



Order

Whereas, Hon'ble National Green Tribunal (NGT) vide order dated 11.12.2023 as mentioned in para 32 in OA. no. 362 of 2022 had directed to HSPCB to prepare SOP for imposition and realization of Environmental Damage Compensation from units/person involved in illegal mining and issue instructions within two months from the receipt of a copy of this order to all its Regional Officers for initiating and conclude the proceedings for imposition of environmental compensation in all cases of illegal mining and transportation in accordance with law within two months. Accordingly, HSPCB had issued office order regarding the same vide office letter no. I/245390/2024 dated 14.03.2024 and circulated the same to all Regional officers, HSPCB and other concerned departments for compliance;

Whereas, Hon'ble National Green Tribunal (NGT) vide order dated 22.03.2024 has issued the following directions;

2. *The report submitted in NGT as per previous report is found materially deficient as no action has yet been taken for imposition of EC on persons found to have carried out illegal mining.*
3. *Further in the report, there is no mention regarding holding of any meeting of the Joint Committee constituted by the Tribunal in the order dated 11.12.2023.*
4. *In SOP reference has been made to Rule 104 of the Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal mining Rules, 2012 which exempts registration of FIRs on First and Second offence, Question of the same being ultra-virus the constitution/the parent Act and violation of the direction issued by the Hon'ble Supreme Court and this Tribunal, need to be examined.*
5. *The SOP prepared is also materially deficient and need review particularly with respect to the aspect of realization of EC as it inhibits concerned DC from recovering EC immediately as default and mandates him to take action in case of failure to deposit EC after six months.*

Whereas, Chairman HSPCB has constituted a committee to review the direction given by Hon'ble NGT in the above said order vide this office letter no. I/247365/2024 dated 12.04.2024. The said committee has conducted the meetings and finalized the necessary amendments to be done in the SOP.

Therefore, in supersession of this office order no. I/245390/2024 dated 14.03.2024, Standard Operating Procedure (SOP) for imposition and realization of Environmental Damage Compensation from units/person involved in illegal mining is hereby revised and as enclosed as **Annexure-A** for compliance with immediate effect.

I/248720/2024

**Dated Panchkula, the
30 April 2024**

**P. Raghavendra Rao, IAS
Chairman, HSPCB**

Endst. No. HSPCB/Coord.Cell/2024

Dated:

A copy of above forwarded to the following information please.

1. The Chief Secretary to Govt. Haryana, Chandigarh.
2. The Additional Chief Secretary to Govt. Haryana, Environment & Climate Change Department, Chandigarh.
3. The Chairman, Central Pollution Control Board, East Arjun Nagar, New Delhi.
4. The Director of Mines & Geology Department, Second Floor, DHL Square, Plot No. 9, Sector-22, IT Park, Panchkula, Haryana.
5. The Director, Development & Panchayat raj, Haryana, Plot No.3, Opp Grain Market, Madhya Marg, Sector 28A, Chandigarh.
6. The Director General, Environment & Climate Change Department, Haryana IInd Floor, Bays No. 55-58, Paryatan Bhawan, Sector-2, Panchkula.
7. The Principal Chief Conservator of Forests, Van Bhawan, C-18, Sector-6 Haryana, Panchkula.
8. All Deputy Commissioners, Haryana.
9. All Superintendent of Police, Haryana.

**Chief Env. Engineer, (HQ)
For Chairma**

Endst. No. HSPCB/Coord.Cell/2024

Dated:

A copy of above forwarded to the following information and further necessary action:-

1. PS to Chairman, HSPCB.
2. PA to Member Secretary, HSPCB.
3. CEE-I and CEE-II, HSPCB.
4. All SEE, HSPCB.
5. All Regional Officer, HSPCB
6. SEE, IT Cell requested to upload the order on the website of the Board.

