

**Reponse to National Environment Policy 2004 (NEP) Draft**  
**By**  
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**1. PREAMBLE**

**1.1** Delhi Science Forum (DSF) is of the view that true development, i.e. development that is long-term, sustainable and equitable both today and with respect to future generations is possible only by holistically integrating environmental concerns into all stages of the developmental process. DSF therefore views any Environment Policy as an instrument towards achieving such sustainable and equitable development with particular emphasis on the interests of the poor and deprived sections of society, especially those whose lives and livelihoods are inextricably dependent upon or linked with natural resources. Any National Policy ought also to safeguard and seek to advance national interests in the context of global environmental problems and related international treaties, which must both be understood as integral parts of the unfolding global politico-economic scenario.

**1.2** DSF's response to the NEP Draft is guided by this perspective and by its study and understanding of the state of the environment and the socio-economic, legislative, regulatory and administrative structures and processes related to environmental issues in India.

**1.3** DSF has critically examined the NEP after a thorough study of the Draft and a series of discussions amongst its own members, and with leading experts and groups from different parts of the country. In overall and general terms, the NEP does not offer a shift in basic developmental policies and strategies towards ensure environmentally sustainable and socially equitable development. The NEP appears to be informed, on the one hand, by a conventional conservationist agenda, unfortunately excluding peoples rights over and involvement in beneficial utilisation of natural resources, and on the other by a broadly economic-fiscal approach to environmental management diluting the legislative, regulatory and other instrumentalities of the State. The NEP also ignores several crucial system-level issues such as technology assessment and choice, institutional capacity building for environmental assessment and monitoring, and linkages with policy frameworks in other areas. It is also extremely weak in bringing in and building upon experiences in these areas both in India and abroad. Whereas these points form part of DSF's overall critique, and could be expanded upon at some subsequent time, for present purposes of a formal response to the Ministry of Environment and Forests, some major points are highlighted below.

**2. SUBSTANTIVE ISSUES**

**2.1** The NEP in its present form is a decidedly unsatisfactory document both in terms of its general orientation and as regards many of its specific recommendations, as further elaborated below. Whereas the NEP does contain some well-argued positions on a few issues and also advances some useful ideas --- such as building-in environmental costs into planning processes and advocating a "Precautionary Approach" wherein "where there are credible threats of serious or irreversible damage to key environmental resources, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation --- the impact of these is neutralised by the highly erroneous positions taken on many issues and by a host of internally contradictory paragraphs, thereby totally negating its efficacy as an

actionable policy document and providing alibis for any kind of action. As such, suggestions for amending this or that paragraph, or changing some few phrases, would not be fruitful. DSF therefore strongly urges that the NEP be re-written, after a thorough-going exercise of public consultations, in the light of the fundamental re-orientation suggested here and by other Organizations and Experts. Some of the major substantive issues are now briefly discussed.

**2.2** The NEP has been released within a few months of the formation of a new Government which, in order to actualize the popular mandate, has drawn up a Common Minimum Programme (CMP) that enunciates priorities and programmes for socio-economic development with special emphasis on the interests and well-being of disadvantaged and poorer sections. It is surprising indeed that the NEP is not informed by these concerns.

**2.3** It is indeed unfortunate that the NEP fuels the myth that the poor, who are most dependent on nature, are themselves the cause of much environmental degradation. That "poverty itself can accentuate environmental degradation" as argued in the NEP may be superficially true *in extremis* but, in the context of irrigation water, fuel-wood, fish and non-timber forest produce referred to in the Draft, not a single major study has shown a correlation between any significant degradation of such resources and their use by the poor, and certainly not in comparison with the resource-guzzling activities of industrial and commercial corporates. Regrettably a bias against the poor runs through the NEP Draft. Many policy recommendations of the NEP would have serious deleterious impact on tribals, forest dwellers, artisanal fisherfolk and other poor. For instance, the NEP seeks to:

- roll back the Coastal Zone Regulatory Act with adverse impact on the well-being and livelihoods of artisanal fisherfolk and linked workers in the unorganized sector
- dilute the provisions for Environmental Impact Assessment (EIA) which are viewed in the NEP as obstacles to development while they are important tools in the hands of the poor in the event of being negatively impacted by industrial-commercial projects
- repeat previous backdoor attempts to substitute afforestation by commercial silviculture with benefits to corporates rather than forest-dwellers or the environment
- over-emphasizes the role of "Protected Areas", even calling for a targeted zone-wise expansion of such PAs including coverage of a whole slew of "incomparable entities" (to be designated as such by some mysterious process), shutting out existing dwellers from their conservation and linked developmental activities which the NEP mostly confines to eco-tourism, thus once again allowing for possible benefits only to tour operators and richer tourists while victimizing the forest or other local dwellers and restricting any compensatory developmental activities to "fringe areas"
- opens the door for a massive displacement of forest dwellers and other poor from such PAs by not recognizing forest dwellers as economic entities and by legitimizing a principle of "access restrictions" (read exclusion) running directly counter to the CMP assurance that "eviction of tribal communities and other forest dwelling communities from forest areas will be discontinued..."

