



To:

Mr. Rameshwar Prasad Gupta, IAS
Secretary
Ministry of Environment, Forest & Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
Aliganj, New Delhi – 110003

December 5, 2021

Subject: Objections to the Draft Regulations on Extended Producer Responsibility proposed under the Plastic Waste Management Rules, 2016.

Ref: Notification No. G.S.R. 722(E) dated 6th October 2021 issued by the Ministry of Environment, Forest & Climate Change

Dear Mr. Gupta,

In response to the notification inviting public comments on the Draft Regulations on Extended Producer Responsibility under the Plastic Waste Management Rules, 2016, please find enclosed our detailed comments and objections.

Given the enormous impacts of plastic on public health and the environment, we believe that every last producer in the chain, including petrochemical corporations, should be held accountable under any EPR regime. However, not only have petrochemical corporations been completely let off the hook, the proposed regulations fail to define the very subject of the regulations - “plastic packaging” and “EPR Targets”. This will undoubtedly make efforts to ensure compliance incredibly difficult, if not impossible.

The basic system of meeting the so-called EPR Targets includes a credit-trading system of ‘Surplus Certificates’ among producers, importers and brand owners of plastic packaging (PIBOs), which is similar to systems of carbon credit trading that have miserably failed to arrest greenhouse gas emissions. On top of that, instead of fines, compensation or criminal liability, the regulations impose a ridiculous requirement where PIBOs are required to buy these certificates from other PIBOs in some cases of non-compliance.

The draft regulations also have weak compliance mechanisms. To begin with, they largely rely on self reporting without enough checks and balances. Many of the requirements for self reporting are also not properly explained. Violations of these provisions often do not have criminal consequences, and those that do are very vague about when criminal law kicks in. Instead, the main method of enforcement is through a system of environmental compensation, which can even be refunded under certain conditions. This weakens the compliance mechanism even further, and casts serious doubt on whether the compensation can be used for the purpose it is being collected for, i.e. plastic waste management. While information on

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compliance is required to be uploaded to a centralized portal, which is a welcome move for transparency, it is unclear whether this portal will be accessible by the public, which could have added an extra layer of accountability for PIBOs. Finally, the period for review of EPR targets is an extremely long five years, which is grossly unfit for tackling an emergency of this scale.

Waste workers have also been given short shrift under the proposed EPR Regulations. The definitions of 'recycler' and 'plastic waste processor' are extremely vague about whom they include, and potentially leave out millions of workers engaged in the crucial work of washing, palletisation, grinding, and bailing plastics. Instead of recognizing the role played by these workers, the proposed EPR Regulations instead say that PIBOs may set up their own collection and MRF centres. Though these are optional for PIBOs under the EPR Regulations, these recommendations have been drafted without considering the severe impacts on the livelihoods of the waste workers engaged in this work. It is also worrying that the constitution of the Supervisory Committee to monitor the implementation of the EPR Regulations has not been defined. Waste workers from the formal and informal sectors, who are close to the ground reality of plastic pollution and suffer some of its worst effects, have also shockingly been left out of the Supervisory Committee. To add to this gross injustice, waste workers and other plastic waste processors have the highest liability for non-compliance with the proposed regulations.

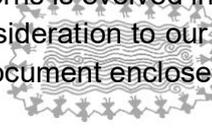
Many demands by grassroots movements over the years, who have been working to end plastic pollution, have also been left out. Waste-to-energy and waste-to-oil, which have been widely criticized by environmental and public health researchers and activists, even the erstwhile Planning Commission, for their harmful effects on health and environment, find a place in the draft regulations for end-of-life disposal of plastic waste. Even the simple but vital idea of waste collection by PIBOs through schemes for buy-back or deposit refund from consumers has been left optional.

The proposed EPR regulations also ignore the vital constitutional role laid out by the 73rd and 74th amendments for rural and urban local bodies. Whereas the Constitution sought to deeply democratize the process of waste management, these regulations are top-down and highly centralised, with little room for local participation or input. It is critical that local governance be promoted for successful implementation of any environmental legislation, involving people working at the very roots of the problem.

