

Integrating Environment and Development: Challenges for India

The Ministry of Environment and Forests (MoEF) recently rejected forest clearance to a proposed mining project led by the United Kingdom-based company Vedanta Resources despite the Ministry's having given an "in-principle" approval to the project in 2008. In addition to concerns regarding the project's potential impact on the ecology and biodiversity of the proposed site, the Niyamgiri Hills of Orissa, the MoEF had found that Vedanta violated provisions of the Environment Protection Act of 1986, the Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act of 2006, and the Forest Conservation Act of 1980. The Ministry has also questioned Vedanta's current sourcing of bauxite ore, and it has issued a show cause notice to the project proponents asking why the Ministry should not also cancel the environmental clearance granted to their alumina refinery, also in the Niyamgiri Hills. Vedanta's proposed expansion of the alumina refinery is also under scrutiny.

The Ministry had previously revoked environmental clearance granted to a Goan iron ore mine operated by Careamol on the grounds that the project proponents had concealed factual information regarding the project, including data that was critical for appraising the environmental integrity of the mine. In yet another case, the Ministry rejected a proposed 600-megawatt "Loharinag Pala" hydroelectric project located in Uttarakhand on the Bhagirathi River, a Ganges tributary. The decision was apparently taken on environmental as well as religious grounds (the Bhagirathi is sacred to Hindus).

Investments had already been made in each of the above three projects, and the zero-tolerance policymaking of the Ministry has put these projects' financial situations at risk. Delayed decisionmaking has also resulted in environmental damage from work already undertaken in pursuance of these projects.

In developing countries like India, conflicts between environmental and developmental considerations are coming to a head. The recent decisions of the MoEF suggest that environmental considerations are finally finding a

voice within the government. Until these decisions, it was tacitly understood that large projects, including private projects involving large investments and particularly those supported by state governments, would not be disturbed despite opposition from environmentalists. This appears to have changed. Government officials have been calling for greater environmental diligence on the part of industries as well as proponents of large infrastructure projects.

It is indisputable that rising demand, development, and urbanization over the last few decades have created unprecedented pressure on land and natural resources in India. These forces explain much of the discord between development and the environment. The government and enforcement agencies are confronted daily with the challenging task of integrating these divergent interests, demands, and needs.

The above cases should serve as a lesson: the government and industries should act in tandem to avoid wasteful expenditure and loss of investment.

Sustainable Development

The answer may lie in "sustainable development," which is well understood but difficult to implement in the absence of scientific mapping of the long-term needs of the population, as well as corresponding planning for the utilization of natural resources. Indian federal and state governments often do not plan well, and sustainable development realistically remains only an empty slogan in the face of state governments desperate to attract industry and investments.

The concept of sustainable development is more "human-centric" than "environment-centric." It aims at meeting human needs in a sustainable manner. However, there is an underlying assumption that natural resources should be used in a manner such that the needs of future generations are not compromised.

The United Nations 2005 World Summit Outcome

ELR India Update

ELR India Update is a quarterly newsletter analyzing the most relevant developments in Indian environmental law for international environmental lawyers, managers, policymakers, and thought leaders.

The goal of this service from the Environmental Law Institute (ELI) is to report on these developments and analyze their implications. The *Update* will also identify and analyze potential future developments for readers, so that they have advanced warning of risks and opportunities. The service will cover environmental legal and policy developments at the national and state level regarding climate and energy policy, manufacturing, importation and exportation, natural resources, product safety, worker safety, and other major environmental issues, such as water quality and supply.

We are very fortunate that *ELR India Update* is written by the attorneys at Kochhar & Co., a highly respected firm with significant environmental expertise and a thorough understanding of the ramifications of legal and policy developments. *ELR India Update* is edited by *Environmental Law Reporter (ELR)* attorneys in Washington, D.C.

ELI has a long history of working with partners in India to advance environmental law and policy. We hope this new partnership provides a service that meets your needs and expectations. We encourage any and all constructive feedback by contacting *ELR's* Editor-in-Chief Scott Schang at schang@eli.org or 202-939-3865.

