

Item No. 01

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 804/2017

Rajiv Narayan & Anr.

Applicant(s)

Versus

Union of India & Ors.

Respondent(s)

Date of hearing: 26.08.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s):

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For Respondent (s):

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Ms. K. Enatoli Sema, Advocate for State of Nagaland
Mr. Rahul Verma, AAG for State of Uttarakhand
Mr. Amit Tiwari, Advocate for State of UP
Mr. Pradeep Misra and Mr. Daleep Dhyani, Advocates for UPPCB
Mr. Mukesh Verma, Advocate for UEPPCB & MPCB
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ORDER

S.No.	CONTENTS	PARA No.
I.	Preface	1- 2
II.	Proceedings Before this Tribunal	3-7
III.	Constitution of Committee by CPCB and Direction to SPCBs/PCCs	8
IV.	Reports of the Committee, Action by the SPCBs/PCCs Further Reports of the CPCB and consideration by this Tribunal	9-
	• Interim Report dated	9

	29.01.2019 by the Monitoring Committee	
	• Order of the Tribunal dated 12.04.2019	10
	• Report of CPCB on Compensation regime	11
	• Final Report of the Committee dated 23.07.2019	12
	• Report dated 14.08.2019 by the CPCB with reference to compliance by the SPCBs/PCCs	13-16
V.	Consideration by this Tribunal	17-19
VI.	Directions	20

I. Preface

1. The matter has been taken up in continuation of order dated 12.04.2019 on the subject of review of compliance of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HOWM Rules).
2. Due to alarming situation created by generation and unscientific dumping of hazardous waste resulting in serious and irreversible damage to the environment and public health, the issue was considered by the Hon'ble Supreme Court *inter alia* in *Writ Petition No. 657/1995, The Research Foundation for Science, Technology and Natural Resource Policy Vs. Union of India & Ors., (2005) 10 SCC 510*. Directions were issued for preparation of a comprehensive report on illegal hazardous waste dump sites, inventory of generation of such waste, National Inventory for Rehabilitation of Hazardous Waste Dump Sites and Regulation of Import etc. The Hon'ble Supreme Court referred to Basel Convention and MARPOL Convention and also considered and accepted the recommendation of the High Powered

Committee on the subject of handling of hazardous waste generated by the ship breaking process and also the waste oil or such other material. MoEF&CC was directed to consider making a provision for bank guarantee by the importers using used oil, furnace oil and zinc waste to regulate illegal transboundary movement of hazardous waste. Directions were also issued for publication of toxic inventory and community participation. Timelines were prescribed for twenty nine specified activities to be undertaken by MoEF&CC, CPCB, SPCBs/PCCs. The matter was disposed of vide judgment dated 06.07.2012 reported in (2012) 7 SCC 769 reiterating continued compliance of earlier directions with further directions for scientific handling of hazardous waste including ship breaking, banning import of hazardous waste and reviewing and revising Hazardous Waste (Management and Handling) Rules, 1989 to cover the aspects not satisfactorily dealt with and also to provide adequate protection to the workers and the public.

II. Proceedings before the Tribunal

3. We may note the background of proceedings of this matter in this Tribunal. The Original Application (O.A No. 36/2012) sought regulation of polluting activities in Ghaziabad in the light of newspaper reports that Ghaziabad was topping the list of polluted areas. The application was disposed of on 13.01.2015 with certain directions. Thereafter while considering various reports on environmental pollution vide order dated 29.08.2017, scope of

proceedings was extended to all the states in the country relating to compliance of HOWM Rules, with following direction:

1. *“As to what is the total generation of hazardous waste in their respective States.*
 2. *Which agencies have been authorized in terms of rules to collect, transport, disposed of and the process of the hazardous wastes.*
 3. *What is the capacity of the plants which have been given due authorization for that purpose.*
 4. *What happens and how the remnant hazardous waste is being dealt with.*
 5. *The members who have been allotted any of the authorized plants and are not sending hazardous waste to those plants. What action the concerned authorities i.e. the State Government and the respective States and State Pollution Control Boards have taken so far, against such members. These details should be filed within one week from today.”*
4. Thereafter vide order dated 25.10.2017 the Tribunal disposed off the application with liberty to file independent application on the subject of HOWM Rules. This led to application being assigned new O.A No. 804/2017.
5. In the course of consideration of the said matter on 30.07.2018 the Tribunal noted the status of compliance of the HOWM Rules in various states and directed as follows:

“(i) All the States, where the hazardous waste is being generated must set up Treatment, Storage and Disposal Facility (TSDF) facility of adequate capacity at appropriate locations within three months from today and forthwith imitate action against erring units.

(ii) Central Government and Central Pollution Control Board must forthwith monitor the compliance of the rules by reviewing the need for action in all the states.

(iii) The Central Pollution Control Board may forthwith constitute a monitoring Committee for the purpose it may appoint a Nodal Officer exclusively to oversee the compliance of the rules. The Member Secretary CPCB may act as a Nodal Officer till a substitute is found. The action taken must be placed on the website of the

Central Pollution Control Board within 3 months from today. Compliance report be filed before this Tribunal on or before 30th November, 2018, which will be treated as a separate application.”

6. On 18.07.2018, the Hon'ble Supreme Court considered the prayer to deal with the issues which according to the applicant had not been earlier covered. The said issues were transferred to this Tribunal. The application mentioned the said issues to be as follows:

- A. Preparation of a National Inventory of Hazardous wastes;*
- B. Complete identification and registration of Hazardous wastes generating units in the country;*
- C. Construction of TSDF/Land fills;*
- D. Hazardous Waste Dump Sites;*
- E. Waste oil/used oil read with the order dated 23.10.2007;*
- F. Setting up of laboratories at the dock/ports;*
- G. Institutional Reforms in MoEF, CPCB, SPCB, PCC;*
- H. National policy documents on Hazardous Wastes as well as cleaner technology;*
- I. Regarding workers handling hazardous wastes.”*

7. In pursuance of the above M.A No. 1302/2018 was filed before this Tribunal. Vide order dated 05.12.2018, this Tribunal directed that the issues being connected to the implementation of judgment dated 06.07.2012 of the Hon'ble Supreme Court may be considered by the Committee constituted by the CPCB in pursuance of order of this Tribunal dated 30.07.2018 on 09.08.2018.

III. Constitution of Committee by CPCB and Direction to SPCBs/PCCs

8. We may note that the CPCB in compliance of the order of this Tribunal constituted a Monitoring Committee on 09.08.2018 and issued directions on 30.01.2019 to all the SPCBs/PCCs as follows:

“a) Ensure that all the solvent recovery industries in the state have mandatory Authorisation for the same in compliance with the SOP and Checklist issued by CPCB for solvent recovery units, within one month. The said SOP and checklist have been circulated to all SPCBs/PCCs vide letter no. B29016/(SC)/1(55-IV)/17-18/WMII/18152-86 dated 08/3/2018 and is also available at CPCB website http://cpcb.nic.in/uploads/hwmd/utilizaionspent_solvent.pdf.

b) Ensure that these solvent recovery industries shall immediately follow the SOP, for safe and scientific spent solvent handling, processing and storage.

c) Ensure that such solvent recovery units shall comply with the provisions of HOWM Rules, 2016, in terms of interstate transport of Hazardous waste and manifest document prescribed under Rule 18 and 19 of the HOWM Rules, 2016, with immediate effect. Stringent action be taken against the erring industries who are giving the spent solvent to such recycling industries without following the manifest systems.

d) Conduct industry interaction programs within a month to create awareness and sensitization on HOWM Rules, 2016 with all the stakeholder industries of Spent Solvent generation/utilization.

e) Prepare an inventory of such solvent recovery units and publish the same on their website for information of all, stakeholders within one month with copy to CPCB within one month.”

