

CHAPTER-IV

POWER AND FUNCTION OF STATE POLLUTION CONTROL BOARD OF ASSAM

There are two regulatory authorities i.e., Central Pollution Control Board at central level and State Pollution Control Boards at the state level to exercise power and function under the WPA for the prevention and control of pollutions in India. Accordingly the State Pollution Control Board (SPCB) of Assam has been constituted with wider responsibilities touching across almost every aspect of pollution such as hazardous wastes generation, handling and their safe disposal. Empowering under section 6, 8 and 25 of the EPA of 1986, the Central Government of India notified the HWM Rules 1989 to direct the occupier generating hazardous waste to take all practical steps to ensure that such waste are properly handled and disposed of without any adverse effects which may result from such wastes. Under the wastes rule the board has some power and function to strive against improper management of hazardous wastes.

The boards has been constituted under the Water (prevention and control of pollution) Act 1974 by the State Government at State level to exercise the powers conferred on and perform the functions assigned to the boards under the Act.¹ The State Pollution Control Board of Assam has granted time to an industry, operation or process to implement time bound programme, standards and conditions to treat the environmental pollutant. Several provisions are incorporated in the Hazardous and

¹ Section 4 of the Water (prevention and control of pollution) Act 1974

Other Waste (Management and Transboundary Movement) Rule, which empowered the State Pollution Control Boards for the proper management, handling and transboundary movement of Hazardous waste in India. Every State boards shall be a body corporate with the name specified by the State Government in the notification under sub-section(I) having perpetual succession and a dispose of common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the said name, sue or be sued.²

4.1 Establishment and Constitution of the State Pollution Control Board of Assam

The SPCB of Assam has been established and constituted as envisaged by the WPA. Section 3 to 15 of the Act deals with constitution of the board, qualification of its member, terms and conditions of their services, meeting of the board, vacancy of the seats, power of the board to constitute committees or appoints officials or employees in the board. Section 4 of the WPA shows that it is obligatory to constitute pollution control boards for the proper functioning and exercise of power to prevent, control of air, water and environment pollution in the state. The State government shall constitute a State Pollution Control Board by notification in the official gazette to exercise power and function assigned to it under the law. The board may initiate action plan or implementation programmes to prevent, reduce, minimize the generation of hazardous wastes as per law pertaining to pollution.

The SPCB of Assam was established on 2nd June, 1975 as per section 4 of the WPA of 1974. Though the board reconstituted in 1981, 1982, 1984, 1985, 1986, 1991,

² Sub-section 3 of section 4 of the Water (prevention and control of pollution) Act 1974

1993,1994, 1996, 1997,2000, 2005,2008 but not formally afterwards. The board was established for the administration and enforcement of legislation relating to environment in the State. The members of the board are nominated by the State Government representing from various departments, corporations, local authority and other institution. The State Pollution Control Board of Assam is working with one Head Office³, eight Regional Offices⁴, and a Central Laboratory at Guwahati, four Regional Laboratory⁵.

The establishment and constitution of the State Pollution Control Board of Assam has been discussed under the following headings:-

a. Constitution of the board

Under sub-section (2) of section 4 of WPA a SPCB shall consist of a chairman, having special knowledge or experience in respective field or administering institution dealing with such matters. Such a chairman may either whole-time or full time. The five other officials nominated by the state government to that government. Another five members from local authority; three non-official members to represent the interest of agriculture, fishery or industry or trade or labour; two persons to represent the companies or corporate controlled by the state government. A full time member secretary shall be appointed by the state government. The board is a legal person as it can acquire and dispose of property and may sue or be sued.

The Board shall consist of seventeen members including the Chairman and the Member Secretary. A member of a Board, other than a member –secretary shall hold

³ Guwahati

⁴ Guwahati, Dibrugarh, Sibsagar, Golaghat, Tezpur, Nagaon, Bongaigaon and Silchar.

⁵ Sivsagar, Tezpur, Silchar and Bongaigaon.

office for a term of three years from the date of his nomination. He shall continue his office even after expiration of his term until his successor enters upon his office. A member of a Board may be removed before expiry of his term by the State Government after giving reasonable opportunity of show cause. A member of a Board may at any time resign his office by writing under his hand addressed; in case of chairman, to State Government and; in any other case to the chairman of the Board, and thereafter the seat of that member or the chairperson shall become vacant.

b. Service period of the office

A member of a Board shall be deemed to have vacated his seat if he is absent without reason sufficient in his opinion of the Board from three consecutive meeting of the Board. A fresh nomination for a casual vacancy in a board can be filed for the remainder of the term for which the member in whose place he was nominated. A member of a board shall be eligible for re-nomination. These members of the board shall disqualify on any of the ground mentioned in section 8 of the WPA. Such a member shall not be eligible to continue his office until his successor enters upon the office or for re-nomination as a member. The state government may remove such member after passing an order in writing after giving an opportunity of showing cause against the same. In the case of *State of Manipur v. Chandan Manihar Singh*⁶, the SC ordered that the proceeding or constitution of the board will not be invalidate if a member become subject to any disqualification.

