

CHAPTER 3 - POLICY, LEGAL AND ADMINISTRATIVE FRAME WORK

3.0 Policy, Guidelines and Legal Requirement

3.1 Introduction

This chapter presents a review of the existing institutions and legislation relevant to the environmental aspects of this road strengthening/widening project, at the Central and State level and which technically, need to co-operate in order to implement the project's environmental requirements.

For conservation and protection of environment Ministry of Environment and Forest (MOEF) Govt. of India has formulated different laws, which are amended time to time. Relevant laws should be implemented during implementation of an infrastructure project like road development. Implementation of such regulations will keep control on the activities and compel the implementation agency to adopt the environmental friendly techniques to have minimum impact on environment.

During planning of the project these regulations should be considered so that during implementation implementing agency will face minimum environmental and social problems.

3.2 Environmental Clearance Requirements

3.2.1 GOI Requirements

The primary responsibility for administration and implementation of the GOI Policy with respect to conservation, ecologically sustainable development and pollution control rests with the Ministry of Environment and Forest (MoEF) . The MoEF is responsible to enforce the regulations established by the National Conservation Strategy, National Forest Policy, the Policy for Abatement of Pollution (1992) and the Indian Environmental Protection Act 1986, revised in 1994 and amended subsequently in 1997.

According to the MoEF-GOI notifications and its amendment of June 13, 2002 no public hearing would be required for the project due to minor impacts. This document in hand is the Environmental Impact assessment report prepared to meet all legitimate contractual

requirements for sustainable development. The impact to various natural resources needs to be minimized for maximum benefits due to the implementation of the projects.

No objection certificate would be required from the Pollution Control Board under 'Air and Water' Act for consent to establish & consent to operate. The requisite fees along with the NOC will have to be submitted to the State Pollution Control Board (SPCB) by the user agency for getting NOC clearance.

The Environment (protection) Act, 1986

This act provides for the protection and improvement of environment. It extends to the whole of India. The EPA identifies Central and State Government standards set for the quality of the environment; emission or discharge of environmental pollutants; procedures and safeguards for handling hazardous substances; and relevant restricted development areas. The EIA document examines processes, materials and substances with potential to cause environmental pollution. The EA assesses if relevant standards will be breached, and confirms that relevant procedures and safeguards will be followed. Document includes procedures and safeguards for the prevention of accidents, which may cause environmental pollution and remedial measures for such pollution. The EA identifies mechanisms to notify the relevant authority in the event of a discharge of pollution exceeding the standards set.

The Environmental Impact Assessment Notification 1994/July 2004

This is the Ministry of Environment & Forests Notification on Environmental Impact Assessment of Development Projects. The Notification is triggered if the project is listed in schedule 1 of the Notification (includes 'Highway Projects' and 'Tarred Roads in Himalayan and/or Forest Area') or if the project occurs in a restricted area. Such projects require environmental clearance from the Central Government in accordance with the procedures specified in the notification. If environmental clearance is required, public hearing is to be conducted in each affected district, in which the Project construction activities will be carried out. If environmental clearance is required, then the application requirements for MOEF are provided in **Section 3.4**.

Public Liability Insurance Act, 1991

The purpose of this act is to provide for public insurance liability for the purpose or providing immediate relief to the persons affected by accident occurring while handling any hazardous substances. The EA confirms that appropriate insurance policy will be taken out. EA identifies hazardous materials associated with the project. The EA document identifies the major accident hazards. Document describes steps to prevent accident hazards and to limit their consequences to the environment. The EA indicates commitment to provide information, training and equipment to ensure workers safety. EA describes mechanisms to notify the concerned authority in the event a major accident occurs.

Forest (Conservation) Act 1980 as amended

Under this law the NHA must obtain administrative approval from the Forest Department to clear over 20 hectares of designated forestland and in 1986 when the MOEF enacted the Environmental Protection Act, the entire linear stretches of road side plantations along the State highways were declared as protected forests (refer Box 3.1 for more details). According to this although the land is under the control of State Government, due to its protected Status, approval of Central, Regional or State Government for using the land for widening and rehabilitation must be obtained.

