



Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

ENVIRONMENTAL CLEARANCES AND MONITORING IN INDIA

REPORT CARD FOR THE MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

Debadityo Sinha

Dhvani Mehta



This Report is an independent, non-commissioned piece of academic work. The authors would like to thank Aashima Panikar, Aditya Rajagopal, Ananya Kuthiala, Kruthika NS, Shreya Shrivastava, Shruti Ambast, Soumya Jha, Yashaswini Mittal and Wafa Qadir Jallu for their inputs. Errors, if any, in the Report are the authors' alone.

The Vidhi Centre for Legal Policy is an independent think-tank doing legal research and assisting governments in making better laws. For more information, see www.vidhilegalpolicy.in

Suggested Citation: Debadityo Sinha and Dhvani Mehta, 'Environmental Clearances and Monitoring in India: Report Card for the Ministry of Environment, Forest and Climate Change' (Vidhi Centre for Legal Policy 2017).

This publication may be freely accessed, copied and redistributed under [CC BY NC ND 2.5 IN](https://creativecommons.org/licenses/by-nc-nd/2.5/in/)

About the Authors

Debadityo Sinha and **Dhvani Mehta** are **Senior Resident Fellows** in the Health and Environmental Law Vertical, Vidhi Centre for Legal Policy.

© Vidhi Centre for Legal Policy, 2017

CONTENTS

I. WHY ARE WE GRADING THE MoEFCC?	1
II. WHAT ARE WE GRADING THE MOEFCC ON?	3
A. SPEED	3
B. QUALITY OF APPRAISAL	7
C. POST-CLEARANCE MONITORING	8
III. HOW ARE WE GRADING THE MOEFCC?	9
A. SPEED	9
B. QUALITY	10
C. POST-CLEARANCE MONITORING	13
IV. RESULTS	14
A. OVERVIEW OF ENVIRONMENTAL CLEARANCES	14
B. SPEED	16
C. QUALITY	20
D. POST-CLEARANCE MONITORING	22
ANNEXURE-I: THE EIA PROCESS	26
ANNEXURE-II: METHODOLOGY	31
A. METHODOLOGY FOR ANALYSIS OF SPEED AND SCOPING	31
B. METHODOLOGY FOR ANALYSIS OF SELF-COMPLIANCE AND POST-CLEARANCE MONITORING	34

I. WHY ARE WE GRADING THE MoEFCC?

Information is the Key to Accountability

In May 2016, the then Minister of Environment, Forest and Climate Change (“**MoEFCC**”), Prakash Javadekar, announced that his ministry had cleared over 2000 projects worth ₹10 lakh crore over the last two years, and had brought down the weighted average time for granting environmental clearances (“**ECs**”) from 599.29 days to 192.59 days.¹ The Minister also claimed that this speed had been achieved without compromising environmental norms, which he stated had been applied even more stringently.

While speed may be an important factor in improving India’s ranking on the Ease of Doing Business Index,² there are concerns that faster ECs might weaken decision-making, and consequently, environmental protection. Already, civil society has widely criticized the various amendments that have been made by the MoEFCC to the Environment Impact Assessment Notification, 2006 (“**EIA Notification**”) to hasten the EIA process.³ Environmental researchers and activists have also written repeatedly about the need to focus on ‘environmental outcomes’ rather than speed.⁴

¹ Manoj Dattatrye More, ‘Green project clearances now in 190 days not 600 days: Prakash Javadekar’ *The Indian Express* (22 May, 2016) <<http://indianexpress.com/article/india/india-news-india/green-project-clearances-now-in-190-days-not-in-600-days-javadekar-2813341>> accessed 26 September, 2016; Lok Sabha, Starred Question No. 142, answered on 8 March, 2016, available at <<http://164.100.47.192/loksabha/Questions/QResult15.aspx?qref=30434&lsno=16>> accessed 26 September, 2016.

² World Bank Group, *Doing Business Data 2016*. For India’s ranking, see <<http://www.doingbusiness.org/data/exploreeconomies/india/>> accessed 26 September, 2016.

³ Mayank Aggarwal, ‘Environmental clearances coming faster, but not everyone is happy’ *LiveMint* (29 December, 2014) <<http://www.livemint.com/Politics/Rx9KOjM62MvyuSzmVRoG4K/Environmental-clearances-coming-faster-but-not-everyone-is.html>> accessed 26 September, 2014.

⁴ Manju Menon and Kanchi Kohli, ‘Finding the Right Reasons for Reform’ *India Together* (29 November 2014), available at <<http://indiatogether.org/high-level-committee-report-on-environmental-laws-and-approval-environment>> accessed 26 September, 2016; Manju Menon and Kanchi Kohli, ‘Environmental Regulation in India: Moving ‘Forward’ in the Old Direction’ (2015) 50 *Economic and Political Weekly* 20.

Environmental outcomes are as dependent on the post-EC process as they are on the decision leading up to the grant of the EC. The strong implementation of environmental laws requires robust monitoring by the MoEFCC. Reliable data on environmental violations and the action taken by the MoEFCC to address them is essential to hold both private actors and the MoEFCC accountable.

- ❖ Our Report Card is an attempt to corroborate the Minister’s claims regarding the time taken to grant ECs from 2014-2016, as well as to assess whether the increased speed has come at a cost to the quality of environmental appraisal.
- ❖ It also assesses the performance by the MoEFCC of its monitoring function in relation to ECs once they have been granted.

In June, 2016, the Centre for Science and Environment (“**CSE**”) also drew up a Report Card reviewing the performance of the National Democratic Alliance Government from 2014-2016. It observed that ‘[t]he overall trend suggests that green clearances have been made faster through incremental changes ‘easing’ the clearance process. However, there is no evidence that the quality of EIA reports has improved or enforcement on the ground have [*sic*] become more effective.’⁵ The CSE Report Card provided figures for the number of projects that were granted ECs in major development sectors between June, 2014 and April, 2016.

- ❖ Our Report Card additionally provides a detailed breakdown of the time taken to grant ECs across different stages of the environmental impact assessment (“**EIA**”) process, as well as across different categories of projects.

In December 2016, the Comptroller and Auditor-General of India published a Performance Audit on Environmental Clearance and Post Clearance Monitoring (“**CAG Report**”).⁶ The CAG Report sampled 216 projects that had been granted ECs between the calendar years 2011 to July 2015 (to study the process of grant of ECs)

⁵ Centre for Science and Environment, ‘Environmental Governance: Two Years of NDA’ (2016), available at <http://cseindia.org/userfiles/nda_env-governance-20160614.pdf> accessed 26 September, 2016.

⁶ Report of the Comptroller and Auditor General of India on Environmental Clearance and Post Clearance Monitoring, Report No. 39 of 2016.

and 352 projects that had been granted ECs between 2008 and 2012 (to study compliance with post-clearance monitoring). The CAG report documented several violations in the manner in which the MoEFCC conducts the EIA and monitoring process.

- ❖ Our Report Card studies similar violations, but with a larger sample size; we have analysed more than 550 projects.

II. WHAT ARE WE GRADING THE MOEFCC ON?

Our Report Card focuses on the EIA Notification. It grades the MoEFCC on three different aspects of the EIA process—speed, quality of appraisal, and post-clearance monitoring.