**IV. Reports of the Committee, Action by the SPCBs/PCCs Further
Reports of the CPCB and consideration by this Tribunal**

9. **Interim Report dated 29.01.2019 by the Monitoring Committee -**

The Monitoring Committee gave its interim report dated 29.01.2019 under the following headings:

1. *Hazardous waste identification: - Uniformity in assessment, Byproducts and solvents (Details in Chapter 4 – Section 4.1.1)*
2. *Grant of Authorisation by SPCBs/PCCs (Details in Chapter 4 – Section 4.1.2)*
3. *Inventory (Details in Chapter 4 – Section 4.2)*
4. *Enforcement actions. (Details in Chapter 5)*
5. *Hazardous waste utilisation and recycle. Issues and need of improvements (Details in Chapter 4 – Section 4.3)*
6. *Common Treatment, Storage and Disposal facilities: reporting. (Details in Chapter 4 – Section 4.5)*
7. *Contaminated sites: Status, identification, need of urgent action, investment, capacity building, guidelines. (Details in Chapter 4 – Section 4.7)*
8. *Impact of other regulations (Details in Chapter 4 – Section 4.2)*
9. *Import and export. (Details in Chapter 4 – Section 4.6)*
10. *Capacity building in CPCB and SPCBs/PCCs and other agencies (trained adequate manpower, laboratory, budget) (Details in Chapter 4 – Section 4.7 and 4.8)*
11. *Duties performed by State/UT Govt. as stipulated under the HOWM Rules, 2016 (Details in Chapter 5)*

On each of the above subjects, the Committee made recommendations for time bound action.

10. **Order of the Tribunal dated 12.04.2019**- The report was considered by the Tribunal on 12.04.2019. The Tribunal accepted the recommendations and directed the Chief Secretaries of the States at the State level and Ministry of Environment, Forest and Climate Change (MoEF&CC) and CPCB at the national level to monitor the compliance of the recommendations. The Committee was directed to complete its remaining task within three months. The CPCB was to complete its report on the regime of compensation for violation of the HOWM Rules.

11. **Report of CPCB on Compensation regime** - Learned Counsel for the CPCB states that as per order of this Tribunal dated 12.04.2019, report dated 10.05.2019 has been prepared on the subject of compensation regime and will be filed, if the same has not been earlier filed.

12. **Final Report of the Committee dated 23.07.2019**- The CPCB has also filed "Final Report of Monitoring Committee on Management of Hazardous Waste" on 23.07.2019. The issues dealt with in the report are:

- I. Contaminated Sites and Related Issues
- II. Import and Export of Hazardous Wastes and Issues
- III. Waste Reception Facilities for wastes generated from ships and issues
- IV. Impact of HW on Workers' Health
- V. Status of compliance of issues with regard to orders of Hon'ble Supreme Court dated 14.10.2003

The committee has suggested disposal of accumulated waste through Treatment, Storage and Disposal Facilities (TSDFs) or on-site secured landfilling (SLF), preparation of guidelines for identification and assessment of contaminated sites, capacity building programme for officials of SPCBs/PCCs to deal with the subject, assessment of 195 sites for probable contamination, resolution of issues relating to financial arrangement between Central-State Government for remediation of contaminated sites, revising policy framework, speedy disposal of confiscated consignments imported illegally, upgrading the laboratories, finalizing procedure for taking bank guarantee from importers to safeguard against illegal import of hazardous waste, strengthening risk management systems while verifying documents for import of waste, laying down requirement of reception facilities at each cargo loading and unloading port, terminal and ship repair ports providing safeguards for the workers handling the waste, institutional reforms and finalizing a national policy for effective enforcement of the HOWM Rules. Summary of observations and recommendations of the Committee are as follows:

Sl. No.	Observations	Proposed Actions (Responsible Agency and timeline of action)
I. CONTAMINATED SITES AND RELATED ISSUES		
1	<p>Disposal of hazardous wastes accumulated at identified sites:</p> <p>(i) The Committee has observed that there are several contaminated dumpsites in various parts of country where hazardous and other wastes were</p>	<p>(i) CPCB/SPCBs/PCCs to ensure that the hazardous waste accumulated at all such identified sites shall be disposed of either through Treatment, Storage and Disposal Facilities (TSDFs) or on-site secured landfilling (SLF) on</p>

	<p>dumped historically, which resulted in contamination of soil, groundwater and surface water thereby posing health and environmental risks.</p>	<p>priority to stop further contamination</p> <p>(CPCB/ SPCBs/PCCs: 06 months)</p>
2	<p>Guidelines for Identification and Assessment of Contaminated Sites:</p> <p>(i) The Committee notes that CPCB is working on standard uniform identification and assessment guidelines for the probable contaminated sites and any new additional sites, such guidelines will bring a consistency and uniformity in dealing with the contaminated sites issues.</p>	<p>(i) For a consistent and uniform application and approach across the country, guidelines for identification and assessment of contaminated sites shall be published.</p> <p>(CPCB: 03 months)</p>
3	<p>Assessment and remediation of Contaminated sites:</p> <p>(i) The Committee has observed that there is a need of awareness and capacity building in SPCBs/PCCs on the entire remediation process including identification, detailed assessment, DPR preparation and execution of remediation.</p> <p>(ii) Further, the committee notes with regret that even today there are about 195 probable contaminated sites (329- 134) which needs a thorough assessment for its confirmation as contaminated site or otherwise. Though the DPRs of 17 sites out of 21 are prepared under NCEF Project and the same have been forwarded to respective State Governments and State Boards. However, no remediation efforts have been initiated at such sites.</p>	<p>(i) Capacity building program for officials of SPCBs/PCCs on the entire process of remediation, which may include practical training on use of tools for soil and groundwater screening such as hand-held XRF instruments, Colorimeter, PID for VOCs/ SVOCs, hand operated augers, groundwater pumps, level meters, etc. shall be organized by CPCB.</p> <p>(CPCB: 06 months)</p> <p>(ii) Assessment of about 195 probable contaminated sites and any new additional sites recommended by CPCB/SPCBs/PCCs shall be completed within period of 1 year after publication of such guidance document by CPCB.</p> <p>(CPCB/SPCBs/PCCs: 1 year)</p> <p>(III) For effective implementation of the remediation plan at State level, Empowered Monitoring Committee chaired by Principal Secretary, Department of Environment having</p>

		<p>representatives from department of Industries, SPCB/PCC, Ground water development agency, etc. shall be constituted.</p> <p>(State Govt: 04 months)</p>
4	<p>Financial Arrangements for remediation of contaminated sites:</p> <p>(i) The Committee while taking note of public trust doctrine read with provisions of section 9 of E (P) Act, it is the duty of the Govt. both Central and State to protect environment by taking remedial measures irrespective of the financial arrangements which seems to be a matter of ongoing deliberations.</p>	<p>(i) Financial arrangements between Central-State Governments for the proposed remediation projects shall be resolved immediately so that the remediation works as proposed in DPRs can be undertaken on priority. These DPRs (2017-18 and 2018-19) may need to be revisited if no action is taken in a reasonable time for execution of remediation works.</p> <p>(ii) Govt. should take up on priority not only remediation projects at the sites where DPRs have been prepared but also the assessment of about 195 sites, besides any new addition of potentially contaminated site, if any. (MoEF&CC/State Govt.: 06 months)</p>
5	<p>Networking of Academic and Research Institutes:</p> <p>(i) Execution of remediation program would require necessary interdisciplinary expertise at the SPCBs/PCCs. The CPCB/SPCBs/PCCs may find it difficult to work on these aspects unilaterally and therefore there has to be coordination and information sharing among these agencies beside developing a network of academic and research institutes which can help in creating an "Expertise Pool". (ii) The committee also notes that a part of such capacity building efforts specific action research programs can be initiated by these agencies and more particularly</p>	<p>(i) MoEF&CC/CPCB/SPCBs/PCCs shall undertake action research and also promote academic courses on this subject in association with academic and research institutions. (MoEF&CC/CPCB/ SPCBs/PCCs: 06 months)</p>

