

Environment Impact Assessment in

India

PREETI SHARMA
ASSISTANT PROFESSOR
JECRC JAIPUR

Original basis, spirit and preamble

To protect environment and control pollution

- Environment Protection Act 1986 (May 1986)
- Environment Protection Rules 1986 (Nov 1986)
 - Section 5 Environment Protection Rules 1986: Prohibitions and restrictions on the location of industries; carrying on of processes and operations in different areas
- EIA 1994
 - Environment Protection Act 1986
 - Discharge internationally agreed obligations under Rio Declaration
- EIA 2006 is supersession of EIA 1994, except in respect of things done or omitted to be done before such supersession

EIA notification 2006 - Preamble

- Copies of the said notification were made available to the public on 15th September, 2005
- Objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government
- Central Government hereby directs that on and from the date of its publication (14th September, 2006)
 - the required construction of new projects or activities or the expansion or modernization of existing projects or activities listed in the Schedule to this notification entailing capacity addition with change in process and or technology shall be undertaken in any part of India only after the prior environmental clearance from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under sub-section (3) of section 3 of the said Act, in accordance with the procedure specified hereinafter in this notification.

Categorization of projects and activities

- All projects and activities are broadly categorized into two categories - Category A and Category B
 - spatial extent of impacts
 - impacts on natural and man made resources
 - impacts on human health

Requirements of prior Environmental Clearance (EC)

- Which projects require EC?
 - Projects listed in the schedule to notification (as Category A and B projects)
 - All new projects or activities listed in the Schedule to this notification
 - Expansion and modernization of existing projects or activities listed in the Schedule to this notification
 - Any change in product - mix in an existing manufacturing unit included in Schedule

Requirements of prior Environmental Clearance (EC)

- EC by whom?
 - Category A projects: Central Government in the Ministry of Environment and Forests
 - Base decisions on the recommendation by Expert Appraisal Committee (EAC)
 - Category B projects: At state level the State Environment Impact Assessment Authority (SEIAA)
 - The SEIAA shall base its decision on the recommendations of a State or Union territory level Expert Appraisal Committee (SEAC) as to be constituted for in this notification
 - In the absence of a duly constituted SEIAA or SEAC, a Category ‘B’ project shall be treated as a Category ‘A’ project

Expert Committees for Screening, Scoping and Appraisal(EAC and SEAC)

- Expert Committees
 - Expert Appraisal Committees (EACs) at the Central Government
 - State Expert Appraisal Committees (SEAC) at the State or the Union territory
- Responsible for screening, scoping and appraising projects
- Procedure for selection and maintenance of EAC and SEAC is given in notification

Application for Prior Environmental Clearance

- An application seeking prior environmental clearance in all cases shall be made
 - In the prescribed Form 1 and Supplementary Form 1A
 - After the identification of prospective site(s)
 - After identification of activities
 - Submit pre-feasibility report for all and conceptual plan for construction activities

Stages in EC process

- Stage 1: Screening (Only for Category 'B' projects and activities)
- Stage 2: Scoping
- Stage 3: Public Consultation
- Stage 4: Appraisal

Stage 1: Screening

- Only for Category B projects and activities to determine if they need EIA
- Category A projects compulsorily need EIA
- Scrutiny of an application seeking EC by SEAC for determining whether or not the project or activity requires further environmental studies
 - Form 1
 - Form 1A
- Classify projects as B1 (require EIA) and B2 (don't require EIA)
- For categorization of projects into B1 or B2, the MoEF shall issue appropriate guidelines from time to time



Category A

Category B

Proposals

▶ Submitted by proponent for TOR	1032
▶ Under Examination	142
▶ Returned to proponent due to Shortcoming	352
▶ Accepted by Member Secretary for TOR	525
▶ Awaiting for TOR	359



- In the case of Category A Hydroelectric projects TOR shall be conveyed along with the clearance for pre-construction activities
- If TOR not finalized and conveyed to the applicant within sixty days of the receipt of Form 1, TOR suggested by the applicant shall be deemed as the final TOR approved for the EIA studies
- Approved TOR shall be displayed on the website of the MoEF or the concerned SEIAA
- Applications for EC may be rejected at this stage itself
 - the decision together with reasons for the same shall be communicated to the applicant
- Prepare EIA draft report

Stage 2: Scoping

- Who does the scoping?
 - Expert Appraisal Committee (EAC) in the case of Category ‘A’ projects or activities
 - State level Expert Appraisal Committee (SEAC) in the case of Category ‘B1’ projects
- Now relevant authority will prepare Terms Of Reference (TOR) addressing all relevant environmental concerns for preparation of an Environment Impact Assessment (EIA) Report based on
 - on the basis of the information furnished by applicant in the prescribed application Form1/Form 1A including
 - proposed by the applicant
 - a site visit by a sub- group of EAC or SEAC only if considered necessary

