

India

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REGULATORY FRAMEWORK

1. Please briefly set out the key environmental legislation and regulatory authorities in your jurisdiction.

Regulatory framework

The main environmental laws are the:

- Environment (Protection) Act 1986 (Environment Act).
- Water (Prevention and Control of Pollution) Act 1974 (Water Act).
- Air (Prevention and Control of Pollution) Act 1981 (Air Act).

Various rules have been made under the Environment Act that address specific environmental issues.

In India's federal system, the legislative powers and enforcement authorities relating to the environment are divided between the Central Government and the 28 State Governments. The Parliament and the State Legislatures have concurring powers to legislate on forests and wildlife protection. However, important environmental laws, such as the Water Act, have been passed under Article 252 of the Constitution, which empowers the Central Government to legislate in a field reserved for States, where two or more State Legislatures consent to a central law.

Regulatory authorities

The enforcement authorities reflect this federal system. The main authority is the Central Ministry of Environment and Forests. However, the Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs) (*see box, The regulatory authorities*), which were initially set up under the Water Act, now have a wide mandate. The CPCB and SPCBs also carry out functions under the Air Act.

The Environment Act is an overarching Act with a wide coverage of environment protection. The CPCB and the SPCBs perform all additional functions and rules made under it. This includes subject matter such as:

- Hazardous waste, chemicals, micro-organisms and genetically engineered organisms.
- Noise pollution, plastic use, biomedical waste, and municipal solid waste management.

Therefore, in practice the CPCB and SPCBs are the main environmental authorities in India, albeit not the only ones. For instance, the relevant authorities for supervising coastal zone regulations are the National Coastal Zone Management Authority and State Coastal Zone Management Authorities. At times, specialised authorities are set up by the Supreme Court of India, such as the Central Empowered Committee that supervises forest-related matters and timber-related industries.

The judiciary, in particular the Supreme Court and the various State High Courts, have played a pivotal role in developing environmental law, adopting new environmental principles, overseeing environmental laws, and dealing with various environmental infringements on its own initiative. Many environmental writ petitions have been filed via the Public Interest Litigation route by concerned citizens or non-governmental organisations. Under the Constitution, Supreme Court judgments become law.

2. To what extent are environmental requirements enforced by regulators in your jurisdiction?

Though India has many environmental laws, closely guarded and supplemented by the Supreme Court and other courts, it is generally felt that the environmental authorities fail to adequately perform their mandate, though there are regional differences.

A recent report submitted to the Supreme Court by a committee concluded that that one of the main weaknesses of the environmental protection regime is the constitution and functioning of the pollution control boards. The committee observed that executive positions are held largely by persons without the technical knowledge required to enforce the numerous environment laws and statutes. The pollution control boards, with few exceptions, are not effectively enforcing environmental laws. The National Environment Policy 2006 argues for a Cabinet monitored Committee to be set up to review implementation of environmental policy annually.

In some cases the Supreme Court has, in frustration with the functioning of executive bodies, closely supervised implementation of environmental laws and standards, such as when it:

- Ordered the public transport sector in Delhi to convert to CNG-driven vehicles.
- Set up the Central Empowered Committee, comprising technical experts, to monitor all wood-based industries, which must regularly report to the Supreme Court on the national situation.

3. To what extent are environmental non-governmental organisations (NGOs) and other pressure groups active in your jurisdiction?

NGOs and various national and international environmental pressure groups have been playing a very active role in environmental enforcement in India. There are a number of large, medium sized and small NGOs that work at the grassroots level and lobby the government to ensure that environmental issues are given their due share of attention.

Various civil society action groups have pursued Public Interest Litigation by filing petitions in the High Courts and the Supreme Court. This has led to various landmark judgments that have affected environmental governance in India.

EMISSIONS

4. Is there an integrated permitting regime or are there separate environmental regimes for different types of emissions? Can companies apply for a single environmental permit for all activities on a site or do they have to apply for separate permits?

There is no single environmental permit for all activities for a site. Separate permits have to be obtained under the various environmental laws. Various activities require an environmental impact assessment (*see Question 9*).

Manufacturing units that must obtain an Industrial Licence (such as those involved in the paper, asbestos, hazardous chemicals, entertainment and electronics industries) must obtain a No Objection statement from the Central Ministry of Environment and Forests.

