects have been granted clearance in this region after the 2006 notification.



"We thought this innovative device in the chimney stack will keep surrounding communities less hostile to the pollution we cause."

- e) **Lack of powers to enforce compliance:** As of now the regional offices which are the authorities entrusted with the task of monitoring have only limited powers to deal with lack of compliance or violations. The regional offices can only issue show cause notices. Further action, including revocation of clearances, rests with the MoEF central in New Delhi. In the analysis of the 2003 projects and case studies it is evident that even though the regional offices have reported violations by project authorities, no penal action has been taken against the violators. Environmental clearances have never been suspended or revoked.
- f) **No standard monitoring protocol and procedures followed by the regional offices:** Information received through the RTI has revealed that the regional offices do not follow a standardized monitoring protocol when it comes to the projects in their area. Each regional office has responded that they chose projects to be monitored based on their own criteria. While this flexibility is ideal when it comes to working with local and regional realities, the absence of minimum requirements leads to lack of monitoring of several projects. If there is a basic commitment on the part of the MoEF that all projects would need to be monitored at least once a year, then the infrastructure facilities and the will to scrutinize projects would work accordingly. The findings of such a monitoring exercise could also be tied to a clearance that needs to be renewed periodically based on environmental performance.
- g) **Lack of coordination between various monitoring agencies:** There are various agencies which do independent monitoring of environmental and forest clearance (issued under the Forest Conservation Act, 1980) conditions. The Pollution Control Board, the MoEF regional offices and the Forest Department (monitoring the forest clearance) in most cases do not coordinate even though some conditions are common. In the case of the Parbati II project, some coordinated inspections were reported, but this is certainly not the practice. Very often the monitoring agencies do not inform another of their site inspections and neither are the reports/notices shared.
- h) **Quality of monitoring and compliance reports:** The quality of compliance and monitoring reports leave a lot to be desired. As stated earlier, these reports suffer from many inadequacies. These include irregularity in reporting or no submission of compliance and monitoring reports, incomplete and vague

reporting, as well as misleading information. In several instances either the compliance report of one period would be identical to an earlier one or of another project operating in the vicinity. There have also been instances observed where the monitoring reports do not give any independent analysis but refer to the reports submitted by project authorities to ascertain the levels of compliance.

- i) **Nature of conditions makes it difficult to report in compliance and monitoring reports:** There are instances presented in the overall analysis chapter wherein multiple conditions for the same function/activity have been listed within environmental clearance conditions. In many ways this is like having sub-conditions within a single condition. Therefore, when the project authorities report on the compliance of these conditions, only one part of the condition is responded to, and therefore, it is impossible to ascertain whether all aspects of the condition have been complied with or not.
- j) **Surprise visits and no interaction with locally affected populations:** In most cases investigated in this study it has been observed that the regional offices do not make surprise visits to project sites. Project authorities are aware of the arrival of the regulatory officials and are prepared in advance. Therefore, unless the violations are blatant and cannot be hidden easily, most cases of non-compliance and related environmental impacts go unnoticed. Investigations have also revealed that the MoEF regional officers do not interact with the locally affected people when they do site inspections. Therefore, in most cases they are unable to get opinions and positions other than those of the project authorities.
- k) **Violations and disregard for compliance by project authorities:** The analysis of projects cleared in 2003 as well as the conclusions of the case studies indicate that there is complete disregard for environmental clearance conditions after clearance is granted. Environmental clearance conditions remain essentially on paper with very little initiative on the part of the project authorities to comply with the conditions. At best, the State Forest Department would issue notices and fines for illegal felling of trees or State Pollution Control Boards would levy fines or file cases in District Courts. However, none of these penalties are strong enough to make project authorities comply.
- l) **Compulsive violations:** The case studies reveal that despite the project authorities having got notices and warnings from regulatory bodies, they continue to violate very critical conditions which have severe environmental impacts. This leads to pollution of rivers, encroachment of forest and agricultural land, irreparable health impacts and so on.
- m) **Clearance for expansion/modernization despite violations:** Access to some monitoring reports, especially of particular case studies like Jindal Steel and Power Limited project in Raigarh, has revealed that the regional office of the MoEF had clearly stated in the monitoring report that the project was not complying with critical environmental clearance conditions, and therefore they should not be allowed to set up additional facilities. Unfortunately, the Central MoEF has not taken any action on this and within six months of the date of the monitoring report, the expansion for the above-mentioned project was granted clearance.
- n) **Environmental clearance conditions amounting to post facto EIAs:** Very often environmental clearance conditions amount to doing fresh studies and analysis to bring forth such information which should have been part of the impact assessments before the projects are cleared. If the impact assessment itself is a part of the future or post-clearance investigation, then the basis on which the project is granted clearance is flawed and inadequate.