Stage 3: Public consultation

- Process by which the concerns of local affected persons and others who have appreciable stake in the environmental impacts of the project or activity are ascertained
- All Category A and Category B1 projects shall undertake Public Consultation
- Public Consultation shall ordinarily have two components
 - public hearing at the site or district wise, to be carried out for ascertaining concerns of local affected persons
 - obtain responses in writing from other concerned persons having a plausible stake in the environmental aspects of the project

Component 1: Public hearing

Component 2: Public hearing

- Public hearing shall be conducted by the State Pollution Control Board (SPCB)
 - forward proceedings to the regulatory authority concerned within 45 days
 - If the public agency nominated reports that it is not possible to conduct the public hearing in a manner which will enable the views of the concerned local persons to be freely expressed
 - It shall report the facts in detail to the concerned regulatory authority
 - After due consideration of the report shall rule that the public consultation in the case need not include the public hearing
 - Invite responses from such concerned persons by placing on their website the Summary EIA report
 - Use other appropriate media for ensuring wide publicity about the project
- Within seven days of the receipt of a written request for arranging the public hearing
- Confidential information including non-disclosable or legally privileged information involving Intellectual Property Right shall not be placed on the website
 - Make available on written request from any concerned person the Draft EIA report

After public consultation...

- Applicant shall address all environmental concerns expressed during this process
- Make appropriate changes in the draft EIA
- Final EIA report shall be submitted by the applicant to the concerned regulatory authority for appraisal

Stage 4: Appraisal

- Detailed scrutiny by the EAC or SEAC of
 - documents like the Final EIA report
 - outcome of the public consultations including public hearing proceedings
 - submitted by the applicant to the regulatory authority concerned for grant of environmental clearance
- Appraisal of all projects or activities which are not required to undergo public consultation, or submit an Environment Impact Assessment report (Category B2) shall be carried out on the basis
 - prescribed application Form 1
 - Form 1A
 - any other relevant information

Stage 4: Appraisal

- EAC or SEAC shall
 - either for grant of prior environmental clearance on stipulated terms and conditions
 - or rejection of the application for prior environmental clearance, together with reasons for the same

Grant or Rejection of EC

- The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant
- The regulatory authority shall normally accept the recommendations of the Expert Committees
- In cases where it disagrees with the recommendations of the Expert Committee (Central or State), the regulatory authority shall request reconsideration by the Central or State Expert Appraisal Committee
- After reconsideration, irrespective of views of Expert Committee, decision of the regulatory authority concerned shall be final

Grant or Rejection of EC

- If decision not granted within stipulated time, the applicant may proceed as if the environment clearance sought for has been granted or denied by the regulatory authority in terms of the final recommendations of the Expert Committee concerned
- Deliberate concealment and/or submission of false or misleading information or data which is material to screening or scoping or appraisal or decision on the application shall make the application liable for rejection
- Rejection of an application or cancellation of a prior environmental clearance already granted shall be decided by the regulatory authority, after giving a personal hearing to the applicant, and following the principles of natural justice