A just, thoughtful and visionary EPR regime would focus on building a circular economy, where waste itself does not exist and is fully reused and recycled. It would do so fully respecting the existing environmental jurisprudence of India and the constitutional mandate for promoting local self-government. It would be driven by the demands and participation of waste workers, who are the backbone of waste management and bear the brunt of its worst effects on human health. The greatest onus would be on PIBOs to establish and finance plastic waste management mechanisms, through centres that are publicly owned and directly managed by waste workers. At the same time, such a regime must also acknowledge that reuse and recycling cannot be enough to address the plastic crisis as long as producers and manufacturers are not held accountable for the overproduction of plastic.

It is critical that these issues and concerns are addressed if we are to create a strong, effective and robust EPR framework to address the growing but overlooked issue of plastic pollution and contamination. Evidently, the flaws highlighted above go to the root of the proposed

framework, and we therefore demand that the draft regulations are withdrawn in their entirety, and a new draft addressing these concerns is evolved in a participatory manner. Towards this end, we hope that you give careful consideration to our objections and comments, which we have explained in further detail in the document enclosed.



Yours truly,

Leo F. Saldanha
Coordinator/Trustee
Environment Support Group

Cc.:

Mr. Satyendra Kumar, Director (Hazardous Substances Management), MOEF&CC
Mr. Amit Love, Scientist E (Hazardous Substances Management), MOEF&CC

This letter and the enclosed Objections have received endorsements from:

Centre for Financial Accountability, New Delhi;
Prof. I Ramdas Rao, Peoples Union for Civil Liberties, Karnataka;
Kirtana Kumar, Theatre Artiste and Filmmaker, Infinite Souls Farm, Bangalore;
Aruna Rodrigues, Mhow, Madhya Pradesh (Principal Petitioner in the Supreme Court in the GMO case);
Madhurya Balan, Writer and Teacher;
Dr. S. G. Vombatkere, National Alliance of Peoples Movements (Karnataka);
Tara Murali, Architect, Chennai;
Nishant Seth, Independent Researcher, Himachal Pradesh;
K. Nagarajan, Bangalore;
Gautam Sonti, Independent filmmaker, Bangalore;
Prof. Mohan Rao, independent researcher, Bangalore;
Adv. Harish Vasudevan K., Kerala;
Ramnarayan, Ecologist, Uttarakhand.

**OBJECTIONS TO THE DRAFT EPR REGULATIONS 2021 ISSUED BY THE UNION
MINISTRY OF ENVIRONMENT, FORESTS AND CLIMATE CHANGE**

PREPARED BY

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Plastic pollution is as much a public health emergency as an environmental one. Research shows the existence of massive plastic contamination, especially through microplastics, in floodplains,² salt-pans,³ lake sediments,⁴ and beaches across India.⁵ This wide-ranging contamination has severe implications not only for wildlife but also communities dependent on these environments for food and water supplies.⁶ Communities affected by plastic contamination face increased risk of diseases and disorders, including cancers and endocrine disruption.⁷ Microplastics are especially dangerous because they can act as carriers of other environmental contaminants, including heavy metals, and spread them further across the food chain.⁸ In spite of these hazards, the government continues to promote and invest in the production of plastic. One recent initiative has been the systematic push to set up plastic parks, special industrial zones devoted to production of plastic and allied industries, across the country. Recently, the Department of Chemicals and Petrochemicals gave final approval for funding for six Plastic Parks in Assam, Madhya Pradesh, Odisha, Tamil Nadu and Jharkhand, and approval is pending for four more in Uttarakhand and Chhattisgarh.⁹

¹ www.esgindia.org

² Deeptija Pandey et al, *The combined exposure of microplastics and toxic contaminants in the floodplains of north India: A review* 2021 Vol. 279 Journal of Environmental Management 111557.

³ M. Narmatha Sathish et al, *Microplastics in Salt of Tuticorin, Southeast Coast of India* 2020 Vol. 79 Archives of Environmental Contamination and Toxicology 111; S. Selvam et al, *Microplastic presence in commercial marine sea salts: A baseline study along Tuticorin Coastal salt pan stations, Gulf of Mannar, South India* 2020 Vol. 150 Marine Pollution Bulletin 110675.