- o) Modification of conditions post-clearance:** It has also been observed that some very critical conditions, including post-clearance studies have sought to be modified by project authorities once a project is granted clearance. The Mumbai-Pune Expressway in terms of the environmental clearance conditions as well as the Lower Subansiri Hydroelectric project with reference to forest clearance conditions are clear examples of this. The modification, dilution or removal of conditions post-clearance makes a complete mockery of the reasons why the conditions would have been brought on board in the first place.
- p) Inability of project proponents to comply with conditions:** In a few instances, project authorities have reported to the MoEF regional office that they are unable to comply with certain kinds of conditions due to lack of infrastructure or capabilities. For instance, several projects operating in an industrial estate in the Southern region have reported that they cannot comply with the condition to set up a green belt around the plant as they are operating in an industrial estate and therefore do not have adequate land to develop a green belt area. Since the green belt is a standard condition in the case of industrial projects, it is imperative that ground level assessment is carried out before such conditions are included to mitigate impacts. In the current scenario the project would continue to operate, without complying with the condition, giving 'valid' reasons for the same.

The above are specific problem areas related directly to the monitoring functions of the MOEF. However, the cause of these problems lies in the deliberate, inherent flaws in the EIA notification and the process leading up to the grant of clearance.

Analysis done by various groups for over a decade now, clearly point to critical inadequacies, such as, poor data in EIA reports, over-reliance of the decision-making process on expert knowledge that is disconnected from local realities, granting clearance to projects despite complete or near complete opposition, ignoring or condoning past violations by project developers, emphasis on speed of decision-making process over quality, and absence of retrospective EIAs. These problems have existed since the time the EIA notification was promulgated in 1994 (with public hearings incorporated into the process in 1997). All of these concerns have not only been left unaddressed but amendments made to the notification up to 2008 (an amendment is pending as this report is being written) have resulted in exacerbating these problems. The only detailed review of the EIA notification that the MoEF undertook between 2000 and 2004 failed to address these issues, as the main aim of the review was to resolve the complaints from project developers that the EIA process was a 'bottleneck' and 'ineffective' in terms of the time it took away from project planning and implementation. As part of the review, consultations were held with CII, ASSOCHAM and FICCI – all associations of investors and project developers (token consultations were held with NGOs and in these there was severe opposition to what the Ministry was proposing as a 'newly engineered' decision-making process). It is, therefore, not surprising that the problems of monitoring and compliance were left totally untouched in the review.

The latest amendment proposes to allow projects already granted clearance to expand on the basis of self-certification and commitment by project authorities to keep pollution loads in check. This is only one in the slew of proposed changes that are meant to take off the burgeoning load of project proposals pending environment clearance at the centre and states. In relation to the dismal performance of projects on the issue of compliance, this move of the Ministry can only be concluded as injustice done twice over towards all those who have been affected by environmental damage due to projects and all those who will be affected in the future.

Locating the Problem:

Can environmental impacts be mitigated under the present EIA process?

Having finished a two year exercise to assess the degree of compliance achieved by large projects granted clearance by the Ministry of Environment and Forests (MoEF), we are asked to include in this report, recommendations that might help resolve the problem of non-compliance of environment clearance conditions. This has been on our minds too during the period of this project. As we wrap up and put away the several hundred pages of monitoring and compliance reports and the paperwork of over fifty Right to Information queries, we mull over the question of what to recommend and who to recommend to.

We feel convinced that the failure of the Ministry to ensure compliance of the conditions issued after the “due” procedure laid out in the Environment Impact Assessment (EIA), 2006 (earlier 1994) process is followed ,not a failure of implementation due to institutional or other limitations, but an intentional failure. The MoEF presently has the task of monitoring over 6000 live projects that are at various stages of construction or operation. All the six regional offices that are given the task of monitoring have been aware that they are in a position to cover only upto 20% projects in a single year. Despite this knowledge, the MoEF failed to address its incapacity to achieve the mitigation end of the EIA process. What it has paid attention to is only the clearance of projects under the EIA process. The limited attention paid to issues of monitoring starkly contrast with the excessive action taken by the Ministry (in association with consultants, investor groups and other Ministries) to reduce time for grant of clearance, exclude more projects from requiring clearance and dilute conditions of clearance. In the words of the Ministry itself, stated in several interviews, official correspondence and public meetings, these have been done in the name of facilitating development.