	<p>professional courses on remediation and restoration can be sponsored at academic/research institution which will help to create a critical mass of expertise in this subject.</p>	
<p>II. IMPORT AND EXPORT OF HAZARDOUS WASTES AND ISSUES</p>		
5	<p>Disposal of illegally imported consignments:</p> <p>(i) In case of confiscated items, responsibility to dispose lies with Customs. CBIC vide Circular No.31/2004- Cus, dated 26-4-2004 has referred to the orders of the Hon'ble Supreme Court in the matter of WP(C) 657/1995 for disposal of hazardous waste. The committee observed that the above circular needs to be amended for disposal of hazardous waste including allocation of fund by the concerned agency for bearing the cost of disposal.</p> <p>(ii) The committee observed that in case of unclaimed/uncleared consignments (where the claimants of the goods/wastes are nontraceable), disposal is to be carried out by port authorities/ICDs (custodian of the unclaimed/uncleared consignments) in consultation with customs and considerable delay in clearing those consignments lying in ICDs/CFSS is a major concern as also referred in the CAG Report.</p>	<p>(i) The customs circular dated 26-4-2004 requires amendment by Central Board of Indirect Taxes and Customs (CBIC) and it is recommended that CBIC to also devise policy framework for speedy disposal and bearing the cost of disposal of confiscated consignments (illegal / banned and non-conformity to the specifications of the products as applicable / as per Schedule V of HOWM Rules, 2016).</p> <p style="text-align: center;">(CBIC: 03 months)</p> <p>(ii) Port authorities/ICDs may also devise a policy, if necessary, in consultation with customs, to ensure HW disposal and its cost so as to expedite the disposal all the unclaimed cargo lying at various ports (and CFSS)/ICDs in a time bound manner.</p> <p style="text-align: center;">(Port Authorities: 03 months)</p>
6	<p>Laboratory Upgradation in Ports/Docks:</p> <p>(i) For upgradation and setting up of laboratories at various docks/ports to prevent entry of hazardous waste, Customs have informed that the revenue</p>	<p>(i) The committee is of the opinion that list of equipments as provided by CBIC for upgradation shall also be provided at major ports, with import and export facilities by CBIC. However, at other ports, arrangements for analysis of</p>

	<p>laboratories at 05 zones (Chennai, Delhi, Kandla, Kolkata and Mumbai) were identified for upgradation for testing of Hazardous waste as per the directions of the Hon'ble Supreme Court on 11.06.2004. Process of replacing nonfunctional equipments required for testing of Hazardous Waste is being further undertaken with the latest configuration/specification and technology. Further details of the laboratory facilities available in customs for analysis of hazardous materials in those five locations were also provided by customs.</p>	<p>relevant parameters with EPA/NABL accredited laboratories having minimum requisite laboratory infrastructure/equipment can be put in place in advance by CBIC.</p> <p style="text-align: center;">(CBIC: 03 months)</p>
7	<p>Bank Guarantee procedure:</p> <p>(i) Para 2.35 of Foreign Trade Policy 2015-20 stipulates that wherever any duty free import is allowed or where otherwise specifically stated, importer shall execute, Legal undertaking (LUT) / Bank Guarantee (BG) / Bond with the customs authority, as prescribed, before clearance of goods. However, execution of the same has not been clarified by DGFT and Customs.</p>	<p>(i) Applicability of bank guarantee for the list or category of items and procedure of executing BG by importer/PSIAs, as applicable, need to be specified by DGFT.</p> <p style="text-align: center;">(DGFT: 03 months)</p> <p>(ii) Procedure of executing bank guarantee by PSIAs and importer in case of import of restricted items (including hazardous wastes specified under Schedule III and VIII) and other items respectively, be devised and mandated by DGFT.</p> <p style="text-align: center;">(DGFT: 03 months)</p>
8	<p>Verification of documents for HW in Part D:</p> <p>(i) Schedule VIII of HOWM Rules, 2016 lays down list of documents for verification by customs for import of other wastes (specified in Part D of Schedule III of the said Rules). For instance, in the CAG report, it has been reported that 49 consignments of restricted goods viz., steel sheets, steel melting scrap etc. were cleared by Customs in four ICDs (viz.,</p>	<p>(i) CBIC shall strengthen their Risk Management System (RMS) for improved vigilance while verifying documents for import of other wastes (Part D of Schedule III of HOWM Rules, 2016) especially those goods/wastes that are similar to hazardous wastes (regulated or banned/prohibited for import), as there is a possibility that prohibited wastes are imported under the other wastes category.</p>

	Chennai, Marmagao, Ahmedabad and Shillong) for importation without proper documents such as clearance from MoEF, conditions as specified in Schedule 1 and 2 of ITC(HS) policy etc.	(CBIC: immediate)
9	<p>RMS system:</p> <p>(i) The customs authorities use the risk management system (RMS) to enable low risk consignments to be cleared based on the acceptance of the importer's self-assessment and without examination. Roughly 30 percent of containers covered under risk management out of which 10 percent are physically verified. There are different types of waste streams which have not been integrated in the RMS. There is a need to review the import/export data of various waste streams and include them in RMS. Further, waste streams in Schedule III – Parts A, B and D and Schedule VI that are often mis-declared by importers need to be identified and added to the RMS.</p> <p>(ii) RMS has to be made robust so as to cover all the hazardous goods or consignments listed with HS code classification in accordance with ITC (HS) policy, 2017 for complete verification and testing of the consignments.</p>	<p>(i) There is need to synchronize Basel code and HS codes to cover all scheduled items as per HW rules in customs verification and control more effectively.</p> <p>(MoEF&CC, Custom and Port Authorities: 06 months)</p> <p>(ii) In order to tackle illegal import of HW consignments (misdeclaration) and those similar to unrestricted items without HS code, such items need to be identified and classified with HS code and brought under the ambit of RMS for stringent verification and testing procedure (for example 'other' waste oil, 'other' oils, furnace oil, Rubber/Tyre oil, Lead / Zinc scrap etc. with hazardous characteristics beyond the limits specified in the HOWM Rules, 2016 be classified with HS Code).</p> <p>(CBIC and DGFT: 06 months)</p> <p>(iii) This process is a continuous process and the monitoring committee recommends that this compliance be reviewed jointly by MoEF&CC and Customs in their coordination meetings.</p> <p>(MoEF&CC, Custom authority: on a regular basis)</p>
10	<p>DGFT license in public domain:</p> <p>(i) Details of licenses issued to import restricted items not placed on DGFT website, which may require to be communicated to the</p>	<p>(i) Details of licenses issued to import restricted items be placed on DGFT website so as to keep the concerned agencies such as Customs and MoEF&CC informed.</p>