**Chief Env. Engineer, (HQ)
For Chairma**

**Standard Operating Procedure (SoP)
for
Imposition and Realization
of
Environmental Damage Compensation
From Units/Persons Involved
in illegal Mining
In Compliance of Order of Hon'ble National
Green Tribunal
In O.A. No. 362 of 2022**

Brief Background:

Hon'ble National Green Tribunal in O.A. No. 362/2022 in the matter of Aravalli Bachao Citizen Movement Vs. Union of India & Ors, vide order dated 11.12.2023 held that "... ***the proceedings for imposition and realization of environmental damage compensation do not originate from and are not dependent on criminal proceedings. In fact the same originate from the are dependent on illegality of mining and transportation and derive their jurisdiction, validity and authority from the environmental laws including the Environmental (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974 and the mines and Minerals (Development and Regulation) Act, 1957 and Rules made there under and the directions given by Hon'ble Supreme Court of India and this Tribunal. There is no valid justification for not initiating the same. The HSPCB is directed to prepare SOP for the same and issue instruction within two month from the receipt of a copy of this order to all its Regional Officers for initiating and conclude the proceedings for imposition of environmental compensation in all cases of illegal mining and transportation in accordance with law***".

Accordingly, in-compliance of the directions of the Hon'ble NGT, a standard operating procedure (SOP) for dealing with imposition and realization of environmental damage compensation is required to be prepared. The action against violators and non-compliant units/person(s) found violating the environmental norms is to be taken by imposition of environmental compensation and realization of the same.

2.0 Standard Operating Procedures (SoPs) for imposition and realization of Environmental Compensation on units/persons involved in illegal mining/violations and non-compliance related to illegal mining in compliance of Hon'ble NGT order dated 11.12.2023 in OA No. 362 of 2022:-

Hon'ble NGT vide its orders dated 26.02.2021 in OA No. 360 of 2015 has issued directions in respect of development of a mechanism for assessment and recovery of compensation regarding mining and directed the CPCB to issue directions to the Administrative Secretary of the State to evolve an appropriate mechanism for assessment and recovery of compensation in all Districts of the State and for utilization of the recovered compensation for restoration of environment by preparing an appropriate action plan. The Govt. of Haryana, Department of Environment & Climate Change vide Memo No 16/10/2022-3Env. Dated 27.06.2022 has accorded approval for adopting Approach 2 mentioned in OA No. 360 of 2015 for imposing environmental compensation in illegal mining cases as directed by CPCB vide their letter dated 11.06.2021. Further, Haryana State Pollution Control Board is nominated as Nodal agency for formulation for projects, maintaining the accounts, releasing of funds (after approval of Govt.) and supervise expenditure by line departments/implementing agencies.

2.1 Legal provisions under the Mines and Mineral (Development and Regulation) Act, 1957 and rules/terms framed by State of Haryana and Environment (Protection) Act, 1986 and Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012.

2.1.1 Mine and Minerals (Development and Regulation) Act, 1957.

Under the provisions of the Section 4 (1) of the Mining Act, no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of mineral concession granted under the Mines and Mineral (Development and Regulation) Act, 1957 and the rules made there under.

2.1.2 The Haryana Minor Mineral Concession, Stocking and Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012.

Rule 103, of the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals, and Prevention of Illegal Mining Rules, 2012 defines illegal or unauthorized Mining and Consequences as “any person undertaking any mining operation without any valid mineral concession granted under the Act”. There are provisions of taking action against the violators indulging in illegal or unauthorized mining under rule 104, as mentioned in chapter 16, which are reproduced as under:

104. Any act of illegal or un-authorized mining shall be liable to the following:

Environmental Compensation for illegal mining and transportation of illegally mined material is imposed in compliance of order dated 26.02.2021 in OA No. 360/2015 in the matter of National Green Tribunal Bar Association Vs Union of India & Ors. In the said order, the Hon'ble Tribunal has directed (in para 9.6) to take action against illegal excavation and transportation of minor mineral to achieve deterrence against illegally mined minerals.

The Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 have been framed by the Govt. of Haryana through Department of Mines and Geology, wherein, under rule, 104 (iii), it has mentioned that whenever a person is found to be indulging in such offence for the third time or more, the officer concerned shall register a FIR and handover all such tools, equipments, vehicles or any other thing used for such un-authorized operation to the police.

