

Q-15012/02/2022-CPW
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE
(CP DIVISION)

IInd Level, Prithvi Wing,
Indira Paryavaran Bhawan
Jor Bagh Road,
New Delhi-110003
Dated: 30.06.2022

NOTICE FOR PUBLIC CONSULTATION

Subject: **Proposal for amendment in Water (Prevention and Control of Pollution) Act, 1974-reg.**

The Water (Prevention and Control of Pollution) Act, 1974 came into force on 23rd March, 1974. The Water (Prevention and Control of Pollution) Act, 1974 is one of the main legislation to control and prevent the water pollution in India.

2. In order to decriminalize the existing provisions of the Water (Prevention and Control of Pollution) Act, 1974, this Ministry is examining the proposals to make amendments in the Water (Prevention and Control of Pollution) Act, 1974 based on inputs received from various stakeholders. Accordingly, a brief note on the proposal under consideration for amendment in the Water (Prevention and Control of Pollution) Act, 1974 is enclosed herewith as **Annexure** for comments/ suggestions from the general public, Government of States and Union Territories, industry associations, and other persons and entities concerned.

3. In view of the above, it is requested that comments / suggestions on the above may be sent **on or before 21.07.2022**. The comments / suggestions may be sent by e-mail in MS-Office Word file to the following ID:

cpwater.comments-mef@gov.in

4. The subject of the e-mail should be "Comments/ suggestions on the proposed amendment in the Water (Prevention and Control of Pollution) Act, 1974".

5. Alternatively, comments / suggestions may also be sent by post to the following address:

Sh. Ved Prakash Mishra
IInd Level, Prithvi Wing,
Indira Paryavaran Bhawan
Jor Bagh Road, New Delhi-110003

The envelope may kindly be superscribed on the top with "Comments/ suggestions on the proposed amendment in the Water (Prevention and Control of Pollution) Act, 1974".



(Ved Prakash Mishra)
Director

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Encl.: As above.

Note for consultation on proposal to make amendment in the Water (Prevention and Control of Pollution) Act, 1974

The Water (Prevention and Control of Pollution) Act, 1974 was enacted under Article 252 of the Indian Constitution and came into force on 23rd March, 1974. The Act consists of 64 Sections in 8 Chapters. The Water (Prevention and Control of Pollution) Act, 1974 is an act of the Parliament of India to regulate the board and control and prevent water pollution, and also establish pollution control boards for prevention and control of water pollution.

2. In case of any non-compliance or contravention of the provisions of the Water (Prevention and Control of Pollution) Act, 1974, various penal provisions have been described in the Act, such as in case non-compliance of the provisions of the Section 25 of the Act or directions issued thereunder, the violator will be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to Six years. There are other prosecution provisions under the act for violations in different categories.

3. In this regard, concerns were raised and suggestions have been made for decriminalization of existing provisions of the Water (Prevention and Control of Pollution) Act, 1974 in order to weed out fear of imprisonment for simple violations under the existing law. Also, there are different processes in different states which create confusion among entrepreneurs, and needs to be universalized across jurisdictions. Also, duplication of consent under Water (Prevention and Control of Pollution) Act, 1974 and clearance under EIA Notification will be done away with.

4. The substantive changes in the proposed amendment of the Water (Prevention and Control of Pollution) Act, 1974 are on the following lines:

- i. Contravention or non-compliance of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 would be dealt with through imposing penalty through Adjudicating Officer. However, violations under Section 25 of the Act, related to prior consent to establish/operate would attract criminal liability.
- ii. The violations pertaining to sections 26, 32, 33, 33A, 41, 42, 45A & 49 are proposed to be dealt with by imposing financial penalties replacing the prosecution in court of law.
- iii. Creation of fund wherein, the amount of penalty imposed by the Adjudicating Officer while adjudicating the damage to environment shall be remitted and the same will be known as "**Water Pollution Remediation Fund**".
- iv. The financial penalties so levied, may be utilised for the purpose of compensation for the affected parties and restoration of the environmental damage.
- v. The Central Government through the proposed Amendment will be authorised to issue notification for certain categories of Industries such as Green Industries / Non-Polluting Industries mandated to obtain prior Environmental Clearance under EIA Notification, from the requirement of obtaining prior consent before establishing/operating such industrial unit under section 25 of the Water (Prevention and Control of Pollution) Act, 1974.
- vi. The Central Government has also been authorised to prescribe guidelines on the matters related to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area, including the mechanism

for time-bound disposal of the application made under the Water (Prevention and Control of Pollution) Act, 1974.