**2.4** Various formulations in the NEP Draft appear, intentionally or otherwise, to favour certain special interest groups and the corporate sector in general. Commercial "forestry" and industrial-commercial activities along the long Indian coastline have already been referred to. Mention may also be made of the fact that fossil-fuel based power generation and automobiles have been treated with kid-gloves while re-processing of hazardous wastes, unplanned urban

construction etc are simply ignored. More problematically, NEP talks of the "polluter pays" principle but shelters the corporate sector with the caveat "with due regard to public interest and without distorting international trade and investment". The NEP also argues, without advancing reasons why it is doing so, that international environmental standards need not be adopted as such in India, the convenient argument by which asbestos, a whole range of pesticides including DDT, and many other materials and substances banned in other countries are allowed to be manufactured and marketed in this country. Such provisions in the NEP give rise to perhaps needless suspicion that protection is being offered to certain interest groups who may be adversely affected by such application of international standards in India as with automobile emissions, pesticide residues in aerated beverages etc.

**2.5** The NEP places undue reliance on economic and fiscal measures to engender environmental conservation, for example as regards irrigation water especially groundwater. No one would disagree that proper pricing of natural resources, taking into account present and future environmental costs, is desirable. Yet there is little evidence to suggest that pricing alone ensures resource conservation: it is well known that raising taxation on petrol/diesel or on automobiles has not brought about any reduction in automobile purchase, usage or petroleum consumption because, when such commodities are viewed in some manner as "necessities", rising costs are merely absorbed or rather passed on elsewhere in the economy. This overarching economic-fiscal orientation is also evident in the extremely peculiar recommendation that periodic review of the NEP be undertaken by the Cabinet Committee for Economic Affairs!

**2.6** NEP's overemphasis on pricing and other economic instruments goes hand-in-hand with an unfortunate downplaying of State regulatory and enforcement mechanisms. NEP argues in favour of such a shift basing itself upon the failure of the State hitherto to effectively monitor or enforce existing environmental regulations and the high propensity for corruption arising out of "fiats-based regulations". This is tantamount to throwing out the baby with the bath-water and ducks the issue of the responsibility of the State which has been recognized even in highly market-oriented societies such as the USA. In fact, the deteriorating status of the environment in India and the wantonness of industrial and commercial establishments in flouting environmental norms and regulations suggests that there is a crying need to strengthen environmental legislation and monitoring/ enforcement procedures within a transparent regulatory framework. The NEP however goes the other way and seeks to dilute the role of EIAs, which are viewed as "obstacles", rather than examining how the EIA process and documentation can be strengthened.

**2.7** It is noteworthy that the above types of processes in fact transcend purely environmental regulations and procedures. Industrial licensing, siting, choice of technology and many other aspects which ought to, but most often do not, get covered under EIAs, have intimate bearing on the environmental impact of industrial-commercial activity. Several previous environmental disasters such as the Bhopal Gas Tragedy and the Sriram Food and Fertilizers gas leak in Delhi are cases in point. One of the major weaknesses of the NEP is its failure to address such linkages with policy frameworks in related fields which is essential if environment is to be viewed and dealt with as an integral part of the developmental process.

**2.8** Apart from the issue of diluted regulatory systems discussed above, there is a discernible tendency in NEP towards "self-regulation" by project authorities through unspecified mechanisms of "public-private partnership". The Draft is also replete with references to "investors" as prominent among the different stakeholders in development and the environment.

At present, and in the foreseeable future, especially against a background of disregard for environmental degradation caused by project activities, it is difficult to envisage “investors” in India having equal stake in either equitable development or environmental conservation. Such social responsibility on the part of industrial-commercial entities can only be brought about, as experience in developed countries has clearly shown, by years of tough regulation, enforcement, accountability and raising of awareness of all sections of the society, economy and polity. In the current context, despite the NEP’s wishful thinking that ‘ironclad guarantees against conflicts of interest” can be built in to private-public self-regulation mechanisms, such proposals would be equivalent to asking the fox to guard the hen-house!

