

**MINISTRY OF ENVIRONMENT & FORESTS  
GOVERNMENT OF INDIA**



**TOWARDS EFFECTIVE ENVIRONMENTAL GOVERNANCE:**

**PROPOSAL FOR A  
NATIONAL ENVIRONMENT PROTECTION AUTHORITY**

**DISCUSSION PAPER  
*FOR COMMENTS***

**September 17, 2009**

## **I. Background**

This Note discusses the need for an effective model of environmental governance in India, which includes the establishment of a National Environment Protection Authority (NEPA). The aim of this Note is to invite comments from the States, civil society, and other stakeholders regarding the design of an appropriate institutional structure for best addressing the growing environmental challenges. This is an evolving document with scope for further development, keeping in view the need for expeditiously giving a practical shape to the proposal.

## **II. Rationale for a More Effective Model of Environmental Governance**

The challenge of environmental management and regulation is immense in a country as large and diverse as India. Over the years, legislation has evolved. With the enactment of the Environment (Protection) Act 1986, the various rules and notifications, and the National Environment Policy 2006, a credible legislative and policy base has been created. But there are gaps in the institutional mechanisms and implementation has not kept pace with the legislative and policy evolution.

The judiciary has played a major role in matters related to the enforcement of environmental laws. While this has had a salutary impact, it has also brought into focus the weaknesses in the executive. Quite clearly, while our environmental laws have been progressive, implementation by government agencies has left much to be desired. The institutional structures in their current form are inadequate for responding to the emerging environmental challenges, including river cleaning, management of wastes, hazardous substance and plastics management, dealing with chemical contamination, monitoring compliance with environmental clearances, etc. There is no suitable authority to comprehensively and effectively implement the Environment (Protection) Act 1986.

While the number and complexity of the projects received for environmental clearance by Ministry of Environment & Forests (MoEF) has increased several fold in recent years, its capacity has remained limited. Similarly, the Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCBs) do not seem to have the capacity or the resources to ensure compliance with various environmental regulations. This challenge is exacerbated by the increasing complexity of environmental issues we face today, requiring the interface of science, economics, law and other social sciences. The fact that the matter of disposal of toxic waste in Bhopal's erstwhile UCIL plant has not been resolved even 25 years after the Gas Tragedy illustrates the point. This underscores the need to have a suitably empowered apex level authority to deal with environmental issues.

Several recent reports have called for an institutional redesign. The Report of the Steering Committee on the Environment and Forests Sector for the 11th Five Year Plan (2007) recommended the setting up of a National Environment Clearance Authority. The Report also found it critical to urgently upgrade and strengthen the pollution regulatory institutions, and recommended the repositioning of the CPCB as the Environment Protection Authority. Similarly, the 192nd Report (2008) of the Departmental Parliamentary Standing Committee on Science & Technology and Environment & Forests on the 'Functioning of the Central

Pollution Control Board (CPCB)' has strongly recommended the strengthening of the Board on various counts.

A study of India's environmental regulators, particularly the SPCBs, by the Centre for Science and Environment, New Delhi (2009) has identified several weaknesses in the implementing capacities of the SPCBs and has recommended the introduction of a uniform set of guidelines and standards of operation. Kalpavriksh Environment Action Group has also recently come out with a study titled "Revealing the state of monitoring and compliance of environmental clearance conditions", which brings to the fore the existing weaknesses in the current compliance mechanism.

The lacuna in terms of an appropriate regulatory framework was highlighted by the Madras High Court, which observed in the case of *Tamil Nadu Pollution Control Board v. The State Human Rights Commission* (decided on 04.11.2004) "...there is an urgent need for enactment of a general resolution on environmental pollution which inter alia should enable co-ordination of activities of various regulatory agencies, creation of authority or authorities with advocate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment safety and health."

It is noteworthy that the Prime Minister in his address during the 'National Conference of Ministers of Environment & Forests', on August 18, 2009, has suggested that the Government should consider the setting up of a National Environment Protection Authority supported by regional Environment Protection Authorities.

Quite clearly, there is a need to re-assess the entire ambit of environmental governance in the country.