⁴ S.Sruthy and E.V. Ramasamy, *Microplastic pollution in Vembanad Lake, Kerala, India: The first report of microplastics in lake and estuarine sediments in India* 2017 Vol. 222 Environmental Pollution 315.

⁵ T.G. Sunitha et al, *Micro-plastic pollution along the Bay of Bengal coastal stretch of Tamil Nadu* 2021 Vol. 756 South India Science of the Total Environment 144073; Mugilarasan M. et al, *Occurrence of microplastic resin pellets from Chennai and Tinnakkara Island: Towards the establishment of background level for plastic pollution* 2017 Vol. 46 Indian Journal of Geo-Marine Sciences 1210; A. Vidyasakar et al, *Characterization and distribution of microplastics and plastic debris along Silver Beach, Southern India* 2020 Vol. 158 Marine Pollution Bulletin 111421; B. Sulochanan et al, *A preliminary assessment of ecosystem process and marine litter in the beaches of Mangalore* 2014 Vol. 43(9) Indian Journal of Geo-Marine Science 1764.

⁶ Naveenkumar AshokYaranal et al, *Identification, extraction of microplastics from edible salts and its removal from contaminated seawater* 2021 Vol. 21 Environmental Technology & Innovation 101253.

⁷ Saudamini Das et al, *Assessing Marine Plastic Pollution in India* 2020 Institute of Economic Growth Working Paper No. 389; R. Karthik et al, *Microplastics along the beaches of southeast coast of India* 2018 Vol. 645 Science of the Total Environment 1388.

⁸ S. Selvam et al, *Hazardous microplastic characteristics and its role as a vector of heavy metal in groundwater and surface water of coastal south India* 2021 Vol. 402 Journal of Hazardous Materials 123786.

⁹ Government says eight plastic parks at various stages of development: Mansukh Mandaviya, *The Hindu* (November 30, 2021) <https://www.thehindu.com/news/national/other-states/government-says-eight-plastic-parks-at-various-stages-of-development-mansukh-mandaviya/article37768747.ece> (last accessed December 2, 2021);

Through these comments, we wish to bring to your attention certain very serious limitations in the proposed Draft Regulations on Extended Producer Responsibility under the Plastic Waste Management Rules, 2016 (“**Draft Regulations**”), addressing which could strengthen the proposed Extended Producer Responsibility (“**EPR**”) framework and equip it with the teeth it needs to tackle the gargantuan challenge of plastic pollution in India.

Lack of Accountability for Petrochemical Corporations, the Original Manufacturers of Plastic

An inordinate focus on the end-of-life impacts of plastic often leads us to forget that plastic has a range of environmental and climate impacts across its life cycle,¹⁰ starting from its extraction from fossil fuels.¹¹ The same petrochemical corporations that are responsible for the climate crisis are also the ones fuelling the plastic crisis. The International Energy Association has reported that plastics and associated products accounted for 12% of the global demand for petrochemicals in 2018, and for 45% of the growth in global demand. This is set to increase to 60% by 2050 in the absence of serious action to address plastic use.¹² Thus, any attempt at defining EPR cannot be limited to holding accountable the manufacturers of plastic products and packaging for reduction, reuse and recycling of plastic. An effective EPR framework must also hold manufacturers of the base material from petrochemicals responsible for the overproduction of plastic. However, the scope of the Draft Regulations is limited to “**Producers**” and “**Importers**” of plastic packaging, although a commendable effort has been made to include “**Brand Owners**” and online marketplaces. Leaving the petrochemical industry out of the scope of the Draft Regulations allows a key player, one that is driving the growth of the industry, the opportunity to evade any responsibility or liability for the harm caused by their actions.

Incomplete Definitions under the Draft Regulations

It is also curious that the term “plastic packaging” itself is not defined under the Draft Regulations nor under the Plastic Waste Management Rules, 2016. Key descriptors that have been used in Regulation 5.2 and 7, such as “rigid packaging”, “flexible packaging” and “fresh plastic packaging” have not been defined. It is unclear whether the meaning of “plastic packaging” is limited to the terms “carry bags” and “plastic sheets”. It is also unclear if items such as those that ‘*constitute or form an integral part of the packaging in which goods are sealed prior to use*’, which are excluded from the definition of “carry bag”, would be considered “plastic packaging”. The term “EPR Target”, which is the crux of the Draft Regulations, has also not been defined. It is only upon a close reading of Regulation 7 that it becomes apparent that EPR targets are themselves percentages of total packaging generated, and targets for recycling and use of recycled packaging that are in themselves percentages of EPR targets.