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The Case of Vedanta

On February 28, 2005, the Orissa state government forwarded a proposal for the diversion of about 660 hectares (6.6 km²) of forest land for bauxite ore mining conducted by the Orissa Mining Corporation and Sterlite through Vedanta Alumina Limited in the Kalahandi and Rayagada districts of the state. The MoEF granted an “in-principle” approval to the project on December 11, 2008. The project leader had already set up an alumina refinery in Orissa for which environmental clearance was granted in 2004. In 2007, the project leader had applied for environmental clearance for an expansion of this refinery from its installed capacity of one to six million tons per annum (mtpa).

On August 10, 2009, the Orissa state government applied to the MoEF for final clearance for the mining project. The Forest Advisory Committee of the Ministry recommended that final clearance should only be granted after ascertaining the community rights of the forest land in question and after settling such rights under the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 (Forest Rights Act).

A joint committee of the MoEF and the Ministry of Tribal Affairs was formed to settle the rights of the forest dwellers under the Forest Rights Act and also to ascertain the

potential impact of the project on the surrounding wildlife and biodiversity. The committee strongly recommended that forest clearance should not be granted to the project because the state government had violated the Forest Rights Act, as the process of settling rights under the Act was not complete.

The committee also noted that Vedanta Alumina Limited was illegally occupying 26.123 hectares of forest land and was thus violating the provisions of the Forest Conservation Act of 1980. The company had also proceeded with construction activity for expanding its existing aluminum mine, intended to increase its installed capacity from 1 mtpa to 6 mtpa, without obtaining environmental clearance as required by the Environment Impact Assessment Notification of 2006. The sourcing of bauxite ore by the project proponents was also found questionable. It was found that the bulk of the bauxite ore used by the refinery was being sourced from 14 mines, 11 of which did not have requisite environmental clearances.

Pursuant to several rounds of deliberations, inquiries, and discussions with the state government and the Forest Advisory Committee, the MoEF found merit in the report of the joint committee, referenced above. Accordingly, the Ministry rejected Stage II forest clearance for the project.

Document considers economic development, social development, and environmental protection as the interdependent and mutually reinforcing pillars of sustainable development. However, the retired Justice B.N. Kirpal pointed out,

different levels of societies have their own concept of sustainable development and the object that is to be achieved by it. For instance, for rich countries, sustainable development may mean steady reductions in wasteful levels of consumption of energy and other natural resources through improvements in efficiency, and through changes in lifestyle, while in poorer countries, sustainable development would mean the commitment of resources toward continued improvement in living standards.¹

In India, it is not “development” per se but the unplanned and indiscriminate exploitation of natural resources that is playing havoc on the country’s environment. For example, a developing country like India, where agriculture is primarily rain-fed, needs to construct dams. However, these projects may damage the environment because of poor planning and half-hearted attempts toward assessing and remedying the environmental and social impacts of the project, in

addition to the absence of a clear and holistic policy for the rehabilitation of displaced persons and ecological restoration. For India, achieving sustainable development means making the right choice at the right time and in the right manner.

Indian Judiciary on Sustainable Development

In India, the concept of sustainable development took root in certain early public interest litigation. In *M.C. Mehta v. Union of India* (A.I.R. 1988 S.C. 1037), the Supreme Court ordered the closure of polluting tanneries situated around the Ganges River, as they were discharging untreated effluents into the river. While passing the order, the Supreme Court was conscious that it would lead to unemployment and economic loss, but the court regarded “life, health, and ecology” to be of greater importance to the people than unemployment and loss of revenue.

Similarly, in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* (A.I.R. 1988 S.C. 2187), the Supreme Court dealt with haphazard limestone quarrying operations in the Mussorie Hills of the Himalayas. This was one of the most significant cases in which the Supreme Court was required to balance ecological considerations against industrial demands on forest resources. Mining activities, especially blasting operations, had completely disturbed the ecological balance of the valley. Purely on environmental considerations and the fact that the lives and livelihoods of the village communities were

¹ B.N. Kirpal, Developments in India Relating to Environmental Justice, http://www.unep.org/dpdl/symposium/Documents/Country_papers/India%20.doc.