Veneer, plywood and other wood-based manufacturing units must obtain an environmental licence from the Central Empowered Committee set up by the Supreme Court. Such permits are location and person specific, and not transferable.

Approval is required for the operation or a process carried out in an industrial installation involving (or likely to involve) hazardous chemicals. This includes onsite storage and transport or isolated storage of hazardous chemicals, or transport of hazardous chemicals through a pipeline. Approval is obtained from the relevant SPCB, the Chief Inspector of Factories, of Dock Safety or of Mines, the Atomic Energy Regulatory Board, or the Chief Controller of Explosives (as the case may be).

Further, the import, export, transport, manufacture, process, use or sale of hazardous micro-organisms or genetically engineered organisms or substances requires approval from the Genetic Engineering Approval Committee. Approval is issued for a specified period, up to four years.

5. If there is an integrated permitting regime, please provide a brief overview of it, in particular:

- **What permits are needed and which regulator issues them?**
- **How long do permits last?**

- **Are there restrictions on transferring permits?**
 - **What are the penalties for non-compliance?**
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There is no single environmental permit for all activities for a site. Separate permits have to be obtained under the various environmental laws.

Most environmental permits are transferable, provided that the same activities are continued. If there is any expansion or additional discharge, the permit holder has to apply for a new or revised permit. The transfer has to be notified to the environmental authorities, and they have the right to change existing conditions or impose new ones.

Prior environmental clearances obtained under the environmental impact assessment rules are expressly transferable (*see Question 9*).

6. Please summarise the regulatory regime for water pollution (whether part of an integrated regime or separate). In particular:

- **What permits or other authorisations are required and which regulator issues them?**
 - **Are any activities prohibited (such as causing or failing to prevent water pollution)?**
 - **Can the regulator require a polluter to clean-up or pay compensation for the water pollution?**
 - **What are the penalties for non-compliance?**
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The Environment Act covers environmental pollution in general and the Environment (Protection) Rules set emission standards for certain industries that cause water pollution. The specific law that deals with water pollution is the Water Act. The SPCB is the main enforcer of the Water Act. The SPCB has a duty to:

- Set standards for water pollution.
- Inspect works.
- Advise the State Government about the suitability of any premises or location to carry out an industry likely to pollute a stream or well.

A consent order (permit) must be obtained by a person for (*Water Act*):

- Establishing or taking any steps to establish an industry, operation or process, or a treatment and disposal system (or an extension of it), that is likely to discharge sewage or trade effluent into a stream or well, sewer or onto land (discharge of sewage).
- Bringing into use any new or altered outlets for the discharge of sewage.
- Beginning to make any new discharge of sewage.

Failure to obtain a permit can lead to imprisonment for at least 18 months (which can be extended up to six years) and a fine.

7. Please summarise the regulatory regime for air pollution (whether part of an integrated regime or separate). In particular:

- **What permits or other authorisations are required and which regulator issues them?**
- **Are any activities prohibited (such as discharging certain substances into the air without a permit or causing air pollution)?**
- **Can the regulator require the polluter to clean-up or pay compensation for the air pollution?**
- **What are the penalties for non-compliance?**

The Environment Act covers environmental pollution in general and the Environment (Protection) Rules set emission standards for certain industries that cause air pollution. The specific law that deals with air pollution is the Air Act. Under the Air Act, the SPCB is the main enforcer of the air pollution regime. The SPCB has a duty to:

- Set standards for air pollution.
- Inspect air pollution control areas.
- Advise the State Government about the suitability of any premises or location to carry out an industry likely to cause air pollution.

In consultation with the SPCB, the State Government can declare any area to be an air pollution control area.

No industrial plant can be established or operated in an air pollution control area without the prior consent (permit) from the SPCB. Certain industries must also obtain clearance based on an Environmental Impact Assessment (see *Question 9*).

Failure to obtain a permit can lead to imprisonment for at least 18 months (which can be extended up to six years) and a fine.

CLIMATE CHANGE

8. Please provide a brief overview of emissions trading schemes in your jurisdiction, including any national targets and carbon allowances systems. Is your jurisdiction party to international agreements on this issue and how have they been implemented into your national law?

On 30 June, 2008, the Prime Minister of India presented its National Action Plan on Climate Change, which focuses on the following eight areas or “missions”:

- Solar.
- Enhanced energy efficiency.
- Sustainable habitat.
- Water.
- Sustaining the Himalayan ecosystem.