The absence of clear definitions of such fundamental parts of the Draft Regulations makes enforcement or compliance extremely difficult. Additionally, there are definitional ambiguities

India Brand Equity Foundation, *Indian Plastics Industry and Exports*, <https://www.ibef.org/exports/plastic-industry-india.aspx> (last accessed December 2, 2021).

¹⁰ Tengku Nuraiti, Tengku Izhar and Yap Voon May, *Life Cycle Analysis of Plastic Packaging 2020* IOP Conf. Ser.: Earth and Environmental Science 616 012036

¹¹ Centre for International Environmental Law et al, *Plastic & Climate: The Hidden Costs of a Plastic Planet*, May 2019, available at <<https://www.ciel.org/wp-content/uploads/2019/05/Plastic-and-Climate-FINAL-2019.pdf>> (last accessed December 2, 2021).

¹² International Energy Agency, *The Future of Petrochemicals* (2018). Available at: <https://www.iea.org/reports/the-future-of-petrochemicals> (last accessed December 2, 2021).

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with respect to “recyclers” and “**Plastic Waste Processors**”. The Draft Regulations define recyclers as “*entities who are engaged in the process of recycling of plastic waste*”; and Plastic Waste Processors as “*recyclers and entities engaged in using plastic for energy (waste to energy) and converting it to oil (waste to oil)*.” This definition is ambiguously worded, as it is unclear whether it includes recyclers engaged in the business of washing, palletisation, grinding, or bailing plastics. Further, it appears to consider waste-to-energy and waste-to-oil as part of the recycling process, whereas in Regulations 7.2(c), 7.3(c) and 7.4(d), waste-to-energy and waste-to-oil are considered to be end-of-life disposal mechanisms.

Surplus Trading Mechanism Allows Evasion of Liability

The present mechanism under the Draft Regulations does not impose any actual obligations on Producers, Importers and Brand Owners (“**PIBOs**”) to reduce their plastic production and allows them to evade liability for pollution. The Draft Regulations set out annual targets for PIBOs to reuse/recycle plastic packaging. Regulation 8 allows PIBOs who have exceeded these targets to offset shortfalls in the previous year, carry forward credits for use in the succeeding year, or sell the credits to other PIBOs which have a shortfall. It also allows PIBOs to meet their target obligations for the year by purchasing EPR surplus certificates from other PIBOs. There are thus no real obligations on PIBOs to reduce their actual plastic production as long as they are able to purchase enough EPR surplus certificates to make up for their shortfall in targets.

The Draft Regulations also make it mandatory for PIBOs to purchase surplus certificates to meet their EPR obligations under the following circumstances:

- Where Producers and Brand Owners cannot meet their targets on use of recycled plastic on account of “statutory requirements”, CPCB may grant an exemption on a case to case basis. If so granted, the Producer/Brand Owner will have to meet its shortfall by purchasing a “certificate” of equivalent quantity from other PIBOs who have exceeded their recycling targets (Regulations 7.2 (d) and 7.4 (e)).
- Importers cannot meet their targets for use of recycled plastic through their actual imports. Instead, buying certificates of equivalent quantity from other PIBOs who have exceeded their recycling targets is the only way in which they can meet their requirements (Regulation 7.3 (d)).

The proposed mechanism in Regulation 8 and Regulations 7.2 (d) and 7.4 (e) above does not enforce compliance through criminal liability or obtain compensation for the damage caused by failure to recycle plastic. It instead allows other PIBOs to profit from the sale of EPR surplus certificates. Further, the requirements themselves are arbitrary. The “statutory requirement” under Regulations 7.2 (d) and 7.4 (e) explained above is vague and has not been defined. Further, the mandatory requirement on Importers to purchase EPR surplus certificates to meet their targets on use of recycled plastic can only be described as absurd.

