

## **Does the MEF have the capacity, the will or even the intentions of assuring compliance?**

### **The continuing farce called conditional clearances**

The Union Ministry of Environment and Forests (MEF) gives clearances to hundreds of projects every month under the Environment Protection Act and Environment Impact Assessment (EIA) Notification of Sept 2006. All of these clearances are statutory clearances. The conditions are supposed to be legally binding. Moreover all of these projects are supposed to have EIAs which are supposed to include Social Impact Assessments and also the Environment Management Plan (EMP). Each of the EMP is supposed to include Rehabilitation Plan. Again the implementation of these plans are mandatory under law, the clearances are given only on the basis of the EIA and EMP.

If the project involves diversion of forest land, it will require another clearance under the Forest Conservation Act, 1980. That clearance also comes with another set of statutory conditions. These are mainly about compensatory afforestation, catchment area treatment and minimum loss of forest, flora and fauna. In addition if the project requires land from or near the wildlife protected areas, it needs additional clearance under the Wildlife Protection Act, with additional conditions. All of these clearances are required as per law and there has been no question from any rational quarter that these clearances are not required.

If the project developer does not abide by any of the conditions and managements plans, consequences are supposed to follow. So a plausible inference would be that the MEF would have the capacity, will and intention of ensuring compliance with the plans and conditions of various clearances that it gives. It is also understood that since implementation of all of these conditions costs substantial amount money, and also involved efforts, the developer would not adhere to them if these conditions were not to be adhered to.

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There are essentially two ways through which MEF can know what is happening on ground at the project sites. One of the conditions of the clearances and also a requirement under the EIA notification is supposed to be that the developer should be sending six monthly compliance reports to the MEF. It is thus hoped that the MEF would be ensuring that these reports are submitted and that someone in the MEF would be going through them and comparing the implementation with the EIA-EMP, conditions vis-a-vis construction of the project and also comparing with the previous compliance reports and checking if the progress in the implementation of the measures is as required. If the reports do not come in time or if the implementation is not as required, one expects the MEF to take steps to correct the situation.

What is happening on ground? First let us look at the situation with respect to the first step, namely submission of six monthly compliance reports, as required under the law. Several instances repeated over the years show that the MEF is least bothered even when the developer does not submit compliance reports. The most glaring case is that of the Polavaram project in Andhra Pradesh, one of the largest multi purpose projects of India, which was given environment clearance on Oct 25, 2005. In response to an RTI by SANDRP, MEF said in Nov 2010, over five years after the clearance, that the project has not submitted a single compliance report. But the MEF had done nothing about this! MEF did not respond even after SANDRP pointed this out to the minister.

Another glaring example is that of Singoli Bhatwari hydropower project under construction on Mandakini River in Uttarakhand. The Project was accorded environment clearance on Aug 24, 2007. When an MEF team visited the site in May end, 2010, it said in its report that almost three years after the clearance the project developer had not submitted a single compliance report. Again the MEF had taken no steps regarding this violation.

In case of the 1000 MW Karcham Wangtoo hydropower project, the MEF regional office visit reports of Jan & May '09 say that the regular submission of the 6-monthly compliance report is yet to be ensured. That was the situation 4 years after the project was given environment clearance. But no steps were taken by the MEF. It does not require great amount of capacity on the part of MEF to ensure that compliance reports are submitted on time and to take steps when they are not submitted. The importance of this cannot be over emphasised. If there is no compliance report, the MEF cannot even start knowing what is happening on ground at the project site. So this fundamental anomaly in the functioning of the MEF shows that the MEF does not even have the will or the intention of ensuring compliance.

Let us see the second means available for the MEF to ensure compliance. The ministry has six regional offices spread over different regions of the country. The scientists from these offices are supposed to visit the projects in their respective regions and monitor what is happening on ground. Based on these visits they are supposed to submit reports & suggest corrective steps.

Here it may be noted that the MEF website has a special section "Proponent Compliance Report" at: <http://164.100.194.5:8081/ssdn1/ComplianceApprovedReport1994.do?sessionid=8E61A1938DFB9F7909DBAFDBEA1A0417>. However, when you go to the site, you will find that there are NO compliance reports on the site. This is in complete violation of the EIA notification dated Sept 14, 2006, section 10(ii) (renumbered as section 10(iii) after the Dec 2009 amendment) of the same clearly states, "The latest such compliance report shall also be displayed on the web site of the concerned regulatory authority." We have written to the Minister about this violation of the law by the MEF on Feb 7, 2011 and await his response.

In reality, each region has such huge number of projects and the staff strength is so little that the officers are able to visit even big project sites hardly once in five years. They rarely are able to visit smaller projects. For example, in case of Polavaram dam in Andhra Pradesh, in over five years since the project got clearance, the regional office had visited the project site just once. There were no site visits in case of Singoli Bhatwari in almost three years since clearance. In fact how pathetic is the situation on ground in this regard has come out with facts and figures in the 2009 report *Calling the Bluff* from Kalpavriksh Environment Action Group.

The report and other evidence shows that the MEF regional offices are never able to go to the project sites on a surprise visit. All their project visits are pre-planned in consultation with the project developer. This thus takes away the possibility of MEF getting to know what is the reality on ground, since in pre-planned meetings, there is a lot of possibility of the project developer *preparing the ground* for the inspection and showing only what he wants to show. In many cases, even when the field visit

reports point out non compliance, the MEF has not taken necessary corrective steps.

Thus the track record of the MEF and its regional offices show that the ministry, while facing some genuine concerns in terms of capacity to make frequent and surprise visits, has shown little will or intention to ensure compliance of its clearance conditions.

There is a third way for the MEF to know ground realities. This is through the numerous representations from communities, NGOs, individuals and media reports. If the ministry had the will & the intentions to ensure compliance, the least the MEF could have done is to take prompt cognisance of these and take necessary steps where violations are thus reported. These steps could include show cause notices, visits of officials to the project sites and in case of wilful, worst and repeated violations, to serve stop work notices. One expects the regulator to take some steps in this direction. However, past experience shows that even when violations are brought to the notice of the MEF, they have rarely taken appropriate action in line with the nature of violations.

One can cite many instances in this regard. The latest one is the photographic evidence of violations of four hydropower projects presented in this issue of *Dams, Rivers & People*. This was sent to the minister and key officials of the MEF on Jan 31, 2011, we have yet to hear from them. Similar evidence was also sent to the ministry earlier on Feb 17, 2010, without any action. Even when the MEF appointed committee reports violations as in case of Phata Byung & Singoli Bhatwari HEPs in Uttarakhand, the ministry did not take appropriate action. Similarly when the MEF regional office highlighted the repeated violations by the Karcham Wangtoo developers in Jan and May 2009, the MEF did not take any action. One can list many more instances, but these should suffice that even when the violations have been brought to the notice of the MEF, they have not taken action.

In some other cases, the MEF position is farcical. For example when we asked under RTI, who will ensure that the developer releases minimum water flow in the downstream area, the ministry replied that the developer himself will ensure that! But why should the developer bother about this when such releases would reduce his power generation at least in 9 lean season months?

What all this shows is that currently, the Union Environment Ministry is giving environment clearances to hundreds of projects every single month, without having the capacity, the will or even the intentions of ensuring compliance. As we wrote to the current minister in the first month as minister, one way out would be for the ministry to involve local communities in monitoring and ensuring compliance through a legally empowered mechanism. There can be many other possible steps the ministry can take if it has the intentions of ensuring compliance with the law of the land.

SANDRP