

F.No. J-11011/1103/2007-IA-II (I)

**Government of India
Ministry of Environment and Forests**

**Paryavaran Bhawan
CGO Complex, Lodhi Road,
New Delhi - 110 003**

Dated: October 20, 2010

To

**The Chief Operating Officer
M/s Vedanta Aluminium Limited
Via-Viswanathpur, AT/PO: Lanjigarh
Dist. Kalahandi - 766 027
Orissa**

Sub: Direction under Section 5 of the Environment (Protection) Act, 1986 regarding withdrawal of ToRs, Cancellation of Public Hearing and Action under Provision of the Environment (Protection) Act, 1986 in view of undertaking construction activity without obtaining prior environmental clearance pertaining to the Expansion from 1 to 6 MTPA Alumina Refinery and from 75 to 300 MW Captive Power Plant at Lanjigarh in Dist. Kalahandi in Orissa by M/s Vedanta Aluminium Limited.

Whereas the M/s Vedanta Aluminium Limited submitted an application vide letter dated 3rd August, 2007 under the provisions of EIA Notification, 2006 to the Ministry of Environment and Forests for expansion of alumina refinery capacity and captive power plant from 1 to 6 MTPA and from 75 to 300 MW respectively by M/s Vedanta Aluminium Limited at Lanjigarh in District Kalahandi in Orissa; and

2. Whereas after following due procedure, the Terms of Reference(TOR) for the preparation of EIA/EMP report including conducting public hearing was prescribed by the Ministry on 12th March, 2008; and

3. Whereas M/s VAL submitted vide letter dated 22nd June, 2009 the final EIA report after completing the public hearing for seeking environmental clearance; and

4. Whereas the proposal was placed before the Expert Appraisal Committee in its meeting held on 17th August, 2009 and the Committee sought additional

information and also decided that a sub-committee comprising members from the Expert Appraisal Committee shall visit the plant site to assess the pollution control measures being adopted in the refinery to be augmented and suggest additional pollution control measures to be adopted for the proposed expansion and hence, the proposal was deferred; and

5. Whereas N.C. Saxena Committee brought out in its report dated 16/8/2010 that M/s VAL has already proceeded with the construction activity for its expansion from 1 MTPA to 6 MTPA without obtaining environmental clearance; and

6. Whereas the Ministry was informed by the Eastern Regional office at Bhubaneswar about the construction which has been undertaken by M/s VAL before obtaining the environmental clearance in violation of provisions of EIA Notification, 2006; and

7. Whereas Show Cause Notice under Section 5 of the Environment (Protection) Act, 1986 vide letter of even no. dated 31st August, 2010 was issued for undertaking construction activity without obtaining prior environmental clearance under the EIA Notification, 2006 for expansion of Alumina Refinery and Captive Power Plant from 1 to 6 MTPA and from 75 to 300 MW respectively by M/s Vedanta Aluminium Limited at Lanjigarh in District Kalahandi in Orissa; and

8. Whereas M/s VAL had provided reply vide letter no. VAL/MK/MOEF/10/002 dated 15th September, 2010 to the Show Cause Notice issued by the Ministry vide letter dated 31st August, 2010. While submitting the reply M/s VAL had requested for personal hearing before taking a final decision on a project; and

9. Whereas on your request, the Ministry vide communication of even no. dated 21st September, 2010 informed that the personal hearing in the matter has been fixed at 3:30 PM on 30th September, 2010 in the Conference room 623, 6th Floor, Ministry of Environment and Forests, Paryavaran Bhawan CGO Complex, Lodhi Road, New Delhi and you were also asked to bring documents /proof/information regarding various issues with respect to 6 MTPA Alumina Refinery and 300 MW Captive Power Plant; and

10. Whereas the personal hearing took place at 3:30 PM on 30th September, 2010 in the Ministry. The Minutes of the hearing are enclosed at Annexure I. As decided in the meeting, certain additional documents sought have been submitted by you vide letter dated 4th October, 2010; and


11. Whereas the written response submitted by you, the personal hearing, which took place on 30th September, 2010 and the additional written submission made by you have been considered and certain conclusions reached, as given in the Note at Annexure II.