**2.9** In light of the above, it would be desirable that an independent environmental regulatory body be set up. The mandate, structure and modalities of functioning of this Agency may be framed based on international experience, especially of the EPA in the USA and similar structures in Europe, as well as experience hitherto in India with independent regulators in the field of electricity generation/distribution and telecommunication services. India has historical had "internal" regulatory structures operating from within the concerned executive department or agency. Whereas this may have been justified in the fifties and sixties when the spread of technical capabilities were limited rendering an independent regulator difficult to conceive. This is no longer true today and India can easily conceptualise and institutionalise an independent environmental regulatory body.

**2.10** The Draft has inadequately addressed the issue of decentralisation of environmental regulation, monitoring and enforcement. The present situation as regards jurisdictions, responsibility and authority is riddled with problems, contradictions and confusion causing enormous problems on the ground. Many of the subjects requiring to be dealt with as regards environmental issues fall within the purview of States such as land, river and other inland surface waters, pollution control etc while many other areas have overlapping jurisdictions, certainly in practice if not in pure legislative intent, such as in forests, coasts, groundwater. These overlaps urgently require to be sorted out, the respective areas to be dealt with by Central and State agencies clearly spelled out the States taken on board as full partners in environmental regulation, monitoring and enforcement. Further, the whole issue of the respective areas of operation of the Centre, States and even Panchayat Raj Institutions requires to be worked out and made explicit. Much of any national environmental policy would lose meaning unless these issues are dealt with satisfactorily.

**2.11** The NEP Draft repeatedly talks of promoting and ensuring “public participation” at various but, in the absence of well-defined processes and mechanisms, this would remain at best a pious hope and, as most often happens currently, something to which lip-service can be paid through token actions passing for consultation. In order to ensure equitable and environmentally sustainable development, informed and genuine involvement of citizens, especially project-impacted local communities, should be promoted in decision-making regarding project approval and monitoring. Vague concepts of “public participation” should be replaced by due process of Public Hearings preceded by Public Notice, with legislated and codified rights and obligations for the public and for project authorities enforceable through suitable quasi-judicial forums. Such mechanisms for Public Hearings are well-known in the USA and Europe but the NEP regrettably makes no attempt to draw on this experience. Such processes should ensure that opinions and concerns of affected communities and their accredited representatives are not only heard but recorded, and responses similarly recorded with provisions for further discussing the same.

Assurances and statements made by project authorities would also be useful in promoting fuller transparency and accountability. Anxieties regarding undue delays or dilatory tactics can be allayed by time limits etc.

**2.10** In many countries especially in North America and Europe, ‘Right to Information’ or ‘Right to Know’ legislation aids the above process of informed public participation in decision - making which is the essence of democracy. In India, such rights and their enforcement are in their infancy but need to be assiduously strengthened and incorporated into important policy documents such as the NEP. The public’s ‘right to know’ must additionally be complemented by an ‘obligation to disclosure’ on the part of project authorities. A gain, in most developed countries, project authorities are required obliged by law to disclose essential information about the project, technology used, likely environmental impact and can be penalized with punitive damages for wrong information or withholding information. The NEP Draft unfortunately ignores these crucial issues.

### **3. PROCEDURAL ISSUES**


**3.1** The NEP Draft has been released and public response has been sought in a relatively short period of 75 days expiring on October 30<sup>th</sup> 2004. Unfortunately, the Draft has been released only on the Internet and only in English, severely restricting access of the wider public to this important document and rendering informed discussions at the grassroots virtually impossible.

**3.2** It is therefore imperative that the deadline be extended by a further 3-6 months. The MoEF should also promote/undertake extensive exercises for public consultations and for eliciting public opinion especially from grassroots levels.

**3.3** It is also imperative that the States be properly, systematically and fully consulted, preferably through a full meeting of the Inter-State Council, before the Draft becomes official policy. The States should also surely hold wide public consultations before formulating its positions on various issues. PRIs may also be similarly consulted by the respective States and the Centre. All this too will require more time than presently allowed for.

**3.4** It is imperative that this process of public consultations be completely transparent and seen to be such by disclosure of inputs received and responses to the same. The NEP Draft has made an unfortunate beginning in this regard by being totally opaque as regards the process of formulating this Policy Draft itself and only assuring in the last line that this would be done after the process of consultations is completed! It is earnestly hoped that greater transparency and accountability would be perceptible in future.

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