	concerned agencies such as Customs and MoEF&CC.	(DGFT: 03 months)
11	<p>Harmonization of ‘other’ category in line with HWM Rules, 2016:</p> <p>(i) Harmonization of Basel codes with ITC (HS codes): The Ministry (MOEF) provides permission on the basis of Basel codes while DGFT uses HS codes. There is a need to synchronize the two codes to avoid confusion.</p> <p>(ii) Import of items under ‘other’ waste oil (ITC code: 2710 99 00) are restricted, however these items are not clearly specified. As the item ‘other’ (ITC code: 2710 19 90) along with certain list of oils are allowed freely, so there is a possibility of import of used/waste oil under the garb of oil under the ‘other’ category.</p> <p>(iii) No HS code has been specified categorically for any of the hazardous and other wastes except for metal scrap and waste oil.</p>	<p>(i) Items that require to be provided with HS code under the classification of oils be specified categorically under the ‘other’ class in consultation with MoEF&CC.</p> <p>(DGFT: 06 months)</p> <p>(ii) HS code for all the hazardous and other wastes listed in Part A, Part B and Part D of Schedule III of the Rules be specified by DGFT and Customs. The Committee recognizes that notifying HS code is an elaborate and time consuming procedure which requires international deliberations and confirmation and therefore the committee recommends to strengthen the RMS which can provide an expeditious alternative safeguard mechanism.</p> <p>(DGFT and Customs: 03 months)</p>
12	<p>Pre-shipment Inspection Agency (PSIAs) for certain category of oils as per Annexure 13 of the ASG Report:</p> <p>(i) Pre-shipment Inspection Agencies (PSIA) notified by DGFT are available for metal scrap wastes only and there is a need for pre-shipment inspection for certain category of oils (i.e. list of oils suggested for pre-shipment inspections certificate for imports in the Recommendations of the former ASG, Sh Gopal Subramaniam.</p>	<p>(i) Initiatives similar to that of metallic scrap wastes be taken by DGFT for notifying PSIAs for certain category of oils suggested for pre-shipment inspections certificate for imports in the Recommendations of the former ASG, Sh Gopal Subramaniam.</p> <p>(ii) Once the PSIAs procedure are specified, the same must be shared with MoEF&CC, CPCB/SPCBs/PCCs and other regulatory authorities.</p> <p>(DGFT: 06 months)</p>

13	<p>Penal Action against the defaulters in case illegal import:</p> <p>(i) Section 135 of Customs Act lays down provisions for prosecution of importer for the offences such as mis-declaration of value or fraudulent evasion or attempt at evasion of any duty or any prohibition, where the person is liable to be punished with imprisonment for a term exceeding up to seven years and with fine. Violations with regard to prohibited goods, namely, hazardous and other wastes are not categorically notified under section 135.</p>	<p>(i) As a means to improve traceability of importers, the Customs authorities could make the registration process of importers more stringent as there have been cases where importers have never been able to be traced when their illegal imports were intercepted. All incidences of illegal import of HW shall be immediately reported to MoEF & CC as per provisions of the Rules.</p> <p>(MoEF&CC, DGFT, Custom and Port authorities: 03 months)</p> <p>(ii) In case of illegal import of hazardous wastes, MoEF&CC may consider delegation of power vested under section 19 of the Environment (Protection) Act, 1986 to CBIC, to enable them to take credible action against such violators under the E(P) Act, 1986.</p> <p>(MoEF&CC: 06 months)</p>
14	<p>Re-export of illegal consignments after confiscation:</p> <p>(i) With regard to re-export of illegally imported items DGFT has referred to a recent order of Hon'ble High Court of Kerala, where in the case pertaining to import of Multifunctional Devices (MFDs) without permission/license from DGFT, the Hon'ble High Court had directed that the powers to direct importers to re-export lies with the DGFT under FT (D&R) Act, 1992 and not with the customs authorities.</p>	<p>(i) As of now, DGFT can take action against the erring importers as per the provisions of Foreign Trade (Development & Regulation) Act, 1992, since the feasibility of delegating such powers to the Customs Authorities is being examined in DGFT. The committee recommends to expedite the process in a time bound manner (preferably within 3 months) so as to ensure speedy disposal of consignments lying in ICDs/CFSs.</p> <p>(DGFT: within 03 months)</p>
15	<p>Clearance of Waste Oil/Sludge from Ships:</p> <p>(i) Used/ Waste Oil generated from</p>	<p>(i) Used/ Waste Oil generated from ships collected by the reception facilities of various ports shall be covered under Authorisation by</p>

	<p>ships are collected by the reception facilities of various ports without authorization by concerned SPCBs/PCCs.</p> <p>(ii) Therefore, Waste oils may get disposed illegally in the garb of waste oil from ships under the obligation of MARPOL.</p>	<p>SPCBs/PCCs for its designated disposal and facilitate tracking of waste under HOWM Rules, 2016.</p> <p>(Port Authorities/ SPCBs/PCCs: Immediate)</p>
16	<p>Findings of CAG Report:</p> <p>(i) Findings and recommendations of Report No. 16 of 2018 of the Comptroller and Auditor General of India on 'Performance Audit of Inland Container Depots (ICDs) and Container Freight Stations (CFSs)' needs to addressed by concerned agencies such as port authorities and customs.</p>	<p>(i) CBIC shall prepare annual inventory of the illegally imported consignments stored in Ports/ICDs/CFSs and submit the same to CPCB and MoEF&CC by 30th September of every year and publish on its website.</p> <p>(ii) Wherever importer of illegally imported consignments is traceable, importer shall not be allowed to import/export, directly or indirectly any material until illegally imported consignments is safely disposed off scientifically as per HOWM Rules, 2016.</p> <p>(Customs, Port Authorities and DGFT: 03 months)</p>
17	<p>Authorization under HWM Rules, 2016 from concerned SPCB/PCC:</p> <p>(i) Custom and Port authorities have not obtained requisite authorization for handling, storage, transportation, recycling, utilization, offering for sale, transfer or disposal, as the case may be, from the State Pollution Control Board.</p>	<p>(i) Necessary authorization for handling, storage, transportation, recycling, utilization, offering for sale, transfer or disposal, as the case may be obtained by Customs and Port authorities to deal with the hazardous wastes that are confiscated and waste from ships respectively.</p> <p>(Port authorities and Customs: Immediate)</p>
18	<p>Collaboration between regulating authorities:</p> <p>(i) The committee observed that regulatory agencies such as Ministry of Environment, Forest and Climate Change, CPCB,</p>	<p>(i) Regular interaction between the Ministry of Environment, Forest and Climate Change, CPCB, SPCBs/PCCs, customs and ports authorities should take place with frequent consultative meetings and trainings in order to avoid working</p>

	SPCBs/PCCs, customs and ports authorities do not interact on a regular basis.	in silos. (MoEF&CC, CPCB, SPCBs/PCCs, customs and ports authorities: On a regular basis)
III. WASTE RECEPTION FACILITIES IN PORTS TO DEAL WITH WASTES GENERATED FROM SHIPS (MARPOL)		
19	<p>Availability of Waste Reception Facilities at ports:</p> <p>(i) In accordance with the orders of the Hon'ble SC, the Ministry of Shipping has to notify availability of reception facilities as per MARPOL Convention. No clear information could be received from DG(shipping) who represented Ministry of Shipping in the interactions with the committee.</p> <p>(ii) According to notification dated 07th Jan 2010 of Department of Shipping the Central Government is required to determine the types of facilities required for the purpose of provision of reception facilities at each cargo loading and unloading port, terminal and ship repair port and notify the organization thereof.</p>	(i) Ministry of Shipping needs to urgently prescribe requirement of reception facilities at each cargo loading and unloading port, terminal and ship repair ports preferably within 06 months, if not done earlier, and such reception facilities shall be provided by such authorities within a period of one year thereafter. (Ministry of Shipping: 06 months and 01 year)
20	<p>Authorization for the waste reception facilities and ports:</p> <p>(i) The committee observed that Port authorities have not obtained authorization under HW rules for waste reception facilities in ports to deal with wastes generated from ships. The annual report of wastes generated and disposed are not reported to concerned SPCBs/PCCs. Concerned SPCBs/PCCs need to enforce provisions of HOWM Rules, 2016.</p>	(i) State Pollution Control Boards shall enforce provisions of HW Rules, 2016 for grant of authorisation and manifest submissions at such waste reception facilities as well as port operations. SPCBs shall ensure that the HW handled at such facilities and ports should be covered in the Annual report to be prepared as per HOWM Rules, 2016. (SPCBs/PCCs and Port Authority: with immediate effect)
21	<p>Swachh sagar portal:</p> <p>(i) DG(S) has developed</p>	(i) The committee recommends Ministry of Shipping to ensure that

