

## 1. FORMULA TO COMPUTE ENVIRONMENTAL COMPENSATION

Recently, it has been observed by practitioners as well as the media in India that the Central Pollution Control Board (CPCB) has started to impose heavy penalties on companies for alleged violation of emission and effluent standards and other environmental non-compliances, by using a formula to compute the environment compensation due.

In August 2018, the National Green Tribunal (NGT) while hearing a matter related to water discharge quality, directed the CPCB to ensure that the discharge quality of environmental pollutants should remain within the notified standards. The NGT left it open for the CPCB to take penal actions and to assess and recover compensation for damage caused to the environment. As a result, a Committee was constituted by the Chairman, CPCB, to provide the formula for calculation of environmental compensation. This Committee prepared a policy on “Methodology for Assessing Penalty & Environmental Compensation and Action Plan to Utilize the Fund”.

On 19 February, 2019 the NGT have also considered the recommended formula for calculation of environment compensation, as devised by the Monitoring Committee, in the matter of *Paryavaran Suraksha Samiti vs. Union of India*.

The formula for calculation of the Environmental Compensation (EC) is as follows:

$$EC = PI \times N \times R \times S \times LF$$

Where, EC is Environmental Compensation in (₹)

- PI** = Pollution Index of industrial sector
- N** = Number of days of violation
- R** = Factor in Rupees (₹) for deriving the EC, which may be a minimum of 100 and maximum of 500.
- S** = Factor for scale of operation which could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units
- LF** = Location factor

This formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations. The Pollution Index was first used by the CPCB to categorize the Industrial sectors into Red, Orange, Green and White categories and the same Pollution Index is now being used for the purpose of calculating the EC. A sample list of Location Factors is also provided which can be used for calculating the EC.

2. AMENDMENT OF HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) RULES, 2016

On 1st March 2019, the Ministry of Environment Forest and Climate Change (MoEFCC) notified an amendment to the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 (HW Rules).

The major change which is brought about by this amendment is that the HW Authorization is no longer required to be obtained by a company which does not require a Consent To Establish (CTE) or Consent To Operate (CTO) from a State Pollution Control Board (SPCB). However, the obligations of handing over the hazardous wastes and other wastes generated by the company to a registered waste collector, recycler, or operator of the disposal facility will remain as it is and should be in accordance with the CPCB Guidelines.

The HW Rules will henceforth also recognize the “waste collector” within the ambit of the rules. Earlier, this term was not formally recognized/defined within the HW Rules, which is a key step in recognizing the importance of the informal sector in the waste management sector in India.

3. REQUIREMENT TO HAVE A CTE IS WAIVED OFF FOR INDUSTRIAL PROJECTS/ESTABLISHMENTS WHICH REQUIRE ENVIRONMENTAL CLEARANCE.

The CPCB has issued written directions to all SPCBs regarding the streamlining of consent mechanism, whereby it has been directed that the Environment Clearance (EC) granted for a project should be considered as a deemed Consent To Establish (CTE). In other words: in such cases there shall not be a requirement to take separate CTE. This was generally followed as a practice, but its’ important that this is clearly notified so that the process is streamlined and adopted by all SPCBs in India.

Furthermore, the SPCBs will now need to be involved in the process of grant of Environment Clearance in order to incorporate the inputs provided by the various other authorities (State / or Central – level) reviewing/granting an EC.