A summary of the EIA process, as set out in the EIA Notification is provided in Annexure-I.

A. Speed

We grade the MoEFCC on the speed at which it grants ECs. Quicker ECs are not necessarily desirable from the perspective of environmental protection, but are touted by most governments as integral to an industry and development-friendly environment. The EIA Notification itself sets out timelines within which different stages of the EIA process ought to be completed. If the relevant authorities under the EIA Notification do not adhere to these timelines, environmental decision-making is weakened.

A good example of this kind of weakening is a provision in the EIA Notification that existed before an amendment made by the MoEFCC on 10 April, 2015. The provision stated that draft Terms of Reference (“**ToR**”)⁷ submitted by a project proponent were *deemed to be approved* if the Expert Appraisal Committee (“**EAC**”) or the State Expert Appraisal Committee (“**SEAC**”) failed to issue project-specific ToR to the

⁷ For a more detailed explanation of ToR and their role in the EIA process, see Annexure-I.

proponent within 60 days of receipt of the application for an EC.⁸ ToR are critical to the EIA process because they form the basis on which the EIA report is prepared i.e. ToR specify the various aspects that an EIA Report must take into account. There is an inherent bias in the draft ToR that are drawn up by the project proponent; the proponent is more likely to draw up ToR favourable to it.⁹ This makes it all the more important that the draft ToR are subjected to rigorous scrutiny by the EAC or the SEAC. If they do not complete this scrutiny within the deadline specified, the draft ToR submitted by the project proponent become final and form the basis of the EIA Report. Therefore, this is a specific instance in which the speed with which the authorities under the EIA Notification act is directly linked to the quality of the environmental appraisal.

The different timelines specified in the EIA Notification for different stages of the process are set out in the table below:

Table 1. Timelines in the EIA Notification

Stage of the EIA Process	Timeline in the EIA Notification	Consequences of Non-Adherence to the Timeline
Issuing project-specific ToR to the project proponent by the EAC or SEAC (before 10 April, 2015)	Within 60 days of receipt of the Form-I application	Draft ToR submitted by the project proponent shall be deemed the final ToR and form the basis for the EIA Report
Issuing project-specific ToR to the project	Within 30 days of receipt of the Form-I application	Standard ToR form the basis for the EIA Report

⁸ After the 10 April 2015 amendment, the project proponent need no longer submit draft ToR. Standard ToR drawn up by the MoEFCC are automatically deemed to be the approved ToR and form the basis of the EIA Report unless additional ToR are further recommended by the EAC or the MoEFCC.

⁹ Note that the MoEFCC has drawn up model ToR that usually form the basis of draft ToR submitted by the project proponent, thereby eliminating the possibility of bias somewhat. However, it is likely that project proponents will stick to the minimum prescribed in the model ToR. Additional, project-specific ToR would require review by expert bodies like the MoEFCC.

proponent by the EAC or SEAC (after 10 April 2015)		
Rejection of EC by the EAC or SEAC after reviewing the Form-I application	Within 60 days of receipt of the Form-I application	
Publishing a summary EIA Report on the website of the MoEFCC	Within 7 days of receiving a written request to arrange a public hearing	
Forwarding the proceedings of the public consultation to the regulatory authority by the State Pollution Control Board or Pollution Control Committee	Within 45 days of a request to the effect by the applicant	The regulatory authority will engage another agency or authority to complete the public consultation and forward the proceedings within another 45 days
Appraisal by the EAC or the SEAC	Within 60 days of receiving the final EIA Report or where there is no public consultation, within 60 days of the receipt of Form-I	
Placing the recommendations of the EAC or the SEAC before the MoEFCC or the SEIAA respectively	Within 15 days of making recommendations by the EAC or the SEAC	
Making and conveying a decision on the grant or rejection of an EC by the	Within 45 days of the receipt of the	The applicant may proceed on the basis of the

MoEFCC or the SEIAA to the project proponent	<p>recommendations of the EAC or the SEAC OR</p> <p>Within 105 days of the receipt of the final EIA Report OR</p> <p>Within 105 days of the receipt of the complete application, where EIA is not required</p>	recommendations of the EAC or SEAC
Request by the MoEFCC to the EAC or SEAC to reconsider its recommendations	Within 45 days of the receipt of the recommendations of the EAC or SEAC	
Furnishing views by the EAC or SEAC to the MoEFCC or the SEIAA after a request for reconsideration	Within 60 days of the receipt of the request for reconsideration	

Our research does not record the time taken to conduct the public consultation and to forward its proceedings to the relevant authorities. It focuses only on Category A projects; under the EIA Notification, such projects are appraised first by the EAC, following which the MoEFCC decides whether the EC ought to be granted or rejected. We have attempted to measure the timelines for the following stages of the EIA process:

- ❖ Time taken for ToR to be issued to the project proponent
- ❖ Time taken for the EAC to recommend the grant of the EC
- ❖ Time taken for the MoEFCC to grant the EC after the recommendation of the EAC
- ❖ Number of meetings of the EAC

The MoEFCC is graded on the basis of the extent to which each of these stages adheres to the timelines set out in the EIA Notification. A detailed explanation of the grading system is provided in Part III.

B. Quality of Appraisal

The quality of appraisal conducted by the EAC or the SEAC and subsequently by the MoEFCC or the SEIAA ought to form the core of any assessment of the performance of these authorities under the EIA Notification. However, quality is difficult to assess objectively. There are several indicators that could be used to assess the quality of appraisal conducted under the EIA Notification:

- ❖ Variance between the draft ToR submitted by the project proponent and the final ToR issued to the project proponent—variance is likely to suggest that the reviewing authority has applied its mind independently to the issue.
- ❖ The nature of comments made by the EAC on the final EIA Report. Such comments ought to assess whether the EIA Report complies with the parameters set out in the ToR issued to the project proponent. They also ought to assess whether the final EIA Report adequately addresses concerns raised at the public consultation.
- ❖ Whether the EAC recommends conditions that are tailored to particular projects to be attached to the grant of ECs.

These indicators are, of course, subjective, and require a detailed examination of several documents—the draft and final ToR, the draft and final EIA Reports, and the minutes of the meeting of the EAC. In our Report Card, we have chosen to focus on a very specific aspect of the EIA process—environmental baseline monitoring—as one of the indicators of the quality of appraisal conducted.

Environmental baseline monitoring (“**EBM**”) forms the foundation of an EIA Report. Baseline studies generally refer to ‘the collection of data on relevant biophysical, social and economic aspects of the project activity and provide a reference point against which the characteristics and parameters of impact-related changes are

analysed and evaluated.’¹⁰ The information collected during EBM helps determine which environmental impacts are likely to be most significant. If one doesn’t have an accurate picture of the state of the environment before the project commences, it becomes impossible to predict the impact that the project will have on the environment once it does. The information collected during EBM is very important—if the project proponent inaccurately depicts the original state of the environment, say, by misrepresenting the existing biodiversity in the project area, reviewing authorities might be less concerned about the impact that the project will have. Therefore, the manner in which EBM is conducted is absolutely vital in ensuring that the environmental appraisal is of the highest quality.