	<p>Centralized port reception facility portal: Swachh sagar which is an online system to facilitate early information sharing of waste category and quantity by ships to the port authorities. The committee was informed that this online information management system is not widely and regularly used at several ports.</p>	<p>all the major and nonmajor ports utilize the Swachh sagar online portal immediately which will ensure better HW management. The MoEF&CC/CPCB/SPCBs should also have an access to this portal for enforcement purpose.</p> <p>(Ministry of Shipping: 03 months)</p>
IV. IMPACT OF HW ON WORKERS' HEALTH		
22	<p>Coverage of all workers under ESI act, 1948:</p> <p>(i) The Special Committee constituted by Apex Court has recommended all workers (covered under ESI Act, 1948 and not covered under ESI Act, 1948) to get medical benefits and compensation under ESI Act, 1948. However, the recommendations of the Report of the Special Committee, May 2004 has not been implemented.</p>	<p>(i) The committee recommends that all the workers engaged in HW handling, storage, transport, preprocessing, utilisation and disposal (covered under ESI Act, 1948 and not covered under ESI Act, 1948) need to get medical benefits and compensation under ESI Act, 1948 as per the recommendations of the Report of the Special Committee, May 2004 and the same be implemented on priority.</p> <p>(Ministry of Labour & Employment: 03 months)</p>
23	<p>Implementation of Rule 5(2) of HOWM Rules, 2016:</p> <p>(i) The committee regrets to note that most of the State Labour Departments are not fully aware of the responsibility cast upon them under Rule 5(2) of HW Rules, 2016 and have not complied with.</p>	<p>(i) The committee recommends Hon'ble Tribunal to direct Chief Secretaries of States to ensure effective and urgent implementation of the provisions of the rules as stipulated under Rule 5(2) of HOWM Rules, 2016 by Department of Labour. (Department of Labour, Respective State/UT Government: Immediate)</p>
24	<p>Unauthorized industries be brought under the ambit of ESI Act, 1948:</p> <p>(i) It is a known fact that there are several unauthorized industries involved in hazardous waste handling like EWaste processing, battery recycling, solvent reuse</p>	<p>(i) Ministry of Labour need to devise a scheme similar to the provisions of ESI Act, 1948 to cover the workers employed in unorganized sector. (Ministry of Labour & Employment : 06 months)</p>

	<p>etc., which employ significant number of workers. It is necessary that all such industries need to be regulated by concerned SPCB/State labour department so that the workers employed therein are brought under the ambit of health and other social support scheme similar to the provisions of ESI Act, 1948.</p>	
25	<p>Implementation of provisions of statute for safety and health of all workers handling HW:</p> <p>(i) The scope of Rule 5(2) of Hazardous Waste (Management and Transboundary Movement) Rules, 2016 is restricted to only workers involved in Recycling, Preprocessing and other utilization activities. As per recommendations of Expert Committee constituted by Apex court, the scope of such health related considerations need to be for all persons handling hazardous waste.</p>	<p>(i) The Monitoring committee is of the view that even at HW generating industry/activity, the workers involved in HW handling including storage and transportation and also in-plant reuse/ recycle/ reutilization will also be exposed to similar environmental health risks. Therefore, the committee recommends that MoEF&CC may examine the same and may consider amendment of the ambit of Rule 5(2) of HOWM Rules, 2016.</p> <p>(MoEF&CC: 06 months)</p>
26	<p>DISPLAY OF INFORMATION OUTSIDE THE FACTORY GATE:</p> <p>(i) The committee notes with regret that many of the SPCBs/PCCs have not responded to the correspondence of CPCB in this regard.</p> <p>(ii) The committee has also observed non-compliances with regard to display of information outside the factory gate in most of the States/UTs inspected by CPCB.</p>	<p>(i) Considering the orders of the Hon'ble Apex court and also the need of information sharing with the local community the committee recommends that the SPCBs need to ensure the compliance of the directions of the Hon'ble Apex court on regular basis rather than a onetime compliance.</p> <p>(ii) The verification of the updation of display board should be an integral part of any inspection carried out by CPCB/SPCBs/PCCs without exception. In case of noncompliance the concerned officer should be subjected to departmental actions.</p> <p>(CPCB/SPCBs/PCCs: Immediate)</p>
27	<p>INSTITUTIONAL REFORMS:</p>	<p>(i) Capacity building in CPCB and</p>

	<p>(i) The committee is of the opinion that there is an urgent need to develop an appropriate and sound institutional framework at SPCBs consisting sound policies, trained and experienced manpower, necessary infrastructure including the laboratories besides having proper enforcement protocol at the State and Central Board level for the effective enforcement of the HW rules.</p> <p>(ii) The committee is of the opinion that there is a need of impetus for action research specifically in the areas of green chemistry, cleaner technology, waste minimization, circular economy and LCA by SPCB/CPCB. It is also necessary that findings of such research shall be shared among all the stakeholders so that there can be environmental benchmarking of the relevant processes across the country.</p>	<p>SPCBs/PCCs and other agencies (viz., trained adequate manpower, laboratory, budget etc.) shall be expedited as recommended in the orders of Hon'ble NGT dated 12.04.2019.</p> <p>(CPCB, SPCBs/PCCs, MoEF&CC and State/UT Government: Immediate)</p> <p>(ii) The committee recommends that CPCB/SPCBs/PCCs shall take efforts similar to that of the State of Gujarat where a separate institution named Gujarat Cleaner Production Centre (GCPC) which conducts such action research supported by adequate information dissemination program and advocacy programs for promoting the cleaner technology.</p> <p>(iii) CPCB/SPCBs/PCCs shall proactively engage in research and development activities by supporting research in clean technology and cleaner production and also, awareness program for the purpose.</p> <p>(CPCB and SPCBs/PCCs: Immediate)</p>
28	<p>NATIONAL POLICY:</p> <p>(i) HW management is a complex technical and scientific subject which require a multidisciplinary approach for the effective management and enforcement of HOWM Rules, 2016. There is a continuously improving understanding and knowledge about the impacts of Hazardous material at the national and international level. India is also an important stakeholder in many international treaties and conventions in the field of Hazardous chemicals and wastes</p>	<p>(i) MoEF&CC can examine the need of having specialized HW policy which can be appropriately aligned with the National Environment Policy (NEP), 2006 which will promote use of Clean Technology and also ensure sufficient financial allocations for technology research and information sharing resulting into improved HW management.</p> <p>(MOEF&CC: 06 months)</p>

	<p>besides other environmental issues. There is a need of further documentation as well as policy framework for promotion of Clean Technology, financial incentives and research.</p>	
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13. **Report dated 14.08.2019 by the CPCB with reference to compliance by the SPCBs/PCCs-**

An action taken report on implementation of recommendation of the Monitoring Committee of Management of Hazardous Waste has also been filed by the CPCB in terms of order dated 12.04.2019 on 14.08.2019 on the subject of compliance of the directions with regard to solvent recovery units.