Now, therefore, based on the response provided by you vide your letter dated 15th September, 2010 in response to the Show Cause Notice issued by the Ministry vide letter dated 31st August, 2010, personal hearing held on 30th September, 2010 and additional documents submitted by you vide letter dated 4th October, 2010 and analysis made by the Ministry, the competent authority has approved that the following directions be given in accordance with the Section 5 of the Environment (Protection) Act, 1986 read with Rule 4 of the Environment (Protection) Rules, 1986:

(a) The TOR issued on 12th March, 2009 for expansion of Alumina Refinery from 1 MTPA to 6 MTPA and 75 MW CPP to 300 MW CPP is hereby withdrawn and consequently the public hearing conducted on 25th April, 2009 stands cancelled.

(b) You are directed to maintain the status quo at the site and no further construction shall be undertaken in respect of expansion project.

(c) The Secretary, Forest & Environment Department, Government of Orissa shall take legal action under the provisions of Environment (Protection) Act, 1986 for violation of the EIA Notification, 2006.


(Dr. Nalini Bhat)
Adviser

Encl.: As above

Copy to:

1. Secretary (Forest & Environment), Government of Orissa, Sachivalaya Bhubaneswar - 751001.
2. The Chairman, Orissa State Pollution Control Board, A-118, Neelkantha Nagar, Unit (vii), Bhubaneswar.
3. The Chairman, Central Pollution Control Board, Parivesh Bhawan East Arjun Nagar, New Delhi - 110032.
4. Chief Conservator of Forests, Ministry of Environment and Forests, Eastern Regional Office, A/3 Chandrasekharpur, Bhubaneswar-751023.
5. Scientist 'F' (Monitoring Cell)/ Monitoring File/Guard File
6. The Chief Operating Officer, M/s Vedanta Aluminium Limited, Via-Viswanathpur, PO: Lanjigarh, Dist. Kalahandi, Orissa Pin - 766027
7. Ministry's website

ANNEXURE - I

MINUTES OF THE HEARING HELD AT 3.30 P.M. ON 30.9.2010 IN ROOM NO. 623, 6TH FLOOR IN THE MINISTRY OF ENVIRONMENT AND FORESTS ON THE CLARIFICATIONS FURNISHED IN RESPONSE TO THE SHOW CAUSE NOTICES DATED 31.8.2010 BY M/S VEDANTA ALUMINUM LIMITED (VAL), LANJIGARH, ORISSA REGARDING 6 MTPA ALUMINA REFINERY AND 300 MW CAPTIVE POWER PLANT.

The Ministry of Environment & Forests issued show cause notice on 31st August, 2010 to M/s Vedanta Aluminum Limited (VAL) under Section 5 of the Environment (Protection) Act, 1986 for 6 MTPA Alumina Refinery and 300 MW Captive Power Plant for starting construction activity without obtaining prior environmental clearance.

2. M/s VAL vide their letter No. VAL/MK/MOEF/10/002 dated 15.9.2010 submitted their reply in response to the show cause notice issued by the Ministry. While furnishing the reply M/s VAL requested for personal hearing before taking a final decision on the project.

3. Subsequently, the Ministry while acknowledging the receipt of M/s VAL's letter dated 15.9.2010 informed them to present their case before the Ministry by duly authorized officers of the company on 30.9.2010. M/s VAL were also requested to bring documents / proofs / information on certain issues.

4. The hearing took place at 3.30 pm on 30.9.2010. Dr. Nalini Bhat, Scientist 'G' heard the matter. Dr. P.L. Ahujarai, Scientist 'F', Dr. V.P. Upadhyay, Scientist 'F', Regional office, Bhubaneswar, MoEF and Shri Ramesh Motipalli, Scientist 'C' were also present during the hearing.

5. From M/s VAL, the following officers attended the hearing:

- (i) Shri Pramod Suri, CEO
- (ii) Dr. Mukesh kumar, COO
- (iii) Dr. J.K. Soni, Assistant Vice President (Environment)
- (iv) Shri Naval Kishore, Head (Health, Safety & Environment)
- (v) Shri Prashant Sen, Head (Legal)
- (vi) Shri Rajan Anand, Manager (Corporate Affairs)

6. Initiating the hearing, Dr. Nalini Bhat informed the representatives of M/s VAL that the purpose of the hearing is to discuss the issues in response to the show cause notice issued by the Ministry. On certain points, the Ministry needed some clarifications.