Sustainable Development

When the concept of sustainable development was first discussed at the international level in the Stockholm Declaration of 1972, the conflict between development and the environment was highlighted. But the concept was given shape and clarity in the World Commission on Environment & Development Report, *Our Common Future*, which defined sustainable development as “development which meets the needs of the present without compromising the ability of future generations to meet their own needs.”¹

A more comprehensive blueprint toward achieving sustainable development was laid down under the Rio Declaration of 1992. The Rio Conference declared that humans are at the center of concerns for sustainable development. People are entitled to a healthy and productive life in harmony with nature. The Rio Declaration further emphasized that in order to achieve sustainable development, environmental protection must constitute an integral part of the development process and cannot be considered in isolation of it.

1 WORLD COMM'N ON ENV'T & DEV. (BRUNDTLAND COMM'N), *OUR COMMON FUTURE* 43 (1987).

primarily dependent upon the valley, the Supreme Court found it necessary to completely freeze mining activity in the valley. However, since certain other vital industrial and agricultural operations were dependent on limestone supplies from this area, the court decided to permit limestone mining on a limited scale under strict regulation. Accordingly, the Supreme Court ordered the closure of all mines except three operations. The court further directed that 25% of the gross profits of these three mines be credited to the Fund Incharge of the Monitoring Committee to be used toward reforestation in the mining area.

The considerations of “sustainability” and “sustainable development” have thus far guided the higher courts in India in reconciling the conflicting interests of environment and development, whether it is choosing forest conservation over forest-based resources² or ordering the closure of tanneries discharging effluents into rivers used for drinking water.³ In most cases, the courts were conscious of the enormous revenue loss or the unemployment that would be caused as a result of the closure or suspension of different industries.

However, the courts have been reluctant in restraining large infrastructure projects solely on environmental considerations. In *Narmada Bachao Andolan v. Union*

of India,⁴ the majority judgment did not consider the construction of a large dam as something that would result in an ecological disaster. The majority judgment was of the view that

the dam is neither a nuclear establishment nor a polluting industry. The construction of a dam undoubtedly would result in the change of environment but it will not be correct to presume that the construction of a large dam like the Sardar Sarovar will result in ecological disaster.

The majority judgment concluded that the precautionary principle as laid down in *Vellore Citizens' Welfare Forum v. Union of India*⁵ ordinarily applies in cases of pollution or other projects or industries for which the extent of likely damage is unknown.

The majority judgment in the *Narmada Bachao Andolan* case also refused to look into the petitioner's contention that the environmental clearance of the project was given without “application of mind” (a term generally used to challenge governmental action where the government exercises its powers arbitrarily). The court was of the view that with respect to public projects and policies initiated by the government, courts should not become an approval authority. Such decisions are made by the government only after a careful consideration of the pros and cons of a project. The Supreme Court was unwilling to opine on whether the decision of the government was right or wrong. The majority judgment clearly stated,

for any project which is approved after due deliberation, the Court should refrain from being asked to review the decision just because a petitioner in filing a PIL alleges that such a decision should not have been taken because an opposite view against the undertaking of the project, which view may have been considered by the Government, is possible.⁶

The subordination of environmental interests to the cause of development was also evident in the Supreme Court's judgment in a public interest lawsuit challenging the construction of the Tehri Dam and the construction of a power plant at Dahani Taluka in Maharashtra.⁷

Thus, although the higher judiciary in India has consistently taken a strong stand against the polluting

2 State of Himachal Pradesh v. Ganesh Wood Products (A.I.R. 1996 S.C. 149).
3 Vellore Citizen Welfare Forum v. Union of India (A.I.R. 1996 S.C. 2715).

4 A.I.R. 2000 S.C. 3751.

5 A.I.R. 1996 S.C. 2715.

6 *Id.*

7 Tehri Bandh Virodhi Sangarsh Samiti and Others v. State of Uttar Pradesh and Others, Supreme Court of India, 1992 Supp. (1) SCC 45.

industry regardless of the consequent economic loss, it has restrained itself from considering large infrastructure projects as potential threats to the environment.