The recommendations of the CPCB are as follows:

“Recommendations:

1. *It is recommended that SPCBs/PCCs (namely Assam, Bihar, Delhi, Haryana, Jammu & Kashmir, Lakshadweep, Manipur, Tripura, Uttar Pradesh, Uttarakhand and DDD&NH) may be directed to submit the compliance status on the directions issued by CPCB as the same has not received from these SPCBs/PCCs*
2. *SPCBs/PCCs of Goa, Karnataka, Maharashtra and Odisha, to ensure that that all the authorized solvent recovery units in States are verified for compliance to CPCB’s SOP.*
3. *It is recommended that SPCBs of Andhra Pradesh, Goa, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan, Telangana and West Bengal to ensure enforcement of manifest system as per the provisions of HOWM Rules, 2016 and initiate action against the erring units.*
4. *SPCBs of Himachal Pradesh, Madhya Pradesh and Rajasthan to immediately prepare inventory of Spent Solvent Recovery Unit available in their States and publish*

the same on their website. Further, all the SPCBs/PCCs having Spent Solvent recovery units to ensure updation and publishing of the inventory at their website on regular basis.

5. *It is recommended that SPCBs/PCCs of Rajasthan, Odisha, Goa and Punjab, shall immediately conduct interaction programs to create awareness and sensitization on HOWM Rules, 2016 with stakeholders of Spent Solvent generation/utilisation.”*

14. It may be noted that the directions of the CPCB dated 30.01.2019 on the subject are as follows:

- a) *Ensure that all the solvent recovery industries in the state have mandatory Authorization for the same in compliance with the SOP and Checklist issued by CPCB for solvent recovery units, within one month. The said SOP and checklist have been circulated to all SPCBs/PCCs vide letter no. B-29016/(SC)/1(55-IV)/17- 18/WM-II/18152-86 dated 08/3/2018 and is also available at CPCB website http://cpcb.nic.in/uploads/hwmd/utilizaion_spent_solvent.pdf.*
- b) *Ensure that these solvent recovery industries shall immediately follow the SOP, for safe and scientific spent solvent handling, processing and storage.*
- c) *Ensure that such solvent recovery units shall comply with the provisions of HOWM Rules, 2016, in terms of interstate transport of Hazardous waste and manifest document prescribed under Rule 18 and 19 of the HOWM Rules, 2016, with immediate effect. Stringent action be taken against the erring industries who are giving the spent solvent to such recycling industries without following the manifest systems.*
- d) *Conduct industry interaction programs within a month to create awareness and sensitization on HOWM Rules, 2016 with all the stakeholder industries of Spent Solvent generation/utilization.*
- e) *Prepare an inventory of such solvent recovery units and publish the same on their website for information of all*

stakeholders within one month with copy to CPCB within one month.”

15. The report finds following deficiencies in compliance of recommendations of the Committee and orders of this Tribunal by the States, the CPCB and the SPCBs/PCCs:

“4.1. BY STATE/UT DEPARTMENTS

- I. Recommendation No. 6.4: It is necessary that the Hon’ble NGT orders dated 30/07/2018 with regard to setting up of TSDF and taking imitate actions against erring units be strictly complied with by the concerned State/UT Government and SPCBs/PCCs. (State/UT Governments and SPCBs/PCCs: immediate).*
- II. Recommendation No. 7.5: In case of the contaminated sites where the polluter is not identified, the State/UT Government would be required to finance remediation of such sites to safeguard the people living in contaminated areas from adverse health effects, in terms of their constitutional responsibility to protect and improve the environment. (States/UTs Government and SPCBs/PCCs)*
- III. Recommendation no. 10.3: SPCBs/PCCs and CPCB needs capacity building in terms of qualified and experienced manpower and also, tools and techniques for effective governance. Committee is informed about steps being taken by SPCBs and would review the same in detail. (MoEF&CC, State/UT Government, CPCB and SPCBs / PCCs: Immediate)*
- IV. Recommendation no. 11.1: There is need to sensitize State/UT Govts. about duties required to be performed by the concerned department/agency as stipulated under Rule 5(1), 5(2), 5(3) and Schedule VII of the HOWM Rules, 2016. Hon’ble NGT may issue appropriate directions in this regard. (All State/UT Govts.: Immediate)*

4.2. BY CENTRAL POLLUTION CONTROL BOARD (CPCB)

- I. Recommendation no. 1.1: There is a need to urgently prepare a guidelines or protocol on how to decide the by-*

product on specific criteria. This can be done based on chemical process involved in order to bring consistency in approach. (MoEF&CC and CPCB: 06 months)

- II. *Recommendation no. 1.4: Pan India IT based solution is suggested for tracking HW. Such integrated data handling and management solution is under implementation by CPCB which the committee would like to review in next phase.*
- III. *Recommendation no. 3.1: Standard guidelines and protocol based on scientific fundamentals for preparation of inventory should be prepared by CPCB and strictly followed by the SPCBs/PCCs to ensure reliable and credible inventory. (SPCBs/PCCs and CPCB/inventory of 2018-19 onwards).*
- IV. *Recommendation no. 3.5: The timelines for inventory preparation as envisaged in Rules be strictly complied with by SPCBs/PCCs. Preparation of country's inventory by CPCB is dependent on such timely submission by SPCBs/PCCS. (SPCBs/PCCs and CPCB).*
- V. *Recommendation no. 4.1: SPCBs/PCCs shall invoke the powers conferred under clause 23(1) and (2) of the Rules, related to all damages caused to the environment or third party due to improper handling and management of the hazardous and other wastes, and non-compliance respectively. CPCB has already issued guidelines for Liability assessment, for invoking clause 23(1) and (2) of HW Rules. CPCB shall also take consequential actions under clause 23 (1) as per the said guidelines noticing environmental damages. (SPCBs/PCCs and CPCB: Immediate).*
- VI. *Recommendation no. 4.4: Urgent updation of concerned websites of SPCBs/PCCs/CPCB with respect to all enforcement actions along with details of industries and action taken. (SPCBs/PCCs/ CPCB: Immediate).*
- VII. *Recommendation no. 4.5: There is need to have an enforcement framework for effective enforcement of Rules based on principle of proportionality and also, precautionary principle. Such framework will remove ambiguity in*

regulatory actions and bring transparency, predictability and consistency in enforcement for actions. (SPCBs/PCCs/CPCB: within 06 months).