7. The representative of M/s VAL gave brief presentation and provided clarifications sought by the Ministry. The response of M/s VAL on the issues / clarifications include the following:

Clarifications on Proposed 6 MTPA Alumina Refinery & 300 MW CPP:

- i. **When the construction work for expansion of Alumina Refinery capacity from 1 MTPA and 75 MW Captive power plant to 6 MTPA Alumina Refinery and to 300 MW Captive Power plant respectively was initiated physically on the site? When was the construction work for the refinery and the power plant expansion respectively stopped?**

The representatives of M/s VAL clarified that, the main construction work was started in May, 2009 i.e. after public hearing for the project was conducted on 25th April 2009. All the construction work was stopped after receipt of SPCB direction dated 16th February, 2010 and at present construction activity for expansion of Alumina Refinery and captive power plant has been stopped.

- ii. **What percentage of construction activity has been undertaken for the expansion of the Alumina Refinery and the Captive Power Plant as on 31st August 2010 with photographs and details of expenditure incurred?**

About 40-45 % of construction activity has been undertaken and the overall progress of the project is around 50-55 %. It may take another 18-24 months to complete the entire work. The estimated cost of the project is Rs 10, 000 Crores. About a sum of Rs. 5, 000 Crores has been committed. Orders for purchase of plant and machinery are near completion.

- iii. **While providing your aforesaid reply dated 15th September 2010 to show cause notice, why it has been stated that this expansion project of your does not require environment clearance under the EIA Notification, 2006?**

As per the understanding of M/s VAL, under the EIA Notification, 2006 **prior environmental clearance** is not required before undertaking construction activity within the existing premises. Shri K. K. Venugopal, a leading Senior Advocate has also opined the same. It was not their intention to violate any law and have always taken abundant precautions for compliance of the applicable laws in all their operations. However, MoEF may impose any penalty if it feels that EIA Notification, 2006 has been violated.

iv. **From where bauxite ore and other raw-material including the fuel will be sourced for the expansion project of the refinery and the power plant?**

M/s VAL informed that India is one of the fourth largest country in the world having more than 3 Billion Tonnes of Bauxite reserves (Proven). Orissa alone is having more than 1.7 Billion Tonnes of proven bauxite reserves and more are being explored. It is expected that with further exploration, the bauxite deposit in Orissa may exceed to 2.5 Billion Tonne in next few years. In the worst scenario, the bauxite can be sourced from other states/countries, if need arises as bauxite is the most abundant available material.

Further, VAL has already signed a MOU with Government of Orissa before starting the project and they have been assured for supply of 150 Million Tonnes of Bauxite for the project through Orissa Mining Corporation Ltd, Government of Orissa undertaking. Besides, they have also applied for nearly 12 mining leases and about 10 numbers of prospecting license for various deposits in the State totaling to more than 300 million tonne which are under different stages of processing. The caustic soda will be procured from the domestic and import market. Regarding source of coal, the company had submitted an application in April, 2009 for coal linkage for the new captive power plant, which is under consideration of CEA. Balance coal will be procured from the domestic and import market.

8. During the hearing, M/s VAL had submitted that considering the magnitude of project and the wide ranging benefits of the project including 5% of the profit for local area development as ordered by the Hon'ble Supreme Court to the local community in one of the most backward and underdeveloped areas in India, the proposed expansion may be granted environmental clearance. They are ready to pay any penalty for violation but not to stop the project. Even some of the other companies have started construction pending the environmental clearance.

9. While concluding the hearing, M/s VAL were asked to submit the following documents / details by 4th October, 2010.

- Details regarding actual construction undertaken along with photographs vis-à-vis expenditure incurred
- Detailed explanation regarding power generation vis-à-vis refinery operation
- Additional clarifications / justifications on the need to continuation of construction activity for expansion of refinery and captive power plant
- A copy of the legal opinion and M/s VAL understanding of non violation of EIA Notification, 2006

Annexure - II

Analysis of the Ministry of Environment and Forests on the response/additional submissions submitted by M/s Vedanta Aluminium Limited with reference to Show Cause Notice under Section 5 of the Environment (Protection) Act, 1986 issued for undertaking construction activity without obtaining prior environmental clearance pertaining to the Expansion from 1 to 6 MTPA Alumina Refinery and from 75 to 300 MW Captive Power Plant at Lanjigarh in Dist. Kalahandi in Orissa.

