

Good Practices in Environmental Regulation:

Several regulatory functions are part of the mandate of the Ministry of Environment and Forests, e.g. Environmental Clearance, Forestry Clearance, Coastal Zone Regulation, Genetic Engineering Approval Committee, Animal Experimentation, etc.

While we are currently engaged in re-engineering these regulatory procedures, some "Good Practices" in regulatory procedures may be adopted even now, to remedy clearly perceived problems with the regulatory procedures, as long as they are consistent with the existing systems, and do not involve any amendments to the relevant statutes or regulations. Some Good Practices that may be considered are as follows:

1. **Scheduling Meetings of the Regulatory/Expert Committees:** A major irritant of regulates is the unpredictable schedule of meetings of the Regulator/Expert Committees. This uncertainty about when the applications of project risk.

To address this problem, we may set up a standing time-table of meetings, (say) the 3rd Wednesday of each month¹¹ at (say) 11.00 a.m. at (say) Rm 402 Paryavaran Bhawan. At each meeting, all the listed cases would be taken up, if necessary by continuing the meetings the following day(s). In case the scheduled date is a public holiday, as a standing arrangement, the meeting would be held the next working day. If the Chair is unable to participate for whatever reason, the Vice Chair, or if there is none, a senior member designated by the Chair, would Chair the meeting and exercise the powers of the Chair.

The list of applications to be considered must be available on the MoEFs website at least 15 days prior to the scheduled meeting.

Minutes of each meeting must be finalized within 5 working days of the close of the meeting, and (relevant portions) communicated in writing to the applicants promptly (mailed next working day). All final decisions of the Regulator/Expert Committee must be put up on the MoEF website the next working day after finalization of the minutes.

2. **Scheduling Initial Consideration of Applications and Seeking Information:** Another serious irritant of regulates, which greatly adds to project risk, is uncertainly about when the applications would be initially considered by the regulator/Expert Committee. Delays are pervasive, and the reason usually is that additional information is

¹ The actual frequency may be worked out in terms of the volume of applications received by the Regulator/Expert Committee.

sought by MoEF staff, usually in a piecemeal and sequential manner, and till they are satisfied, the application is not put up for the consideration of the Regulator/Expert Committee. However, when the matter is eventually considered by the Regulator/Expert Committee, it may seek further information, again piecemeal and sequentially (occasionally, it may find the information furnished in response to queries of MoEF staff deficient or unnecessary). The result is that applications remain under consideration for years, and are not decided upon till long after all the other regulatory requirements have been met, and after financial closure in case of investment projects.

To address this problem, we may adopt the following practices:

First, all applications received in MoEF must be scheduled in the next meeting of the Regulator/Expert Committee for initial consideration provided that at least 30 days have elapsed from receipt in the MoEF.

Second, that while MoEF staff may review the applications and determine what additional information may be necessary, the same must be put up to the Regulator/Expert Committee at the initial consideration of the application. The Regulator/Expert Committee will, if necessary, add to, delete, or otherwise modify the suggested list of additional information presented by MoEF staff, and communicate the same to the applicant in writing (as part of the minutes of the meeting, and if possible orally during presentation of the proposal at the meeting of the Regulator/Expert Committee).

Third, no information should be asked of the applicant which is not in the public domain, except that which is specific to the proposal, and necessarily available with the applicant. When information is required which is not in the public domain, it will be the responsibility of the MoEF to obtain the same within a period of 60 days of the initial consideration, failing which the Regulator/Expert Committee will proceed to consider the case without any presumption adverse to the applicant.

Fourth, the Regulator/Expert Committee, or the MoEF must not at any subsequent stage seek further information from the applicant. In case the information furnished by the applicant in response to the request of the Regulator/Expert Committee at initial consideration is considered incomplete/incorrect, the Regulator/Expert Committee may take note of the fact while reaching its conclusions.

Finally, all applications received must be transmitted to each member of the Committee promptly on receipt in MoEF, within 3 working days by e-mail and hard copy. On receipt, the Chair should indicate if the participation of co-opted members/panel experts is necessary, to the concerned MoEF staff, who should promptly send these additional participants also a copy of the application by e-mail and hard copy.

3. **Scheduling subsequent consideration of the applications:** On each occasion that an application is considered, and some duty is cast on the applicant (including submission of information communicated after initial consideration), s/he must be informed of the same (orally during presentation, and in writing as part of the minutes). Upon the applicant completing this duty, and reporting the fact to the MoEF, the next consideration of the application must be on the next meeting scheduled at least 30 days after reporting completion of the duty.

Any comments of MoEF staff on the report of compliance must be submitted only to the Regulator/Expert Committee, which will decide how the comments may be addressed.

4. **Acting as watchdog for other Regulators:** The current practice of holding up consideration of applicants till other regulators have given clearance is potentially a "Catch-22" situation for applicants. It is unnecessary (and presumptuous) of the MoEF or Regulator/Expert Committee to suppose that other regulators need their oversight. Accordingly, neither MoEF staff, nor the Regulator/Expert Committee may hold up consideration of applicants while other regulators are undertaking their own due diligence. In case the award of another regulator is materially relevant to the application, the final decision of the Regulator/Expert Committee may caveat the requirement of award by the other regulator, before the Regulator/Expert Committee's decision can be acted upon by the applicant.
5. **Giving opportunity to the applicant to present the proposal:** Currently, it is not routine for the Regulator/Expert Committee to give an opportunity to the applicant to present the proposal in person. An important opportunity for seeking clarifications from the applicant is thus not availed of, leading to protracted correspondence and delayed disposal. Accordingly, on each occasion that an application is before the Regulator/Expert Committee, an opportunity may be given to the applicant to present the proposal and respond to queries. The Regulator/Expert Committee may, of course, further discuss the application after the applicant has withdrawn.
6. **Giving Speaking Orders:** Quite often, while rejecting an application, the Regulator/Expert Committee does not furnish reasons for the decision. This practice must be eschewed, and in all cases of rejection, the precise reasons for the same must be given in sufficient detail to enable the applicant, if s/he so wishes, to represent meaningfully against the same.

Sometimes applications are rejected solely on procedural grounds. Unless there are good reasons to suppose that the application has deliberately not followed the prescribed procedure in order to realize some unwarranted benefit, which must be recorded in the grounds for rejection, applications should not be rejected on procedural grounds alone.