At the State level, Government was empowered to declare reserves and protected forest and was also given the authority to acquire land for extension and preservation of forests. In December 1996, a Supreme Court judgment further defined the types of forests to be protected.

Depending on the size of the tract to be cleared, clearances are required from the following levels of Government. If the forest exceeds 20 hectares then prior permission of Central Government is required. If the forest is between 5 to 20 hectares the regional Office of Chief conservator is empowered; if the forest is below or equal to five hectares the State Government may give permission; and, If the construction area is more than 40 % forest, permission to undertake any work is required from the Central Government, irrespective of the size of the area.

In the case of Rajasthan - a hot and dry region, the strip and linear plantations are very significant for a development project like road widening and improvement. (Refer Box 3.1).

Box 3.1 Applicability of Forest conservation act to Roadside Strip-Plantations:

The February 18, 1998 MOEF circular on linear plantations on roadsides, Canal and railway lines modified the applicability of provisions of Forest (Conservation) Act, 1980 to linear plantations. The new modification recognizes that the spirit behind the Forest (Conservation) Act was conservation of 'natural forests' and not 'strip plantations'. In the case of the "notified to be protected" roadside plantations, the clearance may be given by the concerned regional office of the MOEF, irrespective of the area of plantation lost. While issuing the approval, in place of normal provisions for compensatory afforestation, the regional offices will stipulate a condition that for every tree removed at least two trees should be planted. If the concerned Regional office does not issue the decision within thirty days of the receipt of fully completed application, the project proponent may proceed with widening/expansion under intimation to the State Forest Department, and the MOEF.

Wildlife (Protection) Act of 1972

This Act has allowed the Government to establish a number of National Parks and Sanctuaries over the past 25 years. This Act prohibits an activity within National Park and Sanctuary areas. The EA identifies National Park and Sanctuary areas within the project study area. The EA confirms that permission from the Chief Wildlife Warden will be sought for: Undertaking activity in a National Park or Sanctuary area; and labourers and contractors entering a National Park or Sanctuary area. Document identifies the extent of habitat destruction, including number of trees removed. The EA document describes mitigation measures to minimize habitat destruction.

Biological Diversity Act, 2000

This Bill prevents persons undertaking biodiversity related activities without approval from the National Biodiversity Authority. It extends to the whole of India, and approval is required from the National Biodiversity Authority. There are particular restrictions if the Project involves the participation of non-Indian persons. The EA assesses if any biological resource is required for the Project (plants, animals and micro organisms or parts thereof). EA assesses if bio-survey or bio-utilisation is needed for the Project (surveyor collection of species, etc for any purpose). EA document outlines measure to avoid or minimize effects on biodiversity.

April 10, 1997 MOEF Gazette Notification on EIA for Road Improvement Projects

According to this notification, road improvement projects are generally exempt from the environmental clearance. This exemption is for “Highway Projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments provided it does not pass through ecologically sensitive areas such as National Parks, Sanctuaries, Tiger reserve, Reserve forests”.

Accordingly, an EIA addressing specific actions and circumstances within the corridor must be prepared, and approvals received. After the Project receives Forestry Department and SPCB ‘No Objection Certificate’ (NOC), the MOEF application will proceed to MOEF for review and action. The MOEF establishes a review committee and the committee may attach conditions to the NOC. In this case the proposed Project road passes near the reserve forest areas but does not have any direct impact on them.

October 15, 1999, MOEF Circular on Marginal Land Acquisition And Bypasses

According to the provision of EIA Notification of January 27, 1994 and as amended on April 10, 1997, environment clearance is required for highway projects except projects relating to improvement work including widening and strengthening of roads with marginal land acquisition along the existing alignments provided they do not pass through ecologically sensitive areas such as national parks, sanctuaries, tiger reserves, reserve forests etc. It is clarified that marginal land acquisition means land acquisition not exceeding a total width of 20 metres on either side of the existing alignment put together. Further, it is also clarified that bypasses would be treated as stand-alone projects and would require environmental clearance, only if the costs of the projects exceed Rs. 100 crores each.