⁶ (1999) 2 SCC 503.

c. Setting of the board

The board shall meet at least once in every three months and shall observe such rules of procedure in its meetings as provided under the Air Act. The Chairman may also convene a meeting at any time he thinks fit for an urgent work to be transacted.⁷ The copies of minutes of the meeting shall be sent to the CPCB and to the State Government. The board constituted by the State Government under this Act shall stand dissolved and the Central Pollution Control Board shall exercise the power and perform the functions of the State Pollution Control Board.⁸

d. Board's power to constitute committees

The board has been empowered to constitute a committee consisting wholly or partly of members or other persons for any purpose as it may think fit. Such a committee shall observed rules or standards of procedure for transaction of its business at a time and place as may be prescribed. Members of such committee shall be paid allowances for attending the meeting. Section 10 of the WPA empowers the board to associate with any person whose assistance or advice may require in a particular matter to discharging board's function. Such a person may take part in discussion of that particular matter of the board but not for any other matter. Such temporary association of person shall have no right to vote at a meeting. The board may also appoint an officer or employees and qualified consultant as necessary and be assigned duties to them by the board.

⁷ Section 10 of the Air (Prevention and Control of Pollution) Act 1981

⁸ S.C. Shastri, *Environmental law* 271 (Eastern Book Company, Lucknow, 3rd edn, 2008)

e. Service of the Chairman and Member-Secretary

The service of a chairman may be either full time or part-time as the case may be as the state government may think fit. According to section 11-A of the WPA the chairman shall perform his duties as may be delegated by the board. Section 12 of the Act relates to the deals with the member secretary, officers and other employees of the board. The service of the member secretary as per section 12(1) shall be prescribed by the central government or the state government. The member secretary performs his duties as the rules or standard prepared by the central government as well as state government. The board may also delegate power if necessary to other officials from time to time. It also appoints consulting engineers for specific subject matter during the course of performing functions. The board may also pay salaries to such officials or employees and imposed terms and conditions of their services. All above working of the board shall be determined by the regulation of the board that must be approved by the appropriate government.

f. Board's account and audit

The state government may make a contribution to the board's fund each year to enable the board to perform its functions under the laws. It may also raise its fund through any source of loan, bonds, debentures, donations or benefactions etc. the board shall also prepare their budgets of each financial year showing the receipts and expenditure and shall be sent to the state government. It has a duty to prepare an annual report giving full account of their workings during the previous year and shall be laid before the state legislature within a period of nine months from the date of the previous financial year. Section 36 to 40 of the WPA deals with this matter of board.

The Act provides that every board shall have to prepare an annual statement of account and audited by duly qualified auditor. On receipt of the auditor's report, the state government shall lay it before the state legislature.

g. Joint Boards

The two or more State Government or Central Government in respect of one or more Union territories may enter into an agreement to constitute a joint board. Such an agreement is contained with term of the agreement, condition of renewal for all participating States or Union territories. A joint board agreement may provides for apportionment of the expenditures; determine the power and function of the participating states or Union territories; preparing incidental and ancillary provisions for effectiveness of the agreement and consultation between the parties with reference to particular matter arising under the Act. Such an agreement is published in the official gazette of that particular government where the agreement is entered into between the parties.

The joint board of State Government of contiguous States consists of a full time Chairman and member secretary; two officials from each of the participating States; one person and one non-official to be nominated by each of the participating States; two person to be nominated by the Central Government. On the other hand when a joint board is constituted between the Central Government and State Government or State Governments, it shall consist of a full time chairman and a member secretary; two officials and two persons to be nominated by the central government; one person and one non-official to be nominated by the central government. The government of state for which the joint board is constituted has

special power to give any direction within the territorial jurisdiction under the Act. The central government alone is competent to give direction relates to a matter within the territorial jurisdiction of two or more states or Union territory.

4.2. Power and function of the State Pollution Control Board of Assam

Section 16, 17 and 18 of the WPA deals with general power and function of the pollution control boards to improve and promote the quality of air, water and soil in different States of India. The CPCB has power to give direction to the SPCB which defaulted in comply with the directions given by the board and the SPCB shall be bound by such directions. The central government may direct to the CPCB to perform any function of the SPCB. In doing so if any expenses is incurred the SPCB is empowered to recover the same from the liable individual. Besides the general power and function of SPCB under the WPA, to understand and analyze the implementation of the Hazardous Waste Management Rules, the powers and functions of the SPCB of Assam will be discussed in the light of the Hazardous and Other Waste (Management Handling and Transboundary Movement) Rule 2016.