### **III. Basic Structure of an effective Environmental Governance Model**

To be responsive to the complex challenge of environmental management in the country, it is being proposed that the environmental governance structure be comprised around the following dimensions:

1. **Legislation and Policy-Making:** to be the responsibility of the MoEF.
2. **Regulation, Monitoring and Enforcement:** to be the responsibility of a new *National Environment Protection Authority (NEPA)*.
3. **Adjudication:** to be the responsibility of the National Green Tribunal (NGT), a Bill for which has recently been introduced in Parliament. This will support the constitutional jurisdiction of the higher courts.

The State Pollution Control Boards (SPCBs) will continue to play their respective roles in environmental management. In the case of the Central Pollution Control Board (CPCB), some functional adjustments may be required taking into account the role of the NEPA.

#### IV. Key Principles for the Establishment of the NEPA

Before we look into the structural issues related to the NEPA, it may be useful to visit some of the basic principles pertinent to its design:

1. It should be a **statutory body**, created through the **parliamentary process**
2. It will be truly **autonomous of the MoEF**, equipped with **substantial budget**, and with powers to **make its own procedures**.
3. It should be **professionally managed**, drawing upon best-in-class expertise from all relevant professional fields including applied sciences, economics, law, etc. Its Board Members and CEO should be appointed for a fixed tenure.
4. It should have **original powers** conferred upon it under the Environment (Protection) Act, 1986.
5. Its working will subscribe to the “**polluter-pays principle**” and the “**precautionary principle**”.

#### V. Role of the NEPA

The proposed NEPA shall be an independent statutory body with the basic mandate of effective enforcement of environmental laws. It is envisaged that the NEPA shall have specialists from the areas of physical sciences, life sciences, engineering, law, environmental economics, public health and environmental planning and management. This will adequately equip the authority for taking various measures for protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

The NEPA should assume the national stewardship of enforcement and compliance. India being a country of sub-continental dimensions, the body may have Regional EPAs for decentralised functioning. The portfolio of functions, flowing out from Section 3 (2) of the E(P) Act 1986, that may be discharged by the NEPA include:

- (i) **Environment Impact Assessment:** This will deal with EIA notification, 2006 and CRZ notification, 1991 and the clearances thereunder with respect to the restriction of areas in which any industries, operations or processes or class thereof shall not be carried out or shall be carried out subject to certain safeguards.
- (ii) **Enforcement and Compliance:** This will cover areas like ambient monitoring, industrial monitoring, inspection of common facilities and administrative, civil and criminal remedial action to ensure compliance.
- (iii) **Environmental Planning and Sustainability Studies:** This area will be R&D oriented and will include studies in spatial planning, carrying capacity studies, delineation of critically polluted areas and environmental laws.

(iv) **Environmental Health and Eco-system Protection:** This will cover areas like toxicology, water, air and soil pollution, laboratory management and natural resource management.

(v) **Sustainable Production and Waste Management:** This function will look at issues like municipal solid waste, plastic waste, hazardous waste and also the emerging area of environmental labelling (eco-labelling) of products and services.

(vi) **Chemical Safety and Biosafety:** This function would include prevention and management of chemical accidents and related information systems and would also encompass the work related to approvals presently being given by the Genetic Engineering Approval Committee (GEAC). In this context, it is mentionable that proposal for setting up a Biotechnology Regulatory Authority, which will subsume the GEAC, is under separate consideration of the Government of India.

## **VI. Role of the MoEF and the Pollution Control Boards**

The Ministry's role in framing legislation, policy making, framing of Acts, making of Rules, coordination with the State Governments and with various environmental bodies, will continue along with inter-sectoral and inter-ministerial coordination and Parliamentary matters. The Ministry will also head and oversee the international negotiations under its charge. In addition, the Ministry shall also be executing schemes like the Centrally Sponsored Schemes for river cleaning, establishment of Common Effluent Treatment Plants (CETPs) and Treatment Storage and Disposal Facility (TSDFs) and R&D in Clean Technology. The role of MoEF in regulatory functions, however, will need to be adjusted keeping in view the responsibilities being conferred on NEPA.