5. The Water (Prevention and Control of Pollution) Act, 1974 was enacted by the Parliament of India under the provisions of article 252(1). Therefore, a proposal will be submitted to the States, under article 252 (2) read with article 251 (1) of Indian Constitution, for passing of a resolution in respective Legislative Assemblies to empower the Parliament for the said amendment. The enactment by the Parliament will be considered only after passing of such resolution by minimum 2 states as per the provisions of the Article 252 of the Constitution of India.

6. The details of the amendment proposed in the relevant sections of the Water (Prevention and Control of Pollution) Act, 1974 is appended below for comments / suggestions.

Comparison Chart of the Amended Provisions vis-à-vis Original Provisions in the Water (Prevention and Control of Pollution) Act, 1974

Section which prescribes criminal punishment	Details about the Provision	Proposed Amendment	Comments
THE FOLLOWING SECTIONS ARE PROPOSED TO BE SUBSTITUTED / AMENDED / INSERTED			
Amendment of Section 2	-	In Section 2 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Principal Act of this Chapter, the following shall be inserted after sub-clause (b), namely: - (ba) "Fund" means Water Pollution Remediation Fund established under Section 45D.	
Section 25- Restrictions on new outlets and new discharges	Proviso is proposed to be inserted in the amendment by authorizing Central Government for issuing notification for exempting certain categories of industries from the requirement of obtaining prior consent before establishing any industrial unit. Through this provision, the Central Government may exempt certain non-polluting/green industries and those industries requiring prior EC as per EIA notification under Environment	In Section 25 of the Principal Act, in sub-section (1), for the proviso, the following shall be inserted, namely: - "Provided that the Central Government may, by notification in the Official Gazette, exempt certain categories of industries from the provisions of this sub-section."	

	<p>(Protection) Act, 1986 from the requirement of obtaining consent to establish/operate under the provision of Water Act.</p>	<p>In the Principal Act, after section 27, the following section shall be inserted, namely: -</p>	
	<p>Insertion of New Section</p>	<p>“27A. (1) The Central Government may, by Notification in the Official Gazette prescribe the guidelines on the matters relating to the grant or refusal of consent by any State Board for the establishment of any industry, operation or process, or treatment and disposal system or to the bringing into use of a new or altered outlet including the mechanism for time bound disposal of the application made under section 25 or validity period of such consent.</p> <p>(2) Every State Board, in discharge of its functions for the grant or refusal of consent under section 25,26 or section 27 shall be guided by the guidelines as may be made by the Central Government from time to time in this behalf under sub-section (1).”</p>	

<p>Insertion of New Section</p>		<p>In the principal Act, after section 40, the following section shall be inserted, namely: -</p> <p>40A. The Central Government shall prepare its annual report in relation to Water Pollution Remediation Fund giving a full account of its activities define under this Act in such form, as may be prescribed, for each financial year during the previous financial year and forward a copy thereof, within four months from the last date of the previous financial year, to the Central Government which shall cause the annual report and the audit report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.”</p>	
<p>Insertion of New Section</p>		<p>In the principal Act, after section 40A, the following section shall be inserted, namely: -</p> <p>40B. (1) The Central Government shall maintain separate accounts and other relevant records in relation to the Water Pollution Remediation Fund and prepare an annual statement of accounts in such form, as may be prescribed, in</p>	

		<p>consultation with the Comptroller and Auditor-General of India.</p> <p>(2) The accounts of the Fund shall be audited by the Comptroller and Auditor - General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually to the Central Government.</p>	
<p>Section 41 - Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of 32 or directions issued under sub-section (2) of section 33 or section 33A. (1) Whoever fails to comply with any direction given under sub-section (2) or sub-section (3) of section 20 within such time as may be specified in the direction.</p> <p>Power to obtain information</p>	<p>Punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.</p>	<p>In the Principal Act, for section 41, the following sections shall be substituted, namely: -</p> <p>“41. If any person does not comply with the direction given under sub-section (2) or sub-section (3) of section 20, within such time as may be specified in the direction, shall, in respect of each such non-compliance, be liable to pay the penalty which shall not be less than one lakh rupees, but which may extend to 1 crore rupees.</p> <p>(2) Where any person continues non-compliance under sub-section (1), he shall be liable to pay an additional penalty which may extend to 2 crore rupees.</p>	

<p><i>Section 20 (2) Call of information for water extraction from stream and well.</i></p> <p><i>Section 20 (3) Call of information on process and other establishments.</i></p>		<p>Section 41 (3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date, the offender shall pay an additional penalty which shall not exceed 5 crore rupees and such penalty shall be decided by the Adjudicating Officer appointed under Section 49A.</p>	
<p>Section 41 (2) Whoever fails to comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A.</p> <p>Failure to comply with directions under Section 32 (1) (c), Section 33 (2) and Section 33 A.</p>	<p>Punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.</p>	<p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”</p>	
<p>Section 41 (3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction. Failure to comply with direction under section 32 (1) (c), Section 33 (2) and Section 33 A.</p>	<p>Punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.</p>	<p>41A. (1) If any person does not comply with any order issued under clause (c) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A, he shall, in respect of each such non-compliance be liable to pay the penalty which shall not be less than one lakh rupees, but which may extend to 1 crore.</p>	