1. Power to grant authorization:

The State Pollution Control Board of Assam has empowered to grant authorization to every person engaged in generation, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of hazardous waste, after inquiry as it consider necessary and on being satisfied that the applicant posses appropriate facilities for collection, storage, packaging, transportation, treatment, processing, use, destruction, recycling, recovery, pre-processing, co-processing, utilization, offering for sale, transfer or disposal of the

hazardous and other waste as the case may be, after complying with all other guidelines specified by the Central Pollution Control Board from time to time, which shall be valid for a period of five years.

The State Pollution Control Board of Assam may, in case of application for renewal of authorization, check the violation of the conditions specified in the authorization earlier granted and same shall be recorded in the inspection report. The Board may refuse to grant authorization to any applicant for non-compliance of the provision of the Hazardous Waste Management Rules. Before doing so the board has to give reasonable opportunity of being heard and write the reason for it. The State Pollution Control Board of Assam shall maintain a register containing particulars of the conditions imposed under these rules for management of hazardous and other waste and it shall be open for inspection during office hour to any interested or affected person.

2. Power to suspend or cancel an authorisation:

The State Pollution Control Board of Assam shall have power to suspend or cancel an authorisation that has failed to comply with the provisions of the rules or Acts after giving a reasonable opportunity of being heard and recording the reason of such cancellation as it considers necessary in the public interest. The Board shall give direction to the holder of the authorisation for the safe storage and management of the hazardous and other waste that shall be binding upon him. The State Pollution Control Board may extend the period of ninety days for storage and management of the hazardous and other waste in the following cases, namely:-

- (i) small generators (up to ten tonnes per annum) up to one hundred and eightdays of their annual capacity;
- (ii) actual users and disposal facility operators up to one hundred and eightdays of their annual capacity,
- (iii) occupiers who do not have access to any treatment, storage, disposafacility in the concerned State; or
- (iv) the waste which needs to be specifically stored for development of aprocess for its recycling, recovery, pre-processing, co-processing orutilisation;
- (v) in any other case, on justifiable grounds up to one hundred and eightdays.⁹

3. Inventorisation of hazardous and other wastes:

Inventorisation of hazardous wastes in an important function of State Pollution Control Board of Assam. Rule 20(3) of the Hazardous and Other Wastes Management Rules stipulates that the State Pollution Control Board based on the annual returns received from the occupier and operator of the facility for disposal Hazardous and Other Wastes shall prepare an annual inventory of the wastes generated; wastes recycle, recovered, utilized including co-processing; wastes re-exported and wastes disposed and submit to the Central Pollution Control Board by the 30th day of September every year. The State Pollution Control Board shall also prepare the inventory of hazardous waste generators, actual users, and common and captive disposal facilities and shall submit the information to Central Pollution Control Board every two years.

⁹ Rule 8 of The Hazardous and Other Wastes (Management and Transboundary) Rules 2016

4. Monitoring of compliance of various provisions and conditions:

Another significant function of the board is monitoring of compliance of various provisions and conditions of permission including conditions of permission for issued by Ministry of Environment, Forest and Climate Change for exports and imports. Actual users intending to import or transit for transboundary movement of hazardous and other wastes shall send a copy of the application to the concerned State Pollution Control Board for information and the acknowledgement in this respect. The State Pollution Control Board after examining the application for imports shall forward with recommendation and requisite stipulations for safe transport to the Ministry of Environment, Forest and Climate Change along with the application. Under the Hazardous Wastes Management Rules, 1989 and its subsequent amendments, the conditions and guidelines imposed by the Environment, Forest and Climate Change, State Government and Central Pollution Control Board regulate the generation, import, export, handling and disposal of hazardous Wastes and the frequency of monitoring of such Wastes.

5. Implementation of programmes:

Implementation of guidelines and standard operating procedures for recycling, utilization, pre-processing, co-processing of hazardous and other wastes is a vital function of State Pollution Control Board of Assam to prevent or reduce or minimize the generation of hazardous and other wastes. The board has implemented plans and programmes initiated by the Ministry of Environment, Forest and Climate Change, State Government and Central Pollution Control Board on hazardous and other wastes management activities. For implementation of conditions and guidelines imposed by

the State Government and Central Pollution Control Board and its mandate, the Pollution Control Board of Assam earns revenue comprising of Grants in aid from Ministry of Environment Forest and climate change, Central Pollution Control Board, State Government, consent fee, authorisation fee, interest earned, etc.

6. Action against violations of these rules:

The occupier, importer or exporter and operator of the disposal facility shall be liable for all damages caused to the environment or the third party due to improper handling and management of the hazardous and other waste. Such liable person shall have to pay financial penalties as levied for any violation of the provisions under these rules by the State Pollution Control Board with the prior approval of the Central Pollution Control Board. Any person aggrieved by an order of suspension or cancellation or refusal of authorisation or its renewal passed by the State Pollution Control Board, may prefer an appeal to the Appellate Authority, namely, the Environmental Secretary of the State.