- A “green” India.
- Sustainable agriculture.
- Strategic knowledge for climate change.

Of immediate relevance to the corporate sector is the ambition to set up a first of its kind market-based mechanism in India, to promote energy efficiency among energy-intensive large industries, by allowing trade in energy-saving certificates. The existing Energy Conservation Act 2001 already identifies the following energy-intensive sectors (but other sectors may be identified in the future):

- Thermal power stations.
- Fertiliser.
- Cement, iron and steel.
- Chlor-alkali.
- Aluminium.
- Railways.
- Textile and pulp paper.

Once industry-specific benchmarks have been identified, the certified excess savings can be traded among companies to meet their mandated compliance requirements, or can be banked for the next cycle of energy savings requirements. The implementation of this trading mechanism may take place in the near future, as it is anticipated that rules will be adopted under the existing Energy Conservation Act 2001 (and that no new legislation will need to be adopted).

India ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1993 and the Kyoto Protocol 1997 in 2002. As a non-Annex I country (OECD countries and Economies in Transition), India does not take part in the national emissions trading planned for developed countries. However, India is a leading host country of Clean Development Mechanism investments, enabling Annex I countries to invest in emission-reducing projects in developing countries.

ENVIRONMENTAL IMPACT ASSESSMENTS

9. Please provide a brief overview of the requirements to carry out environmental impact assessments (EIAs) for certain projects (for example, construction of an oil and gas facility). In particular:

- **What type of projects and impacts are covered?**
- **Are permits or other documents required before the project can start and which regulator issues them?**
- **What are the penalties for non-compliance?**

Regulatory framework

The EIA Notification 1994, adopted under the Environmental Protection Act, sets out a mandatory EIA procedure for various types of projects. The notifications and all its amendments have

now been replaced by a comprehensive EIA Notification published on 14 September 2006 (EIA 2006). The EIA 1994 is still relevant for pending applications, and the EIA 2006 contains specific Interim Guidelines for such cases.

In EIA 2006, various activities have been identified where an EIA report is mandatory. The notification classifies various activities into two categories, A and B, based on the spatial extent of potential impacts, and potential impacts on human health and natural and man-made resources.

New projects as well as expansion and modernisation of existing projects falling under the stated activities require prior environmental clearance. Category A activities require clearance from the Central Government. Category B activities require clearance from a State level EIA Authority (SEIAA).

The activities requiring prior clearance include:

- Mining of minerals.
- Offshore and onshore oil and gas exploration, development and production.
- Oil and gas transportation pipelines.
- Thermal power plants.
- Nuclear power projects and processing of nuclear fuel.
- Coal treatment plants.
- Metallurgical industries (ferrous and non-ferrous).
- Cement plants.
- Petroleum refining industry.
- Asbestos milling and asbestos-based products.
- Chemical fertilisers.
- Man-made fibre manufacturing.
- Industrial estates.
- Townships and area development projects.

Application procedure

There are four stages that must be followed by typical projects to obtain clearance:

- Stage 1 Screening (only for Category B projects and activities).
- Stage 2 Scoping.
- Stage 3 Public Consultation.
- Stage 4 Appraisal.

Public hearings are exempted for some projects, such as:

- Modernisation of irrigation projects.

- Projects in industrial estates or parks.
- Expansion of roads and highways not needing further land acquisition.
- All building/construction/area development and townships.

An Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee (SEAC) must complete its assessment and make recommendations to the relevant regulatory authority within 60 days from receiving all required documents (including the final EIA report) and completion of the public hearing.

The regulatory authority then considers the recommendations of the EAC or SEAC, and sends its decision to the applicant within 45 days of receiving the recommendations (in other words, within 105 days of the EAC or SEAC receiving the final EIA Report).

For projects that do not require an EIA (B-2 projects identified by the SEAC in the stage 2 scoping stage), the final decision must be sent within 105 days of receiving the complete application with the required documents.

The prior environmental clearance granted for a project or activity is valid for:

- Ten years in the case of river valley projects.
- 30 years for mining projects.
- Five years for all other projects and activities.

It is mandatory for the project management to submit half-yearly compliance reports about terms and conditions specified in a prior environmental clearance.

