

15th December 2010

Shri Jairam Ramesh
Minister of State (Independent Charge)
Ministry of Environment and Forests
Paryavaran Bhavan, CGO complex
New Delhi-110003

Subject: Response on the Discussion Paper on National Environment Assessment and Monitoring Authority (NEAMA)

Dear Shri Ramesh,

We are writing to you in response to the discussion paper dated 26th November 2010 put out by the Ministry of Environment and Forests (MoEF) seeking responses to the proposal for setting up a National Environment Assessment and Monitoring Authority (NEAMA). We would like to state at the outset that we appreciate the acknowledgement in the note that there has been tremendous pressure on the environment due to rapid industrialisation, infrastructure development and population growth. However, we remain disturbed with the MoEF's position to find solutions to this and other problems (as stated in the note), within the scope of institutional reform.

The articulation that the existing regulatory institutions have been unable to cope with the environmental challenges especially with regards to the environment and CRZ related approvals, has been often repeated. The 2006 re-engineering of the Environment Impact Assessment (EIA) Notification and had brought on board the concept of State Level Environment Impact Assessment Authorities (SEIAAs) as an institutional change to reduce the pressure and burden on the MoEF to administer and appraise environment clearance applications. Today there are 23 functional SEIAAs in the country which are looking at clearances of several industrial and infrastructure projects. However, it cannot be said with any confidence that the quality of assessment, monitoring and compliance, public participation and final appraisal has improved. We have and continue to cite several instances where the constant increase in the number and faulty process of clearances has put ecological landscapes and peoples' livelihoods under continued distress.

We have stated in our earlier communication to you that these problems cannot be resolved through such limited institutional reform. In fact it may have the potential to worsen it. . We believe that any institutional change should only come alongside addressing the core lacunae in the regulatory framework. Without this, any new institution will only fall prey to the same and long pending areas of concern.

Our specific points with regards to the note are as follows:

1. **EIA 2006 not an improvement:** We find the statement that the EIA notification, 2006 was a marked improvement its 1994 version deeply problematic. As you are aware, there was strong opposition to the content and drafting process of the 2006 notification. Detailed analysis had indicated that the 2006 notification limits the public hearing process from a decision making space to that which only involves feedback on a draft EIA report, the final version of which never reaches the affected people. The EIA 2006 also weakens the rejection of application clause on grounds of misleading information, which ironically never really gets used.

www.kalpavriksh.org

Pune Apt. 5, Shree Dutta Krupa, 908 Deccan Gymkhana, Pune 411 004, India Tel: 020-25675450 / 25670979 Fax: 020-25654239

Delhi 134, Tower 10, Supreme Enclave, Mayur Vihar Phase 1, New Delhi 110 091 Tel: 011-22753714

Administration: kalpavriksh@vsnl.net
Documentation Centre: kvoutreach@gmail.com
Publications: kvbooks@vsnl.net

Delhi: kvdelhi@vsnl.net

It significantly reduces the extent of impact assessments that need to be carried out for real estate and construction projects, which is one of the biggest infrastructure industries today. There are several other issues with the 2006 notification which we have brought to the notice of the MoEF through various forums and mechanisms.. We do not see this problem being resolved by the creation of an Authority that will grant clearances by following the existing procedures and formats of decision making.