Therefore, in compliance of order dated 26.02.2021 in OA No. 360 of 2015 in the matter of National Green Tribunal Bar Association Vs Virender Singh (State of Gujrat), it has been requested the Department of Mines and Geology to revisit rule 104 of the

Haryana Minor Mineral Concession, Stocking and Transportation of Mineral and Prevention of Illegal Mining Rules, 2012 regarding the provisions of registration of FIR and handing over all such tools, equipment, vehicles or any other things used for such un-authorized operation to the Police on the very first offence itself.

2.1.3 Environmental Protection Act, 1986

There is a provision of taking legal action under section 15 of the Environmental Protection Act, 1986 as amended in Jan Vishwas (Amendment of Provision) Act, 2023, against a Project Proponent/person for violations and non-compliance.

2.2 District Level Task Force (DLTF) for inspection

To curb and check illegal mining, State Government through Mines and Geology has constituted District Level Task Force (DLTF) under the chairmanship of Deputy Commissioner of each District vide order dated 09.03.2007. The DLTF shall conduct joint inspection of the site based on the report of the Mining Department in case they report illegal or excess mining /violation and/or non-compliance related to mining, causing damage to the environment. The DLTF shall keep regular watch over the mining activities and movement of minerals in the district. The DLTF shall have its regular meeting, preferably every month to reconcile the information from the mining activity, and other observations made during the month and take appropriate corrective and remedial action, which may include a recommendations for revoking mining lease or environmental clearance. The DLTF may constitute an independent committee of the expert to assess the environmental or ecological damage caused due to illegal mining and recommend recovery of environmental compensation from the miner's concern. The following are the members of DLTF.

1.	District Collector of the District concerned	Chairman
2.	Superintendent of Police of the District concerned	Member
3.	District Forest Officer of the District concerned	Member
4.	State Pollution Control Board Official of the District concerned	Member
5.	District Transport Official of the District concerned	Member
6.	Assistant Mining Engineer/Mining Officer of the District concerned	Member Secretary/Convener

2.3 Environment Compensation to be levied in case of illegal mining:-

The Hon'ble NGT vide its order dated 26.02.2021 in OA No. 360 of 2015 had considered Approach 2 as mentioned in the report of CPCB submitted on 30.01.2020.

“Approach 2, is demonstrated by the following formula.

“Till such time as data and information for a comprehensive net present value (NPV) is worked out in a site specific manner to account for all (or atleast the major) ecological damages, a simplified NPV, proxied on the market value of the illegally extracted amount may be computed. In this case, the NPV approach would imply that the total benefits from the activity of mining (as represented by the market value of the extracted amount) be deducted from the total ecological costs imposed by the activity. In the absence of data on benefits and costs separately, modification of the formula has been recommended as under:

Total Benefits (B) = Market Value of illegal extraction of mined material: D (refer Table 1)

Total Ecological Costs (C) = Market Value Adjusted for risk factor: $D * RF$ (refer Table 1).

For present purposes, it is assumed that the Benefits would accrue only in the first year (in which the extraction of the illegally mined material takes place), while the ecological costs would continue to be felt over a period of time. NPV is to be calculated for a period of 5 years on the net value, $\Sigma (C - B)$, at a discount rate ranging from 8%-5%, varying in inverse with the risk factor. Thus, where the highest risk factor (say 1) is applicable, the discount rate applicable would be the lowest (say 5% in this case).”

Further, CPCB in its report dated 30.01.2020 (submitted to Hon'ble NGT) has recommended that the annual net present value (NPV) of the amount arrived at after taking the difference between the costs and the benefits through the use of the above approach, may be calculated for a period of 5 years at a discount rate of 5% for mining which is in a severe ecological damage risk zone. The rationale for levying this NPV is based on expert opinion that reversal and/or restoration of the ecological damages is usually not possible within a short period. The negative externalities of the mining activity are therefore to be accounted for in this manner. Ideally, the worth of all such damages, including costs of those which can be restored should be charged. However, till data on site-specific assessments becomes available, this

approach may be adopted in the interim. In situations where the risk categorization charged. However, till data on site-specific assessment becomes available, this approach may be adopted in the interim. In situations where the risk categorization is unavailable or pending calculation, the Discount Rates as mentioned in Table 02, may be considered.