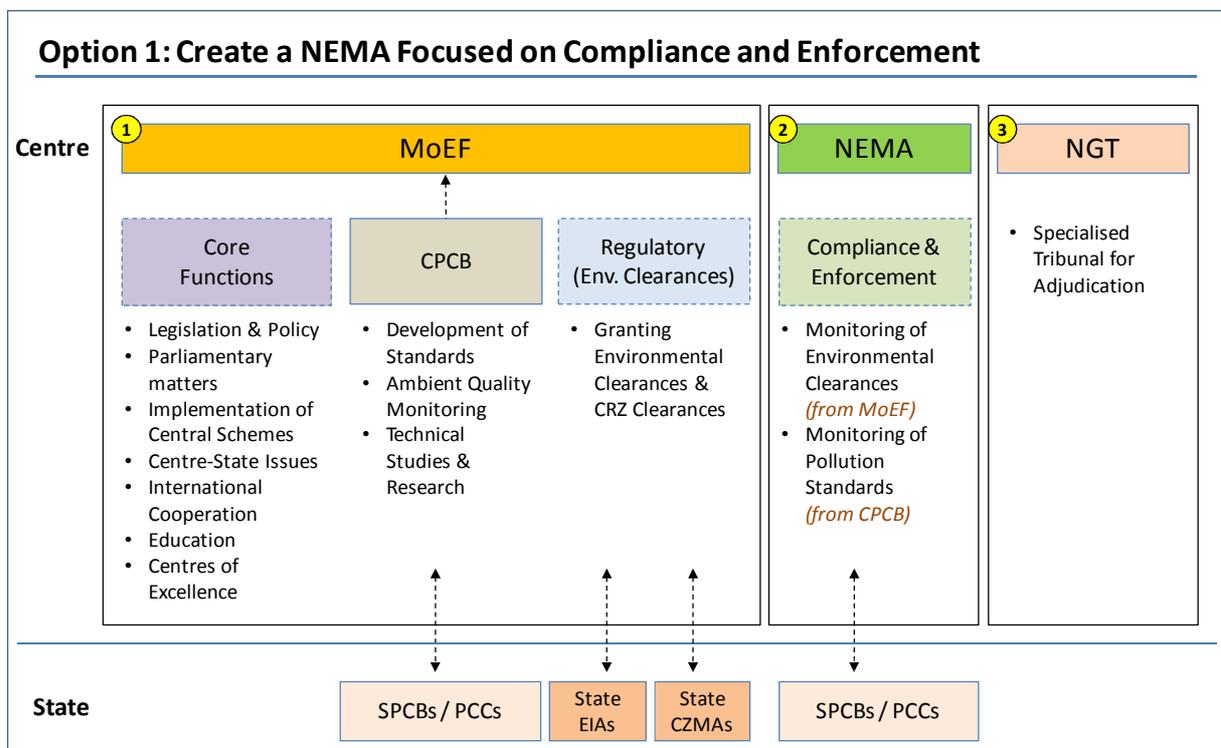
The CPCB will be responsible for developing national environmental standards, monitoring ambient air and water quality, conducting R&D in pollution control technology and coordinating the functioning of the SPCBs. The SPCBs will continue to discharge their compliance and enforcement responsibilities under the existing legislations. The NEPA will provide technical guidance to the SPCBs and it may also give directions to the State Boards in environmental matters.

## VII. Design Options Related to NEPA

Four options are being outlined below with regard to the proposed NEPA.

### ***Option 1: Create a National Environment Monitoring Authority (NEMA) focused on Compliance and Enforcement***

In this model, a new body – National Environment Monitoring Authority (NEMA) – is created. This has a focused mandate, which is to ensure effective compliance and enforcement. NEMA particularly takes over the responsibilities for monitoring compliance and effecting enforcement of environmental clearances granted by the MoEF, a function currently discharged by the MoEF’s regional offices. NEMA also takes over the role of monitoring compliance with pollution standards, currently done by the CPCB. The MoEF continues to discharge all its other functions as present, including regulatory functions such as granting of environmental clearances. The CPCB also continues to discharge all its other functions. NEMA will need to be given significant teeth in terms of powers and resources to implement its mandate. It may perform functions like inspection of facilities and related functions under Section 9,10, 11 of E(P) Act, 1986, issue of direction under Section 5 and launching criminal prosecution under Section 19 of the said Act. In short, the emphasis of this Option is on pointedly strengthening compliance and enforcement.