<p>If the failure of Section 41 (2) continues beyond 1 year, punishment with imprisonment shall not be less than 1 year which may extend upto 7 years.</p>		<p>(2) Where any person continues non-compliance under sub-section (1), he shall be liable to pay an additional penalty which may extend to 2 crore rupees.</p> <p>(3) Where any person continues non-compliance under sub-section (1), beyond a period of one year after such non-compliance, he shall be liable to pay further additional penalty which shall not exceed 5 crore rupees.</p> <p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”</p>	
<p>Section 42. Penalty for certain acts. (1) Whoever – (a) destroys, pulls down, or removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by</p>	<p>Punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees] or with both.</p>	<p>In the principal Act, for section 42, the following shall be substituted, namely: - “42. Where any person- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up,</p>	

<p>or under the authority of the Board, or</p> <p>(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or</p> <p>(c) damages any works or property belonging to the Board, or</p> <p>(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or</p> <p>(e) fails to intimate the occurrence of an accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or</p> <p>(f) in giving any information which he is required to give under this Act, knowingly or</p>	<p>inscribed or placed, by or under the authority of the Board; or</p> <p>(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act; or</p> <p>(c) damages any works or property belonging to the Board; or</p> <p>(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or</p> <p>(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under subsection (1) of section 23; or</p> <p>(f) fails in giving any information which he is required to give under</p>	
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<p>willfully makes a statement which is false in any material particular, or (g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or willfully makes a statement which is false in any material particular.</p> <p>Section 42 (1) (a) to (g)</p> <p>- Doesn't deal directly with pollution related matter but preventive and abatement matters and procedural issues.</p>		<p>this Act, makes a statement which is false in any material particular, he shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees.</p> <p>and where such contravention continues, he shall be liable to pay an additional penalty which may extend to 1 lakh rupees for everyday during which such contravention continues.”</p>	
<p>Section 42 (2). Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provision, any person who knowingly or willfully alters or</p>	<p>Punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees] or with both.</p>	<p>42A. Where for the purpose of grant of a consent in pursuance of the provisions of section 25 or section 26, the use of a meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provision, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be liable to pay penalty which shall not be less than one lakh</p>	

<p>interferes with that device so as to prevent it from monitoring or measuring correctly. Section 42 (2) - Manipulation of monitoring devise.</p>		<p>rupees, but which may extend to fifty lakh rupees.”</p>	
<p>Section 43. Penalty for contravention of provisions of section 24. Section 43- Contravention of provision of Section 24 – Provision of use of stream or well for disposing of polluting matter, etc.</p>	<p>Imprisonment for a term which shall not be less than [one year and six months] but which may extend to six years and with fine.</p>	<p>In the principal Act, for section 43, the following shall be substituted, namely: -</p> <p>“43. Where any person contravenes the provisions of section 24, he shall be liable to pay the penalty which shall not be less than one lakh rupees, but which may extend to one crore rupees.</p> <p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”</p>	
<p>Section 44. Penalty for contravention of section 25 or section 26. Section 44 - Contravention of provision of Section 25 and 26 – Consent to</p>	<p>Punishable with imprisonment for a term which shall not be less than [one year and six months] but which may extend to six years and with fine.</p>	<p>Omission of Section 44.</p>	

<p>Operate and Consent to Establish and its related issues.</p>	<p>Section 45. Enhanced penalty after previous conviction. If any person who has been convicted of any offence under section 24 or 25 or section 26 is again found guilty of an offence involving a contravention of the same provision.</p> <p>Section 45 - Enhanced penalty for previous conviction Repeated contraventions of Section 24, Section 25 and Section 26.</p>	<p>Punishable with imprisonment for a term which shall not be less than [two years] but which may extend to seven years and with fine.</p>	<p>Omission of Section 45.</p>	
<p>Section 45A. Penalty for contravention of certain provisions of the act. [Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act.</p>	<p>Punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day.</p>	<p>In the principal Act, for section 45A, the following shall be substituted, namely: -</p> <p>“45A. If any person contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been provided for in this Act, he shall be liable to pay the penalty which shall not be less than one lakh rupees, but which</p>		

<p>Section 45 A – Penalty for contravention of certain provisions of the Act for which no penalty has been provided.</p>		<p>may extend to fifty lakh rupees, and where such contravention continues, he shall be liable to pay an additional penalty which may extend to 1 lakh rupees for everyday during which such contravention continues.</p> <p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”</p>	
<p>Amendment of Section 45A and Insertion of New Sections.</p>		<p>In the principal Act, after section 45A, the following sections shall be inserted, namely: -</p> <p>Appointment of Adjudicating Officer</p> <p>“45B. The Central Government, for the purposes of determining the penalties under the provisions of this Act, may appoint District Magistrate having jurisdiction over the area to be the Adjudicating Officer, to hold an inquiry in the manner, as may be prescribed, and to impose the penalty:</p>	

Provided that the Central Government may appoint as many Adjudicating Officers as may be required.