We have used a single indicator to assess the quality of the EBM (and correspondingly, of the environmental appraisal) in order to make our review of the performance of the MoEFCC as objective as possible:

- ❖ The date on which EBM commences in relation to the date on which ToR are issued to the project proponent

Comparing these dates is important because the ToR specify the manner in which EBM ought to be conducted. EBM must commence only *after* ToR have been issued to the project proponent. Carrying out EBM before the ToR are issued is like answering an exam before receiving the question paper! In Part III, we provide a more detailed explanation of the manner in which this indicator is graded.

C. Post-Clearance Monitoring

The EIA Notification does not impose a specific duty of monitoring on the MoEFCC. However, some letters issued to the project proponents by the MoEFCC granting ECs also require Regional Offices of the MoEFCC to monitor compliance with, and the implementation of the conditions attached to the grant of the EC.

¹⁰ United Nations Environment Program, EIA Resource Training Manual (2nd edition 2002)

The monitoring reports that assess compliance with the conditions stipulated in the EC are uploaded separately¹¹ by the MoEFCC Regional Offices.

Our Report Card assesses compliance by the MoEFCC with this requirement of the EIA Notification by:

- ❖ Assessing the proportion of instances in which the MoEFCC imposes monitoring requirements on its Regional Offices
- ❖ Examining the number of monitoring reports uploaded on the website of the MoEFCC

Although this is a Report Card for the MoEFCC and not for project proponents, it was a natural extension, while studying post-clearance monitoring, to examine adherence by project proponents with the requirement in the EIA Notification to upload half-yearly self-compliance reports (More information about this requirement is available in Annexure-I). Data on this is presented in Part IV.D.

III. HOW ARE WE GRADING THE MOEFCC?

Each of the parameters that our Report Card assesses the MoEFCC on requires a slightly different grading system. What the grades mean in the case of each of these parameters is represented below.

A. Speed

Depending upon the time taken, we have assigned the grades 'Very Good', 'Good', 'Acceptable', 'Poor' and 'Very Poor' to the EAC and the MoEFCC. The variations in the grades are based on the degree of deviance from the timelines set out in the EIA Notification.

¹¹ Available at <http://environmentclearance.nic.in/Monitoring_Report_Home.aspx> accessed 30 June 2017.

★★★★★ Very Good ★★★ Good ★★ Acceptable ★★ Poor ★ Very Poor

Time taken for the EAC to recommend the grant of the EC

❖ within 60 days	★★★★★
❖ within 75 days	★★★★
❖ within 90 days	★★★
❖ within 105 days	★★
❖ beyond 105 days	★

Time taken for the MoEFCC to grant the EC after the final recommendation of the EAC

❖ within 45 days	★★★★★
❖ within 57 days	★★★★
❖ within 69 days	★★★
❖ within 81 days	★★
❖ beyond 81 days	★

B. Quality

For this parameter, the grade assigned to the MoEFCC depends upon the proportion of instances in which EBM commenced before the ToR were issued. As Part II explained, it is vital that EBM commence only after the ToR are finalised and issued. However, given the complexities of the EIA process in India, there are various permutations and combinations through which EBM may commence at the appropriate time or not, with different reasons for each of them.

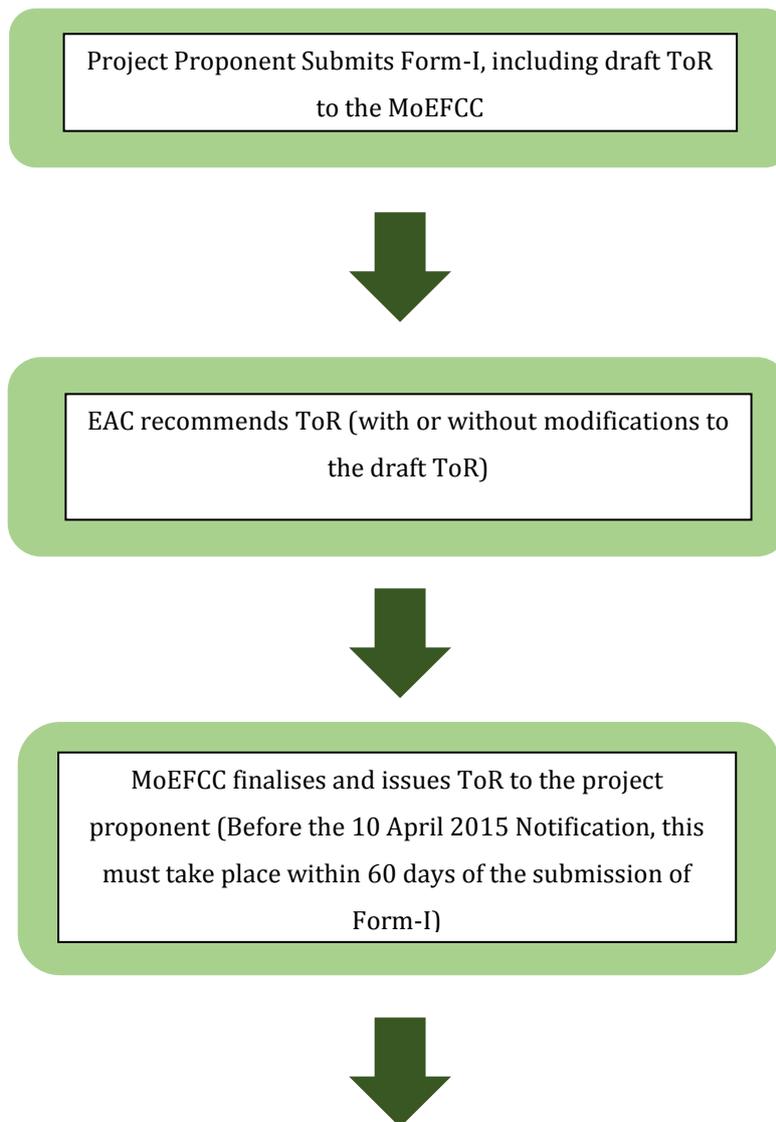
In some instances, EBM commences before the appropriate date entirely because of a violation by the project proponent; in other instances, it is attributable to a delay in review by the EAC. We represent these distinctions in our analysis in Part IV. However, it is important to note that our analysis is restricted to projects where the EC was ultimately granted. This means that even in the case of violations by project proponents, these were ultimately condoned by the EAC and the MoEFCC, suggesting a lower quality of appraisal.

An explanation of what each grade means in the context of this parameter is set out below.

★★★★★ Very Good ★★★☆☆ Good ★★☆☆☆ Acceptable ★★☆☆☆ Poor ★☆☆☆☆ Very Poor

- ❖ EBM commenced before ToR were issued in 10% of cases ★★★★★
- ❖ EBM commenced before ToR were issued in 25% of cases ★★★★☆
- ❖ EBM commenced before ToR were issued in 35% of cases ★★★☆☆
- ❖ EBM commenced before ToR were issued in 50% of cases ★★☆☆☆
- ❖ EBM commenced before ToR were issued in 70% of cases ★☆☆☆☆

The finalisation and issue of ToR, and the conduct of EBM ought to take place in the following steps:



Environmental Baseline Monitoring Commences

Instead of the above process, our analysis reveals that EBM may commence before the ToR are finalised and issued to the project proponent in the following ways:

SCENARIO I

EBM commences **before** the submission of Form-I



EAC recommends ToR **within** 60 days of submission of Form-I, but EBM commences before the expiry of the 60-day period and issue of TOR



EAC recommends ToR **after** 60 days of submission of Form-I, but EBM commences before the expiry of the 60-day period



VIOLATION BY PROJECT PROPONENT



SCENARIO II

EAC recommends ToR **after** 60 days of submission of Form-I; EBM also commences **after** the expiry of the 60-day period, but before the ToR are recommended



DELAY BY THE EAC



Our analysis also reveals that in other instances, EBM has commenced **after** ToR were recommended by the EAC, but **before** they were finalised and issued by the MoEFCC. The MoEFCC may add additional terms to those recommended by the EAC. Therefore, when EBM commences before the ToR are finalised and issued by the MoEFCC, the quality of environmental appraisal is weakened, because an opportunity is lost for the MoEFCC to add another layer of review.