Noise (Regulation and Control) Rules, 2000

As a result of considering the deleterious and psychological effects of the noise pollution on the human well-being, MOEF has drawn up the above rules, which have come to force with effect from February 14, 2000. According to the provisions of the rules notified, a person might make a complaint to the designated ‘Authority’ in the event that the actual noise levels exceed the ambient noise standards by 10dB(A) or more as compared to the prescribed standards. The designated authority will take action against the violator in accordance with the provisions of these rules or other law in force.

The EA identifies all 'industrial', 'commercial', 'residential' and 'silent' zones within the project study area. EA assesses if the levels of noise generated by the project in any area exceeded the ambient air quality standards in respect of noise as specified in the Schedule of the Rules. The EA describes noise pollution control measures to achieve compliance with the ambient air quality standards in respect of noise. The EA document considers if a loudspeaker or public address system is needed for Project.

The Air (Prevention and Control of Pollution) Act, 1981

This Act provides for the prevention, control and abatement of air pollution. It is triggered by air polluting activity in an air pollution control area or when emissions of any air pollutant into the atmosphere exceed the standards set by the Central and State Boards. The EA identifies air pollution control areas. The document identifies all air polluting activities and

sources associated with the project. EA confirms that consent will be required for air pollution control area. The Environmental report describes mechanisms requested for the operation of industrial equipment to notify the State Board of an unforeseen release of air pollutants exceeding the standards. Remedial measures proposed to mitigate air pollution in air pollution control areas are described.

As per EIA notification ,2006 – it states that –

Requirements of prior Environmental Clearance (EC):-

All projects and activities are broadly categorized in to two categories - Category A and Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man made resources.

All projects or activities included as Category ‘A’ in the Schedule, including expansion and modernization of existing projects or activities and change in product mix, shall require prior environmental clearance from the Central Government in the Ministry of Environment and Forests (MoEF) on the recommendations of an Expert Appraisal Committee (EAC) to be constituted by the Central Government for the purposes of this notification;

The projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category ‘A’ in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category ‘B’ in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- All new projects or activities listed in the Schedule to this notification;
- Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization
- Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range

In case of Category ‘B’ projects or activities, this stage will entail the scrutiny of an application seeking prior environmental clearance made in Form 1 by the concerned State level Expert Appraisal Committee (SEAC) for determining whether or not the project or activity requires further environmental studies for preparation of an Environmental Impact Assessment (EIA) for its appraisal prior to the grant of environmental clearance depending up on the nature and location specificity of the project . The projects requiring an Environmental Impact Assessment report shall be termed Category ‘B1’ and remaining projects shall be termed Category ‘B2’ and will not require an Environment Impact Assessment report. For categorization of projects into B1 or B2 except item 8 (b), the Ministry of Environment and Forests shall issue appropriate guidelines from time to time.

After completion of the public consultation, the applicant shall address all the material environmental concerns expressed during this process, and make appropriate changes in the draft EIA and EMP. The applicant to the concerned regulatory authority for appraisal shall submit the final EIA report, so prepared. The applicant may alternatively submit a

supplementary report to draft EIA and EMP addressing all the concerns expressed during the public consultation

The appraisal of an application shall be completed by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within sixty days of the receipt of the final Environment Impact Assessment report and other documents or the receipt of Form 1 and Form 1 A, where public consultation is not necessary and the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee shall be placed before the competent authority for a final decision within the next fifteen days

For Highway projects Category A projects include:

- New State High ways; and
- Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.

Category B Project include:

- New State High ways; and
- Expansion of National / State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.

The project stretch considered for study falls under **category ‘A’ projects** as per EIA notification, 2006 because:

- ❖ Almost a New State High way with NH standard
- Any project or activity specified in Category ‘B’ will be treated as Category A, if located in whole or in part within 10 km from the boundary of: (i) Protected Areas notified under the Wild Life (Protection) Act, 1972, (ii) Critically Polluted areas as notified by the Central Pollution Control Board from time to time, (iii) Notified Eco-sensitive areas, (iv) inter-State boundaries and international boundaries.

Hence get environmental clearances from Expert Appraisal Committee, MoEF, and Government of India.

