

Decisions of 56th meeting of the Technical Review Committee (TRC) under the Hazardous Waste (Management, Handling and Trans-boundary Movement) Rules, 2008 held on 18th July 2016 under the chairmanship of Shri R.K.Garg

AGENDA ITEM NO 01: ISSUES PERTAINING TO HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANS-BOUNDARY MOVEMENT) RULES, 2016

Agenda 1.1: Representation from Alkali Manufacturers' Association of India requesting for exemption of brine sludge generated from membrane cell based Caustic Soda plants from the category of hazardous waste as indicated in 16 D of Schedule I (F.No.23-206/2014-HSMD)

Decision: The Committee recalled that this issue had earlier also been discussed when the AMAI's representatives had approached the Ministry for taking brine sludge out of Schedule I as it does not contain hazardous constituents as per Schedule II, during the formulation of the rules. The Committee had enquired of them the mode of disposal to which there was no response. The Committee expressed its concern that since the sludge contains NaCl to the extent of 4 to 16 % which is soluble in water and can give rise to salinity in underground or surface water if the sludge is dumped in open anywhere. In any case industry has to ensure safe disposal of such waste or its utilization as per Rule 9 of HW Rules, 2016 to prevent any adverse environmental impact.

The matter with regard to amendment is under consideration.

Agenda 1.2: Representation from All India Recycled Fibre & Yarn manufacturers Association, Gujarat acrylic Plastic sheets manufacturer's association and clarification sought by Inspectorate Human Environment and Transport, Netherlands regarding ban in import of plastics under the HW Rules, 2016 (F.No. 17-20/2016-HSMD)

Decision: *The Committee deliberated on the submissions made by the All India Recycled Fibre & Yarn Manufacturers Association and Gujarat Acrylic Plastic Sheets Manufacture's Association and following are the recommendations of the Ministry:*

- i. The Committee observed that import of plastic scrap including used PET Bottles is banned as per Schedule VI of the HW Rules, 2016.*
- ii. The Committee also noted that an amendment to the HW Rules, 2016 has been notified vide GSR No. 670(E) dated 6th July 2016 by the Ministry excluding SEZ areas from the purview of the ban on import of plastic scrap as prescribed in Schedule VI of HW Rules, 2016.*

“6A the import of solid plastic waste at column 92), against Basel Number B3010 in Schedule VI, excluding post-consumer wastes, is permitted to units in Special Economic zones notified by the Central Government”

iii. Having taken note of the validity of licenses for import of plastic and PET scrap issued under the previous Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, It has been decided that all the valid licenses of import of plastic and PET scrap issued under the previous Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 will be treated as legal documents. However, the import will be limited to following four categories as on the date of issue of this office memorandum:

- a. Those consignments which have arrived under the valid licenses on Indian ports.
- b. Those consignments under valid licenses which are in transit from the country of origin.
- c. The quantity of import for which Letter of Credit (LC) has already been opened by valid license.
- d. The quantity of import for which advance has already been paid with documentary evidences. However, in this category the quantity permissible for import will not be the entire quantity for contract against which the advance is paid but the quantity would be limited to the value of advance paid.

Agenda 1.3: Representation from Petroleum Re-refiners' Association of India (PRAI)- Import of used oil under the Rules- (F.No. 23-91/2016-HSMD).

PRAI has mentioned that as some changes have been done in the present rules compared to the earlier HW Rules, 2008 vis-à-vis imports (exports) of HW particularly when brought as a raw material. As per Rule 14(2) (i) of 2008 Rules three conditions were stipulated for allowing import of Hazardous waste specified in Part A of Schedule III i.e. : 1) PIC of the Exporting country, 2) License from DGFT, & 3) Prior written permission of the “Central Government” while as per the Rule 12(3) of the new HW Rules 2016 only two conditions have been stipulated i.e. 1) PIC from the exporting country, & 2) written permission of the MOEF&CC.

Ministry has been asked to ask Ministry of commerce to make suitable amendments to the “Restriction” conditions in the Handbook of Procedure of the Foreign Trade Policy so that both rules get aligned to each other.

Decision: *The matter pertains to amendment and is under consideration.*

Agenda 1.4: Representation from Keysight Technologies International India Private Limited- Clarification with regard to various Forms under the rules (F.No. 23-150/2014-HSMD).