7. Any other function:

The State Pollution Control Board of Assam shall have to exercise all or any other function under these Rules assigned by Ministry of Environment, Forest and Climate Change, State Government and Central Pollution Control Board pertaining to the Hazardous Wastes Management Rules from time to time.

The Board exercises its power and functions through conditions and guidelines imposed by the Ministry of Environment, Forest and climate change, State Government and Central Pollution Control Board while granting consent for project and plan to be established and operated in the State. Besides the above mentioned

primary power and function of the State pollution control board based on as per Acts and rules, the pollution control board of Assam has been performing following activities within the State.

1. The board performs comprehensive programme for the prevention, control or abatement of pollution of water, air, land and to secure execution thereof.
2. The board can consult with the State Government on any matter relating to environment protection and give advice to the government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well.
3. The board can collect data and information of environmental pollution within the State and prepared report on it. It can call for information from the occupier of a facility for the purpose of verifying the correctness of information.
4. The board can investigate and encourage, conduct and participate in research of environmental degradation and reason of such problem and probable solution to it.
5. The pollution control board is to collaborate with the central board in organizing the training of persons engaged in programme relating to prevention, control of pollution and organize mass education programme relating thereto.
6. The board has right to inspect sewage, trade effluent plants for the proper treatment thereof and to review specification, plan and other data relating to plant setup for treatment of trade effluent or in connection with grant of any consent as required under the law. Any person authorised by the board may

visit the premises for the purpose of conducting search, seizing, examining and testing of pollution control equipment, industrial plant, record, register, document etc. for the purpose of search and seizure section 94 of the Code of Criminal Procedure shall be applicable.

7. The board is lay down annual effluent standard for the sewage and trade effluent for the quality of receiving waters resulting from the discharge of effluent and to classify water of the State.
8. The board can take initiatives to evolve economical and reliable methods of treatment of sewage and effluent for the peculiar condition of soil, climate and water resources in different region of the state. It may include utilization of sewage and sustainable trade effluents in agriculture, methods of disposal sewages and trade effluents, laying down standards of treatment of effluent to be discharged into the stream and taking into account the minimum fair whether dilution available therein and tolerance limits of pollution permissible after discharge of effluents.
9. The board can revoke, vary or make any order for the prevention, control or abatement of discharges of wastes into streams of wells. It may require any concerned person to construct new systems for the disposal of sewages and trade effluent or to revamp the existing one with proper upgraded technology and adopt remedial measures as necessary to avoid the risk.
10. The board shall lay down annual effluent standard to be complied with by concerned person and performed function as may be prescribed by the central board or central government from time to time.

11. Moreover, the board shall take emergency measure if an accident would took place as necessary such as removing of pollutants, compensation for damages and issued of closer notice for the violation of law. If any industry discharge pollutant in excess of the standards laid down by the board, the board shall take remedial measures as are necessary to mitigate the situation.
12. The board has power to take sample of effluents for analysis and if the occupier willfully absent after knowledge of the fact, the authorised person of the board shall take the sample which is sealed and signed by him. The result of any government analyst shall be admissible in evidence.
13. The state board is bound by the direction of central board or state government may give to it. But the board may refer the matter to the central government for its decision if the state government direction is inconsistent with the direction of central board.
14. The state board shall have power to issue guidelines restricting operation of industrial units within prohibited prescribed battery limits. It is also authorised to direct the industry to shift its location and failure of which, it can issued closure notice under the law.
15. The board may also establish or recognized a laboratory to enable it to perform its function under the law. The board is empowered to acquire any land for the efficient performance of its function as public purpose.

Section 18 of the WPA provides that state board is abide by the order of state government relates to section 17 only. The state government cannot give direction which is not mentioned under the section and board is not bound to carry out such

order¹⁰. It is provided that if the central government opined that the state board is not comply with the any direction of the central board, then the central board is empowered to perform any function of state board. In that situation, the expenses incurred in connection therewith could be recovered from the state board.

8. Board's power to file complaint

The board or any authorised person in this behalf can make a complaint before a metropolitan magistrate or a judicial magistrate of first class for restraining apprehended pollution. In such a situation the board is authorised by the court to implement the directions as specified by the court. All the expenses incurred by the board to implement the direction shall be recovered from culprit as arrear of land revenue or of public demand. A complaint can also filed by any person who has given notice of not less than sixty days of his intention to make a complaint to the board. The board shall provide all relevant documents or reports in its possession to that person. The board can refuse to provide some reports if the same is, in its opinion, against the public interest. No legal proceeding shall lie against any officer or member of a board in respect of anything which is in good faith done.