A prior environmental clearance can be transferred during its validity period to another legal person entitled to undertake the project or activity. This can be done on application to the relevant regulatory authority by the transferor, or by the transferee with a written statement of no objection by the transferor, on the same terms and conditions as the initial clearance. No reference to the relevant EAC or SEAC is necessary.

In case of non-compliance, the penalty is imprisonment for a term up to five years or a fine up to INR100,000 (about US\$2,500), or both.

WASTE

10. Please provide a brief overview of the regulatory regime for waste. In particular:

- What permits or other authorisations are required and which regulator issues them?
- What activities are prohibited (such as storing or disposing of waste without a permit)?
- Do operators need to meet certain criteria (such as having sufficient financial means to operate landfills and other waste disposal sites)?

- **Are there special rules for certain types of waste (such as hazardous waste or electrical equipment)?**
- **What are the penalties for non-compliance?**

Permits

The following persons must obtain prior authorisation from the relevant SPCB:

- An occupier (person having the control over the affairs of a factory or premises) handling hazardous waste.
- A person recycling waste.
- An operator of a facility for the collection, reception, treatment, storage and disposal of hazardous waste.

There are three main categories of waste governed by separate rules:

- Hazardous waste.
- Radioactive waste.
- Biomedical waste.

Hazardous waste

The most comprehensive and relevant law for companies are the Hazardous Waste (Management and Handling) Rules 1989 (HW Rules).

In 2003, the HW Rules were amended to bring the domestic definition of hazardous waste in line with the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal 1989 (Basel Convention).

Hazardous waste is defined as waste which, due to its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics, causes danger or is likely to cause danger to health or the environment, whether alone or in contact with other waste or substances, and includes:

- Hazardous waste generated by any of 36 listed categories of process (independently of concentration levels).
- Waste containing any of the 75 types of substances, listed under five categories with different concentration limits (based on the lists of The Netherlands Environment Protection Agency).
- Waste set out in Lists A and B (of Part A), relating to the import and export of hazardous waste, if they have any of the 13 hazardous characteristics listed in Part B.

Biomedical and other waste

Generating, collecting, receiving, storing, transporting, treating, disposing and/or handling biomedical waste (except for facilities handling less than 1,000 patients per month) substances requires approval from the relevant SPCB.

Manufacturing carrier bags or containers using new or recycled plastic requires authorisation from the relevant SPCB, which is

granted for up to three years.

A person recycling lead-acid batteries must register with the Joint Secretary of the Ministry of the Environment and Forests. Approval is required for up to two years.

Import and export of waste

As with the HW Rules, the import of waste from any country into India is not allowed for dumping and disposal. However, import of such waste may be allowed for processing or re-use as raw materials, after each case has been examined on merit by the relevant SPCB, and approved by the Ministry of Environment and Forests.

By order of the Supreme Court of 1997, all hazardous waste listed under Annexure VIII of the Basel Convention cannot be imported into India. Further, a 2003 Supreme Court order requires the decontamination of ships before waste is imported from them into India. The Supreme Court has also set up a High-Powered Committee to assist it in monitoring the hazardous waste situation in India, including the ship-breaking sector and the import of hazardous waste into India.

The export of hazardous waste from India is regulated by the Ministry of Environment and Forests.

Penalties

Breach of the waste rules can lead to imprisonment for up to five years or a fine up to INR100,000 (about US\$2,400), or both.

ASBESTOS

11. Please provide a brief overview of the regulatory regime for asbestos in buildings. In particular:

- **What activities are prohibited?**
- **What are the main obligations (such as investigating the presence of asbestos and risk assessments for employees) and who is liable to carry them out?**
- **What permits or other authorisations are required and which regulator issues them?**
- **What are the penalties for non-compliance?**

In India, owners or occupiers of premises have no specific duties relating to asbestos on site, other than general occupational health and safety regulations applying to all industries. These are set out in, among other things, the Factories Act 1948 which, after the Bhopal Gas disaster in 1984, shifted towards imposing preventive checks and balances on industries. Asbestosis was notified as an occupational hazard under the Factories Act in 1976.

However, an asbestos project or unit manufacturing asbestos products must submit an EIA Report (*see Question 9*) to the Central Ministry of Environment and Forests. Also, an asbestos manufacturing unit must obtain an Industrial Licence from the Department of Industrial Policy and Promotion, Central Ministry of Commerce and Industry.