Validity of Environmental Clearance

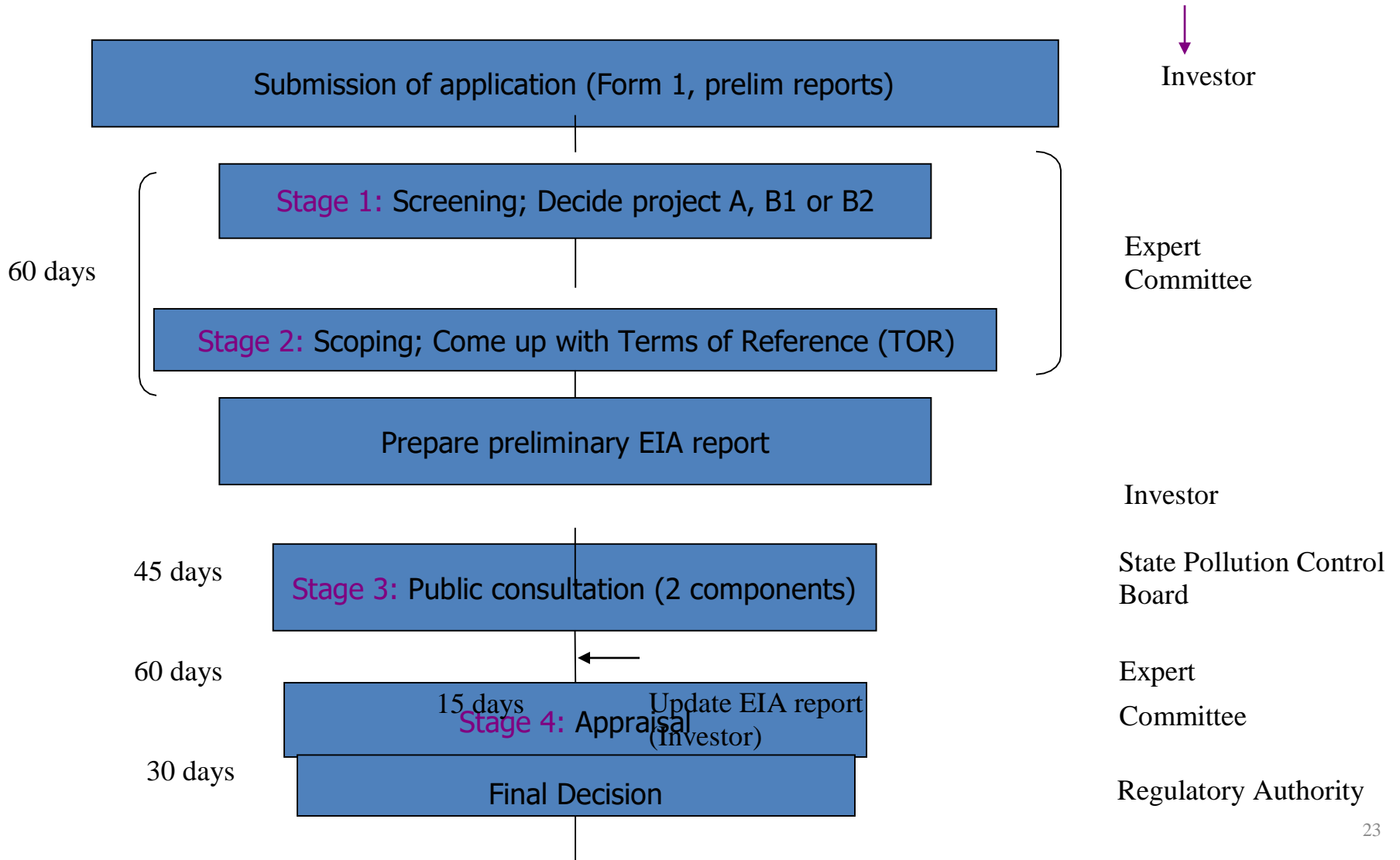
- Ten years in the case of River Valley projects
- Thirty years for mining projects
- Five years in the case of all other projects and activities
- Area Development projects and Townships, the validity period shall be limited only to such activities as may be the responsibility of the applicant as a developer

Post Environmental Clearance Monitoring

- Mandatory for the project management to submit half-yearly compliance reports in respect of the stipulated prior environmental clearance terms

EIA process and Rough Timelines

Who does it?



Loopholes and deficiencies

- Stage 1 - Screening
 - Based on info (form 1, 1A) supplied by investor
 - Pre-feasibility report and conceptual plan - no guidelines or requirements, thereby no need to address environmental issues
- Stage 2 - Scoping
 - No public participation in scoping process - local knowledge about what environmental concerns should be investigated is not given consideration
 - Strict timeline – not a continuous process
 - Biased in securing favorable Terms of Reference (TOR) for investors

Loopholes and deficiencies

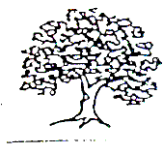
- Stage 3 – Public consultation
 - Unclear wording and definitions
 - Can be avoided if regulatory agency feels it difficult to conduct it owing to local situation
 - local affected persons having plausible stake in impact of project
 - Huge list of exemptions for certain types of projects that cause deep environmental impact without justification
 - Weak wording that widens the scope of these exemptions
 - Tight timeline: 45 days from the time requested by the investor

Loopholes and deficiencies

- Limiting access to information
 - Only summary EIA report made available, not the full EIA with all TOR from the scoping process
 - Confidential information need not be disclosed in summary EIA
- Publicity
 - Use of internet as the main means
 - No definition on how publicity should be carried out
- Erosion of constitution of panel conducting public hearing
 - EIA 2006 mentions only District Magistrate and a representative of SPCB
 - EIA 1994 had District Collector, representatives of state dealing with the project, reps from panchayats, senior citizens from the area, reps of SPCB

Loopholes and deficiencies

- Appraisal
 - No public participation
 - Arguments between regulatory authority and expert committee made known only to investor and not to public
 - Iron hand given to regulatory authority to make final decision – Expert committee opinion can be disregarded
 - Deemed Clearance: In case decision is not given within the prescribed timelines, applicant may proceed as though clearance has been granted or denied



Thank you