

Dow Chemical's Liabilities in Bhopal

CURRENT SITUATION IN BHOPAL

It is over 17 years since the gas leak from the Union Carbide Corporation (UCC) factory in Bhopal caused the world's worst chemical disaster. Over 20,000 people have since died of exposure-related illnesses and more are dying every month. An estimated 120,000-150,000 survivors are still chronically ill. The most common complaints range from respiratory diseases and menstrual disorders to cancers and growth problems in children born since the disaster. According to official figures, 380 deaths in the year 2001 alone were attributable to toxic exposure in December 1984 - more than one for every day of the year.

Over 20,000 people in the vicinity of the Union Carbide factory continue to be exposed to heavy metals, volatile organic chemicals, organochlorines, insecticides and other toxic and carcinogenic chemicals left behind by UCC. The international environmental organization, Greenpeace has named the area around the UCC Bhopal factory a "Global Toxic Hotspot". A report of the Delhi-based Fact Finding Mission on Bhopal released in January, 2002 documented that toxic chemicals in the ground water are also present in high concentrations in the breast milk of women in the affected communities.

WHO IS RESPONSIBLE FOR THIS DISASTER?

Union Carbide Corporation (UCC) was held chiefly responsible for the disaster. In 1985, the Indian government, having assumed powers to represent the Bhopal victims, filed a civil litigation suit against the company. The claim was for upwards of US\$3 billion. In 1989, the claim was settled in the Indian courts for just \$470 million, without the knowledge of the claimants in Bhopal. This settlement absolved the corporation of all civil and criminal liabilities with regards to the leak. In October 1991, however, responding to review petitions filed by Bhopal survivors, organizations and their supporters, the Indian Supreme Court revised the judgement, reinstating all criminal cases against the Corporation and its officials.

HOW WAS THE UNION CARBIDE CORPORATION (UCC) NEGLIGENCE?

Extensive research since the gas tragedy has revealed that Union Carbide Corporation (UCC), was recklessly indifferent to human life and safety in the location, design, operation, maintenance and management of its pesticide factory in Bhopal. Specific examples of negligence include the following:

- Locating the factory in a densely populated area.
- Implementing inadequate and under-designed safety features.
- Departure from standard design and operating procedures to cut down costs: the refrigeration system, for instance, which could have helped prevent the leak, was kept switched off to save US\$50 a day.
- Reducing the amount of essential training for skilled operators from 6 months to 15 days.
- Insufficient maintenance: there was only one operator to monitor over 70 panels.
- Lack of emergency response plans: the sole manual alarm was switched off so as not to 'unduly' alarm people.

Following the leak, UCC compounded the tragedy by suppressing vital information that could have prevented additional death and injury:

- Immediately after the leak, a German toxicologist showed how sodium thiosulphate could be used to provide relief for gas victims, but UCC undermined the administration of the drug. The company realized it confirmed the presence of toxins in the blood, which went against the corporate PR campaign that stressed only "topical" injury due to the toxic cloud.
- Immediately after the disaster, and for weeks afterward, UCC officials stated that just washing with water was enough to take care of the effects of the toxic gases and that the poisonous gas - which had by then killed thousands of people - was 'no more potent than tear gas'.
- Since the disaster, UCC have refused to release vital unpublished information on the nature of the gas that continues to kill in Bhopal. This information is essential for the long-term treatment of exposure-related problems, but is being withheld as a 'trade secret'.

Following the revised Supreme Court decision in 1991, UCC and its officials have repeatedly ignored Court summons from the Bhopal District Court to attend the criminal case in which they stand accused. The former chairman of UCC, Warren Anderson, has been proclaimed an absconder and a non-bailable arrest warrant has been issued against him. Now added to the list of criminal charges include:

- Abuse of judicial mandate and evasion of lawful process.
- Actual and constructive fraud, as a result of UCC's total failure to comply with the lawful orders of the courts of both the United States and India.
- Contamination of ground water and soil with toxic and carcinogenic chemicals as a result of reckless dumping of chemical wastes in and around the factory.

IS DOW CHEMICAL LIABLE?

In February 2001, UCC merged with The Dow Chemical Company and became a wholly owned subsidiary of Dow. In accordance with well-established legal precedents, Dow has inherited, through the merger, all the assets and potential criminal liabilities of the Union Carbide Corporation.

Last year, the prosecution in the criminal case, the Central Bureau of Investigation (CBI) moved an application before the Central Judicial Magistrate (CJM), Bhopal, for 'verification' of the merger. This was granted and the CBI is now in a position to include Dow among the accused in the criminal case.

WHAT IS DOW CHEMICAL DOING ABOUT ITS LIABILITY IN BHOPAL?

During the administration of the merger, as part of their official filings to the authorities in the US, Dow and Union Carbide officials stated:

'there are no...criminal...actions, suits, claims, hearings, investigations or proceedings pending...No investigation or review by any Government Entity with respect to it or any of the Subsidiaries is pending.'

This statement typifies Dow's reluctance to address the liabilities it has inherited in Bhopal. Dow's indifference flows from the top down. As Dow Chairman Frank Popoff states, 'It's not in my power to take responsibility for an event 15 years ago with a product we never developed at a location we never operated.'

This is in stark contrast to Dow's ready acceptance of Union Carbide's liabilities in Texas, where recent asbestos-related litigation is expected to cost the company hundreds of millions of dollars.

Dow Chemical, like Union Carbide before it, continues to drag out the legal process with its indifference and resistance to justice, while the people of Bhopal continue to die.

WHAT NEEDS TO BE DONE?

Dow must:

- Face trial and ensure that the prime accused, Warren Anderson, former Chairman of UCC, is brought before the Bhopal criminal court.
- Provide long-term health care, including medical care, health monitoring and necessary research. The company must release all information it is withholding on the leaked gases and their medical consequences.
- Clean up the toxic mess - remove the contamination from the ground water and soil in and around the abandoned Union Carbide factory in Bhopal.
- Provide economic and social support. This includes: income opportunities to victims who can no longer pursue their usual trade as a result of exposure-induced illnesses; and income support to families rendered destitute due to death or incapacitation of the breadwinner of the family.

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