



Environmental Social
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&
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09 October 2013

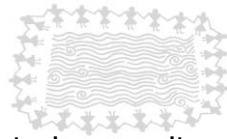
Reg.: Submission of comment/response w.r.t. Notification of Ministry of Environment and Forests dated 2nd July 2013 (No. S.O.1978(E)) relating to proposed supersession of Municipal Solid Waste (Management and Handling) Rules, 2000.

Ref.: Notice on the website of the Ministry at <http://envfor.nic.in/so-1978-e> stating "Comments/suggestions are invited in writing/by email on Draft Municipal Waste (Management & Handling) Rules, 2013 from all stakeholders within 60 days from 29.08.2013. Email may be sent to secy-mef@nic.in. [Read Notification](#) 1.6 MB"

Sir/Madam:

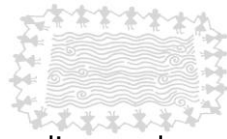
The following are our comments/responses to the aforesaid Notification:

1. At the outset we wish to state that the Hon'ble High Court of Karnataka in W.P. 46523/2012 c/w W.P. 24739-24740/2012, W.P. 30450/2012 and W.P. No. 46601/2012, Public Interest Litigations relating to municipal solid waste management in Bangalore, specifically, and in Karnataka, in general, has issued a series of progressive directions, the implementation of which is being monitored directly by the Hon'ble Court.
2. In W.P. 46523/2012 filed by Environment Support and ors., the Ministry of Environment and Forests is arraigned as the 3rd Respondent, notice has been issued, and appearance marked way back in November/December 2012. At no point in these ongoing proceedings has the Ministry filed any objections to any of the Writ Petitions, or even expressed its intention of modifying the existing Municipal Solid Waste (Management and Handling) Rules, 2000 (hereinafter referred to as MSW Rules, 2000). Therefore, the publication of the aforesaid amendment to the MSW Rules appears, *prima facie*, to be contrary to the letter and spirit of the directions issued by the Hon'ble High Court of Karnataka in the aforesaid pending PILs.
3. It is evident that the series of directions being passed by the Court are with the intention of giving effect to and implementing the existing MSW Rules, 2000, and such other inter-connected laws and guidelines. Hence, to seek to amend, at this stage, the existing MSW Rules, 2000, and without bringing it first to the notice of the Hon'ble Court, amounts to undermining the authority of the Hon'ble High Court of Karnataka. Further, it is a matter of utmost impropriety on the part of the Ministry to have resorted to such actions especially when what is being proposed by way of an amendment of the existing Rules is contrary to the purpose and import of the directions being passed by the Court in the pending litigations. We explain this contention further below.
4. The overarching thrust of the unprecedented directions issued by the Hon'ble Court has been to enforce segregation of municipal solid waste at source;



transport such segregated waste in a sanitary and just manner to transfer stations in each and every ward of the urban area (land has been identified to establish at least three such stations in every ward in Bangalore city); promote composting/bio-methanation of biodegradable waste locally, recover recyclable waste by engaging various civil society and entrepreneurial partners in such management of the material flow; and to ensure only that waste which is inert and has no further use whatsoever is transported to scientifically designed landfills. The Hon'ble Court appreciating that the prevailing mismanagement of municipal solid waste is a direct result of the lack of transparency in municipal administration, poor choice of policies (such as outsourcing to private contractors of waste removal, disposal and landfilling), lack of accountability, etc., deemed it necessary to enforce the direct involvement of citizens in civic affairs by forcing the State Government to institute Ward Committees as a measure to plan, manage, monitor and regulate various municipal issues, particularly garbage management, as is required per the Constitutional 74th Amendment (Nagarpalika) Act. Various civil society organisations, including Environment Support Group, have commented on the proposal of the Karnataka Government to formulate the Karnataka Municipal Corporation (Ward Committee) Rules, 2013, a copy of which is annexed at **Annexure A**. A copy of the Karnataka Government Notification No. UDD 507 MNY 2012, Bangalore, dated 27 August 2013, on ward committee rules is annexed at **Annexure B**.