Table No. 01				
Permitted Quantity (in MT or m ³)	Total Extraction (in MT or m ³)	Excess Extraction (in MT or m ³)	Exceedance in Extraction:	
X	Y	Z = Y-X	Z/ X	Market Value-of-the-illegal mined material (MT-or-m ³):D=Z x where x is market rate of mined material.
				*DF = 0.3 if Z/X = 0.11 to 0.40 DF = 0.6 if Z/X = 0.41 to 0.70 DF = 1 if Z/X >= 0.71
				*RF = 0.25, 0.50, 0.75, 1.00 (as per table 2)

* DF = Deterrence Factor, RF = Risk Factor

Table No. 02				
Severity	Mild	Moderate	Significant	Severe
Risk Level	1	2	3	4
Risk Factor	0.25	0.50	0.75	1.0
Discount	8%	7%	6%	5%

2.3.1 Formula for calculating environmental compensation charges

Market Value of Illegally Mined Material = D

Annual Value of Foregone Ecological Values = D*RF

- Present Value of Foregone Ecological Values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 \frac{(D*RF)}{(1+r)^t}$$

$$= \frac{(D*RF)}{(1+r)^1} + \frac{(D*RF)}{(1+r)^2} + \frac{(D*RF)}{(1+r)^3} + \frac{(D*RF)}{(1+r)^4} + \frac{(D*RF)}{(1+r)^5}$$

Where, r = 5% discount rate = 0.05

- Net Present Value (after netting out market value of illegally mined material) - i.e., Total Compensation to be levied

$$NPV = PV - D$$

3.0 Procedure to impose Environmental Compensation

1. The District Level Task Force will inspect the site and prepare a detailed report in regard to illegal mining /violation and non-compliance related to the mining for imposition of environmental compensation.
2. Concerned Mining Officer/Assistant Mining Engineer, being the member convener of DLTF, will issue a show cause notice of 15 days to the Project Proponent mentioning the grounds on which EC is proposed to be imposed.
3. The data of illegal mined material will be provided by the Mining Department required for imposing environment compensation as per Approach 2 finalized by Hon'ble NGT in case of illegal or excess mining, causing damage to the environment.
4. The Mining Officer/Assistant Mining Engineer and RO, HSPCB shall prepare a detailed report after expiry of the period of show cause notice and will prepare assessment report for imposition of environmental compensation after examining the reply submitted by the Project Proponent (in case received).
5. The Mining Officer/Assistant Mining Engineer will forward the case to DLTF for examination and finalization of the amount of environmental compensation to be imposed, within 15 days time as per Approach 2 and the same may be submitted to Chairman/Chairperson of DLTF for issuing directions for levy and deposition of environmental compensation to the Project Proponent/person and amount to be deposited in the separate account to be opened in District Headquarter and same shall be intimated to the High Powered Committee constituted by Govt. of Haryana for utilization of environmental compensation for restoration of ecology.
6. In case of transportation of illegally mined mineral, the Mining Department shall recover the penalty amount as decided by the Hon'ble NGT vide orders dated 19.02.2020 passed in MA No. 16/2020 in OA No. 44/2016 and vehicle to be released only after recovery of penalty amount.

3.1 Action to be taken in case failure to deposit Environmental Compensation

In case of failure to deposit environmental compensation amount assessed by the DLTF, following procedure should be adopted for realization of environmental compensation for violation by the mining unit/person:-

- a. EC imposed will need to be deposited by the Project Proponent/person involved in illegal mining in a separate account at the District Level within a period of 30 days from issue of directions. In case of failure to deposit the EC amount within 30 days of its issuing the directions for depositing Environmental Compensation amount by the

project proponent/person involved in illegal mining, the concerned Regional Officer, HSPCB will make a reference to the Deputy Commissioner with full facts, within a maximum period of 10 working days, who shall then proceed to recover the environmental compensation amount in accordance with the provisions of the Haryana Land Revenue Act, 1969 or any other similar Act for the time being in force.

- b. Cases of new/renewal of licence and permissions of mining, Environment Clearance (EC), Consent to Operate (CTO) under Water Act, 1974/Air Act, 1981 or suspension of closure order of the defaulting PP/person shall not be entertained until and unless the EC amount is deposited.
- c. Legal action shall also be initiated against the defaulting Project Proponent/person by the concerned Mining Officer/Regional Officer, HSPCB.