However, the reasons for this are not due to violations by the project proponent, but because of delay by the EAC. Before the 10th April 2015 amendment to the EIA Notification, the ToR had to be finalised and conveyed to the project proponent within 60 days of the submission of Form-I. This deadline applies both to the EAC and the MoEFCC. The EAC must recommend the ToR and the MoEFCC must issue the ToR within 60 days. Any delay beyond this period allows the project proponent to commence EBM on the basis of draft ToR.

Therefore, every instance of EBM commencing after the ToR are recommended by the EAC but before they are issued by the MoEFCC represents a weakening of the quality of environmental appraisal.

Our Report Card documents the dates on which EBM commenced in relation to the dates on which ToR were recommended and issued. This provides a clear picture of the proportion of violations by the project proponent as well as instances of delay by the EAC, both of which represent a lowering of the quality of environmental appraisal.

C. Post-Clearance Monitoring

Although the EIA Notification does not explicitly require the MoEFCC to monitor compliance with the conditions attached to the grant of ECs, carrying out such monitoring duties would constitute good practice. Grades are therefore assigned on the basis the proportion of instances in which the MoEFCC imposes monitoring requirements on itself through its Regional Offices.

★★★★★ Very Good ★★★☆☆ Good ★★☆☆☆ Acceptable ★★☆☆☆ Poor ★☆☆☆☆ Very Poor

- ❖ Imposing monitoring requirements in 90% of cases ★★★★★
- ❖ Imposing monitoring requirements in 75% of cases ★★★★
- ❖ Imposing monitoring requirements in 50% of cases ★★★
- ❖ Imposing monitoring requirements in 35% of cases ★★
- ❖ Imposing monitoring requirements in 20% of cases ★

Additionally, we also analysed the number of instances in which the MoEFCC uploaded monitoring reports on its website. However, the performance of this function does not form part of our grading system because of methodological difficulties. The findings from this analysis are, of course, presented in Part IV.D.

IV. RESULTS

This Part presents the key findings of our analysis and assigns a grade to the MoEFCC using the grading system set out in Part III. Additional findings that do not necessarily reflect the performance of the MoEFCC but are closely linked to the EIA process are also represented, such as violations by project proponents in conducting EBM and their failure to upload self-compliance reports. A detailed explanation of our methodology—sample size, limitations and error corrections—is provided in Annexure-II.

A. Overview of Environmental Clearances

A total of 555 Category A projects were granted ECs during the study period. Of these:

- ❖ 404 are owned by private entities
- ❖ 151 are owned by public sector enterprises or where public sector enterprises have some shareholding

The highest number of ECs were granted to the following three categories of projects:

- ❖ 223 ECs to Industrial projects
- ❖ 134 to Non-Coal Mining projects
- ❖ 97 to Infrastructure and CRZ projects

The States with the four highest number of ECs are also the States with the highest number of private projects:

- ❖ 115 ECs in Maharashtra
- ❖ 95 ECs in Gujarat
- ❖ 37 ECs in Rajasthan
- ❖ 34 ECs in Haryana

A possible reason for a high number of projects from Maharashtra receiving Central clearance from the EAC might be because the SEAC of the Mumbai metropolitan region, which appraises Category B projects was dissolved in July 2013 and reconstituted only in March 2015. Paragraph 4(iii) of the EIA Notification provides that in such instances, the projects will be appraised by the EAC as Category B projects.

Table II provides an overview of the region-wise distribution of ECs, as well as their division in the public and private sectors.

Table II. State and Sector-Wise Number of ECs

Projects granted Environmental Clearances				
S.No	State	Public	Private	Total
1.	Maharashtra	18	97	115
2	Gujarat	9	86	95
3	Rajasthan	5	32	37
4	Haryana	5	29	34
5	Uttarakhand	22	8	30
6	Tamil Nadu	14	15	29
7	Andhra Pradesh	7	20	27
8	Telangana	7	16	23
9	Odisha	9	12	21

10	West Bengal	10	11	21
11	Himachal Pradesh	1	12	13
12	Karnataka	2	11	13
13	Delhi	9	4	13
14	Uttar Pradesh	3	9	12
15	Punjab	0	11	11
16	Jharkhand	5	6	11
17	Chattisgarh	9	2	11
18	Kerala	4	5	9
19	Madhya Pradesh	5	3	8
20	Bihar	1	5	6
21	Jammu and Kashmir	0	5	5
22	Assam	2	2	4
23	Meghalaya	0	3	3
24	Goa	2	0	2
25	Sikkim	1	0	1
26	Andaman and Nicobar Islands	1	0	1
GRAND TOTAL		151	404	555

B. Speed

Our analysis revealed the following median values for different stages of the EIA process:

- ❖ 81 days for the EAC to recommend the grant of the EC
- ❖ 85 days for the MoEFCC to grant the EC after the recommendation by the EAC

- ❖ 191 days overall for the EC to be granted

This corroborates the then MoEFCC Minister Mr Prakash Javadekar's claim that the time taken to grant ECs has reduced to approximately 190 days.

Sector-wise differences for the shortest and longest projects are represented in Table III.

Table III. Projects that took the shortest and longest times to receive ECs (all values in median)

No of days for the EAC to recommend the grant of the EC	No of days for the MoEFCC to grant the EAC after the recommendation of the EAC
<p>Shortest time:</p> <p>River valley projects (27 days)</p> <p>Thermal power projects (28 days)</p>	<p>Shortest time:</p> <p>Coal mining projects (54 days)</p>
<p>Longest time:</p> <p>EAC Industrial projects-2¹² (142 days)</p>	<p>Longest time:</p> <p>New Construction projects and Industrial Estates (139 days)</p>

One of the reasons for coal mining projects receiving ECs so speedily might have to do with the fact that no public consultation is required for a one-time expansion of existing coal mines.¹³

A more detailed category-wise breakdown is provided in Table IV.

¹² This primarily includes proposals relating to distilleries, petroleum refineries, oil and gas terminals, and the manufacturing units of chemicals, drugs and fertilizers.

¹³ Office Memoranda issued by the MoEFCC regarding the one-time expansion of coal mines dated 7 January, 2014, 30 May 2014, 28 July 2014, 2 September 2014 are available at <<http://www.moef.nic.in/circulars>> accessed 29 June 2016.