9. Power to give direction and imposed penalty

Under section 33(A), of the WPA as amended in 1988 Amendment Act, the state pollution control boards empowered to provide directions including the direction to close prohibit or regulate any industry; and to stop the supply of electricity, water or any other services to that industry. Non-compliance of such direction is punishable Section 41(20) of the WPA, which includes punishment of imprisonment of not less

¹⁰ *K.Muniswami Gowda v. State of Karnataka*, AIR 1962 SC 933.

than one year and six month which may extend to six years. In case failure continues, an additional fine which may extend to five thousand for every day during which failure continues. If failure continues for one year after first conviction, imprisonment for a term which shall not be less than two years which may be extended to seven years and with fine.

Section 42 of the Act provides penalty for certain acts such as damages, destructions, removes of pillar, post, notice, property any matter put up by the authority of the board; obstructing any person acting under the direction of authority; fails to intimate any occurrence of accident or foreseen act or furnished any information or make any false statement willfully to the authority. Whoever commits such acts shall be liable to imprisonment for a term which may extend to three month or fine shall not exceed ten thousand or both.

Section 43 and 44 of the Act provides that if any person use stream, well or any water body for the disposal of polluting matter; and make any fault at the time of prior consent of the board to establish any industry, operate any facility, treatment and disposal of hazardous wastes shall be punishable with imprisonment for a term which shall not be less than one year and six months which may extend to six years and with fine. If a person convicted under section 43 and 44, and again found guilty of the same offence on second and every subsequent offence committed within two years from the commission of the second offence, shall be not less than two year which may extend to seven year and with fine.

The Supreme Court of India may impose pollution fine of ten lakh in the public interest for exemplary damages empowering under Article 32 of the constitution¹¹. The court may take deterrent measure by publishing the offender's name, place of residence, offence, and fine imposed. The expenses for publication shall be recovered as a fine. The court can imposed doctrine of vicarious liability and joint liability for an offence committed by company and company shall be liable to be punished. The court should not deal with lightly after elapsed of years, unreasonable delay was not accepted as a ground for not proceeding against the company.

10. Appeal against the board's order

Under section 28 of the WPA any aggrieved person can prefer an appeal against the order of a pollution control board to the appellate authority constituted by the state government. An appeal should be made within a period of 30 days after the communication of the order to him. The state government may at any time call for the record of an order of the board for satisfying itself to check the legality of the matter. The government shall not revise any order and only a power conferred on it to keep surveillance on the functioning of board. Revision is not a right guaranteed to the party.

Any person aggrieved by an order of board for suspension or cancellation or refusal of authorisation or its renewal, may prefer an appeal to the appellate authority within thirty days of communication to him. Such an appeal shall be disposed of within sixty days by the authority in its satisfaction under the hazardous wastes management rule of 2016. The authority may also entertain an appeal after an expiry

¹¹ *M.C. Mehta v. Kamal Nath* (2000) 6 SCC 213

of thirty days if it is satisfied that the appellant was prevented by some sufficient cause from filing the appeal in time.

4.3. Regulations relating to the duties and responsibilities of an occupier.

The recurring problem of increasing accumulation of hazardous wastes is a worrisome situation. These wastes are worst types of wastes that are extremely harmful. But unfortunately, both the large and small scale industries have paid barely any attention in treatment of it. Many industries generating hazardous wastes must ensure that these wastes are managed in ways that protect human and environment. These industries are regulated based on the amount of wastes it generated in a calendar year. The rule of 2016 has ability to alter the scenario if duly followed.

Rule 20 of 2016 mentioned that the occupier or the operator shall be responsible for proper collection, treatment, storage and disposal of hazardous wastes. It shall be their responsibility to ensure that the wastes are properly handled, and disposed off without any adverse effects on the environment. In order to minimize any danger due to accident, all persons working in the site shall be informed, trained and equipped to ensure their safety.

The word occupier is defined under the rule 3(21) of hazardous wastes rule of 2016, which means a person in relation to any factory or premises, has possession or control over the affairs of the factory or the premises in the matter of hazardous and other wastes. the occupier of a facility shall take strong step in the procedure followed for the management of hazardous wastes. it shall take step for prevention, minimization, reuse, recycling, recovery, utilization and safe disposal of hazardous

wastes. The occupier shall send or sold its generation wastes to an authorised user or disposal of in an authorised disposal facility in accordance with rules.

In the cases of its treatment, the occupier must have knowledge about necessary preventive measure as may be needed for safe storage and disposal. The occupier should take all scientific equipment such as appropriate training, expert in respective field proper technical assistance to prevent accidents and harms to human health. Every occupier of a facility must file an application to obtain a consent certificate for grant of authorisation or renewal of such authorisation to establish or operate a facility within a period of sixty days from the publication of these rules. Application for renewal of authorisation may be made three months before the expiry of such authorisation.

Every occupier has a responsibility to established appropriate facility for the management and dispose of hazardous wastes. It shall maintain a record of hazardous wastes and submit annual return containing details of its quantity of generation and disposal on or before 30th day of June following the financial year to which that return relates. If the occupier is found liable of non-compliance with the above rule, its authorisation shall be cancelled by the board. The occupier shall not store hazardous wastes more than a specified period as prescribed by the rule. He must maintain a record of sale, transfer, storage, or utilization of such wastes.