VIII. *Recommendation no. 8: SPCBs/PCCs and CPCB need to take cognizance of these aspects (i.e. HW resulting from enforcement of other regulations) while enforcing the relevant rules and also, preparation of HW inventory and other interventions. (SPCBs/PCCs and CPCB).*

IX. *Recommendation no. 10.3: SPCBs/PCCs and CPCB needs capacity building in terms of qualified and experienced manpower and also, tools and techniques for effective governance. Committee is informed about steps being taken by SPCBs and would review the same in detail. (MoEF&CC, State/UT Government, CPCB and SPCBs / PCCs: Immediate)*

1.3. *BY STATE POLLUTION CONTROL BOARDS/ POLLUTION CONTROL COMMITTEES (SPCBS/PCCS)*

I. *Recommendation No. 1.2: Other waste is presently missing from all the regulatory actions, including inventory. It is necessary to bring such waste in regulatory domain, as envisaged in the rules (SPCBs/PCCs: inventory of 2018-19 onwards)*

II. *Recommendation No. 1.3: SPCBs/PCCs need to take steps to ensure closing of the manifests received and reconcile the HW handling data. This work is humungous and need support in terms of software and online submissions. (SPCBs/PCCs)*

III. *Recommendation No. 1.5: The pre-processing and recycling/utilisation facilities need to be treated as critical environmental infrastructure facilities for sound environmental management of hazardous waste so as to ensure enhanced level and frequency of enforcement and environmental monitoring. Elaborate protocols are needed to be developed. (SPCBs/PCCs: continuous activity)*

IV. *Recommendation No. 1.6: According to Rules, the identification and quantification of the hazardous waste generation is to be done at the authorization stage itself and*

therefore, it is necessary that SPCBs shall adopt the scientific principles as enumerated for such identification and quantification of HW. (SPCB/PCCs: Immediate)

- V. Recommendation No. 2.1: Uniform format for visits and inspections of HW handling facilities is necessary to ensure comprehensive inspections as per the provisions of the Rules. A format is proposed by the Committee.
- VI. Recommendation No. 2.2: The authorization document should clearly stipulate respective mode of management (such as common or captive incineration/secured landfilling or pre-processing or recycling or utilization or export or captive storage, as applicable) for each category of HW being generated. (SPCBs/PCCs: immediate)
- VII. Recommendation No. 3.2: SPCBs/PCCs shall verify and scientifically validate the HW data and facilities before grant or renewal of authorization. (SPCBs/PCCs: inventory of 2018-19 onwards)
- VIII. Recommendation No.3.3: There is an emergent need to develop sectoral process based reasonable HW generation range to have uniformity in assessing the HW generation from industries and benchmarking the same with its peers, rather than solely depending on industry data. (SPCBs/PCCs: continuous activity)
- IX. Recommendation No. 3.4: All occupiers who have authorizations shall submit the Annual report and in case of non-compliance, action needs to be taken by SPCB/PCC. (SPCBs/PCCs: inventory of 2018-19 onwards)
- X. Recommendation No. 4.1: SPCBs/PCCs shall invoke the powers conferred under clause 23 (1) and (2) of the Rules, related to all damages caused to the environment or third party due to improper handling and management of the hazardous and other wastes, and non-compliance respectively. CPCB has already issued guidelines for Liability assessment, for invoking clause 23(1) and (2) of HW Rules. CPCB shall also take consequential actions under clause 23 (1) as per the said guidelines wherever directions under section 5 of the E(P) Act have been issued

by CPCB, noticing environmental damages. (SPCBs/PCCs and CPCB: Immediate)

- XI. Recommendation No. 4.2: The habitual and serious defaulters shall be prosecuted under provisions of the Environment (Protection) Act, 1986. Other alternative regulatory actions including refusal and revocation of Authorization can also be explored following the due process. (SPCBs/PCCs: Immediate)
- XII. Recommendation No. 4.3: Non-compliance to be documented while processing authorization for renewal or inspections in order to invoke powers of refusal or revocation of Authorization as per Rules. (SPCBs/PCCs: Immediate)
- XIII. Recommendation No. 4.4: Urgent updation of concerned websites of SPCBs/PCCs/CPCB with respect to all enforcement actions along with details of industries and action taken. (SPCBs/PCCs/ CPCB: Immediate)
- XIV. Recommendation No. 4.5: There is need to have an enforcement framework for effective enforcement of Rules based on principle of proportionality and also, precautionary principle. Such framework will remove ambiguity in regulatory actions and bring transparency, predictability and consistency in enforcement for actions. (SPCBs/PCCs/CPCB: within 06 months)
- XV. Recommendation No. 5.1: The inventory data needs to be verified and validated before accepting the same. The states shall adopt the proposed guidelines immediately while preparation of HW inventory. (SPCBs/PCCs: Immediate)
- XVI. Recommendation No. 5.2: There is emergent need of consistent approach in recycle and utilisation of HW in terms waste management hierarchy mandated in the rules across all the States in order to ensure the level playing field for the industry. This can be achieved by advocacy programme such as concept of waste exchange banks, know your waste programme, circular economy, documentation of the success stories along with regulatory interventions wherever required. (SPCBs/PCCs)

- XVII. *Recommendation No. 5.3: It is also necessary to develop certain benchmarks/guidelines for the possibilities of HW recycle/utilisation on case to case basis. For example, for co-processing at Cement plants the Thermal Substitution Ratio (TSR) can be an objective criterion to decide the potential to use HW for utilization purpose. The range of TSR at different cement plants can be collated to develop a database for sound co-processing practices. (SPCBs/PCCs)*
- XVIII. *Recommendation No. 5.4: The concept of environmental benchmarking among the similar industries generating HW can be useful to ensure consistency and uniformity. The emerging trend of circular economy would be a key intervention for rationalizing the HW generation and reuse/utilization. (SPCBs/PCCs: continuous activity)*
- XIX. *Recommendation No. 6.1: The practice of returning the HW consignment needs to be immediately stopped and the consignment needs to be stored within the TSDF with information to the waste generator and also the concerned SPCB. The TSDF shall take appropriate measures to dispose this waste at the risk and cost of the waste generator under due information to the SPCB immediately on priority. Though the present guidelines prescribed that the waste shall be sent back to the waste generators, this practice needs to be immediately discontinued in view of non-accounting of the waste once it is out of manifest protocol and the associated environmental risks. (SPCBs/PCCs/TSDFs: immediate)*
- XX. *Recommendation No. 6.2: SPCBs/PCCs shall conduct environmental audit including the site selection criteria, design and layout for the TSDFs in next one year. They can engage expert institutes for the purpose and seek CPCB's technical advice on the ToR of the study, if required. (SPCBs/PCCs: 01 year)*
- XXI. *Recommendation No. 6.3: All the Common SLF shall disclose the mandatory amount deposited in Escrow Account annually to SPCB/PCC, CPCB and display on their website. SPCB/PCC to take action in case of non-compliance (SPCBs/PCCs: immediate)*

XXII. Recommendation No. 6.4: It is necessary that the Hon'ble NGT orders dated 30/07/2018 with regard to setting up of TSDF and taking imitate actions against erring units be strictly complied with by the concerned State/UT Government and SPCBs/PCCs. (State/UT Governments and SPCBs/PCCs: immediate)

XXIII. Recommendation No. 8.0: SPCBs/PCCs and CPCB need to take cognizance of these aspects while enforcing the relevant rules and also, preparation of HW inventory and other interventions. (SPCBs/PCCs and CPCB)

XXIV. Recommendation No. 10.1: Each of the SPCBs/PCCs/Custom/TSDF, as listed in report, need to have at least one laboratory where all HW parameters as required under the Rules can be analysed. (SPCBs/PCCs/Custom/TSDF: 06 months)

XXV. Recommendation No. 10.3: SPCBs/PCCs and CPCB needs capacity building in terms of qualified and experienced manpower and also, tools and techniques for effective governance. Committee is informed about steps being taken by SPCBs and would review the same in detail (MoEF&CC, State/UT Govt, CPCB and SPCBs/PCCs: Immediate)"

16. Recommendations of the CPCB to rectify above deficiencies are:

“6.1. RECOMMENDATIONS:

1. It is recommended that 05 SPCBs/PCCs (namely Dadar Nagar Haveli& Daman & Diu; Haryana; Lakshadweep; Manipur and Nagaland) directed to submit the status on implementation of recommendations made by the Monitoring Committee in its interim report, as CPCB has not received any information from these SPCBs/PCCs.
2. SPCBs/PCCs need to implement 25 action points, out of which 11 action points needs to be implemented immediately and other 14 in regular and nonimmediate manner. It is recommended that SPCBs/PCCs which are not complying with the recommendations made by Monitoring Committee should submit the status report to CPCB immediately.
3. It is recommended that till National Hazardous Waste Tracking System (NHWTS) which is being developed by

CPCB is made functional, SPCBs/PCCs may be directed to ensure and verify reconciliation of manifest.