Table IV. Category-wise breakdown of the speed of the appraisal process

Project Categories (divided according to EAC appraisal)	No of days taken by the EAC to recommend the grant of the EC	No of EAC meetings	No of days taken by the MoEFCC to grant the EC after the recommendation of the EAC	Total No of days taken by the EAC and MoEFCC to grant the EC
River Valley Projects	27	1	90	117
Coal Mining	70	2	54	140
Thermal Power	28	1	63	163
Industrial Projects-1	65	1	96	175
Non-Coal Mining	80	1	71	180
Infrastructure & Miscellaneous + CRZ	78	1	100	191
Industrial Projects-2	142	1	69	207
New Construction Projects & Industrial Estates	86	1	139	231
Overall	81	1	85	191

On the basis of the grading system set out in Part III, a sector-wise Report Card for the EAC and the MoEFCC is presented below:

Table V. Report Card: Speed

Category of Proposals	Report Card	
	EAC	MoEFCC
Coal Mining	★★★★★	★★★★★
Non-Coal Mining	★★★	★★
Infrastructure, Miscellaneous + CRZ	★★★	★
Industrial Projects-1	★★★★★	★
Industrial Projects-2	★	★★★
New Construction & Industrial Estates	★★★	★
Thermal Power	★★★★★	★★★
River Valley	★★★★★	★

Our analysis also revealed some individual honours and dubious distinctions that are presented below!



Project which took the shortest time to receive the EC:

2x660 MW Khargone Super-Critical Thermal Power Project of M/s NTPC, Madhya Pradesh **(46 days)**



Project which took the shortest time to receive a recommendation from the EAC:

Arpa Bhisajhar Barrage Project of M/s Water Resource Department, Chattisgarh **(1 day)**



Project which took the shortest time to receive an EC from the MoEFCC after a recommendation from the EAC:

Greenfield International Airport, Mopa of Department of Civil Aviation, Goa **(8 days)**



Project which took the longest time to receive the EC:

Limestone Mining of M/s South India Cements Limited, Karnataka
(574 days)



Project which took the longest time to receive a recommendation from the EAC:

Mining of sand in Panipat Unit-2 of M/s Sanjay Jaglan, Haryana
(483 days)



Project which took the longest time to receive an EC from the MoEFCC after a recommendation from the EAC:

Samarnaka Quartz and Feldspar Mining Project of M/s RK Chandaliya, Rajasthan **(503 days)**



Project which required the maximum number of EAC meetings to recommend the EC:

Kusmunda Open Cast Project of M/s South Eastern Coalfields Ltd, Chattisgarh **(6 meetings)**

C. Quality

Our analysis revealed that of the 421 proposals that we examined, in 245 of them, EBM commenced before ToR were issued by the MoEFCC.



Of these 245 proposals, we analysed 230 to determine whether EBM commenced before the ToR were issued because of a violation by the project proponent or because of delay by the EAC. As explained in the section on Methodology in Annexure-II, 15 proposals were excluded because of insufficient information.

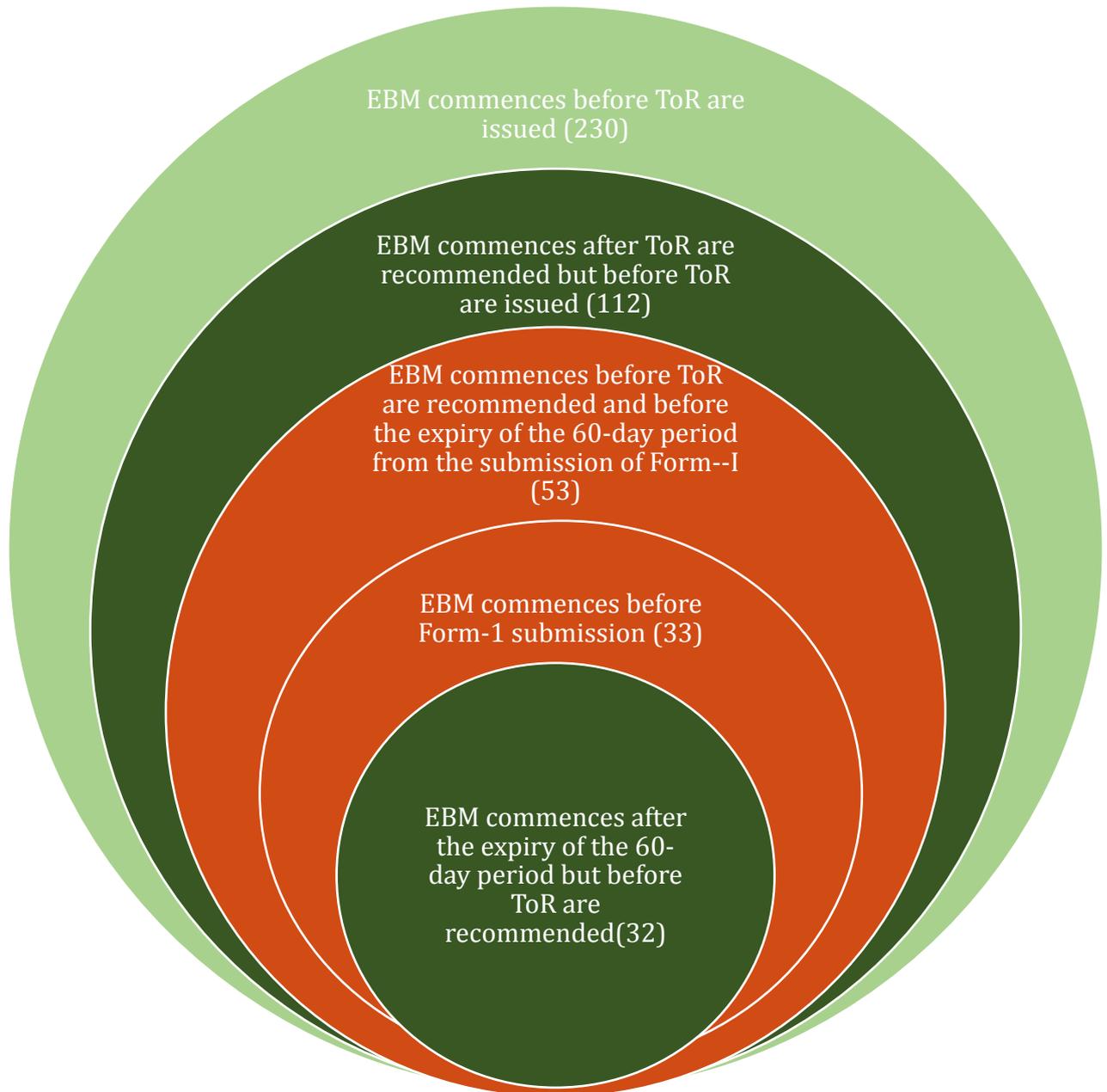
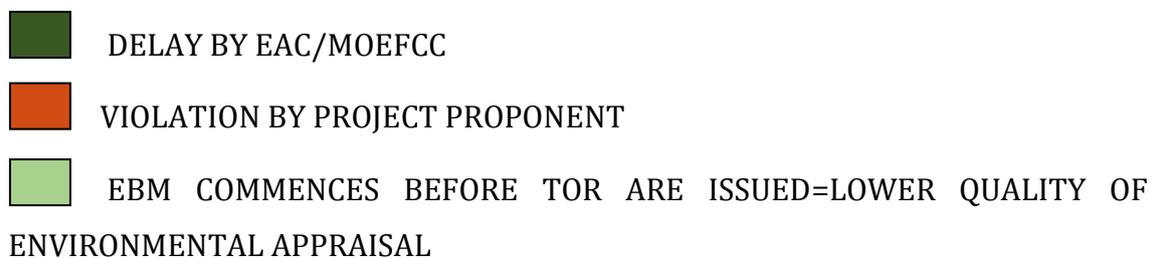


Figure I. Instances in which EBM commenced before the issue of ToR



-  Of the 230 proposals in which EBM commenced before the ToR were issued, 144 instances (62%) were because of a delay on the part of the EAC
-  The oldest baseline data used was in the Patherdih NLW Coal Washery Project (Dhanbad, Jharkhand), where EBM commenced 1323 days or more than 3 and a half years before the submission of Form-I!