Decision: The point wise clarification as sought by the applicant is as follows:

- i. Form 7: The note at ** below part D of Schedule III D indicate authorization by SPCB on one time basis for actual users or the trader on behalf of actual users. Further, Schedule VII providing list of authorities and corresponding duties refers to grant and renewal of authorization on part of SPCB;
- ii. Form 6 at 12 refers to details of transporter of waste which needs to be appropriately filled and signed by carrier's representative as indicated in the form. At point 13 of the form exporter declaration of the waste along with the signature is necessitated. There is also part of the form (point 14-17) which needs to be completed and signed by the importer (actual user or trader).
- iii. Consent of SPCB is mandatory for any commercial / industrial establishment under Air and Water Act.
- iv. The permissions issued by the Ministry have 18 months validity from the date of issue.

Agenda 1.5: Clarification sought by Customs, Gujarat: whether “Waste Pneumatic tyres for direct use” includes “old and used pneumatic tyres” also or not- (F.no.23-107/2016-HSMD)

Attention has been brought to Hazardous Waste Management Rules, 2016 and the following entries in this regard of Schedule III of the existing Rules:

S.No.	Entry	Description	Schedule	Category
	B-3140	Waste Pneumatic Tyres for direct reuse	VI	Prohibited
	B-3080	Waste parings and scrap of rubber	III B	Restricted
	B-3140	Waste pneumatic and other tyres, excluding those which do not lead to resource recovery, recycling, reclamation but not for direct reuse	III B	Restricted

As per the representation old and used Pneumatic tyres and waste pneumatic tyres are two different kinds of tyres which are also classified under different CTH i.e. 4012.20 & 4004 respectively of Customs Tariff Act. As per ITC(HS), 4012.20 is meant for “used pneumatic tyres” and 4004 meant for “Waste, Paring and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom.”

Ministry has been requested to clarify as to whether, “Waste Pneumatic Tyres for direct use” includes “old & used pneumatic tyres” or not.

Decision: The Committee recommended providing the following clarifications in response to the queries raised by Customs:

- i. Waste pneumatic tyres for direct use refers to old and used pneumatic tyres which are directly usable and corresponds to item B 3140 in Schedule III B of the HW Rules, 2016 and are thus covered under ITC (HS) 4012.20. However, if the tyres have been made

- unusable by giving single or multiple cuts, those are allowed to be imported only for recycling, resource recovery and reclamation but not for direct reuse;
- ii. Waste parings and scrap of rubber along with other rubber waste including scrap of hard rubber are covered under item B 3080 and B 3040 of Schedule III B of HW Rules. These correspond to ITC (HS) 4004 except for hard rubber.

AGENDA ITEM 3: ISSUES FOR GENERAL CLARIFICATION WRT IMPORT/EXPORT POLICY UNDER THE RULES- POLICY ON VINTAGE AGE AND RESIDUAL LIFE FOR IMPORT OF EEAs.

The committee noted that following two applications received from M/s Essel Shyam Communication Limited and M/s SeS environmental Services Pvt. Ltd. Gurgaon with regard to import of used EEAs that was considered in the 69th meeting of the Expert committee:

- (i) The application from M/s Essel Shayam pertained to import of 285 nos. of used electrical & electronics assemblies (EEAs) from Singapore for re use purpose. The Committee then noted that most of the items proposed to be imported are of 2006-2008 make and only about 6 items are of post 2010 make. Considering the age of most of the items the Committee then did not recommend the import. In response to the Ministry's decision, the applicant has submitted that the items being imported for direct reuse purpose for setting up a live sports studio are in excellent functional and operational condition despite their age. They have been inspected by a team of well-qualified and equipped technicians. A certificate from a CE empaneled with a MNC has also been attached.
- (ii) With regard to SES environmental services, There were two applications pertaining to import of i. 1550 telecom cards and 1 no. of universal radio communication tester for testing purpose. The Committee noted that the YOM of the telecom cards varies from 2001-2012 while that of the tester has not been mentioned. Moreover, the CEC of the tester has not been provided by the applicant. The Committee recommended that the matter in respect of age of the items may be discussed in the meeting of the Technical Review Committee and the applicant may be asked to provide CEC as well as the year of manufacture in respect of the tester.

In order to have clarity regarding the vintage of the EEAs in the aforesaid cases, the Committee recommended that this matter may be referred to the Technical Review Committee (TRC) for evolving future guidelines for import of used EEAs.

Decision: *On the basis of deliberation in the Committee, the Ministry recommended following criteria for import of used/ second hand electrical and electronic equipment by actual users:*

- i. Residual life of equipment should not be less than 5 years;*
- ii. Date of manufacture should not be more than 7 years from the date of proposed import in case of refurbished equipment;*
- iii. Certificate from the CE / recognized agency of the Exporting country for its functionality, age, minimum residual life ;and status and date of refurbishment ;*

- iv. In case of non-refurbished equipment, the date of manufacture should not be more than 5 years from the date of proposed import.