The Ministry, which has a monitoring cell, mentions the clauses on compliance and monitoring in each environment clearance letter. However, the cell only ‘collects’ all the reports generated by this monitoring process. The Ministry seems to have found no reason so far in collating and analysing the data it receives and therefore does not have any idea of the degree of compliance achieved by projects on the conditions it had imposed on these at the time of clearance. Without such an analysis, how does the Ministry know if its system of monitoring is functioning as per its own objectives? The minutes of the meetings of the central office with the regional offices indicate that there is little desire to know. This lack of desire to know if the mitigation measures are working as per what was envisaged at the time of clearance, is also corroborated by the absence of any retrospective EIAs (study of impacts after the commissioning of a project)

A fallacious EIA process

The legal and technical framework for assessment of impacts makes the following assumptions:

- Nature has to be viewed and accessed as a resource if a certain model of development needs to be realised. These will inevitably impact the environment and people.

- The very same model of development has also made available, mechanisms by which the impacts of such use of nature can be minimised.
- Through a mix of various technological options offered by experts on different subjects such as forestry, wildlife, geology, hydrology etc, a balance can be arrived at, which allows us both development and conservation.

Every EIA report generated to assess the environmental and social impacts is constructed to prove true these beliefs. If activists are accused of rhetoric, these EIA reports, upheld as scientific documents are worth a read for the extent of development rhetoric they contain. Even before any possibility of assessment, economic, social or environmental, hydel, mining or real estate projects are declared as harbingers of prosperity. All the data is prefixed by notions of altering a 'backward' area that is 'development deficit'. Therefore, all construction irrespective of its location, type or impact is seen as positive.

EIAs are used not only for the identification of impacts but their comparative evaluation too. The science in the EIA framework allows the categorization of the foreseen impacts of a project such that they can be quantified. Those impacts that cannot be categorized and quantified are simply left out or only described. For eg: In the cases involving land acquisition the insecurity or the misery of being displaced and uprooted, or the feeling of loss of a sacred space is not what is identified as an impacts, but the material details of land acquisition. Such ignoring of the misery in the identification of land acquisition as an impact provides a way of 'compensating' the impact through measures such as physical rehabilitation or monetary compensation or the reassembling of the 'sacred site' elsewhere.

The evaluation of impacts is also determined by how they are defined in the EIAs. Negative impacts of projects are made to appear local, specific and short term, whereas benefits are described as national or regional, general and long term. For eg: a hydropower project will affect 'x' number of people in the vicinity for the project for the period of construction, but it will generate not just specific amounts of power but profits and many development benefits for the state and the nation for over several decades. When formulated in this manner, the benefits accruing from the project always outweigh the costs. This is a systematic manner by which impacts are underestimated often leading to them being called 'collateral damage'. Together with the identification of compensation measures to reduce the impacts further, all projects are (or can be) declared 'viable'.

In effect, the EIA process performs two functions:

- Helps to declare projects viable and gain acceptance by underestimating their impacts.
- Attempts to arrive at mitigation measures for those impacts as defined by the EIA.

By failing to differentiate high impact projects from others, the entire burden of environmental protection is transferred to the post clearance stage of the EIA process.

The EIA process for each project also includes a public hearing that is supposedly to obtain the views of the public regarding the project and its impacts. The public that is to be heard at these events are those who live in an area and who understand the landscape that they occupy simply by having been there, having observed and interacted with it. Their understanding of the effects of manipulating the environment is very different from those of the expert scientist or technocrat. For eg: floods, that are viewed by experts as a problem that needs to be prevented by hydraulic structures on river courses are viewed as necessary by the communities that depend of fish stocking of wetlands that occurs only during floods. Since floods have already been identified