The response of the M/s Vedanta Aluminium Limited (VAL) in reply to the Show Cause Notice issued on 31st August, 2010 and certain additional clarifications sought by Ministry vide letter dated 21st September, 2010 and further clarifications provided during hearing held on 30th September, 2010 vis-à-vis analysis of the Ministry include the following :

(i) Non-compliance of provisions of the Environment Impact Assessment (EIA) Notification, 2006 by starting construction activity without obtaining prior environmental clearance.

Response of the M/s VAL

There is no indication in the Show Cause Notice, which aspects of para 1 of the EIA Notification has been violated. The subject matter of the allegation/charge of non-compliance is not set out. The understanding of the company is that prior environmental clearance is not required before undertaking construction activity within the existing premises. Shri K.K.Venugopal, leading Sr. Advocate has interpreted that Para 13 of the Show Cause Notice is not attracted as capacity addition is being done without any change in process and without any change in technology and Para 2 (ii) sub-clause (i) of the EIA Notification deals with "New Projects or Activity" and sub-clause (iii) deals with "Change of Product Mix", which are not applicable in the present case.

The overall progress of the project is around 50-55% and it will take another 18-24 months to complete the entire project from the date of permission is granted for resuming the work. The estimated capital expenditure for the project is around Rs. 10,000 crores. A sum of Rs. 5000 crores has already been committed till date and ordering of the plant and machinery is nearing completion.

As regards the construction work, some site preparation work was started in the beginning of 2009 to create employment opportunities for the locals. The main construction work was started in May, 2009 ie. after public

hearing for the project was conducted on 25th April, 2009. Construction work was started on 16th February, 2010.

Analysis of the Ministry

Provisions of para 7(ii) of the EIA Notification, 2006 reads as follows:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this Notification through change in process and or technology or involving a change in the product mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.

While according environmental clearance for 1 MTPA Alumina Refinery and 75 MW CPP in September, 2004, following General Condition was stipulated:

- No further expansion or modifications in the plant shall be carried out without prior approval of the Ministry of Environment and Forests.
- Para 3 of the Environmental Clearance letter of September, 2004 also stipulates that the Ministry may revoke or suspend the clearance if implementation of any of the above conditions is not satisfactory.

The interpretation of M/s VAL about the EIA Notification, 2006 and legal opinion obtained on 15/09/2010 need to be further elaborated. M/s VAL, as indicated above submitted the application for obtaining Terms of Reference. The Company also prepared the EIA/EMP reports for submission to State Pollution Control Board (SPCB) for public hearing which was held in April, 2009. The submissions made by M/s VAL reveal that construction work on the expansion component was initiated after the completion of public hearing in May, 2009. However, the documents available in the Ministry through evaluation reports of the Regional office, Bhubaneswar and the State Pollution Control Board indicate that the work on expansion was initiated even before November, 2008.

More importantly, M/s VAL did not indicate the start of construction work while they applied for Terms of Reference and also in the EIA/EMP Reports prepared for the expansion project. However, Orissa State Pollution Control Board issued Show Cause Notice on 12th January, 2009 under Section 33A of Water (Prevention & Control of Pollution) Act, 1974 and Section 31 A of Air (Prevention & Control of Pollution) Act, 1981 to M/s VAL for undertaking expansion activity without obtaining Consent to Establish from Pollution Control Board and Environmental Clearance.

The action of M/s VAL is not consistent with the legal opinion sought, which seems to be an after thought as the Company has partially complied with the procedure laid in the EIA Notification, 2006 for obtaining Environmental Clearance for the expansion proposal.

It is clear that M/s VAL have violated the provisions of EIA Notification, 2006 by undertaking 50-55% of the construction activity. They have also committed investment of about Rs. 5000 crores for various expansion activities.