AGENDA ITEM NO 03: CLARIFICATION WRT IMPLEMENTATION OF VARIOUS PROVISIONS OF E-WASTE (MANAGEMENT) RULES, 2016 AS SOUGHT BY VARIOUS INDUSTRY ASSOCIATIONS

AGENDA 3.1: Representation from Manufacturers Association for Information Technology (MAIT) (F.No. 6-18/2008-HSMD) and Consumer Electronics and Appliances Manufactures Association (CEAMA) (F.No. 23-110/2016-HSMD):

Rule 1(2): Date of Extension of Applicability of Rules

- (i) Extension of rules for implementation from FY 17-18 i.e. instead of October 2016 to April 2017 as it will give adequate time for preparing EPR Plan

Clarification: The implementation of the Rules is dependent on the issuance of various guidelines as prescribed under the E-Waste (Management) Rules, 2016. The Committee therefore is of the view that the matter may be considered by the Ministry on the basis of report from CPCB regarding the issuance of above stated guidelines in the E-waste (Management) Rules, 2016; which according to the CPCB representative will be notified before October, 2016 deadline.

Rule (2): Applicability of the Rules on E-retailers

- (ii) Since most of the e-retailers work as market platform and they do not sell any product under their brand name, so why the rules should be made applicable to them.

Clarification: The Rules are applicable to all those who put EEEs in the market. As such e-retailers who may be putting in the market, branded or unbranded products for which there is no brand owner in India and falls in the category of importer as producer as given in Rule 3(cc)(iii) also have to get the EPR plan prepared and seek the approval of the Competent Authority as prescribed under the E-waste (Management) Rules, 2016.

Rule 3(f): Component definition

- (iii) Do the accessories, attachments like earphone (mobile), stabilizer (aircon & Refrigerators) etc. are to be considered as a component or part of the relevant equipment. It is worthwhile to note that these products do not play any role to make the main product functional. If any of the attachments, for instance stabilizer in case of refrigerator, is offered for sale together, will such attachments also be covered for e-waste generation, target calculations etc.

Clarification: Attachment/accessories as long as they are sold along with the EEE are to be considered as components/parts of that EEE. It may not be correct to

say that they do not play any role to make the main EEE functional.

Rule 3(g): Consumables definition

- (iv) Does "consumables" include Ink/toner cartridge and/or bottle which doesn't have electric current or electro-magnetic field? Such bottles are just the containers.

Clarification: All consumables of any EEE including ink toner/ cartridges are governed by EPR provision of the E-waste (Management) Rules, 2016. Accordingly, the responsibility under the management, falls on the part of producer.

Rule 3 (k): Deposit refund scheme

- (v) Since the industry will be paying interest on the Deposit, it will be deemed as NBFC activity for which RBI approval is required. Interest to be paid on deposit, clarity on the rate is required.
- (vi) When the products are very old, it is possible that customer may have lost the original invoice so its date of purchase cannot be determined. In such case interest for how many years to be paid, is a matter of concern.
- (vii) This deposit shall be covered under the definition of Public Deposit under the Companies Act and there is different set of compliance in the said Act, so this deposit should be excluded from the definition of Public deposit.

Clarification: If DRS is made part of EPR, the producer has to obtain all other applicable approval/permission under the laws prevailing in the country. As far as the rate of interest is concerned, the producer has to decide the level which will incentivize the consumer to return the e-waste to the producer. Even while the date of purchase cannot be ascertained, the producer can stipulate requisite conditions while selling the EEE as to what minimum amount will be refunded by the producer.

Rule 3(n): End of Life definition

- (viii) While defining EOL of a product, the proposed guidelines specially market segment & consumer behavior should be considered as per the Indian market scenario & should include factors like
- a. Transfer of hands between users
 - b. Storage period after use.
- (ix) EEE products life cycle is longer in developing countries like India, than in developed countries like EU, US & Japan. Therefore, EOL to be clarified in guidelines considering Indian prospective.
- (x) Further differentiation in product life is required between premium & basic product targeted for different market segment. Since segment is different so consumer behavior will also be altogether different, so and this behavior and

market condition should be considered while determining Average life of the products.

Clarification: All the factors mentioned for taking into consideration the end of life of equipment may be included while estimating the generation of waste to be provided and to be included in the EPR in Form 1.