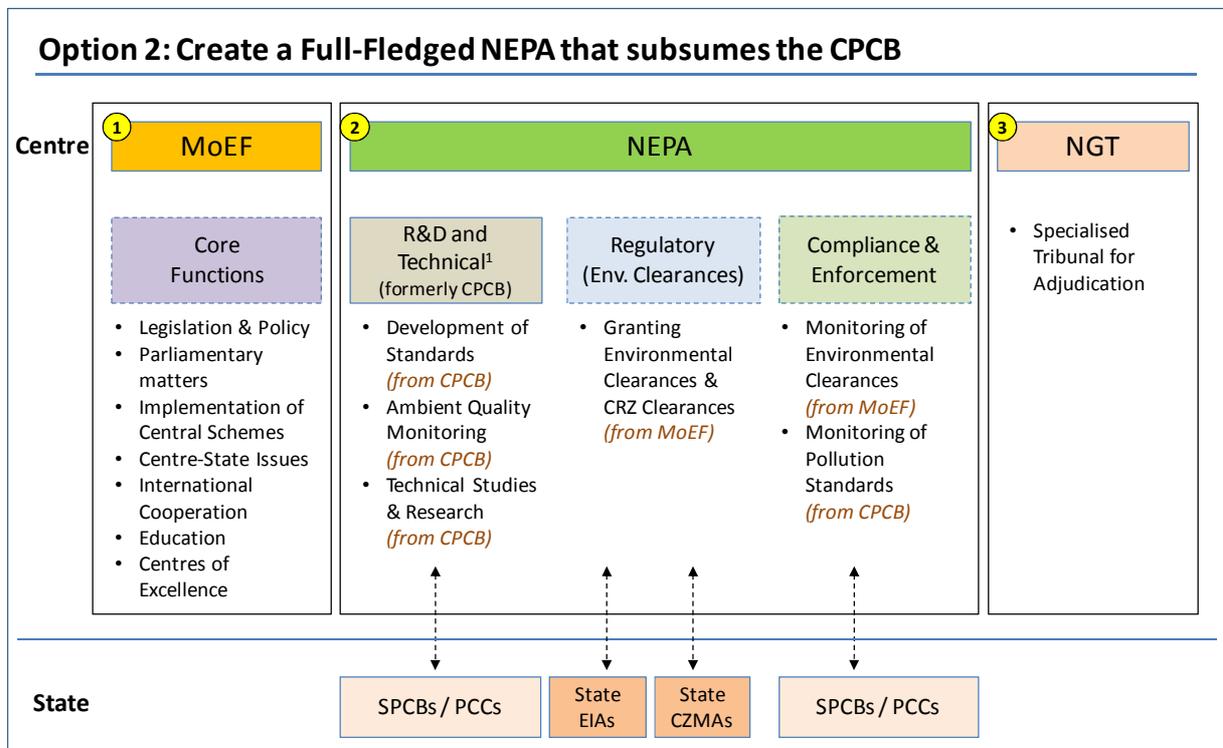
Note: Forestry & Wildlife continue to be functions of the MoEF and are beyond the scope of this document

**Option 2: Create a Full-Fledged NEPA that subsumes the CPCB**

In this model we create a NEPA, which subsumes the CPCB within itself. In other words, the CPCB ceases to exist on NEPA’s creation. Employees of CPCB will become employees of the NEPA, which shall have three broad functions. First, it will conduct R&D and technical studies, primarily being done by CPCB today. Second, it will perform the regulatory function of granting environmental clearances, currently being done by the MoEF. Third, it will perform functions regarding compliance and enforcement with environmental clearances and pollution standards, as explained in Option 1 above.

In effect, the CPCB would morph into a NEPA, with a much larger mandate than before. A key feature of this model is that the available technical manpower of CPCB and its experience in handling pollution control may be utilized as a base for the NEPA. In addition, the existing infrastructure and the six regional offices of CPCB could be upgraded to suit the needs of NEPA. This would essentially translate into a total revamp of the CPCB as well as an organisational metamorphosis in terms of technical manpower, dimensions of functions and approach to environmental challenges. In order to re-engineer CPCB into the NEPA an amendment of the Water (Prevention & Control of Pollution) Act, 1974 may also be needed.