Any occupier who intends to export his wastes specified in the schedule, has responsibility to make an application along with insurance cover to the MoEF&CC for the transboundary movement of hazardous wastes. The occupier has a duty to obtain prior informed consent in writing from the importing country in respect of wastes

that he intends to export. The exporter shall ensure that no consignment is shipped before the prior informed consent is received from the exporting country. It should be accompanied with movement document and records of all transactions as may be prescribed by the rule. The occupier, who intends to export such wastes without proper permission, shall be deemed illegal. Such an illegal exporter is liable to return such wastes to his country.

The occupier of a facility shall be responsible for identification of site for establishment of a facility for treatment, storage, disposal of hazardous and other wastes in the site. The occupier of a captive facility or operator of a common facility shall design set up such facility as per technical guidelines issued by the central pollution control board and state board. The establishment of such facility shall be monitored by the state board and it should maintain record of hazardous wastes so that annual return can be filed without discrepancies. The occupier of such facility shall be liable for all closures or post closures phases.

At the time of packaging and labeling, the occupier of a facility shall ensure that all guideline is followed such as non-washable, weather proof and easily visible label is used in packaging. At the time of transportation, the occupier shall provide all relevant information to the transporter regarding safety measure need to be taken in case of emergency. The occupier should inform to the pollution control board before handing over the wastes to the transporter.

If the occupier of a facility wants to transport any hazardous wastes, it must have necessary authorisation from concern authority. The sender of such wastes must have prepared seven copies of manifest comprising colure code indicated in the rule

and duly signed by the sender. One copy (white) shall forward to the board, and in cases of transportation through any transit state, the board of transit state should be informed. The sender must send the wastes along with copies of 3 to 7 of manifest duly signed; otherwise no transporter shall accept it.

The occupier of a facility must inform immediately to the pollution control board in case of any accident and send a report in form no. 11. The occupier shall be liable for all damages caused to the environment or third party due to improper management of hazardous wastes. It shall be liable to pay financial penalties as levied for any violation of the provisions under these rules by the board with prior approved of the central board. Any occupier aggrieved by an order of suspension or cancellation or refusal of authorisation or renewal of authorisation by the state, it can prefer an appeal to the appellate authority within a period of 30 days.

However in many cases, it is found that the occupier has violated the provisions of new rules. For example: Serious damage was being caused to the environment by certain industries producing toxic chemicals in Bicchri, a small village in Udaipur District of Rajasthan. The manufacturing of the toxic chemicals gave rise to enormous quantity of highly toxic waste and the waste was not treated properly. Because of its effect, the water in the wells and streams in Bichhri turned dark and dirty rendering unfit for human consumption. Soil was polluted to such an extent that, it became unfit for any cultivation. It spread disease, death and disaster in die village. The Court applying the principle of “absolute liability” and “polluter pays principle”

held that the company was absolutely liable for the environmental degradation¹². The Court directed the company to pay for the pollution and undo the environmental damage and wrong caused by its industrial activity. The Rules do not provide any standards or technologies to be adopted for the proper collection, treatment storage and disposal of wastes, by the generator or the occupier.

4.4. Responsibility of the State Government under the Hazardous Waste Management Rules

Responsibility of the State Government is much more importance pertaining to the implementation of HWM rules all over the State. The rules of 2016 provides for the responsibilities of State Government for environmentally sound management of hazardous and other wastes. The State Government shall authorize the Department of Industry or any other government agency authorised in this regard in the State to ensure earmarking or allocation of industrial space or shed for recycling, pre-processing and other utilization of hazardous or other waste in the existing and upcoming industrial park, estate and industrial clusters. The Department of Labour shall ensure recognition and registrations of workers involved in recycling, preprocessing and other utilization activities and also assist formation of groups of such workers to facilitate setting up such facilities. The Department shall have to undertake industrial skill development activities for the workers and annual monitoring to ensure safety and health of workers involved in recycling, pre-processing and other utilization. The State Government may prepare integrated plan

¹² *Indian Council for Enviro-Legal Action v. Union of India*, AIR 1996 SC (1446).

for effective implementation of these provisions and to submit annual report to the Ministry of Environment, Forest and Climate Change, in the Central Government.

Responsibility of the State Government under the Hazardous Waste Management Rules has been discussed under the following headings:-

1. Identification of sites

The main responsibility of the State Government under these Rules is to identify the disposal sites for the purpose of disposing the hazardous wastes after ascertaining the suitability of the sites through Environmental Impact Assessment studies. The State Government shall within 30 days of receiving the documents of Environment Impact Assessment as well as public hearing in relation to the sites identified by the operator of the facility, occupier or any association for the purpose of disposing the wastes shall complete the assessment and convey its decision as to approval or refusal of using the sites identified for setting up of the facility for treatment, storage and disposal of hazardous waste.