3.2 Clearance required prior to construction

Tree felling permissions are required from the forest department. Specific applications forms are available for this process, but applications should reach the respective DFOs. This follows a

joint verification (according to species) for girth, size and classifications. The entire EA process will be carried out in tandem with the design stage with appropriate mitigation measures.

- The clearances required for the project include the following:
- Environmental clearances from Expert Appraisal Committee (EAC), MoEF Government of India.
- Tree felling permissions are required from the forest department. Applications for this purpose should reach the respective DFO for Sikar. This follows a joint verification (according to species) for girth, size and classifications.

3.3 Clearances required **During construction**

During construction stage the Contractor will be required to obtain a number of permissions, consents and clearances from various bodies. Details of these are provided in the Table 3.1

Table 3.1 Clearances to be taken by Contractor

Sl. No	Contractors activity for which the clearances area applicable	Statute under which clearances required	Statutory Authority
1	Hot mix plants, Crushers and Batching plants	State Pollution Control Board clearance/ NOC for 'consent to establish' under Air Act and Water Act. The Air (Prevention and control) Act 1981 and the noise pollution Rules 2000	MSPCB,
2	Storage handling and transport of Hazardous materials	Hazardous waste management handling rule and manufacture storage	Do
3	Location and layout of workers camp, equipment, storage yards.	EP act 1986 and Environmental Management Plan	Do
4	Quarries	EP Act 1986 and Environmental Management Plan	MSPCB & State Mining Dept
4	Quarries	EP Act 1986 and Environmental Management	MSPCB &

		Plan	State Mining Dept
5	Discharge from labour camp	Water (Prevention and control of Pollution) Act, 1974	MSPCB
6	Disposal of bituminous and scarified waste material	Hazardous Waste management Rules	MSPCB,
7.	For using ground water during construction	Consent from State Ground water Board	

- MSPCB = Mizoram State Pollution Control board

3.4 Legal Requirement:

The relevant legal requirement, which has been considered for the present project, has been identified and the institutions responsible the same has also been identified and discussed in table 3.2

Table 3.2: Summary of Relevant Legal Requirements Considered for this Project

Act	Year	Objective	Responsible Institution
Environmental (Protection) Act.	1986	To protect and improve the overall environment	MOEF, DOF, SPCB,
Notification on Environment Impact Assessment of Development Projects (and amendments) (referred to as the Notification on Environmental Clearance)	1994	To provide environmental clearance to new development activities following environmental impact assessment.	MOEF, DOF, SPCB,
Forest (Conservation) Act. Forest (Conservation) Rules	1980 1981	To check deforestation by restricting conversion of forested areas into non forested areas	Forests Departments, GOI, GO Mizoram
Wildlife (Protection) Act	1972	To protect wildlife through conservation of National	Wildlife Division, Forests Department, GO

Act	Year	Objective	Responsible Institution
		Parks and Sanctuaries	Mizoram
National Forest Policy	1952	To maintain ecological stability through preservation and restoration of biological diversity	Forest Departments, GOI and GO Mizoram
National Forest Policy (Revised.)	1988		
Compendium of Environmental Guidelines, Rules of Business, Schedule II	1987	To determine which developments require EIA.	DOE, GO Mizoram
Water (Prevention and Control of Pollution) Act (and subsequent amendments)	1974	To control water pollution by controlling discharge of pollutants as per the prescribed standards	SPCB
Air (Prevention and Control of Pollution) Act (and subsequent amendments)	1981	To control air pollution by controlling emission of air pollutants as per the prescribed standards	SPCB & Transport Department.
Coastal Regulation Zone Regulations, and Notification on Coastal Regulation Zone	1990 1991	To restrict the establishment or expansion of industries, operations or process between the High Tide and Low Tide Lines	MOEF, DOE, SPCB
Central Motor Vehicle Act, Central Motor Vehicle Rules, Uttar Pradesh Motor Vehicle Rules	1988 1989 1989	To check vehicular air and noise pollution	Motor Vehicle Department, Mizoram
Ancient Monuments and	1938	Conservation of cultural	State Dept. of