5. The Hon'ble Court has also deemed it necessary to ensure that municipal waste produced by all bulk generators should not be allowed to be mixed with the waste stream being generated from residential areas, and that such material must be handled and managed directly by the bulk generators in separate facilities, thus unburdening the work load on municipal authorities. Towards this end, based on the directions of the Hon'ble Court, the Bruhat Bengaluru Mahanagara Palike, in coordination with the Karnataka State Pollution Control Board and the Karnataka State Urban Development Department, has identified land for the handling of waste generated by bulk generators, based on bio-methanation, recovery of recyclable material and intelligent material management to reduce generation of waste.
6. The Court has also found it necessary that penal provisions must be instituted to ensure waste is segregated at source and that its management thereafter follows various guidelines it has instituted, both for domestic and small commercial generators and also for bulk generators, along with the provisions of the MSW Rules, 2000. In compliance with these directions of the Hon'ble Court in the aforesaid PILs, the Karnataka Government has finally notified amendments to the Karnataka Municipal Corporation Act, 1976, by way of Karnataka Act No. 55 of 2013, viz., Karnataka Municipal Corporations (Amendment) Act, 2013, which has received the assent of the Governor on 19th August 2013 and a copy is annexed at **Annexure C**.
7. The Hon'ble Court has also directed the Bruhat Bengaluru Mahanagara Palike to comprehensively revamp the existing mechanism of collection and handling of municipal solid waste by private contractors as it has on thorough review found the practice to be highly inefficient, ineffective, intransparent and against the public interest. In fact the Court has held in its directions of 30th August 2013 in the aforesaid litigations that "any further extension to those contractors should be with the prior permission of this Court".
8. Particularly taking note of the highly problematic policy of the award of 'tipping fee' for landfilling operations, and the fact that such practices have only encouraged dumping of unsegregated and unprocessed waste in landfills causing massive environmental and public health problems in villages (where such facilities are typically located), the Hon'ble Court has time and again directed that the practice of landfilling has to be abandoned and that cities must move toward



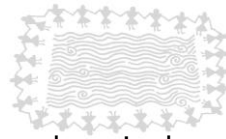
reducing waste generation, recycling and composting waste, and drastically reduce the need for landfills and resorting to them only for the handling and storage of inerts, hazardous waste, and biomedical waste, strictly following all necessary safeguards per law and evolving scientific standards.

9. Particularly taking note of the highly illegal and unscientific operations of one major landfill operator, viz., M/s Ramky, the Hon'ble Court has directed in the aforesaid proceedings on 30th August 2013 that "M/S/ Ramky Infrastructures India Pvt. Ltd., is a party in one of these writ petitions before this Court, who has been arrayed as respondent No.10 in W.P.No.46523/2012. They are duly served. It is alleged that after accepting the contract, they have done nothing to remove the garbage, but they have received the tipping fee. It is submitted that they have again made an attempt to receive tipping fee and they are working through M/s.Clean and Green Solutions Pvt. Ltd. There are several allegations made against this company. Under these circumstances, the Corporation is directed not to make any payment to them without any further orders from this Court."
10. These and various other directions of the Division Bench of the Hon'ble High Court of Karnataka may be accessed at:
<http://www.esgindia.org/education/community-outreach/resources/esgs-initiatives-socially-just-and-ecolo.html>.
11. Taking into consideration all the above, we reiterate that the proposed amendments to the MSW Rules, 2000 are a highly retrograde proposal and that they undermine the progressive directions of the Hon'ble Karnataka High Court, whilst promoting methods of municipal solid waste management that have been widely found to be unjust, unscientific and wholly unnecessary. In fact, we are shocked that the Ministry has undertaken this exercise entirely secretly, including choosing to keep the Judiciary in the dark on the proposal and not just ordinary citizens of the country. In the section that follows we specifically address our concerns about the nature and implications of the proposed amendments to the MSW Rules, 2000.
12. It is a matter of great distress to us that the Ministry has sought to promote highly questionable and controversial methods of municipal waste management, including by promoting the most dangerous technology of incineration, and that too by effecting changes in the basic structure of the law governing municipal waste management. Why the Ministry is so keen on promoting incineration, as is evident per Sections 6 and 9 of the proposed Rules, belies understanding, especially considering the undeniable fact that incineration based waste-to-energy projects have comprehensively failed every where they have been tried in India, besides causing unprecedented damage to public health of local communities. Most importantly, such technologies tend to promote the view that waste generation is not a problem, and that it could be easily handled by burning it off, and producing energy in the bargain. Nothing, clearly, can be farther from the truth, and it is high time the Ministry undertakes a comprehensive and independent assessment of ongoing incineration projects, and that without being victim to any lobby pressures, especially from transnational corporations emerging based in Europe and North America who seem to be very keen on dumping such failed technologies in India. This matter has been thoroughly debated in the aforesaid proceedings before the Hon'ble Court, including a specific submission by Mr. Siddaiah, IAS (Retd.), who was Commissioner of BBMP till May 31st, 2013, and is assisting the Court in the ongoing proceedings, and has submitted these very objections to the incineration technologies.
13. The definitions section of the proposed Rules give way to a variety of confusions. For instance, it does not specifically and accurately explain the nature of "micro-organisms"; "buffer zone" is loosely defined, without any specific clarity on the spatial extent of " a zone of no-development"; "collection" is uncategorical and lends itself to mean collection of unsegregated waste, thus promoting such