D. Post-Clearance Monitoring

We analysed the proportion of instances in which the MoEFCC imposes monitoring requirements on its regional offices while granting ECs. Our key findings were:

- ❖ The MoEFCC explicitly imposed monitoring requirements in less than half (44%) of cases
- ❖ In 27% of cases, there was some ambiguity regarding monitoring requirements
- ❖ There was a stark difference in the imposition of monitoring requirements across sectors. The Non-Coal Mining and Coal Mining categories demonstrate a very high proportion of monitoring requirements (98% and 93% respectively), while the Industrial-2 and Infrastructure categories display very low proportions (19% and 4% respectively)

Table VI. Category-wise breakdown of the imposition of monitoring requirement

Sector	Yes	No	Not explicitly asked	Missing	Total
Non Coal Mining	133	2	0	0	135
Industrial-1	68	64	0	5	137
Coal Mining	27	2	0	0	29
Industrial-2	17	70	0	3	90
Thermal Power	12	0	0	1	13
Infrastructure	4	6	83	4	97
New Construction	0	0	55	1	56
River Valley Project	0	0	3	0	3
TOTAL	249	144	153	14	560

Using the grading system developed in Part III, a sector-wise Report Card is presented below:

Table VII. Report Card: Post-Clearance Monitoring

Category	Grade
Non-Coal Mining	★★★★★
Industrial-I	★★
Coal Mining	★★★★★
Industrial-2	★
Thermal Power	★★★★★
Infrastructure	★
New Construction	★
River Valley Project	★

There is a steady decline in the number of monitoring reports being uploaded by the Regional Offices of the MoEFCC over 2014, 2015 and 2016.

- ❖ The maximum number of monitoring reports were uploaded for the Industrial-1 category (1100 over 3 years)
- ❖ The lowest number of monitoring reports was recorded for the Industrial-2 category (17 over 3 years)

Figure II below presents the number of reports uploaded for five sectors between 2014 and 2016. In each of the sectors represented, the Regional Offices uploaded at least 1 monitoring report for projects in each of them over the last three years.

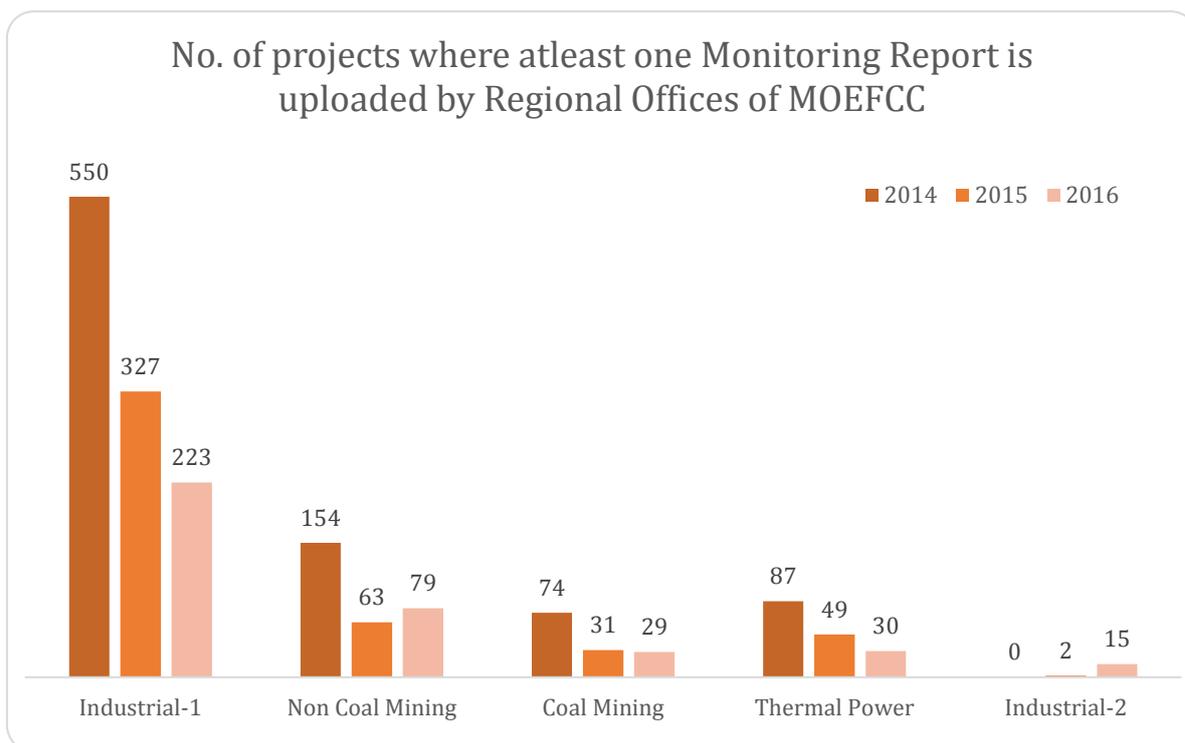


Figure II. Category-wise trends in uploading monitoring reports by the Regional Offices of the MoEFCC

As mentioned earlier, we also analysed whether project proponents adhered to the requirement in the EIA Notification to submit half-yearly self-compliance reports. Since there is a fixed number of self-compliance reports that are required to be uploaded, it was possible to calculate the degree of non-compliance. These values are presented in Figure IV.

- ❖ The Ranchi Regional Office showed the highest proportion of self-compliance reports that were uploaded, although even this was only 13%
- ❖ In 6 out of 10 Regional Offices (Bangalore, Lucknow, Bhopal, Nagpur, Chandigarh and Shillong), less than 5% of the self-compliance reports were uploaded

Figure III provides the status on self-compliance reports submitted by Project Proponents to their respective Regional Offices.