(2) The Adjudicating Officer may summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the Adjudicating Officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person concerned has contravened the provisions of this Act, he may determine such penalty as he thinks fit in accordance the provisions of this Act, as the case may be:

Provided that no such penalty shall be imposed without giving the person concerned an opportunity of being heard in the matter.

45C. (1) Any person aggrieved by the order passed by the Adjudicating Officer under the provisions of this Act, may prefer an appeal to the National Green Tribunal established

under section 3 of the National Green Tribunal Act, 2010.

(2) Every appeal under sub-section (1) shall be filed within sixty days from the date on which the copy of the order made by the Adjudicating Officer is received by the aggrieved person.

(3) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appealed against.

Establishment of Water Pollution Remediation Fund

45D. (1) The Central Government may, by notification, establish a fund to be known as the Water Pollution Remediation Fund.

(2) Where an Adjudicating Officer imposes penalty or additional penalty, as the case may be, under the provisions of this Act, the amount of such penalty shall be credited to the Water Pollution

Remediation Fund established under sub-section (1).

(3) The Central Government may, by notification, prescribe the manner in which the Water Pollution Remediation Fund shall be administered, the form and the manner in which the money shall be drawn from the Fund and for all other matters connected with or incidental to the administration of the Water Pollution Remediation Fund.

45E. Where any person contravenes the provisions of section 25 or section 26, he shall be punishable with imprisonment which shall not be less than one year and six months but which may extend to six years or with fine which may extend to five crore rupees.

Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.⁷⁷

45F. If any person who has been convicted of any offence under 45E is again found to have committed an offence involving a contravention of the section 25 or section 26, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine:

Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

45G. Where any person fails to pay the penalty or the additional penalty, as the case may be, under the provisions of this Act, he shall be punishable with imprisonment for a term which may extend to 3 years, or with fine which may extend to twice the amount of the penalty imposed under the provisions of this Act or with both.

(2) Where any offence under sub-section (1) has been committed by a company, every person who, at the

time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of such offence and he shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in sub-section (1), if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence und has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also have deemed to be guilty of that

		<p>offence and shall be liable to be proceeded against and punished accordingly.</p> <p><i>Explanation.</i> -For the purposes of this section, -</p> <p>(a) "company" means anybody corporate and includes a Limited Liability Partnership firm or other association of individuals;</p> <p>(b) "director", in relation to a firm, means a partner in the firm."</p>	
<p>Amendment of Section 47.</p>		<p>In the principal Act, for section 47, the following section shall be substituted, namely</p> <p>47. Where any company contravenes any provision of this Act, such company shall be liable to pay the penalty for each such contravention which shall not be less than five lakh rupees and may extend to five crore rupees:</p> <p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such company or body corporate shall be liable to pay the penalty equal to the amount of the damage caused.</p>	

<p>Amendment of Section 48.</p>		<p>In the principal Act, for section 48, the following section shall be substituted, namely</p> <p>48. Where contravention of any provision of this Act has been committed by any department or agency of the Central Government or any State Government and such contravention is attributable to any neglect on the part of the officer concerned, such officer and if contravention is committed on the instruction of senior officer or Head of the Department, such senior officer or Head of the Department, as the case may be, shall be liable to pay the penalty not exceeding two lakh rupees for each such contravention.</p>	
<p>Section 63- Power of Central Government to make rules.</p>		<p>In the principal Act, in section 63, in sub-section (2), after clause (m), the following clause shall be inserted, namely: -</p> <p>“(ma) the manner of holding inquiry by the Adjudicating Officer under section 45B;</p> <p>(mb) the manner of establishment and maintenance of Water Pollution</p>	

		<p>Remediation Fund under section 45D;</p> <p>(mc) the guidelines related to exempting the green industries / non-polluting industries from the provisions of this sub-section (1) of section 25;</p> <p>(md) the guidelines on the matters relating to the grant or refusal of consent by any State Board for the establishment of any industry, operation or process, or treatment and disposal system or to the bringing into use of a new or altered outlet including the mechanism for time bound disposal of the application made under section 25 or validity period of such consent under section 27A."</p>	
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