6. *SPCBs/PCCs shall strictly follow the guidelines for inventorization of hazardous and other waste issued by CPCB and ensure verification and validation of the annual returns submitted by the occupiers/recycler/pre-processor/utilizer/coprocessor operator of disposal facilities including submission of the annual inventory to CPCB within the stipulated time period.*

5. *It is recommended that SPCBs/PCCs (namely Himachal Pradesh, Sikkim, Punjab, Kerala and Jharkhand) which have reported non-compliance but not taken any action shall be directed to take action against such violators as per provisions of HOWM Rules, 2016.*

Further, it is also recommended that SPCBs/PCCs may be directed to initiate actions against all such units which are violating one or other provisions of HOWM Rule, 2016 including non-compliance to the documenting submission such annual returns, manifest document, etc.

6. *It is recommended that the timeline provided by the SPCBs/PCCs with regard to adopting waste management hierarchy (as stipulated in the HOWM Rules) to ensure the level playing for the industries shall be strictly adhere to.*

Further, SPCBs/PCCs shall also initiate development of certain benchmarks/guidelines for the possibility of hazardous waste recycling/ utilization on case to case to basis as most of the SPCBs/PCCs have not taken any initiative on the same.

7. *It is recommended that SPCBs/PCC may be directed to initiate development of sectoral process based HW generation range to have uniformity in assessing the HW generation from industries and benchmarking the same.*

8. *It is recommended that SPCBs/PCCs of (Karnataka, Maharashtra, Rajasthan, Kerala and Uttarakhand) having Common TSDF to immediately open the Escrow Account as per O.M of MoEF&CC including deposition of mandatory amount.*

Further, SPCBs/PCCs of Gujarat, Jharkhand, Karnataka, Odisha, Rajasthan, Tamil Nadu and West Bengal shall

take action against the Common TSDF(s) for not displaying the details of mandatory amount deposited in the Escrow Account on their website.

9. *SPCBs/PCCs may be directed to expedite conducting of environment audit of the Common/Captive SLFs in the time bound manner as specified in the Interim Report of the Monitoring Committee Report.*
10. *SPCBs/PCCs have reported that out of 30 SPCBs/PCCs only 19 are having laboratory facilities for analysis of all hazardous waste parameters as required under HOWM Rules, 2016. Therefore, it is recommended that all the remaining 11 SPCBs/PCCs (Andaman and Nicobar Islands, Arunachal Pradesh, Delhi, Goa, Jammu & Kashmir, Jharkhand, Meghalaya, Odisha, Puducherry, Sikkim and Uttarakhand) should be equipped with all the facilities for analysis of all hazardous waste parameters as required under HOWM Rules, 2016.*
11. *It is recommended to direct States/UTs (namely Andaman and Nicobar Islands, Assam, Arunachal Pradesh, Bihar, Chhattisgarh, Chandigarh, Delhi, Goa, Jammu & Kashmir, Lakshadweep, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Tripura and Sikkim) where common TSDF is not available to immediately set up adequate number/capacity of Common TSDFs in such States/UT.*
12. *All the Chief Secretaries of the States/UTs may be directed to submit biannually compliance report to CPCB by collecting information from the State Government/ Departments like Labour/ Industries/ Environment and SPCBs/PCCs.”*

V. Consideration by this Tribunal and Directions

17. We have given due consideration to the report of the Committee as well as the report of the CPCB on the follow up action. We do not see any objection to the recommendations being accepted. No objection has been raised by any of the parties. Accordingly, the recommendations are accepted..

18. The States/UTs, CPCB/SPCBs/PCCs, Central Board of Indirect Taxes and Customs (CBIC), the Port Authorities, the DGFT, the MoEF&CC, the Ministry of Shipping, Ministry of Labour and Employment and the Department of Labour of all the concerned States/UTs may take necessary steps in terms of the recommendations of the Committee within the timelines specified. If there is any default, the Tribunal may consider requiring environmental compensation to be paid by the defaulting parties.
19. Hazardous waste being highly toxic in nature, having potential for irreversible damage to the environment and public safety, scientific handling of such waste has to be ensured.

VI. Directions

20. In the light of above, the States/UTs, CPCB/SPCBs/PCCs, the Central Board of Indirect Taxes and Customs (CBIC), the Port Authorities, the DGFT, the MoEF&CC, the Ministry of Shipping, Ministry of Labour and Employment and the Department of Labour of all the concerned States/UTs may take necessary steps in terms of the recommendations of the Committee within the timelines specified. If there is any default, the Tribunal may consider requiring environmental compensation to be paid by the defaulting parties.

While doing so following specific steps may be ensured:

- i. Hazardous waste inventory be updated and verified by way of test checks to ensure that the same is credible, reliable and robust in terms of contents and scope, as already recommended in the interim report of the Monitoring

Committee dated 29.01.2019 which was accepted by the Tribunal on 12.04.2019.

- ii. Since it has been reported that State Boards/PCCs of Dadra & Nagar Haveli, Haryana, Daman & Diu, Manipur, Lakshadweep and Nagaland have not furnished the relevant data, the said States/UTs may furnish the data within one month to the CPCB, failing which they will be liable to pay a sum of Rs, 1 lakh per month with effect from 01.10.2019.
- iii. As already directed, all the States which have not set up TSDF may do so and the States which fail to set up the same up to 31.03.2020, will be liable to pay environmental compensation of Rs. 10 lakh per month. However, with regard to States which may be categorized as small States, having regard to the quantum and nature of generation of hazardous waste, the liability to pay compensation will start from 01.01.2021. The categorization based on threshold limit of generation of hazardous waste be made by the CPCB within one month from today and placed on its website.
- iv. 126 sites which have already been identified as contaminated may be cleared of the hazardous waste within six months so that remediation process may start. The remediation work may start at the 55 sites for which DPRs have been completed within the timelines specified in the DPRs. For the remaining 71 sites, DPRs may be completed expeditiously but not later

than one year and thereafter remediation may be done as per the timelines in the DPRs.

v. Failure to remove the waste from the 126 identified sites, will result in environmental compensation to be paid at the rate of Rs. 10 lakhs per site from 01.04.2020 by the concerned SPCBs/PCCs to the CPCB. Same rate will apply in respect of such of the 195 sites as are identified as contaminated with effect from 01.01.2021.

vi. With regard to 195 probable contaminated sites, the assessment may be completed within six months and thereafter the waste may be removed within next six months from sites cleared by the CPCB to be contaminated.

vii. The clearance of site by way of disposal or transfer should be strictly as per the HOWM Rules, to be monitored by the CPCB. The cost of removal of waste may be first paid out of the environment funds/consent funds available with the State PCBs/PCCs and thereafter recovered from the persons concerned.

viii. Whenever any difficulty arises, the CPCB may, on being so satisfied, allocate funds from environment funds available with it, which may thereafter be recovered from the concerned defaulters.

ix. The recommendations of the CPCB with regard to the compensation regime on the subject may be adopted, subject to further consideration of orders.

x. The CPCB may oversee the compliance of these directions compile data from all quarters and furnish an interim compliance report before 15.04.2020 by email at judicial-ngt@gov.in.

List for further consideration on 28.04.2020

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

August 26, 2019
Original Application No. 804/2017
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