Rule 3(gg): Refurbisher

- (xi) Most refurbishers are setup under the Shops and Establishments Act. What is the operational plan to bring them under the ambit of the E-Waste Rules? Exempting them from the Rules will result in huge leakage undermining the purpose, thus setting up for failure of the Rules.

Clarification: Refurbisher as defined in the rules have been given responsibilities under the existing rules, which also include onetime authorization from concerned SPCB. Repair shops which have been set up under the Shops and Establishments Act may be carrying out some refurbishment, however taking into account the huge number, it has been considered impractical to bring them in the ambit of these Rules from the point of implementation.

Rule 4: Responsibilities of the Manufacturer

- (x) Does the sub-vendors who provides components to the product manufacturers as per Schedule-I need to take e-waste manufacturers authorization?

Clarifications: Any manufacturer who manufactures electrical and electronic components or sub-components either as vendor or sub-vendor has to obtain authorization as manufacturer

- (xi) If any manufacturer holds a valid authorisation under HW Rules 2008, would they need to again obtain authorisation as required under 4(2) of e-waste Rules 2016?
- (xii) What would be status of existing authorisation under e-waste/hazardous waste rules 2011?

Clarification: All those including manufacturers who are already holding authorization under the e-waste (Management & Handling) Rules, 2011, they need not obtain the authorization under the existing E-Waste (Management) Rules, 2016 as long as they are valid and subsisting. However, the provision for manufacturer authorization was not there in e-waste rules, 2011. Further, all the producers will have to apply afresh for EPR authorization under the Rules, 2016. The manufacturer have authorization under HW Rules will also have to apply separately for authorization under e-waste rules, 2016.

Rule 5: Responsibilities of the producer

- (xiii) Please clarify as to how EPR will be interpreted for customers that buy from producers in other countries and import to India on their own?

Clarification: EPR is applicable to producers who are supplying EEE in India either from manufacturers from India or imported from outside. However, for individuals buying EEE outside the country, and bringing them into India, there is no obligation on the part of the producer under these Rules.

- (xiv) Producers can continue to import EEE and carry on their operations during the 90 day period when their EPR Authorisation application is under review by CPCB?

Clarification: The Committee is of the view that they can continue with the operations during the 90 day period when their EPR Authorisation application is under review by CPCB.

- (xv) Are the Producers expected to achieve 30% collection target and report the same in the Annual Returns filed for the FY 2016?

Clarification: Since the rules come into effect from 1st Oct 2016, the collection targets for the year 2016-2017 will be proportionate namely 15 % of the estimated e-waste generation. Subsequently, the target under the rules as prescribed in Schedule III shall be calculated in consonance with the financial year to coincide with the applicability of other provisions under the Rules.

- (xvi) What is the penalty for non-compliance?

Clarification: Penalty for non-compliance shall be as per the Environment (Protection) Act, 1986, under which the existing rules have been notified which shall also take into account Rule 21(2) prescribed under the E-waste Rules, 2016.

- (xvii) Do producers have to report both - Quantity and Weight

Clarification: Producer has the option to report either in quantity or weight but the same shall be clarified in the EPR Plan submitted to the CPCB.

Rule 7: Responsibilities of dealers

- (xviii) Dealers should be integrated by charging some penalties for illegal, recycling/ disposal, if any: Under the new rules dealers Responsibility is very limited. Since this is one major point of leakage to the informal sector, hence there is a need to fill Form 3 and get authorization from their respective SPCB's. Also the form -2 submitted by Dealer to respective SPCB should also be informed to Producers for maintaining E-waste inventory under waste management to control informal leakages.

Clarification: As per the rules the dealers are collecting e-waste on behalf of the producers and the figures of

collection are supposed to be provided by them to the respective producers on whose behalf they are doing the collection.

Rule 9: Responsibilities of consumer or bulk consumer

- (xix) Is it compulsory for the bulk consumer to file the annual return for the financial year 2016-2017, on or before 30th June, 2017?

Clarification: As per Rule 9(4) all the Bulk Consumer need to file return before 30th June, 2017.

Rule 13: Procedure for Seeking and Grant of Authorization

- (xx) What happens to the already existing Authorizations received from different SPCBs?

Clarification: Existing EPR authorization under the Rules 2011 will not remain valid subsequent to the enforcement of E-waste (Management) Rules 2016. However, the other authorization given by SPCBs for dismantlers and recyclers shall continue to be in force till the validity.