CONTAMINATED LAND

12. Please provide a brief overview of the regulatory regime for contaminated land. In particular:

- Which regulator is responsible and which legislation applies?
- In what circumstances can a regulator require the investigation and clean-up of contaminated land?
- What are the penalties for non-compliance?

India has no specific environmental regime relating to the contamination of land. Only in an indirect manner will pollution on land be taken into account. For instance, no person can knowingly cause or permit any poisonous, noxious or polluting matter to enter (directly or indirectly) into a stream, well or sewer, or onto land (*Water Act*).

Further, this reference to stream includes underground waters. For 20 years, various versions of a Bill to Regulate and Control the Development and Management of Groundwater have been tabled before Parliament, without being adopted into law.

13. In relation to liability for contaminated land:

- Which party is liable for carrying out or paying for environmental investigation and clean-up?
- Can an owner or occupier who has not caused contamination be liable for investigation and clean-up of contamination on their land?
- Can previous owners or occupiers be liable for contamination they have caused in the past?
- Are there limits on liability or ways for a party to limit its liability?

There is no specific environmental regime in India relating to the contamination of land.

14. Can a lender incur liability for contaminated land and is it common for a lender to incur such liability? What steps do lenders commonly take to minimise such liability?

There is no specific environmental regime in India relating to the contamination of land.

15. Can a private individual bring legal action against a polluter, owner or occupier (for example, for damage caused by the movement of contamination onto his land)?

Many environmental petitions have been filed via the Public Interest Litigation route by concerned citizens or NGOs. Under the Constitution, Supreme Court judgments become law.

The Water Act, the Air Act and the Environment Act also provide for citizen suits, enabling the courts to deal with an offence under these Acts on notice from any person, if this person has given at least 60 days notice to the Central Government, or the CPCB or relevant SPCB.

TRANSACTIONS

16. In what circumstances can a buyer inherit pre-acquisition environmental liability in:

- An asset sale?
- The sale of a company (share sale)?

India has no specific environmental regime relating to the contamination of land. A buyer can only usually inherit pre-acquisition environmental liability if, at the relevant time, it failed to comply with the Environment Law or the rules made under it, in relation to the assets it is buying. The liability rules under the Environment Act are set out below.

In case of offences committed by a company, every person who, at the time the offence was committed, was directly in charge of and responsible to the company for conducting the company's business, as well as the company, is liable for the offence, unless such person can prove that either:

- The offence was committed without his knowledge.
- He exercised all due diligence to prevent the offence.

In addition, if the offence has been committed with the consent or connivance of, or is attributable to neglect by a director, manager or other company officer, such a person is also liable for the offence.

Under the Factories Act, a company must designate a person as occupier of the company's premises. An occupier is either the managing director or a director. Occupier means a person who has control over the affairs of the factory or the premises.

In the case of companies registered under the Companies Act, a shareholder is not personally liable for offences committed by companies under the Environment Law, unless he is a director, manager or other officer (*see above*). However, in sole proprietorship or partnership firms, the sole proprietor or partners is liable as an occupier.

17. In what circumstances can a seller retain environmental liability after disposal in:

- An asset sale?
- A share sale?

Persons who are liable for environmental matters (*see Question 16*) at the particular time of non-compliance or contravention continue to be liable, even after disposal, in an asset sale or share sale.

18. Does a seller have to disclose environmental information to the buyer in:

- **An asset sale?**
 - **A share sale?**
-

Any seller or buyer must examine the requirements of the relevant law(s) applicable to that particular property, assets or company. The buyer should ensure that it obtains relevant details and documents, and is informed and satisfied about requirements and liabilities under the various laws, before the transaction is completed.

There is no specific law or procedure stating what details the seller must disclose to the buyer. In the last few years parties, particularly those involved in factories transactions, have become aware of environmental issues, and are taking care to enquire about environment compliance, particularly air and water pollution. This is because of widely publicised environmental cases taken up by the Supreme Court, and strict action including closure of factories for non-compliance and the arrest of the Minister and Chief Secretary of the State Government for allowing saw mills to operate in breach of the Environmental Law.

19. Is environmental due diligence common in an asset sale or a share sale? If yes:

- **What areas are usually covered?**
 - **What types of environmental assessments are available?**
 - **Are environmental consultants usually used? If so, what issues should be covered in an engagement letter (for example, limit on consultant's liability)?**
-

Because of recent widely publicised environmental cases and incidents, parties are now more concerned about environmental issues (see *Question 18*).