Table VIII. Submission of Self-Compliance Reports by Project Proponents

Submission of Compliance Report up to 1st June, 2016 for projects having received EC since 1st June, 2014			
Regional Offices	Uploaded	Not Uploaded	All
Nagpur	1	137	138
Bhopal	2	126	128
Lucknow	2	68	70
Chennai	4	66	70
Bangalore	2	53	55
Dehradun	4	45	49
Bhubaneshwar	4	42	46
Chandigarh	0	44	44
Ranchi	3	19	22
Shillong	0	7	7
Total	22	607	629

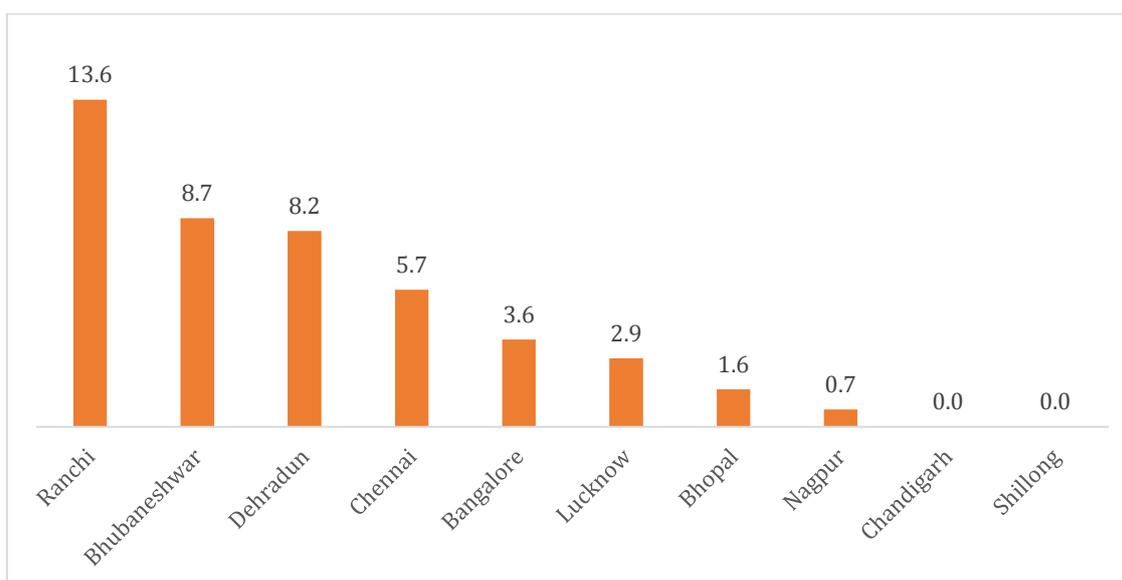


Figure III. Percentage of Self-Compliance Reports Uploaded

ANNEXURE-I: THE EIA PROCESS

The EIA Notification, 2006 requires a specified set of projects and activities, including the expansion or modernisation of existing projects and activities to obtain prior EC. Projects are divided into Categories 'A' and 'B', based on the spatial extent of their potential impact as well as their impact on human health and natural and manmade resources. Category A projects are appraised by a Centrally-constituted Expert Appraisal Committee ("**EAC**"), while Category B projects are appraised by State or Union Territory-level Expert Appraisal Committees ("**SEACs**").

The different stages in the EIA process are:

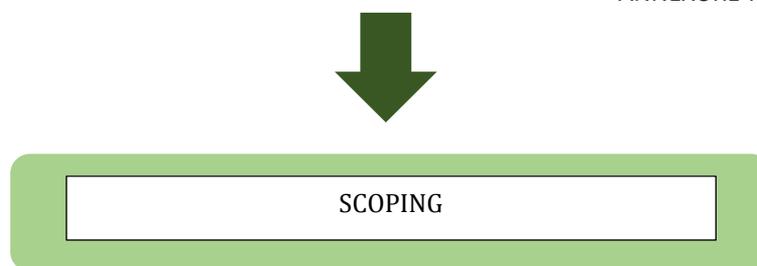
SUBMISSION OF FORM-I

The project proponent first identifies the site and conducts a pre-feasibility study before making an application for EC by filling and submitting Form-1 to the concerned authority. The concerned authority is the MoEFCC for Category A projects and the State Environment Impact Assessment Authority ("**SEIAA**") for Category B projects.



SCREENING (ONLY FOR CATEGORY B PROJECTS)

In this stage, the SEAC reviews Form-1 to decide whether or not the project or activity requires EIA. Projects requiring an EIA report are classified as Category 'B1' projects and those that do not require such report are classified as Category 'B2' projects.



Scoping refers to the process by which detailed Terms of Reference (“**ToR**”) are framed. This is one of the most crucial stages of the EIA process because the ToR determine the various aspects that the EIA Report must take into account.

The project proponent submits Form-I, a pre-feasibility report and draft ToR (together referred to as the Form-I application) to the MoEFCC, for Category A projects and to the SEIAA, for Category B projects. The EAC and SEAC, as the case may be, then finalise project-specific ToR based on this information. Before an amendment to the EIA Notification introduced by the MoEFCC on 10 April, 2015, the draft ToR submitted by the project proponent were deemed to be approved if the EAC or the SEAC failed to issue project-specific ToR to the project proponent within 60 days of receipt of the Form-I application.

After 10 April 2015, the project proponent need no longer submit draft ToR to the concerned authority. Instead, standard ToR (framed by the MoEFCC in consultation with sector-specific expert appraisal committees) are deemed to be the approved ToR for all projects. The project proponent may begin preparation of the EIA Report straight after the successful online submission and registration of the Form-I Application. However, the EAC or the SEAC may still amend or suggest additional ToR within 30 days of acceptance of the Form-I application.



The project proponent is supposed to conduct the EIA strictly according to the ToR. The EIA study is conducted by an EIA consultant organization (accredited by the Quality Council of India/National Accreditation Board for Education and

Training/MOEFCC) hired by the project proponent seeking the environmental clearance.



PUBLIC CONSULTATION

This is the process by which those persons having a plausible stake in the environmental impact of a project may express their concerns either orally or through written submissions. Before such consultation, the application and summary of the EIA Report are uploaded on the MoEFCC website, while a draft EIA Report is also available to the public for inspection.

After completion of the public consultation, the project proponent shall 'address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and Environment Management Plan ("EMP"). Once this is complete, the final EIA report, is submitted to the EAC for Category A projects and to the SEAC for Category B projects for appraisal.



APPRAISAL

Appraisal is the penultimate stage in the EIA process. The EAC or the SEAC scrutinises the final EIA Report, refers to the concerns raised at the public consultation, and makes a recommendation to the MoEFCC or the SEIAA rejecting the EC or granting it on stipulated terms and conditions.



GRANT OR REJECTION OF THE EC

The MoEFCC or the SEIAA considers the recommendations of the EAC or SEAC concerned and convey its decision to the applicant granting or rejecting the EC.



POST-EC COMPLIANCE AND MONITORING

Paragraph 10 of the EIA Notification makes it mandatory for the project proponent to submit 'half-yearly compliance reports in respect of the stipulated prior environmental clearance terms and conditions in hard and soft copies to the regulatory authority concerned, on 1st June and 1st December of each calendar year.'

These compliance reports are public documents. Copies must be provided to any person making an application. The latest compliance report is also to be displayed on the website of the MoEFCC. The website of the MoEFCC documents whether the project proponent has uploaded compliance reports. This record is maintained in a list¹⁴ divided according to the 10 different Regional Offices of the MoEFCC.

The EIA Notification does not impose a specific duty of monitoring on the MoEFCC. However, some letters issued to the project proponents by the MoEFCC granting ECs also require Regional Offices of the MoEFCC to monitor compliance with, and the implementation of the conditions attached to the grant of the EC.