The Legal and Policy Framework on Environment and Development

In view of India's rapid development, it became imperative for the Indian Legislature to formulate laws and policies to ensure sustained development with minimal impact on the environment on the one hand, and, on the other hand, to discourage and penalize unfettered and illegal development. Sustainable development and inter-generation equity have been accepted as guiding principles of environmental lawmaking and governance in India. However, translating those principles into practice is the greatest challenge for the country.

The early 1980s witnessed a visible endeavor on the part of the federal government to regulate indiscriminate development through environmental laws, with, for example, the enactment of the Environment Protection Act of 1986 and the further strengthening of pollution laws. The government has also made several attempts in the past to achieve sustainable development through regulations such as the Environmental Impact Assessment (EIA) Notification of 2006 and the Coastal Regulation Zone (CRZ) Notification of 1991. A number of industrial and commercial projects, including mining, river valley projects, thermal power plants, cement plants, airports, building and construction projects, and special economic zones, among others, require prior environmental clearance, both for setting up a new project and for the expansion or modernization of an existing one.

Under the EIA Notification, the government and administrative agencies have been empowered to assess a proposed project from environmental and social perspectives. They can reject the project if deemed necessary. Similarly, the de-reservation or use of forests for commercial and non-forestry activities is strictly regulated under the Forest Conservation Act of 1980.

Under most such regulations, it is primarily government bodies that are vested with important decisionmaking powers. The exercise of such powers by the government often becomes contentious, as was the case with the Sardar Sarovar Dam project in Madhya Pradesh or Vedanta's proposed mining project in Orissa, to name just two. But the government's dilemma in choosing environment over development is clearly evident. There are not many incidents in which the government has taken a strong decision against the industry on purely

environmental considerations, whether through laws and regulations or administrative decisions.

The government is often criticized for diluting stringent laws to create space for industry, even though the recent cases of the Vedanta project, the Loharinag Pala hydroelectric project, and the Careamol iron ore mine project indicate a more stringent enforcement of environmental laws. And despite the MoEF taking a stand against industry due to environmental considerations, such decisions were taken at later stages of project implementation. For example, in the case of the Careamol iron ore mine project, it was only after the National Environmental Appellate Authority (NEAA) filed an appeal challenging the project that it was discovered that the project proponent had submitted false documents to obtain environmental clearance. Only then did the MoEF revoke environmental clearance. Similarly, in the case of Vedanta, the blatant violation of environmental laws were allowed to continue for several years before the Ministry rejected the proposal in August 2010.

Thus, while the Careamol iron ore mine project raises serious questions on the process and procedure on the basis of which the government appraises developmental projects, the Vedanta project poses a larger question of how responsible authorities enforce laws.

Conclusion

The fact that development projects are being challenged in courts on environmental grounds is a sign that the environment is not being effectively addressed during project planning and implementation. It further reflects that the laws and their enforcement are not satisfactory.

There is a need to bring clarity to laws and regulations and to integrate environmental concerns with development. Principles and parameters laid down by the judiciary are helpful in formulating policies. However, the bigger challenge lies in the enforcement of such policies. Granting project clearance in the beginning and revoking it later is not a positive sign. Lack of infrastructure, requisite technical expertise, and appropriate human resources, coupled with bureaucratic processes, may be the reason for such lapses on the part of the government. Thus, administrative procedures and processes should be revisited, especially those relating to project appraisal and clearance. The government may also consider having an independent regulator in place for project appraisal, approval, and monitoring. Lastly, for sustainable development, there is no substitute for short, medium, and long-term planning.

A Different Perspective Toward the Nuclear Liability Act

The Civil Liability for Nuclear Damage Act of 2010, commonly known as the Nuclear Liability Act, was passed on August 30 by the Lok Sabha (lower house of Parliament) amidst resistance from many stakeholders. The Act, which will take effect after the President signs it, will open nuclear trade between India and Nuclear Suppliers Group countries.

This bill has been one of the most contentious in modern Indian history. Aspersions were cast on the ruling government's intentions even before the bill was introduced into the Lok Sabha.