2. **Conditional Clearances:** The note quotes the Minister of Environment stating that the conditions levied at the time of clearance should be such that they are objective, measurable, fair and consistent as well as should not impose inordinate financial or time costs on the proponents. There is absolutely no mention or acknowledgment of the fact that the conditions are often seen as a way out to address the issues of environment and social impacts post facto, when infact these impacts needed to be assessed and studied prior to public consultation and appraisal. The compliance of such conditions renders a *fait accompli* situation to whatever the result of post facto assessment might be, as by then, the projects are already well underway. While the NEAMA note sympathises with project authorities when it says that conditions should not add additional costs on them, it fails to recognise that absolute disregard that project authorities have currently shown to the compliance of conditions that are critical to mitigating environmental impacts. In our report *Calling the Bluff* we have highlighted several such instances to the MoEF. In its understanding of conditional clearances the NEAMA note is also oblivious to instances where clearances defy logic by say, laying down 121 conditions, almost forcing an approval from the SEIAA. We do not see how the setting up of the NEPA, NEAMA or any other body of a similar nature addresses the above mentioned issues.
3. **Reasons of Conflict of Interest:** The NEAMA note mentions that the dual role of the Government in both appraisal as well as approval results in a perception of conflict of interest. It is ironic that the issue of conflict of interest has been dealt with in this manner. The concerns that have been raised have a much broader understanding. It involves two critical points, first when those in decision making positions in any of the expert committees have a direct stake in promoting a particular sector, project or project proponent/s. This may be a person or people affiliated to a government or non-government agency or even the industry. The second is with reference to the manner in which the composition of the expert committees have been designed and implemented. It has largely excluded those working on environmental, wildlife and social concerns. Thereby committees have essentially comprised technocratic and bureaucratic “expertise” and view of the environment. Even when the 1994 notification allowed for a much broader composition, the committees were very heavily made up of government affiliated bodies and even industry representation. Since 2005, we have been regularly analysed the composition of these committees and brought to the notice of the MoEF. The current format of the NEAMA only replicates the existing structure of Expert Appraisal Committees (EACs) and locates them outside the MoEF in the form of Thematic Appraisal Committees (TACs).
4. **Issue of Autonomy:** We are happy that the MoEF has clearly defined in this note that the NEAMA will be an authority under the Environment Protection Act, 1986 and oversee the implementation and monitoring of two notifications issued under this Act. It has also been clarified that it is the MoEF which will finally issue environment and CRZ clearances. Some part of the financial support may also come through the Central Government, presumably the MoEF itself, as was the case with the National Environment Appellate Authority and is with the National Biodiversity Authority (NBA). We therefore fail to understand in what other way the authority will be autonomous and independent other than the fact that it will be constituted as a separate authority continued to be connected to the MoEF for its mandate, reporting and finances. We understand that the NEAMA will essentially be a relocation of the Impact Assessment Division of the MoEF and the Expert Appraisal Committees (EACs) into what is being termed as a body with scientific rigour. It will not take away the possibilities of similar instances of appointments and choice of experts as has happened in the existing system. Therefore, the proposed NEAMA is not an answer to the issue of conflict of interest.

5. **Issues of Capacity and Tasks for the NEAMA:** The MoEF seeks to amalgamate the roles of the environment and CRZ tasks of the MoEF carried out by the regional offices, monitoring tasks of the MoEF regional office as well mapping and management functions coastal zone management authorities into one authority called the NEAMA. The reasons explained in the NEAMA note are due to increased pressure on these authorities, along with other functions the authorities are unable to respond to the plethora of responsibilities. While acknowledging that MoEF seeks to vest this responsibility into one full time body dealing with multiple functions of appraising projects for clearances, monitoring their compliance, advising the central government on environmental policies as well as supervise and coordinating with SEIAAs and SCZMAs. Additional tasks are also to prepare coastal zone management plans, carry out investigations and research as well as facilitating the creation of national databases of environmental information and dissemination. The tasks of three functional set ups spread across different regions of the country are now being collapsed into one authority. With no clarity on the number of full time members, number of regional offices of the NEAMA and also other issues related to staffing, MoEF's note prematurely assumes that the institutional structure envisaged will indeed been able put aside the woes of capacity shortfall which are being faced a vast network of full time officials and part time experts. It does not give any clarity on how the NEAMA can deal with the clearance numbers which continue to be to the tune of 80-100 a month, monitoring of projects which is done every 3-4 years or the larger threats to coastal habitats and livelihoods; all of which MoEF, EACs and SCZMAs are to do as of today.

We once again bring to the attention of the MoEF, that the range of problems of the environment clearance regime are symptomatic of the regulatory framework and will not be resolved only through creation of new institutions . It will face the same hiccups, similar road blocks and inherit the legacy of the faulty regulatory framework that has been in existence till date. If environment protection and upholding peoples' livelihoods is truly the agenda of this reform process, then it cannot be done in exclusion of a regulatory revamp, suggestions for which have been brought to the notice of the MoEF several times before.

We do hope that you will initiate this much needed process as early as possible. We await your actions in this direction.

Thanking you, with regards

The image shows two handwritten signatures in blue ink. The first signature on the left is 'Kanchi Kohli' and the second signature on the right is 'Manju Menon'. Both signatures are written in a cursive style.

Kanchi Kohli and Manju Menon

CC: Sunita Singh, Director (P&L),
Ministry of Environment and Forests (sunitasinghgoyal@gmail.com)