2. Publish inventory of all disposals in State

It is also the responsibility of the State Government to compile and publish periodically the inventory of such hazardous wastes disposal sites and facilities. The State Government shall also set up an on-site facility for treatment, storage and disposal of hazardous wastes for captive use and it shall be governed by the authorization procedure as laid down in Rule 5. Thus the onsite facility provided by the State Government under the purview of authorities, whereby an initial impact assessment executed will no longer make it possible to dispose of the wastes in municipal dumps or in any manner that is not environmentally sound. On the other

hand, it leaves scope to explore possibilities for recycling, reuse, recovery and treatment for safe storage and disposal on site. Further, the units must be willing to undertake such responsibility to minimize risks to environmental resources before the grant of authorization.

3. Power to supersede State Board

Under section 62 of the WPA, the state government has power to supersede the state board at any time if the state government is of opinion that the board has steadfastly made default in performance of its power and function imposed on it under the laws; or for any circumstances rendering public interest. Before to do so the government shall give a reasonable opportunity to file show cause considering explanation and objection if any for not to be supersede. The government must issue a notification in the official gazette in relation to the supersession for a period of not exceeding one year.

4. Rules making power of State Government

After constitution of the state pollution control board, the state government may make rules in respect of the matters not falling under central government's purview. Such rules may make in the matter of service term and condition of chairman and member secretary or other members thereupon; the power and duties to be exercised and discharged by the chairman and other members of the board; quorum, time and place of meeting of the board; fees and allowances to be paid to the members of the committee not as member of the board or person associated with the function of the board; form of the notice or report of the government analyst; form or any particulars for the consent of the board; manner of inquiry to be taken by the board for

granting or refusing such consent; the form of manner or procedure to be followed by the appellate authority in disposing of appeal; form of the annual reports and accounts of the board; form of providing notice of intention to make a complaint to the board or authorised person; and any other matter as may be prescribed by the law or central government.

MoEF&CC is directed to either itself or through the CPCB or any other agency draft a policy document on hazardous waste generation and its handling within the country. They should also conduct a comprehensive research programme to determine the effect of hormonally effective synthetic chemicals. Directions may also be issued for centers of excellence for environmental health science and for existing institutes engaged in related activities. MoEF&CC should encourage the industries and their associations to participate in research activities concerning environmental health. These studies should be made public so that people can know about toxicity and its impact. Chess can be levied on the industries dealing with hazardous wastes¹³. The State Government has a regulatory duty and obligation for environmental empowerment. A terrible incident of Union Carbide remembered us the travails of the victims, dead and alive. It is more important that the people must empower with laws relating to the HWM for the safety of our environment.

4.4.1 The NGT directions to State Government

In the case of Pradip Kumar Agarwalla & Others v. Rohit Choudhury & Others¹⁴, the NGT chairman J. Swatanter Kumar, disposed the miscellaneous

¹³ Available at www.dpcc.delhigovt.nic.in visited on 11/ 05/ 2017

¹⁴ M.A. NO. 78 of 2013 in R.A. NO. 29 of 2019 in A.P. NO. 38 OF 2012.

application filed by different applicants seeking modification of order and judgment passed by the tribunal in Review application of the applicants. He stated that after meticulous perusal of documents filed by the parties, it was rampant violation of the EPA and Rule 5 of the EP Rules, rather than its compliance. He stated that there was no hesitation in our mind to come to a conclusion that the number of industrial units, some of which are hazardous and creating pollution are existing in or about "No Development Zone" of Kaziranga.

The tribunal directed the state government to take immediate steps to remove all those illegal units, should be closed down immediately. It should be inspected by the SPCB, CPCB regularly after or before establishment of such unit in new location of NDZ. The MoEF&CC the State Government are directed to prepare a Comprehensive Action Plan and Monitoring Mechanism for implementation of the conditions stipulated in law. The tribunal opinioned that the MoEF&CC State Government failed in their duties, number of polluting industries established in and around NDZ of Kaziranga& posing immense threat to environment and its creatures. It directed the MoEF and the State Government to deposit Rs. 1,00,000/- each, with the Director, Kaziranga National Park for conservation and restoration of flora and fauna.

In the case of *Modern Lube industries v. CPCB*¹⁵, G. Sudershan Reddy, C.J. ordered that the court do not find any illegality to have been committed by the PCB board of Assam in directing petitioners to close down its industrial unit. The petitioner is not entitled to carry on any activity of recycling or refining in absence of proper

¹⁵ (2007) GLR 574.

certificate. In the case of *Jadav Soap Works v. Union of India*¹⁶, the Gauhati High Court order that an opportunity must be provided to the industry applying for the consent certificate from the board before issued closure notice to it.