- (xxi) Can Producer submit application before the enforcement date, ie 1 Oct 2016

Clarification: Yes Producer can submit application before the enforcement date of the new E-waste (Management) Rules 2016 i.e. 1st Oct 2016.

- (xxii) Since as per 13(1)(iv), the refusal of EPR authorisation shall forfeit the right of producer to place EEE on market its critical to have clarity on this aspect.

Clarification: This is already clear in the existing rules that refusal of authorization means Producer not being able to operate in the market.

- (xxiii) Different product categories will require different infrastructure, collection mechanisms and logistics. Please clarify what constitutes an "effective system" to eliminate any subjectivity and individual bias at the time of granting authorizations.

Clarification: Effective system implies any channelization mechanism which ensures collection of e-waste as per the targets and their movement to authorized recyclers and dismantlers.

- (xxiv) We understand that including dealers in take back programs is optional. This understanding must be clarified here as well.

Clarification: The inclusion of dealer in take back programme is optional. If the Producer want to make them as part of the channelization programme the same shall be adequately indicated in the EPR Plan.

- (xxv) There would be thousands of dealers who might be collecting e-waste on behalf of a producer. Do we expect to submit the agreement copies of all these dealers along with the EPR Authorization form?

Clarification: The details of all the dealers who are being made part of the e-waste channelization need to be indicated as part of the EPR Plan.

Committee observed that there were many other issues pertaining to target and RoHS provision of the rules, which will be clarified after release of guidelines by CPCB.

Rule 16: RoHS

- (xxvi) Specific details required on surveillance mechanism like methodology, labs & cost for implementation of this provision.

Clarification: Guidelines are being prescribed by CPCB in this respect.

Rule 19: Transportation of e-waste

- (xxvii) There would be thousands of collection points across India (considering the option of placing recycle bins at retail stores, repair stores, dealers, etc). All these collection points to follow the Manifest process?

Clarification: Yes, under the provision of the rules any transportation of e-waste shall be under the provision of the rules, which necessitate manifest system.

General:

- (xxviii) Are manufacturers and refurbishers allowed to treat e-waste?

Clarification: Any treatment of waste shall be under the provision of the rules and necessary authorization as applicable, will be needed for such treatment.

- (xxix) Please provide a mechanism to inform CPCB of changes to the take back plan without revising the EPR authorization every time?

Clarification: Online provision will be created for the same.

- (xxx) For Hazardous waste (heavy metals, etc.) and plastic waste (packing material), who are responsible i.e. recycler/ dismantler. Clarity on submission of annual returns for the hazardous and plastic waste generated is required.

Clarification: The rules prescribe responsibility of recyclers/dismantlers for forwarding the dismantled and non-recyclable waste to appropriate authorized recycling and treatment facility, respectively. Further, the hazardous and plastic waste generated

from e-waste dismantling/recycling shall also be filed by the e-waste recyclers/dismantlers.

AGENDA 3.2: Representation from Electric Lamp and Component Manufacturers' Association of India (ELCOMA): Clarification on categorization of Fluorescent and other Mercury containing lamps in SCHEDULE I.

Decision:

- i.** The sub-Rule 1 of Rule 16 is about Reduction of Hazardous substances (ROHS) in the items mentioned in Schedule I. Nowhere in the E-waste Rules it is written that any item listed in Schedule I is exempted from application of these E-waste Management Rules, 2016. Since, fluorescent and other mercury containing lamps are listed in Schedule I as CEE W5, the producers of such items have to comply with the provisions of E-waste (Management) Rules, 2016 as well with the Schedule II with respect to ROHS.
- ii.** The Committee noted that the fluorescent and other mercury containing lamps are also covered under Rule 15 (i) and 15 (j) of Solid Waste Management Rules, 2016, which prescribes the duties and responsibilities of local authorities and village panchayats of census towns and urban agglomerations with respect to collection and transportation for disposal of CFLs as part of domestic hazardous waste. CFL as part of domestic hazardous waste has been indicated in the SWM Rules 2016 at rule 3 (17). This is thus in contradiction with the provision of E-waste (Management) Rules 2016 which prescribe such a responsibility on producer as a part of their EPR. The Committee is therefore of the view that there has to be a compatibility amongst the two Rules and the issue needs to be examined again in terms of amendment in one of the Rules. Considering the environmental impact of constituents like Hg and potential recyclability of glass and other components, the Committee is of the view that CFLs and other Hg containing lamps should continue to remain regulated under the E-waste Rules 2016 with amendment in SWM Rules, 2016.