

Government of India
Ministry of Road Transport & Highways
(S&R (P&B/New Technology) Zone)
Transport Bhawan, 1, Parliament Street, New Delhi-110001

Dated: 26th September, 2023

CIRCULAR

To

1. The Chief Secretaries of all the State Governments/ UTs.
2. The Principal Secretaries/ Secretaries of all States/ UTs Public Works Department/ Road Construction Department/ Highways Department (dealing with National Highways and other centrally sponsored schemes).
3. The Chairman, National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110 075.
4. The Managing Director, NHIDCL, PTI Building, New Delhi-110001.
5. The Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110 010.
6. All Engineers-in-Chief and Chief Engineers of Public Works Department of States/ UTs/ Road Construction Department/ Highways Departments (dealing with National Highways and other centrally sponsored schemes).
7. All CE-ROs, ROs and ELOs of the Ministry.

Subject: Order on usage of flyash in National Highway Construction~reg.

Reference: No.CE-RO/LKO/NH(O)/17/PratapgarhBypass/2020-21(Pt.) Dated, 26.09.2023

Madam/Sir,

The mandatory use of flyash/ pond ash has been stipulated by MOEF&CC vide gazette notification no. S.O.763 (E) dated 14.09.1999 and subsequent amendments vide notifications dated 27.08.2003, 03.11.2009, 25.01.2016 and 31.12.2021. This order is being issued based on interpretation of MOEF&CC's notification and its subsequent amendments for National Highway contracts for which bids have been received between 25.01.2016 and 31.12.2021.

2. Relevant provisions of MoEF&CCs notifications published from time to time are brought out as follows: -

2.1 As per para-1 sub para (5) notification of MOEF&CC the mandatory use of flyash in road construction flows from notification dated 25.01.2016 (read in conjunction with notification dated 03.11.2009): -

“No agency, person or organization shall, within a radius of **three** hundred kilometers of a thermal power plant undertake construction or approve design for construction of roads or flyover embankments with top soil; the guidelines or specifications issued by the Indian Road Congress (IRC) as contained in IRC specification No. SP: 58 of 2001 as amended from time to time, regarding use of fly ash shall be followed and any deviation from this direction can only be agreed to on technical reasons if the same is approved by Chief Engineer (Design) or Engineer- in-Chief of the concerned agency or organization or on production of a certificate of "fly ash not available" from the thermal power plant(s) (TPPs) located within **three** hundred kilometers of the site of construction and this certificate shall be provided

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by the TPP within two working days from the date of receipt of a request for fly ash, if fly ash is not available.”

2.2 Para- 3, sub para 8 of MOEF & CC's Notification dated 25.01.2016 inter-alia stipulated: -

“It shall be the responsibility of all State Authorities approving various construction projects to ensure that Memorandum of Understanding or any other arrangement for using fly ash or fly ash based products is made between the thermal power plants and the construction agency or contractors.”

2.3 As per para-2, sub para 14 of MOEF & CC's Notification dated 25.01.2016: -

“The coal or lignite based thermal power plants shall within a radius of three hundred kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments”.

2.4 The Ministry vide D.O. No. NH - 35014/18/2016-H dated 04.12.2017 conveyed to the Ministry of Power that MoEF&CC vide letter dated 23.08.2017 had informed that the meaning of the words “Assets Creation Programmes of the Government” may be read in the context of projects carried out under certain plan scheme of the Government Department; the Ministry clarified that the projects being implemented by NHAI come under Plan Scheme of Assets Creation of Government in the view of the fact that National Highways are infrastructure assets which promote economic activity; moreover all National Highways are assets belonging to the Ministry and NHAI by way of entrustment. The Ministry of Power was accordingly requested to look into the matter and provide necessary instructions to concerned officers on the matter of cost of transportation of fly ash for National Highways Projects.

2.5 Accordingly, National Highways projects by virtue of qualifying under “Assets Creation Programme” are covered under para 2 sub para 14 of MOEF&CC Notification dated 25.01.2016 (Ref. para 2.3 ante) whereby the Thermal Power Plants are obligated to supply flyash at construction site of National Highways projects, situated within 300 km of the TPPs and also shall bear entire cost of transportation as per aforementioned Notification.

2.6 As per para B. (1) of MOEF & CC Notification dated 31.12.2021: -

“All agencies (Government, Semi-government and Private) engaged in construction activities such as road laying, road and flyover embankments, shoreline protection structures in coastal districts and dams within 300 kms from the lignite or coal based thermal power plants shall mandatorily utilise ash in these activities:

Provide that it is delivered at the project site free of cost and transportation cost is borne by such coal or lignite based thermal power plants.

Provided further that thermal power plant may charge for ash cost and transportation as per mutually agreed terms, in case thermal power plant is able to dispose the ash through other means and those agencies makes a request for it and the provisions of ash free of cost and free transportation shall be applicable, if thermal power plant serves a notice on the construction agency for the same.”

3.0 Difficulties have been experienced in implementation of the provisions stipulated vide the MOEF & CC Notification dated 25.01.2016 primarily due to following reasons: -

(i) Non-execution of Memorandum of Understanding or any other arrangement for using fly ash or fly ash based products between the thermal power plants and the construction agency or contractors;

(ii) Provisions such as the following incorporated in some Contract Agreements executed by the agencies of the Ministry:

“Circular no. 24028/14/2018-H dated 27.08.2018 said that in construction of embankment, fly ash will be used if any thermal and lignite based power plant is available in the periphery and the cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity within a radius of hundred kilometers from a coal or lignite based thermal power plant shall be borne by such coal or lignite based thermal power plant as it is located in (name of place) which is within a radius of hundred kilometres.”;

(iii) Ambiguous interpretation of Specific Contract provisions of National Highways projects read in conjunction with provisions stipulated in the MOEF & CCs Notification dated 25.01.2016 in cases where fly ash is not delivered at the project site free of cost by coal / lignite based thermal power plants and / or transportation cost is also not borne by them.