Critics were further incensed by the fact that the bill was introduced near the time when a local court finally delivered judgment on the Bhopal gas tragedy. Many questioned the wisdom of allowing the construction of nuclear plants and providing for limited nuclear damages liability in the face of the renewed memory of the human and environmental losses in Bhopal. The Deepwater Horizon oil spill disaster in the Gulf of Mexico occurred around the same time as well. In response, BP committed an initial US\$20 billion toward claims arising out of damages from the spill. Union Carbide, by contrast, settled claims at under US\$500 million, despite the loss of approximately 18,000 lives in Bhopal.

The Act is one of the last steps required to operationalize the India-United States civil nuclear cooperation agreement of 2008. Because this agreement itself has been met with skepticism, so has the Act. Critics have termed the Act a "sell-out" of the nation, a ploy to protect foreign suppliers of nuclear material and technology at the cost of the Indian Treasury. The Act has been further criticized for, among other things, fixing a cap on liability, attempting to shield overseas exporters of radioactive material from the liability of a nuclear accident, and circumventing the environmental law principles laid down by the Supreme Court.

Supporters of the Act contend that India must protect foreign suppliers in order to develop the country's civil nuclear energy sector. They argue that no foreign nuclear material or technology suppliers would come forward if such protection were not guaranteed.

It is pertinent to discuss certain aspects of the Act that may have gone unnoticed because of the distrust and cynicism with which it was seen by many Indians.

At the outset, the Act fills in a large gap in the existing legal and regulatory regime by establishing

"civil liability for nuclear damage." The Act provides for this liability, in addition to establishing the position of Claims Commissioner and the Nuclear Damage Claims Commission. This is the first specific legislation that addresses compensation for damage caused by nuclear accidents.

For example, a victim of a nuclear accident would want compensation commensurate with, if not more than, the actual damage caused. The victim also needs efficient and prompt state machinery to get his or her claims adjudicated. Asking who bears the cost of the compensation is probably secondary for him or her. Without this Act, nuclear accident victims would be unsure how and where to file claims.

Currently, under the Public Liability Insurance Act of 1991, the operator of a nuclear facility must obtain insurance coverage for life, property, and environmental damages worth only about 500 million rupees (about US\$11.3 million) so it is surprising that the Nuclear Liability Act, a law that demands that nuclear facility operators obtain insurance 30 times greater than the existing requirement, is being overlooked and criticized.

By bringing in this legislation, the government is attempting to fix liability on various stakeholders involved in the management of nuclear installations and/or the handling of things like radioactive material or nuclear fuel. But some have misunderstood the Act as trying to place liability only on the operator of a nuclear energy plant. The definition of "operator" in the text of the Act is dynamic: liability shifts from the operator to transporters or consignors depending on who has actual possession or control over nuclear material when an accident or incident occurs. Although the nuclear energy sector may be liberalized in the future, under the current Atomic Energy Act of 1962, nearly complete control of radioactive material as well as the operation of nuclear installations and reactors is vested only with either the federal government or a company in which the government has a majority stake. This may change in the future if the nuclear energy sector is opened to private players.

The Act establishes a cap of 15 billion rupees (about US\$340 million) on the maximum liability of the operator, but not on the liability arising from damages (see text box). The amount of liability may be increased by the government, but in such a case, the government

Salient Features of the Civil Liability for Nuclear Damage Act of 2010*

The Civil Liability for Nuclear Damage Act of 2010 has been enacted to provide for, among other things, the establishment of civil liability for nuclear damage, the appointment of a claims commissioner, and the establishment of the Nuclear Damage Claims Commission.

What is nuclear damage?

The term “nuclear damage” refers to personal injury, loss of life, or damage to property caused by or arising out of a nuclear incident. The definition also includes economic loss arising from loss of life, injury, property damages, costs of environmental rehabilitation, and costs of establishing preventive measures.

What is a nuclear incident?

A nuclear incident is any occurrence, or series of occurrences with the same origin, that causes nuclear damage, or—but only with respect to preventive measures—creates a grave and imminent threat of causing such damage.