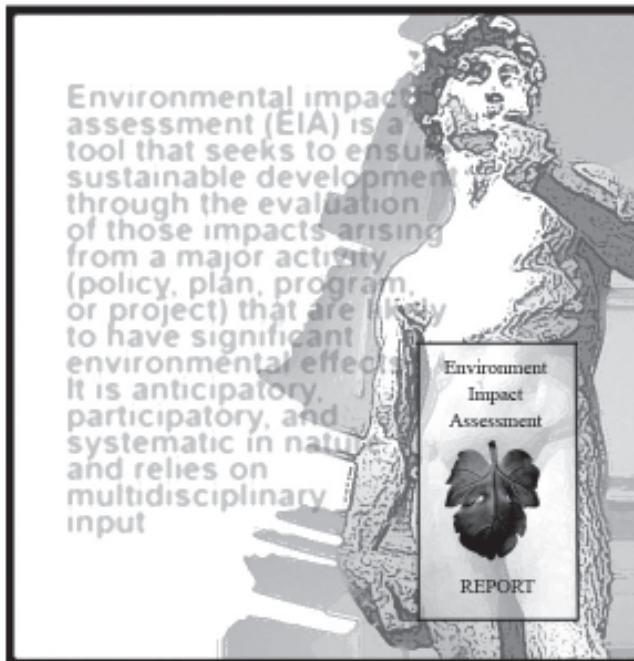
as a problem, its prevention is to be undertaken at all costs. So flood mitigation projects are designed and implemented, despite their social and environmental costs, irrespective of what the ‘public’ has to say. The potential benefits of a democratic practice such as public hearing are lost to the decision-making because the inputs and deliberations of the hearings are viewed within the assumptions and the preset framework of the EIA. The views that stand in opposition to these assumptions are left out of the decision-making process.

The objections to projects at public hearings resonate with the lived experience of what centralised governance has done to them. Several past projects executed by Central and State Governments, ministries and departments, have not delivered what they promised – be it drinking water, education, public transport, etc. Instead, the implementation of projects may have shrunk or made inaccessible the available common resource areas such as forests and pastures, destroyed ground and surface water sources and rendered communities landless and without livelihoods. The impacts that play out after projects are granted clearance are not recorded by the government, but by affected people. Their opposition to new projects is firmly located in their awareness that these projects are implicated in larger political processes. But experts who design and appraise these projects view them as inert objects that can be located in any space to produce a set of desired outcomes. For eg; A hydel project located in any place is assumed to produce ‘x’ megawatts of electricity in ‘y’ years irrespective of the location’s socio-political peculiarities. The deductions on the total power output of the project are made using formulae that consider only the physical parameters such as water flow, sedimentation etc. Mitigation measures are treated in the same way by experts that recommend them. Plans and schemes for afforestation, catchment area management, ground water recharging etc. are generic recommendations irrespective of the social, cultural, demographic and political peculiarities of the area where these are to be undertaken.

Non compliance - a symptom of the EIA failure

The problems that we have highlighted in this report have their origin in the view of projects as readymade artefacts that can be placed in any location to produce a foreseeable and desired set of results. The impacts of these ‘project-objects’ are evaluated through an EIA process that favours a certain imagination of development – that is of being industrial and urban.

Over 6000 projects that have been granted clearance by the Ministry of Environment and Forests (MoEF), year after year, since 1986 using this EIA process¹. The appraisal of these projects under the EIA process has resulted in the grant of condition based clearances². The fifteen years of existence of the legal framework for the EIA process has seen



¹ The process of public hearing was formally incorporated into the legal framework for EIA only in 1997.

² A very small number of projects have been rejected clearance. These are also not rejected in toto. They may have been allowed to reapply for clearance.