As this is a clear case of violation :

- The TOR prescribed vide Ministry's letter No. J.11011/1103/2007-IA-II (I) dated 12th March, 2008 may be withdrawn.
- As TOR is withdrawn, public hearing held in April, 2009 needs to be cancelled.
- M/s VAL shall maintain the status quo and no further construction activity should be undertaken.
- As further legal action is required to be initiated, the State Government may be directed to take action under Section 19 of the EPA, 1986 against M/s VAL for undertaking substantial activity without obtaining prior environmental clearance which is in violation of the provisions of the EIA Notification.

(ii) Unregulated expansion of Alumina Refinery would cause long term ecological and environmental impacts due to fugitive emissions including mercury generation of red mud beyond the approved activities including the long term health impacts.

Response of the M/s VAL

The company is using caustic soda manufactured by membrane cell technology. Therefore, there is no possibility of mercury pollution due to increase in capacity as no mercury is available in the bauxite ore. M/s VAL in collaboration with IMMT, Bhubaneswar has already started making red mud bricks to achieve the zero waste concept.

To control the fugitive emission, the company will adopt state of art technologies like pipe conveyor for transport of material, dry fog system for dust separation, bag filters for dust collection, water sprinklers for dust separation etc. to prevent adverse impact on the environment and ecology of the area.

As regards occupational health issues, company is continuously monitoring the health of the employees for the last three years. Besides, in-house health specialists, the industry has taken experts from the Regional Labour Institute, Kolkata. Rehabilitation colony has been provided with hospital to impart medical facility free of cost.

Analysis of the Ministry

M/s VAL has made a system of environmental and occupational health system in the existing set up of 1 MTPA capacity. In general, for consideration of expansion projects factual monitored data needs to be included in the modeling exercise for estimation of the likely pollution load from the entire plant. Unless the impact of the environment and occupational health load due to increase in capacity to 6 MTPA is assessed and inventorized these impacts on natural ecosystems and human beings cannot be easily ascertained. However, at this stage it is mute point.

(iii) Out of 14 mines from which bauxite is to be sourced, only one mine has obtained environmental clearance. The unit does not have environmentally cleared enough source of bauxite.

Response of the M/s VAL

Ms/ VAL will source bauxite from suppliers in Jharkhand. The parties are having mining lease and operating the mines for many years prior to 1994 when no such environmental clearance was required. In some cases, mining lease has expired and application for renewal was submitted. However, renewal has been not granted till date and therefore, the lease deemed to have been extended under Rule 24 (a) of Mineral Concession Rules till the State Government passes any further order. Many other companies such as SAIL, OMCL and Public Sector Undertaking which are involved in mining are also following the same practice. The Ministry vide circular dated 2nd July, 2007 had clarified that all such mining projects which did not require environmental clearance under the EIA Notification, 1994 will continue to operate without obtaining environmental clearance till the mining lease falls due for renewal, if there is no increase in the lease area and/or there is no enhancement production. In the event of increase in the lease area and/or production, such projects would need to obtain prior environmental clearance. All such projects

which have been operating without any environmental clearance would obtain environmental clearance at the time of the lease renewal. M/s VAL has not procured any bauxite from illegal and unregulated source.

M/s VAL informed that India is one of the fourth largest country in the world having more than 3 billion tonnes of Bauxite reserves (Proven). Orissa alone is having more than 1.7 billion tonnes of proven bauxite reserves and more are being explored. It is expected that with further exploration, the bauxite deposit in Orissa may exceed to 2.5 billion tonnes in next few years. In the worst scenario, the bauxite can be sourced from other states/countries, if need arises as bauxite is the most abundant available material.

Further, VAL has already signed a MOU with Government of Orissa before starting the project and they have been assured for supply of 150 Million Tonnes of Bauxite for the project through Orissa Mining Corporation Ltd, Government of Orissa undertaking. Besides, they have also applied for nearly 12 mining leases and about 10 numbers of prospecting license for various deposits in the State totaling to more than 300 million tonne which are under different stages of processing. The caustic soda will be procured from the domestic and import market. Regarding source of coal, the company had submitted an application in April, 2009 for coal linkage for the new captive power plant, which is under consideration of CEA. Balance coal will be procured from the domestic and import market.

Analysis of the Ministry

Since environmental clearance to the 6 MTPA Alumina Refinery has not been granted, the details regarding source of bauxite is also a mute point and is not relevant at this stage.