Liability of a nuclear operator, including limitations

The operator of the nuclear installation is liable for nuclear damage caused by a nuclear incident occurring in that installation. The operator is also liable for damages involving nuclear material coming from or originating in that nuclear installation, as well as material sent to that nuclear installation. This is provided, however, that the operator had control over such material at the time of the nuclear incident. The Act lays down detailed criteria to ascertain the liability of the operator of a nuclear installation with respect to the nuclear material originating from or sent to such an installation. For example, in cases where the nuclear incident involves material sent to the operator’s nuclear installation, the operator is liable for such an incident and the consequent loss of life and property if he has taken charge of such material.

The Act also enumerates cases wherein the consignor or the person responsible for transportation of the nuclear material is deemed the operator and thus liable under the Act.

The Act, however, excludes the liability of the operator in cases where nuclear damage arises out of force majeure events, such as a grave natural disaster or an act of armed conflict or civil war. The operator is also not liable for damage to the nuclear installation itself, to the property on the site used in connection with the installation, or to the means of transport on which the material was being carried when the incident occurred.

The maximum liability of the operator is fixed at 15 billion rupees (about US\$340 million). In the original draft of the Act, the liability was capped at 500 million rupees (about US\$11.3 million).

In order to cover its liability, the operator of a nuclear installation is required to obtain and maintain insurance or other financial security before it begins the operation of a nuclear installation.

Liability of the government

The federal government will be liable for nuclear damage from a nuclear incident where the total liability of the operator exceeds the maximum liability as stipulated under the Act (i.e., 15 billion rupees, or about US\$340 million). The federal government is also liable when a nuclear incident occurs in a nuclear installation owned by the government and when a nuclear incident arises as a result of a force majeure event as stipulated under the Act (see above).

Enforcement agencies under the Act

The Act provides for the appointment of one or more Claims Commissioners for the purpose of adjudicating upon claims for compensation in respect to nuclear damage. The commissioners may be appointed for areas as determined by the federal government. The Claims Commissioners will receive applications from those entitled to claims compensation under the Act, conduct necessary inquiries, and distribute compensation.

In cases where the federal government is of the opinion that the amount of compensation may exceed the maximum liability of the operator as stipulated under the Act, or that it is expedient and necessary that the claims be adjudicated by a separate commission, or that it is otherwise in the public interest, the government may establish a Nuclear Damage Claims Commission by notification. The Act lays down the composition of the commission as well as the qualifications of the people to be appointed as members with the commission.

**This note is based on the draft of the bill that was tabled in the Lok Sabha in March 2010. Subsequently, the Lok Sabha passed the bill in August 2010, with certain modifications. The copy of the modified bill that was passed by the Lok Sabha is not available in the public domain. However, the provisions discussed above form part of the Act.*

bears the amount in excess of the liability determined under the Act. In private contracts or agreements, such “limitation of liability” provisions are always provided in order to limit parties’ liability to an agreed-upon amount. Furthermore, in appropriate circumstances, the provisions of the Act leave enough room for the interpretation that the liability of a grossly negligent supplier, transporter, or contractor is not limited to the amounts set out therein.

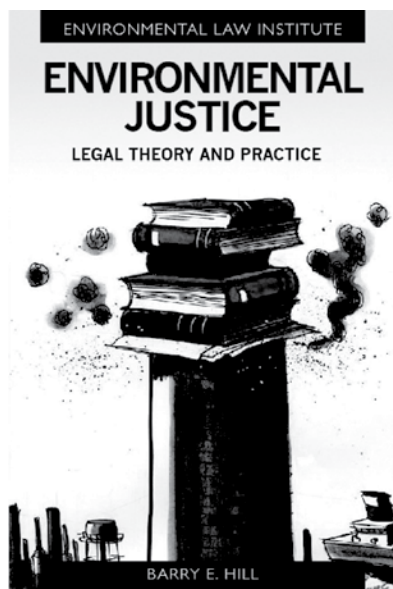
Foreign suppliers have not been given complete legal immunity under the Act, as some have alleged. The consignor of materials would be responsible if a nuclear accident occurs during transportation. It would not be sensible, however, to hold the supplier of a radioactive material responsible regardless of whether it had control over the material at the time of the accident, whether there were any defects in the material, or whether there was an omission, willful or otherwise, by the supplier. The mere fact of supplying the material cannot necessarily obligate a supplier to compensate the victims of a nuclear disaster. But the Act does account for cases of willful acts or gross negligence on the part of material, equipment, or services suppliers—in these, the operator has a right to recourse against the supplier.