Environmental due diligence has become common in an asset sale or a share sale.

Areas covered

The areas covered include:

- The application of relevant environmental laws, rules and orders, relating to air and water pollution and the cutting of trees.
- Compliance reports sent to the relevant authorities.
- Status of any enforcement action relating to non-compliance with environmental laws.

Environmental consultants

Environmental consultants are engaged to examine the application of relevant environmental laws, rules, and orders relating to:

- Air and water pollution and cutting of trees.
- Types of machinery used and their status.

- Inspection of compliance with air and water pollution laws.
- The experience and training of employees.
- Machine operation.
- Compliance reports sent to the relevant authorities, and any pending enquiries.
- Status of any enforcement action relating to non-compliance with environmental laws.
- Advice on the financial implications and viability of the concerned project, taking into account the latest environmental orders, directions and notifications issued for the particular property.

20. When are environmental warranties and indemnities usually given and what issues do they usually cover in:

- **An asset sale?**
 - **A share sale?**
-

Environmental warranties are usually given in respect of compliance with environmental laws relevant to the various assets, including the status of machinery and air and water pollution.

Indemnities are given in respect of liabilities arising out of non-compliance or breach of environmental laws including rules, orders, directions and notifications, on or before the execution of sale documents.

21. Are there usually limits on environmental warranties and indemnities, for example, time limits or financial caps?

There are no caps on environmental warranties and indemnities set out by law, but they can be set out in the contract between the parties.

REPORTING AND AUDITING

22. Do regulators keep public registers of environmental information (for example, of environmental permits or contaminated properties)? What is the procedure for a third party to search those registers?

Under the Air Act and the Water Act, every SPCB maintains a register containing details of the persons to whom environmental consents have been granted, and the conditions imposed. The register is open to inspection during reasonable hours, by any person interested in or affected by the relevant environmental standards or the outlet or premises relating to the consent.

Under the Hazardous Wastes (Management and Handling) Rules 1989, every SPCB maintains a register containing details of conditions imposed on the disposal of hazardous waste. The register is available for inspection at office hours to any person interested or affected.

23. Do companies have to carry out environmental auditing? Do companies have to report information to the regulators and the public about environmental performance?

Under the Hazardous Wastes (Management and Handling) Rules 1989, an occupier who has control of an industrial activity involving hazardous chemicals must prepare a safety audit report before undertaking the industrial activity. Certain classes of polluting industries must submit an EIA to the relevant authority (see *Question 9*).

24. Do companies have to report information to the regulators and the public about environmental incidents (such as water pollution and soil contamination)?

A person in charge of a place where an industry, operation or process, or treatment and disposal system or extension or addition is being carried on, must inform the SPCB if, due to an accident or other unforeseen event, a poisonous, noxious or polluting matter is being discharged, or is likely to be discharged, into a stream, well or sewer, or onto land (*Water Act*). Failure to do this is an offence, punishable with imprisonment for up to three months, or a fine up to INR10,000 (about US\$240), or both.

The Manufacture, Storage and Import of Hazardous Chemical Rules 1989 require an occupier to notify the concerned authority when a major accident occurs on a site or in a pipeline.

25. What powers do environmental regulators have to access a company's documents, inspect sites, interview employees and so on?

Under the Water Act, officers of an SPCB can take samples of any sewage or trade effluent passing from a plant, or over a place into a stream or well. However, the results of such sampling are not admissible as evidence in legal proceedings, unless the detailed procedure set out by the Water Act has been followed.

The SPCB officers have power to:

- Enter and inspect a place to examine any plant, records, registers, documents or other material object.
- Search a place in which there is reason to believe that an offence has been or is about to be committed.

The Code of Criminal Procedure 1973 applies, as it does to searches and seizures made under a warrant.

Under the Water Act, the SPCBs have power to issue directions to any person, officer or authority, including orders to close, prohibit or regulate any industry, operation or process, and to stop or regulate the supply of water, electricity or other service.

Under the Air Act, an SPCB can inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process to take steps to prevent, control, or abate air pollution.