In the case of *Rohit Choudhary v. Union of India&others*¹⁷, the NGT chairman J. Swatanter Kumar, and others order that the pollution control board of Assam would be a necessary and proper party as respondent no. 5 in the matter. He stated that “ the land acquired by the Numaligarh Refinery Limited is in clear violation of the established laws, rules and conditions”. The refinery should have developed waste land and build its township without destroying eco-sensitive area.

In compliance of the order dated 30/07/2018¹⁸ of NGT and SC judgments in WP 657/1995 dated 06/07/2012, the CPCB constituted a monitoring committee chaired by Dr. Ajay Deshpande to report the compliance status of H&OWM Rules. Subsequently the committee has convened five meeting from August 24, 2018 to January 7th, 8th and 9th 2019. The committee has gather information concerns in implementation of H&OWM Rules 2016 from secondary data from the SPCBs followed by questionnaires and interactions with concerned agencies. In this respect state wise response has been discussed in the Table no.3 given below.

¹⁶ AIR 2000 Gau 47

¹⁷ M.A. No. 787 of 2015 original application no. 38 of 2011

¹⁸ In the case of *Rajiv Narayan &Anr. Vs. U.O.I &ors.* (Application no. 804/2017)

Table no.3: Responses to the questionnaire received from the various stakeholders.

S. No.	Name of the State	Information received from SPCB	Information received from Department of Environment	Information received from Department of Labour	Information received from Department of Industry
1.	Andaman and Nicobar Islands	×	×	√	×
2.	Andhra Pradesh	×	√	×	×
3.	Arunachal Pradesh	√	×	√	×
4.	Assam	√	×	×	√
5.	Bihar	√	×	√	√
6.	Chhattisgarh	√	×	×	√
7.	Delhi	√	×	√	×
8.	Gujarat	√	×	×	×
9.	Goa	√	×	√	√
10.	Haryana	√	√	×	×
11.	H.P.	√	×	√	×
12.	J.& K.	√	×	×	×
13.	Jharkhand	√	×	×	×
14.	Karnataka	√	×	×	×
15.	Kerala	√	×	×	×
16.	Lakshadweep	×	√	×	×
17.	Madhya Pradesh	√	×	×	×
18.	Maharashtra	√	×	×	×
19.	Manipur	√	×	×	√
20.	Meghalaya	√	×	×	√
21.	Mizoram	√	×	×	√
22.	Nagaland	√	×	×	×
23.	Odisha	√	×	×	×

24.	Punjab	√	×	×	×
25.	Rajasthan	√	×	×	×
26.	Sikkim	×	×	×	√
27.	Tripura	√	×	×	×
28.	Tamil Nadu	√	×	×	×
29.	Telangana	√	√	×	×
30.	Uttar Pradesh	√	×	×	√
31.	Uttarakhand	√	√	√	×
32.	West Bengal	√	√	×	√
33.	D&D and D&NH	×	×	×	√
34.	Puducherry	√	×	×	√
35.	Chandigarh	√	×	√	×
	Total	29	06	08	11

Source: National Inventory on Hazardous Wastes Generation and its Management 2017-18 (CPCB: MoEF&CC, December 2019)

It is evident from the Table no. 3 that only 29 of 35 SPCBs/PCCs have able to submit their responses to the questionnaire and SPCB of Assam is one amongst the 29 SPCBs/PCCs. Whereas department of environment of only 6 states are able to respond the questionnaire and Assam is found as non-responder state. On the other hand department of department of industries of 11 states have submitted their response to the questionnaire where Assam is included. Furthermore department of labour of 8 states have submitted their answer to the questionnaire where Assam is considered as non-responder state. The committee has observed that the information provided by the concern authorities has been suffered from anomalies and discrepancies having tentative in nature. The interaction with the authorities shows the lack of proper knowledge and understanding of H&OWM Rules 2016. Poor

awareness and involvement are to be found as a reason behind such non-compliance and not realization of importance of requested information.

4.5 Discussion

Pollution needs to be tackled with top priority before it spins out of control. The hazardous effluents are increasing alarmingly. Unless some drastic steps are not initiated it will emerge as major threat to human health and environment. The authority is taking no tangible steps to stop plying of industries. The SPCB of Assam could not install necessary software and hardware for centralized data collection, analysis and corrective action. The board has not mentioned the details of conditions imposed while granting authorisation to any industry. The board has not any information about the disposal or recycle of hazardous wastes generated every year.¹⁹

The composition of the State Pollution Control Board lacks the representation of the private companies. Such company poses great risk of doing pollution. Therefore members from private company must have represented the board. The members of the board should be represented by the environmentalist, experts, NGOs etc. so that the laws, rules and regulations are properly enforced. The main objects of establishment of the boards are that it should function impartially and efficiently so that it should not be affected by the irregularities.

¹⁹ Bijeta Chetry, “An analysis on the function of State Pollution Control Board of Assam in respect of Hazardous Waste Management” 3 *NLUALR* 149 (2019)