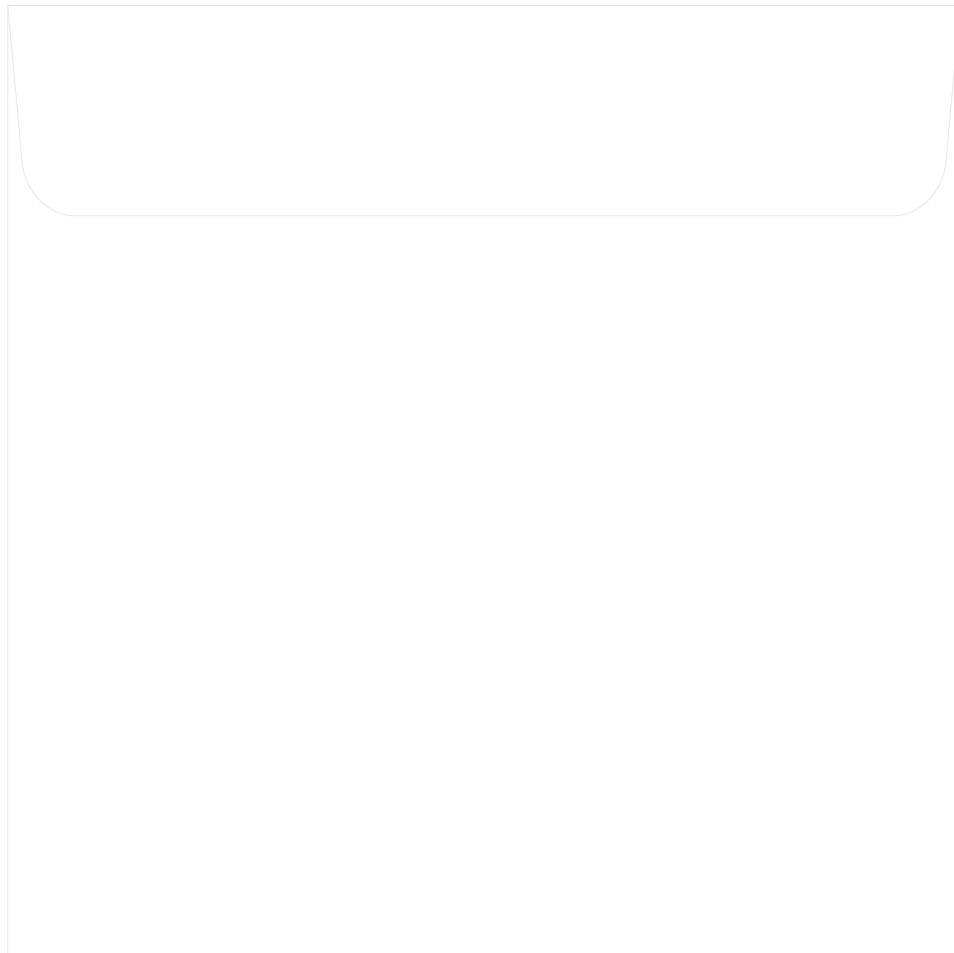
umpteen protests, thousands of critiques and several cases reaching courts. Contestation over the assessment and evaluation of impacts has resulted in the EIA process being constantly negotiated and redesigned. It has been amended thirteen times in twelve years. The fourteenth amendment, taken up in response to the need to reduce the ‘bottlenecks’ faced by potential investments, led to a massive re-engineering in favour of speeding up clearances took place September 2006. And as we write this report, the latest amendment of 19th January 2009 is pending. One of the proposals in the amendment is to allow for projects to expand on the basis of a self certification that such expansion will not increase or enhance pollution loads or environmental impacts.

The vexed problems of compliance and monitoring are symptomatic of the fallacies that are inherent in the assumptions and the design of the EIA process. To see the problems of compliance as independent of the EIA process and attempts to plug the problem of non- compliance without reviewing the entire EIA process would amount to treating the symptom rather than the illness.

Kalpavriksh is a 30-year old NGO that works on environmental awareness, campaigns, litigation, research, and other areas. Kalpavriksh believes that a country can develop meaningfully only when ecological sustainability and social equity are guaranteed, and when a sense of respect for nature and fellow humans is achieved. To this end, its activities are directed to ensuring conservation of biological diversity, livelihood security, empowerment of local communities (especially through community-based conservation and management of natural resources), challenging the current destructive path of 'development', and reviving a sense of oneness with nature.

Over the years, KV's work has included research and advocacy on the environmental and social impacts of development projects and activities (for example dams and mining), and the environment decision-making processes for these. KV has worked with people's movements, NGOs, activists and communities on these issues.

*For information on other publications, please visit the Kalpavriksh website **www.kalpavriksh.org***



This study takes a close look at the level of compliance achieved by projects that are granted environment clearance by the Ministry of Environment and Forests under the EIA notification. The findings based on the data collected from the Ministry of Environment's own documentation and our field investigations point to many areas that need immediate attention. Non-compliance of clearance conditions has severe impacts on people and the environment. In most cases, these are poor labourers and contract workers on projects and local communities living around project sites, community water sources, forest areas and farm lands.

This document presents the overall findings of the study and our framing of the problem of non-compliance. The Data CD along with the document contains the region-wise analysis of the six regional offices as well as the five projects for which we conducted on-site investigations.