We also note that the mechanism proposed is similar to carbon credit trading systems, which have been criticized as far back as 2006 for their ineffectiveness.¹³ These systems reward heavy polluters with profits by allowing them to purchase carbon credits - or a “license to pollute”. We have seen that carbon credit systems have delayed the long-term structural

¹³ Lohmann, Larry Lohmann, *A licence to carry on polluting?* 2006 *New Scientist* 2580.

changes and deep cuts in emissions needed to tackle climate change, and we are fearful of the same issues arising out of the proposed trading mechanism under the Draft Regulations.

Weak Compliance and Enforcement Mechanisms



The EPR obligations envisaged in the Draft Regulations are largely based on self-reporting of the quantities of packaging waste that would be collected and processed. Regulation 10.6 requires PIBOs to file annual returns on plastic packaging collected and processed as per their EPR obligations. A similar obligation is placed on “**Plastic Waste Processors**” under Regulation 11.2. Plastic Waste Processors undertaking end-of-life disposal of plastic packaging waste are also required to provide information themselves on the Central Pollution Control Board’s (“**CPCB**”) centralized portal under Regulation 11.10. In the case of end of life use of plastic waste in road construction, the PIBO is even allowed to provide a self declaration certificate under Regulation 11.7.

Further, the whole mechanism of EPR targets is based on figures such as ‘*average weight of plastic packaging material (category-wise and state-wise) sold in the last two financial years*’ and ‘*average quantity of pre-consumer plastic packaging waste in the last two financial years*’. Yet, there is not even a self-reporting mechanism to declare these quantities so as to verify the declared EPR targets. It is only mentioned vaguely that the EPR target shall be provided by the PIBOs as part of Action Plans uploaded on the CPCB’s centralised portal, under Regulations 7.2(a), 7.3(a), and 7.4(a). Thus, there is serious doubt that the audit and verification mechanism specified in Regulations 12.4 and 13.1 to be carried out by the CPCB and State Pollution Control Boards (“**SPCB(s)**”) respectively will have any teeth. Indeed, the experience with self-reporting under the Environment Impact Assessment Notification 2006 is a strong indicator of the inherent weakness of an environmental compliance regime that is primarily based on self-reporting without adequate checks and balances.¹⁴

We also note that the centralized online portal referred to above is an essential part of the compliance mechanism under the Draft Regulations. Allowing the information and Action Plans filed by PIBOs to be subject to public review and scrutiny would add an additional layer of accountability, and make the compliance mechanism more participative. However, the Draft Regulations do not mention whether the centralized portal would be publicly accessible, thus foreclosing the possibility of transparency.

The proposed enforcement mechanism relies heavily on levying environmental compensation for non-compliance with EPR targets (Regulations 9.2-9.4). It is also unclear on the extent and circumstances under which non-compliance would attract criminal liability, especially under Regulations 9.5-9.7. Even where criminal liability under Section 15 of the Environment (Protection) Act 1986 is clearly provided for (such as for the furnishing of false and fabricated information under Regulation 9.1), the weak compliance and verification mechanism would lead to under-detection of such cases.

It is also a matter of concern that even where environmental compensation is being collected, a refund system has been created to accommodate PIBOs who “catch up” with their required targets in successive years (upto a period of three years). Regulation 9.5 allows that in such situations, specified percentages of the original compensation paid can be returned to the

¹⁴ For further reference, see Leo F. Saldanha et al, *Green Tapism: A Review of the Environmental Impact Assessment Notification 2006* (2007, Environment Support Group).

PIBO. This system will necessarily mean that the compensation collected cannot be fully utilised immediately upon collection, and will delay plastic waste management efforts, at great cost to public and environmental health.



Finally, Regulation 7.7 provides for a review of the functioning of the EPR mechanisms once every five years. Given the scale of the environmental and public health emergency posed by the plastic crisis, we submit that a five year period is too long for adequate review of progress. Instead, targets should be reviewed and upgraded on an annual or bi-annual basis.