The alternative view is that the multifaceted environmental challenges in the country require an effective planning and management regime which in turn calls for a paradigm shift in the existing business processes and capacities of the CPCB. Retrofitting the CPCB into the NEPA may be challenging.

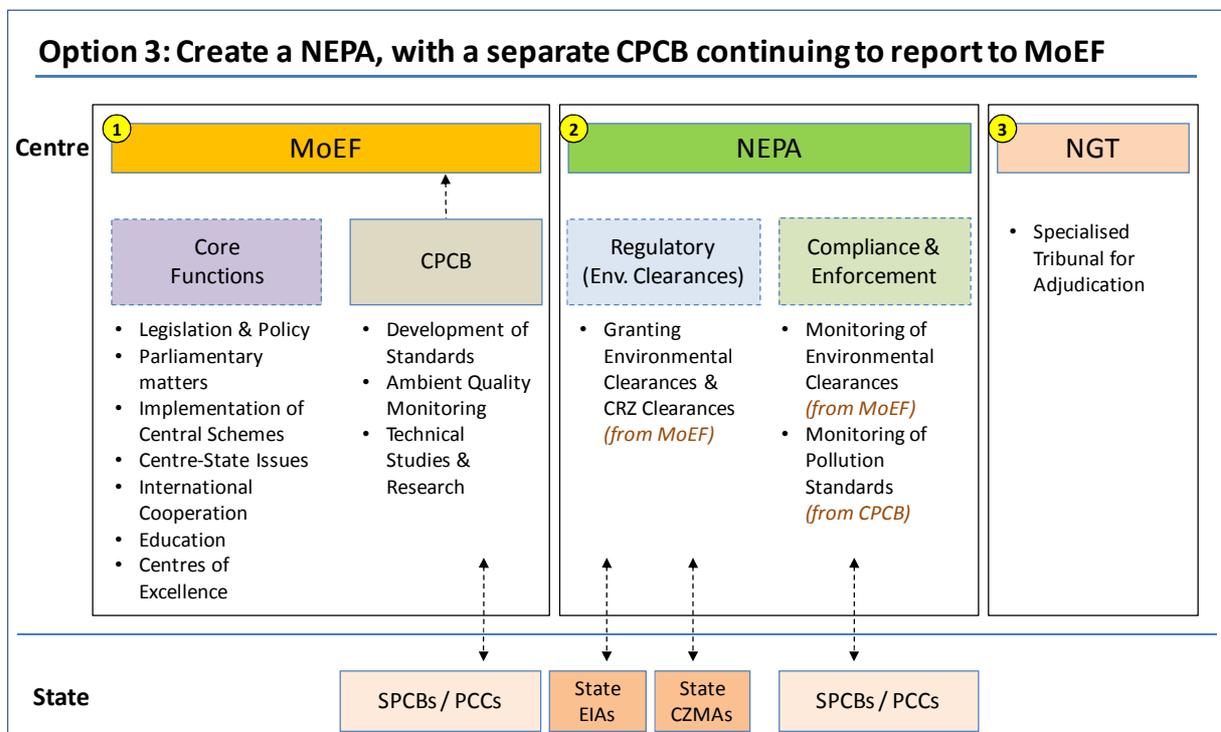


<sup>1</sup> Functions of CPCB get subsumed by the NEPA, primarily by the R&D and Technical Unit of the NEPA; CPCB ceases to exist  
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**Option 3: Create a NEPA, with a separate CPCB continuing to report to MoEF**

In this model we create a NEPA where the NEPA and the CPCB continue to work independently, collaborating where necessary. Here, a NEPA is being created that has two broad functions. First, it performs the regulatory function of granting environmental clearances, currently being done by the MoEF. Second, it performs the function of compliance and enforcement of environmental clearances and pollution standards, as explained in Option 1 above.