Critics of the Act have argued that by limiting the liability of the supplier to the above-mentioned circumstances, its regulations are regressive and seek to circumvent the principle of absolute liability laid down by the Supreme Court in the landmark case *M.C. Mehta v. Union of India*.

But around the world, operators of hazardous industries are always primarily responsible for cleanup or damages. The Supreme Court established that an enterprise engaged in a hazardous or inherently dangerous industry owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone as a result of its hazardous activities. As per this principle, the enterprise *engaged* in a hazardous activity is responsible, not the industry or enterprise that only supplies equipment or material. It may not be consistent with the absolute liability principle to extend liability to the supplier after hazardous materials and equipment have been given to the operator of the plant in India.

The Civil Liability for Nuclear Damage Act of 2010 is much needed. Instead of criticizing the Act, opponents should focus their energy on strengthening the structure and mechanisms for awarding timely compensation to nuclear accident victims.

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Barry E. Hill is currently the senior counsel for environmental governance in the Office of International Affairs of the U.S. Environmental Protection Agency. He has taught environmental justice at the Vermont Law School for 15 years, where he serves on the board of advisors for the Environmental Law Center. He has published numerous articles on environmental law and policy, and environmental justice.

Legal and Regulatory Updates

RULES AND NOTIFICATIONS

Organic Chemicals Manufacturing Industry Standards

The Ministry of Environment and Forests, through the Environment (Protection) (Fourth Amendment) Rules of 2010,¹ has introduced more stringent standards for the discharge of effluents and emissions by the organic chemicals manufacturing industry.

The amended rules lay down effluent and emission standards for incinerators as well as stormwater discharge standards, not originally stipulated under the earlier rules. Under the amended rules, however, the effluent parameters and standards remain more or less the same as they were prior to this notification.

DRAFT/PROPOSED STATUTES/RULES

Draft Coastal Regulation Zone Notification of 2010

The Ministry of Environment and Forests issued a draft Coastal Regulation Zone Notification of 2010 under the Environment (Protection) Act of 1986, inviting suggestions and objections from the public within 60 days from its date of issue, September 15, 2010. The draft notification is available on the Ministry's website at www.envfor.nic.in.

As proposed, the draft CRZ notification would:

- Include aquatic areas. The original CRZ Notification of 1991 does not provide for the sea area up to 12 nautical miles from low tide and the water area of "tidal influenced water bodies." Recognizing the importance of the aquatic area in maintaining the functional integrity and biodiversity of the coastal areas and waters, the draft CRZ notification proposed to include the aquatic areas. Further, the draft notification proposes new CRZ classifications, which include a change in CRZ-IV from "ecologically sensitive areas" to "aquatic areas" and the addition of a new category, CRZ-V, comprising "areas requiring special consideration."
- Revise the hazard mapping mechanism. The 1991 notification does not take into account the impacts of coastal hazards, including rises in sea level. Hazard mapping based on tides, waves, rises in sea level, and shoreline changes is proposed to be

included, as are provisions enumerating requisite safeguards against these hazards.