Vague and Limited Constitution of EPR Supervisory Committee

There is no clarity regarding the constitution of the Committee headed by the CPCB Chairman that is tasked with monitoring the implementation of the EPR Regulations under Regulation 18. Though it is specified that representatives of various ministries, line departments and stakeholders such as PIBOs shall be part of the committee, there is no mandate on the exact number of representatives from various fields. Further, it is alarming that there is no mandate for the inclusion of representatives of Plastic Waste Processors in this committee. Plastic Waste Processors, who include formal and informal sector workers working in segregation, sorting and recycling, and other allied activities, bear the maximum health impacts of disposal and management of plastic waste. Their expertise is also crucial in ascertaining whether or not EPR mechanisms are actually successful in reducing the amount of plastic waste that is disposed of in a hazardous manner. Further, as we explain below, they bear the highest liability under the proposed EPR regime.

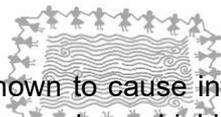
Unfair Distribution of Liability

Whereas an EPR regime should place the maximum liability on those most responsible for the plastic crisis and reap the largest financial gains from it, the proposed regime does quite the opposite. Petrochemical corporations responsible for the production of virgin plastic are let off the hook completely. In contrast, between Producers and Importers of packaging, Brand Owners, and Plastic Waste Processors, it is the last group - which is typically small or medium-scale in operation - for whom the most stringent penalties are envisaged. Under Regulation 11.4, Plastic Waste Processors may, in addition to criminal liability or payment of environmental compensation, also face debarring or revocation of registration for five years for furnishing false information to authorities, a condition which is not imposed on any other entity in the plastic management chain. The highest burden of waste management therefore falls squarely on the final actor in the life cycle of plastic, while other actors involved in direct production and dissemination can pay and continue polluting. That the surplus trading mechanism under Regulation 8 is available only to PIBOs is further evidence of this disparity.

Inadequate and Harmful End-of-Life Disposal Mechanisms

Regulation 5.2 lays out four mechanisms to deal with plastic packaging waste: (i) reuse; (ii) recycling; (iii) use of recycled plastic content, and; (iv) end-of-life plastic disposal. With respect to end-of-life plastic disposal, the following mechanisms are proposed: (i) waste-to-energy, (ii) waste-to-oil, (iii) cement kilns for co-processing, and (iv) road construction [Regulations 7.2(c), 7.3(c) and 7.4(c) read with Annexure, examples 1 to 3]. Some of these mechanisms have

been incorporated into the EPR targets without a proper consideration of their harmful environmental impacts.



Waste-to-Energy (“WtE”) plants are known to cause intense, long-lasting, highly toxic and widespread air pollution. WtE incinerators release highly dangerous chemicals, furans and dioxins, which are triggering agents for cancer, and also produce hazardous bottom ash. Due to the toxicity and the wasteful consumption of electricity by WtE incinerators, the technology is slowly being phased out across the world. In 1995, the erstwhile Planning Commission in its ‘*Report of the High Power Committee - Urban Solid Waste Management in India*’ said on the viability of WtE plants that:

“Incinerators have proved unsuitable for most situations in India because of the nature of municipal waste - it is too high in moisture and organic content so that the waste has a low calorific value, such that it will not burn without the addition of an auxiliary fuel.”

In this context, we would like to draw attention to the fact that the Draft Regulations contain no obligations for maintaining a separate stream of plastic waste, with Regulation 10 merely stating that PIBOs “may” operate deposit refund / buy back schemes. Thus, it is likely that plastic waste would continue to be mixed with other kinds of waste, adding to the toxicity of WtE.

In this sense, it is directly contradicting the Solid Waste Management Rules, 2016, which, as you are aware, was a substantial improvement over the 2013 Draft SWM Rules which the Hon’ble High Court of Karnataka was forced to stay¹⁵ on the ground that it was violative of directions requiring segregation of waste at source, amongst others. This regulation takes us back to the 2013 situation, which is both retrograde and opposed to High Court rulings on the matter.