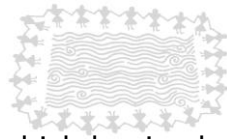


problematic practices of mixing waste at source; "composting" is defined rather unscientifically, as it has not explained what a "controlled process" involves; "construction and demolition waste" has all sorts of terminologies employed to describe including "rubble" and "waste arising from building materials debris" which could easily be re-interpreted to mean and involve everything that the builder finds a nuisance, including liquid and gaseous waste; "disposal", once again, is described in a manner that gives credence to a dumping culture, and without in the least being categorical of the consequences of such practices; "landfilling", highly problematically, promotes such environmentally disastrous practices, and being defined descriptively lends itself to a variety of subjective interpretations that could accentuate environmental and public health problems; "leachate" does not conform to the definition in science and leads to confusion when read with the definitions of "trade effluent" as defined in the Water (Prevention and Control of Pollution), Act, 1974; "materials recovery facility" is very loosely defined and could result in a wide range of highly subjective and problematic interpretations over time; "municipal solid waste", shockingly, includes "treated bio-medical waste" which questions the very purpose then of the Biomedical Waste (Management and Handling) Rules, 1998, and could potentially undermine the implementation of the latter if the former were to have a *non-obstante* clause; "operator of a facility" suggests that a "person" only qualifies for such operations, and could potentially create a host of problems to ongoing operators or potential ones, such as those who are working in compliance with the directions of the Hon'ble High Court of Karnataka on behalf of bulk generators, for instance; "pelletisation", again, is a technically unsound definition, as it cannot mean only that material that is made out of solid waste; "processing" has a highly problematic definition as it works to confuse and probably contradict the meaning of the term "recycling that follows; "segregation" quite questionably involves "industrial hazardous waste" without explaining how such material can at all be found in the municipal waste stream; "storage" quite questionably implies and promotes mixing of waste, without defining what "temporary" means and involves and rather loosely describes safeguards; "transportation" has a variety of terminologies that further qualify its meaning, such as "specially designed transport system" and "from place to place hygienically", "unsightly", etc. all of which will be subjectively used to lower the standards of management; "treatment" read with definitions relating to "treated bio-medical wastes", and also the highly questionable inclusion of "industrial hazardous waste" under "segregation" and given the emphasis "to reduce its potential to cause harm" is such a problematic way to define a critical activity, that it essentially knocks off the possibility of monitoring and regulating municipal and other wastes through evolving and appropriate techniques and standards; "vermicompost" wrongly defines the process and it results in vermicompost and not "compost" as defined; and then "waste pickers" comprehensively undermines, demeans, and messes with accepted norms of appreciating the due statutory roles of Pourakarmikas and informal waste pickers, and could possibly be a definition that undermines applicable labour laws and norms.