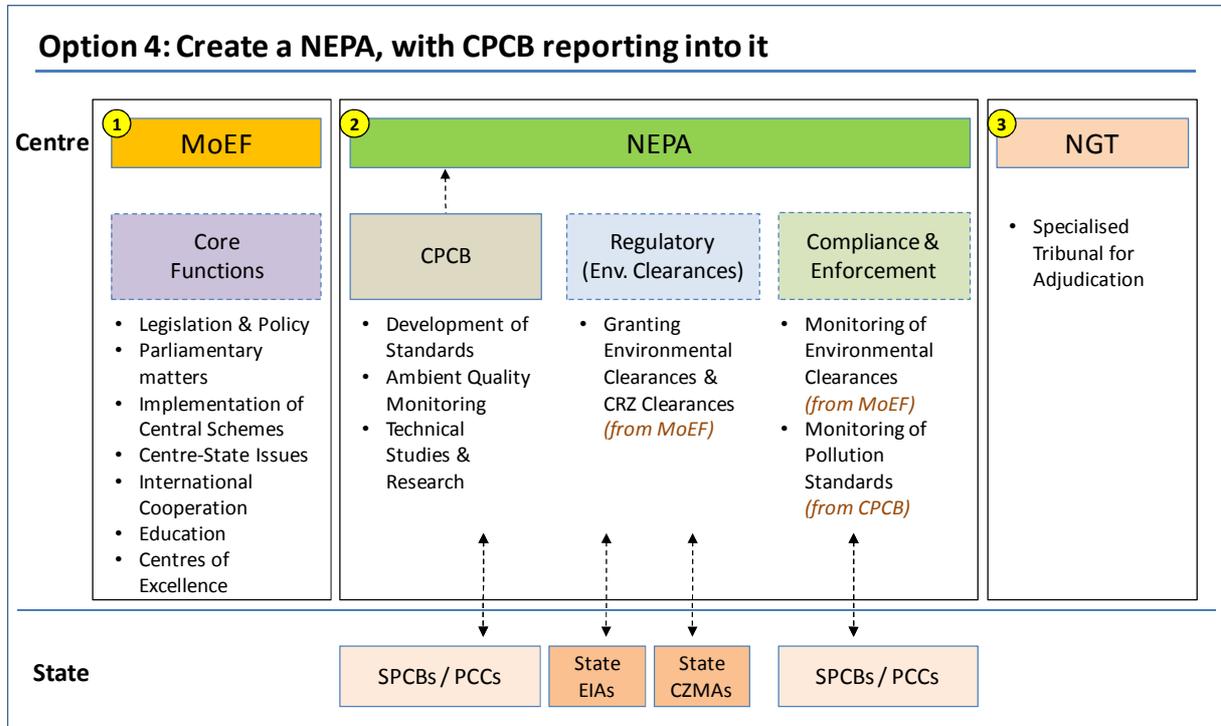
The CPCB continues to exist as today, reporting directly to the MoEF, collaborating with NEPA wherever necessary. It continues to perform the functions it performs today, except the monitoring of compliance with pollution standards and hazardous substance and waste management, that become the functions of the NEPA.



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**Option 4: Create a NEPA, with CPCB reporting into it**

This option is a variant of Option 3, the difference being that the CPCB reports to the NEPA instead of reporting to the MoEF. The distinctiveness of Option 4 (relative to Option 3) is that it recognises the significant synergies that the CPCB may have with the work of the NEPA.



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## **VIII. Epilogue**

This Note contains a broad outline of a proposal for a redesigned institutional structure of environmental governance of India. It is clear that new ground needs to be broken and choices made if we are to enhance the quality of our environmental management and governance. This Note lays out some of these choices.

We are putting this document in the public domain for comments and inputs over the next 30 days so that we can further enhance and refine this concept.

At a time when there appears to be an “institutional fatigue” for the creation of new institutions in the public sector, we need to address the legitimate question: “Why do we need another institution?” As this Note explains, it is clear that given the limitations of our current system and the increasingly complex environmental challenges we face, there is a need for an empowered, professionally managed, independent institution for environmental protection in India.

The creation of the NEPA must be seen in the context of a broader institutional re-design, which acknowledges the need for a more focused role for the MoEF and includes the creation of the NGT. This is aimed to generate enhanced outcomes in the creation of new policies, implementation of regulations and dispensation of justice in the environmental domain in India.

We look forward to your comments.

Please provide written comments to the following:

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