“**Waste-to-Oil**”, which is a form of chemical recycling, has similar issues. Sector specialists from the Bureau of International Recycling have described it as an “immature industry” that is ten years away from viability.¹⁶ Like WtE, Waste-to-Oil also requires high energy inputs, resulting in greenhouse gas emissions.¹⁷ It emits harmful toxic chemicals and carcinogens which could have severe adverse effects on local communities and on the environment, along with contributing to climate change.¹⁸ Further, as the end goal of Waste-to-Oil is usually the production of fuel, the use of such fuel would also release greenhouse gases, further contributing to climate change.¹⁹

¹⁵ WP 46523/2012 (Environment Support Group and ors. Vs. Bruhat Bengaluru Mahanagara Palike and ors.), c/w WP 24739/2012 before the Hon’ble High Court of Karnataka.

¹⁶ Joshua Doherty, ‘*Chemical recycling of plastics ‘10 years away*’, Let’s Recycle, 21 October 2012. Available at: <https://www.letsrecycle.com/news/latest-news/chemical-recycling-of-plastics-10-years-away/> (last accessed December 2, 2021).

¹⁷ GAIA, *Chemical recycling: Distraction, not solution* (2020). Available at: https://www.no-burn.org/wp-content/uploads/CR-Briefing_June-2020.pdf (last accessed December 2, 2021).

¹⁸ Andrew N. Rollinson, *Fire, explosion and chemical toxicity hazards of gasification energy from waste* 2018 Vol. 54 Journal of Loss Prevention in the Process Industries 273.

¹⁹ Greenpeace, *Throwing away the future: how companies still have it wrong on plastic pollution ‘solutions’* (2019). Available at: <https://www.greenpeace.org/usa/wp-content/uploads/2019/09/report-throwing-away-the-future-false-solutions-plastic-pollution-2019.pdf#FalseSolutions2019.indd%3A.94634%3A1531> (last accessed December 2, 2021).

No obligation for establishment of specific plastic waste management mechanisms and infrastructure



The absence of mandatory provisions for specific mechanisms for EPR gravely undermines the efficacy of the proposed EPR regulations. Researchers have estimated that plastics and other materials cannot be reused at a significant scale without at least 90% mandatory collection and deposit return systems.²⁰ It is therefore worrying that Regulation 10.1 makes it optional for PIBOs to establish schemes such as 'deposit refund system' or 'buy back'. Similarly, Regulation 14.1 makes it optional for PIBOs to develop collection and segregation infrastructure for managing plastic packaging waste. Regulation 14.1 also ignores the existence of the present informal waste recycling economy: the recommendations for collection points and Material Recovery Facilities, if followed by PIBOs, would result in the creation of a parallel waste collection economy that would displace thousands of informal workers who are presently dependent on this sector.

The need of the hour is to ensure that plastic manufacturers and PIBOs are held accountable for financing the establishment, operation, and upgradation of dedicated plastic waste collection, aggregation and processing centers, including providing fair compensation for the operators of such centers. While this is done, the public utility functions of decentralised waste management centres must be recognised and maintained, by ensuring that they are owned and operated by waste workers from the informal sector.

Non-adherence to Constitutional Mandate for Local Governance

The 73rd and 74th amendments to the Constitution, which deal with rural and urban local governments respectively, require that matters such as plastic waste management and regulation, and EPR, are governed by local authorities with powers of planning resource use and environmental conservation. However, the Draft Regulations lay out a highly centralised system of regulatory oversight, completely ignoring the role envisaged for local governments under the Constitution.

Other Omissions

It is critical to appreciate that the failure of environmental regulation in the country, indicative in the fact that most Public Interest Litigations are on environmental concerns, is the outcome of keeping local communities, the public at large, and local governments outside processes and procedures of environmental oversight and regulatory control. The Draft Regulations repeat this error, and this is likely to result in extensive pollution by plastics in coastal areas, rivers and streams, lakes and other wetlands, mountains and forests. The Draft Regulations also ignore the role of plastic waste, for instance, disposed plastic containers, in the spread of vector-borne diseases. The need of the hour is to prioritise environmental safety, regulation and public health over corporate interests, which the Draft Regulations fail to do.

[Inputs received from Pinky Chandran, Founding Member, Solid Waste Management Roundtable and Trustee, Hasiru Dala have been included.]

²⁰ Changing Markets Foundation, 'Talking Trash: The corporate playbook of false solutions to the plastic crisis' (2020).