14. Section 4 of the proposed Rules defines the roles of various authorities in such manner that it actually promotes a top-down approach in formulating waste management strategies and policies and is thus in direct contradiction with the letter and spirit of the Nagarpalika Act. While the need for coordination of roles amongst the Centre, State and Local Governments is to be appreciated, the Constitution guarantees independent and autonomous functioning of the different layers of governance, and actively promotes the role of municipal authorities in attending to such matters as municipal solid waste management by employing progressive and citizen friendly methods. In particular, the Constitutionally guaranteed and mandated roles of District and Metropolitan Planning Authorities



- in such matters has been comprehensively overlooked.
15. Section 5, once more, comprehensively ignores the Nagarpalika Act, in particular the 12th Schedule to the Constitution, and the due roles of Municipalities as defined therein. Thus, the legality of this Section is itself in question, particularly given that the responsibilities of municipal authorities in relation to solid waste management are defined without correlating the roles as defined in the 74th Constitutional Amendment. There are also various other problematic implications of this Rule, such as equating a "municipal authority" with that of "an operator of a facility" at sub clause (10). Which, besides, is a problematic provisions as it uses unspecific and unscientific terminologies such as "high boots made of tough leather" (tough being open to subjective interpretation), "goggles" which could merely mean decorative eye-shades, "masks", which again, is a non-specific way to describe an occupational health requirement. Most questionably, the sub-clause 11 of Rule 5 actually promotes legalisation of illegal facilities, such as the one run by M/s Ramky in Mavallipura, and which is in gross violation of the letter and spirit of the Environment Protection Act, 1986, and the "Polluter Pays Principle" as has been held by various decisions of the Hon'ble Supreme Court of India.
 16. Rule 6 clear promotes a variety of confusions between the roles of the Pollution Control Boards and that of the State Environment Impact Assessment Authorities, as the former can only accord Consents, and not Authorisations, which when read with the problematic definition of "authorization" in Rule 2, further complicates the role of the aforesaid Authority as defined in the Environment Impact Assessment Notification, 2006.
 17. Rule 8 actively promotes an highly centralised approach to waste management which essentially is a municipal issue. Besides it is in absolute contradiction to the very purpose of the Constitutional 74th Amendment (Nagarpalika) Act, which seeks to decentralise and devolve plan and scheme making powers to local urban governments. Incredulously, the Rule demands consistency with the National Urban Sanitation Policy, which by itself is an highly problematic document that promotes "colonisation" of municipal affairs, when clearly it is settled law that policies have persuasive value and cannot be forced through statutory instruments.
 18. Rule 9 (1) of the proposed amendments again lend itself to a variety of subjective, and thus highly problematic, interpretations, such as the term "safe" employed in sub-clause (a); the surprising introduction of term "horticultural" without defining the same in sub-clause (b), and in the same clause drawing in "dairy waste" which clearly is an industrial by-product and should never be included in the municipal waste stream; loosely defining the role of "municipal authority" to "identify storage spaces" and problematically describing the nature of activity in such facilities, and rather uncategorically describing how such facilities will be "designed"; confusions are introduced between "storage facilities or 'bins'" when it is brought out in sub-clause (d), and that without defining either of them, yet proceeding to describe the latter but without clearly defining the operationalisation of the infrastructure so created; at sub-clause (e) "manual handling of municipal solid waste shall be prohibited" but scandalously that very clause allows for such manual handling when "unavoidable" without at all describing what such circumstances might be; at sub-clause (f) "landfill site" is mentioned without prior definition, and which with the subsequent sub-clause (g) results in essentially promoting dumping of unsegregated waste given the choice of the term "avoided" but not absolutely prevented, and confounding further the functionality of the process by stating at sub-clause (h) that "landfill shall only be permitted for non-usable, non-recyclable, non-biodegradable, non-reactive inert waste" without priorly defining any of these, and thereafter specifically promoting their reuse, and thus absolutely contradicting understanding of the nature of the