¹⁴ Available at < http://environmentclearance.nic.in/Online_EC_Compliance_Report.aspx> accessed 30 June 2017

The monitoring reports that assess compliance with the conditions stipulated in the EC are uploaded separately¹⁵ by the MoEFCC Regional Offices.

¹⁵ Available at < http://environmentclearance.nic.in/Monitoring_Report_Home.aspx> accessed 30 June 2017

ANNEXURE-II: METHODOLOGY

This part first explains the methodology adopted in assessing the speed with which different stages of the EIA process were conducted, as well as in documenting the discrepancies in the scoping process with specific reference to EBM. This is followed by a brief explanation of the methodology used to document violations in post-clearance self-compliance and monitoring.

A. Methodology for Analysis of Speed and Scoping

This part of the study was conducted for all ‘Category A’ projects for which ECs were recommended and granted by the EAC and the MoEFCC respectively between **1 June 2014 and 25 May 2016**. There were some ‘Category B’ projects that were appraised by the EAC (in the absence of the relevant SEAC),¹⁶ and these have also been included in our analysis. Our analysis also includes some proposals for clearance under the Coastal Regulation Zone Notification 2011, (“**CRZ Notification**”) which were appraised by EAC-Infrastructure & Miscellaneous.¹⁷

The MoEFCC website <<http://environmentclearance.nic.in>> listed a **total of 560 proposals** for the period mentioned above. The website uploads Form-I applications, letters issued by the MoEFCC (after recommendation by the EAC) granting ToR, the EIA Report and additional documents as well as letters issued by the MoEFCC granting ECs. From these documents, the relevant dates of submission, dates of grant of ToR/ECs, dates on which EBM commenced, and the number of EAC meetings were individually extracted and then recorded using a spreadsheet application.

Our analysis can be divided into two parts: i) Quantitative Analysis ii) Qualitative Analysis

¹⁶ Paragraph 4 (iii), EIA Notification.

¹⁷ There may be projects that require clearance both under the CRZ Notification and the EIA Notification. Clause 4(i)(b) of the CRZ Notification states that such projects only require clearance under the EIA Notification, subject to being recommended by the concerned State or Union territory Coastal Zone Management Authority (CZMA).

i) Quantitative Analysis

The objective of this analysis was to estimate the different times taken to complete different stages of the EIA process across sectors. In particular, we studied:

- Number of days taken by each sector-specific EAC to recommend the grant of EC
- Number of days taken by the MoEFCC to grant the EC after the recommendation of the EAC

Based on this data, median values for the days taken by the EAC and MoEFCC were calculated.

ii) Qualitative Analysis

As explained in Part II, EBM is the core of any EIA report, since it establishes the environmental quality of the area where the project is proposed and based on which the likely impacts are to be estimated. As mentioned in the previous part, it is vital that EBM commences after the ToR have been issued. Therefore, we used the date of commencement of EBM as the criterion for testing the quality of environmental appraisal.

Our analysis might have been affected by the 10 April 2015 amendment to the EIA Notification which stated that standard ToR were deemed to be the approved ToR. By virtue of this amendment, EBM can commence without waiting for the EAC and MoEFCC to recommend and issue ToR (although the EAC still retains the power to issue additional ToR within 30 days of the submission of the Form-I application). This would have meant that our use of the date of commencement of EBM as a parameter to judge the quality of the EIA process would have been meaningless, especially since we are interested in documenting whether EBM commences before or after ToR are issued (a point rendered moot by the April 2015 amendment).

However, in our sample set, only 7 proposals for the grant of ToR were submitted after 10 April 2015 amendment came into force. Of these 7 proposals, 6 of them carried out EBM even before making a Form-I application (a clear violation of the EIA Notification, even post the 2015 amendment). In the remaining proposal, the

project proponent carried out EBM after the ToR were issued. Therefore, all 7 proposals were still valid for the purposes of inclusion in our analysis.

iii) Limitations & Error Correction

This analysis is entirely based on the information available on the MOEFCC website only for those projects that were granted EC by the MOEFCC after recommendation by different sector-specific EACs for new/expansion/modernization proposals. This excludes proposals for extension of the validity of the EC.

5 proposals out of the sample set of 560 were entirely excluded because information was incomplete or insufficient. For the quantitative analysis on the number of days taken by the EAC and the MoEFCC, a further 4 proposals in the Industrial-1 category were excluded because of the unavailability of the date on which ToR were recommended. **For the qualitative analysis on EBM, 139 out of 560 proposals were excluded** either because we could not retrieve the dates of submission of the Form-I application or the date of commencement of EBM or because the EIA reports were not available.

There were some instances where the dates of submission by the project proponents to the MoEFCC on the portal and in the permission letters issued by the MoEFCC did not correspond. In such cases, we have treated the date of submission mentioned on the portal as the official date of submission of the application to the MOEFCC. However, in some instances, where it was obvious that the dates on the portal were incorrect (for example, when the dates of EAC meetings preceded the date of submission of the Form-I application), we have relied on the dates of submission mentioned in the letters issued by the MoEFCC.

The number of days taken by the EAC to recommend ToR were calculated using the date of submission of the revised Form-1 application in cases where the EAC took more than 1 meeting to recommend TOR (More than 1 EAC meeting to recommend ToR implies that the project proponent is asked to make a fresh Form-1 application).

The duration of EBM in most EIA reports was mentioned in months (eg. April-June, 2015) without specifying any dates. In such cases, we considered the first day of the month in which EBM commenced as the date of commencement of EBM.

Out of the remaining 421 proposals, in 245 proposals, EBM was carried out before TOR was granted by the MoEFCC. Out of these 245 proposals, 15 were further excluded due to insufficient data (for example non-availability of EIA information). Thus, the final results are calculated based on 230 proposals where EBM commenced before TOR.

B. Methodology for Analysis of Self-Compliance and Post-Clearance Monitoring

All the information for this part of the analysis was also primarily obtained from the MoEFCC website. As mentioned earlier, half-yearly self-compliance reports are uploaded on the MoEFCC website in the following categories: region, category, state, and year. We analysed compliance reports for the projects that have been granted EC since 4 July 2014. For these projects, the half-yearly compliance report submission dates were 1 December 2014, 1 June 2015, 1 December 2015 and 1 June 2016. We analysed projects for which the compliance reports had been uploaded until 1 June 2016. In response to an RTI application made to the MoEFCC, we were informed that all the compliance reports for projects within the period that we had requested were available online.

Post-clearance monitoring reports are also uploaded by Regional Offices of MoEFCC on its website. Therefore, from the website of the MoEFCC, we examined the number of projects where the MoEFCC had uploaded at least 1 monitoring report for the years 2014, 2015 and 2016. We analysed projects falling only within the following five categories: Industrial-I, Industrial-II, Non-Coal Mining, Coal Mining, and Thermal Power Plants. We chose these categories because they are relatively more polluting.



Vidhi

Centre For Legal Policy

BETTER LAWS. BETTER GOVERNANCE

Please direct all correspondence to:

Debadityo Sinha,

Vidhi Centre for Legal Policy,

D-359, Lower Ground Floor, Defence Colony,

New Delhi - 110024.

Phone: 011-43102767

Email: debadityo.sinha@vidhilegalpolicy.in