4. The Ministry requested the Ministry of Power to consider resolving the issue of mandatory utilization of fly ash for National Highways projects (for which bids were received after 25.01.2016 and before 31.12.2021) in consultation with all concerned stakeholders. Accordingly, a meeting was held under the Chairmanship of Hon'ble Minister of Power on 14.06.2023 which was attended by the Secretary (Power), Secretary (RT&H), Chairman (NHAI), Senior Representatives from Central Electricity Authority, NTPC Ltd. and other officers from these stakeholder organizations. After detailed deliberations in the said meeting, the decisions taken were conveyed vide the Ministry of Power O.M No. 30-9/3/2022- St.Th. dated 26.06.2023, which were as follows : -

(i) The Ministry of Road Transport and Highways will provide a list of road projects for which bids were received between years 2016 to 2021 to the MoP along with remaining ash quantity required in these projects.

(ii) The following SOP shall be followed in respect of the list of projects referred to in (i). above:

- a. Wherever the ash is available, it shall be provided by the thermal power plants (TPPs) as per the provisions of the MoEF&CC's 2016 Notification.
- b. Where the ash available with TPPs has already been auctioned and there is no issuable ash, TPPs may issue a '**No Availability Certificate**' to MORTH/NHAI so that an alternative arrangement may be looked for, by the MORTH/NHAI contractors.
- c. If the issuable ash is in the process of being tied-up as per the MoP's advisory, then TPPs will first supply the ash free of cost with free transportation to the road projects for which bid due date is between January 2016 and December 2021. Remaining balance quantity, after meeting the requirement of the MORTH/NHAI road projects, may be disposed as per the MoP's advisory dated 22.02.2022.

Thermal Power Plants which are providing ash free of cost but are not bearing the transportation cost, shall be directed to bear the transportation cost as per the provisions in the MoEF&CC's January 2016 Notification in case of MORTH/NHAI projects bid out between the years 2016 to 2021.

(iii) Ministry of Power shall take action against those IPPs/State Plants which don't follow their statutory obligations regarding supply of ash to road projects of NHAI/MoRTH.

(iv) MoRTH will explore measures to curb inflated billing against free of cost ash transport. This may include identifying shortest route of transportation, creation of check posts in the identified route, geo tagging etc. The MoRTH/NHAI contractors must be obligated to share the details of the vehicles transporting ash to the road projects, with the thermal power plant owners for proper accounting by the TPPs for the cost, as a reimbursement towards the transportation cost.

5. The relevant provisions of Notifications of MOEF & CC regarding use of fly ash makes this amply clear that mandatory use of fly ash for construction of embankments and approaches of National Highways projects, in case of TPPs situated within 300 km radius of such projects, shall not be insisted by MoRTH/NHAI in National Highways projects for which bids were received after 25.01.2016 and before 31.12.2021 only in the following two conditions: -

(i) If 'No Availability Certificate' of fly ash is obtained from TPPs situated within radius of 300 km of site;

(ii) The Chief Engineer (Design) or Engineer-in-Chief, i.e. Highest Technical officer of the Authority approves deviation as per para-1 sub para (5) of MOEF&CC notification dated 25.01.2016 (read in conjunction with notification dated 03.11.2009).

6. In the light of the foregoing, following clarifications are, accordingly, issued for mandatory utilization of fly ash in National Highways projects for which bids were received after 25.01.2016 and before 31.12.2021: -

In case one of following two conditions arise,

Either, (a) If 'No Availability Certificate' of fly ash is obtained from TPPs situated within radius of 300 km of site;

Or, (b) The Chief Engineer (Design) or Engineer-in-Chief, i.e. Highest Technical officer of the Authority approves deviation as per para-1 sub para (5) of MOEF&CC notification dated 25.01.2016 (read in conjunction with notification dated 03.11.2009);

- i. the Contractors of the Authority i.e. (NHAI/MoRTH/NHIDCL/ PWDs/ BRO) shall make arrangements for alternate material for embankment construction.
- ii. It is the responsibility of the contractor to carry out due diligence of the project at bid stage regarding availability of fly ash from the nearby TPPs keeping in mind that in case of non-availability of fly ash from TPPs, the Authority shall accordingly permit use of alternate material such as soil, sand, etc. arranged on its own by the bidder/contractor for construction of embankment and/or approaches to the structures.
- iii. The Authority (MoRTH/NHAI/ NHIDCL/ BRO/ PWDs) shall not bear the cost of fly ash/cost of alternate material/cost of transportation, etc.
- iv. However, the non-availability of fly ash to the projects or inadequate/ slow supply of fly ash to the project site shall be treated as Non-political event under force majeure clause of Agreement and both Parties (Authority and the Contractor) shall not have any claim on each other on this account.

7. All the cases, in this regard, shall be dealt accordingly.

Yours sincerely,

Bidur Kant Jha

26/09/2023
(Bidur Kant Jha)

Director

(New Technology for Highway Development)

For Director General (Road Development) & Special Secretary

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1. All CEs in the Ministry of Road Transport & Highways
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4. Technical circular file of S&R (P&B) Section
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