- material itself; sub-clause (i) which begins by promoting “composting” which then is further qualified as “any other end product” quickly collapses into an area of confusion when it refers to “standards as specified in Schedule-II” in which the very first item (1) provides a description of activities under “Standards of Composting” that includes everything including non-composting activities such as “incineration, pelletisation”, etc., thus clearly laying ground for a series of highly confounding litigations that are certain given such provisions in law. Then, perhaps as an afterthought, a proviso is inserted at sub-clause (j) to “create awareness among all stakeholders about their responsibilities” but without defining what “stakeholders” means in law. Thereafter, the Rule at sub-clause (k) complicates matters fundamentally as it equates “authorised agency” and “waste pickers” without any clarification and qualification, and goes onto include a standard that “open burning of municipal solid waste is not permitted” which by implication lends to the possibility of burning of waste so long as it is covered.
19. Rule 9 (2) demands that these Rules shall be incorporated in “Municipal bye laws of all the Urban Local Bodies” without actually specifying the need for such legislative action and also not clarifying if this is in conformance with the Nagarpalika Act.
 20. Rule 9 (3) illustrates “suitable technology” for managing municipal solid waste rather uncritically, and thus lends itself to a variety of subjective and highly problematic interpretations. Then at Rule 9 (4) the idea of regulating “new technology” is addressed, without first describing what is old and what “new”.
 21. Rule 9 (6) states that “existing dumpsite which are not engineered landfill sites shall be closed down and capped as per the provisions of the rules” without defining the “provisions” and thus opens the doors to a variety of operators who would have comprehensively violated environmental and pollution control norms, and yet getting away scot free from the penal action they deserved for despoiling the environment and damaging public health. Read with Rule 9 (7) and (8), the lack of clarity in these provisions becomes self evident.
 22. These Rules, as proposed, also promote the need to constitute yet another Advisory Body, as is proposed at Rule 10, but without explaining what then would be the roles of District Planning Committees, Pollution Control Boards, State Environmental Appraisal Authority, State Environment Impact Assessment Authority, and the like.
 23. In consideration of all of the above, we deem it fit and necessary that the Ministry of Environment and Forests summarily withdraws this Notification as being ultra vires of directions issued by the Hon'ble High Court of Karnataka, contradicting the letter and spirit of the Environment Protection Act, 1986 and connected laws and rules, and also contradictory to various progressive decisions of the Hon'ble Supreme Court. We submit that this amendment will serve to confound the nature of municipal solid waste management, open the doors for a variety of operators to dump discarded technologies in India, result in widespread breakdown of waste management strategies that have been built on the basis of MSW Rules, 2000, erase the distinction between the different waste streams, such as municipal, industrial, bio-medical, e-waste, etc., and consequently lay the ground for highly regressive actions that would result in an unprecedented environmental and public health disaster.
 24. We finally submit that there is a lot of experience and understanding of municipal solid waste management that has been developed due to sincere and consistent action by hundreds of voluntary initiatives across India, which have demonstrated the high possibility of managing municipal waste in a socially just, ecologically sensitive and economically viable manner, based on decentralised and local community engagement approaches, and which will help manage our cities in inclusive and just ways that are also climate friendly. In deep consideration of this knowledge, experience and wisdom, the Ministry should consider review of



the existing MSW Rules, 2000 only after it has formulated a well-designed and well-thought through proposal for reform, which is then deeply and widely debated in every district of the country, and not merely by a few officials in the Ministry's headquarters at Delhi or those privileged by the Ministry's invitations.

Yours truly,

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Environment Support Group

Encl.:

Annexure A: Comments by Environment Support Group and other on the proposal of the Karnataka Government to formulate the Karnataka Municipal Corporation (Ward Committee) Rules, 2013.

Annexure B: Copy of the Karnataka Government Notification No. UDD 507 MNY 2012, Bangalore, dated 27 August 2013, proposing Ward Committee Rules.

Annexure C: Karnataka Act No. 55 of 2013, viz., Karnataka Municipal Corporations (Amendment) Act, 2013, which has received the assent of the Governor on 19th August 2013.

Cc.:

1. Union Minister for Environment and Forests
2. Union Minister for Urban Development
3. Union Minister for Labour
4. Union Minister for Social Justice and Empowerment
5. Union Minister for Parliamentary Affairs
6. Union Minister for Health and Family Welfare
7. Chairperson, Department Related Parliamentary Standing Committee on Science, Technology, Environment and Forests
8. Chairperson, Department Related Parliamentary Standing Committee on Urban and Rural Development
9. Chairperson, Department Related Parliamentary Standing Committee on Health and Family Welfare
10. All Parliamentarians
11. Deputy Chairman, Planning Commission of India
12. Chairperson, Central Pollution Control Board
13. Principal Secretaries of Urban Development Departments of all States and Union Territories
14. Principal Secretaries of Environment Departments of all States and Union Territories
15. Chairpersons of Pollution Control Boards and Committees in all States and Union Territories
16. Southern Regional Office of the Union Ministry of Environment and Forests