THE REGULATORY AUTHORITIES

Central Pollution Control Board (CPCB)

Main responsibilities. These are to:

- Advise the central government on water and air pollution matters.
- Co-ordinate activities of the SPCBs.
- Give technical assistance to the SPCBs.
- Organise training of personnel of the SPCBs.
- Collect, compile and publish statistical data related to air and water pollution.
- Set environmental standards.
- Establish laboratories.

W www.cpcb.nic.in

State Pollution Control Boards (SPCBs)

Main responsibilities. These are to:

- Advise the state government on matters of water and air pollution.
- Co-ordinate activities with the CPCB.
- Inspect works and plants.
- To make, vary or revoke orders related to pollution control.
- Set environmental standards.
- Establish laboratories.

A person authorised by the Central Government can enter a place, at all reasonable times, to check compliance with the Environment Act, and to examine and test equipment, plant, records, registers, documents or other material objects, and search a building to investigate offences under the Environment Act and to collect evidence (*Environment Act*).

INSURANCE

26. What types of insurance cover are available for environmental damage or liability and what risks are usually covered? How easy is it to obtain environmental insurance and is it usually obtained in practice?

The main environmental insurance mechanism in India relates to the coverage of immediate relief to a person, due to an accident caused by hazardous substances.

A person owning or having control (in a company, a director, manager, secretary or other officer directly in charge of and responsible to the company) of the handling of hazardous substances must take out insurance policies, to give relief to a person in case of death, injury, or damage to property resulting from an accident (*Public Liability Insurance Act 1991*). The handling of hazardous substances means the manufacturing, processing, treating, packaging, storing, transporting, converting, selling or transfer of hazardous waste. This insurance requirement does not include workmen, who are protected by labour laws.

Importantly, the Public Liability Insurance Act imposes strict liability on the owner of hazardous substances, and the claimant is not required to show that the death, injury or damage was due to any wrongful act, neglect or default of any person.

The insurance policy must be at least the amount of the paid-up capital of the undertaking handling the hazardous substances, but no more than INR500 million (about US\$11.8 million).

However, the amounts reimbursed are low by international standards. For instance, medical expenses incurred per claimant are reimbursed up to INR12,500 (about US\$294), and for fatal accidents and total permanent disabilities the relief is up to INR25,000 (about US\$588).

TAX

27. What are the main environmental taxes in your jurisdiction (for example, tax on waste disposal, carbon tax and tax breaks for carrying out clean-up of contaminated land)? For each tax, please briefly state how it is calculated, who pays it and the tax rates.

Under the Water (Prevention and Control of Pollution) Act 1977, a tax is levied and collected by the Government to implement the Water Act. It is payable by every person carrying on an industry. It is calculated by the quantity of water consumed, which is quite nominal, for example ten to 30 paise per kilolitre for specific purposes.

Under the air and water pollution laws, relevant State Governments set various nominal fees to be paid with an application for consent to set up industries.

REFORM

28. Please summarise any proposals for reform and state whether they are likely to come into force and, if so, when.

The National Environment Policy 2006 (NEP) is the principal reform document. It briefly describes the:

- Key environmental challenges currently facing India.
- Objectives of environment policy.

- Principles underlying policy action.
- Strategic themes for intervention and broad indications of the legislative and institutional development needed to accomplish them.
- Mechanisms for implementation and review.

The full text of the document can be accessed at www.envfor.nic.in/nep/nep2006e.pdf

Trading in energy-saving certificates

On 30 June 2008, the Prime Minister presented the National Action Plan on Climate Change (see *Question 8*).

Hazardous materials

The HW Rules (see *Question 10*) are set to be replaced by the Hazardous Materials (Management, Handling and Transboundary Movement) Rules (Hazardous Materials Rules), the draft of which was circulated in September 2007. The Hazardous Materials Rules intend to broaden the scope of the HW Rules by encompassing other “materials” beyond waste intended for final disposal, and by strengthening the regulation of recyclable materials. The Hazardous Materials Rules would also govern e-waste. The draft Hazardous Materials Rules is somewhat controversial, and faces staunch opposition from NGOs. Therefore the timing of its adoption is not entirely clear.

Coastal zone management

In May 2008, the Ministry of Environment and Forests circulated a draft Coastal Zone Management Notification to replace and update the 1991 Notification, which suffered from poor implementation. The draft takes into consideration new developments, such as a proposal for developing green field airports and the expansion and modernisation of existing airports in coastal areas.

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