- Require action plans. The earlier notification does not lay down adequate measures for the control of pollution. Under the proposed notification, the state and union territory governments are directed to prepare action plans to mitigate the discharge of untreated waste, effluents, and sewage (including solid waste) in a time-bound manner.
- Classify erosion-prone areas. The Ministry is of the view that a majority of coastal erosion is caused by man-made, or "anthropogenic" factors. Keeping in view the irreversible damage caused to the coast on account of such activities, the draft notification proposes the classification of coastal stretches into "high erosion areas," "medium erosion areas," and "low or stable coast." It is proposed that no projects would be permitted in the high erosion-prone areas, while in the medium erosion-prone areas, comprehensive environmental impact assessments would be required.
- Consider sensitive areas. Although the draft CRZ notification provides for uniform regulation of all coastal stretches irrespective of factors such as biodiversity, socioeconomic conditions, and developmental pressures, it proposes special provisions for certain sensitive areas, such as Greater Mumbai, Kerala, Goa, and the Sundarbans.
- Establish deadlines for grant of clearance. The CRZ Notification of 1991 does not lay down a comprehensive procedure for granting environmental clearance to permissible activities in the CRZ. To address this gap, the draft notification proposes detailed procedures, including documents to be submitted for obtaining clearance, such as studies, reports, and maps. The draft notification also stipulates time lines for the environmental clearance process.
- Provide consistency with other standards. The draft CRZ notification proposes to incorporate similar procedures to those laid down under the Environment Impact Assessment Notification of 2006 in order to bring about uniformity of standards.

¹ Notification dated July 21, 2010, bearing No. 608 (E)

*Draft E-Waste (Management and Handling)
Rules of 2010*

The Ministry of Environment and Forests modified the draft E-Waste Rules released in May 2010 based upon suggestions and objections received from various stakeholders.

The modified draft of the rules is intended to narrow down the scope of regulation on electronic wastes, since the modified rules only cover electrical equipment from the information technology and telecommunications industries and certain consumer electronics. The earlier draft sought to regulate a wide range of products and wastes, including large and small household appliances, medical devices, information technology and telecommunications equipment, electrical and electronic tools, toys and sports equipments, automatic dispensers, and monitoring and control instruments. The revised rules introduce less stringent Restriction of Hazardous Substances regulations. The earlier draft of the rules also laid down threshold limits for the inclusion of 20 hazardous substances in electrical and electronic equipment. Under the modified rules, there is a general restriction on the use of certain substances, such as lead, mercury, cadmium, and chromium, and no specific threshold limits have been stipulated. Further, the revised rules contain a list of 23 applications that are exempt from the above requirements.

MISCELLANEOUS

*Formation of CITES Cell in the
Ministry of Environment and Forests*

India has been a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) since 1976. The implementation of the provisions of CITES is being carried out by concerned authorities, but in order to fulfill its larger obligations toward international trade in endangered species and wild fauna and flora, the Ministry has formed a CITES cell within the Ministry through an Office Memorandum dated August 12, 2010. In addition to assisting the Ministry in the technical, administrative, and legal functioning of CITES implementation in India, the CITES cell is also responsible for maintaining, updating, and acting on various decisions taken by CITES parties and for responding to queries and requests from CITES.

*Consideration of Projects for Environmental Clearance to
be Located in Critically Polluted Areas or
Industrial Clusters*

The Ministry of Environment and Forests, in an Office Memorandum dated January 13, 2010, imposed a moratorium until August 31, 2010, on the consideration of projects for environmental clearance to be located in critically polluted areas or industrial clusters identified by the Central Pollution Control Board. It was decided that during the moratorium period, time-bound action plans will be prepared by the State Pollution Control Boards and Pollution Control Committees concerned. However, the Ministry observed that the mere preparation of action plans would not serve their intended purposes unless those plans were effectively implemented in the field for improving the environmental quality in these clusters. It was therefore deemed necessary to review their implementation status on the ground. The Ministry thus decided that the Central Pollution Control Board would monitor the status of the initiation of the action plans in the industrial areas in question. In light of this, the moratorium was extended to October 31, 2010, on the consideration of projects for environmental clearance to be located in identified areas.

National Green Tribunal Established

The Chairman of the National Green Tribunal, Shri. Justice LS Panta, along with the Minister for Environment and Forests, Mr. Jairam Ramesh, held a press conference on October 19, 2010, to announce the official launch of the National Green Tribunal. The National Green Tribunal marks the first time a tribunal exclusively dedicated to environmental issues has been set up in India. The body, established by the National Green Tribunal Act of 2010, will have circuit benches across the country to try all matters related to and arising out of environmental issues. The Ministry of Environment and Forests also intends to organize workshops in rural areas to educate people about issues of access and procedure related to the National Green Tribunal in the coming weeks.