Act	Year	Objective	Responsible Institution
Archaeological Sites and Remains Act.		and historical remains.	Archeology Archeological Survey of India
The Land Acquisition Act National Highways Act	1894 1956	Set out procedures for acquisition of land by government	Land and Land Revenue Department, Govt. of Mizoram
Public Hearing notification of MOEF of 10 th April, 1997	1997	Provide process of public hearing	SPCB.
Noise (Regulation & Control) Rules 2000	2001	Noise pollution regulation and controls	SPCB
<i>Biological Diversity Act</i>	2000	Prevents persons undertaking biodiversity related activities without approval from the National Biodiversity Authority. It extends to the whole of India, and approval is required from the National Biodiversity Authority.	MOEF
EIA notification, 14 th September, 2006	2006	Provide guideline for Environment clearance.	State Environment Department

MOEF – Ministry of Environment and Forest, SPCB –State Pollution Control Board, Mizoram , DOE – Department of Environment, DOF – Department of Forest.

3.5 Road Construction Standards, Norms and Management

Following the road construction standards, norms and management procedure has been adopted to keep the standards and guidelines maintained by the Indian Roads Congress (IRC):

- Guidelines for Environmental Impact Assessment of Highway Projects, IRC: 104-1988.
- Recommended Practice for Treatment of Embankment slopes for erosion control, IRC: 36-1974.
- Recommended Practice for Borrow pits for Road Embankment for Road manual operation, IRC: 10-1961.

- Recommended Practice for the construction of Earth Embankments for Road Works, IRC: 36-1970.
- Highway Safety Code, IRC, special publication no. 44.
- Guidelines on Bulk Bitumen Transportation and Storage Equipment, IRC, special publication 39.
- Recommended Practice for Tools Equipment and Appliances for Concrete Pavement Construction, IRC: 43-1972.
- Recommended Practice for use and Upkeep of Equipment, Tools and Appliances for Bituminous Pavement Construction, IRC: 72-197. Road Accident Forms A-1 and 4, IRC: 53-1982.

ANNEXURE 3.1

ENVIRONMENTAL LAWS, POLICIES & CIRCULARS IN CHRONOLOGICAL ORDER

- 1860** The Indian Penal code
1894 The Land Acquisition Act
1904 The Ancient Monument Preservation Act
1927 The Indian Forest Act
1947 The Water Act
1948 Factories Act 1948
1951 The industries (Development & Regulation) Act
1956 The National Highways Act
1958 The Ancient Monuments and Archaeological Sites and Remains Act
- United Nations Conference on the Human
Environment, Stockholm - June**
- 1972** The Indian Wild Life (Protection) Act
1974 The Water (Prevention & Control of Pollution) Act /// Criminal Procedure code
1975 The Water (Prevention & Control of Pollution) Rules
1977 The Water (prevention & Control of Pollution) Cess Act
1978 The Water(Prevention & Control of Pollution) Cess Rules
1980 Forest (Conservation) Act
1981 The Air (Prevention & Control of Pollution) Act
1982 The Air (Prevention & Control of Pollution) Rules
1983 The Air (Prevention & Control) (Union Territories) Rules
1984 The Explosives Act
1986 The Environment (Protection) Act
1987 National Water Policy
The National Highways Authority of India Act ///// The Motor Vehicle
1988 Act
1989 The Central Motor Vehicles Rules
The Public Liability Insurance Act /// The Public Liability Insurance
1991 Rules
1992 Policy Statement on Abatement of Pollution of 1992
1994 The EIA Notification
1997 Notification on EIA for Road Improvement Projects
1998 National Forest Policy // Circular on Linear Plantation on Road-sides and Railway Lines
1999 Circular on Marginal Land Acquisition and Bypasses
- 2000** Noise Rules 2000
Wildlife (Protection) Amendment Act / Biological Diversity Act /
Control of National Highways (Land & Traffic) Act
- 2002** Forest (Conservation) Rules / Highways Administration Rules /
- 2003** National Rehabilitation and Resettlement Policy
Biological Diversity Rules // National Environmental
2004 Policy(Draft)
- 2006** EIA notification